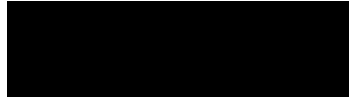


In the Matter Of:
Prime Time Toys v Spin Master

DR. BARRY M. KUDROWITZ

February 06, 2025



ESQUIRE
DEPOSITION SOLUTIONS

PETITIONERS' EXHIBIT 1036
Prime Time Toys et al. v. Spin Master, Inc.
IPR2023-01461

800.211.DEPO (3376)
EsquireSolutions.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

PRIME TIME TOYS LLC, PRIME TIME TOYS LTD.,
And EASEBON SERVICES LTD.,

Petitioner,

v.

SPIN MASTER, INC.,

Patent Owner.

IPR2023-01339 (Patent 8,640,683 B2)
IPR2023-01348 (Patent 8,371,282 B2)
IPR2023-01461 (Patent 8,596,255 B2)1

[REDACTED] Deposition of
DR. BARRY MATTHEW KUDROWITZ
Thursday, February 6, 2025
9:02 a.m.

Reporter: Barbara J. Carey, RPR
Job Number: J12314441

1 APPEARANCES:

2
3 ATTORNEYS FOR PETITIONER:

4 KENNETH P. GEORGE
5 BRIAN COMACK
6 Attorneys at Law
7 AMSTER, ROTHSTEIN & EBENSTEIN LLP
8 405 Lexington Avenue
9 New York, New York 10174
10 kgeorge@arelaw.com
11 bcomack@arelaw.com

12 ATTORNEYS FOR PATENT OWNER:

13 KENNETH DARBY
14 JEFFREY SHNEIDMAN
15 Attorneys at Law
16 FISH & RICHARDSON P.C.
17 111 Congress Avenue
18 Austin, Texas 78701
19 kdarby@fr.com
20 shneidman@fr.com
21
22
23
24
25

I N D E X

EXAMINATION OF DR. BARRY MATTHEW KUDROWITZ:

By Mr. Comack - Page 5

EXHIBITS INTRODUCED:

Number	Description	Page
Exhibit 1001.....	U.S. Patent No 8,596,255 United States Patent Meggs (25 pages)	11
Exhibit 1001.....	U.S. Patent No 8,371,282 United States Patent Meggs et al. (10 pages)	12
Exhibit 1001.....	U.S. Patent No 8,640,683 United States Patent Meggs et al. (11 pages)	12
Exhibit 1003.....	Bulgarian Patent No BG110343 (41 pages)	133
Exhibit 2015.....	Declaration of Dr. Barry Matthew Kudrowitz Regarding U.S. Patent Nos. 8,371,282, 8,640,683, and 8,596,255 (233 pages)	12

(Continued...)

I N D E X (Continued):

EXHIBITS INTRODUCED:

Number	Description	Page
Exhibit 2119	Standard Consumer Safety Specification For Toy Safety (51 pages)	110

* * * * *

1 DEPOSITION OF DR. BARRY MATTHEW
2 KUDROWITZ, held pursuant to Notice of Taking Deposition
3 and held at FISH & RICHARDSON P.C., 60 South Sixth
4 Street, Suite 3200, Minneapolis, Minnesota 55402 before
5 Barbara J. Carey, Registered Professional Reporter.

6 WHEREUPON, the following proceedings
7 were duly had:

8 THE REPORTER: Raise your right hand and
9 I will swear you in.

10 DR. BARRY MATTHEW KUDROWITZ,
11 After having been first duly sworn, was called as a
12 witness and testified as follows:

13 THE REPORTER: Thank you.

14 You may begin.

15 EXAMINATION

16 BY MR. COMACK:

17 Q. Good morning, Dr. Kudrowitz. It's good to see
18 you again.

19 A. Good morning.

20 Q. We're here to take your deposition. And just
21 for the record, my name is Brian Comack, but we've met
22 before. I'm with Amster Rothstein Ebenstein representing
23 the Prime Time petitioners. I have my colleague, Kenneth
24 George, and you know him well, too.

25 Anyway, this is for -- this deposition is for

1 all three IPRs, which we'll get to identifying them
2 shortly.

3 But before we start with my questions, you
4 know, substantively, I'd like to go through some ground
5 rules if that's okay with you.

6 A. Sure.

7 Q. Okay. So you understand that you're under
8 oath; correct?

9 A. Yes.

10 Q. Okay. And do you understand that the oath
11 requires you to tell the truth to the best of your
12 ability?

13 A. Yes.

14 Q. Okay. Will you do that today?

15 A. Yes.

16 Q. Okay. And I'm going to be asking you a bunch
17 of questions, and you see that we have Barb, the
18 court reporter here, and she's going to take down my
19 questions and your answers.

20 Do you understand that?

21 A. Yes.

22 Q. Okay. And I would ask that when I ask a
23 question, please do your best to give an audible answer,
24 nothing like "uh-huh," "yeah," but "yes," "no," spoken
25 answers.

1 Does that work for you?

2 A. Yes.

3 Q. Okay. And we'll try not to talk over each
4 other. If you could wait for me to complete my question,
5 and I'll wait for you to complete your answer, and we'll
6 do our best not to, sort of, step on each other's words;
7 okay?

8 A. Okay.

9 Q. All right. Are you represented by counsel
10 today?

11 A. I am.

12 Q. Is your counsel here with you?

13 A. Yes, they're sitting next to me right now.

14 Q. Now, do you understand that your counsel may
15 object to some of my questions?

16 A. Yes.

17 Q. Okay. And unless your counsel instructs you
18 not to answer, do you understand that you must answer my
19 questions?

20 A. Yes.

21 Q. Okay. Now, if you don't hear a question, just
22 let me know, and I'll repeat it; okay?

23 A. Okay.

24 Q. If you don't understand one of my questions,
25 I'd be happy to rephrase it; okay?

1 A. Okay.

2 Q. Got it. All right.

3 Now, if you answer one of my questions, I'm
4 going to understand that you heard it and understood it.

5 Is that okay with you?

6 A. Yes.

7 Q. Okay. Now, if you need a break, just let me
8 know and I'll be happy to take one. The only thing that
9 I'd ask is if I have a question pending, that you answer
10 my question before we break.

11 Is that fine?

12 A. That is fine.

13 Q. Okay. Normally, I like to take a break about
14 every hour, do like a five- or ten-minute break, but if
15 you want to go longer, you want to go shorter, just let me
16 know, and I'll accommodate you.

17 A. Okay.

18 Q. Now, during breaks today, you're not permitted
19 to consult with your counsel regarding the substance of
20 your testimony.

21 Will you abide by that rule?

22 A. Yes.

23 Q. Okay. Is there any reason why you cannot give
24 a full and accurate and truthful testimony today?

25 A. No.

1 Q. I'm just going to hand you the deposition
2 notices in this case that we filed, and the first one is
3 for the IPR that's 2023-01339 for U.S. Patent 8,640,683.
4 Pass it across the table.

5 MR. COMACK: Kenneth, would you like a
6 copy?

7 MR. DARBY: Yes, please.

8 BY MR. COMACK:

9 Q. And I'm going to give you the other two.

10 And just while I'm grabbing the other two,
11 which you'll see are mainly identical, the next one is the
12 deposition notice for yourself, Dr. Barry Matthew
13 Kudrowitz, and it's for IPR2023-1348, U.S. Patent Number
14 8,371,282.

15 And the last one is the deposition notice for
16 you, again, for IPR2023-01461 for U.S. Patent 8,596,255.
17 So I've handed you three deposition notices.

18 Do you understand that these depositions are
19 proceeding according to these notices?

20 A. Yes.

21 Q. Okay. And do you understand that we reserved
22 part of the second day to continue your deposition next
23 week?

24 A. I'm aware of that.

25 Q. Now, I am going to try and see if I can get

1 everything wrapped up today. I'm going to do my best, but
2 let's see how that goes; okay?

3 A. Okay.

4 Q. All right. So just some housekeeping.

5 So you understand, based on these notices,
6 that there are three separate IPRs; correct?

7 A. That is my understanding.

8 Q. And one is for U.S. Patent Number 8,371,282;
9 correct?

10 A. Yep. Yes.

11 Q. I'm going to call that patent the '282 Patent.
12 Is that okay with you?

13 A. That is fine.

14 Q. And another IPR is for U.S. Patent
15 Number 8,640,683.

16 Do you understand that?

17 A. Yes.

18 Q. And I'm going to call that patent the
19 '683 Patent.

20 Is that okay with you?

21 A. That's okay.

22 Q. And then the last one is for U.S. Patent
23 Number 8,596,255.

24 Do you understand that?

25 A. Yes.

1 Q. Okay. And I'm going to call that patent the
2 '255 Patent.

3 Is that okay with you?

4 A. That is okay with me.

5 Q. And sometimes I may refer to the '282 Patent,
6 '683 Patent and '255 Patent all together, and I might just
7 call those the Hasbro patents.

8 Will you understand that when I use the phrase
9 "Hasbro patents," that I'm referring to all three of those
10 patents?

11 A. Yes.

12 Q. Now, because I'm going to go there in a minute
13 anyway, I'm just going to hand you copies of the patents
14 so you have them.

15 So I'm going to hand you Exhibit -- they're
16 all marked as Exhibit 1001 in each of their respective
17 IPRs.

18 So this is Exhibit 1001 which is the
19 '255 Patent.

20 (Whereupon, Exhibit 1001 for the
21 '255 Patent was introduced.)

22 MR. COMACK: Jeff, I have an extra one
23 if you want.

24 I'm going to hand you the '282 Patent, which
25 was also marked as Exhibit 1001 in its IPR.

(Whereupon, Exhibit 1001 for the
'282 Patent was introduced.)

MR. COMACK: And I'm going to hand you
the '683 Patent, which was marked as Exhibit 1001 in the
IPR for the '683 Patent.

(Whereupon, Exhibit 1001 for the
'683 Patent was introduced.)

BY MR. COMACK:

Q. So I've handed you the '683, the '282 and the
'255 Patents.

Have you reviewed all three of these patents?

A. I have.

Q. And you're prepared to talk about them today;
correct?

A. I am.

Q. Now, you submitted a single declaration in all
three IPRs; is that correct?

A. I did.

Q. And I'm going to give you a copy of it just so
you have it in front of you. Give me one moment while I
look for it.

I'm going to hand you what's been previously
marked as Spin Master Exhibit 2015 in all three IPRs.

(Whereupon, Exhibit 2015 was
introduced.)

1 BY MR. COMACK:

2 Q. Is this the Declaration submitted in all three
3 IPRs?

4 A. Yes.

5 Q. Okay. Now, if I ask you a question about
6 Exhibit 2015, unless you tell me otherwise, I'm going to
7 understand that your answer to my question applies to all
8 three IPRs.

9 Is that okay with you?

10 A. Yes.

11 Q. Okay. Now, do you understand that the '683
12 and the '282 Patent have the same specification and
13 drawings?

14 A. I'm aware of the '282 and 683.

15 Q. So yes, they do have the same specification
16 and drawings; correct?

17 A. Correct.

18 Q. Okay. You also understand that the
19 '255 Patent includes the specification and drawings of the
20 '683 and '25 -- I'm sorry, the '282 patents?

21 A. It includes the full spec and all the
22 drawings; is that what your question is?

23 Q. Yeah. So in other words, whatever -- in terms
24 of the specification and drawing that's in the '282 Patent
25 and the '683 Patent, you would also find in the

1 '255 Patent; is that correct?

2 A. I believe so.

3 Q. And do you understand that the '255 Patent
4 also includes additional specification and drawings on top
5 of what's in the '255 -- I'm sorry, the '282 and the
6 '683 Patents?

7 A. Yes, I'm aware there's additional drawings.

8 Q. Okay. And also some additional disclosure in
9 the specification as well?

10 A. Yes.

11 Q. Okay. So unless I tell you otherwise, when I
12 ask you a question about this common specification or
13 common drawings of any one of the '683, '282 and
14 '255 Patents, I'm going to understand that your answer to
15 my questions applies to all three of the patents -- the
16 '683, '282 and '255 Patents.

17 Is that okay with you?

18 A. Yes.

19 Q. Okay. So for example, if I ask you a question
20 about language in the specification of the '683 Patent,
21 unless I tell you otherwise, you should assume that my
22 question also applies to the same language in the
23 specification of the '255 and the '282 Patents; okay?

24 A. Okay.

25 Q. And if your answer applies to only one of the

1 '683, '282 or '255 Patents, will you let me know which
2 patent your answer applies to or ask me to rephrase the
3 question?

4 A. Yes.

5 Q. Okay. And before we dive into your
6 declaration, are there any mistakes that you noticed in
7 your declaration that you'd like to point out?

8 A. There's a couple of typos.

9 Q. Okay.

10 A. But we could find them if you want.

11 Q. Yeah, if you have them handy. If you don't,
12 you know, we could look during break.

13 A. There's one -- there's, like, some words that
14 are mushed together that we could find if it comes to it.

15 Q. That's fine.

16 A. There's another one where it uses the wrong
17 word, it copies the wrong word from above.

18 Q. Okay. And do you want to do the same thing;
19 if we get to it, you'll correct it?

20 A. Yeah.

21 Q. Because I think you have a thick, lengthy
22 declaration.

23 A. I don't know where they are. I'm sorry, I'm
24 talking over you.

25 Q. I wouldn't, either, for what it's worth.

1 Okay. So if we can go to your declaration,
2 paragraph 22.

3 Are you there?

4 A. I am there.

5 Q. Great. And let me take a step back before I
6 ask you a question about that paragraph.

7 Throughout your declaration, you use the
8 acronym "POSITA," P-O-S-I-T-A, as at shorthand for the
9 phrase "person of ordinary skill in the art"; is that
10 correct?

11 A. Correct.

12 Q. And if we look at paragraph 22 of your
13 declaration, you provide a definition of a POSITA;
14 correct?

15 A. Correct.

16 Q. And if you go to paragraph 23 of your
17 declaration, you also quote to Mr. Delman's definition of
18 a POSITA; is that correct?

19 A. Yes. Correct.

20 Q. And in forming your opinions in all three
21 IPRs, your opinions are the same under both Mr. Delman's
22 definition and your definition of a POSITA; is that right?

23 A. Yes.

24 Q. Let's go to paragraph 147 of your declaration.
25 Are you there?

1 A. I'm there.

2 Q. Okay. I'm just going to read it out loud to
3 you, and again, this is paragraph 147.

4 You write, "It is my opinion that Xploderz
5 were commercially successful and that this commercial
6 success has a nexus to at least Claims 8, 19 and 20 of the
7 '282 Patent and Claims 5, 8 and 9 of the '683 Patent. In
8 forming my opinions, I have reviewed the sales data for
9 2011 and 2012 for the Xploderz myself, and I have reviewed
10 the ITC trial testimony of Lynn Rosenblum, an expert in
11 the toy industry with prior experience in toy marketing
12 and sales to confirm my understanding of the Maya Group
13 sales data in the context of the toy industry."

14 Did I read that correctly?

15 A. Yes.

16 Q. Okay. Now, it's your opinion -- your opinion
17 is that commercial success evidence that you discuss in
18 Exhibit 2015 has a nexus to Claims 8, 19 and 20 of the
19 '282 Patent; is that right?

20 A. At least Claims 8, 19 and 20 of the
21 '282 Patent, and then also Claims 5, 8 and 9 of the
22 '683 Patent.

23 Q. I see. You didn't discuss commercial success
24 or secondary considerations evidence of any other claim in
25 your declaration, though; isn't that right?

1 A. This declaration was focused on those specific
2 claims.

3 Q. Right. And you didn't rely on any secondary
4 consideration evident for the '255 Patent at all; correct?

5 A. I did not focus on the claims of the
6 '255 Patent for this report.

7 Q. Okay. Now, it's also your opinion that
8 industry praise evidence that you discuss in Exhibit 2015
9 has a nexus to Claims 8, 19 and 20 of the '282 Patent; is
10 that right?

11 A. I'm sorry, was that the same question you
12 asked?

13 Q. No. So that's a good question, and I can see
14 why you thought that.

15 So my prior question was, I asked you about
16 the claims of the '282 Patent regarding commercial
17 success, so now I'm asking about industry praise, so it's
18 a slightly different question, so I'll ask it again.

19 Does that make sense to you?

20 A. You're talking about industry praise now?

21 Q. Yes. So is it your opinion that the industry
22 praise evidence that you discuss in Exhibit 2015 has a
23 nexus to Claims 8, 19 and 20 of the '282 Patent?

24 A. As well as Claims 5, 8 and 9 of the '683.

25 Q. I see. And you also rely on commercial

1 success for Claims 5, 8 and 9 for the '683 Patent as well;
2 correct?

3 A. Correct.

4 Q. Okay. All right. Now, in paragraph 147, you
5 state that you reviewed the ITC trial testimony of Lynn
6 Rosenblum.

7 Did you review all of her testimony?

8 A. I reviewed the testimony. I think I reviewed
9 all of it, yes.

10 Q. Okay. And are you relying on Ms. Rosenblum's
11 testimony in forming your opinions?

12 A. In part.

13 Q. Okay. Do you have any reason to believe that
14 Ms. Rosenblum's testimony is not accurate?

15 A. I don't have any reason to believe that.

16 Q. Okay. You don't have any financial expertise;
17 correct?

18 MR. DARBY: Objection to form.

19 A. Well, I would not say that, that I have no
20 financial expertise.

21 BY MR. COMACK:

22 Q. What would you say?

23 A. That I have some financial expertise.

24 Q. Okay. Tell me about what your area of
25 expertise is in financial areas.

1 A. Well, I teach some of the business side of toy
2 development in my toy development course. One of the four
3 schools that I run is retail merchandising.

4 Q. Anything else?

5 A. I had a product on the market through
6 licensing, and I work with students on licensing deals
7 with companies.

8 Q. So you believe that you're qualified to offer
9 expert opinions on financial matters?

10 MR. DARBY: Objection to form.

11 A. I think in the case of the data presented
12 here, I'm capable of looking at sales of certain blasters
13 and comparing them.

14 BY MR. COMACK:

15 Q. But do you have expertise to do that?

16 MR. DARBY: Objection to form.

17 A. I think, to the degree of what we're looking
18 at in this case, I'm capable of comparing sales data on
19 NERF guns.

20 BY MR. COMACK:

21 Q. Do you have an accounting degree?

22 A. I don't have an accounting degree.

23 Q. Are you a CPA?

24 A. I'm not a CPA.

25 Q. Do you have expertise in accounting?

1 MR. DARBY: Objection to form.

2 A. I'm not an expertise -- I don't have expertise
3 in accounting.

4 BY MR. COMACK:

5 Q. Do you have a marketing degree?

6 A. I don't have a marketing degree.

7 Q. Do you have any peer-reviewed publications
8 regarding marketing?

9 A. The number of my papers are on how
10 presentation of ideas influence consumers' willingness to
11 buy or desire to -- the desire to have them, and that's
12 related to marketing.

13 Q. And for those papers, do you cite well-known
14 marketing principles?

15 MR. DARBY: Objection to form.

16 A. Like willingness to pay, for example.

17 BY MR. COMACK:

18 Q. And do you have a business degree?

19 A. No.

20 Q. You're not an expert in business; are you?

21 MR. DARBY: Objection to form.

22 A. I'm sorry, what was the question?

23 BY MR. COMACK:

24 Q. You have no expertise in business; do you?

25 MR. DARBY: Objection to form.

1 A. I mean, I run my own consulting business.

2 BY MR. COMACK:

3 Q. Right. But that doesn't make you an expert;
4 does it?

5 A. I mean, practicing -- I don't know if that
6 makes me an expert.

7 Q. Getting back to Ms. Rosenblum, have you ever
8 spoken to her?

9 A. I have spoken to her.

10 Q. When was that?

11 A. During -- a year ago.

12 Q. A year ago in connection with these IPRs?

13 A. In connection with -- we talked during the
14 hearing.

15 Q. You're talking about for the ITC?

16 A. ITC.

17 Q. Have you spoken to her at all in connection
18 with these IPRs?

19 A. I have not spoken to her in connection with
20 these IPRs.

21 Q. Okay. And when you spoke to her in connection
22 with the ITC proceedings, what did you speak about?

23 A. I don't recall. It was a long time ago.

24 Q. You don't remember any conversations about the
25 opinions that you or her were providing in that ITC case;

1 is that right?

2 A. I don't recall what we talked about.

3 Q. Do you know who Oded Ben-Ezer is?

4 A. From my understanding, he is one owners or
5 founders of the Maya Group.

6 (Reporter clarification.)

7 BY MR. COMACK:

8 Q. Do you know when he worked for the Maya Group?

9 A. Do I know when he worked for the Maya Group?

10 Q. Uh-huh.

11 A. I don't know offhand.

12 Q. Have you ever spoken to Mr. Ben-Ezer?

13 A. I have not.

14 Q. Why not?

15 A. I don't know.

16 Q. Could you have spoken to him if you had asked
17 your counsel?

18 A. I don't know.

19 Q. Did you think it was important to talk to him
20 in connection with forming your opinions in this IPR?

21 A. I reviewed his testimony.

22 Q. Right. But that wasn't my question.

23 Did you think it was important to speak to him
24 in forming your opinions --

25 MR. DARBY: Objection; asked and

1 answered.

2 BY MR. COMACK:

3 Q. -- in this IPR?

4 A. I reviewed his testimony and didn't think that
5 was part of this meeting.

6 Q. So you didn't see a need to speak to
7 Mr. Ben-Ezer in forming your opinions for this IPR;
8 correct?

9 A. I formed my opinions based on the evidence
10 that I had.

11 Q. Okay. Did you review the ITC deposition
12 testimony of Mr. Ben-Ezer -- I'm sorry, in forming your
13 opinions?

14 A. I reviewed the testimony. It's a long
15 transcript.

16 Q. Uh-huh. So did you review all of
17 Mr. Ben-Ezer's ITC deposition testimony in forming your
18 opinions?

19 A. That was included in my opinions.

20 Q. Do you have any reason to believe that
21 Mr. Ben-Ezer's deposition testimony is not accurate?

22 A. I have no reason to think that.

23 Q. Okay. Well, let's go to -- I need to find
24 what page -- Footnote 6 on page 86 of your declaration.

25 Are you there?

1 A. Yeah.

2 Q. Okay. I'm just going to read Footnote 6 to
3 you.

4 "I understand from reading the ITC
5 investigation deposition of Maya Group's Oded Ben-Ezer
6 that Maya overall made approximately \$50MM million from
7 the sales of the Xploderz blasters and ammunition." And
8 you cite EX2032, (Ben-Ezer Deposition), pages 275, lines
9 11 to 14.

10 You go on to state, "I have focused my
11 analysis on the first two years since that is the most
12 detailed data that is available from the Maya Group, but
13 also believe that continued sales and line extensions in
14 later years are also supportive of commercial success,
15 which is described further below and in trial testimony
16 and expert report of Ms. Rosenblum that she submitted in
17 the ITC investigation."

18 And then you cite her Exhibit 2046,
19 Section XI.A.5.

20 Is that all correct?

21 A. Yes.

22 Q. Okay. Now, you state in Footnote 6 that the
23 Maya Group sold \$50 million of Xploderz blasters and
24 ammunition.

25 Is it your understanding that this \$50 million

1 sales figure covers the 2011 to 2015 time period?

2 MR. DARBY: Objection to form.

3 A. That's my understanding.

4 BY MR. COMACK:

5 Q. Okay. Now, your commercial success analysis
6 of the Xploderz product only focused on sales of the
7 Xploderz for the first full two years, and in
8 paragraph 148 of your declaration, you state that those
9 sales took place in 2011 and 2012 and that the total sales
10 of the Xploderz products during that time totaled over
11 \$35 million; is that correct?

12 A. And over -- yeah; that's correct. Yeah.

13 Q. Okay. Do you know what the sales for the
14 Xploderz products were in 2013?

15 A. I think one could back out the sales for the
16 years after 11 and 12 by subtracting the totals.

17 Q. So what were the sales of the Xploderz product
18 in 2013?

19 Dr. Kudrowitz, I don't believe you have that
20 sales date for 2013, '14 or '15 in your report, but I'd be
21 happy to read to you what Ms. Rosenblum said to you about
22 those sales, if that would help.

23 A. Sure.

24 Q. And I'll just read it to you.

25 The question -- this is in Exhibit 1004,

1 pages -- page 581, and I'm reading to you from lines 3 to
2 16, okay.

3 "Question: Do you know that there were sales
4 in 2013 and 2014?

5 Answer: Yes.

6 Question: Okay. Did you know that the
7 Xploderz revenue declined from \$17 million in 2012 to
8 \$12 million in 2013?

9 Answer: Yes."

10 So I'll stop there for a moment.

11 So based on her testimony, do you understand
12 that the Xploderz sales in 2013 was \$12 million?

13 MR. DARBY: Objection to form.

14 A. It sounds like that's what you read to me.

15 BY MR. COMACK:

16 Q. Do you disagree with Ms. Rosenblum?

17 A. I don't have reason to disagree.

18 Q. Okay. And I'm going to continue with the line
19 of questioning starting on line 9.

20 "Question: Did you know that the Xploderz
21 revenue declined again to \$7 million in 2014?

22 Answer: Yes."

23 Based on Ms. Rosenblum's testimony, do you
24 agree that the Xploderz revenue was \$7 million in 2014?

25 MR. DARBY: Objection to form.

1 A. I don't have any reason to disagree with that.

2 BY MR. COMACK:

3 Q. So you agree.

4 MR. DARBY: Objection; asked and
5 answered.

6 A. I don't -- I'm going off of what you're saying
7 what she said, and I don't have a reason to disagree.

8 BY MR. COMACK:

9 Q. Okay. I'm going to keep reading her
10 testimony.

11 "And again, in 2015 to just \$500,000. Did you
12 know that?

13 Answer: Yes."

14 Do you agree with Ms. Rosenblum that the
15 Xploderz sales in 2015 were \$500,000?

16 A. Again, I don't have any reason to disagree.

17 Q. Okay. And then I'm going to read one more Q&A
18 to you.

19 "And to zero in 2016."

20 That was the question.

21 "Answer: Yes, I knew all of that."

22 Do you agree with Ms. Rosenblum that the sales
23 of the Xploderz in 2016 were zero dollars?

24 A. I don't have a reason to disagree.

25 Q. Is it your opinion that declining sales of

1 Xploderz products from 2013 to 2016 evidence commercial
2 success for the claims of the '282 and '683 Patent?

3 A. Yeah, so it's my opinion that the Xploderz
4 were a commercial success. There's -- in the toy
5 industry, according to my report, if you have a line that
6 has \$3 or \$4 million, that's a good brand. They sold
7 \$15, \$17 million in the first two years, and they were in
8 millions in the following two years as well, and even if
9 the sales went down to have a toy on the market for
10 multiple years is a success.

11 Q. So you believe that a drop from \$17 million to
12 \$12 million, a \$5-million drop in 2013, then another
13 \$5-million drop in 2014, and then almost a
14 \$6-and-a-half-million drop in 2015 is evidence of
15 commercial success?

16 MR. DARBY: Objection to form.

17 A. Yeah, in totality, the toy industry, when you
18 have a toy that was successful for one, two years, that's
19 a success, and they were pulling in millions of dollars
20 for several years.

21 BY MR. COMACK:

22 Q. So a steep decline in sales over a three-year
23 period represents commercial success.

24 Is that your opinion?

25 MR. DARBY: Objection to form.

1 A. Well, two parts: One, it doesn't negate that
2 it was a commercial success for two years.

3 BY MR. COMACK:

4 Q. I see.

5 A. But also, in the toy industry, having a toy
6 that goes on the market for four years is also a marker of
7 success, and that is also supported by Lynn's testimony.

8 Q. Let's go back to Footnote 6 on page 86 of your
9 declaration.

10 You indicated that you were relying on the
11 sales of the first two years because that was the "most
12 detailed data."

13 Is that right?

14 A. Most detailed -- that was available.

15 Q. I see.

16 And there, you didn't discuss the sales for
17 the years 2013, 2014 and 2015; correct?

18 A. Are you asking in this paragraph if I
19 discussed the sales?

20 Q. In that paragraph or anywhere else in your
21 report.

22 A. Well, the total sales are in that \$50-million
23 figure.

24 Q. Right. That's true.

25 But you didn't discuss the decline -- in other

1 words, the sales, year over year, from 2013, 2014 and
2 2015; correct?

3 A. I did not go into detail on the sales of those
4 other years, but I did discuss that a toy that is on the
5 market for many years is a success.

6 Q. And what do you base that opinion on?

7 A. My expertise in the toy industry.

8 Q. What expertise do you have in the toy
9 industry?

10 A. I've taught toy design for 16 years, I bring
11 students to Toy Fair, I go to Toy Fair.

12 Q. Right. But you haven't taught -- I'm sorry,
13 you're not a marketing expert, though?

14 MR. DARBY: Objection to form.

15 A. Well, I mean, you can be an expert in the toy
16 industry without being in marketing.

17 BY MR. COMACK:

18 Q. Well, you're talking about a commercial
19 success of a product.

20 What qualifies you to do that?

21 A. From my experience in the toy industry, I see
22 toys on the market and off the market. I am a judge for
23 Toy of the Year. I study the toy industry.

24 Q. Do you study the sales and how that affects a
25 company's success in the toy industry?

1 A. In some ways.

2 Q. What ways?

3 A. I mean, that's part of understanding the toy
4 industry.

5 Q. Have you ever worked for a toy company?

6 A. I've worked with toy companies.

7 Q. As a consultant?

8 A. As a consultant.

9 Q. When you work with those toy companies, do you
10 provide consulting services regarding their sales?

11 A. Sometimes sales are important in the
12 conversations.

13 Q. Do you advise them on how to be commercially
14 successful when you provide commercial consulting
15 services?

16 MR. DARBY: Objection to form.

17 A. I think that's the end goal.

18 BY MR. COMACK:

19 Q. Do you look at a toy company's sales data and
20 give them consulting advice on whether their sales data is
21 evidence of a commercial success in connection with your
22 consulting services?

23 A. I would give advice on certain products.

24 Q. That's not what I asked you. I'm asking you
25 about sales data.

1 Do companies that hire you, toy companies,
2 provide you with their sales data and ask you to provide
3 consulting services on whether their sales data shows that
4 they were commercially successful?

5 MR. DARBY: Objection to form.

6 A. In that specific example, that is not what
7 companies would work with me for.

8 BY MR. COMACK:

9 Q. Okay. Going back to Footnote 6 in your
10 declaration, you state there were line extensions for the
11 Xploderz products in, quote, "later years."

12 By "later years," do you mean 2013, 2014 and
13 2015?

14 A. Line extensions also applies to year 2012 as
15 well.

16 Q. Okay. Because in your -- just so I understand
17 it, in Footnote 6, you seem to say that you were relying
18 on sales figures for 2011 and 2012, the "first two years"
19 you call them, and then you refer to "later years." So I
20 found that confusing.

21 So are you saying that "later years" includes
22 2012?

23 A. The way I read this statement and the way I
24 intended to write this statement was that the continued
25 sales and line extensions in the later years support

1 commercial success.

2 Q. And just to clarify, when you use the term
3 "later years," what time period are you covering?

4 A. After the first two years, so '13, '14.
5 However, as a side note, the line extensions in 2012,
6 there are line extensions in 2012, as well.

7 Q. Got you.

8 Now, the introduction of line extensions of
9 Xploderz product was not enough to prevent the decline in
10 sales of those products; was it?

11 A. I don't know what led specifically to the
12 decline in sales, but regarding line extensions, they
13 typically indicate that there is success. You wouldn't
14 come up with new varieties of products if things are not
15 successful.

16 Q. But the introduction of the line extensions of
17 Xploderz products was not enough to prevent the decline in
18 sales, whatever the reason was; isn't that right?

19 MR. DARBY: Objection; asked and
20 answered.

21 A. The line extension could also be a reason --
22 could also play a role in the increase in sales in 2012,
23 too. I don't know.

24 BY MR. COMACK:

25 Q. You have no knowledge of the impact of the

1 line extensions in 2012 on sales; is that correct?

2 A. My argument here is that they are an indicator
3 of commercial success. To the degree at which they led to
4 outcomes, I can't tell you offhand.

5 Q. But you agree that the sales of Xploderz
6 increased, year over year, from 2013 to 2015; correct?

7 MR. GEORGE: Decreased.

8 BY MR. COMACK:

9 Q. I'm sorry, decreased. Strike that.

10 You agree that the sales of the Xploderz
11 products decreased, year over year, from 2013 to 2015; is
12 that correct?

13 A. I'm aware that the numbers decreased.

14 Q. And you agree that the line extensions
15 introduced from 2013 to 2015 coincided with that decrease
16 in sales, year over year, of Xploderz products; correct?

17 A. Not exactly. There were still line extensions
18 in 2012 when the sales increased.

19 Q. I'm asking you about the line extensions in
20 2013 to 2015, the sales of those products and those line
21 extensions resulted in a decrease in sales, year over
22 year; correct?

23 MR. DARBY: Objection to form.

24 A. I don't think one can attribute the line
25 extensions to the reduction in sales.

1 BY MR. COMACK:

2 Q. Why not?

3 A. There could be other factors.

4 Q. But the sales did decrease from 2013 to 2015
5 when those line extensions were introduced.

6 That's a fact; correct?

7 A. They also increased in 2012.

8 Q. That wasn't my question, Dr. Kudrowitz. I'm
9 asking but 2013 to 2015, and I just want to you focus on
10 those years.

11 The sales decreased, year over year, from 2013
12 to 2015 for the line extensions that were introduced for
13 2013 to 2015.

14 That's a fact; correct?

15 A. No.

16 Q. It's not?

17 A. You can't attribute having line extensions to
18 a decrease in sales.

19 Q. I didn't use the word "attribute."

20 I'm asking you if the sales decreased, year
21 over year, from 2013 to 2015 for the line extensions that
22 were introduced from 2013 to 2015 -- straight sales
23 numbers.

24 Do you disagree with that?

25 A. I want to make sure I understand your

1 question.

2 Are you saying that the products that were
3 released in 2013 to 2014 had lower sales numbers than
4 those in 2011, 2012.

5 Q. No. I'm asking you if the sales -- let me
6 back up.

7 You cited sales of 2011 and 2012 as commercial
8 success; right?

9 A. Yes.

10 Q. Okay. And you didn't cite any sales data as
11 part of your commercial success analysis after 2012; is
12 that correct?

13 MR. DARBY: Objection to form.

14 A. Well, there were \$50 million of sales, total,
15 and some of that is after the first two years.

16 BY MR. COMACK:

17 Q. Right. And that -- so you had -- what was the
18 total number?

19 So you had \$35 million in sales, the Xploderz.
20 There were \$35 million of Xploderz sales in 2011 and 2012;
21 correct?

22 A. So according to my report, yeah.

23 Q. If look at paragraph 148, bottom line of
24 page 85, you'll see the number.

25 A. Yes, \$35 million in sales in the first two

1 years.

2 Q. And the first two years being 2011 and 2012;
3 correct?

4 A. Correct.

5 Q. So that means that there were only \$15 million
6 in sales from 2013 to 2015; correct?

7 A. That is correct. However, I also want to call
8 out that having three or four million is a good -- is
9 successful in the toy industry. And so you're saying
10 \$15 million, that's still successful.

11 Q. Right. But when the line extensions were
12 introduced in 2013, the sales from 2012 to 2013 dropped by
13 \$5 million; correct?

14 MR. DARBY: Objection to form.

15 A. I don't recall the actual -- the exact numbers
16 that you said earlier.

17 BY MR. COMACK:

18 Q. Well, Ms. Rosenblum explained that the sales
19 of the Xploderz dropped from \$17 million in 2012 to
20 \$12 million in 2013, and you agreed with her; correct?

21 A. That's correct.

22 Q. And so the line extensions sold in 2013
23 coincided with a \$5-million drop in sales of Xploderz
24 products; correct?

25 A. I mean, you're framing it that way, but one

1 can also look at it as the line extensions led to
2 \$12 million in sales in 2013, which is, on its own,
3 successful, as well.

4 Q. Did you ask Mr. Ben-Ezer why there was
5 \$5-million drop in sales of Xploderz in 2013?

6 A. As I said, I didn't talk directly with
7 Mr. Ben-Ezer.

8 Q. Do you know if he testified about why there
9 was a drop in sales?

10 A. I don't recall offhand.

11 Q. If the company was faced with declining sales,
12 would they do a line extension to try and increase those
13 sales?

14 MR. DARBY: Objection to form.

15 A. Oh, I'm sorry, I thought you were reading from
16 his report -- from his statement.

17 BY MR. COMACK:

18 Q. I wasn't, so I'll repeat the question. I
19 apologize for that. This is a question that I'm asking
20 you.

21 If a company was faced with declining sales,
22 would that company try to do a line extension of their
23 products to try and increase those sales?

24 MR. DARBY: Objection to form.

25 A. I think it could be one thing a company could

1 do, but it's not the only thing someone would do.

2 BY MR. COMACK:

3 Q. What is your basis for your opinion that a
4 company could try to do line extensions to increase sales
5 of a product?

6 A. Having exposure to the industry.

7 Q. Your exposure to the industry is what you base
8 that opinion on?

9 A. Seeing how companies put out different line
10 extensions over the years.

11 Q. And are you just talking about the toy
12 industry?

13 A. And product industry.

14 Q. Okay. Let's go to paragraph 166 of your
15 declaration. Let me know when you're there.

16 Are you there? I was going to read it to you,
17 Dr. Kudrowitz. Are you at paragraph --

18 A. Yes, I'm at 166.

19 Q. So I'm just going to read you what you say in
20 paragraph 166.

21 "Regarding line extensions, as discussed
22 above, the Xploderz yielded multiple line extensions
23 including the X2, Night Fighterz, Blaster Pro, X3, and
24 Firestorm. This is a factor signaling that the Xploderz
25 were commercially successful."

1 And then you cite two exhibits, and then it
2 goes on to say, "A line extension signals that the
3 manufacturer believed that the original products were
4 commercially successful enough to invest in the additional
5 costs necessary to release the extension products." You
6 provide more citations.

7 "Here, Maya Group extended the Xploderz lines
8 multiple times, which is a signal that the Xploderz
9 product was a commercial success," and you provide more
10 cites.

11 So am I correct from that passage that it's
12 your opinion that the mere fact that there were line
13 extensions are evidence that Xploderz products were a
14 commercial success?

15 MR. DARBY: Objection to form.

16 A. Well, as I say in the report, a line extension
17 signals that the manufacturer believed that the original
18 products were commercially successful enough to invest in
19 the additional costs necessary to release extension
20 products.

21 BY MR. COMACK:

22 Q. But we know from the sales data from 2013 to
23 '15 for the Xploderz, that sales, in fact, decreased;
24 correct?

25 A. The sales decreased from '13 to '15.

1 Q. And the Xploderz product had to be
2 discontinued because of those declining sales; correct?

3 MR. DARBY: Objection to form.

4 A. I don't know specifically why.

5 BY MR. COMACK:

6 Q. You don't know? Because you didn't speak to
7 Mr. Ben-Ezer; correct?

8 MR. DARBY: Objection to form.

9 A. I didn't speak to Mr. Ben --

10 BY MR. COMACK:

11 Q. Ezer.

12 A. -- Ezer.

13 Q. Okay. And the line extensions did not reverse
14 the sales decline from 2013 to 2015; correct?

15 A. So, I mean, the line extensions did attribute
16 to, what is it, \$15 million in sales in those later years.

17 Q. I understand. But my question was a little
18 different.

19 The line extensions of the Xploderz product
20 did not reverse the sales decline of those products from
21 2013 to 2015; correct?

22 A. They still led to \$15 million in sales.

23 Q. Not my question. They didn't reverse the
24 decline. I'm talking about the decline, not the total
25 number of sales.

1 The Xploderz line extensions did not reverse
2 the continued decline in sales from 2013 through 2015;
3 correct?

4 A. Continuing the line extensions from 2013 to
5 2015 did not result in increased sales in those years.

6 Q. They resulted in decreased sales in those
7 years; correct?

8 MR. DARBY: Objection to form.

9 A. Well, again, there could be other factors
10 involved in decreasing sales.

11 BY MR. COMACK:

12 Q. That wasn't my question.

13 The line extensions did not prevent the
14 decrease in sales from 2012 to 2013; did they?

15 A. I would say that the line extensions -- the
16 way I would classify it is that the line extensions did
17 not result in any increase in sales in those years.

18 Q. Dr. Kudrowitz, the Maya Group sold \$17 million
19 in Xploderz in 2012; correct?

20 A. Can you say that again?

21 Q. The Maya Group sold \$17 million of Xploderz
22 product in 2012; correct?

23 A. That sounds right, yes.

24 Q. And then in 2013, the Maya Group sold line
25 extensions for the Xploderz products; correct?

1 A. Correct.

2 Q. And in 2013, the sales for the Maya Group of
3 the Xploderz product were \$12 million; correct?

4 A. Correct.

5 Q. So the line extensions introduced in 2013 of
6 the Xploderz product did not prevent that \$5-million
7 decrease in sales of Xploderz product in 2013; is that
8 correct?

9 MR. DARBY: Objection; asked and
10 answered.

11 A. That's not how I would characterize that.
12 Again, I would say they did not lead to continuing the
13 same sales numbers in 2012.

14 BY MR. COMACK:

15 Q. But they didn't prevent those sales from
16 decreasing; correct?

17 MR. DARBY: Objection; asked and
18 answered.

19 MR. COMACK: I don't think he did, Ken.
20 I'm asking about the word "prevent," and he keeps ignoring
21 that part of my question, so...

22 MR. DARBY: Same objection.

23 A. Just the characterizing -- characterizing of
24 it as preventing, I don't necessarily agree with that
25 framing of it.

1 BY MR. COMACK:

2 Q. So do you think those line extensions in 2013
3 caused an increase in sales as compared to 2012?

4 A. I would say that they resulted in similar
5 sales as Year 1, which was also successful.

6 Q. A drop in \$5 million in sales, to you, is
7 similar; correct? Is that what you're saying?

8 MR. DARBY: Objection to form.

9 A. I believe -- so in the first year, is it
10 \$14 million in sales?

11 BY MR. COMACK:

12 Q. I don't know.

13 A. According to page 87 of my report. And you
14 said in your -- I'm sorry, I don't have the report in
15 front of me.

16 In Year 3, how much sales were there?

17 Q. Are you talking about 2013?

18 A. In 2013.

19 Q. \$12 million.

20 A. \$12 million.

21 So again, according to my report, \$3 to
22 \$4 million is a successful number for a toy, and we're
23 talking \$12 million. That's still successful in the toy
24 industry.

25 Q. Okay. So just to be clear, it's your opinion

1 that -- let me withdraw that.

2 MR. DARBY: Counsel, getting towards an
3 hour on the record, if we could work in a break soon.

4 MR. COMACK: I just have three questions
5 and then we can take a break if that's okay.

6 BY MR. COMACK:

7 Q. Are you ready, Doctor?

8 A. Ready.

9 Q. Is it possible that line extensions are
10 evidence of an attempt by a company to resuscitate a dying
11 product?

12 A. I don't know -- I don't know necessarily, but
13 I do know that, according to my report, they are also a
14 sign that the manufacturer company believes that there is
15 potential there.

16 Q. In paragraph 166, you provide several
17 citations to Ms. Rosenblum's report from the ITC and her
18 testimony from the ITC hearing.

19 Do you see that?

20 A. Yes.

21 Q. And so you're basing your opinions regarding
22 line extensions on Ms. Rosenblum's testimony from the ITC
23 case; is that right?

24 MR. DARBY: Objection to form.

25 A. That's in part. As I said in my report, in

1 paragraph 147, "In forming my opinions, I reviewed sales
2 data myself, I have reviewed the ITC testimony of Lynn
3 Rosenblum, an expert in the toy industry with prior
4 experience in toy marketing sales to confirm my
5 understanding of the Maya Group sales data in the context
6 of the toy industry."

7 BY MR. COMACK:

8 Q. I was just talking about line extensions, not
9 sales data.

10 A. I reviewed her testimony in making these
11 opinions.

12 Q. Okay. Do you know if Ms. Rosenblum considered
13 the sales data for the line extensions in 2013 to 2015?

14 A. This looks like I'm citing to her testimony
15 regarding line extensions.

16 Q. I'm sorry, do you know if she considered sales
17 data for line extensions sold from 2013 to 2015?

18 A. I would expect that she did.

19 MR. COMACK: Okay. Let's take a break.

20 (Whereupon, a recess was taken
21 from 10:10 a.m. to 10:23 a.m.)

22 BY MR. COMACK:

23 Q. Dr. Kudrowitz, we just took a break.

24 I apologize for asking this question -- I
25 think it's going to get a little repetitive and maybe even

1 annoying -- but during the break, did you speak to your
2 counsel about any aspects of your testimony?

3 A. No.

4 Q. Okay. Is it your opinion that one of the
5 reasons for the commercial success and industry praise for
6 the Xploderz product was its ability to hold more
7 ammunition?

8 If it helps, I could give you an example
9 where -- in your report for that. So it's in many
10 different places -- I'll wait. Go ahead.

11 A. Can you repeat your question?

12 Q. Absolutely.

13 Is it your opinion that one of the reasons for
14 the commercial success and industry praise for the
15 Xploderz product was its ability to hold more ammunition?

16 A. So in my report, in paragraph 211, I say that
17 "The fact is that the Xploderz did have the as-claimed
18 firing mechanism, the as-claimed ammunition that created
19 the distance advantages and did have the magazine combined
20 with the SAP ammunition that created the capacity
21 advantages, and the Xploderz did combine the as-claimed
22 ammunition with the as-claimed projectile launcher to be
23 the first SAP or un-projected blaster on the market."

24 Q. So just so that I could have a clear answer,
25 because I know you were reading from your report, is it

1 your opinion that one of the reasons for the commercial
2 success and industry praise for the Xploderz product was
3 its ability to hold more ammunition?

4 A. There were other products on the market that
5 held lots of ammunition, but in this case, the success was
6 holding the as-claimed ammunition in the blaster as
7 claimed. That's what led to the success.

8 Q. The mere fact of holding the as-claimed
9 ammunition in the as-claimed blaster was the reason for
10 success?

11 MR. DARBY: Objection to form.

12 A. The success came from the combination of the
13 as-claimed -- the benefits of the as-claimed ammunition in
14 the as-claimed blaster.

15 BY MR. COMACK:

16 Q. What benefits are you talking about?

17 A. Being able to hold more ammo, being able to
18 shoot that ammunition further, for example.

19 Q. Okay. Thank you.

20 So is it your testimony that there is a nexus
21 between the ability to hold more ammo in Claim 5 of the
22 '683 Patent and Claim 8 of the '282 Patent?

23 Is that right?

24 A. Can you repeat your question?

25 Q. Yes. Is it your testimony that there's a

1 nexus between the ability to hold more ammo in Claim 5 of
2 the '683 Patent, as well as Claim 8 of the '282 Patent?

3 A. So on page 77 of my report, I say that the
4 Xploderz were praised and celebrated with its nexus to the
5 inventions described in those claims.

6 Q. But my question is, is it your testimony --
7 you understand that you have to show a nexus between a
8 claimed feature and the success; correct?

9 MR. DARBY: Objection to form.

10 A. Are we in the context of industry praise? Is
11 that what we're talking about right now?

12 BY MR. COMACK:

13 Q. I'm just talking about -- sure, let's talk
14 about industry praise.

15 Do you understand that you have to show a
16 nexus between the praise of a claimed feature and the
17 praise itself? Let me withdraw that.

18 Please go to paragraph 145 of your
19 declaration.

20 A. Okay.

21 Q. And I'm going to read you -- "I understand
22 that if commercial success is due to something already
23 known, then non-obviousness is not shown. For example, if
24 the commercial success is due to an unclaimed feature of
25 the patent-practicing device or if what creates commercial

1 success was known in the art, the success is not
2 pertinent."

3 Do you see that?

4 A. Yes.

5 Q. Are you talking about a nexus there?

6 A. This is in the context of commercial success,
7 and in 142, I talk about the nexus requirement to be met.

8 Q. Thank you.

9 And so paragraph 142, you state, "For a nexus
10 requirement to be met, I understand that the commercial
11 success must be causally related to the invention itself.
12 That is, the asserted commercial success of the product
13 must be due to the merits of the claimed invention, and
14 not to other factors such as a patentee's dominant
15 position in the market, or advertising or packaging
16 unrelated to the patented feature."

17 Correct?

18 A. Correct.

19 Q. So do you understand that for the nexus
20 requirement to be met, there must be a causal link between
21 the commercial -- the secondary consideration evidence and
22 the claimed feature itself?

23 A. My understanding, according to paragraph 211,
24 is that there needs to be a nexus between the evidence in
25 the case and the merits of the claimed invention.

1 Q. Right. So there has to be some claim, and it
2 has to be some specific claim, and the nexus has to be
3 between that evidence of, say, commercial success and the
4 specific claimed feature of the claim you're relying on;
5 for example, Claim 5?

6 A. Well, it can be the merits of the claimed
7 intention.

8 Q. What does that mean?

9 A. It could be the advantages or benefits of that
10 claim element invention.

11 Q. Okay. Take a look at Claim 5 of the
12 '282 Patent. Actually -- yeah, Claim 5 of the
13 '683 Patent. I gave you the wrong patent number. I
14 apologize.

15 Claim 5 reads, "The system of Claim 1, wherein
16 the projectile launcher includes a feed chamber for
17 loading the soft-projectiles within" --

18 (Reporter clarification.)

19 BY MR. COMACK:

20 Q. "Includes a feed chamber for loading the
21 soft-projectiles within projectile launcher."

22 Do you see that?

23 A. Yes.

24 Q. And Claim 5 of the '683 Patent is one of the
25 claims that you're arguing there is a commercial success

1 and praise evidence for; correct?

2 A. I'm arguing that there is evidence showing
3 that the Xploderz was linked to the benefits of Claim 5.

4 Q. What aspect of the Xploderz?

5 A. The elements -- the Xploderz are practicing
6 Claim 5.

7 Q. So you're relying on the feed chamber in the
8 Xploderz to show a nexus for Claim 5; is that right?

9 A. Well, all of Claim 5, which includes the
10 projectile launcher having a feed chamber for loading the
11 soft projectiles within the projectile launcher, and 5
12 depends on 1, and so that as well.

13 Q. I see. Okay.

14 So you recall we talked a few minutes ago
15 about the ability to hold more ammo, and you identified
16 that as one of the benefits of the claims; correct?

17 A. One of the benefits of the claims is it allows
18 for holding more ammo than perhaps other things.

19 Q. Okay. And is that because of Claim 5?

20 A. With 1.

21 Q. But you're not relying on Claim 1 to show
22 commercial success or praise; correct?

23 A. Claim 5 depends on Claim 1.

24 Q. Right. But you don't rely on Claim 1 itself
25 without the features in Claim 5 to show commercial success

1 or praise; correct?

2 A. In this report, I'm relying on Claim 5, which
3 captures the features, also, of Claim 1.

4 Q. So Claim 5 adds a feature to Claim 1; correct?

5 A. Claim 5 builds on Claim 1.

6 Q. How so?

7 A. It adds, "Wherein the projectile launcher of
8 system Claim 1 includes a feed chamber for loading the
9 soft projectiles within the projectile engine."

10 Q. So that feed chamber is not in Claim 1;
11 correct?

12 A. Not explicitly in Claim 1.

13 Q. It's only in Claim 5; correct?

14 A. Well, it's also in Claim 7 claiming Claim 5,
15 and 6 claims 5.

16 Q. But you're not relying on commercial success
17 for Claim 7 or Claim 6. You're only relying on commercial
18 success for Claim 5; correct?

19 A. In the '683 Patent, I'm relying on -- I'm
20 looking at 8 and -- 8 and 9, which rely on 5. Sorry, 7
21 relies on 5, and 8 relies on 7.

22 Q. Okay. I'm just trying to understand the basis
23 for your reason that there's commercial success and praise
24 and a nexus for Claim 5 of the '683 Patent, so I just want
25 you to focus on only that claim.

1 Can you tell me why you believe there is a
2 nexus for Claim 5?

3 A. Claim 5 describes a feed chamber for the
4 projectile device of Claim 1, and the benefits of having a
5 feed chamber allows you to have lots of ammo.

6 Q. And for Claims 8 and 9 of the '683 Patent, is
7 it your opinion that there is a nexus between the ability
8 to achieve more distance than the features recited in
9 Claims 8 and 9?

10 A. So as I say in my report, 137, the distance is
11 a result of the increased force acting on the SAP
12 ammunition, including as described in the common Maya
13 practice claims. For example, Claim 20, which depends on
14 19 of the '282 Patent, and Claim 9 which depends on 8 of
15 the '682 Patent.

16 Q. Thank you.

17 Was the industry praise of the Xploderz
18 product most generally due to the soft projectile
19 launching device that launches a plurality of spherical
20 hydrated super-absorbent polymer soft projectiles?

21 MR. DARBY: Objection to form.

22 A. The praise was due to a combination of the
23 as-claimed ammunition used in the as-claimed blaster.

24 BY MR. COMACK:

25 Q. I'm looking for a simple "yes" or a "no" to my

1 question.

2 Was the industry praise of the Xploderz
3 blaster most generally due to the soft projectile
4 launching device that launches a plurality of spherical
5 hydrated super-absorbent soft projectiles; yes or no?

6 MR. DARBY: Same objection.

7 A. It was due to -- the majority of the praise is
8 due to the claimed ammo in the projectile system as
9 claimed in these highlighted claims on page 76 of my
10 report.

11 BY MR. COMACK:

12 Q. Which highlighted claims are you referring to
13 by memory?

14 A. This is what I'm referring to as the common
15 Maya practice claims.

16 Q. What are the claim numbers?

17 A. Oh, yes. So in Appendix 1, the common Maya
18 practice claims I'm referring to are 8, 19, and 20 of the
19 '282, and Claims 5, 8, and 9 of the '683.

20 Q. So you disagree with my statement that the
21 industry praise of the Xploderz blaster was most generally
22 due to the soft projectile launching device that launches
23 a plurality of spherical hydrated super-absorbent soft
24 projectiles; correct?

25 A. My response is that it was a combination of

1 the as-claimed blaster with the as-claimed ammunition.

2 Q. But you're talking as set forth in Claims 5,
3 8, and 9 of the '683 Patent; correct?

4 A. And also 8, 19, and 20 of the '282 Patent.

5 Q. Thank you.

6 So was the industry praise of the Xploderz
7 blaster most generally due to soft projectile launching
8 device that uses air pressure to launch a plurality of
9 spherical hydrated super-absorbent polymer soft
10 projectiles?

11 A. I think in my report, I state many times that
12 it is a combination of the as-claimed ammunition in the
13 as-claimed blaster.

14 Q. But as set forth in Claims 5, 8, and 9 of the
15 '683 Patent and Claims 8, 19, and 20 of the '282 Patent;
16 correct?

17 (Reporter clarification.)

18 A. Those are the ones I'm describing in this
19 report.

20 MR. COMACK: I guess let's take a break.

21 (Whereupon, a recess was taken

22 from 10:46 a.m. to 10:53 a.m.)

23 BY MR. COMACK:

24 Q. So going back on the record, we just had a
25 technical difficulty with wifi here at your office, so I

1 think hopefully it's resolved now.

2 But, Dr. Kudrowitz, during the break, did you
3 talk to your counsel about the substance of your
4 testimony?

5 A. No.

6 Q. Okay. I have in front of me Patent Owner's
7 Response filed in the IPR for the '683 Patent, and I'm
8 reading from page 46 a statement that Patent Owner put in
9 their response.

10 "As discussed below, these advantages - more
11 distance and more ammo - are merits of practicing the
12 '683 Patent's Claim 5 (for more ammunition) and Claims 8
13 and 9 (for more distance)."

14 Do you agree with that statement?

15 A. Can I read that?

16 Q. She can read it back to you. Mine's all
17 marked up, I'm sorry.

18 (Whereupon, The record was read
19 by the reporter.)

20 A. I agree that those are merits of practicing
21 those claims.

22 BY MR. COMACK:

23 Q. Okay. Let's take a look at Claim 8 of the
24 '683 Patent, and I'll read it to you.

25 "The system of Claim 7 wherein the projectile

1 launcher further comprises an air compression chamber, a
2 piston disposed within and actually aligned with the air
3 compression chamber, and a spring up operatively arranged
4 to bias the piston toward a rest position from a cocked
5 position within the air compression chamber."

6 Do you see that?

7 A. I see that.

8 Q. And now, I'm going to just read Claim 9 to
9 you.

10 "The projectile system of Claim 8 wherein the
11 projectile launcher further comprises a smaller diameter
12 tube in communication with the air compression chamber,
13 and wherein a biasing force of the spring is sufficient to
14 cause the piston to move from the cocked position to the
15 rest position to force air from the air compression
16 chamber into the smaller diameter tube and cause a soft-
17 projectile locating at the firing position to accelerate
18 and be launched from the projectile launcher. From the feed
19 chamber to a firing position of the projectile launcher."

20 Do you see that?

21 A. I see that.

22 Q. Okay. Does the size of the air compression
23 chamber affect the distance that the ammo will travel?

24 A. I think it plays a role in distance.
25

1 Q. And how so?

2 A. If you have a larger chamber, you could move
3 more air.

4 Q. And moving more air would cause the ammunition
5 to travel farther; is that right?

6 A. It could.

7 Q. Okay. Does the biasing force of the spring
8 affect the distance that the ammo will travel when
9 launched?

10 A. Like the piston, it all plays a role in the
11 projecting process.

12 Q. So the spring working with the piston, the
13 piston plays a role in how far the ammo will travel.

14 Is that what you're saying?

15 A. I'm saying that it contributes to projecting
16 the projectiles a distance.

17 Q. Okay. And how does the piston and the spring
18 affect the distance that the projectile will travel when
19 launched from the claim launcher?

20 A. The spring stores energy and releases it.

21 Q. So if I wanted to have a projectile that
22 travels more distance, would that depend on the spring
23 that I'm using?

24 MR. DARBY: Objection to form.

25 A. It depends on all of the factors in here, not

1 just the spring.

2 BY MR. COMACK:

3 Q. But does the spring play a role in how far the
4 ammo will travel when launched from the launcher?

5 A. It plays a part in this system.

6 Q. How so?

7 A. It allows you to store energy, and then
8 release it.

9 Q. But is there only one type of spring strength
10 that exists for these launchers?

11 A. I think the Xploderz have a variety of springs
12 in them.

13 Q. And the spring that moves the piston to launch
14 the product, is there only one spring strength that was
15 used in the Xploderz?

16 A. I don't think they all have the same spring --
17 spring strength.

18 Q. So if I used a stronger spring in the Xploderz
19 than a weaker one, all things being equal, will the ammo
20 travel farther when I use the stronger spring?

21 A. Keeping everything equal?

22 Q. Uh-huh.

23 A. Even the user?

24 Q. Yeah.

25 A. And the degree to which it's pulled back?

1 Q. Uh-huh. Yes.

2 A. Maybe.

3 Q. You don't know?

4 A. Well, I mean, there could be other factors.

5 Q. But all the other factors are equal.

6 So in my example, all factors are equal, and
7 the only difference is that in the Xploderz, you're using
8 a stronger spring than a weaker one.

9 Will the ammo travel farther when you use the
10 stronger spring as compared to the weaker spring?

11 A. Well, in theory, you can transfer more energy
12 to the projectile, but it might also just affect how fast
13 the same amount of air hits the projectile. Does the rate
14 of hitting the projectile contribute to the distance, or
15 is it just the amount?

16 In this hypothetical, I would have to do some
17 tests.

18 Q. You don't know sitting here today?

19 A. It sounds reasonable, but I would want to test
20 it.

21 Q. Would a POSITA have known the answer to that
22 question as of 2010?

23 A. I think a POSITA would consider that that is
24 possible.

25 Q. Would the POSITA have had to do testing to

1 confirm that prior to 2010?

2 A. I think a POSITA would be obvious to test
3 that.

4 Q. Without doing those tests, the POSITA would
5 not have known whether a stronger spring would affect the
6 distance that a SAP projectile would travel?

7 A. I think it would be likely, but again, I think
8 a test would be worth doing.

9 (Reporter clarification.)

10 A. Would be worth doing.

11 BY MR. COMACK:

12 Q. Is there any disclosure in the Hasbro patents
13 regarding what the strength of the springs used with the
14 piston is?

15 A. Are you asking in the spec, is there any
16 disclosure of the specific spring strength?

17 Q. Yeah.

18 A. I don't believe there's a specific spring
19 strength in the spec.

20 Q. Is there any disclosure in the Hasbro patents
21 as to how to make the SAP ammo travel farther?

22 A. The patents discuss how the mechanism
23 disclosed in the claims allows ammunition to travel
24 farther.

25 Q. Where? My question is, where in the Hasbro

1 patents is that discussed?

2 Okay. And you're looking at your report, I
3 see. And just to be clear, I'm asking about what's in the
4 patent. If it helps, we could do some word searching
5 because we have an electronic copy if you want us to
6 search for any words in the patent, Dr. Kudrowitz. Just
7 let us know if you'd like that and give us the words, we'd
8 be glad to do it.

9 A. So as I note in my report, "The
10 super-absorbent polymer projectile launching toys and/or
11 weaponry described herein may increase the user experience
12 as compared to foam-based projectile toys, yet they remain
13 safe for children to use." And that's on page 79 of my
14 report.

15 Q. But you aren't able to find any disclosure in
16 the patent that discuss the distance that the ammo will
17 travel when launched from the claimed launchers; is that
18 correct?

19 A. There's no specific mention of distance
20 traveled, but they are talking about the experience of
21 projectiles in this context.

22 Q. Do any of the claims of the Hasbro patents
23 specify the distance that the ammo must travel?

24 A. There's no specification of distance, but the
25 benefits of practicing these claims are what lead to

1 distance.

2 Q. Is there any description in the Hasbro patents
3 comparing the distance the ammo launched by the claim
4 launcher versus the distance of the ammo launched by any
5 other launcher?

6 A. Can you say that again?

7 MR. GEORGE: Maybe the reporter can read
8 it back. Thank you so much.

9 (Whereupon, The record was read
10 by the reporter.)

11 A. So again, on the same page, I talk about how
12 the as-claimed blaster with the as-claimed ammo has
13 increased user experience over foam projectile toys, and
14 specifically how it allows them to be projected with
15 reasonable force and velocity without breaking apart,
16 which has advantages over the other projectiles on the
17 market.

18 BY MR. COMACK:

19 Q. All right. Let's take a look at Column 1 --
20 let's go to the '683 Patent.

21 Do you have that in front of you?

22 A. Yes.

23 Q. And I'm going to read to you from Column 1
24 starting at line 49 through 67 when you're ready.

25 "Although NERF and other foam like materials

1 can be used to make toy weaponry projectiles that are
2 relatively safe to project or launch, the properties of
3 NERF and other foam like materials have some significant
4 drawbacks when used as projectiles for projectile
5 launching toys. Because foam-based materials such as NERF
6 foam are light, they are highly susceptible to air forces
7 when trying to project them through the air in free flight
8 as occurs when fired from toy weaponry. The soft, light
9 properties of foam and NERF type products are due to their
10 low density. The low density of foam-based projectiles
11 decreases the momentum of the projectiles, which in turn
12 increases the effect of air resistance, drag, and other
13 motion retarding forces. This causes foam-based
14 projectiles to rapidly slow after initial firing and
15 easily curve off line."

16 Do you see that?

17 A. Yes.

18 Q. Okay. In your opinion, is one of the benefits
19 of the claimed invention in the '683 Patent the ability to
20 shoot further than NERF launchers?

21 A. Can you repeat what you said?

22 (Whereupon, The record was read
23 by the reporter.)

24 A. One of the benefits of practicing the claim is
25 to have projectile launchers that are toys that can shoot

1 further than foam launchers.

2 BY MR. COMACK:

3 Q. So is it your opinion that the claims require
4 that the SAP projectiles travel a greater distance than
5 foam projectile launchers when launched?

6 MR. DARBY: Objection to form.

7 A. One of the benefits of practicing the claims
8 is that you can shoot projectiles in toy products farther
9 than foam shooting products, blasters.

10 BY MR. COMACK:

11 Q. So is that benefit a requirement of any claim
12 of the Hasbro patents?

13 A. It is an advantage or benefit of practicing
14 the claim.

15 Q. But it's not a requirement of those claims;
16 correct?

17 A. I think in the grand -- the wide view of this,
18 the Xploderz are practicing those claims and achieve great
19 distance, which is what is being praised, and that praise
20 is a benefit of practicing those claims.

21 Q. Okay. But I'm asking you, is that benefit
22 that you keep reciting a requirement of any claim of the
23 Hasbro patents?

24 A. In a -- so I think in the context of this
25 report, I'm not talking about a hypothetical product that

1 doesn't have distance and shoot farther than NERF. I'm
2 talking about the Xploderz, which did shoot farther than
3 NERF.

4 Q. I'm not asking about the Xploderz. I'm asking
5 you about the claims of the Hasbro patents.

6 Is it a requirement that any product that
7 practices that patent have the benefits of shooting
8 greater distance than foam-based projectile launchers as
9 you've been talking about? Is that a requirement of any
10 claim?

11 A. One could follow the claim and not shoot
12 further than a NERF gun, but in this case, the Xploderz
13 follow the claim and did shoot further than a NERF gun.

14 Q. But it's not a claim requirement to shoot
15 further than a NERF gun; correct?

16 A. It is a benefit of practicing the claim that
17 you can --

18 Q. I understand you keep telling me it's a
19 benefit. I'm just looking for a simple yes-or-no answer
20 to my question; is that benefit that you've been
21 discussing required by any claim of the Hasbro patents?

22 MR. DARBY: Counsel, if you could,
23 please let the witness finish his answers.

24 A. The claim does not state that one must shoot
25 further than NERF.

1 BY MR. COMACK:

2 Q. So it's not required?

3 A. That's not how I would characterize that.

4 Q. So then it is required?

5 A. Well, how I'm characterizing it is that a
6 benefit of the claim is that you can shoot further than
7 foam.

8 Q. Okay. I understand that. But I'm trying to
9 understand what these claims cover and what they don't.

10 So, for example, in the ITC you tested
11 Prime Time Toys' accused products for infringement;
12 right?

13 A. I did.

14 Q. And when you tested the Prime Time Toys
15 products for infringement, did you determine whether --
16 did you do a test to show that the Prime Time Toys
17 products shot further than a foam-based projectile
18 launcher?

19 MR. DARBY: Objection; out of scope.

20 A. The -- I compared the products to the claim
21 language, not compared the products to NERF guns.

22 BY MR. COMACK:

23 Q. And you didn't do that because how far a NERF
24 launcher launches in comparison to any claim of the Hasbro
25 patents is not a required claim requirement; correct? You

1 know what? I withdraw it.

2 Staying on the '863 Patent [sic], please turn
3 to Column 8 -- I'm sorry, the '683 Patent, please turn to
4 Column 8. I'm going to read starting at line 62 and
5 continue to Column 9, line 6.

6 "The dehydrated soft-projectile 16 may be sold
7 in a kit designed to refill a magazine 50. In one
8 embodiment, the kit comprises a pre-counted number of
9 dehydrated rounds designed to fill up a particular
10 magazine when hydrated. A magazine 50 preferably holds
11 between 150 and 250 rounds and more preferably holds about
12 200 soft-projectiles 16."

13 Continuing to Column 9, "However, the magazine
14 50 and the kit at that fills the magazine 50, can hold any
15 number of soft-projectiles. For example, larger clips of
16 approximately 500 to 1,000 rounds may be used for machine
17 guns, Gatling guns or other rapid fire projection devices
18 10. In contrast, magazine or clips of 6 to 20 rounds may
19 be used for single shot toys or weaponry."

20 Do you see that?

21 A. I do.

22 Q. Okay. So do you see in Column 8 where it says
23 that a magazine preferably holds 150 -- between 150 and
24 250 rounds and more preferably 200 rounds?

25 A. Yes.

1 Q. Okay. Is this an example of the magazine's
2 ability to hold more ammo that resulted in the commercial
3 success and praise of the Xploderz product?

4 A. Well, I think the Xploderz are an example of
5 being able to hold more ammo.

6 Q. How much ammo did the Xploderz hold?

7 A. They had different amounts, depending on which
8 model.

9 Q. Can you recall any?

10 A. If you go to page 56 of my report, I believe
11 that the numbers are sometimes how many ammo they have, so
12 it might be 200 in the XBlaster. 450 --

13 (Reporter clarification.)

14 A. I'm sorry, 200 in the XBlaster.

15 BY MR. COMACK:

16 Q. So the model number that has 200, you believe
17 that that indicates how much ammo the blaster holds?

18 A. I don't know if that's for every case, but I
19 know in some cases, like if you read the Footnote, the
20 XBlaster 450 was the same as the XBlaster 200, but with
21 250 more rounds of ammunition.

22 Q. How do you know -- oh, I'm sorry, were you
23 finished?

24 A. I could finish the line and that the
25 XBlaster 700 was just an XBlaster 200 with 500 additional

1 rounds of ammunition.

2 Q. But how do you know that doesn't mean that the
3 product was sold with that many rounds as opposed to
4 holding that many rounds?

5 A. The way I interpret this statement is that
6 with 250 more rounds means it had 250 more rounds.

7 I'm sorry, is that not your question?

8 Q. No. Were those rounds held in the magazine or
9 sold in a packet? I'll point you to page 59 of your
10 declaration, paragraph 103.

11 Do you see there's an image of the
12 XBlaster 200?

13 A. Yes.

14 Q. Okay. And do you see sort of towards the
15 bottom of the packaging where it says XBlaster 200 in
16 orange?

17 A. Yes.

18 Q. And right there it says, "Includes 200
19 Xploderz Ammo," in white text right below that.

20 A. Yes.

21 Q. Okay. If you look just above the orange text
22 that I just read to you, do you see a packet that says
23 Xploderz?

24 A. Yes.

25 Q. Isn't this just indicating that that packet

1 has 200 rounds?

2 A. That's what that appears.

3 Q. Right. And this doesn't say that the blaster
4 holds 200 rounds; correct?

5 A. The package does not say it holds 200 rounds.

6 Q. So going back to Column 8 where we were
7 reading from, is the magazine's ability to hold between
8 150 and 250 rounds of ammo an example of the ability for
9 the blaster to hold more ammo that resulted in the
10 commercial success and praise of the Xploderz product?

11 A. The ability to hold more ammo is what is
12 praised in the industry praise, and that is reflected in
13 the Xploderz products, and it's also a benefit of
14 practicing these claims.

15 Q. And is it the magazine in the Xploderz product
16 that holds more ammo?

17 A. So in Claim 5 it says the system of Claim 1
18 for projectile launcher includes a feed chamber, and the
19 feed chamber is what is holding -- allowing for holding
20 more ammo.

21 Q. Okay. So your position is that it's the feed
22 chamber in the Xploderz product that held the ammo; is
23 that your position?

24 A. Are you asking if a feed chamber is what holds
25 ammo?

1 Q. No, I'm asking --

2 MR. COMACK: Can you just read my
3 question back, please?

4 (Whereupon, The record was read
5 by the reporter.)

6 A. Well, the feed chamber allows for loading the
7 ammo.

8 BY MR. COMACK:

9 Q. What do you mean by that?

10 A. It is what allows the ammo to go into the
11 projectile launcher system.

12 Q. Got it. All right.

13 Take a look at Claims 1 to 15 of the
14 '683 Patent.

15 Do any of these claims specify the number of
16 ammo rounds that are held by the launcher?

17 A. I'm sorry, which -- what am I looking at?

18 Q. '683 Patent, Claims 1 to 15, in other words
19 all of the claims.

20 Is there any claim that requires the number of
21 ammo rounds held by the claim launcher?

22 A. Well, there's no specific number listed for
23 ammo rounds, but when one practices the claims, it allows
24 one to have many rounds of ammo.

25 Q. How many? You know, I'll withdraw it.

1 What about Claims 1 to 20 of the '282 Patent;
2 do any of those claims specify the number of ammo rounds
3 that are held by the launcher?

4 A. Again, the claims don't specify a number of
5 ammo rounds, but they allow for many rounds of ammo with
6 the system as-claimed and the ammunition as-claimed.

7 Q. All right. Let's look at Figure 3 of the
8 '683 Patent, and it's the same figure.

9 Are you there?

10 A. Oh, no.

11 Q. Figure 3. And the Hasbro patents all have
12 this same drawing; correct?

13 A. Yes.

14 Q. Okay. Does Figure 3 show a magazine?

15 A. This is -- the patent says, "As shown in
16 Figure 3, the magazine 50." So that shows a magazine.

17 Q. I got it. Okay.

18 Where were you reading from, just for the
19 record?

20 A. This is Column 8, line 36.

21 Q. Thank you.

22 Now, if you can jump to Claim 6 of the
23 '683 Patent.

24 It says, "The system Claim 5, wherein the feed
25 chamber is provided within a magazine."

1 Do you see that?

2 A. I see that.

3 Q. And just to be complete, if we now jump to
4 Claim 11 of the '282 Patent. I'll read it.

5 It says, "The projectile launcher of Claim 8,
6 wherein the feed chamber is provided within the magazine."

7 Do you see that?

8 A. Yes.

9 Q. So both Claims 6 and 11 that we just read
10 state that the feed chamber is provided within a magazine;
11 correct?

12 A. That's what it says.

13 Q. All right. So let's go back to Figure 3 now.

14 A. Okay.

15 Q. Does Figure 3 show the feed chamber?

16 A. Okay. Can you ask the question again?

17 MR. COMACK: Please read it back.

18 (Whereupon, The record was read
19 by the reporter.)

20 A. Yes.

21 BY MR. COMACK:

22 Q. Where in Figure 3 is the feed chamber?

23 A. The magazine is a form of a feed chamber.

24 Q. Okay. Let's go back to Claim 6 of the
25 '683 Patent. It says that, "The feed chamber is provided

1 within the magazine."

2 Do you see that?

3 A. Yes.

4 Q. So where within the magazine is that feed
5 chamber in Figure 3?

6 A. Figure 3 shows a magazine, which has a hollow
7 chamber in which the ammo is stored, and then it has
8 tapered lines going to an exit which allows for feeding
9 into the projectile device.

10 Q. So the feed chamber is indicated by reference
11 number 52; correct?

12 A. No, it's just -- I believe 52 is just an
13 opening. 52 is a first opening designed to mate with the
14 projection device.

15 Q. Is that part of the feed chamber?

16 A. Is the mating part part of the feed chamber?

17 Q. The narrowed tapered lines 52, are they part
18 of the feed chamber?

19 A. 52 is not pointing to the narrow tapering.

20 Q. Is the opening 52 part of the feed chamber?

21 A. 52, I mean, it needs an opening to feed, but
22 the chamber itself is within the magazine.

23 Q. Do you know whether the opening 52 is part of
24 the feed chamber or not?

25 A. 52, again, is listed as a -- let me see

1 here -- an opening that mates with the projection device.

2 Q. And is the opening 52 the part of the launcher
3 that's for loading the soft projectiles within the
4 launcher?

5 A. Well, 52 on its own is not a chamber. It is
6 an opening to a chamber or from a chamber.

7 Q. And is that a part that's for loading the soft
8 projectiles within the projectile launcher?

9 A. The opening allows for the soft projectiles to
10 go into the projectile launcher.

11 (Discussion off the record.)

12 (Whereupon, a recess was taken
13 from 11:40 a.m. to 11:54 a.m.)

14 BY MR. COMACK:

15 Q. Dr. Kudrowitz, during the break, did you speak
16 with your counsel regarding the substance of your
17 testimony?

18 A. No.

19 Q. Okay. Let's go to paragraph 145 of your
20 declaration. Okay. I see you're there, so I'm going to
21 read you what it says.

22 "I also understand that if the commercial
23 success is due to something already known, then
24 nonobviousness is not shown. For example, if the
25 commercial success is due to an unclaimed feature of the

1 patent-practicing device or if what creates the commercial
2 success was known in the prior art, the success is not
3 pertinent."

4 Do you see that?

5 A. Yes.

6 Q. So is it your understanding that if the
7 commercial success is due to an unclaimed feature or a
8 feature that was known in the prior art, then the
9 commercial success is not pertinent to the question of
10 obviousness?

11 A. I believe that's what I say here.

12 Q. Okay. So there cannot be a nexus to the
13 commercial success if the feature responsible for the
14 commercial success is unclaimed or is in the prior art;
15 correct?

16 A. If the commercial success is due to a specific
17 unclaimed feature, that is true, but that's not what I'm
18 arguing in my report.

19 Q. I'm just asking you about what your
20 understanding of the law that you applied per paragraph
21 145. So I think you said it's your understanding, so
22 we're good. Okay.

23 Let's look at paragraph 219 of your
24 declaration, and this starts on page 125, if that helps.

25 A. Okay.

1 Q. I'm just going to read you a few sentences in
2 that paragraph starting at the top.

3 "The 'toy' color scheme distinguishes the
4 blaster products as a toy and not a real weapon. The gun
5 shape and 'toy' color scheme were ubiquitous in the
6 2010-2012 time frame and did not distinguish the Xploderz
7 product from competitor's products. Like Xploderz, most
8 competitor blaster products had a weapon-like form factor
9 paired with the bright colors that signified them as a
10 toy. In my opinion, these features did not differentiate
11 Xploderz over competitor products that were not the
12 drivers of commercial success, especially in the saturated
13 market."

14 Do you see that?

15 A. Yes.

16 Q. Okay. So do any of the claims of the Hasbro
17 patent specify a color scheme?

18 A. I don't recall any color schemes specified in
19 the Hasbro patents.

20 Q. Neither do I. And so color scheme is an
21 unclaimed features because none of the claims of the
22 '683 Patent and '282 Patents mention a specific
23 color scheme that the launcher should be; is that right?

24 A. I would agree that the color scheme is
25 unclaimed.

1 Q. Okay. So in forming your opinions, how did
2 you determine what is an unclaimed feature for purposes of
3 your nexus analysis for the claims of the '683 and
4 '282 Patents?

5 A. I looked at what was claimed and mapped those
6 to the Xploderz products and considered other things, but
7 given that the colors, for example, were similar to NERF
8 products, that was not a driving feature that I believe
9 led to the success, and it was the as-claimed ammo in the
10 as-claimed blaster.

11 Q. What do you mean by "as-claimed ammo"?

12 A. The ammunition described in the claims of
13 these patents.

14 Q. Which claims?

15 A. So ammunition first appears in Claim 1 of the
16 '282 and the '683, and that continues to 8 and 5, which
17 continues to 7, which continues to 8 and 19 and onward to
18 20 --

19 (Reporter clarification.)

20 A. 20 and 9 with the '282 and the '683,
21 respectively.

22 BY MR. COMACK:

23 Q. Let's go to paragraph 155 of your declaration.

24 A. Okay.

25 Q. Okay. I'm going to read you the second

1 sentence in paragraph 155.

2 "I understand from the ITC investigation
3 deposition transcript of John Tomulonis, the Senior
4 Director of Global Brand Strategy and Marketing for NERF,

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Do you see that?

9 A. Yes.

10 Q. Okay. Now, take a look at paragraph 173 of
11 your declaration.

12 A. Okay.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Is that correct?

18 A. Yes. That's correct.

19 Q. And you have a similar statement in
20 paragraph 175, so if you could turn there, of your
21 declaration.

22 A. The same page.

23 Q. Okay, good.

24 [REDACTED]

25 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

A. Yes.

Q. Do you have any experience calculating a company's market share for a product category?

A. I do -- well, I do market share calculations in my class to show them how to talk about their new ideas.

Q. Have you ever calculated the market share for a company based on their sales data in your practice, your experience?

A. Well, we use examples from online where you can pull market share data.

Q. Which examples?

A. Just you search up -- if we're doing something for like a coffee chain industry or something, we'll show the students how to look at the market share.

Q. And do you show them how to calculate the market share based on the data you pull?

A. Generally.

Q. Okay. And can you point to any peer-reviewed literature that supports your methodologies used to calculate the Maya Group's market share that you provided in paragraph 173 and 175 of your declaration?

A. I don't believe I'm referring to any methods

1 or techniques.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A. Can you repeat that back?

7 MR. COMACK: Could you, please. Thank
8 you.

9 (Whereupon, The record was read
10 by the reporter.)

11 A. That's the numbers I used to make these
12 calculations.

13 BY MR. COMACK:

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. That is correct.

18 Q. Who is Mr. Tomulonis?

19 A. He's the -- from my report it says he's the
20 senior director of global brand strategy and marketing for
21 NERF, has -- yeah.

22 Q. Did you talk to Mr. Tomulonis about Hasbro's
23 market share in the blaster market?

24 A. No.

25 Q. Could you have?

1 MR. DARBY: Objection; form.

2 A. I don't know if I could have.

3 BY MR. COMACK:

4 Q. Did you ask to?

5 A. I did not ask to.

6 Q. Did you review any market research reports to
7 reach your conclusion on what Hasbro's market share was in
8 the blaster market in 2011 and 2012?

9 A. I'm sorry, I need to hear that again, please.

10 MR. COMACK: Can you please read --
11 thank you.

12 (Whereupon, The record was read
13 by the reporter.)

14 A. No, I was relying on testimony.

15 BY MR. COMACK:

16 Q. Do you know if Mr. Tomulonis looked at any
17 market research reports in estimating Hasbro's market
18 share in the blaster market for 2011 and 2012?

19 A. I would expect he would, but I am not one to
20 confirm what he did.

21 Q. Why would you expect that he would?

22 A. He is the senior director of global brand
23 strategy and marketing for NERF.

24 [REDACTED]

25 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

A. If you showed me the timeline -- the time of the report, I would agree with you.

Q. You didn't provide a report -- you've cited his deposition testimony, and you've only cited -- it's Exhibit 1070 pages 126 to 60 through 20. I'd be happy to read it to you if you'd like to hear it, but it's four lines of text that you cited -- five lines.

A. Yeah, as someone in that role, I would expect that they would have an understanding of the data.

[REDACTED]

[REDACTED]

[REDACTED]

A. I'm just going on what the testimony said.

Q. Got you. Okay.

[REDACTED]

[REDACTED]

[REDACTED]

A. Are you asking what category of blasters are included in the blaster market?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

[REDACTED]

Q. But I'm asking you -- you define a category called the blaster market in doing your market share calculations; correct?

A. That is what we're calling this Hasbro's blaster market.

Q. So the market was just Hasbro's products?

A. No -- well, there was more blasters on the market than --

Q. Right.

A. -- Hasbro's products.

[REDACTED]

[REDACTED]

[REDACTED]

A. Are you asking for specific types of blasters that were in the market?

Q. That you would include or that were included in that blaster market that you've defined?

A. I don't know if I have that detail broken out in my report.

Q. Besides Hasbro, what company sold products that fall within the blaster market in 2011?

A. Can you repeat the question?

1 (Whereupon, The record was read
2 by the reporter.)

3 A. I don't recall all of the other blasters on
4 the market back then.

5 BY MR. COMACK:

6 Q. Do you recall the companies that were included
7 in that blaster market for your market share data?

8 A. There were other blasters. I don't know what
9 they were called.

10 Q. And same for 2011; you don't recall what other
11 companies sold blasters that were -- I'm sorry, let me
12 withdraw that.

13 Same for 2012, you don't recall what other
14 companies sold blasters in the blaster market that you
15 have defined for your market share calculations; is that
16 right?

17 A. I don't want to say the wrong things right
18 now. I don't recall offhand what the other blasters were
19 at the time, besides NERF.

20 Q. And because you didn't look at any other
21 companies who were part of that blaster market, you don't
22 know what their market share was for 2011 or 2012;
23 correct?

24 [REDACTED]

25 [REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

A. If his numbers are wrong, then the calculations would change, but I was aware that NERF was the largest blaster component in the market.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. Again, I'm going on the numbers I have, but if the numbers change, then my numbers change.

[REDACTED]

[REDACTED]

[REDACTED]

MR. DARBY: Objection to form.

A. I'm going off his range being generally correct.

BY MR. COMACK:

[REDACTED]

[REDACTED]

[REDACTED]

MR. DARBY: Objection; asked and answered.

[REDACTED]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[REDACTED]

[REDACTED]

MR. COMACK: Okay. Give me one moment,
please.

(Discussion off the record.)

BY MR. COMACK:

Q. Okay. Do you agree that if a SAP
projectile -- I'm sorry, let's go to the '683 Patent,
Exhibit 1001, and that's turn to Column 3. I'm going to
read from line 54 to Column 4, line 5.

A. I'm sorry, which column?

Q. Column 3.

A. 3.

Q. Line 54, and I'm just going to read from
there, and I'm going to stop when I get to Column 4, line
5 or around there. Okay.

"The present patent document discloses and
teaches projectile launching devices, such as toys,
amateur guns and weaponry that use projectiles formed from
a super-absorbent polymer (SAP). As a result, the
projectiles launched by the devices of the present patent
documents are soft-projectiles. Further, once hydrated,
the unique properties that SAP's exhibit give the
soft-projectile several advantages over current projectile
materials such as paint balls, plastics, and foams. For

1 example, SAP projectiles can maintain -- for example,
2 hydrated SAP projectiles can maintain their shape under
3 modest pressure. The ability of SAP projectiles to
4 maintain their shape allows them to be projected with a
5 reasonable force and velocity without breaking apart.
6 However, under excessive pressure, hydrated SAP
7 projectiles will break down and lose their shape. Because
8 SAP projectiles break down under excessive pressure, the
9 force at impact is spread over a much wider surface area,
10 thus reducing the likelihood of injury."

11 So do you agree that if a SAP projectile
12 breaks down on impact, then the force at impact is spread
13 over a much wider surface area, and this reduces the
14 likelihood of injury?

15 A. That seems true.

16 Q. Okay. And now I'm going to -- the same column
17 passage we were reading from starting at line 67 of
18 Column 3, I'm just going to reread that last sentence.

19 "Because SAP projectiles break down under
20 excessive pressure, the force at impact is spread over a
21 much wider surface area, thus reducing the likelihood of
22 injury."

23 Is that statement true for a spherical SAP
24 projectile with a diameter between 5 millimeters and
25 8 millimeters? I'll withdraw the question.

1 Take a look at Column 4, line 34.

2 A. Uh-huh.

3 Q. Okay. I'm going to read to you.

4 "Soft-projectiles made from SAP can be any
5 size. Preferably, however, the soft-projects made from a
6 SAP are between 3 millimeters and about 15 millimeters in
7 diameter when hydrated and more preferably between 5
8 millimeters and 8 millimeters in diameter when hydrated."

9 Do you see that?

10 A. Yes.

11 Q. And then if we go to line 41, it says, "Larger
12 soft-projectiles made from a SAP are possible. For
13 example, rounds having a diameter of 30 millimeters have
14 been created."

15 Do you see that?

16 A. Yes.

17 Q. Okay. So is it true that a spherical SAP
18 projectile with a diameter between 5 and 8 millimeters
19 will break down under excessive pressure and that the
20 force at impact will be spread over a much wider surface
21 area, thus reducing the likelihood of injury?

22 MR. DARBY: Objection to form.

23 A. It depends.

24 BY MR. COMACK:

25 Q. On what?

1 A. Is it hydrated?

2 Q. Yes.

3 A. And if it's hydrated to the point that it's
4 softer than it is when it's not hydrated, it will spread
5 out the impact. Whether or not it reduces injury is --
6 depends on things -- other things.

7 Q. Such as?

8 A. It might not produce injury if it's not going
9 fast, neither will produce injury.

10 Q. What do you mean by "fast"?

11 A. If it's not -- if the kinetic energy of the
12 object is -- exits the muzzle at low velocity there might
13 not be injury when it's unhydrated or hydrated.

14 Q. Was it known prior to 2010 that if a
15 projectile hits a target and the force at impact is spread
16 over a wide surface area, the likelihood of injury would
17 be reduced?

18 MR. DARBY: Objection to form.

19 A. That is a way of reducing the impact or the
20 effects of the impact, but again, in certain cases there
21 might not be injury in any case, or there might be injury
22 regardless.

23 BY MR. COMACK:

24 Q. All right. Let's go to paragraph 54 of your
25 declaration.

1 MR. COMACK: You know what? I'm about
2 to go to another -- let's stop here for lunch if that's
3 okay with you guys.

4 (Whereupon, a recess was taken
5 from 12:28 p.m. to 1:04 p.m.)

6 BY MR. COMACK:

7 Q. We just got back from a lunch break, so I'll
8 ask my usual question.

9 During the break, did you speak to your
10 counsel about the substance of your testimony?

11 A. No.

12 Q. Of course. Okay.

13 Let's turn to paragraph 54 of your
14 declaration, and that I believe is page 31, maybe. Yes,
15 page 31. So I'm going to read to you paragraph 54.

16 "That heavier and softer ammunition like
17 potatoes or paintballs can pose more injury risk than
18 smaller and harder Airsoft rounds as explained by basic
19 principles of physics. It was well-known at the time of
20 the Challenged Patents that the kinetic energy possessed
21 by a projectile plays a prominent role in its capacity to
22 injury someone. When a projectile impacts human tissue,
23 there's a transfer of energy between the projectile and
24 the tissue. Kinetic energy from the projectile transfers
25 to the tissue, causing a physical disruption. If the

1 extent of the tissue disruption is sufficient, the impact
2 causes an injury."

3 Do you see that?

4 A. Yes.

5 Q. Okay. Now, in paragraph 54, you stated that,
6 "When a projectile impacts human tissue, there is a
7 transfer of energy between the projectile and the tissue.
8 Kinetic energy from the projectile tissues -- from the
9 projectile transfers to the tissue, causing a physical
10 disruption."

11 So my question is, does all of the kinetic
12 energy of the projectile transfer from the projectile to
13 the tissue?

14 A. Well, some of it may be lost in air friction
15 if it's not directly impacting the tissue, some of it may
16 go into distorting the projectile itself.

17 Q. Is that it?

18 A. Some could produce sound by moving air.

19 Q. Anything else?

20 A. There might be.

21 Q. Okay. When you refer to some of it -- I think
22 you said -- could be lost due to distorting the
23 projectile, what did you mean by that?

24 A. It's like if the projectile deforms, then some
25 of the energy is going into deforming the projectile.

1 Q. So that -- some of the energy, due to the
2 deformation, will not transfer to the object that it's
3 impacting; is that right?

4 A. Some of -- yeah, it's not a one -- I guess
5 it's not a fully one-to-one always, but generally, I think
6 in the scale of what we're talking about, you know, most
7 of the energy is going to transfer to the -- whatever it's
8 hit.

9 Q. All right. Let's look at paragraph 42 of your
10 declaration.

11 In paragraph 42, you say, "Mr. Delman has
12 taken the position that 'prior to 2010, Spitballs were
13 softer projectiles...that could be used in place of the
14 hard spherical plastic ammunition of Peev to address the
15 injury problem' with Airsoft guns."

16 Do you see that?

17 A. I see that.

18 Q. And then for the citations, you cite to
19 Mr. Delman's three declarations that he submitted in this
20 IPR.

21 Do you see that?

22 A. Yes.

23 Q. Okay. Now, in paragraph 42, you say you're
24 quoting from paragraph 84 of Mr. Delman's declaration in
25 '683 IPR. I think that's a mistake. I think you meant to

1 cite paragraph 85, and I could show it to you just so we
2 could set the record straight. So if you bear with me for
3 a minute, I'm going to grab that. And actually, I mean, I
4 could -- I could just read it to you, I think. But if
5 you'd like a copy, I'd be glad to give it to you.

6 MR. GEORGE: Let him see it.

7 MR. COMACK: Yeah, sure. Sorry about
8 that.

9 THE WITNESS: That's all right.

10 BY MR. COMACK:

11 Q. Okay. So if we go to paragraph 85 -- well,
12 first go to paragraph 84 of Mr. Delman's declaration, you
13 compare it to the quote in paragraph 42 of your
14 declaration that starts, "Prior to 2010, Spitballs were
15 softer." I don't think you'll find that in paragraph 84.

16 Do you see that? Cut to the chase, if you go
17 down to paragraph 85, I think that's where the quote is.

18 A. Yep. That's correct.

19 Q. Okay. So we can correct your declaration as
20 referring to paragraph 85 of Mr. Delman's declaration from
21 the IPR for the '683 Patent; correct?

22 A. I think so. I just want to look at 77, also.

23 Q. So 77's from a different IPR.

24 A. Oh, I see.

25 Q. Basically, you have this one quote from the

1 three declarations, and you think you intended to cite the
2 paragraph that refers to this quote in all three IPRs.

3 A. That's fine.

4 Q. Okay. So now with that correction, if we go
5 back to paragraph 42 of your declaration, when you quote
6 Mr. Delman, you say, "Prior to 2010, Spitballs were softer
7 projectiles..." then you have an ellipsis, those three
8 dots.

9 Do you see that?

10 A. I see that.

11 Q. Okay. And you use those ellipsis in paragraph
12 42 to omit part of what Mr. -- I'm sorry, to omit part of
13 what Mr. Delman was saying; correct?

14 A. That is correct.

15 Q. And so if you hold -- if you put paragraph 42
16 and you put Mr. Delman's paragraph 85 next to each other,
17 I want to fill in what's missing from those ellipses. So
18 can you do that, have both side-by-side?

19 A. Sure.

20 Q. Okay. So if I look at what you wrote it says,
21 "Prior to 2010, Spitballs were softer projectiles" and
22 that's if paragraph 42, and if we continue in paragraph 85
23 of Mr. Delman's report, right after where you place that
24 ellipses, it says, "(Will bounce and/or explode into mushy
25 parts on impact)."

1 Do you see that?

2 A. Uh-hum. Yes.

3 Q. And that's the part that you omitted, the
4 language I just read from Mr. Delman's declaration; right?

5 A. That is the part that's removed with the
6 ellipses.

7 Q. Okay. Did you consider the removed language
8 from Mr. Delman's report in forming your opinions?

9 A. The removed language is one of the exhibits
10 and so that was considered.

11 Q. Okay. Isn't it true that a projectile that
12 will bounce and/or explode into mushy parts on impact
13 affects how much kinetic energy from the projectile
14 transfers to the tissue?

15 MR. DARBY: Objection to form.

16 A. If we're doing a certain projectile and it
17 deforms or explodes, then some of the kinetic energy is
18 going into that.

19 BY MR. COMACK:

20 Q. Okay. Let's turn to paragraph 62 of your
21 declaration. I'm going to read that to you.

22 "In sum, my testimony quoted above does not
23 translate to the polymer balls that Spitballs teaches in
24 the manner Petitioner appears to suggest. After all,
25 Spitballs are not the equivalent of Airsoft ammunition,

1 only softer. As I have explained, Spitballs are massive
2 compared to lightweight Airsoft ammunition, and Spitballs
3 will have a higher muzzle energy as a result. With a
4 15.24 mm (0.6 inch) diameter and mass of 1.84 g, Spitballs
5 more closely resemble 55 caliber paintballs, (14 mm,
6 1.75 g) than Airsoft ammunition (see below). And, again,
7 paintballs were known to have more injury capacity than
8 Airsoft rounds."

9 When you calculated the kinetic energy for
10 spitballs, your calculations were based on a size of 15.24
11 millimeters; correct?

12 A. Correct.

13 Q. Do you understand that the Peev reference
14 teaches Airsoft ammunition is 6 millimeters?

15 (Reporter clarification.)

16 BY MR. COMACK:

17 Q. 6 millimeters.

18 A. It's my understanding that Peev teaches
19 standard Airsoft ammo.

20 Q. And that's 6 millimeters; correct?

21 A. Which is 6 millimeters.

22 Q. Okay. So if a 15.24 millimeter spitballs --
23 I'm sorry, let me withdraw that.

24 So a 15.24 millimeters spitballs will not fit
25 into the Peev's Airsoft gun; correct?

1 A. If we are assuming using a standard 6
2 millimeter round Airsoft, no.

3 Q. It will not fit; correct?

4 A. If you are going to assume Peev is using a 6
5 millimeter size ammunition.

6 Q. Then the 15.24 millimeter spitballs would not
7 fit into Peev's Airsoft gun based on that assumption;
8 correct?

9 A. In the standard -- in the current
10 interpretation that Peev represents, standard Airsoft
11 guns.

12 Q. I just want to be clear because I don't think
13 you're fully answering. I think I know what you're
14 saying, but I want to make sure that I have it right.

15 Based on what you just said for standard
16 Airsoft guns that use 6 millimeter diameter ammunition, a
17 15.24 millimeter spitball will not fit into that standard
18 Airsoft gun of Peev; correct?

19 A. I mean, there's multiple teachings in Peev,
20 and if we are using a standard Airsoft round and the
21 teachings of Peev, then a 15 millimeter spitball or
22 anything would not fit into a standard Airsoft device.

23 Q. Thank you.

24 Now, in your declaration, you did not do
25 kinetic energy calculations for a 6 millimeter spitball;

1 correct?

2 MR. DARBY: Objection to form.

3 A. The data I have from Dr. Reitman and
4 Mr. Delman is only at the full size of spitballs.

5 BY MR. COMACK:

6 Q. So you did not do a kinetic energy calculation
7 for 6 millimeter spitball; correct?

8 A. This is the data that was presented in this
9 case for spitballs, and so --

10 Q. I'm not sure you're right about that.
11 But my question is, irrespective of what date
12 was presented or not, you did not do kinetic energy
13 calculations for a 6 millimeter spitball; correct?

14 A. Yeah, I don't -- I mean, if you take it back,
15 a person -- I guess why would a person of ordinary skill
16 in the art in the first place want to put that into a
17 standard Airsoft gun.

18 Q. Well, you understand that Mr. Delman says a
19 person of ordinary skill in the art would want to put a
20 spitball into Peev's Airsoft gun; correct?

21 A. I think my argument is that a person of
22 ordinary skill in the art would not want to be putting
23 spitballs into Airsoft guns.

24 Q. I was asking about Mr. Delman, not your
25 opinions.

1 Do you understand it's Mr. Delman's opinion
2 that a person of ordinary skill in the art would have been
3 motivated to use a spitballs ammunition with Peev's
4 Airsoft gun?

5 A. I understand that's Mr. Delman's argument.

6 Q. Okay. In your declaration, you did not
7 calculate the kinetic energy of a 6 millimeter SAP
8 projectile; is that correct?

9 A. In this declaration, I did not calculate --
10 well, that's not -- I calculated the kinetic energy of a 6
11 millimeter Airsoft.

12 Q. I asked you about SAP, though. You did not do
13 a calculation for the kinetic energy of a 6 millimeter SAP
14 projectile; correct?

15 A. I -- yeah, I did not do the calculation of
16 that hypothetical size of a SAP.

17 Q. Okay. And you did not calculate the mass of a
18 6 millimeter SAP projectile in your declaration, either;
19 did you?

20 A. Again, that's a hypothetical ammunition that
21 doesn't exist.

22 Q. Okay. Is it true that a hydrated
23 super-absorbent polymer sphere having a diameter of 15.24
24 millimeters will have a greater mass than a hydrated
25 super-absorbent polymer sphere having a diameter of

1 6 millimeters?

2 MR. DARBY: Objection to form.

3 A. Can you repeat that?

4 MR. COMACK: Would you mind reading
5 that. Thank you.

6 (Whereupon, The record was read
7 by the reporter.)

8 A. I'm sorry, I don't -- I'm missing the question
9 again, what am I comparing?

10 BY MR. COMACK:

11 Q. We can withdraw it. That's okay.

12 Let's go to paragraph 47 of your declaration.
13 Excuse me. Excuse me, again. I'll read it to you.

14 "Paintballs are hollow gelatin spheres filled
15 with liquid paint that break apart on impact. ASTM's
16 standard specification for paintball ammunition reflects
17 this common knowledge." I'm going to stop reading there
18 for the moment.

19 Did I read that correctly?

20 A. Which paragraph are you on?

21 Q. Should be 47. Did I get the number wrong?

22 A. Yeah, I think -- sorry.

23 Q. Yeah. Do you want me to do that again for
24 you, since you weren't at the right paragraph?

25 A. I'm there.

1 Q. Okay. I'll just read it again. I'm going to
2 read the first three lines of paragraph 47.

3 "Paintballs are hollow gelatin spheres filled
4 with liquid paint that break apart on impact. ASTM's
5 standard specification for paintball ammunition reflects
6 this common knowledge."

7 Did I read that correctly?

8 A. Yes.

9 Q. So does a paint ball have two separate
10 components?

11 A. Well, I would say the ones I've looked at,
12 there's a casing and a filling.

13 Q. So the casing is sort of the outer casing
14 that's like a rigid shell; correct?

15 A. It's more rigid. You can kind of dent it with
16 your fingers.

17 Q. Okay. And then the filling is a liquid paint
18 that goes inside that casing; correct?

19 A. Sure.

20 Q. And a paint ball, what is the shell made out
21 of?

22 A. According to my report, paint balls are hollow
23 gelatin spheres.

24 Q. Right. And if you look at paragraph 47,
25 you're quoting to an ASTM standard where Section 3.1.6

1 says that the shell is a rigid to semi rigid material,
2 generally gelatin; correct?

3 A. Where? I see. 3.16.

4 Q. Yeah.

5 A. Rigid to semi rigid.

6 Q. So that's correct; right?

7 A. Made of gelatin, yes.

8 Q. Okay. And does the shell have a hollow
9 cavity?

10 A. When you -- when it's full of paint, it's not
11 hollow.

12 Q. So the paint goes inside a cavity that was
13 hollow inside the shell?

14 A. That sounds like an accurate description of
15 paint balls.

16 Q. And just to be clear, paint is the liquid in
17 the paint ball; correct?

18 A. They might have other things in there, but I
19 don't -- yes, paint is what is inside a paint ball.

20 Q. And that's the liquid inside the paint ball;
21 correct?

22 A. Sure.

23 Q. Okay. When a paint ball strikes a target, the
24 shell will crack; correct?

25 A. Yeah, it might -- well, it could also break

1 open at the seam.

2 Q. So it could crack or break open at the seam;
3 correct?

4 A. Yeah, or it could smoosh, and then break open.

5 Q. Okay. And once -- and once the paint ball
6 breaks open, the liquid paint will pour out of the shell
7 to mark the target; correct?

8 A. I wouldn't say pour out as a characteristic.
9 Sort of splatters.

10 Q. But it flows out of the shell and splatter on
11 the target; right?

12 A. It splatters on the target if it opens.

13 Q. So the paint exits the shell and splatters on
14 the target; correct?

15 A. I mean, the way you're describing it sounds
16 like it's a hard ball that opens like an egg, and then the
17 inside comes out. It's more like a splatter, a squishing
18 and seeping out.

19 Q. You're not an expert in super-absorbent
20 polymers; correct?

21 MR. DARBY: Objection to form.

22 A. I'm an expert in toys and projectiles and I
23 have some expertise in -- related to gels, and I'm
24 familiar with super-absorbent polymers. Whether that
25 makes me an expert at specifically super-absorbent

1 polymers, I don't know.

2 BY MR. COMACK:

3 Q. Take a look at paragraph 66 of your
4 declaration.

5 A. Okay.

6 Q. I'm just going to read to you the first
7 sentence, "Spitball polymers do not meet the 'non-liquid
8 filled' aspect of this definition for 'suitable' Airsoft
9 ammunition because they are filled with water when
10 hydrated."

11 Do you see that?

12 A. Yes.

13 Q. Is it your testimony that hydrated spitballs
14 have two separate components?

15 MR. DARBY: Objection to form.

16 A. One could say there is the super-absorbent
17 polymer as a component and water as a component.

18 BY MR. COMACK:

19 Q. But are they separate components in a hydrated
20 super-absorbent polymer?

21 A. Well, they -- water goes into them. They
22 start as two separate components.

23 Q. But once you have a hydrated super-absorbent
24 polymer, they're no longer separate, the water and the
25 polymer; correct?

1 A. When you leave them out, they dry out and the
2 water comes back out.

3 Q. Wasn't my question.

4 When you have a hydrated super-absorbent
5 polymer, the water is not a separate component of the
6 polymer; correct?

7 A. It sounds like you're trying to define liquid
8 filled meaning that there's two components, but water goes
9 into spitballs, and therefore, it becomes full of liquid.

10 Q. Okay. So is there a hollow cavity in the
11 spitballs product?

12 A. I don't know what this criteria to have a
13 hollow cavity is for something to be liquid filled.

14 Q. Is it your testimony when a spitball strikes a
15 target, the water powers out of the spitball?

16 A. Water doesn't come out of a spitball when it
17 strikes a target.

18 Q. All right. You discuss various ASTM standards
19 in your declaration.

20 Do you recall that?

21 A. Yes.

22 Q. Okay. If we go to paragraph 63 of your
23 declaration, I'm not going to read it to you, but if you
24 take a look, you'll see that you're discussing ASTM
25 standard F963; is that right?

1 A. Yes.

2 Q. And you indicate in paragraph 63 that ASTM
3 F963 governs the toy design and is mandatory by law;
4 correct?

5 A. Yes.

6 Q. And you explain that ASTM F963 is a standard
7 specification for toy safety; is that right?

8 A. That is what I say here in my report.

9 Q. Okay.?

10 (Whereupon, Exhibit 2119 was
11 introduced.)

12 BY MR. COMACK:

13 Q. So I've handed you what has been previously
14 marked as Exhibit 2119, Spin Master 2119 in all three
15 IPRs. It's entitled, "Designation: F 963-07, Standard
16 Consumer Safety Specification for Toy Safety."

17 Do you see that?

18 A. Yes.

19 Q. Is Exhibit 2119 the ASTM F 963 standard that
20 you discuss in paragraph 63 of your declaration?

21 A. I believe it is.

22 Q. And if it helps you, if you go to
23 paragraph 77, you'll see a citation to 2119, and it refers
24 to it as ASTM F 963-07.

25 Do you see that?

1 A. Yes.

2 Q. Okay. So while we're at that paragraph, I'm
3 just going to read it to you.

4 "As I mentioned above at paragraph 63,
5 ASTM F 963-07 (Standard Consumer Safety Specification For
6 Toy Safety) was mandatory at the time of the Challenged
7 Patents in 2010. According to ASTM F 963-07, toy
8 projectile launchers used with 'rigid projectile(s)' --
9 and you put that in quotes -- "'can have a kinetic energy
10 no greater than '0.08J,' an exceptionally low limit."

11 Then you cite Exhibit 2119, page 17. "At a
12 kinetic energy limit of 0.08 J, the maximal allowable
13 speed for a 0.20 g plastic Airsoft round is only about
14 91 feet per second (fps) or about 117 fps for 0.12 g
15 round."

16 Do you see that?

17 A. I see that.

18 Q. So in paragraph 77, are you saying that under
19 no circumstances does ASTM standard in Exhibit 2119 permit
20 a rigid projectile to exceed 0.08 Joules?

21 A. Can you reinterpret your question?

22 (Whereupon, The record was read
23 by the reporter.)

24 A. That's the industry standard that someone
25 would -- that a person of ordinary skill in the art would

1 be looking at for a standard projectile, but there are
2 guidance, so if it does have energy above that, it shall
3 have an impact surface of resilient material.

4 BY MR. COMACK:

5 Q. And you're relying on paragraph 4.21.1.3 of
6 Exhibit 2119 for the answer you just provided; correct?

7 A. That's what this document says.

8 Q. Now, paragraph 4.21.1.3 does not place any
9 restrictions on the kinetic energy of a non-rigid
10 projectile that's fired from a toy; correct?

11 A. I think that there are, in general, there's
12 guidelines for all toys, rigid or not.

13 Q. I'm sorry, I'm asking you about
14 paragraph 4.21.1.3 in Exhibit 2119.

15 That statement places no restrictions on the
16 kinetic energy of a non-rigid projectile; correct?

17 A. That statement does not have any further
18 guidance on it.

19 Q. Right. And so it also has no restrictions on
20 the kinetic energy of a soft projectile that's fired from
21 a toy; correct?

22 A. This statement is specific to rigid
23 projectiles fired from a toy.

24 Q. Right. And when it talks about rigid
25 projectiles when they're fired -- when they have a kinetic

1 energy greater than 0.08 Joules, as you mentioned, it
2 needs to have a resilient material for the impact surface;
3 correct?

4 A. That's what this statement says.

5 Q. And does resilient refer to an object that can
6 return to its original form after being compressed?

7 A. That sounds maybe like an elastic material.

8 Q. What's your understanding of the use of the
9 word "resilient" in this paragraph 4.21.1.3?

10 A. That it can absorb force, perhaps.

11 Q. So paragraph 4.21.1.3 in ASTM 963 actually
12 encourages the use of resilient projectiles when launched
13 by toys; correct?

14 MR. DARBY: Objection; form.

15 A. I don't think "encourage" is the right word.
16 It just says if it exceeds a certain limit, then it has to
17 have an impact surface of resilient material.

18 BY MR. COMACK:

19 Q. Why is that?

20 A. To absorb impact.

21 Q. Okay. Let's go back to the '683 Patent.

22 Okay. We're going to go to Claim 10. Let me know when
23 you're there.

24 A. Okay.

25 Q. All right. I'm going to read Claim 10 to you.

1 "The system of Claim 1 wherein the super-
2 absorbent polymer has a cross-linking density sufficient to
3 prevent the soft projectiles from breaking apart when
4 launched from the projectile launcher."

5 Do you see that?

6 A. I see that.

7 Q. Okay. Does the -- I'm sorry, and if you look
8 at the '282 Patent, you'll see that Claim 13 has the same
9 language as Claim 10 of the '683 Patent; if you just
10 confirm that for me.

11 A. Sorry, which claim in --

12 Q. I'm sorry, it's Claim 13 of the '282 Patent.
13 I just want you to confirm that it has the same language
14 as Claim 10 of the '683 Patent.

15 A. They're similar.

16 Q. Aside from referring to their Claim 1's, is
17 there any difference?

18 A. No.

19 Q. Do the Hasbro patents disclose a specific
20 cross-linking density that is sufficient to prevent soft
21 projectiles from breaking apart when launched from the
22 projectile launcher?

23 A. Just to clarify, you're asking is there a
24 specific cross-linking density disclosed in these patents?

25 Q. Yes, in connection with preventing a soft

1 projectile from breaking apart when launched from the
2 projectile launcher.

3 A. There's no specific amount disclosed, just
4 that it is sufficient to prevent the soft projectiles from
5 breaking apart when launched from the projectile launcher.

6 Q. Does the '683 Patent disclose a specific
7 cross-linker that should be used?

8 A. There's no specific cross-linker listed.

9 Q. Take a look at Column 3, line 54 of the
10 '683 Patent, and when you're there, I'm going to read from
11 line 54 to about line 58. Okay.

12 "The present patent document discloses and
13 teaches projectile launching devices, such as toys,
14 amateur guns and weaponry that use projectiles formed from
15 the super-absorbent polymer (SAP). As a result, the
16 projectiles launched by the devices of the present patent
17 document are soft-projectiles."

18 Do you see that?

19 A. Okay.

20 Q. You saw that; right?

21 A. Yep.

22 Q. Okay. So according to the '683 Patent, the
23 passage we just read, if a projectile is formed from SAP,
24 then the projectile is a soft projectile; correct?

25 MR. DARBY: Objection to form.

1 A. That's not necessarily true.

2 BY MR. COMACK:

3 Q. So you disagree with the passage I just read
4 to you in the patent?

5 A. No, I mean, Mr. Delman also has described
6 unhydrated or lightly hydrated SAP as firm.

7 Q. But if the SAP is hydrated, then it's soft,
8 it's a soft projectile according to the patent; correct?

9 MR. DARBY: Objection to form.

10 A. My read on this is that SAP allows, when you
11 hydrate SAP, it allows them to be soft, but it doesn't
12 necessarily result in soft if you don't hydrate it enough.

13 BY MR. COMACK:

14 Q. Let's go to Column 4, line 19 of the
15 '683 Patent. And I'm going to read to about line 24.

16 "Consequently, by using a SAP with a higher
17 cross-link density, a soft projectile can be made to fly
18 farther and faster without breaking apart and have a
19 stronger impact. In contrast, soft projectiles made from
20 a SAP with a lower cross density will break apart more
21 easily and have a much softer impact."

22 Do you see that?

23 A. Yes.

24 Q. So according to this passage in the
25 '683 Patent, if a projectile is made with a higher

1 cross-link density, such that it has a stronger impact,
2 then it is a soft projectile; correct?

3 MR. DARBY: Objection to form.

4 A. The cross-link density, whether it's higher
5 cross-link or lower cross-link, is separate from how much
6 you hydrate the ammunition.

7 BY MR. COMACK:

8 Q. Take a look at Figure 1 of the '683 Patent.

9 A. I'm there.

10 Q. Figure 1 shows a launcher that's described in
11 the Hasbro patents; correct?

12 A. Yes.

13 Q. And this launcher uses a spring, a piston, and
14 air pressure to launch the soft SAP projectile; correct?

15 A. Those are parts of what launched the SAP.

16 Q. All right. Let's take a look at Column 5,
17 line 34 of the '683 Patent.

18 A. Which line?

19 Q. Column 5, and I'll point you're attention to
20 line 34, and I'm going to read up to line 40.

21 You ready?

22 A. Yes.

23 Q. "Air pressure can be created in a number of
24 ways including, for example, from a plunger operated by
25 the user, from a cartridge containing compressed gas

1 (such as the Co2 cartridges used with paint ball guns),
2 from air that has been pumped into an internal chamber and
3 released, or from an explosion in a chamber."

4 Do you see that?

5 A. Yes.

6 Q. So according to the Hasbro patents, air
7 pressure can be created by using a Co2 cartridge by the
8 type used by paint ball guns; correct?

9 A. That's what this says.

10 Q. And the Co2 cartridge would apply a pneumatic
11 force to the soft SAP projectile when launching the
12 projectile; correct?

13 A. Not necessarily.

14 Q. Are you still looking? Are you done with your
15 answer?

16 A. Yes.

17 Q. Okay. But you agree that, according to the
18 Hasbro patents, a Co2 cartridge of the type used in paint
19 balls could be used to launch a soft SAP projectile;
20 correct?

21 A. Yes.

22 Q. Okay. And prior to 2010, would a POSITA have
23 known how to use a Co2 cartridge in a projectile launcher
24 to launch a soft SAP projectile?

25 MR. DARBY: Objection to form.

1 A. Prior to 2010, I think if you asked a POSITA
2 to create a mechanism to launch SAP with Co2, they could
3 do that.

4 BY MR. COMACK:

5 Q. Does the '683 Patent -- well, let me rephrase
6 it.

7 The '683 Patent does not disclose a
8 cross-linking density that's sufficient to prevent the
9 soft SAP projectile from breaking apart when launched from
10 the projectile launcher using a Co2 cartridge; correct?

11 A. Can you repeat that back, please?

12 (Whereupon, The record was read
13 by the reporter.)

14 A. The patent discloses -- it doesn't have a
15 specific cross-link density. It just says enough to
16 prevent it from breaking apart when launched.

17 BY MR. COMACK:

18 Q. So prior to 2010, you'd agree that a POSITA
19 would have been able to select a cross-linking density
20 that's sufficient to prevent the soft SAP projectile from
21 breaking apart when launched from a projectile launcher
22 using a Co2 cartridge; correct?

23 MR. DARBY: Objection to form.

24 A. Again, I think if asked to do so, that is --
25 they could potentially do that.

1 BY MR. COMACK:

2 Q. Okay. Now let's look at Column 7 of the
3 '683 Patent, and we'll start at line 59, and I'll read to
4 line 62.

5 "As another example, projection device 10 can
6 accelerate the soft-projectile or soft-projectile holder
7 by an accelerating mass, like the hammer of a gun,
8 impacting the soft-projectile or soft-projectile holder."

9 Do you see that?

10 A. I see that.

11 Q. So according to this teaching in the Hasbro
12 patents, the hammer of a gun can directly impact the soft-
13 projectile to accelerate the projectile during its launch;
14 is that right?

15 A. Can you read the question again?

16 (Whereupon, The record was read
17 by the reporter.)

18 A. It says the soft-projectile or soft-projectile
19 holder.

20 BY MR. COMACK:

21 Q. So it could be either one; correct?

22 A. So as I read this, an accelerating mass can
23 impact the soft-projectile or the soft-projectile holder.

24 Q. And an example of an accelerating mass that
25 can impact the soft projectile is the hammer of a gun;

1 correct?

2 A. That's the example that this patent uses.

3 Q. Thank you.

4 And when the hammer impacts the soft
5 projectile, the hammer would apply a mechanical force
6 directly to the soft projectile; correct?

7 MR. DARBY: Objection to form.

8 A. It seems like it could also hit the projectile
9 holder and not the soft projectile.

10 BY MR. COMACK:

11 Q. Right. But one option is that the hammer
12 could directly apply a mechanical force to the soft
13 projectile, itself.

14 That's what the patent says; correct?

15 MR. DARBY: Objection to form.

16 A. The patent -- yeah, the spec says, "Can
17 accelerate the soft projectile or the holder by using
18 accelerated mass impacting the soft projectile or the soft
19 projectile holder."

20 BY MR. COMACK:

21 Q. Yeah, so a mechanical force can be applied by
22 the hammer directly to the soft projectile for launching;
23 correct?

24 A. Directly or indirectly.

25 Q. Thank you.

1 Now, prior to 2010, would a POSITA know how to
2 use a hammer to impact a soft projectile to accelerate the
3 projectile during launch?

4 MR. DARBY: Objection to form.

5 A. Prior to 2010, a POSITA, if asked to launch a
6 SAP using a hammer, maybe could figure out how to do that.

7 BY MR. COMACK:

8 Q. But you agree the Hasbro patents don't tell
9 the POSITA how to use a hammer to impact the soft
10 projectile so that it would launch; correct?

11 A. The patents describe -- they list a bunch of
12 acceleration systems, but for all of these, they don't go
13 into detail on slingshots and catapults, for example.

14 Q. I'm talking about the example with the hammer
15 and a gun striking a soft projectile to launch it.

16 Do you understand that?

17 A. I understand that.

18 Q. And my question is, when a POSITA
19 reads Column 7, line 59 to 62 of the '683 Patent and sees
20 that discussion of using a hammer for that purpose, would
21 the POSITA be able, prior to 2010, implement a -- design a
22 gun that would use a hammer or a launcher that would use a
23 hammer to launch the projectile by directly impacting it?

24 A. So I think if we -- again, if we asked a
25 POSITA to do it, they probably could come up with a way of

1 launching a SAP by hitting it.

2 Q. With a hammer?

3 A. Now, when you say a hammer, do you mean a
4 hammer?

5 Q. No, I mean a hammer with a gun, the passage
6 that we were just reading from in Column 7 -- the hammer
7 of a gun, excuse me.

8 A. I think the page says like a hammer of a gun,
9 not with a hammer of a gun.

10 Q. Okay. Would a POSITA be able to do that?

11 A. They might be able to do something by using an
12 accelerating mass, whether it's -- yeah, at the time if
13 they were asked to.

14 Q. Right. And if they weren't able to do that,
15 use something like a hammer of a gun, then this teaching
16 in the patent in Column 7, lines 59 to 62, would not
17 enable -- would not be enabling for the POSITA to make
18 that part of their invention; correct?

19 MR. DARBY: Objection; outside of scope.

20 A. I think a POSITA at the time would be able to
21 make a device, if asked, that would use an accelerated
22 mass like a hammer to impact the soft projectile or
23 soft-projectile holder.

24 BY MR. COMACK:

25 Q. Prior to 2010, would a POSITA be able to

1 select a cross-linking density that is sufficient to
2 prevent the soft SAP projectile from breaking apart when
3 impacted by a hammer to accelerate the projectile?

4 MR. DARBY: Objection to form, and out
5 of scope.

6 BY MR. COMACK:

7 Q. And again, my question applies a hammer of a
8 gun?

9 MR. DARBY: Same objection.

10 A. So again, in this -- this is using a simile,
11 here, to explain an accelerating mass. It's "like a
12 hammer of a gun," not explicitly a hammer of a gun, and I
13 don't know offhand if a person of ordinary skill in the
14 art would be able to design a cross-link density
15 sufficient to withstand a hammer of a gun at the time, but
16 maybe.

17 BY MR. COMACK:

18 Q. How about same question but with an
19 accelerating mass?

20 MR. DARBY: Same objection.

21 A. Similar response; I don't know if they would
22 be able to.

23 MR. COMACK: Let's take a break.

24 (Whereupon, a recess was taken
25 from 2:09 p.m. to 2:20 p.m.)

1 BY MR. COMACK:

2 Q. So because we just came back from a break my
3 usual question; did you talk to your counsel about the
4 substance of your testimony?

5 A. No.

6 Q. If you could turn to paragraphs 81 and 82 of
7 your declaration, and you don't have to read it out loud,
8 just give it a read and let me know when you've gotten
9 through them.

10 A. Okay. I've read them.

11 Q. Okay. So in these paragraphs, are you
12 explaining that Peev's Airsoft gun is not a toy because
13 the Airsoft gun is meant to mimic real firearms?

14 A. In part.

15 Q. So does that mean that, prior to 2010, toy
16 guns did not mimic real firearms?

17 A. No, that's not quite what I'm saying. Peev's
18 patent was to make Airsoft more like real firearms.

19 Q. So prior to 2010, were there toy guns that did
20 mimic real firearms?

21 A. Perhaps in the look and the way you hold it.

22 Q. So prior to 2010, would an Airsoft gun be
23 considered a toy gun that mimicked real firearms?

24 MR. DARBY: Objection to form.

25 A. Can you repeat that back?

1 (Whereupon, The record was read
2 by the reporter.)

3 A. Prior to 2010, I would not characterize
4 Airsoft as toy guns.

5 BY MR. COMACK:

6 Q. Okay. Let's go back to Exhibit 2119, which
7 was the F 963 toy safety standard that we were looking at
8 earlier.

9 Earlier, you told me, I believe, that
10 Exhibit 2119 that this ASTM standard governed safety
11 standards for all toys; is that right?

12 A. This is the safety standard at the time for
13 toys.

14 Q. And including toy guns; correct?

15 A. I would say yes.

16 Q. All right. Let's go to Section 4.31 on
17 page 21 of Exhibit 2119.

18 A. Which is which exhibit; this one?

19 Q. 2119, the ASTM safety standards?

20 A. Which page?

21 Q. Page 21, and we're going to go to
22 Section 4.31, so it's in the left-hand column, it's the
23 third entry down, it says, "Toy Gun Marking."

24 Do you see that?

25 A. Yes.

1 Q. And I'm going to read Section 4.31 to you for
2 the record.

3 "Toy gun marking - This requirement is
4 intended to minimize the potential for a toy gun to be
5 mistaken for a real firearm."

6 Do you see that?

7 A. Yes.

8 Q. So paragraph 4.31 is referring to a marking
9 requirement for toy guns that otherwise could be mistaken
10 for a real gun; correct?

11 A. Correct.

12 Q. Okay. Let's jump to paragraph 4.31.3.2.
13 4.31.3.2. So that's the left-hand column,
14 second from the bottom.

15 Do you see that?

16 A. No.

17 Q. So if you take the standard, you go all the
18 way down the left-hand column?

19 A. Oh, yeah.

20 Q. 4.31.3.2 it starts with "A blaze orange band."

21 Do you see that?

22 A. I see that.

23 Q. I'm just going to read that to you.

24 "A blaze orange band, or brighter orange-
25 colored band covering the circumference of the

1 muzzle end of the barrel for a distance of at least
2 0.25 in (6MM)."

3 Do you see that?

4 A. I see that.

5 Q. So paragraph 4.31.3.2 is referring to the
6 marking requirement that must be used on toy guns that
7 could be mistaken for real firearms; correct?

8 A. That is the recommendation on this.

9 Q. And the marking requirement for such toy guns
10 is covering the muzzle of the gun with a bright orange
11 band; correct?

12 A. Or brighter orange band.

13 Q. Now, if we stay in the left column and we jump
14 back up, we're going to paragraph 4.31.1, and that starts
15 with, "This requirement applies."

16 Do you see that?

17 A. Yes.

18 Q. All right. I'm going to read that to you.

19 "This requirement applies to all toy,
20 look-alike, and imitation firearms which have the general
21 appearance, shape, or configuration or combination thereof
22 of a firearm. This includes, but is not limited to,
23 nonfunctional guns, water guns, Airsoft guns," and then it
24 lists other guns, "and guns with an opening to eject any
25 non-metallic projectile."

1 Do you see that?

2 A. Yes.

3 Q. So according to section or paragraph 4.31.1.1
4 of Exhibit 2119, the requirement -- the marking
5 requirement of using an orange band on toy guns applies to
6 Airsoft guns; correct?

7 MR. DARBY: Objection to form.

8 A. To toy Airsoft guns.

9 BY MR. COMACK:

10 Q. Where does it say "toy Airsoft guns"?

11 A. "All toy or look-alike items, including
12 Airsoft guns."

13 Q. Uh-hum. So are you -- what's the difference
14 between a toy Airsoft gun and an Airsoft gun?

15 A. Well, this has specifications on kinetic
16 energy of toy projectiles.

17 Q. Let's go back to paragraph 81 of your
18 declaration.

19 Are you there?

20 A. Yes.

21 Q. Okay. I'm just going to read it to you.

22 "Moving on, and contrary to Mr. Delman's view,
23 in my opinion, Peev does not teach a toy. In fact, Peev's
24 stated 'task' was to create an electric Airsoft gun that
25 functions 'as close as possible' to a 'real firearm,' up

1 to and including an 'automatic' firing mode."

2 And then you cite Peev, pages 22 and 26.

3 You then go on to say, "The kind of gun Peev
4 taught is one that 'finds application in the sporting gun
5 industry and is used for military simulations or training
6 or for entertainment in Airsoft games.'"

7 And you cite page 22 of Peev for that.

8 Then you go on to say, "It is a high-powered,
9 military-grade projectile device designed for 'faster shot
10 repeatability' and to avoid any potential 'defect' that
11 might otherwise cause a 'decrease' in muzzle velocity."

12 And you cite paged 25 and 28 of Peev.

13 Do you see that?

14 A. Yes.

15 Q. So in paragraph 81, you have referred to
16 Peev's Airsoft gun as a high-powered device; correct,
17 third line from the bottom of paragraph 81 of cite?

18 A. That is what I cite here, yes.

19 Q. Okay. What do you mean by "high-powered"?

20 A. It shoots at high velocity.

21 Q. Can you explain to me what "high velocity"
22 means.

23 A. The feet per second of the projectiles coming
24 out of the gun are fast.

25 Q. How fast?

1 A. Within the range of Airsoft.

2 Q. Which is?

3 A. I think that Airsoft Q&A -- actually, do you
4 happen to have the Airsoft Q&A guidelines?

5 Q. I don't believe I do, but sitting here, do you
6 know what you meant by "high-powered"?

7 A. So I believe the Airsoft Q&A has Airsoft
8 ranging from 100 to 500 feet per second, but I don't know
9 the exact lower limit.

10 Q. Okay. You also refer to Peev's Airsoft gun as
11 being "military-grade"; correct? Third line from the
12 bottom, paragraph 81.

13 A. I see that.

14 Q. What did you mean by "military grade"?

15 A. Intended for military simulations and
16 training.

17 Q. Are you saying that Peev's Airsoft gun is made
18 to military specification?

19 MR. DARBY: Objection to form.

20 A. I'm saying that Peev is teaching one that is
21 used for military simulations or training.

22 BY MR. COMACK:

23 Q. You discuss a commercial product sold by
24 Mr. Peev; correct?

25 A. I'm sorry, did you say did I discuss the

1 commercial?

2 Q. A commercial product sold by Mr. Peev? And
3 you can look at paragraph 27, for example, of your
4 declaration?

5 A. Okay. I'm at paragraph 27.

6 Q. And there you discuss a commercial product
7 sold by Mr. Peev; correct?

8 A. Correct.

9 Q. And that product was sold after the time of
10 the Hasbro patents; correct?

11 MR. DARBY: Objection to form.

12 A. I believe it's based off of the patent that is
13 pictured here in my figure, Peev's patent.

14 BY MR. COMACK:

15 Q. I see.

16 So in paragraph 27, you show a picture of
17 Mr. Peev holding an Airsoft gun; right -- on the left?

18 A. Yes.

19 Q. And on the right, you show a drawing of Peev's
20 Airsoft gun, which is Figure 1; correct?

21 A. That's an illustration of the teachings of
22 Peev's patent.

23 Q. Right. And so Figure 1 of Peev shows the
24 internal workings of the Peev Airsoft gun in Exhibit 1003;
25 correct?

1 A. That is correct.

2 Q. But you never were able to look at the
3 internal workings of the gun that Mr. Peev is holding on
4 the left side image of paragraph 27; correct?

5 MR. DARBY: Objection to form.

6 A. I did not open that gun that he's holding.

7 BY MR. COMACK:

8 Q. Okay. Now in paragraph 81, you cite pages 25
9 and 28 of Peev, right at the very end.

10 Do you see that, paragraph 81? Go back to
11 paragraph 81 and I'll repeat the question for you when you
12 get there.

13 A. Okay.

14 Q. Okay. Do you see at the very bottom of
15 paragraph 81 where you cite pages 25 to 28 of Peev as
16 support for your opinion that Peev's Airsoft gun is a
17 high-powered device that's military grade?

18 A. Yes, I see that.

19 Q. Give me one moment, please.

20 (Whereupon, Exhibit 1003 was
21 introduced.)

22 BY MR. COMACK:

23 Q. I'm going to hand you what's been previously
24 marked in all three IPRs as Petitioner Exhibit 1003.

25 What part of page 25 and 28 -- this is the

1 Peev reference; correct? Sorry.

2 A. Yes.

3 Q. Okay. What part of pages 25 and 28 of Peev
4 support your opinion that Peev's Airsoft gun is a
5 high-powered device?

6 A. Which paragraphs are you asking again?

7 Q. Well, in paragraph 81 of your declaration, you
8 cited pages 25 and 28 of Peev as support for your
9 statement that Peev's Airsoft gun is a high-powered
10 military grade projectile device. So I'm asking you where
11 on page 25 and 28 does it say that?

12 A. These pages describe trying to make an Airsoft
13 gun more like a real gun, and talking about how they don't
14 want to reduce velocity of the ammunition.

15 Q. Where? Can you read me the passages on
16 page 25 and then 28 that you're referring to?

17 A. The second -- well, the second passage on page
18 25 says, "If the mechanism remains for an extended period
19 of time, this will cause the spring to weaken, causing a
20 decrease, which, in turn, decrease the initial -- in the
21 initial velocity of the fired ball," and therefore,
22 velocity is important to the concept of Peev in trying to
23 make it as realistic as possible. Even the minimal
24 decrease in velocity from this system, they're trying to
25 avoid.

1 Q. That passage that you just read from Peev
2 doesn't discuss what the initial velocity is; does it?

3 A. It doesn't specify a specific velocity. That
4 is correct, but it is talking about trying to make it more
5 like a real gun.

6 Q. Where is that?

7 A. The paragraph on page 6 -- 28, sorry.

8 Q. Which paragraph?

9 A. The third paragraph.

10 Q. The one that starts, "Another advantage of the
11 electric Airsoft gun"?

12 A. Yes, "According to the invention, is the
13 option of approximating its way to functioning and
14 manipulation to the way of functioning and manipulation of
15 the real firearm."

16 Q. But that paragraph on page 28 of Peev has
17 nothing to do with the discussion on the second paragraph
18 of page 25 in its weakening of springs; isn't that right?

19 MR. DARBY: Objection to form.

20 A. They're all related to the same purpose of
21 trying to make an Airsoft behave more like a real gun.

22 BY MR. COMACK:

23 Q. Okay. Well, let's actually take a look at
24 what Peev says about that, and let's start on page -- let
25 me get my bearings for one second.

1 All right. So before we go there, there was a
2 question that I neglected to ask.

3 On page 25 and 28 of Peev, there is no use of
4 the word "high-powered" to describe the Airsoft gun;
5 correct?

6 A. Which pages?

7 Q. 25 and 28.

8 A. It talks about not decreasing velocity, which
9 is related to power, which is related to it wanting to
10 maintain high power.

11 And then, not in those pages, but on page 30,
12 it talks about trying to provide maximum imitation of the
13 Airsoft gun to be like a real firearm.

14 Q. Page 38 says maximum handling of the Airsoft
15 gun as with a real firearm. It's not talking about power,
16 it's talking about handling; correct?

17 A. That is related to power.

18 Q. How so? It doesn't tell you what the power
19 of the gun is based on how you handle it; isn't that
20 right?

21 MR. DARBY: Objection to form.

22 A. Well, a firearm has certain purposes, and one
23 of those purposes is to shoot things, and the handling of
24 the firearm is -- shooting things is part of the handling
25 of it.

1 BY MR. COMACK:

2 Q. You agree that Peev's Airsoft gun is not a
3 real firearm; correct?

4 A. The goal of Peev is to make Airsoft more like
5 a real firearm.

6 Q. So it's not a real firearm; correct?

7 A. It is not a powdered firearm, yes.

8 Q. Okay. So Peev's gun includes a spring, a
9 piston, an air compression chamber, a microcontroller, and
10 a battery; correct?

11 A. And other things.

12 Q. Like what?

13 A. Sensors, for example.

14 Q. Sensors, circuitry; right?

15 A. Ammunition, nozzle, we go through all of the
16 elements. Muzzle, sure.

17 Q. A real firearm does not have a battery, a
18 spring, a piston, an air compression chamber, circuitry,
19 sensors; does it?

20 MR. DARBY: Objection to form.

21 A. Some firearms have some of those things.

22 BY MR. COMACK:

23 Q. Which ones?

24 A. Like there's a compression chamber, like air
25 is in the chamber.

1 Q. What type of firearm are you talking about?

2 A. Well, there's chambers in firearms.

3 Q. Well, you're talking about real firearms, so I
4 don't know what you mean by real firearms, but what real
5 firearms have that?

6 A. Gas explodes and pushes ammunition out of it.

7 Q. Right. Real firearms use gun powder to make
8 that explosion; correct?

9 A. Powder firearms use powder to explode.

10 Q. Right. And so using a spring, a piston, an
11 air compression chamber, a battery and circuitry is not
12 something that a real firearm uses; correct -- to fire?

13 MR. DARBY: Objection to form.

14 A. Generally, that's correct.

15 BY MR. COMACK:

16 Q. Okay. And let's actually talk about how Peev
17 is trying to be like "a real firearm." So let's go to
18 page 25 of Peev.

19 Are you there?

20 A. I'm there.

21 Q. Okay. On page 25, at the bottom, it says,
22 "Another very major disadvantage of the popular electric
23 Airsoft gun is that it does not provide an indication
24 that the magazine has run out of rounds because the
25 rifle does not stop firing, and the only way for the

1 shooter to know that there are no rounds in the magazine
2 is to visually detect that no pellets fly out of the
3 barrel of his rifle, which very difficult during Airsoft
4 games."

5 Do you see that?

6 A. Yes.

7 Q. So according to Peev, when typical Airsoft
8 guns run out of ammunition, the gun would keep firing;
9 correct?

10 A. It will keep going through its cycle of
11 system.

12 Q. And you call that dry firing in your
13 declaration; is that right?

14 A. That sounds right.

15 Q. Okay. So let's go to the next page of Peev,
16 very top of page 26, it says, "This makes handling
17 electric Airsoft guns quite different from handling real
18 firearms."

19 Do you see that?

20 A. Yes.

21 Q. So does that mean that a real firearm would
22 stop firing when it ran out of ammunition?

23 MR. DARBY: Objection to form.

24 A. You would know that you've ran out of
25 ammunition with a real firearm.

1 BY MR. COMACK:

2 Q. Is that because it stops firing when it runs
3 out of ammunition?

4 MR. DARBY: Objection to form.

5 A. That's what this sound like, yes.

6 BY MR. COMACK:

7 Q. Now, if you go to paragraph 39 of your
8 declaration, you actually talk about this specific problem
9 on Peev; correct?

10 A. I discuss that, yes.

11 Q. And in paragraph 39, you discuss Peev's
12 solution to this dry firing problem; correct?

13 A. Yes.

14 Q. And you explain that Peev solved the dry
15 firing problem by configuring the Airsoft gun to cut power
16 when it detects that the magazine is empty; correct?

17 A. That's correct.

18 Q. So one way that Peev's Airsoft gun is to made
19 and operate and function more like a real firearm is by
20 cutting off the firing mechanism when the magazine is
21 empty; correct?

22 A. That is one way, yes.

23 Q. But that feature has nothing to do with the
24 muzzle velocity of Peev's Airsoft gun; does it?

25 A. That specific element does not relate to

1 velocity.

2 Q. And that feature also has nothing to do with
3 the force of impact of the ammunition shot from Peev's
4 Airsoft gun when hitting a target; correct?

5 A. It does have an advantage of the hop up
6 system, so that would allow the ammunition to go
7 potentially straighter.

8 Q. But detecting when the magazine is empty has
9 nothing to do with the impact, the force of impact of the
10 ammunition when shot from Peev's Airsoft gun; does it?

11 A. I think the sensor system is separate from
12 velocity and impact.

13 Q. Okay. What part of pages 25 and 28 of Peev
14 support your opinion that Peev's Airsoft gun is a military
15 grade device?

16 A. Which pages?

17 Q. 25 and 28.

18 A. Do I say military grade?

19 Q. You sure do, paragraph 81 at the last
20 sentence, you say, "It is a high-powered military grade
21 projectile device," and you cite pages 25 and 28 of Peev.

22 A. Which paragraph?

23 Q. Paragraph 81, sorry, I don't know if I said
24 something different, so I apologize if I did.

25 A. Oh.

1 Q. And if you go to the very last sentence on
2 paragraph 81 that starts with, "It is a high-powered
3 military grade projectile device."

4 Do you see that?

5 A. Yes.

6 Q. And at the very end, as support for that
7 statement, you only cite pages 25 and 28 of Peev, so I
8 want to know where does Peev say that on those pages?

9 A. Right.

10 Q. That it's a military grade device? That's
11 what my question is.

12 A. Right, right. The Airsoft guns are used in
13 military simulations, and that is -- the purpose of Peev
14 is to make the Airsoft handle more like a real firearm,
15 and so for selecting Airsoft used in military simulations,
16 what's described in Peev would make the Airsoft better for
17 military simulations than other Airsoft.

18 Q. Page 25 and 28 don't discuss military
19 simulations; do they?

20 A. I don't believe they do.

21 Q. We can take a break.

22 (Whereupon, a recess was taken
23 from 3:01 p.m. to 3:12 p.m.)

24 BY MR. COMACK:

25 Q. Dr. Kudrowitz, during the break, did you speak

1 to your counsel regarding your testimony?

2 A. No.

3 Q. Thank you.

4 All right. Let's look at page 25 of Peev.

5 At the very top, there's a paragraph, the
6 first paragraph that says, "Since the current from the
7 battery to the electric motor passes through the
8 mechanical contact group during operation, sediment
9 accumulates on it, as a result of which it defects."

10 Do you see that?

11 A. I see that.

12 Q. And the defect in the passage that I just read
13 from Peev is simply referring to sediment that builds up
14 on a mechanical contact inside Peev's Airsoft gun;
15 correct?

16 A. It sounds like that's in the famous,
17 quote/unquote, "Airsoft guns" has that issue.

18 Q. Okay. So the famous Airsoft guns that have
19 that issue have nothing to do with an Airsoft gun being
20 high-powered; does it?

21 MR. DARBY: Objection to form.

22 A. The sediment building up does not relate to
23 high power.

24 BY MR. COMACK:

25 Q. And the sediment buildup does not relate to

1 the Airsoft gun being a military grade; correct?

2 MR. DARBY: Objection to form.

3 A. Sounds like Peev is trying to make things
4 higher quality and reduce some of the defects, and so it
5 would make Airsoft higher quality.

6 BY MR. COMACK:

7 Q. But it wouldn't necessarily make it military
8 grade; correct?

9 A. I don't know.

10 Q. Okay. Let's look at the second paragraph of
11 Peev on page 25, and I'll read it to you.

12 "Because pulling the trigger starts
13 energizing the motor and releasing the trigger stops
14 energizing it, if the trigger is released before the
15 full shot cycle has been completed, the piston and
16 spring remain cocked without any shot being fired.
17 Also, pr. automatic fire, when the trigger is released,
18 the current supply to the electric motor is immediately
19 stopped and the air compression mechanism can stop in
20 the state of a partially or fully tensioned spring.
21 If the mechanism remains for an extended period with
22 the spring partially or fully tensioned, this will
23 cause the spring to weaken appreciably, causing a
24 decrease in the tension in the cylinder, which, in turn,
25 means a decrease in the initial velocity of the fired

1 ball."

2 Correct?

3 A. That's what that says.

4 Q. And again, that's not talking about Peev's
5 gun, that's talking about what you referenced as the
6 "famous electric Airsoft gun"; right?

7 A. An issue with -- this is describing an issue
8 with famous air -- or whatever you want to call it,
9 standard Airsoft guns.

10 Q. Okay. And Peev's reference to a decrease in
11 initial velocity relates to a spring that's been weakened;
12 correct?

13 A. Peev discusses that the spring would weaken in
14 regular Airsoft guns.

15 Q. And it doesn't discuss what the strength of
16 that spring that was weakened is; correct?

17 A. It just talks about having whatever spring
18 you're using not be weakened.

19 Q. Right. And Peev doesn't talk about the
20 strength of the spring in the invention of Peev in its
21 Airsoft gun; correct?

22 A. It does not have a specific spring strength
23 disclosed.

24 Q. And just because a spring has been weakened in
25 an Airsoft gun does not mean that the Airsoft gun is

1 high-powered; does it?

2 A. If we're getting to the point where we're
3 considering a slight weakening of a spring and trying to
4 remedy that, we must be talking about an Airsoft situation
5 where spring strength is important.

6 Q. Right. But it doesn't say slight weakening;
7 does it, Peev?

8 A. Weakening at all.

9 Q. And where a spring is weakened, it doesn't
10 necessarily follow that the Airsoft gun is high-powered?

11 A. Peev intent is to make an Airsoft gun more
12 like a real firearm, and by implementing these measures to
13 keep the spring strong, he is maintaining an Airsoft to be
14 high-powered.

15 Q. Where does Peev say that it's keeping its
16 spring strong?

17 A. Not weakening.

18 Q. So if it's not weakening, that means it's a
19 strong spring?

20 A. If it doesn't weaken, it's as strong as it was
21 before.

22 Q. But it doesn't mean that it's a strong spring?

23 MR. DARBY: Objection.

24 A. I'm talking relative, whatever the spring was
25 that was used.

1 BY MR. COMACK:

2 Q. Okay. But you agree that Peev has no
3 discussion of what the muzzle velocity of the gun is
4 whatsoever; correct?

5 A. Peev is designed for military simulate --
6 talks about military simulation and standard Airsoft, and
7 so we're probably not talking about low-power toy Airsoft
8 here.

9 Q. Let's take a look at page 23 of Peev, the very
10 top.

11 Are you there?

12 A. I'm sorry, did you say 25?

13 Q. 23.

14 A. Okay.

15 Q. Do you see the heading, "Area of Technology"?

16 A. Yes.

17 Q. Right below that it says, "Electric Airsoft
18 guns find application in the sporting gun industry and are
19 used for military emulations or training, or for fun when
20 conducting Airsoft games."

21 Correct?

22 A. Correct.

23 Q. So Peev doesn't limit its teaching to Airsoft
24 guns that are used for military training; correct?

25 MR. DARBY: Objection to form.

1 A. Peev talks about sporting gun industry,
2 military simulation and Airsoft games.

3 BY MR. COMACK:

4 Q. Fun for when conducting Airsoft games;
5 correct?

6 A. That's what that says, and just because
7 something's fun, doesn't mean it's a toy.

8 Q. Doesn't mean that it's not, either; right?

9 MR. DARBY: Objection to form.

10 A. How I read this is that we're talking about
11 standard Airsoft guns or higher powered ones that are used
12 in military simulations.

13 BY MR. COMACK:

14 Q. It doesn't say anything about power, that
15 paragraph; correct?

16 A. That sentence does not say anything about
17 power.

18 Q. And in fact, if you read Peev from
19 cover-to-cover, you will not find one mention of the power
20 of the Airsoft gun discussed; correct?

21 MR. DARBY: Objection; lack of
22 foundation.

23 A. I would have to read it cover-to-cover.

24 BY MR. COMACK:

25 Q. You don't know sitting here?

1 A. If it says the word "power."

2 Q. High power?

3 A. I don't know if it says "high power" sitting
4 here right now, but I could do a search.

5 Q. Would you like me to do a word search?

6 A. Sure.

7 Q. Okay. Bear with me for one minute.

8 What words would you like me to use in the
9 search engine? I have a searchable PDF version of Peev.

10 A. Start with the "power."

11 Q. I'm not coming up with anything, but I just
12 want to make sure that the full document is searchable so
13 that I'm being fair. I have to convert this into
14 something that I can search. Take about a minute
15 Dr. Kudrowitz.

16 As much as I'd like to do this, I'm not able
17 to convert it into a searchable document, so I apologize
18 for that.

19 But sitting here today, you're not aware of
20 any discussion of Peev's Airsoft gun being high-powered;
21 is that right?

22 A. Sitting here today, I don't know offhand if it
23 says "high-powered."

24 Q. And sitting here today, do you know if Peev
25 discusses the muzzle velocity of its Airsoft gun?

1 A. I know in my report I say it mentions velocity
2 at least once on page 25.

3 Q. 25 of your report?

4 A. No, of Peev.

5 Q. Okay. Where on page 25 does it mention the
6 muzzle velocity of its gun?

7 A. The last sentence of the second paragraph.

8 Q. So you're referring to the sentence that says
9 that, "There will be a decrease in the initial velocity of
10 the fired ball"; correct?

11 A. That's correct.

12 Q. Can you explained to me, before that wasn't
13 talking about Peev's Airsoft gun, that was talking about
14 the famous electric Airsoft gun; correct?

15 MR. DARBY: Objection to form.

16 A. This is talking about a problem with existing
17 Airsoft guns that leave the spring partially tensioned,
18 which Peev solves with his teachings, which, then, do not
19 result in a decrease in initial velocity of fired ball or
20 muzzle velocity.

21 BY MR. COMACK:

22 Q. Other than that, there was no teaching in the
23 Peev patent regarding muzzle velocity; correct?

24 MR. DARBY: Objection; lack of
25 foundation.

1 A. That might be the only time it mentions
2 velocity, but it talks about increased performance on
3 page 24, for example.

4 BY MR. COMACK:

5 Q. Okay. What is the muzzle velocity of Peev's
6 Airsoft gun?

7 A. Peev does not disclose a specific muzzle
8 velocity.

9 Q. Okay. Let's go back to paragraph 81 of --
10 actually, let's just go to page 28 of Peev.

11 Do you see the third paragraph that starts,
12 "Another advantage of the electric Airsoft gun, according
13 to the invention, is the option of approximating the way
14 and functioning and manipulation of the way of functioning
15 and manipulation of the real firearm."

16 Do you see that?

17 A. Yes.

18 Q. And if you read the rest of this paragraph,
19 that paragraph's just talking about the Peev's solution to
20 the dry firing problem; isn't that correct?

21 A. This describes another advantage of the system
22 related to dry fire, which is also related to detecting
23 when ammunition is in the chamber, and --

24 Q. I'm sorry. Are you finished?

25 A. Yes.

1 Q. Okay. And that paragraph in Peev's sort of --
2 the fourth line -- the fifth line from the bottom starting
3 at the right side says, "The firing ban is in effect until
4 the empty magazine is replaced with a refill and then the
5 bolt release button is pressed or the loading lever is
6 pulled (depending on the Airsoft gun model). Only then
7 does the electric Airsoft gun's control system allow
8 firing again until the magazine is empty."

9 Do you see that?

10 A. Yes.

11 Q. So that just relates to the solution to the
12 dry firing problem; correct?

13 A. That also relates back to the not having a
14 spring in partial tension mode, as well.

15 Q. Okay. And then in the next sentence it says,
16 "On the other hand, due to the first sentence -- first
17 sensor presence, the trigger travel of the electric
18 Airsoft gun is within 3 millimeters, which corresponds to
19 the actual trigger travel of the real firearm that the
20 electric Airsoft gun imitates. The shorter trigger also
21 allows for faster shooter repeatability in a single shot
22 mode."

23 Do you see that?

24 A. Yes.

25 Q. The language that I just read on page 28 of

1 Peev does not indicate Peev is a high grade military
2 projectile device; does it?

3 MR. DARBY: Objection; form.

4 A. This paragraph talks about trying to make
5 Airsoft more like a real firearm in some regards.

6 BY MR. COMACK:

7 Q. The regard being that the distance the trigger
8 travels being the same as the distance the trigger travels
9 in a real firearm; is that right?

10 A. That's how I read this.

11 Q. That doesn't have an impact on the muzzle
12 velocity of the Airsoft gun; does it?

13 A. I don't believe so.

14 Q. Take a look at paragraph 6 of your
15 declaration.

16 The second sentence I'll read to you, "Not
17 only do electric Airsoft guns like Peev's resemble and
18 operate like real firearms, they also average somewhere in
19 the neighborhood of 300 to 350 feet per second fired at
20 around 500 to 700 rounds per minute."

21 Do you see that?

22 A. Yes.

23 Q. You don't cite anything in Peev to support
24 that statement; do you?

25 MR. DARBY: Objection to form.

1 A. That statement says -- is about electric
2 Airsoft guns like Peev.

3 BY MR. COMACK:

4 Q. Right. But it's not talking about Peev's
5 Airsoft gun; right?

6 MR. DARBY: Objection; form.

7 A. Well, Peev is describing if you want to use
8 the word "famous" or as I would call "standard Airsoft
9 gun" in Peev. This statement is about Airsoft guns like
10 Peev's.

11 BY MR. COMACK:

12 Q. For that statement, you cite Exhibit 2016;
13 correct?

14 A. Correct.

15 Q. Exhibit 2016 does not discuss Peev's Airsoft
16 gun; does it?

17 MR. DARBY: Objection to form.

18 A. May I have Exhibit 2016?

19 BY MR. COMACK:

20 Q. I don't have it. It's okay. I'll withdraw
21 it.

22 What's your understanding of the term "real
23 firearm"?

24 A. Right. I think it would be maybe a powder --
25 powder firearm.

1 Q. Can you explain to me what you mean by a,
2 "Powdered firearm"?

3 A. One that uses an explosion to launch a
4 projectile.

5 Q. And can you explain how that explosion is
6 created in a real firearm?

7 A. Gun powder is ignited.

8 Q. How is it ignited, the gun powder?

9 A. There's a trigger that -- a hammer that hits
10 the explosive.

11 Q. Can you describe the ammunition, the bullet
12 that's used in a real firearm?

13 A. It usually has --

14 Q. Go ahead. I'm sorry.

15 A. -- some aerodynamic properties, it's often
16 metal.

17 Q. What are the components of the bullet in a
18 real firearm?

19 MR. DARBY: Objection; out of scope.

20 A. I don't believe I talked about this in my
21 report.

22 BY MR. COMACK:

23 Q. No, but up talked about real firearms, so I
24 think it is within the scope of your report. You're
25 making a comparison of Peev's Airsoft gun to a real

1 firearm, and a real firearm shoots a real bullet.

2 So I'm trying to understand your knowledge of
3 a real bullet and a real firearm?

4 MR. DARBY: Same objection.

5 BY MR. COMACK:

6 Q. Do you know what the components are?

7 A. I don't get into real bullets in my analysis,
8 but I am comparing Airsoft to real or non Airsoft guns,
9 and so, yeah, I don't go into details on the components of
10 a real bullet.

11 Q. You're actually comparing Airsoft guns to real
12 firearms. That's what you say in your report; correct?

13 A. In the context of Peev, is that what we're
14 talking about?

15 Q. The opinion that you provide in your
16 declaration compare Peev's Airsoft gun to a real firearm.
17 You discuss it at length in your report; correct?

18 A. I talk about how Peev is trying to replicate a
19 real firearm.

20 Q. Right. And so I'm trying to understand the
21 similarities between a real firearm and Peev and the
22 differences?

23 A. Uh-hum.

24 Q. And Peev on the one hand shoots a small
25 polymer ball; correct?

1 A. The teachings of Peev are applied to small
2 polymer balls.

3 Q. Right, 6 millimeter polymer spheres; correct?

4 A. That is correct.

5 Q. And a real firearm, as you've described, it
6 does not shoot a 6 millimeter polymer ball; correct?

7 A. That is correct.

8 Q. What does it shoot, the real firearm?

9 A. Bullets.

10 Q. And I want to understand what those bullets
11 are made of, what its components are in a real firearm?

12 A. There's a shell and gunpowder or powder.

13 Q. Where is the gunpowder?

14 A. In the back end of it.

15 Q. In the back end of the --

16 A. Bullet.

17 Q. -- bullet?

18 And when the hammer of the gun strikes the
19 bullet, is that when the explosion happens?

20 MR. DARBY: Objection; outside of scope.

21 A. I don't -- I'm not sure, offhand, the exact
22 part and time when the explosion happens inside of the
23 bullet.

24 BY MR. COMACK:

25 Q. It's because you don't have -- I'll withdraw

1 it.

2 Okay. On page 20 -- I'm sorry, let's look at
3 page 27 of your declaration -- I'm sorry, paragraph 27. I
4 don't know if I said page.

5 Are you there?

6 A. Paragraph 27 or page 27.

7 Q. Paragraph, I apologize.

8 A. That's fine. I am there.

9 Q. All right. I'll read it to you.

10 "Peev is about Airsoft guns. More
11 specifically, Peev is about electric Airsoft guns, which
12 are often referred to as 'Automatic Electric Guns' or
13 'AEGs'. 'Electric Airsoft guns(1) externally represent a
14 copy of real firearms,' and Peev's task was to make them
15 even more gun like, both operationally and functionally."

16 And you cite pages 23 and 26 for that.

17 Do you see that?

18 A. Yes.

19 Q. Okay. Let's look at page 23 of Peev.

20 Are you there?

21 A. Yes.

22 Q. So right under the heading, it says, "Prior
23 State-of-the-Art Technology," it says, "Electric Airsoft
24 guns (1) externally represent a copy of real firearms, but
25 instead of cartridges, polymer balls with a diameter of

1 6 mm are fired by compressed air."

2 Do you see that?

3 A. Yes.

4 Q. So just because the external part of an
5 Airsoft gun looks like a real firearm does not mean that
6 the Airsoft gun will function and operate like a real
7 firearm; correct?

8 MR. DARBY: Objection to form.

9 A. Just because externally it looks like a real
10 firearm -- I'm repeating your question, I think -- it
11 doesn't necessarily mean it's going to behave like a real
12 firearm. Something can look like a real firearm and not
13 behave like a real firearm.

14 BY MR. COMACK:

15 Q. Let's look at page 26 of Peev, and let me know
16 when you're there; okay.

17 A. Uh-huh.

18 Q. Do you see the heading, "Technical Nature of
19 the Invention"?

20 A. Yes.

21 Q. I'm going to read the paragraph right below
22 that heading.

23 "The task of the invention is to create an
24 electric Airsoft gun that provides improved operational
25 performance, as well as bringing the way of functioning

1 and manipulation of the electric Airsoft gun as close as
2 possible to the way and functioning -- way of functioning
3 and manipulation of the real firearm."

4 Do you see that?

5 A. Yes.

6 Q. So this sentence that I just read is
7 explaining that Peev's task was to create an electric
8 Airsoft gun that could function and be manipulated as
9 close as possible to a real firearm; right?

10 A. That's what it says.

11 Q. All right. Look at the very next paragraph.
12 This paragraph's referring to how Peev's performs the task
13 of making its electric Airsoft gun so that it functions
14 and can be manipulated like a real firearm; correct?

15 A. That's the beginning of the explanation of the
16 invention.

17 Q. All right. So in that paragraph, does it say
18 how Peev makes its Airsoft gun function and be manipulated
19 like a real firearm?

20 A. It starts by talking about having a control
21 system that helps it behave more like a real firearm.

22 Q. Are you finished?

23 A. Yes.

24 Q. And that control system has nothing to do with
25 the muzzle velocity of Peev's Airsoft gun; correct?

1 MR. DARBY: Objection to form.

2 A. That control system is what keeps that spring
3 from not weakening, which, in turn, relates back to muzzle
4 velocity.

5 BY MR. COMACK:

6 Q. Peev has an automatic firing mode; correct?
7 And just to help you out, in paragraph 81, you talk
8 about an automatic firing mode and cite pages 22 and 26
9 of Peev.

10 Do you see that?

11 A. Which paragraphs of my report?

12 Q. If you look at paragraph 81, the second
13 sentence talks about an automatic firing mode.

14 A. I see that.

15 Q. The automatic firing mode of Peev doesn't tell
16 you anything about the muzzle velocity of its Airsoft gun;
17 correct?

18 MR. DARBY: Objection to form.

19 A. The muzzle velocity is not directly related to
20 the automatic firing mode, except in the sensor system
21 which is designed to stop the auto mode from leaving the
22 spring in a position that weakens it.

23 BY MR. COMACK:

24 Q. Okay. Let's take a look at paragraph 82 of
25 your declaration again.

1 A. Okay. I'm there.

2 Q. I'm just going to read the first two
3 sentences.

4 "Per my earlier discussion at paragraph 27 to
5 34, Peev's gun, virtually like all other high-powered
6 Airsoft guns are meant to mimic real firearms."

7 And you cite page 26 of Peev.

8 "Part of mimicking a real firearm is
9 mimicking, to a lesser degree, the impact of an ammunition
10 round which is necessary for cooperative Airsoft games and
11 military armed force training."

12 Do you see that?

13 A. Yes.

14 Q. Where does Peev say that part of mimicking a
15 real firearm is mimicking the impact of an ammunition
16 round?

17 A. Am I saying that that is from Peev?

18 Q. I don't know.

19 A. I don't believe I am.

20 Q. So Peev doesn't say that; correct?

21 A. That's not from Peev, that sentence.

22 Q. Okay. Let's take a five-minute break. I
23 think we just need five minutes.

24 (Whereupon, a recess was taken
25 from 3:50 p.m. to 4:08 p.m.)

1 MR. COMACK: Dr. Kudrowitz, I have no
2 further questions, and I understand that your counsel
3 doesn't either, so this concludes your deposition.

4 THE WITNESS: Fantastic.

5 MR. GEORGE: Thank you, very much.

6 (The deposition of Dr. Barry M.

7 Kudrowitz concluded at approximately
8 4:08 p.m.)

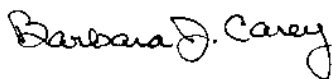
9 * * * * *

CERTIFICATE

I, Barbara J. Carey, Registered Professional Reporter and Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, Dr. Barry M. Kudrowitz in Minneapolis, Minnesota was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



BARBARA J. CAREY
Registered Professional Reporter
Certified Shorthand Reporter
Notary Public
Dated: February 10, 2025