

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SHARKNINJA, INC., SHARKNINJA OPERATING
LLC, SHARKNINJA MANAGEMENT LLC, AND
SHARKNINJA SALES COMPANY,

Petitioners,

-vs-

Case No. IPR2023-01322

US Patent No. 10,433,687

DYSON TECHNOLOGY LIMITED,
Patent Owner.

V I D E O C O N F E R E N C E
D E P O S I T I O N O F

WITNESS: JOSEPH FESTER

DATE: Friday, April 26, 2024
9:06 a.m.

APPEARANCES: (All parties appearing remotely
via Zoom)

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I N D E X

WITNESS: JOSEPH FESTER

PAGE NO.

Examination by Ms. Silverstein

3

E X H I B I T I N D E X

EXHIBIT NO.

DESCRIPTION

PAGE NO.

Exhibit 1	US Patent 8,424,153	23
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(Exhibits attached to transcript.)

- - -

April 26, 2024

9:06 a.m.

- - -

-JOSEPH FESTER-

called as a witness, being first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MS. SILVERSTEIN:

Q. Good morning, Mr. Fester. My name is Brianna
Silverstein, and I along with my colleague, Chris
Brenjes, are representing Dyson in this matter.
Nice to meet you formally on the record now.

Have you ever been deposed before?

A. I have.

Q. And how many times have you been deposed,
approximately?

A. Three times previously.

Q. All right. I'd like to understand the
circumstances behind each of those so why don't
you start with the first time you were deposed.

A. Sure.

Q. What was that matter and what was your role in
the matter?

A. Of course. The first time I was deposed was
approximately 2015. I was a -- it's a 30(6)(b)

1 witness. What is the term for speaking on behalf
2 of the --

3 Q. 30(b)(6)?

4 A. 30(b)(6), thank you. I was a 30(b)(6) witness
5 for Bissell Home Care Incorporated in a trademark
6 dispute versus Dyson.

7 Q. Okay. What about the second time?

8 A. The second and third times were close together in
9 proximity, and those were both IPR declaration
10 depositions that were in matters of SharkNinja
11 versus iRobot, and those were in 2019, 2020 area.
12 I think 2020.

13 Q. And what was the technology area for those IPRs?

14 A. The technology area was vacuum cleaner design.
15 Is that too general?

16 Q. Is there anything more specific you can say about
17 it other than vacuum cleaner design?

18 A. There is, like, brush and nozzle design was part
19 of one of the litigations.

20 Q. All right. So other than those three times,
21 you've never been deposed. This is your fourth
22 time being deposed?

23 A. That is correct.

24 Q. All right. So while you have some experience, I
25 just want to go over some ground rules for today

1 to make sure we're on the same page and we make
2 Ms. Jacoby's life much easier today.

3 So my role is to ask the questions and
4 your role is to answer the questions. Ms. Jacoby
5 is taking down everything that is said when we
6 are on the record so we need to make sure to do
7 our best to speak up, speak slowly and not speak
8 over each other.

9 Additionally, she cannot transcribe
10 gestures so we have to make sure that we're both
11 providing verbal responses. Your attorney is
12 here and he may make objections to my questions
13 from time to time. Unless he instructs you not
14 to answer, you should provide a response to my
15 question. If you do not understand any portion
16 of my question, please let me know. Otherwise if
17 you provide a response, I will assume you've
18 understood the entirety of my question.

19 Please do your best to answer the
20 questions that I ask. To the extent that you
21 have any followup, your attorney will have a
22 chance to ask you a question once I'm finished
23 with my questioning.

24 Also, you can ask for a break at any
25 time. The only caveat is that if I have a

1 question pending, you need to answer that
2 question first and then we can take a break. And
3 I'll try to get us on a break at least, you know,
4 every hour or so just for everyone's comfort.

5 Does that all make sense to you?

6 A. Indeed. I understand.

7 Q. Great. Did you do anything to prepare for
8 today's deposition?

9 A. Yes.

10 Q. What did you do?

11 A. I reviewed essentially all of the exhibits,
12 specifically the -- sorry, all of the 1,000
13 exhibits that were part of the petition.
14 Specifically, I reviewed the petition, my
15 declaration. I've reviewed portions of the 687
16 patent, of the patents that we are claiming on
17 grounds one and two. I also reviewed the patent
18 owner's preliminary response as well as an
19 institution decision.

20 Q. Did you meet with anybody in preparation for
21 today's deposition?

22 A. I did.

23 Q. Whom did you meet with?

24 A. Ahmed, my attorney. I met with him yesterday.

25 Q. And how long was that?

1 A. All day.

2 Q. Did you meet with anybody at SharkNinja to
3 prepare for your deposition?

4 A. No.

5 Q. Have you spoken with anybody at SharkNinja during
6 your work on this matter?

7 A. No.

8 Q. I think we were talking before we went on the
9 record that you have a paper copy of some of the
10 petitioner exhibits and then you have the
11 electronic copy of the certain things that I've
12 marked.

13 Is there anything else that you've
14 brought with you to your deposition today to
15 assist with your testimony?

16 A. No.

17 Q. Okay. I'd like to start with Exhibit 1003 to the
18 IPR proceeding.

19 Do you recognize this document?

20 A. I do.

21 Q. What is it?

22 A. This is my declaration that I wrote on behalf of
23 my client for to support the petition for the IPR
24 review of 687.

25 Q. Okay. Can you please turn to page 125 so -- and

1 when I'm talking about the page number, it's the
2 page number that's in the bottom right-hand
3 corner of the document that gives the total
4 pages.

5 Is that your signature on page 125?

6 A. Okay. So just to clarify, I can type in the pdf
7 just 125 and get to it?

8 Q. Yeah.

9 A. Okay. Yeah. Indeed that is my signature.

10 Q. Okay. And what is the purpose of this document?

11 A. The purpose of this document is to -- pardon me,
12 I'm going to -- the purpose of my document is
13 paragraph two, declaration, I give my opinions as
14 to whether the claims of the 687 patent are
15 valid. I provide technical bases for these
16 opinions as appropriate.

17 Q. Okay. And pages one through 125 of this document
18 contain all the opinions that you are providing
19 in this case as to whether challenged claims one
20 through four, eight and ten of the 687 patent are
21 unpatentable, correct?

22 A. That is correct.

23 Q. Who drafted pages one through 125 of this
24 document?

25 A. It was a -- it was essentially a bit of a joint

1 effort of my attorneys and myself.

2 Q. This document includes some appendices. If you
3 turn to page 126 of the pdf you'll find Appendix
4 A.

5 Do you recognize this appendix?

6 A. Yes.

7 Q. And what is that?

8 A. This is a copy of my CV.

9 Q. Is this an up-to-date version of your CV?

10 A. This includes my current position labeled as
11 Dematic Corporation project manager and 2014 to
12 present, and that is correct that this is
13 current.

14 Q. Perfect. I will turn back to this in a little
15 bit, but for now I'd like you to turn to page 130
16 of this pdf which is Appendix B.

17 Do you recognize this appendix?

18 A. Yes, I do.

19 Q. And what is that?

20 A. This is the table that lists the exhibits that
21 were part of the petition.

22 Q. Does it also indicate the materials that you
23 reviewed in drafting the declaration?

24 A. Correct. I apologize. I may have been unclear.
25 I for the petition and the declaration

1 used the same kind of table of references, same
2 numeric -- enumeration, if that's a word.

3 Q. Is this a complete list of the materials that you
4 had considered in forming your opinions as of the
5 date that you signed this declaration, which was
6 August 21st, 2023?

7 A. Yes.

8 Q. Okay. And is this a complete list of the
9 materials that you have considered as of today in
10 connection with forming your opinions in this
11 case?

12 A. No.

13 Q. What else have you considered as of today in
14 forming your opinions in this case?

15 A. I considered the patent owner's preliminary
16 response, which was in response to both the
17 petition and the declaration, and I considered
18 the institution decision.

19 Q. Anything else that you considered?

20 A. I did look at one of the references, one of the
21 2000 references -- 200X references that was from
22 Krebs basically because I used to work with Allen
23 and just reviewed that as it related to the POPR.

24 Q. Anything else that you looked at?

25 A. No.

1 Q. Okay. Let's turn to page 132 of this pdf which
2 is Appendix C.

3 Do you recognize this appendix?

4 A. I do.

5 Q. And what is this?

6 A. This is the list of the challenged claims of
7 patent 687.

8 Q. Just to make sure the record is clear, in this
9 IPR proceeding you are only providing an opinion
10 as to the patentability of claims one through
11 four, eight and ten of the 687 patent that are
12 listed in this appendix?

13 A. Yes.

14 Q. Let's turn to page 134 of the pdf which is a
15 Appendix D.

16 Do you recognize this appendix?

17 A. I do.

18 Q. And what is it?

19 A. It is a summation of the law in regards to the --
20 as it pertains to the legal standard for prior
21 art, and it is a summation of the law as to how
22 to consider prior art.

23 Q. Okay. And who drafted this appendix?

24 A. This was drafted by my attorneys.

25 Q. Before you began your work on this matter, did

1 you have any understanding of the legal concepts
2 that are described in this appendix?

3 A. Indeed I did.

4 Q. How and when did you gain that understanding?

5 A. In my previous work on IPR declarations.

6 Q. So did you have any understanding of these legal
7 concepts before you worked on the IPRs for
8 SharkNinja that we discussed that you were
9 deposed for before?

10 MR. EL DESSOUKI: Objection.

11 BY MS. SILVERSTEIN:

12 Q. You can answer.

13 A. Maybe -- I've had experience with -- a lot of
14 experience with intellectual property, but as far
15 as the litigation portion of it I would say no.
16 So these standards were new as of my work in 2019
17 for the IPR declarations that I previously
18 mentioned that I was deposed for.

19 Q. And when you did those IPR declarations, even
20 though it was your first time learning of these
21 standards, did you feel like you were well
22 equipped to utilize the standards in giving your
23 opinions?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: Yes.

1 BY MS. SILVERSTEIN:

2 Q. Now, if you look on page 135 to 136 of the pdf,
3 you have a section on anticipation and prior art,
4 correct?

5 A. Correct.

6 Q. You are not providing an opinion in this matter
7 that any of the challenged claims are anticipated
8 by any of the prior art references, correct?

9 A. Please restate your question.

10 Q. Certainly. You are not providing an opinion in
11 this matter that any of the challenged claims are
12 anticipated by any of the prior art references,
13 correct?

14 A. If I'm understanding your question, all of the
15 challenged claims are anticipated by prior art.
16 That's the intent of my -- in terms of -- maybe
17 I'm misunderstanding.

18 Q. Yeah. So if you look at this appendix, you'll
19 see there's a section on anticipation, which is
20 where one single reference either implicitly or
21 explicitly discloses it, and then there's a
22 section on obviousness.

23 I want to make sure that we're on the
24 same page that you're not opining that any of the
25 challenged claims are anticipated by a single

1 one.

2 A. I apologize.

3 MR. EL DESSOUKI: Objection. Objection
4 to form.

5 THE WITNESS: Thanks for the
6 clarification. Yes, and I would agree in terms
7 of anticipation, no.

8 BY MS. SILVERSTEIN:

9 Q. All right. And then if you turn to the bottom of
10 page 139, this paragraph spills over to page 140,
11 the appendix states, I understand that a
12 particular combination may be obvious if it was
13 obvious to try the combination. For example,
14 when there is a design need or market pressure to
15 solve a problem and there are a finite number of
16 identified predictable solutions, a person of
17 ordinary skill has a good reason to pursue the
18 known options within his or her technical grasp,
19 end quote.

20 When you are talking about market
21 pressure here, that is in part dictated by what
22 users want, correct?

23 A. As a POSITA, the voice of a consumer is filtered
24 through typically a marketing team. So
25 indirectly to answer your question, yes, but they

1 typically keep the engineers away from people.

2 Q. Right, but I guess just to put a finer point on
3 it, when you're talking about market pressure in
4 this paragraph you are talking about like the
5 market of the product that's going -- in
6 reference to the consumer market.

7 A. Sure. So consumers would want something or maybe
8 expect something because of the competitive
9 products and that creates market pressure or a
10 market need.

11 Q. Okay. And then if you turn to page 141, the
12 second bullet point states or just discusses
13 design incentives or other market forces in
14 evaluating obvious needs.

15 And again, just like we talked about
16 with the prior paragraph, that is in part
17 dictated by consumers and users of the product,
18 correct?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: Correct.

21 BY MS. SILVERSTEIN:

22 Q. Thank you. Let's go back to your CV, which was
23 page 127.

24 According to your CV, you've been
25 working for Dematic Corporation for the last ten

1 years, correct?

2 A. That is correct.

3 Q. And what does Dematic Corporation do?

4 A. Dematic Corporation is a supplier of material
5 handling equipment. Essentially -- I can read
6 from my declaration, but they make logistics
7 equipment typically found in warehouses.

8 Q. And that's the industry you've been working in
9 since 2014?

10 A. That is correct.

11 Q. And Dematic Corporation does not design,
12 manufacture or sell vacuum cleaners, correct?

13 A. Correct.

14 Q. So your work for the last ten years has not dealt
15 with vacuum cleaners in your position at Dematic
16 Corporation, correct?

17 A. That is correct.

18 Q. Is there any experience that you have gained from
19 your time at Dematic Corporation that has been
20 relevant in rendering your opinions as to what a
21 person of ordinary skill in the art would have
22 found in this case?

23 MR. EL DESSOUKI: Objection.

24 THE WITNESS: Can you rephrase that
25 question?

1 BY MS. SILVERSTEIN:

2 Q. Sure. So in this case, you have had to make
3 opinions as what a person of ordinary skill in
4 the art would have found as to the technology of
5 the 687 patent, correct?

6 A. Correct.

7 Q. Okay. So in doing that, did you use any of the
8 experience that you have gained over the last ten
9 years in your position at Dematic Corporation to
10 inform that opinion?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: Relative to my experience
13 at Dematic?

14 BY MS. SILVERSTEIN:

15 Q. Yes.

16 A. No.

17 Q. Prior to working at Dematic, you worked at
18 Bissell, correct?

19 A. That is correct.

20 Q. Was your work at Bissell exclusively on vacuum
21 cleaners or did you work on other products?

22 A. So in my declaration, paragraph seven, I worked
23 with dry vacuum cleaners including handheld,
24 robotic, canister and upright models.

25 So to answer the question directly, it

1 was mostly all vacuum cleaners, mostly all dry
2 vacuum cleaners. There was some experience with
3 some wet vacuum cleaners, if you know that term,
4 deep-cleaning shampooers, but the vast majority
5 was dry vacuum cleaners.

6 Q. Was your experience with the wet vacuum cleaners
7 at all relevant and helpful in informing your
8 opinions in this case regarding what a person of
9 ordinary skill in the art would have found?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: I think any experience is
12 good experience.

13 BY MS. SILVERSTEIN:

14 Q. And prior to working for Bissell, you worked for
15 X-Rite Incorporated, correct?

16 A. That is correct.

17 Q. And what did X-Rite Incorporated do when you were
18 working there?

19 A. They made and they continue to make color
20 measuring equipment.

21 Q. And is that the industry that you worked in from
22 1998 until 2000 when you left to go to Bissell?

23 MR. EL DESSOUKI: Objection.

24 THE WITNESS: I was at X-Rite through
25 2001.

1 BY MS. SILVERSTEIN:

2 Q. Sorry, yeah, 2001, if I misspoke.

3 A. Give me one moment. I did not list one job on my
4 CV that was between X-Rite and Bissell.

5 So there was another employer that I had
6 for seven months or so prior to joining Bissell.

7 Q. Who was that?

8 A. Tennant, T-E-N-N-A-N-T, Corporation.

9 Q. And what industry were they in while you were
10 working there?

11 A. Commercial cleaning equipment.

12 Q. When you were at Tennant, did you work on
13 anything other than vacuum cleaners?

14 A. They have -- yes.

15 Q. What did you work on?

16 A. Floor scrubbers and vacuums.

17 Q. Did your work at Tennant on floor -- let me
18 strike that. Let me start again.

19 Was there any experience that you gained
20 while working on Tennant on the floor scrubbers
21 that you considered relevant in rendering your
22 opinion as to what a person of ordinary skill in
23 the art would have found as to the issues in this
24 case?

25 MR. EL DESSOUKI: Objection.

1 THE WITNESS: Again, I feel that all
2 experience is good experience.

3 BY MS. SILVERSTEIN:

4 Q. Let's go back to your time at X-Rite.

5 When you worked at X-Rite, did you work
6 in that vacuum technology at all?

7 A. No, I did not.

8 Q. Okay. And prior to working at X-Rite, you worked
9 for Electrolux and/or Frigidare Company, correct?

10 A. Correct. Yes, it was named Frigidare at the
11 time. It's since been renamed to Electrolux,
12 yes.

13 Q. And during your time at Frigidare from 1995
14 through 1998, was your work in the refrigerator
15 area?

16 A. It was, yes.

17 Q. So you did not work in vacuum technology during
18 that time?

19 A. I did not.

20 Q. Okay. Prior to working at Electro -- sorry,
21 Frigidare from 1989 through 1995, you worked for
22 Whirlpool Corporation, correct?

23 A. That is correct.

24 Q. During your time at Whirlpool, were you working
25 in the refrigerator space?

1 A. Yes, along with a number of other spaces. My CV
2 kind of mentions that I was an engineering co-op.
3 I was able to work with a number of different
4 areas including washing machines, dishwashers --
5 actually, no; washing machines and refrigeration
6 was my main focus during that time there.

7 Q. And while you worked at Whirlpool, you did not
8 work in vacuum technology, correct?

9 A. I did not.

10 Q. Okay. Moving on to your education, the highest
11 degree you have is a Master's in business
12 administration, correct?

13 A. That is correct.

14 Q. You graduated with a Bachelor of Science in
15 mechanical engineering from Kettering University
16 in 1994, correct?

17 A. Correct. At the time, it was named GMI
18 Engineering and Management Institute so my
19 diploma says that but Kettering University is the
20 current name of my alma mater.

21 Q. Okay. And this -- sorry, your CV indicates that
22 you had a machine design specialty.

23 Can you explain what that is?

24 A. Sure. Within the mechanical engineering program,
25 there were a number of different elective classes

1 that one could take, and one of them was plastics
2 technology, one of them was machine design.

3 What that meant was that you had core
4 classes for your BSME, a core group of classes
5 for your BSME, but some elective classes would be
6 tailored to a certain specialty if you elected
7 such a specialty. So because I chose the machine
8 design specialty, there was a fair number of
9 classes that were dedicated to courses that
10 supported that specialty.

11 Q. Were any -- strike that. Was any of the
12 electives that you chose to take geared towards
13 vacuum technology or was it more generalized than
14 that?

15 A. It was more generalized than that.

16 Q. And would you say that the education that you
17 gained from your time at Kettering University has
18 helped inform your opinions as to what a person
19 of ordinary skill in the art would have found in
20 this case?

21 A. Most definitely.

22 Q. All right. Do you have -- let me mark this first
23 for Ms. Jacoby, and then I will send it to you.

24 MS. SILVERSTEIN: Ahmed, how I'm going
25 to do this is for the new ones, I'm just going to

1 start them at like Exhibit 1.

2 MR. EL DESSOUKI: Okay.

3 MS. SILVERSTEIN: Anything I'm
4 introducing that's not already marked in the IPR.

5 MR. EL DESSOUKI: Okay.

6 (Deposition Exhibit 1 was marked.)

7 MR. EL DESSOUKI: Brianna, I see you
8 introduced Exhibit 1, which is a US patent ends
9 in 153. Do you want me to send that to
10 Mr. Fester?

11 MS. SILVERSTEIN: Yeah. If you want to
12 send that to him, you can. I was just getting
13 ready to do that.

14 MR. EL DESSOUKI: Oh, sure. No, go
15 ahead.

16 MS. SILVERSTEIN: Okay.

17 THE WITNESS: And pardon me, Brianna.
18 How are you going to send that?

19 MS. SILVERSTEIN: Well, how would you
20 like me to send it?

21 THE WITNESS: I didn't know if you were
22 going to drop it in the chat or email it.

23 MS. SILVERSTEIN: What's going to be the
24 easiest for you? I can do whatever you want me
25 to do.

1 THE WITNESS: Well, dropping it in the
2 chat if that's possible.

3 MS. SILVERSTEIN: Yep, I think so.
4 Let's try it. Oh, maybe not.

5 THE WITNESS: Otherwise you could --

6 MS. SILVERSTEIN: Wait, wait. All
7 right. I can just send it to the email that I
8 sent things to earlier.

9 MR. EL DESSOUKI: While you're getting
10 that, I want to object to this exhibit as not
11 relevant, hearsay, lacks foundation and beyond
12 the scope of this declaration.

13 MS. SILVERSTEIN: Sure.

14 BY MS. SILVERSTEIN:

15 Q. Okay, I just sent it. Let me know when you have
16 it.

17 A. I'm downloading it now. I got distracted by
18 opening my Gmail. So downloads, Exhibit 1. Copy
19 that. I'm opening the exhibit now.

20 Q. Okay.

21 A. Yep.

22 Q. Do you recognize this document?

23 A. I do.

24 Q. What is it?

25 A. It is a patent for a vacuum cleaner that I worked

1 on when I was at Bissell.

2 Q. Okay. And just for the record, it's US patent
3 number 8,424,153, correct?

4 A. Correct.

5 Q. And this is patent number eight on your list of
6 intellectual property in your CV which is on page
7 129 of 1003, correct?

8 A. Correct.

9 Q. Okay. Going back to the patent, I'd like you to
10 look at the abstract. It uses the term upright
11 vacuum cleaner.

12 Can you please describe what that term
13 means?

14 MR. EL DESSOUKI: Objection.

15 THE WITNESS: Sure. By describing it, I
16 want to make reference to my declaration.

17 BY MS. SILVERSTEIN:

18 Q. Okay.

19 A. As I previously mentioned in paragraph seven, I
20 worked with dry vacuum cleaners including
21 handheld, robotic, canister and upright models.
22 There are several different general categories
23 within vacuum cleaners, and one of those
24 categories is upright vacuum cleaners.

25 Upright vacuum cleaners at the time of

1 my tenure at Bissell were the most popular vacuum
2 cleaner category in the US. It describes
3 essentially the largest residential vacuum
4 cleaner that you would have. It is a -- it
5 typically has a large floor nozzle that's
6 supported by wheels and a large -- which a large
7 body is attached to with a handle at the top of
8 the large body.

9 The connection between the body and the
10 floor nozzle is a pivotable connection, and
11 typically there's a brush that's in the nozzle
12 that agitates the debris, and there is a suction
13 motor that's in the body that is sucking the
14 debris into the body. And there's some type of
15 capturing device within the body, be it a bag or
16 a cyclone dirt cup, to capture the debris. So
17 that is an upright vacuum cleaner.

18 Q. All right. Thank you for that. I'm going to
19 mark another one, and I'll send that to you in
20 just a second.

21 (Deposition Exhibit 2 was marked.)

22 BY MS. SILVERSTEIN:

23 Q. All right. I've just sent you what I've marked
24 as Exhibit 2 to the deposition. So when you get
25 that and download it, let us know.

1 MR. EL DESSOUKI: I see it on Exhibit
2 Share from you also sending it.

3 MS. SILVERSTEIN: Yeah, I sent it to the
4 email.

5 MR. EL DESSOUKI: I object to the
6 exhibit. It's not relevant, hearsay, lacks
7 foundation, beyond the scope of the declaration.

8 THE WITNESS: I was trying to copy it
9 and all of a sudden it tried to compress it. My
10 number of USB ports was taken up. Technical
11 issues. Pardon me for a second.

12 MS. SILVERSTEIN: No, that's fine. Take
13 your time.

14 BY MS. SILVERSTEIN:

15 Q. Mr. Fester, have you been able to open that?

16 A. Yes, I have it.

17 Q. Just so we're all clear, we're looking at
18 Exhibit 2. Do you recognize this document?

19 A. I do.

20 Q. And what is this document?

21 A. This is a patent that myself and a colleague
22 Allen Krebs authored for Bissell.

23 Q. And for the record, this is US patent number
24 8,789,235, correct?

25 A. Correct.

1 Q. And this is patent number 11 on your list of
2 intellectual property in your CV which was page
3 129 of Exhibit 1003, correct?

4 A. Just cross-referencing to answer. Yes.

5 Q. Okay. And if you go to -- going back to
6 Exhibit 2, you go to page 12 of the document,
7 under column one in the background of the
8 invention paragraph, this paragraph states -- and
9 it's lines 22 through 25.

10 A. Sorry, which column?

11 Q. Column one.

12 A. Okay.

13 Q. You there?

14 A. Yes.

15 Q. So looking at 22 through 25, it states that
16 vacuum agitator height control mechanisms that
17 allowed a user to adjust the height of the --
18 sorry, let me start again.

19 It states that there were vacuum
20 agitator height control mechanisms that allowed a
21 user to adjust the height of the agitator but it
22 recognizes that, quote, in many such control
23 mechanisms, the height of the agitator is
24 adjusted by raising or lowering the entire base
25 assembly for floor relative to the floor surface,

1 end quote, correct?

2 MR. EL DESSOUKI: Objection; misstates.

3 THE WITNESS: You missed a word.

4 BY MS. SILVERSTEIN:

5 Q. Sorry. What word?

6 A. I believe you missed nozzle. So the quote is, In
7 many such control mechanisms, the height of the
8 agitator is adjusted by raising or lowering the
9 entire base assembly or floor nozzle relative to
10 the floor surface.

11 Q. Thank you for clarifying that.

12 Okay. The patent then notes that,
13 quote, This results in a change in the distance
14 between the suction nozzle and the floor surface,
15 end quote, correct?

16 A. Correct.

17 Q. And it also states that as the distance between
18 the suction nozzle and the floor surface
19 increases, quote, the working air velocity is
20 decreased and the vacuum cleaner can experience a
21 loss of suction resulting in reduced efficiency
22 and poorer cleaning performance, end quote,
23 correct?

24 A. Correct.

25 Q. And that was the problem that you and your

1 coinventor attempted to solve using this patent,
2 correct?

3 A. Correct.

4 Q. And that was because you wanted to avoid the
5 reduced efficiency and poor cleaning performance
6 resulting from the loss in suction that occurs as
7 the distance between the suction nozzle and the
8 floor surface increases, correct?

9 MR. EL DESSOUKI: Objection.

10 THE WITNESS: It has been a number of
11 years since I have reviewed this, so reading the
12 abstract gives one particular reason or
13 explanation why. I would have to review it a
14 little more to understand the intent of what we
15 are trying to solve.

16 BY MS. SILVERSTEIN:

17 Q. Okay. But you acknowledge that that's what the
18 abstract states?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: Correct.

21 BY MS. SILVERSTEIN:

22 Q. Would you also experience the same loss of
23 suction resulting in reduced efficiency and poor
24 cleaning performance as the suction nozzle of a
25 handheld vacuum cleaner is tilted away from

1 perpendicular to the surface to be cleaned?

2 MR. EL DESSOUKI: Objection.

3 THE WITNESS: Can you restate that
4 question, because I'm trying to picture it in my
5 mind what you're saying, unless you had some type
6 of a figure to submit.

7 BY MS. SILVERSTEIN:

8 Q. Sure. I'll try to explain it and see how we can
9 do with that.

10 So if you have a handheld vacuum cleaner
11 and you have the suction directly perpendicular
12 to the surface to be cleaned -- so let's say a
13 couch, you have it directly perpendicular -- as
14 you tilt it away from perpendicular and the
15 distance between the suction nozzle and the
16 surface to be cleaned increases, would you
17 experience the same loss of suction resulting
18 from the reduced efficiency and poorer cleaning
19 performance that the 235 patent noted?

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: It depends.

22 BY MS. SILVERSTEIN:

23 Q. What does it depend on?

24 A. The nozzle design specifically. Sorry.

25 Q. And what type of nozzle design could result in

1 the reduced efficiency?

2 MR. EL DESSOUKI: Objection.

3 BY MS. SILVERSTEIN:

4 Q. And poorer cleaning performance, if the nozzle is
5 tilted away from perpendicular to the surface to
6 be cleaned?

7 MR. EL DESSOUKI: Sorry, Brianna. You
8 cut out for a second. Would you mind re-asking
9 your question?

10 BY MS. SILVERSTEIN:

11 Q. Sure. Mr. Fester says it depends on the nozzle
12 design so I'm trying to understand what type of
13 nozzle design would experience reduced efficiency
14 and poorer cleaning performance if you tilt it
15 away from perpendicular to the surface to be
16 cleaned.

17 MR. EL DESSOUKI: Objection.

18 THE WITNESS: So the considerations that
19 I would have to give to it would be about what
20 axis is it tilting away. Is it tilting away
21 about the axis of a wheel that supports the
22 entire floor nozzle? Does the nozzle itself have
23 a large area that it expands, not just the width
24 of the nozzle -- typically the width of the floor
25 nozzle would be the front end width of it -- but

1 also the depth of it. Is there depth because
2 there is perhaps a brush in there or was it a
3 thin design.

4 So those are elements that would be part
5 of the consideration as to whether or not the
6 cleaning performance would be impacted.

7 BY MS. SILVERSTEIN:

8 Q. Okay, but depending on those elements, the
9 cleaning performance could be impacted by tilting
10 the suction nozzle away from the -- from
11 perpendicular to the surface to be cleaned,
12 correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: And just to kind of go
15 back to one of the -- were you speaking about
16 handheld or stick vacuums?

17 BY MS. SILVERSTEIN:

18 Q. I'm talking about handled vacuums right now.

19 A. Okay. So for a handheld vacuum -- I apologize.
20 For a handheld vacuum, it would merely depend on
21 the nozzle design. So the portion of the wheel,
22 when I was speaking about the wheel, that would
23 be essentially a stick vacuum that I
24 misunderstood your question.

25 So it would be specific to just the

1 nozzle design.

2 Q. Okay. But you do recognize that depending on the
3 nozzle design you could experience a loss of
4 suction resulting in reduced efficiency and
5 poorer cleaning performance as the suction nozzle
6 of a handheld vacuum cleaner is tilted away from
7 the surface perpendicular to be cleaned, correct?

8 MR. EL DESSOUKI: Objection.

9 THE WITNESS: Yes.

10 MS. SILVERSTEIN: Okay, we've been going
11 about an hour, and I'm actually at a kind of good
12 turning point so I'm wondering if we want to take
13 five minutes go off the record.

14 THE WITNESS: Fine by me.

15 MR. EL DESSOUKI: Sounds good.

16 (A brief recess was taken.)

17 BY MS. SILVERSTEIN:

18 Q. Let's turn back to your declaration now,
19 Mr. Fester.

20 If you can turn to paragraph 16, which
21 is on page ten of the pdf.

22 A. Yes, I'm there.

23 Q. You recognize in this paragraph that reducing the
24 amount of dust and other particles released into
25 the air when the dirt collector is open was a

1 known problem that had not yet been solved at the
2 time of the invention, correct?

3 MR. EL DESSOUKI: Objection.

4 THE WITNESS: Yes.

5 BY MS. SILVERSTEIN:

6 Q. Okay. Now, turning to paragraph 25 which is on
7 page 14 of the pdf.

8 A. Yes.

9 Q. In this section of your declaration you're
10 discussing the prosecution history. In this
11 paragraph you're discussing the second office
12 action that rejected the claims as anticipated or
13 obvious in view of Conrad 787 and the applicant's
14 subsequent amendment of the claims to require,
15 quote, at least part of the end portion moves
16 across the longitudinal axis when the end portion
17 moves from the closed configuration to the open
18 configuration, end quote, correct?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: I just want to make sure
21 the court reporter got that correct in terms of
22 the longitudinal axis.

23 MS. REPORTER: It's axis, A-X-I-S?

24 THE WITNESS: Correct.

25 BY MS. SILVERSTEIN:

1 Q. Then you state in that paragraph, quote, The
2 applicant's amendment suggests that both the
3 examiner and the applicant agreed that the
4 handheld configuration as it was claimed did not
5 overcome the art of record such as Conrad 787,
6 end quote, correct?

7 A. Correct.

8 Q. I'd like you to look at what's been marked as
9 Exhibit 1002 to the IPR proceeding. I believe
10 you already downloaded that, correct?

11 A. I do have 1002.

12 Q. Okay. Do you recognize this document?

13 A. I did not review the document in its entirety,
14 but yes, I do recognize this document.

15 Q. And what is it?

16 A. It is the application history of the -- sorry --
17 yeah, it's the application history of 687.

18 Q. Okay. And this document appears on your
19 materials considered list, correct?

20 A. Correct.

21 Q. And if you could turn to page 168 of the pdf?

22 A. Yes.

23 Q. These are the remarks that accompany the
24 applicant's amendment that you referred to in
25 paragraph 25 of your declaration, correct?

1 A. I'm attempting to answer your question.

2 MR. EL DESSOUKI: While you're doing
3 that, I just want to object because --

4 BY MS. SILVERSTEIN:

5 Q. If I can help you out, if you look on paragraph
6 five on this page, it has the claim amendment
7 there. It says claim one has been amended to
8 recite that, and it includes a claim amendment
9 that you referred to in paragraph 25 of your
10 declaration.

11 A. Thank you. Yes, that is accurate in terms of
12 what was cited in my declaration.

13 Q. Okay. And if you look on paragraph three of this
14 page, it says, quote, any amendments and/or
15 cancellations have been made only in the interest
16 of progressing the prosecution of this
17 application and do not indicate that any
18 amendments and/or cancellations are necessary for
19 patentability. Moreover, applicant has not
20 acquiesced to any rejections and/or objections
21 made by the patent office, end quote, correct?

22 A. That is what the remarks say, yes.

23 Q. Okay. So this is in direct contradiction to your
24 statement in paragraph 25 of your declaration
25 that the applicant agreed that the handheld

1 configuration as it was claimed did not overcome
2 the art of record, correct?

3 A. Please restate your question.

4 Q. Certainly. The statement that we just read in
5 paragraph three is in direct contradiction to
6 your statement in paragraph 25 of your
7 declaration, that the applicant agreed that the
8 handheld configuration as it was claimed cannot
9 overcome the art of the record, correct?

10 A. You're omitting the first part of that sentence,
11 which is critical.

12 The applicant's amendment suggests that
13 both the examiner and the applicant agreed that
14 the handheld configuration as it was claimed did
15 not overcome the art of record.

16 Q. Okay.

17 A. The term suggests is imperative to what I was
18 trying to explain.

19 Q. Okay. But the applicant said on page 168 of
20 Exhibit 1002 when it made the claim amendment
21 that it was not acquiescing to any objections or
22 rejections made by the patent office, correct?

23 MR. EL DESSOUKI: Objection.

24 THE WITNESS: That is the statement in
25 the remarks, correct.

1 BY MS. SILVERSTEIN:

2 Q. Okay. Let's turn to -- we're going back to your
3 declaration, 1003, paragraph 30. So that's on
4 page 16.

5 You state that you reviewed the file
6 history for --

7 A. Sorry. Let me get there first.

8 Q. Sorry. You state that you reviewed the file
9 history for the 687 patent, and you are not aware
10 of Conrad 630, Matsumoto or Dyson being discussed
11 in the prosecution history, correct?

12 A. Correct.

13 Q. And when you are referring to Conrad 630,
14 Matsumoto and Dyson, you are referring to the
15 prior art references that are discussed in your
16 declaration, correct?

17 A. Correct.

18 Q. Okay. I'd like for you to look at what has been
19 marked as Exhibit 1004 to the IPR proceeding.

20 A. I'm there.

21 Q. Okay. Do you recognize this document?

22 A. Yes.

23 Q. What is this document?

24 A. This is the 630 patent, the Conrad 630 patent.

25 Q. Now I'd like you to look at what has been marked

1 as Exhibit 2009 to the IPR proceeding. This was
2 in the document that Ahmed sent you earlier
3 today.

4 MR. EL DESSOUKI: Let me pull it up.
5 Okay. This document is not relevant, beyond the
6 scope of this declaration, lacks foundation and
7 hearsay.

8 BY MS. SILVERSTEIN:

9 Q. Okay. This is US patent publication application
10 number 20160150923, correct, Mr. Fester?

11 A. Correct.

12 Q. And this application is a continuation of Conrad
13 630, correct?

14 MR. EL DESSOUKI: Objection.

15 THE WITNESS: I cannot answer that
16 question with certainty right now.

17 BY MS. SILVERSTEIN:

18 Q. Okay. If you look on the front of this document
19 on the left-hand column next to the little number
20 630, under related US application data, it says
21 it's a continuation of application number
22 13/255858 filed on September 9th, 2011.

23 Do you see that?

24 A. I do.

25 Q. Okay. And if you go back to Exhibit 1004, which

1 is Conrad 630, let me know when you're there.

2 A. I am.

3 Q. And then you look next to -- on the front of the
4 document on the left-hand side next to the 21 it
5 says application number, and it gives that same
6 application number, 13/255858.

7 Do you see that?

8 A. I do see that.

9 Q. Okay.

10 A. Yes.

11 Q. So now that we've walked through that, can you
12 confirm that Exhibit 2009 is a continuation of
13 Conrad 630?

14 MR. EL DESSOUKI: Objection.

15 THE WITNESS: I can confirm that
16 Exhibit 2009 is a continuation of that
17 application number 13/255858.

18 BY MS. SILVERSTEIN:

19 Q. Okay. And that application is the underlying
20 application for Conrad 630, correct?

21 MR. EL DESSOUKI: Objection.

22 THE WITNESS: The application number for
23 Conrad 630 is indeed 13/255858.

24 BY MS. SILVERSTEIN:

25 Q. Okay. Do you have an understanding that

1 continuation applications include the same
2 disclosure as their parent applications?

3 MR. EL DESSOUKI: Objection.

4 THE WITNESS: Restate the question.

5 BY MS. SILVERSTEIN:

6 Q. Do you have an understanding that continuation
7 applications contain the same disclosure, so
8 drawings and specifications, as their parent
9 applications?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: I would say that I do
12 not -- I am not familiar with the term
13 continuation application.

14 BY MS. SILVERSTEIN:

15 Q. Okay. If you look at Exhibit 2009 and you look
16 at pages two through ten of that pdf and you see
17 the drawings there, and you compare them in
18 Exhibit 1003 -- or sorry -- 1004, Conrad 630, to
19 pages one through ten there, can you see that
20 those drawings are the same?

21 A. So I'm looking at them side by side. They appear
22 to be quite similar.

23 Q. Okay. Can you look at Exhibit 1001 to the IPR
24 proceeding.

25 A. Okay, I have that.

1 Q. Do you recognize this document?

2 A. Yes.

3 Q. What is it?

4 A. This is the challenged patent which is 687.

5 Q. And if you turn to page two of this patent -- or
6 of the document and the patent, yes, under
7 references cited, this lists all the references
8 that were before the patent office during
9 prosecution, correct?

10 A. Page two?

11 Q. Yep.

12 MR. EL DESSOUKI: Sorry, can you repeat
13 the question?

14 BY MS. SILVERSTEIN:

15 Q. If you turn to page two of the 687 patent, under
16 references cited this lists the references that
17 were before the patent office during prosecution
18 of the application issued as the 687 patent,
19 correct?

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: It appears so, yes.

22 BY MS. SILVERSTEIN:

23 Q. Okay. And if you look about midway down the
24 left-hand column, you see 2016/0150923, correct?

25 A. 2016/0150923, yes.

1 Q. Yes. Okay. And that's Exhibit 2009, correct?

2 A. Correct.

3 Q. Okay. So this means that a reference that had at
4 least very similar drawings to Conrad 630 was
5 before the patent office, correct?

6 MR. EL DESSOUKI: Objection.

7 THE WITNESS: Again, I restate that I'm
8 not 100 percent sure of the continuation rules.
9 So I would say that what is listed as references
10 cited shows 2016/0150923, which is indeed
11 Exhibit 2009, and then in 2009 that it references
12 that it is a continuation of application number
13 13/255858 which is -- I can close that one -- the
14 application number for Conrad 630 which is
15 Exhibit 1004.

16 BY MS. SILVERSTEIN:

17 Q. Okay. And if you look at Exhibit 2009, if you go
18 to page 13 of that. Just let me know when you're
19 there.

20 A. I am.

21 Q. Okay. And then you go to paragraph 53, the last
22 sentence of paragraph 53 says, In alternate
23 examples, handle 102 may be provided elsewhere on
24 the vacuum cleaner 100, for example at the rear
25 110, and may be of any design, correct?

1 A. That is a correct reading of paragraph 53.

2 Q. Okay. So this disclosure was before the patent
3 office when it examined the application that
4 issued as the 687 patent, correct?

5 MR. EL DESSOUKI: Objection.

6 THE WITNESS: This is listed in the
7 references cited for 687, correct.

8 BY MS. SILVERSTEIN:

9 Q. Okay. Let's go back to your declaration now,
10 1003, and look at paragraph 24, so that starts on
11 page 13. Are you there?

12 A. Give me a minute, please. Sorry, which pdf page
13 was it?

14 Q. Page 13.

15 A. And which paragraph?

16 Q. Paragraph 24.

17 A. Okay, thank you. I am there.

18 Q. Okay. Perfect.

19 You discuss the first office action in
20 the prosecution of the application that issued as
21 the 687 patent in this paragraph, correct?

22 A. Correct.

23 Q. And you refer to US patent publication number
24 2017/0071426 to Krebs, correct?

25 A. Correct.

1 Q. If you'll open up Exhibit 2001, so 2001 to the
2 IPR proceeding. Let me know one you have it
3 open.

4 A. Okay.

5 MR. EL DESSOUKI: Give me just a second.

6 MS. SILVERSTEIN: That's fine. Take
7 your time. Just let me know.

8 MR. EL DESSOUKI: Okay.

9 BY MS. SILVERSTEIN:

10 Q. This is the Krebs patent application publication
11 that you're referring to in paragraph 24 of your
12 declaration, correct?

13 A. Correct.

14 Q. If you look at Krebs you will see -- and, you
15 know, maybe figure four might be the best place
16 to go for this -- but that the longitudinal axis
17 of the cyclonic separator is perpendicular to the
18 longitudinal axis that passes through the suction
19 opening, correct?

20 A. So I'm looking at figure four.

21 Q. The longitudinal axis of the cyclonic separator?

22 A. At which I would say is axis Y.

23 Q. Yep. Is perpendicular to the longitudinal axis
24 that passes through the suction opening. Yeah,
25 no, I think the longitudinal -- sorry, you said

1 axis Y is the longitudinal axis of the cyclonic
2 separator. I think that's actually X.

3 A. Exactly. So X is the longitudinal axis for the
4 cyclone and Y is the axis for the suction
5 opening.

6 Q. And those are perpendicular to each other,
7 correct?

8 A. They appear approximately perpendicular.

9 Q. Okay. And then if you turn to Exhibit 1004,
10 which is Conrad 630, I think figure six might be
11 the easiest one to look at for this. Similarly,
12 in Conrad 630 --

13 A. Sorry. Sorry.

14 Q. Sorry. Take your time. Just let me know when
15 you're there.

16 A. 1004.

17 Q. Uh-huh.

18 A. And where shall I look?

19 Q. I thought figure six is probably the easiest.
20 That's on page seven.

21 A. Okay.

22 Q. So similarly there, the longitudinal axis of the
23 cyclonic separator, which I believe extends from
24 that dotted line in 123, is perpendicular to the
25 longitudinal axis that passes through the suction

1 opening, correct?

2 A. There's no axis shown for these suction opening,
3 but knowing the design of the Conrad 630, I would
4 say that your estimation of perpendicularity
5 between the nozzle and the nozzle's axis and the
6 cyclone's axis is approximately perpendicular. I
7 would say that's correct.

8 Q. Okay. And in both -- sorry, do you have more to
9 say?

10 A. No.

11 Q. Okay. In both Krebs and Conrad 630, the handle
12 lies transverse to the suction conduit, correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: I apologize. With the
15 number of windows open -- Krebs is which exhibit?

16 MS. SILVERSTEIN: Krebs is 2001.

17 THE WITNESS: Your question is about the
18 handle?

19 BY MS. SILVERSTEIN:

20 Q. Yes.

21 A. Can you restate your question?

22 Q. In both Krebs and Conrad 630, the handle lies
23 transverse to the suction opening, correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: Correct.

1 BY MS. SILVERSTEIN:

2 Q. Okay. And neither Krebs nor Conrad 630 meets the
3 limitation of claim one of the 687 patent
4 requiring that the handle axis and the
5 longitudinal axis intersect within the vacuum
6 cleaner, correct?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: Correct.

9 BY MS. SILVERSTEIN:

10 Q. So the patent office did consider a prior art
11 reference that contained the same placement and
12 orientation of the suction opening, cyclonic
13 separating unit and handle as in the disclosure
14 in Conrad 630, correct?

15 MR. EL DESSOUKI: Objection. Restate
16 your question.

17 BY MS. SILVERSTEIN:

18 Q. Sure. So the patent office did consider a prior
19 art reference, and here we're talking about
20 Krebs, that contained the same placement and
21 orientation of the suction opening, cyclonic
22 separating unit and handle as the disclosure in
23 Conrad 630, correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: I cannot answer that

1 question with certainty due to my not full
2 understanding of the term continuation and not
3 having fully reviewed the new exhibit that -- the
4 new Conrad exhibit.

5 BY MS. SILVERSTEIN:

6 Q. Sorry. This is just about Krebs, which is 2001,
7 and Conrad 630, which is 1004. So we walked
8 through Krebs and we said, you know, everything
9 we just talked about with the handle and the
10 suction opening.

11 So I'm just confirming with you that the
12 patent office considered Krebs which contained
13 the same placement and orientation of the suction
14 opening, cyclonic separating unit and handle as
15 the disclosure in Conrad 630.

16 MR. EL DESSOUKI: Objection.

17 THE WITNESS: I would disagree that
18 Krebs and Conrad 630 are the same. They may
19 share similarities relative to the claim that
20 you're referencing, but those two are not the
21 same.

22 BY MS. SILVERSTEIN:

23 Q. Okay. I'd like you to look at what has been
24 marked as Exhibit 1007 to the IPR proceeding.

25 MR. EL DESSOUKI: Brianna, if I could

1 interject, on Exhibit 2001, Exhibit 2002,
2 Exhibit 2009, Exhibit 2010, Exhibit 2015, I
3 object to all those exhibits as outside the scope
4 of his declaration, they lack foundation, they're
5 hearsay and not relevant.

6 MS. SILVERSTEIN: I note your objection.

7 BY MS. SILVERSTEIN:

8 Q. Mr. Fester, do you have 1007 up?

9 A. I do.

10 Q. Perfect. Do you recognize this document?

11 A. I do.

12 Q. What is that?

13 A. This is referred to as the Dyson patent.

14 Actually, I think we've kind of also referred --
15 work order 888. This is 888.

16 Q. I'm going to refer to it as Dyson because that's
17 what you referred to it as, and I don't think
18 it's as confusing in this setting as it may be
19 otherwise.

20 A. Okay.

21 Q. But we're on the same page. We can call this
22 Dyson.

23 And if you go back to Exhibit 1001,
24 which is the 687 patent, back to page two, which
25 we were on before, that has the reference it

1 cited. Let me know when you're there.

2 A. Page two. Yes.

3 Q. And if you look at the right-hand column, there's
4 three GB patents there. And one of those is GB
5 24401911, correct?

6 A. Correct.

7 Q. If you turn to page 11 of the 687 patent. Let me
8 know when you're there.

9 A. Okay.

10 Q. And you look on the left-hand side in column one
11 under background of the invention, that also
12 refers to the same patent GB 2440111B, correct?

13 A. I don't recall the B as being part of the cited
14 references.

15 Q. Okay.

16 A. The B is not.

17 Q. Without the B it's the same --

18 A. Correct.

19 Q. Okay. If you can open up what's been marked as
20 Exhibit 2002 to the IPR, let me know when you're
21 there.

22 A. Okay.

23 Q. This is GB 2440111, correct?

24 A. Correct.

25 Q. And this exhibit indicates that GB 2440111 is

1 also a patent that application that was filed by
2 Dyson, the patent owner in this IPR, correct?

3 A. Dyson is listed as both the proprietor and the
4 agent, so yes.

5 Q. Okay. And if you look at the drawings in this
6 exhibit which are on pages two through five of
7 the pdf -- although figure four is not helpful in
8 what I'm going to ask for, so maybe focus on
9 pages two, three and four -- they disclose the
10 same pistol grip type handle that Dyson, the
11 prior art reference that you rely on in this IPR,
12 disclosed, correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: Comparing the Exhibit 2002
15 figures two and three to Exhibit 1007 figure two,
16 those handles appear to be similar.

17 BY MS. SILVERSTEIN:

18 Q. Okay. And that pistol grip type handle is the
19 portion of Dyson that you rely upon for your
20 opinion that the challenged claims would have
21 been obvious in grounds two and four, correct?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: Correct.

24 BY MS. SILVERSTEIN:

25 Q. Okay. Let's go back to Exhibit 1001, the 687

1 patent.

2 A. Yep.

3 Q. If you go to the front page now, the first page,
4 and you look on the right-hand column, it says
5 references cited, and the third one down there is
6 US patent number 8,156,609, correct?

7 A. Correct.

8 Q. You see how it has an asterisk next to it?

9 A. I see the asterisk.

10 Q. Okay. And if you go to page two, you look at the
11 bottom, it indicates there that the asterisk
12 means that that art was actually cited by the
13 examiner during prosecution, correct?

14 A. Correct. Yeah, it seems to be the denotation for
15 what the asterisk means.

16 Q. Okay.

17 MR. EL DESSOUKI: Brianna, sorry. Which
18 references are we discussing?

19 MS. SILVERSTEIN: We're in Exhibit 1001
20 and we're talking about 8,156,609 which is listed
21 on the front page.

22 MR. EL DESSOUKI: Okay. Got it. Thank
23 you.

24 BY MS. SILVERSTEIN:

25 Q. All right. Mr. Fester, I'd like you to open up

1 Exhibit 2010 from the IPR, please.

2 A. I have it opened.

3 Q. Perfect. This is US patent number 8,156,609 that
4 we just noted was cited by the examiner, correct?

5 MR. EL DESSOUKI: Give us a second.

6 MS. SILVERSTEIN: That's fine, take all
7 the time you need. I could have just come to
8 Detroit with all of you. This would have been a
9 lot easier, I guess.

10 THE WITNESS: The rooms are hard to get.

11 MR. EL DESSOUKI: It's the draft for the
12 NFL.

13 MS. SILVERSTEIN: My husband would have
14 been very jealous to know if I was in Detroit
15 with the draft.

16 MR. EL DESSOUKI: We weren't able to
17 stay in Detroit so we're just outside of Detroit.

18 THE WITNESS: We still felt the effects.

19 Yes, the Exhibit 2010 is listed on
20 Exhibit 2002's --

21 BY MS. SILVERSTEIN:

22 Q. 1001 I think is what you're talking about.
23 Exhibit 1001.

24 A. Thank you, yeah. It's listed on 1001's cited
25 reference.

1 Q. Okay. All right. And then going back to 2010,
2 the front of this patent indicates that it's also
3 assigned to Dyson, correct?

4 A. Dyson is listed as the assignee, yes.

5 Q. And if you look at figures two and three, which
6 are on pages four and five of 2010, that also has
7 a pistol grip handle that is similar to the one
8 in Dyson which is 1007 as well as GB24401119B
9 which was Exhibit 2002 that we just discussed,
10 correct?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: They appear similar, yes.

13 BY MS. SILVERSTEIN:

14 Q. So the patent office did consider disclosure of
15 pistol grip handles similar to Dyson during
16 prosecution of the application that issued as the
17 687 patent, correct?

18 MR. EL DESSOUKI: Objection.

19 THE WITNESS: Exhibit 2010, which
20 includes a pistol grip, was listed as a cited
21 reference in 687, yes.

22 BY MS. SILVERSTEIN:

23 Q. Okay. Let's go back to your declaration which
24 was 1003. And I'd like to jump ahead to
25 paragraph 52 which starts on the bottom of page

1 27 of the pdf. Let me know when you're there.

2 Actually, I'm going to be talking mostly
3 about what's on pages 28 and 29, but it starts on
4 page 27.

5 A. You said paragraph 52?

6 Q. Yes.

7 A. Yes, I am there.

8 Q. Okay. Now, this paragraph you are quoting the
9 advantages that Dyson attributes to its pistol
10 hand grip, correct?

11 A. Yes.

12 Q. If you look at the first bullet point, which is
13 on top of page 28, it explicitly states that the
14 suction conduit is in the longitudinal Y-Y axis
15 that lies transverse to the axis X-X of the hand
16 grip, correct?

17 MR. EL DESSOUKI: Okay, I'm not seeing
18 it in the text, Brianna.

19 MS. SILVERSTEIN: Sure. If you go in
20 the bullet point four lines down it starts,
21 Further, the axis X-X of the hand grip 28 lies
22 transverse to a longitudinal axis Y-Y of the
23 section conduit 12.

24 BY MS. SILVERSTEIN:

25 Q. Correct.

1 A. Correct.

2 Q. Okay. Similarly, the second bullet point also
3 explicitly states that the suction conduit is in
4 the longitudinal axis Y-Y that is transverse to
5 the axis X-X of the hand grip, correct?

6 A. I'm looking for where you are reading in the
7 second bullet point.

8 Q. The very first sentence, The transverse
9 arrangement of the longitudinal axis Y-Y of the
10 suction conduit 14 with respect to the axis X-X
11 of the hand grip 28.

12 A. That is correct.

13 Q. Okay. And while the third bullet point does not
14 explicitly discuss the suction conduit being in
15 the longitudinal axis Y-Y that lies transverse to
16 axis X-X of the hand grip, this quote is from the
17 same embodiment described in the first two bullet
18 points, correct?

19 And I'll also note for your convenience
20 if you want to go back to Dyson to check this, I
21 believe the quote is actually from page five,
22 lines 11 through 19. I think there's a typo in
23 the quote there.

24 A. Where I reference it at page six?

25 Q. Yeah, in your citation. Yeah.

1 A. Yes, that is a direct quote from Dyson.

2 Q. Yeah. And just to clarify, it's also from the
3 same embodiment that's described in the first two
4 bullet points where the suction conduit is in the
5 longitudinal axis Y-Y that lies transverse to
6 axis X-X of the hand grip, correct?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: Correct.

9 BY MS. SILVERSTEIN:

10 Q. Okay. So these advantages of the pistol hand
11 grip of Dyson are dependent upon the suction
12 conduit being in the longitudinal axis Y-Y that
13 lies transverse to axis X-X of the hand grip,
14 correct.

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: Restate your question.

17 BY MS. SILVERSTEIN:

18 Q. So the advantages that you discussed or that you
19 cite in the first -- those three bullet points in
20 paragraph 52 of your declaration, Exhibit 1003,
21 are dependent upon the suction conduit being in
22 the longitudinal axis Y-Y that lies transverse to
23 axis X-X of the hand grip, correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: I would say that's

1 correct.

2 BY MS. SILVERSTEIN:

3 Q. Okay. I'm just going to go through this,
4 hopefully short section, and then we can take
5 another break. But let's turn to your opinion on
6 the level of ordinary skill in the art.

7 So if you go to paragraph 56 of your
8 declaration, Exhibit 1003, that's on page 31.
9 Let me know when you're there.

10 A. I'm there.

11 Q. And it's your opinion that a person of ordinary
12 skill in the art around September of 2015 would
13 have had a Bachelor's Degree in mechanical
14 engineering or an equivalent discipline or
15 equivalent work experience and at least one
16 year's worth of experience in research, design
17 and/or development related to vacuum cleaners or
18 other comparable mechatronic appliances or
19 devices for industrial design, correct?

20 A. That's correct.

21 Q. You also say that a person in ordinary skill in
22 the art may have had more education and less
23 experience or less education and more experience,
24 correct?

25 A. Correct.

1 Q. So in your opinion, a Bachelor's Degree in
2 mechanical engineering is not necessary as long
3 as the person has sufficient experience in
4 research, design and/or development related to
5 vacuum cleaners, correct?

6 A. My statement that says a POSITA may dot dot dot
7 have less education than a Bachelor's Degree and
8 more experience, yes, I agree with that
9 statement.

10 I would say that some engineering
11 experience would be -- some engineering classes,
12 perhaps an Associate's Degree or some related
13 field less than a Bachelor's Degree would be
14 falling in the lines of the less education than a
15 Bachelor's Degree.

16 So I would say that someone who does not
17 have any -- I'm just stating the advantage of
18 some collegiate, some academic knowledge in
19 concert with experience would be falling in the
20 lines of what I was inferring by a POSITA.

21 Q. Okay. If you turn to paragraph 57, which is
22 right below that, you have a list of skills that
23 a person of ordinary skill in the art would have
24 had in September 2015, correct?

25 A. Correct.

1 Q. So it is your opinion that as long as a person
2 has those skills as of 2015, then they would have
3 been a person of ordinary skill in the art at
4 that time, correct?

5 A. I think that's a funny re-wording of what I'm
6 saying.

7 I'm saying a POSITA would have these
8 skills, but that's what I would say, that a
9 POSITA would have these skills necessary to do
10 the three bullet points outlined in paragraph 57.

11 Q. Okay. So if someone has the title of engineer
12 and worked on developing and designing vacuum
13 cleaners from 1998 through 2014, you would expect
14 that they would be considered a person of
15 ordinary skill in the art, under your definition,
16 correct?

17 MR. EL DESSOUKI: Objection.

18 THE WITNESS: That's far too little
19 information to give an answer.

20 BY MS. SILVERSTEIN:

21 Q. What other information would you need?

22 A. In my explanation of what a POSITA is, I do not
23 make really any reference to the title that they
24 have but, in fact, what they would be doing in
25 terms of both their academic and their job

function. So many times a person is given the title of engineer when they're not necessarily an engineer.

So a POSITA would be, as I've outlined in my declaration, the title that the individual has may or may not be indicative of them being a POSITA.

Q. Okay. And just to go back to your definition, you say a Bachelor's Degree in mechanical engineering or equivalent work experience, correct?

A. Correct.

Q. And is that work experience somewhat of what you're trying to elaborate on in paragraph 57?

A. Paragraph 57 just identifies the skills that a POSITA would have, so the work experience to develop those skills would be the work experience that's referred to in paragraph 56.

Q. Okay.

MS. SILVERSTEIN: All right. I'm at a good stopping point so should we take another five-minute break, come back at 11:15? Does that work for everybody?

THE WITNESS: Yes.

MS. SILVERSTEIN: All right.

1 (A brief recess was taken.)

2 BY MS. SILVERSTEIN:

3 Q. All right. We are finally getting to your
4 grounds.

5 A. Okay.

6 Q. Your first ground, ground one, this is your
7 opinion that claims one through four, eight and
8 ten of the 687 patent are rendered obvious by
9 Conrad 630 in view of Conrad 787.

10 As an initial matter, as you testified
11 before, you are not opining that either Conrad
12 630 or Conrad 787 independently explicitly or
13 implicitly disclosed all of the limitations of
14 each of the challenged claims, correct?

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: That is correct.

17 BY MS. SILVERSTEIN:

18 Q. Okay. Let us go to paragraph 61 of your
19 declaration which is on page -- the bottom of
20 page 28. Let me know when you're there.

21 A. Yeah, it's 28 on the page --

22 Q. Oh, sorry. You're right, 32 of the pdf.

23 A. Yep, but yes, I'm there.

24 Q. Okay. You reference a statement in Conrad 630
25 that you assert discloses that the handle for its

1 vacuum can be at the back of the vacuum.

2 This statement does not refer
3 specifically to the design and position of the
4 handle in Conrad 787, correct?

5 A. My statement in paragraph 61 is referencing part
6 of the description of Conrad 630 itself.

7 Q. Right. So that statement in Conrad 630, which is
8 in paragraph 52 of Conrad 630, is that statement
9 in Conrad 630 does not refer specifically to the
10 design and position of the handle in Conrad 787,
11 correct?

12 A. 630 is not referencing 787 in this portion of
13 their description.

14 Q. Okay. So a person of ordinary skill in the art
15 in 2015 even reading that statement -- and by
16 that statement I mean the statement in paragraph
17 52 that you're citing to from Conrad 630 -- would
18 have needed an additional motivation beyond that
19 statement to use Conrad 787's handle design and
20 position on a vacuum cleaner such as Conrad 630,
21 correct?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: So I'm going to ask you to
24 restate that question, please.

25 BY MS. SILVERSTEIN:

1 Q. Sure. So a person of ordinary skill in the art
2 looking at Conrad 630 would have had to have some
3 motivation beyond just the statement in paragraph
4 52 of Conrad 630 to implement Conrad 787's handle
5 design and positioning on a vacuum cleaner such
6 as the one disclosed in Conrad 630, correct?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: I think that 630 itself
9 leaves room for that motivation, and that's why
10 they explicitly state that the handle one of two
11 may be provided elsewhere on the vacuum cleaner
12 100; for example, at the rear 110 and may be of
13 any design, end quote.

14 So that quote is directly from Conrad
15 630.

16 BY MS. SILVERSTEIN:

17 Q. Right, but that quote doesn't reference Conrad
18 787's particular design or position, correct?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: Design -- let me answer
21 that twofold.

22 The quote from 630, may be of any design
23 and at the rear, so it does kind of specify the
24 position of being at the rear and it is open in
25 terms of design so.

1 BY MS. SILVERSTEIN:

2 Q. Okay. Sorry, you can continue. I didn't mean to
3 cut you off.

4 A. So it does not specifically point to pistol grip,
5 but it does say that it does leave the door open.
6 That's it.

7 Q. All right. So in order to choose a pistol grip,
8 a person of ordinary skill in the art would have
9 had some additional motivation to choose that
10 design over any of the other handle designs that
11 it could have, correct?

12 MR. EL DESSOUKI: Objection.

13 THE WITNESS: In general, correct.

14 BY MS. SILVERSTEIN:

15 Q. Okay. And Conrad -- that statement in Conrad 630
16 in paragraph 52 that you read doesn't say
17 anything about the angle of the handle axis
18 relative to any of the other portions of the
19 vacuum cleaner, correct?

20 A. It does not say that in the reference.

21 Q. Okay. And you acknowledge that Conrad 630 and
22 Conrad 787 have the same inventor, correct?

23 A. I do.

24 Q. And Conrad 630, which is Exhibit 1004, was filed
25 five years prior to Conrad 787, which is

1 Exhibit 1006, correct?

2 A. 630 was filed in 2010 and 787 was filed in August
3 of 2015, so yeah, approximately five years apart.

4 Q. Okay. So at the time that Conrad 787 was filed
5 in 2015, the inventor had already made the
6 statement in Conrad 630, paragraph 52, regarding
7 moving the handle to the rear and using a
8 different design for the handle, correct?

9 A. Correct.

10 Q. However, in Conrad 787, the inventor did not just
11 add the pistol grip to the back of the vacuum of
12 Conrad 630, correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: Correct.

15 BY MS. SILVERSTEIN:

16 Q. Conrad 787 does not include an end wall movable
17 relative to the longitudinal axis like in Conrad
18 630, correct?

19 A. Correct.

20 MR. EL DESSOUKI: Objection.

21 BY MS. SILVERSTEIN:

22 Q. So the inventor did not think to put the handle
23 of Conrad 787 on the vacuum cleaner of Conrad 630
24 despite making that statement in Conrad 630,
25 correct?

1 MR. EL DESSOUKI: Objection.

2 THE WITNESS: I don't know what the fine

3 Mr. Conrad thought or did not think.

4 BY MS. SILVERSTEIN:

5 Q. You do not know of any publications from
6 Mr. Conrad, the inventor, prior to September 2015
7 that have the vacuum cleaner of Conrad 630 with
8 the pistol grip handle and handle placement of
9 Conrad 787, correct?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: Correct.

12 BY MS. SILVERSTEIN:

13 Q. All right. Let's go back to your declaration,
14 Exhibit 1003, and we're going to go to paragraph
15 67 which is on page 34 of the pdf. Let me know
16 when you're there.

17 A. I am.

18 Q. Okay. In this paragraph you are identifying the
19 advantages associated with Conrad 787's handle
20 that you allege would have motivated a person of
21 ordinary skill in the art to use that handle with
22 Conrad 630, correct?

23 A. Correct.

24 Q. All right. Let's look at the first bullet point.
25 The handle configuration allows the user to

1 operate hand vac 112 during cleaning. The handle
2 that is included on Conrad 630 also allows the
3 user to operate a hand vac during cleaning,
4 correct?

5 A. Correct.

6 Q. Okay. Move to your second bullet point. Here
7 you're talking about Conrad 787's disclosure that
8 the handle configuration can be comfortably
9 operated in an orientation that does not require
10 an application of torque by the user's hand when
11 the hand vac 112 is held by handle 484 because
12 the center of gravity 524 of the hand vac 112 is
13 aligned vertically below the user's hand.

14 You acknowledge this is important for
15 the use of Conrad 630's vacuum cleaner since it
16 is a handheld vac that is likely to be used to
17 clean surfaces other than floors that are not
18 horizontal, correct?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: Please repeat your
21 question.

22 BY MS. SILVERSTEIN:

23 Q. Sure. The second bullet point you say the handle
24 configuration can be comfortably operated in an
25 orientation that does not require an application

1 of torque by the user's hand when the hand vac
2 112 is held by handle 484 because the center of
3 gravity 524 of the hand vac 112 is aligned
4 vertically below the user's hand.

5 You acknowledge in the last two
6 sentences of that bullet point that this is
7 important for the use of Conrad 630's vacuum
8 cleaner since it is a handheld vac that is more
9 likely to be used to clean surfaces other than
10 floors that are not horizontal, correct?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: I did not use the last
13 part of your statement 'that are not horizontal'.
14 So my statement ends with it is more likely to be
15 used to clean surfaces other than floors.

16 BY MS. SILVERSTEIN:

17 Q. Okay, but the sentence before that you say this
18 is important for use of Conrad 630 vacuum to
19 clean surfaces that are not horizontal, correct?

20 A. Yes. Yes. Correct.

21 Q. Okay. Sorry. I was paraphrasing. I didn't mean
22 to insinuate I was quoting. You're right, that
23 wasn't a direct quote.

24 Now, Conrad 630's vacuum cleaner without
25 any modifications already has the center of

1 gravity aligned vertically below the user's hand,
2 correct?

3 MR. EL DESSOUKI: Sorry, can you repeat?

4 MS. SILVERSTEIN: Sure.

5 BY MS. SILVERSTEIN:

6 Q. Conrad 630's vacuum cleaner without any
7 modification already had the center of gravity
8 aligned vertically below the user's hand,
9 correct?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: There's not enough
12 information that is given in 630 to determine the
13 center of gravity.

14 BY MS. SILVERSTEIN:

15 Q. What other information would you need to
16 determine center of gravity for Conrad 630?

17 A. Specifically, the weight of the various
18 components that are used, materials of the
19 various components.

20 Q. Given that the handle of Conrad 630 is at the top
21 of the vac, can you at least agree that all the
22 weight of the vacuum is below -- vertically below
23 the user's hand during operation?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: So let's look at -- just

1 trying to find the date. There we go.

2 So looking at Exhibit 1004, the main
3 figure one shows the vacuum 630 and -- yeah,
4 there we go.

5 So figure six is the better
6 approximation because it shows essentially a line
7 labeled -- I think it was 194, which is the
8 floor, or maybe 135, that shows the vacuum in
9 essentially a horizontal position. And in that
10 instance -- in the instance when the surface to
11 be cleaned is a horizontal surface, the handle
12 would be located above the center of gravity of
13 630.

14 BY MS. SILVERSTEIN:

15 Q. Okay. Turning back to your declaration and
16 paragraph 67, the last bullet point, which is on
17 the top of page 35 of the pdf of Exhibit 1003, it
18 says that the handle axis 888 of handle 848
19 extends in a nonzero forward angle 892 to the
20 vertical which may provide a comfortable hand
21 alignment for grasping by the user when picking
22 up the hand vacuum 112 and when using hand vac
23 112 for cleaning surfaces below the user's elbow,
24 correct?

25 That was not a quote -- or, actually, it

1 might have been a quote but --

2 A. Again, just kind of -- I can reread that just to
3 quote the reference from the bullet point on page
4 35 that Conrad 787 further explains that in,
5 quote, the illustrated embodiment, handle axis
6 888 of handle 484 extends at a, parentheses,
7 nonzero, end parentheses, forward angle 892 to
8 the vertical, e.g. when bottom wall 216 is
9 horizontal, end parentheses. This may provide a
10 comfortable handle alignment for grasping by a
11 user when picking up hand vac 112 and when using
12 hand vac 112 for cleaning surfaces below the
13 user's elbows, end quote.

14 Q. Okay. Handle of Conrad 630 already has a handle
15 axis that extends at a nonzero forward angle to
16 the vertical, correct?

17 A. Correct. Yes, correct.

18 Q. Okay. Let's move on to paragraph 72 of your
19 declaration which is on page 37 of Exhibit 1003.

20 Let me know when you're there.

21 A. I am.

22 Q. You opine in this section that one of the
23 advantages of using Conrad 787 handle design and
24 placement with Conrad 630's vacuum is that,
25 quote, the user will have a better grip and more

1 comfort when using the handheld vacuum with an
2 attachment which would allow more flexibility in
3 using the handheld vacuum with an attachment for
4 different types of cleaning, end quote, correct?

5 A. Correct.

6 Q. Doesn't handle of Conrad 630 already provide the
7 user with sufficient grip in using the vacuum
8 with an attachment?

9 MR. EL DESSOUKI: Objection.

10 THE WITNESS: It depends.

11 BY MS. SILVERSTEIN:

12 Q. What does it depend on?

13 A. Depends on the surface that is being cleaned --

14 Q. So --

15 A. -- and --

16 Q. Oh, sorry, keep going. No, you go.

17 A. And the tool or attachment that is being used in
18 connection with Conrad 630.

19 Q. So what type of attachment would you allege --
20 strike that. Let me start over again.

21 You said the attachment and the surface
22 to be cleaned.

23 A. Correct.

24 Q. Okay. So for what surface to be cleaned would
25 you allege that Conrad 630's handle does not

1 provide the user with sufficient grip to use the
2 vacuum with an attachment?

3 MR. EL DESSOUKI: Objection.

4 BY MS. SILVERSTEIN:

5 Q. Do you understand what I'm asking because it was
6 not my most artful question?

7 A. You can restate if you'd like.

8 Q. Okay. What I am trying to get at is what type of
9 surface to be cleaned do you allege that Conrad
10 630's handle is not sufficient -- does not have
11 sufficient grip in using the vacuum?

12 MR. EL DESSOUKI: Objection.

13 THE WITNESS: So the specific -- part of
14 it depends on the attachment that's being used.
15 I reference in paragraph 71, Exhibit 1008, which
16 is Conrad 663, and it talks about in addition to
17 the auxiliary or accessory cleaning tool, the
18 nozzle may be directly connected to any of a
19 number of cleaning tools that have been provided
20 with an appropriate attachment number including
21 wands, brushes, crevice tools and other hoses.

22 So for some of those uses, the hand vac
23 itself would be held at a much different angle
24 than the primarily horizontal positioning that is
25 shown in the figure that we looked at for 630.

1 It would not be horizontal. It would indeed be
2 at some other angle, maybe all the way
3 vertically, and that could be for cleaning either
4 a floor with an attachment that has a nozzle on
5 it or a crevice tool, and in that instance it
6 would be -- you would be holding the vacuum at an
7 angle quite differently than horizontal.

8 (Deposition Exhibit 3 was marked.)

9 BY MS. SILVERSTEIN:

10 Q. Okay. I'm going to introduce Exhibit 3, which
11 I'm doing right now, and I will send it to you
12 via email. Give me one second.

13 MR. EL DESSOUKI: I object to the
14 exhibit as beyond the scope of Mr. Fester's
15 declaration, lacks foundation, hearsay and not
16 relevant.

17 BY MS. SILVERSTEIN:

18 Q. I just sent this to you, Mr. Fester, so let me
19 know when you have a chance to open it.

20 A. Here it is. Okay, I have Exhibit 3 open.

21 Q. Okay. Just going back to the statement before we
22 go to Exhibit 3 that you read from paragraph 71
23 of your declaration, you were quoting Exhibit
24 1008. And just that last quote that you read, it
25 talked about attachment tools being -- you said

1 wands, brushes, crevice tools and other hoses,
2 correct?

3 A. Correct.

4 MR. EL DESSOUKI: Objection.

5 BY MS. SILVERSTEIN:

6 Q. Did that imply that the wands and brushes and
7 crevice tools would also be hosed in
8 Exhibit 1008?

9 MR. EL DESSOUKI: I'm sorry, Brianna,
10 there's a --

11 THE WITNESS: There's a car going by
12 that's making massive amounts of noise.

13 And we're done. Okay, please repeat the
14 question.

15 BY MS. SILVERSTEIN:

16 Q. Okay. Does that statement that I just read --
17 wands, brushes, crevice tools and other hoses --
18 imply that in Exhibit 1008 the wands, brushes,
19 and crevice tools are also attached via a hose?

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: No.

22 BY MS. SILVERSTEIN:

23 Q. Do you know of any disclosure in Exhibit 1008
24 that talks about an attachment that is not
25 attached via a hose?

1 A. I think the description is clear that there could
2 be a direct connection. I'm going to reread it.
3 Again, this is from Exhibit 1008.

4 In addition to the auxiliary or
5 accessory cleaning tool 112, the nozzle 412 may
6 be directly connected to any one of a number of
7 cleaning tools that have been provided with an
8 appropriate attachment member.

9 So the direct connection -- the directly
10 connected implies that there is no hose between
11 the nozzle and the tool that is attached.

12 Q. Okay. Do you have Exhibit 1008 up? If not, can
13 you pull it up, please?

14 A. I am retrieving it. Okay.

15 Q. All right. So I'm going to go through the
16 drawings with you, so let's start on page four of
17 the pdf. That's figure one.

18 A. Yes.

19 Q. Can you agree with me that this doesn't show
20 attachments or this isn't showing the type of
21 attachment you're talking about?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: Correct. Figure one does
24 not show.

25 BY MS. SILVERSTEIN:

1 Q. Okay. Figure two.

2 MR. EL DESSOUKI: Sorry, Brianna, if you
3 can just clarify what you mean by type of
4 attachment that you're talking about.

5 MS. SILVERSTEIN: The type of attachment
6 Mr. Fester is relying on for his opinion that
7 Conrad 630 could be used with attachments. He
8 points to Exhibit 1008, so we're talking about --
9 I mean, it's really his interpretation of how
10 this patent discloses using attachments with the
11 Conrad 630 vacuum. That's what we're talking
12 about.

13 BY MS. SILVERSTEIN:

14 Q. Do you understand what I'm talking about,
15 Mr. Fester, or do we need to clarify it more?

16 A. I understand your question.

17 Q. Okay.

18 A. I would say that the best reliance that I have is
19 figure 3B of 1008, and again, going back to my
20 declaration.

21 Q. Okay. Well, let's go to figure 3B then. That
22 shows a hose attachment, correct?

23 A. Yes. Sorry. Technical -- multiple pages open.

24 Q. That's okay. Take your time.

25 A. Okay.

1 Q. All right. So 3B shows a hose attachment,
2 correct?

3 A. Yes.

4 Q. Okay. And figure four also looks like a Conrad
5 630 type vacuum, also shows a hose attachment,
6 correct?

7 A. Figure four shows how the hose of the upright
8 embodiment attaches to body 400 which is
9 essentially Conrad 630.

10 Q. Okay. If you go to figure 21, we're showing that
11 upright vacuum using Conrad 630, and that also
12 has an attachment that is connected through a
13 hose, correct?

14 A. You said figure 21. What page is that?

15 Q. Sorry, page 25 of the pdf.

16 A. Okay. And what is your question relative to
17 figure 21?

18 Q. That this also shows the Conrad 630 type vacuum
19 cleaner being used in the upright form with a
20 hose attachment, correct?

21 A. Correct.

22 Q. Okay. And in figure 21, number 114 is a wand,
23 correct?

24 A. It appears as such, yes.

25 Q. Okay. If you go to figure 33, which is on page

1 37.

2 A. Yeah.

3 Q. Now, this is -- now, from what I can tell it does
4 not appear to be the Conrad 630 vacuum, but it is
5 an illustration of using a handheld vacuum with
6 an attachment, correct?

7 A. Correct. The cyclone is a different embodiment.

8 Q. Okay. And this also uses a hose to connect the
9 attachment, correct?

10 A. There is a hose between the connection to the
11 cyclone and the end tool, which looks like 112,
12 which is handwritten 112.

13 Q. Sorry, go ahead. 112 is a crevice tool?

14 A. Correct.

15 Q. So none of the figures we looked at show the
16 attachment being connected to the handheld vacuum
17 without a hose, correct?

18 A. That is correct.

19 Q. Okay. All right. Now, I'd like to turn to
20 Exhibit 3. Is this an accurate illustration of
21 the vacuum of Conrad 630 with a handle design and
22 position from Conrad 787 being used with a hose
23 attachment?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: Okay, sorry. There was

1 some high-pitch frequency that my OCD ears could
2 not eliminate.

3 BY MS. SILVERSTEIN:

4 Q. Do you need for me to repeat the question?

5 A. I would love for you to repeat the question.

6 Q. Okay. Is this an accurate illustration of the
7 vacuum cleaner of Conrad 630 with the handle
8 design and position from Conrad 787 being used
9 with a hose attachment?

10 A. No.

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: No, it's not.

13 BY MS. SILVERSTEIN:

14 Q. What is inaccurate about it?

15 A. The placement of the hose is coming -- is
16 attached directly to the end wall of -- let's say
17 that that is 630 that is rendered, whereas with
18 630's attachment the nozzle is coming out at a
19 different location and would be attached. The
20 coupling between a nozzle and the hose would be
21 an elbow connection.

22 Q. I understand what you're saying. So it would
23 have to -- if you move the hose connection to the
24 vacuum from the end wall to the suction opening,
25 would -- and that's the only -- if we just made

1 that adjustment, would that then be an accurate
2 illustration of the vacuum of Conrad 630 with a
3 handle design and position from Conrad 787 being
4 used with a hose attachment?

5 A. I want to ensure --

6 MR. EL DESSOUKI: Objection.

7 THE WITNESS: Sorry. I want to ensure
8 that you're including the coupling that is shown
9 in 1008 because 1008 figure 3B shows an elbow
10 connection.

11 BY MS. SILVERSTEIN:

12 Q. Okay. Yeah, we can include that.

13 But if we include that and make the
14 connection in the suction, is this an accurate
15 picture, accurate illustration of the vacuum of
16 Conrad 630 with the handle design and position
17 from Conrad 787 being used with a hose
18 attachment?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: This would be one
21 possibility of what is allowed per Exhibit 1008's
22 description.

23 BY MS. SILVERSTEIN:

24 Q. Okay. And in this illustration, the user has to
25 hold the vacuum hanging down vertically since the

1 handle is on the back, correct?

2 MR. EL DESSOUKI: Objection.

3 THE WITNESS: That is what is shown
4 here, correct.

5 BY MS. SILVERSTEIN:

6 Q. Okay. And in this illustration, as the user
7 works his way up the stairs he will have to lift
8 the vacuum cleaner in order to make sure the
9 vacuum cleaner does not hit the stairs, correct?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: There's too little
12 information for me to make that call.

13 BY MS. SILVERSTEIN:

14 Q. What other information would you need to know?

15 A. From what I see, the vacuum is being held above
16 the stair tread and would not be hitting the
17 stairs, and so it would not appear to be -- if
18 that user were to hold the vacuum in the said
19 position that the vacuum would be hitting a stair
20 tread.

21 Q. The potential to hit the stair tread. Let me
22 back up.

23 So it sounds like what you're saying is
24 some of it depends on kind of the length of the
25 vacuum versus the height of the stairs versus the

1 height of the person using the vacuum.

2 Is that -- I'm paraphrasing, obviously,
3 but is that kind of what you're getting at?

4 A. Yeah, there's a number of options.

5 MR. EL DESSOUKI: Objection.

6 THE WITNESS: Yeah, a number of factors
7 that would play into answering that question.

8 BY MS. SILVERSTEIN:

9 Q. Okay. Can you agree that the potential for
10 hitting the stairs while using the vacuum with
11 the attachment, the hose attachment, is less
12 when -- if the attachment is to the Conrad 630
13 vacuum that is held horizontally --

14 MR. EL DESSOUKI: Objection.

15 BY MS. SILVERSTEIN:

16 Q. -- as opposed to vertically in the combination
17 vacuum?

18 MR. EL DESSOUKI: Sorry. Objection.

19 THE WITNESS: Do you have an exhibit
20 that shows what you're verbally explaining?

21 BY MS. SILVERSTEIN:

22 Q. I don't. I did not print it out. What I'm
23 explaining is -- well, let's back up. Let's do
24 piece by piece.

25 If the Conrad 630 vacuum without any

1 modification to the handle is being used with a
2 hose attachment, it would -- the user would be
3 holding it on the top of the vacuum so the vacuum
4 would be oriented vertically in relation to how
5 the vacuum is in Exhibit 3, correct?

6 MR. EL DESSOUKI: Objection.

7 THE WITNESS: You said the vacuum would
8 be being held vertically relative --

9 BY MS. SILVERSTEIN:

10 Q. No, horizontal relative to the way it's being
11 held vertically in Exhibit 3.

12 A. Thank you.

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: Okay, so I understand what
15 you're saying in terms of how the horizontal
16 holding of the vacuum cleaner would be held by
17 the user in an unmodified 630 with a hose
18 attached to it. And the question is?

19 BY MS. SILVERSTEIN:

20 Q. Okay. So then the question is in that scenario,
21 the user would be less likely to hit the stairs.
22 I understand that there's a bunch of variables to
23 go into, whether they're going to hit the stairs
24 or not, but the user's less likely to hit the
25 stairs as they vacuum up the stairs than they

1 would be in the scenario illustrated in Exhibit 3
2 where the user has to hold the vacuum vertically
3 while going up the stairs?

4 MR. EL DESSOUKI: Objection.

5 THE WITNESS: Again, it does depend on a
6 number of factors. The horizontal holding of the
7 630, an unmodified 630, would have the vacuum
8 sticking forward more than what is shown in
9 Exhibit 3.

10 So depending on the height of said user
11 and the height of the stairs, those could be
12 factors, but in general using this person here in
13 Exhibit 3, that would be generally an accurate
14 statement.

15 BY MS. SILVERSTEIN:

16 Q. Okay. All right. Let's go back to your
17 declaration.

18 MR. EL DESSOUKI: Brianna, can I take a
19 two-minute break? This Uber driver is calling
20 me.

21 MS. SILVERSTEIN: Sure. A two-minute
22 break is fine. We will wait for Ahmed to get
23 done.

24 (A pause was had in the proceedings.)

25 BY MS. SILVERSTEIN:

1 Q. All right. Let's go to paragraph 75 of your
2 declaration, Exhibit 1003, so that's page 37 of
3 the pdf.

4 A. One second, please.

5 Q. That's fine. Just let me know when you're there.

6 A. Okay. Sorry, it was which paragraph?

7 Q. 75.

8 A. Okay.

9 Q. In this paragraph you opine that a person of
10 ordinary skill in the art would have had a
11 reasonable expectation of success in relocating
12 the handle to the back of Conrad 630's vacuum,
13 and you state, quote, this location would allow
14 the user to push the vacuum cleaner forward over
15 the surface to be cleaned easily, end quote. And
16 you point to the vacuum being, quote, well suited
17 for services like couching and bedding which are
18 more easily cleaned using a handheld vacuum as
19 opposed to a stick or upright vacuum, correct?

20 A. That's correct.

21 Q. Okay. I'm going to introduce a new exhibit and
22 then I will send it to you.

23 (Deposition Exhibit 4 was marked.)

24 MR. EL DESSOUKI: I object to Exhibit 4
25 as beyond the scope of Mr. Fester's declaration,

1 lacks foundation, hearsay, not relevant and
2 improper hypothetical and --

3 MS. SILVERSTEIN: Sorry, I think I cut
4 you off.

5 MR. EL DESSOUKI: Calls for speculation.

6 BY MS. SILVERSTEIN:

7 Q. Okay. Mr. Fester, let me know when you've opened
8 Exhibit 4.

9 A. I have it open.

10 Q. Okay. This is an accurate illustration of how a
11 user would have to bend his or her elbow in order
12 to push the vacuum cleaner of Conrad 630 with a
13 handle in the back, the pistol grip handle in the
14 back of Conrad 787, so pushing that vacuum
15 forward over the surface like you discussed in
16 paragraph 75, correct?

17 MR. EL DESSOUKI: Objection.

18 THE WITNESS: So it is one possible
19 motion. When I think of couches I think of the
20 back of a couch, and in order to clean off the
21 back of the couch and also the front of the couch
22 where you're -- what part of your thighs?

23 BY MS. SILVERSTEIN:

24 Q. Calves?

25 A. Calves. Good grief. I did not study anatomy in

1 school.

2 Where your calf would be sitting, so
3 those vertical surfaces, those nonhorizontal
4 surfaces of a couch would require a different
5 motion.

6 Q. Okay, but if you were say cleaning the cushion,
7 the top of the cushion of the couch because your
8 kids spilled popcorn on the couch, in just a
9 hypothetical scenario, that this is illustrative
10 of how one would have to hold the modified Conrad
11 630 vacuum with the Conrad 787 handle placement,
12 correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: I'm going to say that my
15 mock-ups include space for the 787 rear-mounted
16 handle as well as retaining the original handle,
17 essentially a position that was offered in 630.

18 So the optionality would allow the user
19 to hold the vacuum at a somewhat horizontal angle
20 for cleaning horizontal surfaces and then use the
21 pistol grip of 787 at the rear for vertical
22 surfaces.

23 BY MS. SILVERSTEIN:

24 Q. Okay. In Conrad 787, just so I'm clear, that
25 only includes the pistol grip. That does not

1 have the ability to hold the vacuum at the top
2 like in Conrad 630, correct?

3 MR. EL DESSOUKI: Objection.

4 THE WITNESS: 787 includes only one
5 handle which is at the rear.

6 BY MS. SILVERSTEIN:

7 Q. Okay. And in that -- if what you did -- I
8 understand what you're talking about in your
9 hypothetical, but let's -- if all you're doing is
10 taking that 787 and replacing the handle of
11 Conrad 630, you get a vacuum -- a handheld vacuum
12 that looks like the vacuum in Exhibit 4, correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: Your statement is correct
15 but it's inconsistent with the mock-ups that I
16 show in my declaration, and those begin on page
17 39 and continue to page 40, I think.

18 BY MS. SILVERSTEIN:

19 Q. Okay. I understand that you have your mock-ups
20 and --

21 A. Pardon me, continue onto page 41.

22 Q. I'll get to that, but I just want to -- so in
23 this Exhibit 4, though, just like in Conrad 787,
24 the only option for the user is to hold the
25 handle at the rear, correct? There is no option

1 for the user to hold the handle at the top of the
2 vacuum, correct?

3 MR. EL DESSOUKI: Objection.

4 THE WITNESS: Exhibit 4 shows no handle
5 at the top of the vacuum.

6 BY MS. SILVERSTEIN:

7 Q. Okay. And do you -- as you sit here today, do
8 you have any examples, real life examples, of a
9 handheld vacuum that includes both the pistol
10 grip of Conrad 787 plus the original handle of
11 Conrad 630?

12 MR. EL DESSOUKI: Objection.

13 THE WITNESS: Pardon me. Are you
14 speaking of commercialized examples or art
15 examples?

16 BY MS. SILVERSTEIN:

17 Q. Whatever example that you would have sitting here
18 today. Any example that you may have sitting
19 here today of that combination.

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: I do not have an example
22 to share at this time.

23 BY MS. SILVERSTEIN:

24 Q. So when you wrote your declaration and you put
25 together the mock-ups in the declaration that

1 you're now asserting have this ability to use the
2 handle both in the pistol grip format and as the
3 original Conrad 630 format, you did not consider
4 any actual real world examples of any vacuum
5 cleaners, handheld vacuum cleaners that ever
6 implemented that type of handle, correct?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: I would say that's an
9 incorrect statement.

10 BY MS. SILVERSTEIN:

11 Q. You just told me that sitting here today you have
12 no real life examples of any vacuum -- handheld
13 vacuum cleaners that have both handles so how is
14 that an incorrect statement?

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: There are handle designs
17 that exist that allow the user to hold a hand vac
18 or a upright vac handle at a different position
19 depending on the use case. If the -- so
20 typically I'll say a loop handle, and I was
21 wanting to reference a loop handle in the art
22 work of one of these, but I have a number of
23 windows open, I can't right now.

24 So a loop handle typically extends,
25 let's say, for essentially a 90-degree arc, and

1 along that 90-degree arc quarter circle, if you
2 will, the user can hold it at any particular
3 angle.

4 So those loop handles that were
5 commonplace at the time I was working at Bissell
6 at the time of, you know, this challenged claim,
7 and those type of handles are what I considered
8 when it came time to provide a mock-up to say --
9 to expand on the statement of Conrad 630 where it
10 allowed me to move the handle at the rear.

11 I wanted to maintain the ability to
12 allow horizontal cleaning as well as vertical
13 cleaning, so that loop kind of thought is part of
14 my experience. All experience is good
15 experience, and that is what led me to the
16 consideration that I presented in the different
17 mock-ups that I showed.

18 BY MS. SILVERSTEIN:

19 Q. If you go to Exhibit 1008 and figure 24 on page
20 28, is that what you're talking about for a loop
21 handle?

22 MR. EL DESSOUKI: Can you repeat the
23 page number, please?

24 BY MS. SILVERSTEIN:

25 Q. Page 28.

1 A. That is one type of handle. There were other
2 examples that were far more pronounced. I
3 believe Bissell had a -- was it called an Easy
4 Vac that had a looped handle that allowed for a
5 lot more of a grip at a different -- along a
6 different portion of the arc. So this is a loop
7 handle in terms of it's a loop. It's a oval, but
8 it primarily has one grip location.

9 The loop handle that I'm referring to
10 has various grip locations along an approximate
11 90-degree arc.

12 Q. Okay. Now, you didn't talk about loop handles or
13 any of this in your declaration, correct?

14 A. I did not.

15 Q. Okay. And you said that one of your goals was to
16 main --

17 A. One. Hold on, car noise. Okay.

18 Q. Okay. You said one of the goals that you had in
19 providing the mock-ups was to maintain the
20 ability to do both horizontal and vertical
21 cleaning, correct?

22 A. Correct.

23 Q. Where is that talked about in the declaration
24 explicitly?

25 A. Paragraph 73 says that a POSITA would wish to

1 retain the advantages of Conrad's 630's design
2 such as an improved dust and configuration.
3 Another advantage that is not explicitly detailed
4 would be a current horizontal handle, so that is
5 an advantage of the 630 design that would be
6 retained.

7 Q. But you don't talk in here at all about retaining
8 the handle. In fact, if you look at paragraph 74
9 you talk about relocating the handle to the rear,
10 correct?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: I do use the term
13 relocation, but my figures are clear in that the
14 relocation is not a substitution but in addition
15 to.

16 BY MS. SILVERSTEIN:

17 Q. Okay. Let's go back to Exhibit 4 and let's stick
18 with this configuration which I understand you're
19 now testifying is not the configuration that you
20 put forward, but let's just talk about this one
21 where the handle is the Conrad 787 handle that
22 only allows the user to hold the vacuum from the
23 rear. Okay?

24 And do you agree that in this
25 configuration, if you were -- if the user was

1 trying to vacuum something on the couch cushion
2 or a countertop, their elbow would have to be
3 bent, correct?

4 MR. EL DESSOUKI: Objection.

5 THE WITNESS: Generally, yes.

6 BY MS. SILVERSTEIN:

7 Q. And this is because the handle is on the back
8 with the suction of Conrad 630 is on the bottom,
9 so the handle is not in an longitudinal Y-Y axis
10 with the suction, correct?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: In the figure that you
13 show in Exhibit 4, your statement is correct, but
14 the allowance that Exhibit 1008 allows, which is
15 Conrad 663, it would allow an attachment that
16 could be directly connected to the nozzle which
17 is on the bottom and extend out in a --
18 essentially from this perspective of Exhibit 4 in
19 essentially a horizontal fashion, which would be
20 parallel to the longitudinal axis of the cyclone,
21 parallel but offset by a few inches, and in that
22 way the suction would be essentially along the
23 longitudinal axis of the cyclone.

24 BY MS. SILVERSTEIN:

25 Q. Okay. But going back to paragraph 75 of your

1 report, there you're talking about relocating the
2 handle to the back of the vacuum cleaner,
3 correct?

4 MR. EL DESSOUKI: Objection.

5 THE WITNESS: I am speaking of -- yeah,
6 in paragraph 35 -- 75. 75 does discuss
7 relocating the handle to the back of the vacuum
8 cleaner.

9 BY MS. SILVERSTEIN:

10 Q. And in the sentence that straddles page 37 of the
11 pdf and page 38, you say this location would
12 allow a user to push the vacuum cleaner forward
13 over the surface to be cleaned easily.
14 Specifically, the vacuum cleaner would be well
15 suited for surfaces like couches and bedding
16 which are more easily cleaned using a handheld
17 vacuum as opposed to a stick or upright vacuum,
18 correct? That's what your declaration said?

19 A. That is what my declaration says.

20 Q. So in this instance you are not talking about
21 adding an attachment to the vacuum cleaner.
22 You're talking about using the vacuum cleaner as
23 a handheld without an attachment, correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: I do not explicitly detail

1 attachments nor do I explicitly detail the
2 orientation of the vacuum cleaner. The examples
3 that I give, couches and bedding, have a variety
4 of use case and handle orientations which would
5 include many nonhorizontal; that is, any vertical
6 surfaces to be cleaned.

7 BY MS. SILVERSTEIN:

8 Q. Okay. But you do talk about it allowing the user
9 to push the vacuum cleaner forward over the
10 surface, correct?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: I do say that, yes.

13 BY MS. SILVERSTEIN:

14 Q. Okay. And so that is using the vacuum cleaner
15 without an attachment, correct?

16 MR. EL DESSOUKI: Objection.

17 THE WITNESS: Attachments are not
18 enunciated in paragraph 75.

19 BY MS. SILVERSTEIN:

20 Q. In what scenario would you have to push the
21 vacuum cleaner forward over a surface to be
22 cleaned if you were using an attachment?

23 MR. EL DESSOUKI: Objection.

24 THE WITNESS: So referring to
25 Exhibit 1008 in paragraph 71, again, I discuss

1 how the nozzle, quote, may be directly connected
2 to any one of a number of cleaning tools that
3 have been provided with an appropriate attachment
4 member including wands, brushes, crevice tools
5 and other hoses.

6 So reading that, directly connected to
7 the nozzle could be a wand. At the end of that
8 wand could be another appropriate attachment
9 member, which would be a nozzle. So this hand
10 vac could be extended to a stick vac. I know we
11 excluded stick vacs in that example in the
12 paragraph that we're looking at, but either a
13 wand attached to a stick vac or a nozzle or some
14 type of brush that would be attached to the
15 appropriate attachment member that is directly
16 connected to the nozzle.

17 So I could imagine if there was a
18 dusting brush that would be attached to the
19 appropriate attachment member of the nozzle
20 attached to 630, that would require someone to
21 push the vacuum back and forth. So now it's not
22 the nozzle of 630 that is in direct contact with
23 the surface to be cleaned but instead an
24 attachment that is connected to the vacuum that
25 is in direct contact with the surface to be

1 cleaned that would require someone to push the
2 vacuum, and a dusting brush would be something
3 that would be an example that could be used very
4 appropriately on couches or bedding.

5 BY MS. SILVERSTEIN:

6 Q. Okay. Let's go back to Exhibit 4 and assume
7 we're not using an attachment. And I think you
8 already agreed with me on this, but I want to
9 make sure it's clear because then you started
10 talking about attachments.

11 In Exhibit 4 the reason that the user's
12 elbow has to be bent to use the configuration in
13 Exhibit 4 that has Conrad 787's handle on the
14 rear of Conrad 630's vacuum, the user is
15 vacuuming a surface such as a couch cushion or a
16 countertop, the reason that the user's elbow has
17 to be bent like that is because the suction of
18 Conrad 630 is on the bottom so the handle is not
19 in the longitudinal Y-Y axis with the suction,
20 correct?

21 MR. EL DESSOUKI: Objection.

22 THE WITNESS: So for the example shown
23 in Exhibit 4, which is not fully representative
24 of the mock-ups that I presented, that statement
25 is correct.

1 BY MS. SILVERSTEIN:

2 Q. Okay. I have one more exhibit I'd like to enter
3 and go through before we take our break for
4 lunch.

5 (Deposition Exhibit 5 was marked.)

6 BY MS. SILVERSTEIN:

7 Q. All right. I just sent it to you, Mr. Fester, so
8 let me know when you have that up.

9 MR. EL DESSOUKI: I'll object to
10 Exhibit 5 as beyond the scope of Mr. Fester's
11 declaration, lacks foundation, hearsay, not
12 relevant.

13 I also object to Exhibits 3, 4 and 5 are
14 not consistent with Mr. Fester's declaration and
15 has incomplete hypotheticals that call for
16 speculation.

17 THE WITNESS: I have Exhibit 5 open.

18 BY MS. SILVERSTEIN:

19 Q. Okay. Now, this is an accurate illustration of
20 how our user would vacuum a surface to be cleaned
21 such as a couch or coffee table using Conrad 630
22 without any adaptation to the handle design or
23 placement, correct?

24 MR. EL DESSOUKI: Objection

25 THE WITNESS: The right image seems a

1 bit exaggerated and not too different from a
2 triceps exercise that I do. That's probably my
3 only comment that it's, yeah, a bit far back.

4 BY MS. SILVERSTEIN:

5 Q. Okay. And in this illustration, the user does
6 not have to bend his or her elbow, correct?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: The arm movement shown in
9 Exhibit 5 appears to have the arm primarily
10 straightened.

11 BY MS. SILVERSTEIN:

12 Q. Okay. And generally speaking, there is more
13 strain on the wrist, elbow and shoulder when the
14 elbow is bent to push a vacuum along the surface
15 to be cleaned, correct?

16 MR. EL DESSOUKI: Objection.

17 THE WITNESS: Say that again.

18 BY MS. SILVERSTEIN:

19 Q. Generally speaking, there is more strain on the
20 wrist, elbow and shoulder when the elbow is bent
21 to push the vacuum along the surface to be
22 cleaned, correct?

23 MR. EL DESSOUKI: Objection.

24 THE WITNESS: I don't know that I would
25 agree with that statement as a blanket statement.

1 BY MS. SILVERSTEIN:

2 Q. Okay. Can we turn to your declaration. Let's
3 turn to paragraph 165 which -- I will let you
4 know when I get there what page it's on -- is on
5 page 83 of the pdf.

6 A. Which paragraph, Brianna?

7 Q. 165. You're there?

8 A. I am.

9 Q. Okay. So here you're talking about the Matsumoto
10 reference, right, which is one of the references
11 used in grounds three and four, correct?

12 A. Correct.

13 Q. And here you're talking about the handle of
14 Matsumoto being unergonomic and uncomfortable
15 because of its shaped angle and orientation,
16 correct?

17 A. Correct.

18 Q. You say the angle requires a grip along a
19 somewhat horizontal axis which could strain the
20 wrist over extended use, correct?

21 A. Correct.

22 Q. Is that grip straining the wrist over extended
23 use because the user may have to bend his or her
24 elbow when they use Matsumoto?

25 MR. EL DESSOUKI: Objection.

1 THE WITNESS: No. What I was referring
2 to was the wrist strain. That's primarily why I
3 state it could strain the wrist over extended
4 use. So imagine, if you will, a person in a
5 stationary position that is pushing the vacuum
6 forward and backward, forward and backward.

7 The horizontal grip of the vacuum that's
8 shown there in figure 25, albeit that's kind of
9 an annotated version of figure 25, if you imagine
10 kind of the wrist -- and I know I'm showing you,
11 Brianna, and the court reporter may have troubles
12 describing this, but it's being held at a
13 horizontal position like gripping a handrail, and
14 you're kind of sliding it forward and backward,
15 forward and backward.

16 And that forward and backward motion is
17 because you're holding on a horizontal is the
18 strain that I was referring to. Especially on
19 the most forward stroke, the strain on the upper
20 portion of the wrist would be the uncomfortable
21 strain that was being referred to.

22 BY MS. SILVERSTEIN:

23 Q. Okay. And when you were just showing us that,
24 your elbow was bent, correct?

25 A. On the forward and backward, yeah. There's --

1 imagine you could do it -- but part of it is that
2 I was holding my arm up so that you could see.
3 But you could do it with a number of different
4 ways which would maybe minimize the elbow
5 bending, but in all those it would still have
6 generally the wrist kind of bearing the brunt of
7 the strain in terms of the actuation -- not the
8 actuation, the movement that the wrist would have
9 to make in order to maintain a horizontal grip as
10 it's moved away from the user and then pulled
11 back to the user.

12 Q. Okay. So going back to my original question,
13 it's your testimony that there is not more strain
14 on the wrist -- sorry, strike that.

15 Is it your testimony that there is not
16 more strain on the wrist, elbow and shoulder when
17 the elbow is bent to push the vacuum along the
18 surface to be cleaned?

19 MR. EL DESSOUKI: Objection.

20 THE WITNESS: Could you please restate
21 that question, Brianna?

22 BY MS. SILVERSTEIN:

23 Q. Yep. Is it your testimony that there is not more
24 strain on the wrist, elbow and shoulder when the
25 elbow is bent to push the vacuum along a surface

1 to be cleaned?

2 MR. EL DESSOUKI: Objection.

3 THE WITNESS: Sorry to belabor this
4 answer, but one more time I would like you to
5 repeat the question.

6 BY MS. SILVERSTEIN:

7 Q. Okay. I asked you the question generally there
8 is more strain on the wrist, elbow and shoulder
9 when the elbow is bent to push the vacuum along
10 the surface to be cleaned, and you had responded
11 to me that you did not agree with that.

12 So what I'm asking is then is it your
13 testimony that there is not more strain on the
14 wrist, elbow and shoulder when the elbow is bent
15 to push the vacuum along the surface to be
16 cleaned?

17 MR. EL DESSOUKI: Objection.

18 THE WITNESS: I mean, my answer is it
19 depends on a number of different factors.

20 BY MS. SILVERSTEIN:

21 Q. What factors?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: The position of the hand
24 and/or wrist that is gripping as you move back
25 and forth, the weight of the product, the weight

1 in the hand of the product.

2 BY MS. SILVERSTEIN:

3 Q. So you're saying depending on certain factors
4 there are times when having your elbow bent to
5 push the vacuum along the surface to be cleaned
6 would not be more strenuous than having your --
7 strenuous on your wrist, elbow and shoulder than
8 having your arm straight while pushing the vacuum
9 along a surface to be cleaned?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: In general, I think the
12 elbow bending is a very natural movement for
13 people to use as they vacuum back and forth on a
14 surface to be cleaned. And depending on the user
15 they will do what is most comfortable to them in
16 terms of what -- in terms of cleaning the area
17 that they need to clean.

18 So if they are experiencing some strain,
19 they may relocate their hand to a different
20 position or they may relocate the vacuum to a
21 different position. They would kind of respond
22 to their body themselves to avoid such strain.

23 BY MS. SILVERSTEIN:

24 Q. So is what you're saying that it's dependent on
25 each person and that you don't -- you can't as

1 you sit here today say which situation is more or
2 less strenuous?

3 A. I would say that my comments are going to
4 specifically -- looking at the Matsumoto, are
5 specific to the wrist and kind of having the
6 wrist in one fixed position as you're going back
7 and forth. And in that case, you are moving your
8 elbow, but the fact that the wrist is in a
9 certain position which is required for
10 Matsumoto's handle, that is what is requiring
11 additional strain that I was looking to -- that
12 was the disadvantage of Matsumoto that I was
13 looking to 787 to satisfy a more comfortable grip
14 for the handle of Matsumoto.

15 Q. Okay. So I am moving away from Matsumoto right
16 now for a second. I'm going back to my question
17 which was, like I said, I asked you if generally
18 speaking there is more strain on the wrist, elbow
19 and shoulder when the elbow is bent to push a
20 vacuum along the surface to be cleaned. You told
21 me you didn't agree with that.

22 A. I believe I said it depends.

23 Q. Okay.

24 MR. EL DESSOUKI: Objection.

25 BY MS. SILVERSTEIN:

1 Q. Then you said it depends and I asked you what it
2 depends on, and then I said is it your testimony
3 that each person -- that you can't testify to it
4 because each person may experience a different
5 result, different strain on their wrist, elbow
6 and shoulder when their elbow is bent because,
7 you know, you started talking about a user is
8 going to do what is the most comfortable to them.

9 So what I'm asking you is then is that
10 your testimony that as to this question
11 specifically about whether there's more strain on
12 the wrist, elbow and shoulder when the elbow is
13 bent, and we're assuming the vacuum cleaner is
14 the same, so there's no difference in the weight
15 of the vacuum cleaner, of the position of the
16 hand, any of that.

17 We're talking about the same -- one
18 person is using the same vacuum cleaner, is it
19 going to be more strenuous to have their elbow
20 bent or less strenuous? That's what I'm asking.

21 So can you opine on that?

22 MR. EL DESSOUKI: Objection.

23 BY MS. SILVERSTEIN:

24 Q. And just to clarify, when I say the same vacuum
25 cleaner, we're talking about the same vacuum

1 cleaner except for in one instance the handle is
2 on the back so the elbow is bent and on the other
3 instance the handle is on the top so the elbow is
4 not bent.

5 MR. EL DESSOUKI: Objection.

6 THE WITNESS: I believe I've answered
7 the question, and I don't know that I care to
8 opine any further on that.

9 BY MS. SILVERSTEIN:

10 Q. Okay. So your answer is still you're not going
11 to opine on it. You don't think you can opine on
12 it because it depends on factors that you just
13 can't consider.

14 Is that your answer or is it something
15 else?

16 MR. EL DESSOUKI: Objection.

17 THE WITNESS: I mean, it's asked and
18 answered.

19 BY MS. SILVERSTEIN:

20 Q. Well, that's an objection. That's not a
21 response.

22 MR. EL DESSOUKI: Objection.

23 BY MS. SILVERSTEIN:

24 Q. I'm entitled to a response to my question, so if
25 the response is that you don't know, then, you

1 know, that's the response.

2 MR. EL DESSOUKI: Objection.

3 BY MS. SILVERSTEIN:

4 Q. Do you want me to ask the question again?

5 A. I've answered it with -- I believe I've answered
6 the question.

7 Q. Okay. All right. We can take a break.

8 (A lunch recess was taken.)

9 BY MS. SILVERSTEIN:

10 Q. All right. Mr. Fester, I would like to now talk
11 about the mock-ups of your -- that you included
12 in your declaration. Those are in paragraph 75
13 and 76 of Exhibit 1003, correct?

14 A. Let me get there.

15 Q. Yeah. And it starts -- 75 starts on page 37 of
16 the pdf.

17 A. Yeah. It looks like is it page 39 the mock-ups
18 start?

19 Q. Yes.

20 A. Okay. Yes, I'm there right now. Yep.

21 Q. Okay. And these mock-ups are examples of the
22 vacuum cleaner that could have resulted from the
23 combination of Conrad 630 and Conrad 787 that
24 you're proposing, correct?

25 A. Correct.

1 Q. Okay. And in these mock-ups just like in your
2 combination the only modification you are
3 proposing to Conrad 630 is to move the handle to
4 the back and to make it a pistol grip like in
5 Conrad 787, correct?

6 MR. EL DESSOUKI: Objection.

7 THE WITNESS: That is not an accurate
8 statement.

9 BY MS. SILVERSTEIN:

10 Q. Okay. What's inaccurate about it?

11 A. By the word move, it is not move. It's to add to
12 the existing horizontal handle to provide the
13 handle at 787 at the back --

14 Q. Okay.

15 A. -- while still retaining the original handle
16 location of 630.

17 Q. Okay. If you go to page 40 of the pdf, at the
18 second mock-up, the one on the bottom of the
19 page, that does not include the handle of Conrad
20 630, correct?

21 A. It still includes a horizontal element to it.

22 Q. Okay. But the green section is what is intended
23 to be the handle, correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: Correct. But we're

1 looking at the -- I did not enumerate the
2 mock-ups, but essentially the third mock-up, so
3 the one on the bottom of the page that is labeled
4 36.

5 BY MS. SILVERSTEIN:

6 Q. Yeah.

7 A. Yeah, so that has a horizontal element to it that
8 is essentially co-linear to the existing handle
9 102 but located to the right of it.

10 Q. Right. And in the actual vacuum it would be
11 located to the rear of the handle. I think it's
12 actually 102. That's hard to see.

13 A. I believe I said 102.

14 Q. Oh, okay. Sorry. I thought I heard 162. So let
15 me ask my question again.

16 The green section that you're talking
17 about that's horizontal, in the actual vacuum it
18 would be to the rear of the existing handle,
19 correct?

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: The third mock-up shows
22 the horizontal element that would be further back
23 than the current handle 102.

24 BY MS. SILVERSTEIN:

25 Q. Okay. And in that mock-up -- I'm just talking

1 about that one, the third one -- there is no
2 handle 102, correct? That's removed from the
3 mock-up, the third mock-up?

4 A. I would say that in that mock-up 102 is moved
5 back to still be horizontal but moved toward the
6 back of the handheld vacuum.

7 Q. Okay. And you stated still be horizontal, but
8 handle 102 is not perfectly horizontal, right?
9 It's angled upwards, correct?

10 A. Yep.

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: That's correct, yep. It
13 is -- there's a slight angle to it, correct.

14 BY MS. SILVERSTEIN:

15 Q. Okay. Now I want to just kind of talk generally
16 about all four of these mock-ups now. And I'm
17 going to ask this question, and it's kind of
18 broad so we may have -- I might have to
19 elaborate, but what exactly is the green line
20 supposed to represent in each of these mock-ups?

21 MR. EL DESSOUKI: Objection.

22 THE WITNESS: The green line represents
23 from paragraph 75 a quick sketch that shows a
24 handle arrangement as an example. So the direct
25 quote is as an example, a quick sketch of that

1 shows such a handle arrangement as provided
2 below. And that going earlier in paragraph 75 it
3 just talks about the combination of 630 and 787.

4 BY MS. SILVERSTEIN:

5 Q. Okay. And if we go to Exhibit 1006, which is
6 Conrad 787, and we look at figure 79, which is on
7 page 77 of the exhibit, I believe this is the
8 pistol grip that you are relying on in the
9 combination, correct?

10 And please feel free to correct me if
11 I'm wrong, but I believe that this is the pistol
12 grip.

13 A. Correct, yep.

14 Q. Okay.

15 A. Photograph 484 -- handle 484 is a handle of 787
16 that is referenced in my declaration.

17 Q. Okay.

18 A. Yeah, you can see 484.

19 Q. You're on figure 78 which is page 76. Okay,
20 that's the same as what I was looking at, but
21 this one has more delineated, which is fine.

22 A. Yeah, I apologize. I changed -- I ensured that
23 the reference was accurate, yeah.

24 Figure 78 shows the handle that you're
25 referencing as handle 484.

1 Q. Okay. So what I'm trying to figure out is where
2 does the pistol grip handle 484 fit in on the
3 green line that you put into your declaration?

4 MR. EL DESSOUKI: Objection.

5 BY MS. SILVERSTEIN:

6 Q. So if we need to go mock-up by mock-up, that's
7 fine. I'm just trying to figure out how is that
8 pistol grip part of your handle arrangement that
9 you said is represented by the green lines?

10 A. The pistol grip would be -- the rear handle would
11 be the rear green line, which is mostly vertical
12 but it is inclined at an angle consistent with
13 the pistol grip angle.

14 So for the first mock-up shown on page
15 39, it would be the slanted mostly vertical line
16 to the right, that green line, and similarly on
17 the second, third and fourth mock-up would be
18 that similar location.

19 Q. Okay. So the pistol grip is represented by the
20 single line, the one the most to the right if
21 you're looking at each of these mock-ups; is that
22 accurate to say?

23 A. That is accurate to where essentially the grip
24 would be located if we were just looking at
25 that -- at the axis of the handle, yes.

1 Q. Okay. And so essentially that line would be
2 replaced by hand grip 484 from Conrad 787,
3 correct?

4 A. That's correct.

5 Q. Okay. So if we're looking at this first mock-up,
6 the one that's on page 39 of the pdf, what
7 material is used -- well, what do these other
8 lines look like? Are they straight like they are
9 here? Are they that thickness? What do you
10 envision those to look like?

11 MR. EL DESSOUKI: Objection.

12 MS. SILVERSTEIN: What's the objection?
13 What's the objection, Ahmed?

14 MR. EL DESSOUKI: Sorry?

15 MS. SILVERSTEIN: What's the objection?

16 MR. EL DESSOUKI: I think you're going
17 outside the scope of this declaration.

18 MS. SILVERSTEIN: I'm asking him
19 specific questions about mock-ups that are in his
20 declaration.

21 MR. EL DESSOUKI: Well, he can answer if
22 he can.

23 MS. SILVERSTEIN: Okay. I would just
24 appreciate keeping the objections to relevant
25 objections.

1 THE WITNESS: Brianna, please restate
2 the question.

3 BY MS. SILVERSTEIN:

4 Q. Sure. So in this first mock-up you've identified
5 to me what this -- the line that's to the most
6 right of that mock-up is, that that's going to be
7 the pistol grip.

8 What I'm trying to figure out is you
9 have three other lines in this mock-up. What do
10 those represent, in reality? Are they that
11 thickness? Are they, you know, that horizontal?
12 How are they represented in reality?

13 MR. EL DESSOUKI: Same objection.

14 THE WITNESS: The intent of these
15 mock-ups is to show a quick option, and
16 essentially I'd say a quick sketch that shows the
17 handle arrangement. If I were to elaborate on
18 how that would actually look if this were
19 commercialized, I would say that the green lines
20 would be of an approximate thickness and girth as
21 what 102 is.

22 So you can see that going from left to
23 right, the first vertical line in would
24 essentially be what is already shown in 102 and
25 essentially to that -- where 102 meets up with

1 the body on the right-hand side is where the
2 second vertical line meets so approximately
3 reusing that handle.

4 And then the reason for that middle one
5 would just be for strength, and the line to the
6 right, the horizontal line to the right of that
7 middle vertical line would continue with that
8 similar type of width, girth, size is 102 and
9 then continue down on an angle to be the pistol
10 grip form.

11 BY MS. SILVERSTEIN:

12 Q. Okay. But the pistol grip is going to be the
13 same width and girth as in Conrad 787, correct?

14 MR. EL DESSOUKI: Same objection.

15 THE WITNESS: I think it would be very
16 similar, yes.

17 BY MS. SILVERSTEIN:

18 Q. Okay. Where is the on-and-off button going to be
19 located in is this mock-up?

20 MR. EL DESSOUKI: Same objection.

21 THE WITNESS: That is not detailed on
22 this sketch.

23 BY MS. SILVERSTEIN:

24 Q. I understand it's not on there. That's why I'm
25 asking you where would it be. If you were

1 designing this mock-up, where would you put the
2 on-and-off button?

3 MR. EL DESSOUKI: Same objection.

4 THE WITNESS: There could be a number of
5 different locations where one or two switches
6 could be used.

7 BY MS. SILVERSTEIN:

8 Q. Where would that be?

9 A. For the pistol grip it could maintain the similar
10 location of the switch that is shown in 787 which
11 would be essentially I will call it the trigger,
12 and for the horizontal there could be perhaps
13 another switch. Give me a moment.

14 I will note that claim 1D does not
15 expound about the location of the power switch so
16 the location of the power switch has not been a
17 part of my opining.

18 Q. Is it your opinion that you can have the pistol
19 grip that does not have a trigger switch?

20 MR. EL DESSOUKI: Objection.

21 BY MS. SILVERSTEIN:

22 Q. Let me be a little more specific. Is it your
23 opinion that you can have a pistol grip, the
24 claimed pistol grip, to be used on a handheld
25 vacuum without a trigger switch?

1 A. I'd say that the claim 1D does not specifically
2 enunciate power switch. It does say pistol grip.
3 I think pistol grip could be used to describe
4 merely the grip portion as opposed to
5 specifically requiring the trigger mechanism.

6 Q. Okay. Let's move on then to the other three
7 mock-ups.

8 A. Sorry, what page was that? I think it was 39 to
9 41?

10 Q. 40 is where the other three start.

11 So a similar question for these is what
12 kind of material would you envision being
13 substituted for the remaining green lines that
14 are not the pistol grip?

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: In general, the intent of
17 these sketches is to offer an alternate path for
18 the design that is currently shown as handle 102
19 and with the exception of having a pistol grip at
20 the rear of the handle loop.

21 BY MS. SILVERSTEIN:

22 Q. Handle 102 is angled, and in all four mock-ups
23 the only line that you have that is not
24 completely vertical or completely horizontal is
25 the pistol grip one, correct?

1 A. That is correct.

2 Q. Are those lines indicative of the fact that
3 whatever material was used to replicate those
4 lines would also likewise either be horizontal or
5 vertical?

6 MR. EL DESSOUKI: Objection.

7 THE WITNESS: The horizontal line that's
8 shown to kind of be where 102 is placed right now
9 could indeed still maintain an angle to provide a
10 similar type of angle that's shown in 102. I did
11 not show that in my mock-up. In my mock-ups,
12 plural.

13 BY MS. SILVERSTEIN:

14 Q. Okay. So other than the handle that we just
15 discussed, you are not proposing any modification
16 to any other portions of Conrad 630 such as the
17 suction conduit or the dirt collector or the
18 cyclonic separating unit, correct?

19 A. Once more with the question, please.

20 Q. Yeah. Other than the handle variations that we
21 just discussed at length, you are not proposing
22 any modification to any other portions of Conrad
23 630 such as the suction conduit or the dirt
24 collector or the cyclonic separating unit,
25 correct?

1 A. The only item that I will speak to that would be
2 maybe an exception to your statement is just the
3 statements you have made relative to the
4 inclusion of attachments that was described in
5 Exhibit 1008.

6 Q. Okay, but other than the attachment and the
7 handles, you're not proposing -- I guess let me
8 say this. You are not proposing any modification
9 to the suction conduit that's included in the
10 vacuum and dirt collector or the cyclonic
11 separating unit of Conrad 630, correct?

12 A. Again, back to kind of the attachment comment,
13 I'll read from this -- give me a second to find
14 it.

15 So just going back to the statement that
16 was made with 1008, the nozzle may be directly
17 connected to any one of a number of cleaning
18 tools that have been provided with an appropriate
19 attachment member including wands, brushes,
20 crevice tools and other hoses. So foreseeably, I
21 could see the wand attached to an elbow coming
22 out and making the suction longitudinal axis to
23 be at a line that is parallel to the longitudinal
24 axis of the cyclone, so that would be the only
25 comment I would have on that. So that would be

1 an impact on the suction conduit.

2 Q. Okay. So other than -- so let's put aside when
3 the vacuum is being used with attachments. Okay?

4 Let's just talk about the vacuum as it
5 is. In that case, you are not proposing any
6 modifications to the suction conduit, the dirt
7 collector or the cyclonic separating unit,
8 correct?

9 MR. EL DESSOUKI: Objection.

10 THE WITNESS: Those modifications I do
11 not believe are required to -- for the grounds
12 that I make to invalidate claims of the 687.

13 BY MS. SILVERSTEIN:

14 Q. Okay. I'd like you to go back to -- well, you
15 might have to flip back and forth between these,
16 but if you go back to page 34.

17 A. My declaration?

18 Q. Yes, in your declaration, sorry.

19 A. That's all right.

20 Q. And paragraph 67.

21 A. Yes.

22 Q. I believe we talked earlier about the second
23 bullet point. The handle configuration can be
24 comfortably operated in an orientation that does
25 not require an application of torque by the

1 user's hand when the hand vac 112 is held by
2 handle 484 because the center of gravity 524 on
3 the hand vac 112 is aligned vertically below the
4 user's hand, correct?

5 A. Correct.

6 Q. Yet the user is using the pistol grip in these
7 mock-ups. The center of gravity is not aligned
8 vertically below the user's hand during use,
9 correct?

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: The center of gravity is
12 something that I've already stated has not
13 necessarily been established and would require
14 additional information that has not been provided
15 in order to firmly establish. So, additionally,
16 the center of gravity is not any requirement of
17 the argued claims.

18 BY MS. SILVERSTEIN:

19 Q. Okay. But going back to paragraph 67, those are
20 the bullet points that you provided that you
21 allege provide the motivation for using Conrad
22 787 pistol grip in combination with Conrad 630,
23 correct?

24 MR. EL DESSOUKI: Objection.

25 THE WITNESS: Correct. These are

1 statements from 787.

2 BY MS. SILVERSTEIN:

3 Q. They're statements from 787 that you allege would
4 motivate the combination that you have provided,
5 correct?

6 MR. EL DESSOUKI: Objection.

7 MS. SILVERSTEIN: What's the objection?

8 MR. EL DESSOUKI: Asked and answered.

9 MS. SILVERSTEIN: He didn't answer it.

10 THE WITNESS: I'm reciting the -- in the
11 second bullet point, I'm reciting the argument
12 that 787 presents for why it is a comfortable
13 handle.

14 BY MS. SILVERSTEIN:

15 Q. Okay. Before the bullet points including the
16 second bullet point, your declaration in
17 paragraph 67 states, quote, the advantages
18 associated with Conrad 787's handle - such as
19 improved comfort - would motivate the
20 combination. For example, Conrad 787 explains
21 that, end quote. And then you have the bullet
22 points including the second bullet point about
23 the center of gravity, correct?

24 A. Correct.

25 MR. EL DESSOUKI: Objection.

1 BY MS. SILVERSTEIN:

2 Q. Okay. So as you sit here today, you cannot
3 provide an opinion on whether if a user is using
4 the pistol grip in the mock-ups that you provided
5 on paragraph 75 and 76, whether the center of
6 gravity is aligned vertically below the user's
7 hand during use.

8 Is that your testimony, because you need
9 additional facts.

10 MR. EL DESSOUKI: Objection.

11 THE WITNESS: There are use cases where
12 the vacuum would be located directly below the
13 handle. I believe your figure three showed such
14 an example, and that is such a use case where
15 this bullet point would come into play.

16 BY MS. SILVERSTEIN:

17 Q. Okay. Let's go back to the bullet point. Isn't
18 this bullet point relevant -- well, actually, let
19 me back up.

20 Isn't this bullet point supposed to be
21 relevant towards using the vacuum as a hand vac
22 as opposed to using it with attachments?

23 MS. SILVERSTEIN: Objection.

24 THE WITNESS: I'm going to Exhibit 1006
25 which is the 787 patent. I'm looking at

1 paragraph 312 as the reference and going back now
2 to the figure.

3 Okay. So I've reviewed the reference
4 that I cite in the second bullet point, first and
5 second bullet points, and your question was
6 whether or not this was referencing using 787 as
7 a hand vac. The referenced area of 787 is
8 speaking when it is being used as a hand vac.

9 BY MS. SILVERSTEIN:

10 Q. Okay. And just kind of buttoning this up, I
11 understand -- I take your point about if you're
12 using attachments and the center of gravity, but
13 let's take attachments out of the picture and
14 you're just using this hand vac without
15 attachments.

16 The hand vac and the mock-ups that you
17 provide in paragraphs 75 and 76 of your
18 declaration, if a user is using the pistol grip,
19 is it your testimony that you cannot opine as to
20 whether the center of gravity did align
21 vertically below the user's hand during use?

22 A. I think in several use cases that situation would
23 be true, that the center of gravity would be
24 approximately vertically below the user's hand.

25 Q. While the user was using this hand vac during

1 use, to clean a surface during use.

2 So let's look at the picture -- the
3 figure you have, figure six. That's the one you
4 used for your mock-ups, and the floor is that
5 line -- or the surface to be cleaned, I should
6 say, is that line on the ground. I'm not sure
7 what number it is, actually. I think it's, like,
8 F.

9 A. Sorry, I want to make sure I'm looking at the
10 same thing you are.

11 Q. Yeah, any of the mock-ups that you have in
12 paragraph 75 or 76. You're using figure six from
13 Conrad 630. There's that line that's F, that's
14 the surface to be cleaned.

15 In that situation if the user is using
16 the pistol grip, can you agree with me that in
17 that situation the center of gravity of the
18 vacuum cleaner is not aligned vertically below
19 the user's hand during use?

20 A. In that -- in the use case that you described,
21 correct, if you were to use the pistol grip
22 handle, that would not be -- the vacuum would not
23 be aligned beneath -- generally would not be
24 aligned -- the center of gravity of that would
25 generally not be aligned below the user's hand.

1 Q. Okay.

2 A. But that disregards other use cases where it
3 would be aligned beneath the user's hand. And
4 again, the optionality that I'm providing -- I'm
5 aiming to provide in these mock-ups -- is a
6 horizontal handle to clean horizontal surfaces
7 and a pistol grip to clean nonhorizontal
8 surfaces.

9 Q. Okay. That horizontal handle in the mock-up,
10 that is not -- are you asserting that's the
11 claimed handle in limitation 1B?

12 A. The claimed handle in 1B would be the vertical
13 line that's on a slant. I believe we already
14 discussed that.

15 Q. The pistol grip line?

16 A. Correct.

17 Q. From Conrad 787?

18 A. Correct.

19 Q. Just making sure we're on the same page.

20 I want to circle back to something we
21 talked about before lunch when you were talking
22 about this assertion that the combination that
23 you are alleging would include both a version at
24 least of the original Conrad 630 handle in
25 addition to the pistol grip.

1 And I asked you before lunch if there
2 was anyplace in your declaration that explicitly
3 stated that you were keeping the handle in 630,
4 and you told me paragraph 73, and I assume you
5 will also point to the mock-ups that you
6 provided.

7 Is there any other place in this
8 declaration where you say for ground one that
9 you're going to keep the Conrad 630 handle in
10 addition to adding a pistol grip handle?

11 MR. EL DESSOUKI: Objection.

12 THE WITNESS: Yes.

13 BY MS. SILVERSTEIN:

14 Q. Where?

15 A. Paragraph 75 and midway through that paragraph;
16 for example, a POSITA could have designed a
17 handle that attaches to the vacuum cleaner of
18 Conrad 630 at the same location that the current
19 handle attaches and which extends to the rear of
20 the vacuum cleaner and then forms a pistol-shaped
21 handle which is sloped relative to the
22 longitudinal axis 123 which at an angle
23 consistent with teachings of Conrad 787.

24 So I'm going to emphasize the verbiage
25 that says attaches to the vacuum cleaner of

1 Conrad 630 at the same location that the current
2 handle attaches and which extends to the rear of
3 the vacuum cleaner and then forms a pistol grip
4 -- pistol shaped handle.

5 Q. Okay. Is there anyplace else other than that
6 paragraph, paragraph 73, and your mock-ups where
7 you discuss keeping the Conrad 630 handle in
8 addition to adding the pistol grip?

9 A. I am not for certain, but I know for certain that
10 that is fairly clear that it is not
11 substitutionary, which may have been a
12 misinterpretation of earlier in paragraph 35 with
13 the relocating of the handle, but it is -- it's
14 an additional handle. So it's taking the
15 advantage that 630 provides already and adding to
16 it the pistol grip of 787.

17 Q. Is there anyplace in this declaration where you
18 talk about a user using the handle of Conrad 630
19 in the vacuum that would result in the
20 combination that you provided in ground one?

21 A. So one example in paragraph 72, a POSITA would
22 have recognized the advantages associated with
23 providing the handle at the rear including that
24 the user would have a better grip and more
25 comfort when using the handheld vacuum cleaner

1 with an attachment which would allow more
2 flexibility in using the handheld vacuum with an
3 attachment for different types of cleaning.

4 So though this is essentially the
5 motivation to combine, it also essentially
6 describes the advantages of using the handle at
7 the rear.

8 Q. No, I understand that. I'm sorry, I think maybe
9 my question got lost in translation.

10 I'm talking about is there anyplace in
11 this declaration where you talk about using the
12 handle at the top that you said you're keeping,
13 the Conrad 630 handle and the combination --
14 sorry -- in the vacuum cleaner that results in
15 the combination you're asserting in ground one?

16 A. I would again point to the general motivation
17 which was speaking to more flexibility in using
18 the handheld vacuum with an attachment for
19 different types of cleaning. So the different
20 types of cleaning are going to require -- or
21 different use cases so that points to using the
22 different handles, but I would say that the
23 mock-ups and paragraph 75, which I've already
24 recited, are probably the most clear examples of
25 retaining essentially handle 102 of the existing

1 630 and then adding handle 484 of 787 to the
2 rear.

3 Q. Okay. Let's -- I want to go through the
4 limitations quickly, and just kind of to save
5 time and to save Ms. Jacoby from typing them all
6 out, I'm going to refer to them by the numbers
7 that you refer to them as in your declaration.

8 Is that okay with you, Mr. Fester?

9 A. That is fine.

10 Q. Okay.

11 MR. EL DESSOUKI: If now is a good time
12 to take a break, maybe we --

13 MS. SILVERSTEIN: This should take not a
14 lot of time and then we can take a break.

15 MR. EL DESSOUKI: Okay.

16 MS. SILVERSTEIN: I just want to get
17 through this. I think this will go fairly
18 quickly. If it starts not going quickly, we can
19 take a break.

20 MR. EL DESSOUKI: Okay.

21 BY MS. SILVERSTEIN:

22 Q. Okay. So I'm starting with limitation 1B, which
23 is on page 45 of your declaration, Exhibit 1003,
24 and you agree that Conrad 787 does not disclose
25 this limitation, correct?

1 A. In my declaration, I rely on 634 meeting 1B.

2 Q. Okay. So I guess what I should say is then you
3 are not opining in this case that Conrad 787
4 discloses limitation 1B?

5 A. Correct.

6 Q. Okay. And then as to 1C, which is on page 47 of
7 your declaration, you are not opining that Conrad
8 787 discloses limitation 1C, correct?

9 A. That is correct.

10 Q. Okay. On limitation 1D, which starts on page 50
11 of your declaration, you are not opining that
12 Conrad 630 discloses limitation 1D, correct?

13 A. Correct.

14 Q. Okay. And going to claim two, which is on page
15 56 of the declaration, you are not opining that
16 Conrad 630 discloses the additional limitation of
17 claim two, correct?

18 A. Correct.

19 Q. Okay. Going to claim three, which is on page 57,
20 you are not opining that Conrad 787 discloses the
21 additional limitation of claim three, correct?

22 A. Correct.

23 Q. Okay. Claim four is on page 59 of your
24 declaration. You are not opining that Conrad 787
25 discloses the additional limitation of claim

1 four, correct?

2 A. Correct.

3 Q. Okay. Claim eight, which is on page 60, you are
4 not opining that Conrad 787 discloses the
5 additional limitation of claim eight, correct?

6 A. I am not, though I believe it would, but I will
7 say for the record that I would just stick to my
8 declaration that 630 discloses the limitation.

9 Q. Okay. And then claim ten, which is on page 63,
10 you are not opining that 787 discloses the
11 additional limitation of claim ten, correct?
12 Sorry, Conrad 787.

13 A. That is not included in my opining, no.

14 Q. Okay. And in this proceeding, you are not
15 providing any opinion as to whether the
16 combination of Conrad 630 and Conrad 787 would
17 have rendered obvious claims five through seven,
18 nine and 11 of the 687 patent, correct?

19 A. Those are not within the scope of my declaration.

20 Q. Okay, we can take a break.

21 (A brief recess was taken.)

22 BY MS. SILVERSTEIN:

23 Q. Before we move to ground two, I just want to
24 clarify we talked a lot about attachments in
25 Exhibit 1008.

1 Exhibit 1008 is not a reference that you
2 are using as an invalidating prior art reference
3 in any of the grounds that you're presenting in
4 this IPR, correct?

5 A. So the reason I look at 1008 without making it
6 essentially a reference is that according to
7 paragraph 71, though Conrad 630 does not
8 explicitly disclose its use with an attachment;
9 however, another reference by the same inventor
10 showing exactly the same handheld vacuum as
11 Conrad 630 shows how it can be used with an
12 attachment, and that is the Exhibit 1008.

13 And looking at 1008's description is
14 where both -- there's figure 3B that shows an
15 attachment that noble attachment and the verbiage
16 that I recited a couple of times that discusses
17 the different cleaning tools that can be used
18 including wands, brushes, crevice tools and other
19 hoses.

20 Q. I'm going to move to strike that response as
21 nonresponsive.

22 The only question I'm asking is I'm just
23 clarifying that you have not asserted
24 Exhibit 1008 as an invalidating prior art
25 reference in any of the four grounds that you're

1 asserting in this IPR, correct?

2 A. Correct.

3 Q. Okay. Let's go to ground two. This is your
4 opinion that claims one through four, eight and
5 ten of the 687 patent are rendered obvious by
6 Conrad 630 in view of Dyson.

7 You are not opining that either Conrad
8 630 or Dyson independently explicitly or
9 implicitly disclose all of the limitations of the
10 challenged claims, correct?

11 A. Correct.

12 Q. Going back to the statement in Exhibit 1004,
13 which is Conrad 630, that's in paragraph 52, and
14 it reads, In alternate examples, handle 102 may
15 be provided elsewhere on the vacuum cleaner 100;
16 for example, at the rear 110 and may be of any
17 design.

18 That statement does not refer
19 specifically to the design of the handle in
20 Dyson, correct?

21 A. The 630 language is not specific about what type
22 of handle. It does reference a handle of any
23 design.

24 Q. Okay. Let's go to paragraph 125 of your
25 declaration, Exhibit 1003. That's on page 66 of

1 the pdf.

2 A. Yep.

3 Q. Okay. In this paragraph you are opining on
4 statements in Dyson that you allege support a
5 motivation to incorporate Dyson's handle 28 at
6 the rear 110 of Conrad's vacuum, correct?

7 A. Correct.

8 Q. Okay. And one basis you provide for the
9 motivation is Dyson's disclosure regarding the
10 comfort of the handle to the user, correct?

11 A. Correct.

12 Q. The first statement you quote is Dyson's
13 disclosure that, quote, This arrangement feels
14 comfortable for a user, closed quote, correct?

15 A. Correct.

16 Q. Okay. And if we turn to Exhibit 1007, which is
17 Dyson, this quote comes from -- I have here page
18 four, lines 27 through 29, but I'm not sure right
19 now whether that's page four of the pdf so let me
20 look.

21 It's on page five of the pdf, lines 27
22 through 29. That actually should be -- that
23 specific quote is 28 through 29. Do you see that
24 there, this arrangement feels comfortable for a
25 user? Are you on 1007, Mr. Fester?

1 A. I am, and I'm awfully perplexed. You said page
2 five.

3 Q. Page five of the pdf, yep. It's in the last full
4 paragraph. It's the last sentence of that
5 paragraph.

6 A. Oh.

7 Q. It's okay.

8 A. Yeah. If it was a snake it would have bit me.
9 Yes, I see that.

10 Q. Okay. And when Dyson is referring to, quote,
11 this arrangement, closed quote, it is the
12 arrangement where the axis X-X of the hand grip
13 28 lies traverse to a longitudinal axis Y-Y of
14 the suction conduit, correct?

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: It appears to be the quote
17 from lines 24 and 25, yes.

18 BY MS. SILVERSTEIN:

19 Q. Okay. So you agree with me then in that final
20 sentence that this arrangement it's talking about
21 the X-X axis of the hand grip lies transverse to
22 a longitudinal axis Y-Y of the suction conduit,
23 correct?

24 A. Correct.

25 Q. Okay. Now, going back to your declaration, same

1 paragraph, that paragraph you also quote Dyson's
2 disclosure that the handle allows the user to,
3 quote, maintain a comfortable wrist position and
4 movement of the handheld vacuum cleaner feels
5 comfortable, closed quote, correct?

6 A. Correct.

7 Q. Okay. If we look back at 1007 now, if you're
8 looking at page three of the pdf, we're looking
9 at line 17 through 19.

10 A. Okay, hold on. Sorry, which page on 1007?

11 Q. Page three of the pdf.

12 A. Yep.

13 Q. Line 17 through 19. That's where that quote
14 comes from in your declaration we just read,
15 right?

16 A. That is correct.

17 Q. And the beginning of that sentence which you
18 don't quote in your declaration says, quote,
19 Providing a handheld cleaning appliance with such
20 an arrangement, closed quote? You see it? It's
21 the beginning of the sentence that I just read to
22 you.

23 A. Yes. I see that, yes. I agree that that is part
24 of the quote that was not included in my
25 declaration.

1 Q. Okay. And when Dyson is referring to, quote,
2 such an arrangement, closed quote, it again is
3 referring to an arrangement, quote, wherein the
4 elongated handle lies transverse to the
5 longitudinal axis of the suction conduit, closed
6 quote, correct?

7 MR. EL DESSOUKI: Objection.

8 BY MS. SILVERSTEIN:

9 Q. And you can find that quote directly before the
10 beginning of that sentence that we were just
11 quoting from.

12 A. Yeah. The arrangement appears to refer to the
13 position of the longitudinal axis of the suction
14 conduit and the handle axis.

15 Q. Okay. So the statements related to the comfort
16 to the user of the handle in Dyson that you cite
17 in paragraph 125 of your declaration as providing
18 motivation to use Dyson's pistol grip handle in
19 Conrad 630 refer to Dyson's arrangement where the
20 handle axis lies transverse to the longitudinal
21 axis of the suction conduit, correct?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: Please restate your
24 question.

25 BY MS. SILVERSTEIN:

1 Q. Yeah. To follow on to the set of questions that
2 we just had where you confirmed with me both of
3 the statements were referring to the arrangement
4 in Dyson where the handle axis lies transverse to
5 the longitudinal axis of the suction conduit, the
6 question is the statements related to the comfort
7 to the user of the handle in Dyson that you cite
8 in paragraph 125 of your declaration as providing
9 motivation to use Dyson's pistol grip handle in
10 Conrad 630 refer to Dyson arrangement where the
11 handle axis lies transverse to the longitudinal
12 axis of the suction conduit, correct?

13 MR. EL DESSOUKI: Objection.

14 THE WITNESS: That appears to be the
15 case.

16 BY MS. SILVERSTEIN:

17 Q. Okay. And going back to your declaration in
18 paragraphs 130 and 131, so starting on page 68 of
19 your declaration, you provide mock-ups of your
20 combination in ground two, correct?

21 A. Correct.

22 Q. And those mock-ups are identical to the mock-ups
23 that you provided for ground one; is that
24 correct?

25 A. That is correct.

1 Q. I'm trying to short circuit some of this, but
2 would everything that we said as to the mock-ups
3 in ground one apply to these mock-ups in ground
4 two except that the pistol grip would be the
5 pistol grip of Dyson instead of the pistol grip
6 of Conrad 787?

7 MR. EL DESSOUKI: Objection.

8 THE WITNESS: That would be a fair
9 summary.

10 BY MS. SILVERSTEIN:

11 Q. Okay. All right. Now, if we look at these
12 mock-ups, in none of these mock-ups does the
13 elongated axis of the pistol grip handle lie
14 transverse to the longitudinal axis of the
15 suction conduit, correct?

16 MR. EL DESSOUKI: Objection.

17 THE WITNESS: In my declaration I've
18 identified the longitudinal axis as 123 and
19 denoted it in red which is, according to
20 paragraph 130, sloped relative to the
21 longitudinal axis 123 and at an angle consistent
22 with the teachings of Dyson.

23 BY MS. SILVERSTEIN:

24 Q. I think you're talking about the longitudinal
25 axis of the -- I'm blanking right now -- of the

1 separator, the cyclonic separator. That's what
2 you're talking about in this paragraph.

3 I'm talking about the longitudinal axis
4 of the suction conduit and whether that pistol
5 grip handle lies transverse to the longitudinal
6 axis of the suction conduit.

7 MR. EL DESSOUKI: Objection.

8 BY MS. SILVERSTEIN:

9 Q. Maybe we can take it step by step.

10 Can you agree with me that the
11 longitudinal axis of the suction conduit in these
12 mock-ups in paragraphs 130 and 131 of your
13 declaration is a line that's roughly
14 perpendicular to the longitudinal axis of the
15 cyclonic separating unit that's line 126 there?

16 A. (No verbal response.)

17 Q. What seems to be giving you trouble with this?
18 What can I help you with to kind of move this
19 along?

20 A. I do not believe I made a specific reference to
21 suction conduit for 630. The axis I'm referring
22 to is through 123.

23 Q. No, I understand what you're referring to. I'm
24 asking you a different question, though.

25 I mean, is it your opinion that -- or is

1 it your testimony here today that you can't
2 provide an opinion about where the longitudinal
3 axis of the suction conduit is for the
4 combinations in your mock-ups in paragraphs 130
5 and 131 of your declaration?

6 MR. EL DESSOUKI: Objection.

7 BY MS. SILVERSTEIN:

8 Q. If you don't have an opinion on it, you can just
9 say that and we can move on.

10 A. I have not identified something essentially that
11 is referenced as a suction conduit in my
12 declaration for what 630 is, but looking at
13 figure eight of 630 I could opine that the
14 horizontal black arrow that is between the
15 numbers 830 and 818 would be indicative of the
16 suction conduit.

17 Q. Okay. All right. Let's go to 1007. Let's look
18 at page two of the pdf.

19 A. Okay.

20 Q. I'm looking at the paragraph that starts on that
21 line 19 and goes to page three of the pdf, and
22 it's talking about alternative arrangement of
23 hand grip where the hand grip is arranged
24 transversely to the longitudinal axis of the
25 cylindrical main body and approximately parallel

1 to the suction conduit, correct?

2 I can point you.

3 A. I'm reading it right now.

4 Q. Okay.

5 A. And what is your question about this passage?

6 Q. I just was establishing that it's talking about
7 an alternative arrangement of the hand grip where
8 the hand grip is arranged transversely to the
9 longitudinal axis of the cylindrical main body
10 and approximately parallel to the suction
11 conduit.

12 Right? That's established. That's what
13 it says in the first three sentences, correct?
14 That's what it's talking about?

15 A. Okay. Correct.

16 Q. Okay. And then if you look at -- you start at
17 the end of line 25, Dyson states, quote, The
18 heavy components of the vacuum cleaner, for
19 example the motor and fan assembly, are located
20 forwardly of the hand grip relative to a user's
21 hand when the vacuum cleaner is in use.
22 Therefore, the center of mass of the respective
23 handheld vacuum cleaner will be located forwardly
24 from the hand grip. This may result in the
25 handheld vacuum cleaner described above being

1 tiring and uncomfortable to use because the user
2 will have to exert additional effort in order to
3 maintain the handheld vacuum cleaner in a fixed
4 orientation, closed quote, correct?

5 A. That is a correct quote.

6 Q. Okay. And then if you go to the next page and
7 you look at the first full paragraph it states,
8 quote, It is an object of the invention to
9 provide a handheld vacuum cleaner which is easier
10 to manipulate in use than known arrangements,
11 closed quote, correct?

12 A. Correct.

13 Q. So according to that sentence, one of the objects
14 of Dyson was to avoid the arrangement described
15 in the paragraph that we discussed that straddles
16 pages two and three of the pdf, correct?

17 A. I do not believe I had reviewed the alternate
18 arrangement hand grip that's referenced in line
19 19 of page two, so I'm not sure that I can answer
20 the intent of the invention outside of what is
21 stated there.

22 Q. Okay. If you look back at your file declaration,
23 the mock-ups again that are on page 69, 70 and
24 71, and those mock-ups if we are looking at them
25 being used where that line F is the surface to be

1 cleaned and the user is using the pistol grip --

2 A. Sorry. Let me get to -- you said 69.

3 Q. Page 69, yep.

4 A. Hang on.

5 Q. So if F is the surface to be cleaned and the user
6 is using the pistol grip, in those mock-ups the
7 motor and fan assembly are located forward of the
8 hand grip relative to the user's hand when the
9 vacuum is in use, correct?

10 A. In that use condition, correct.

11 Q. Okay. Backing up to paragraph 127 of your
12 declaration, which is on page 66. Let me know
13 when you're there.

14 A. Yes.

15 Q. Okay. Here just like in ground one you're again
16 opining on the motivation to use the pistol grip,
17 this time from Dyson instead of Conrad 787, with
18 Conrad 630 because of the disclosure in
19 Exhibit 1008 that a similar vacuum would be able
20 to use attachments, correct?

21 MR. EL DESSOUKI: Objection.

22 BY MS. SILVERSTEIN:

23 Q. And all I'm trying to establish here, just so
24 that we can kind of move on, is that you are
25 making the same statements here in this ground as

1 you did in ground one regarding the use of
2 attachments and motivation to combine. So if you
3 can just confirm that for me.

4 A. I don't see my reference to 1008 in paragraph
5 127.

6 Q. If you go up to 126, do you see how you refer
7 back to ground one?

8 A. Oh, thank you.

9 Q. Yep.

10 A. Okay. And again, so yes, the same inference of
11 using attachments for 630 is true with this
12 ground as well.

13 Q. And if I were to show you Exhibits three, four,
14 and five, again, your answers would be the same
15 regardless of whether I told you that pistol grip
16 was the pistol grip from Conrad 787 versus the
17 pistol grip from Dyson, correct?

18 MR. EL DESSOUKI: Objection.

19 THE WITNESS: They would be essentially
20 the same answers, correct.

21 BY MS. SILVERSTEIN:

22 Q. Okay. All right. Let's turn to your limitation
23 for this ground.

24 MS. SILVERSTEIN: Oh, you can hear us,
25 right, Ahmed?

1 MR. EL DESSOUKI: I just needed to close
2 the door.

3 MS. SILVERSTEIN: All right. I just
4 didn't want to start asking questions without --

5 MR. EL DESSOUKI: Thank you. I
6 appreciate it.

7 BY MS. SILVERSTEIN:

8 Q. Okay. We're going to go through the challenged
9 claims, and again, if it's okay with you,
10 Mr. Fester, I'm just going to use the numbers
11 that you used in your declaration as opposed to
12 trying to say the entire limitation; is that
13 okay?

14 A. That is --

15 THE WITNESS: Laurel, do you get paid by
16 the word?

17 MS. REPORTER: Well, kind of.

18 THE WITNESS: I'm fine with your
19 limitations.

20 BY MS. SILVERSTEIN:

21 Q. All right. So let's start on page 73 of your
22 declaration, limitation 1B.

23 A. All right, I'm there.

24 Q. Okay. You are not opining that Dyson discloses
25 limitation 1B, correct?

1 A. That is not part of my argument, no.

2 Q. All right. Going to 1C, which is on the top of
3 page 74. You are not opining that Dyson
4 discloses limitation 1C, correct?

5 A. That is not part of my argument, no.

6 Q. Okay. 1D, which is also on page 74, you are not
7 opining that Conrad 630 discloses limitation 1D,
8 correct?

9 A. Correct.

10 Q. So it's your opinion then that Dyson meets this
11 limitation, correct?

12 A. Correct.

13 Q. Okay. And if you look at -- so paragraph 141 is
14 on page 74 but you might be able to look at that
15 as well as the figure that you have annotated on
16 the top of page 75.

17 A. Yes.

18 Q. You are comparing the handle axis -- in order to
19 determine whether Dyson meets limitation 1D, you
20 compare the handle axis X-X with the longitudinal
21 axis Y-Y, as disclosed in Dyson, correct?

22 A. Correct.

23 Q. And in 141 you state that the longitudinal axis
24 Y-Y of Dyson is the claimed longitudinal axis of
25 the cyclonic separating unit, correct?

1 A. Sorry, where was that reference?

2 Q. It's on 141 in the actual text. You say, quote,
3 The hand grip 28 pink is inclined with respect to
4 the cyclonic separating apparatus 18 to form an
5 angle which -- I don't know which one that is --
6 omega? Is that omega?

7 A. Beta.

8 Q. Beta, okay. I wasn't in Greek classes.

9 Green of not less than 85 degrees and
10 not greater than 140 degrees between a handle
11 axis X-X purple and a longitudinal axis Y-Y red
12 of the cyclonic separating apparatus 18.

13 A. That is a correct quote.

14 Q. Okay. So again, just so that we're on the same
15 page, you're opining that longitudinal axis Y-Y
16 of Dyson is the cyclonic separating -- is the
17 longitudinal axis of the cyclonic separating unit
18 as claimed in 1D, correct?

19 A. That is how my declaration reads.

20 Q. Okay. So let's go to Dyson 1007, page five of
21 the pdf. Let me know when you're there.

22 A. Okay.

23 Q. If you start on line 24 it states, quote,
24 Further, the axis X-X of the hand grip 28 lies
25 transverse to a longitudinal axis Y-Y of the

1 suction conduit 12. The longitudinal axis Y-Y
2 passes through the suction opening 16, closed
3 quote, correct?

4 A. Correct.

5 Q. So in Dyson, the longitudinal Y-Y is the
6 longitudinal axis of the suction conduit,
7 correct?

8 A. Correct.

9 Q. Okay. And if we go back to your declaration, at
10 the top of page 75, this is figure two from Dyson
11 that you annotated, correct?

12 A. Correct.

13 Q. And in the text -- well, I guess -- you've
14 identified in that annotated figure, you've put a
15 yellow box around 18, that is the cyclonic
16 separating apparatus, correct, that we were
17 talking about?

18 A. Correct.

19 Q. Okay. And if you look back at Dyson -- so let's
20 go back to 1007 and go to page four of the pdf.
21 Let me know when you're there.

22 A. Okay.

23 Q. If we look down, it starts on line 16. It says,
24 quote, The cyclonic separating apparatus 18
25 comprises an upstream cyclone 20 and a plurality

1 of downstream cyclones 22, but further detail is
2 not material to the invention and therefore will
3 not be described, closed quote, correct?

4 A. Correct.

5 Q. So given that description in Dyson, if you go
6 back to figure two that you annotated in your
7 declaration, wouldn't the longitudinal axis of
8 Dyson's cyclonic separating unit be perpendicular
9 to the Y-Y axis in Dyson?

10 A. Could you repeat your question?

11 Q. Given that we've established that 18 is comprised
12 of 22 and 20, wouldn't the longitudinal axis of
13 the Dyson cyclonic separating unit be
14 perpendicular to the Y-Y axis in Dyson?

15 A. It appears that's a true statement.

16 Q. Okay. And if the longitudinal axis of the
17 cyclonic separating unit in Dyson is
18 perpendicular to the Y-Y axis in Dyson, then the
19 handle axis and the longitudinal axis would not
20 intersect within the vacuum cleaner, correct?

21 A. That appears to be true.

22 Q. Okay. And if the longitudinal axis of the
23 cyclonic separating unit in Dyson is
24 perpendicular to the Y-Y axis in Dyson, then the
25 disclosure from Dyson of the angles of the handle

1 relative to the Y-Y axis do not indicate that
2 Dyson meets the claims angles in limitation 1B,
3 correct?

4 A. That would appear to be correct.

5 Q. Okay. Let's move on to claim two that starts on
6 page 77 of the pdf.

7 You agree that Conrad 630 -- or sorry,
8 let me go back. Strike that.

9 You do not opine that Conrad 630
10 discloses the additional limitation of claim two,
11 correct?

12 A. No, I do. Paragraph 147, my opinion that Conrad
13 630 discloses this limitation.

14 Q. Okay, but if you look at paragraphs 140 through
15 150 or really 140 and 149, those are all about
16 Dyson, correct? And if you look at paragraph 146
17 you say it is my opinion that Dyson's discloses
18 the elements on this claim, correct?

19 A. Yeah, that paragraph 147 appears to erroneously
20 refer to Conrad 630 when it should have been
21 referring to Dyson.

22 Q. Okay. And if you look at paragraph 148, you
23 opine that Dyson discloses an angle of between 90
24 and a hundred degrees between the handle axis and
25 what you claim in that paragraph is the

1 longitudinal axis of the cyclonic separating
2 unit, correct?

3 A. Correct.

4 Q. So the only way Dyson can meet the additional
5 limitation of claim two based on your opinion is
6 when the angle between the handle axis and the
7 longitudinal axis of the cyclonic separating unit
8 is exactly a hundred degrees, correct?

9 A. I did not say exactly in there. The last line of
10 paragraph 148 preferably in the range of 100 to
11 90 degrees.

12 Q. Correct. I guess what I'm referring to is the
13 claim language requires an angle of 100 to 125,
14 and you said the angle is 90 to 100, so I guess
15 would you agree the only overlap there is when
16 it's exactly a hundred degrees?

17 A. That would be a fair overlap of the two.

18 Q. Okay. And the calculations in 148 and 149 are
19 not correct if the claimed longitudinal axis of
20 the cyclonic separating unit in Dyson is
21 perpendicular to the Y-Y axis in Dyson, correct?

22 A. That is correct.

23 Q. Okay. Let's move on to claim three on page 79 of
24 the pdf.

25 You do not opine that Dyson discloses

1 the additional limitation of claim three,
2 correct?

3 A. Correct.

4 Q. Claim four on the same page. You do not opine
5 that Dyson discloses claim -- the additional
6 limitation of claim four, correct?

7 A. Correct.

8 Q. And then claim eight, also on the same page, you
9 do not opine that Dyson discloses the additional
10 limitation of claim eight, correct?

11 A. Correct.

12 Q. Then moving to the next page, page 80 of the pdf,
13 you do not opine that Dyson discloses the
14 additional limitation of claim ten, correct?

15 A. Correct.

16 Q. And in this proceeding, you are not providing any
17 opinion as to whether the combination of Conrad
18 630 and Dyson would have rendered obvious claims
19 five through seven, nine and 11 of the 687
20 patent, correct?

21 A. That's correct.

22 Q. It hasn't quite been an hour, but I'm going to
23 move on to ground three. Do you want to do some
24 of that and then take a break or do you want to
25 take a break now?

1 A. Let's keep going. Let's keep this train moving.

2 Q. Okay, let's keep going.

3 Moving on to ground three, which is your
4 allegation that the challenged claims one through
5 four, eight and ten are rendered obvious by
6 Matsumoto in view of Conrad 787.

7 So your first opinion in paragraph 162
8 of your declaration, which is on page 81 of
9 Exhibit 1003, is that a person of ordinary skill
10 in the art would have been motivated to use
11 Matsumoto in a handheld vacuum configuration, and
12 in paragraph 164 you include a mock-up of figure
13 25 to show use of Matsumoto's vacuum as a
14 handheld vacuum, correct?

15 A. Correct.

16 Q. Okay. Why did you include that opinion in this
17 declaration?

18 A. I promise, I'm getting there.

19 Q. That's okay.

20 A. The reason I included the annotated figure, my
21 mock-up shown on page 83 is --

22 Q. Can we move -- I'm talking about the mock-up,
23 sorry, on page 789 so not the one that's the
24 combination, just the one that's mainly
25 Matsumoto.

1 A. The -- I apologize. Thank you for clarifying.

2 Q. Yeah.

3 A. What is the question of that?

4 Q. Why did you include an opinion, your opinion here
5 that a person of ordinary skill in the art would
6 have been motivated to make Matsumoto smaller and
7 use it as a handheld, as you've opined in that
8 mock-up on the top of page -- oh, you're on page
9 83. Sorry, I was looking at the bottom page
10 again. I think we're talking about the same
11 thing. Sorry, that was my mistake.

12 A. Okay.

13 MR. EL DESSOUKI: Can you repeat the
14 question, just so the record is clear?

15 MS. SILVERSTEIN: Yes. Sorry, I think
16 that was my mistake.

17 BY MS. SILVERSTEIN:

18 Q. Why did you include the opinion that in paragraph
19 162 that a person of ordinary skill in the art
20 would have been motivated to use Matsumoto in a
21 handheld vacuum configuration and in paragraph
22 164, which I am talking about the picture on page
23 83 of the pdf, did you include the mock-up of
24 figure 25 to show the use of Matsumoto's vacuum
25 as a handheld vacuum?

1 A. Okay.

2 Q. I think you were going to tell us. I think you
3 had the right mock-up. I think I interrupted you
4 mistakenly.

5 A. That's fine. So paragraph 162 does a pretty good
6 job of kind of pointing to why, so though
7 Matsumoto in the figure 25, it just -- it
8 basically is disclosing there a handheld
9 stick-type vacuum cleaner that's more for kind of
10 cleaning floors. Matsumoto does not explicitly
11 disclose a miniature handheld vacuum to be used
12 as a handheld configuration that would be suited
13 for cleaning other types of surfaces such as
14 couches and bedding; however, Matsumoto explains
15 that miniaturizing the vacuum cleaner would
16 enhance the operability thereof, and additionally
17 kind of looking at the Matsumoto reference, there
18 are several indications where miniaturizing is
19 used as it's referring to the overall space that
20 the vacuum cleaner takes up.

21 So looking at that kind of teaching from
22 Matsumoto that size is kind of important, having
23 a miniature version of its overall package as a
24 handheld as opposed to strictly kind of a stick
25 type would be within its teachings.

1 Q. Okay. Let's look at what Matsumoto said.

2 And so you're referring in paragraph 162
3 to paragraph 68 of Matsumoto, correct, where it
4 talks about miniaturizing?

5 A. That is one reference -- that is the reference I
6 point to in my declaration, yes.

7 Q. Okay. So let's go to Matsumoto which is
8 Exhibit 1005 to the IPR, and let's look at
9 paragraph 68 of Matsumoto, and let me know when
10 you're there. It's on page eight of the pdf.

11 A. Yep.

12 Q. Okay. And this talks about miniaturizing a
13 vacuum cleaner and enhancing the operability by
14 using the connection pipe in the handle, correct?

15 MR. EL DESSOUKI: Objection.

16 THE WITNESS: That is what it's
17 referring to, correct.

18 BY MS. SILVERSTEIN:

19 Q. Okay. And there is no disclosure in Matsumoto of
20 miniaturizing the vacuum in the way that you have
21 done in the mock-up in paragraph 164, correct?

22 MR. EL DESSOUKI: Objection.

23 THE WITNESS: There is no such
24 disclosure, no.

25 BY MS. SILVERSTEIN:

1 Q. Okay. All right. Let's go back to paragraph 164
2 of your declaration and your figure 25.

3 Now, in both of those figures you've
4 colored blue the parts that you allege are
5 collars, correct?

6 A. That is correct.

7 Q. Okay. And if you look back at paragraph 163, you
8 state that those collars, quote, indicate the
9 connection pipe three is made of multiple pipes
10 connected to one another and which can be
11 disconnected from each other, end quote, correct?

12 A. Correct.

13 Q. Now, there is no disclosure in Matsumoto that
14 indicates that those portions that you have
15 colored in blue are, in fact, collars, correct?

16 A. That is correct. I make that assumption because
17 as a POSITA, anyone who would look at the figure
18 25 is going to readily understand what that
19 figure is showing. It is a telescoping wand and
20 it could be either a telescopic wand or two wands
21 put together, which essentially satisfied the
22 same purpose, but, in essence, it is a -- it is
23 the normal type of stick vacuum that was
24 prevalent on the market at the time of this
25 disclosure where it can be used as a stick vacuum

1 as shown or be disconnected entirely from the
2 telescoping wand from the upper blue collar and
3 just have a portion to which you could attach any
4 of a plurality of tools to the hand vac.

5 So looking at this figure, it would be
6 obvious to a POSITA that this is a telescopic
7 wand that connects the hand vac, the upper hand
8 vac, that is basically not colored orange with
9 the nozzle for on the floor.

10 Q. Okay. There is no disclosure in Matsumoto that
11 connection pipe three is a telescopic wand or is
12 made up of multiple pipes disconnected from each
13 other, correct?

14 MR. EL DESSOUKI: Objection.

15 THE WITNESS: I did not see that text in
16 its description.

17 BY MS. SILVERSTEIN:

18 Q. Okay. Moving on to paragraph 165 of your
19 declaration which is on page 83. Let me know
20 when you're there.

21 A. Sorry, which paragraph?

22 Q. 165.

23 A. Okay. I am there.

24 Q. All right. You opine that a person of ordinary
25 skill in the art would have understood that,

1 quote, Matsumoto's long and skinny handle 484 is
2 unergonomic and uncomfortable because of its
3 shape, angle and orientation, closed quote, and
4 that, quote, the angle requires a grip along a
5 somewhat horizontal axis which can strain the
6 wrist over extended use, closed quote, correct?

7 A. Correct. I do want to call out that 484 is an
8 incorrect reference. That actually is the 787
9 enumeration. The correct enumeration would be
10 10A.

11 Q. Okay, thank you. What support do you have for
12 those statements that you make in that paragraph?

13 A. The support that I have is just relative to the
14 experience I have as a POSITA and knowing that
15 that angle would be uncomfortable in terms of
16 especially when you extend it out. Having your
17 wrist hold a mostly horizontal handle would
18 become a strain on your wrist over time.

19 Q. And there were modifications known at the time
20 other than the pistol grip handle that could have
21 been made to Matsumoto's handle that could have
22 solved the alleged problems that you identified
23 with the handle, correct?

24 A. Sure.

25 Q. All right. Let's turn to paragraph 166 now.

1 You opine that, quote, Matsumoto's
2 handle is likely to break because of its design,
3 closed quote, because it is a long skinny handle,
4 correct?

5 A. Correct.

6 Q. Okay. What support do you have for that
7 statement?

8 A. Well, having worked at Bissell for 11-ish years
9 and having our quality group on site and having a
10 recurring quality meeting that discussed issues
11 that we would have with failures of a new product
12 or calls that we would have from users that were
13 complaining about issues or returns that we would
14 have to any of our multiple retailers, one of the
15 issues that was predominant was failures of
16 handles.

17 There were handle designs that worked
18 well and there were handle designs that broke
19 well, and this is a handle design that would
20 break well as in it would not be a robust design.

21 So the opining that I do in -- I'm going
22 to look for the paragraph -- yeah, in paragraph
23 166, additional concern of the POSITA would be
24 the robustness of the shown handle. The long
25 skinny handle is essentially a cantilever

1 absorbing the constant forces of the user's hand
2 as the vacuum is maneuvered back and forth.

3 Additionally, what I don't mention there
4 is just a fall of the vacuum as it typically gets
5 tipped over, dropped, that handle is ripe for
6 being a victim of a slip-and-fall accident that
7 will crack it in half.

8 Q. Okay. In paragraph 167, which is at the top of
9 page 84, you allege that based on the alleged
10 deficiencies that you listed in paragraph 166, a
11 person of ordinary skill in the art would have
12 substituted Conrad's 787 pistol grip handle for
13 Matsumoto's handle, correct?

14 A. Correct.

15 Q. And part of the reason for this is because, like
16 you just said, Conrad's 787 handle is more robust
17 and bigger than the Matsumoto handle, correct?

18 A. That was an incorrect summation of my argument.

19 Paragraph 167 says in this second
20 sentence, A POSITA would have recognized that
21 Conrad's handle -- sorry -- Conrad's 787 is what
22 it should have said, but that Conrad's handle
23 would be more comfortable and more reliable.

24 Q. Okay, but if we go back to paragraph 166 on the
25 page before you say, An additional concern a

1 POSITA would have is the robustness of the shown
2 handle.

3 So are you saying then that the size and
4 the fact that Matsumoto's handle was long and
5 skinny would not motivate a person to use Conrad
6 787's handle because it was bigger and less
7 likely to break?

8 A. The motivation to move away from the current
9 Matsumoto handle is given in 166. It's a long
10 skinny handle. Additionally, would recognize --
11 sorry, that means that a POSITA would have
12 recognized that Matsumoto's handle is likely to
13 break because of its design.

14 So we have a long skinny handle for
15 Matsumoto, got this problem, what am I going to
16 do, I'm a POSITA, I'm going to look at 787, and
17 I'm going to recognize that 787's handle would
18 have been more comfortable and more reliable.

19 Q. But part of that is also that it solves the
20 problem of the long and skinny handle too, right?
21 You wouldn't want to replace the long and skinny
22 handle with another long and skinny handle. You
23 need a handle that's more robust than the
24 Matsumoto handle, correct?

25 A. Correct.

1 Q. And there were modifications other than the
2 pistol grip handle that could have been made to
3 Matsumoto's handle to decrease the likelihood of
4 Matsumoto's handle to break, correct?

5 A. Sure.

6 Q. Okay.

7 MS. SILVERSTEIN: If you want a break,
8 this would be a good time. Otherwise we can kind
9 of keep going until the next time I have a break,
10 but it's up to you.

11 MR. EL DESSOUKI: Yeah, let's take a
12 break.

13 MS. SILVERSTEIN: Okay.

14 (A brief recess was taken.)

15 BY MS. SILVERSTEIN:

16 Q. All right. Let's go to paragraph 168 of your
17 declaration, which is page 84. Are you there?

18 A. I am.

19 Q. All right. So in this paragraph, just like we
20 did in ground one, you list the alleged benefits
21 of the pistol grip that Conrad 787 discloses,
22 correct?

23 A. That's correct.

24 Q. And going through them again, the first bullet
25 point states that the Conrad 787 handle allows

1 the user to operate hand vac 112 during cleaning,
2 correct?

3 A. Correct.

4 Q. And Matsumoto's handle without any sort of
5 modification also allows user to operate the
6 vacuum during cleaning, correct?

7 A. Correct.

8 Q. And in the second point, I'll read it directly
9 from there. I've got it paraphrased here, but
10 just to make sure we're going ahead, it says that
11 Conrad's 787 handle configuration can be, quote,
12 comfortably operated in an orientation that does
13 not require an application of torque by the
14 user's hand when hand vac 112 is held by handle
15 484, closed quote, because, quote, the center of
16 gravity 525 of the hand vac 112 is aligned
17 vertically below the user's hand, closed quote,
18 correct?

19 A. The only correction is that you said 525. It's
20 524.

21 Q. Sorry. Thank you.

22 A. Other than that, correct.

23 Q. Okay. And in Matsumoto's vacuum in figure 25,
24 the center of gravity is vertically below the
25 user's hand, correct?

1 And you can either look -- your figures
2 are on page 82, that's the one I'm talking about
3 right now, of your declaration if you want to
4 look there.

5 A. So Matsumoto shows exclusively a stick vacuum
6 which would be partially supported by the floor.
7 Indeed, most of the weight would be supported by
8 the floor and would have -- the weight at the
9 handle would be less because of that so -- but
10 the center of gravity for that unit would be
11 below the handle but not directly vertically
12 beneath it.

13 Q. Okay. And would all of that also apply to your
14 mock-up on the top of page 83?

15 A. In that use condition. And again, in those use
16 conditions, but again, as a hand vac is not
17 necessarily always being used on the floor, there
18 are many use conditions that the hand vac would
19 be directly -- the center of gravity would be
20 directly underneath -- or the alleged center of
21 gravity would be directly underneath the handle.

22 Q. Okay. And going back to page 84, in that second
23 bullet point, the second sentence you refer to
24 Conrad 630. Was that a typo?

25 A. The portion that begins with this is important

for use of Conrad 630 through the rest of that sentence, through the rest of that bullet point until it ends with other than floors is a typo.

Q. Okay. Okay. And I think that you confirmed this for us earlier, but that the Matsumoto vacuum in figure 25 is meant to be used on floors, correct?

A. Correct.

Q. Okay.

A. It's basically a stick vacuum is shown.

Q. Okay. And now you did -- I understand that that second sentence in this bullet point is a -- the second and third sentences are -- what am I trying to say.

The last two sentences of that second bullet point are a typo here, but you did say that earlier in ground two and recognize that this quote from Conrad 787 is especially important for vacuums that are used on surfaces other than floors, correct?

A. Correct.

MR. EL DESSOUKI: Objection.

BY MS. SILVERSTEIN:

Q. And so this point is really only applicable to Matsumoto in the modified handheld version from the mock-up on page 83 of your declaration,

1 correct?

2 MR. EL DESSOUKI: Objection.

3 THE WITNESS: The torque argument would
4 be specific to what 787 is saying about the use
5 of their hand vac. So the equivalent argument in
6 terms of specific to the center of gravity would
7 be a use case that is primarily seen with the
8 hand vac of Matsumoto.

9 BY MS. SILVERSTEIN:

10 Q. And when you say hand vac of Matsumoto, you're
11 talking about the modified version that you
12 created at the top of page 83?

13 A. That or even a different use condition that would
14 be divorced from the floor nozzle entirely and
15 using just tools.

16 Q. Okay. Looking now at the third bullet point you
17 have there, and this says, Conrad 787 further
18 explains that in, quote, the illustrated
19 embodiment handle axis 888 of handle 484 extends
20 at a nonzero forward angle 892 to the vertical,
21 it says eg., eg. when bottom wall 216 is
22 horizontal, period. This may provide a
23 comfortable handle alignment for grasping by the
24 user when picking up hand vac 112 and when using
25 hand vac 112 for cleaning surfaces below the

1 user's elbow, end quote, correct?

2 A. Correct.

3 Q. Okay. And this point is also more relevant to
4 Matsumoto when Matsumoto is being used in a hand
5 vac fashion as opposed to on the floor, correct?

6 A. The hand vac usage is what 787 is describing when
7 they're speaking of this relative to the center
8 of gravity.

9 Q. Okay. In paragraph 170 you include mock-ups of
10 the vacuum that would result from your proposed
11 combination in ground three, correct?

12 A. Correct.

13 Q. And just to clarify, in this ground you are
14 replacing Matsumoto's handle with the pistol grip
15 handle of Conrad 787, correct?

16 A. That is correct.

17 Q. Okay. And the only modification that you're
18 proposing in these mock-ups to Matsumoto are
19 miniaturizing Matsumoto and to make the handle a
20 pistol grip like in Conrad 787, correct?

21 A. That is what's disclosed in my declaration, yes.

22 Q. Okay. And you are not proposing any modification
23 to any portions -- any other portions of
24 Matsumoto such as the suction conduit or the dirt
25 collector or the cyclonic separating unit,

1 correct?

2 A. Correct.

3 Q. Okay. All right. Let's go to the limitations.

4 So once again, I'm going to just refer
5 to the limitations by the numbering that you
6 provided in your declaration.

7 Do you understand that, Mr. Fester?

8 A. I do.

9 Q. Perfect. All right. Let's go to ground 1B and
10 that's on page 91.

11 A. Okay.

12 Q. Tell me when you're there. You're good?

13 A. Yes.

14 Q. Okay. Now, you have not opined that Conrad 787
15 discloses the limitation 1B, correct?

16 A. Correct.

17 Q. All right. Let's go to 1C, which is on page 94,
18 and the sentence starts on page 95. Let me know
19 when you're there.

20 A. I am.

21 Q. Okay. You are not opining that Conrad 787
22 discloses limitation 1C, correct?

23 A. Correct.

24 Q. Okay. Go to limitation 1D. That's on page 97.

25 A. Okay.

1 Q. You are not opining that Matsumoto discloses
2 limitation 1D, correct?

3 A. Correct.

4 Q. Okay. Go to claim two is on page 100.

5 A. Okay.

6 Q. You are not opining that Matsumoto discloses the
7 additional limitation of claim two, correct?

8 A. Correct.

9 Q. All right. Let's go to claim three, which is on
10 page 102 of the pdf.

11 A. Okay.

12 Q. You are not opining that Conrad 787 discloses the
13 additional limitation of claim three, correct?

14 A. Correct.

15 Q. Okay. Let's go to claim four, which is on page
16 104 of the pdf.

17 A. Yes.

18 Q. You are not opining that Conrad 787 discloses the
19 additional limitation of claim four, correct?

20 A. Correct.

21 Q. Okay. Let's go to claim eight, which starts at
22 the bottom of 105 and goes on to 106.

23 A. Yes.

24 Q. Ready? You are not opining that Conrad 787
25 discloses the additional limitation of claim

1 eight, correct?

2 A. Correct.

3 Q. Okay. And then let's go to claim ten, which is
4 on page 107.

5 A. Yes.

6 Q. You are not opining that Conrad 787 discloses the
7 additional limitation of claim ten, correct?

8 A. Correct.

9 Q. Okay. And then just to close it off, in this
10 proceeding you are not providing any opinion as
11 to whether the combination of Conrad -- the
12 combination of Matsumoto and Conrad 787 would
13 have rendered obvious claims five to seven, nine
14 and 11 of the 687 patent, correct?

15 A. Correct.

16 Q. All right. We are to ground four.

17 If I was really mean, I would have saved
18 all the stuff up front and made you think that
19 ground four we were almost done so -- but I'm not
20 so ground four does mean we're almost done.

21 MR. EL DESSOUKI: Good.

22 BY MS. SILVERSTEIN:

23 Q. All right. So ground four is your allegation
24 that the challenged claims one through four,
25 eight and ten are rendered obvious by Matsumoto

1 in view of Dyson.

2 Let's go to -- so your first opinion
3 here just like in ground three, which I think is
4 in 210, paragraph 210, is that a person of
5 ordinary skill in the art would have been
6 motivated to use Matsumoto in a handheld vacuum
7 configuration, and then you include the same
8 mock-ups in paragraph 212 of figure 25 to show
9 Matsumoto's vacuum is a handheld vacuum, correct?

10 A. Correct.

11 Q. Okay. And your motivation or your -- let me
12 start again. Strike that.

13 Your support for making this allegation
14 in ground four is the same as your support was in
15 ground three, correct?

16 A. Restate.

17 Q. Your support for your allegation that a POSITA
18 would have been motivated to miniaturize
19 Matsumoto that you've opined in ground four is
20 the same as it was for your opinion in ground
21 three that Matsumoto would have -- that a POSITA
22 would have been motivated to modify Matsumoto,
23 correct?

24 A. Correct.

25 Q. Okay. So all the questions I asked you regarding

1 collars and everything in Matsumoto, if I were to
2 ask you those again for ground four, the answers
3 would be the same, correct?

4 A. That is correct.

5 MR. EL DESSOUKI: Objection.

6 BY MS. SILVERSTEIN:

7 Q. And just there were some questions I asked you
8 there about substituting the pistol grip handle
9 in ground three of Conrad 787 for the Matsumoto
10 handle.

11 If I asked you those same questions but
12 instead said the pistol grip handle of Dyson,
13 would your answers be the same to those?

14 MR. EL DESSOUKI: Objection.

15 THE WITNESS: Yes.

16 BY MS. SILVERSTEIN:

17 Q. Okay. All right. Let's turn to paragraph 215
18 which is on page 114.

19 A. I'm there.

20 Q. Okay. And in this paragraph you are again, like
21 you did in ground three -- or sorry, excuse me --
22 ground two opining on statements in Dyson that
23 you allege support a motivation to incorporate
24 Dyson's handle 278 on Matsumoto's vacuum,
25 correct?

1 A. Correct. And just to clarify, the arguments --
2 ground two was in combination with Conrad 630.
3 Ground four is in combination with Matsumoto.

4 Q. Okay. That's a point well taken.

5 And in this paragraph 215 you include
6 the same motivation -- strike that. Let me start
7 again. And in paragraph 215, just like you did
8 in ground two, one basis you provide for the
9 motivation is Dyson's disclosure regarding the
10 comfort of the handle to the user, correct?

11 A. Correct.

12 Q. And in 215 in that last sentence that begins with
13 in short, you include the same quotes there from
14 Dyson that we discussed when we were discussing
15 ground two, correct?

16 A. Correct.

17 Q. Okay. So if I were to ask you the questions
18 about those quotes again and the arrangement of
19 Dyson that those quotes refer to, your answer
20 would be the same as they were for ground two?

21 MR. EL DESSOUKI: Objection.

22 THE WITNESS: Correct.

23 BY MS. SILVERSTEIN:

24 Q. Okay. All right. Let's go to your mock-ups.

25 On paragraph 218, again page 115 of the

1 pdf.

2 A. Okay.

3 Q. And again, these are the mock-ups that you
4 created to show the combination of Matsumoto and
5 Dyson, correct?

6 A. Correct.

7 Q. And just like in ground three, the only
8 modifications you've made here to Matsumoto are
9 to miniaturize Matsumoto and to make the handle a
10 pistol grip like in Dyson, correct?

11 A. Correct.

12 Q. And again, just for clarification, in this ground
13 you're again replacing Matsumoto's handle with a
14 pistol grip, correct?

15 A. That is correct.

16 Q. Okay. And you are not proposing any modification
17 to any other portion of Matsumoto such as the
18 suction conduit or the dirt collector or the
19 cyclonic separator, correct?

20 MR. EL DESSOUKI: Objection.

21 THE WITNESS: That is correct.

22 BY MS. SILVERSTEIN:

23 Q. Okay. Now, if we look in these mock-ups, in
24 neither of them does the elongated axis of the
25 handle lie transverse to the longitudinal axis of

1 the suction conduit, correct?

2 MR. EL DESSOUKI: Objection.

3 THE WITNESS: Restate.

4 BY MS. SILVERSTEIN:

5 Q. Sure. Now, if we look at these mock-ups, in
6 neither of them does the elongated axis of the
7 handle lie transverse to the longitudinal axis of
8 the suction conduit, correct?

9 A. I do not believe that I've identified -- well,
10 the suction port body four -- no, that's not -- I
11 do not believe I've identified an equivalent
12 suction conduit in Matsumoto.

13 Q. Okay. So as you sit here today, you cannot opine
14 on whether in your mock-ups the elongated axis of
15 the handle lies transverse to the longitudinal
16 axis of the suction conduit?

17 MR. EL DESSOUKI: Objection.

18 THE WITNESS: I went exploring for a
19 little bit in the document. What page were we
20 on?

21 BY MS. SILVERSTEIN:

22 Q. Well, I'm just on the mock-ups, page 116.

23 A. Thanks, that's what I was needing.

24 If I were to opine, the suction conduit
25 would be essentially the conduit that would be

1 coaxial with what is shown as the tube three, so
2 the -- in that instance, the handle axis would be
3 transverse to the suction conduit.

4 Q. Okay. All right. Let's turn to the limitation.
5 So just as we've done with the other grounds, I'm
6 just going to refer to the limitation by the
7 limitation number. Okay, Mr. Fester?

8 A. That is fine.

9 Q. All right. So 1B, which is on page 117.

10 A. Yep.

11 Q. You have not opined that Dyson discloses
12 limitation 1B, correct?

13 A. Correct.

14 Q. Okay. Going to 1C, which is on page 118, you
15 have not opined that Dyson discloses limitation
16 1C, correct?

17 A. Correct.

18 Q. Okay. 1D, which is also on page 118, you have
19 not opined that Matsumoto discloses limitation
20 1D, correct?

21 A. Correct.

22 Q. So it's your opinion that Dyson meets this
23 limitation, correct?

24 A. Correct.

25 Q. And in paragraph 225 you refer back to your

1 analysis of Dyson in ground two for limitation
2 1B, correct?

3 A. Correct.

4 Q. All right. Let's go to two which is -- it
5 technically starts on page 120, but the meat of
6 it is on page 121.

7 A. I'm there.

8 Q. You agree that Matsumoto -- sorry, strike that.

9 You do not opine that Matsumoto
10 discloses the additional limitation of claim two,
11 correct?

12 A. Correct.

13 Q. And again, if you look at paragraph 233, you
14 incorporate by reference your discussion of Dyson
15 in ground two for this limitation as well,
16 correct?

17 A. That is correct.

18 Q. Okay. Let's go to four, which is on -- or sorry,
19 independent claims -- or dependent claim three
20 which is on page 122.

21 A. I'm there.

22 Q. You do not opine that Dyson discloses the
23 additional limitation of claim three, correct?

24 A. That is correct.

25 Q. And claim four is on the same page. You do not

1 opine that Dyson discloses the additional
2 limitation of claim four, correct?

3 A. Correct.

4 Q. Claim eight is on the same page. You do not
5 opine that Dyson discloses the additional
6 limitation of claim eight, correct?

7 A. Correct.

8 Q. Then if you go to the next page, we've got claim
9 ten. You do not opine that Dyson discloses the
10 additional limitation of claim ten, correct?

11 A. Correct.

12 Q. And in this proceeding, you are not providing any
13 opinions as to whether the combination of
14 Matsumoto and Dyson would have rendered obvious
15 claims five through seven, nine and 11 of the 687
16 patent, correct?

17 A. That is correct.

18 MS. SILVERSTEIN: I think I'm done, but
19 I'd like just a minute to confer with Chris and
20 then we'll pop back on in like a minute or two.
21 Shouldn't take very long.

22 THE WITNESS: Sure.

23 (A pause was had in the proceedings.)

24 MS. SILVERSTEIN: Yeah, I have no more
25 questions for this witness pending whatever Ahmed

1 has.

2 MR. EL DESSOUKI: Okay. I'll take a few
3 minutes and maybe let's get back on the record at
4 about 4:30 or something like that.

5 MS. SILVERSTEIN: 4:30? Sure.

6 MR. EL DESSOUKI: All right.

7 (A brief recess was taken.)

8 MR. EL DESSOUKI: No questions.

9 MS. SILVERSTEIN: We ordered for three
10 days, Laurel.

11 MS. REPORTER: The first is when you
12 need it?

13 MS. SILVERSTEIN: Yeah, that's fine. Is
14 that when you need it, Ahmed?

15 MR. EL DESSOUKI: I don't think we need
16 a rush, but we'll get it.

17 (Deposition concluded at 4:39 p.m.)

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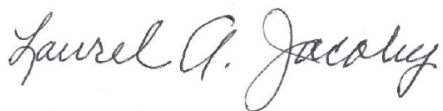
CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, Laurel A. Jacoby, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth and nothing but the truth; that the foregoing questions asked, and the answers given by the witness were duly recorded by me and reduced to computer transcription; that this is a true, full and correct transcript so taken; and that I am not related to, nor of counsel to either party, nor interested in the event of this cause.



Laurel A. Jacoby, CSR-5059

Notary Public

Oakland County, Michigan

My Commission Expires: September 1, 2024

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

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