

In The Matter Of:
LifeCORE Fitness, Inc. v.
Woodway USA, Inc.

ROBERT S. GIACHETTI, Ph.D., P.E.
July 30, 2024

NorthStar Deposition Services

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IPR2024-00083

Page 1		Page 3	
1	UNITED STATES PATENT & TRADEMARK OFFICE	1	R E M O T E A P P E A R A N C E S :
2	BEFORE THE PATENT TRIAL AND APPEAL BOARD	2	
3		3	For the Petitioner
4	LIFECORE FITNESS, INC.,)	4	LifeCORE Fitness, Inc. D/b/a ASSAULT FITNESS:
5	d/b/a ASSAULT FITNESS,)	5	BROOKS KUSHMAN, P.C.
6	Petitioner,)	6	BY: ANDREW B. TURNER, ESQ.
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21		21	
22		22	
23		23	
24		24	
25		25	
Page 2		Page 4	
1		1	ROBERT S. GIACHETTI, Ph.D., P.E. JULY 30, 2024
2		2	C O N T E N T S
3		3	Appearances Page 2
4	DEPOSITION of Robert S. Giachetti,	4	
5	Ph.D., P.E., taken by the attorney for the	5	Previously Marked Exhibits Page 5
6	Patent Owner, commenced at the hour of 9:24 a.m.	6	
7	(CT), on Tuesday, July 30, 2024, held remotely,	7	Examination by Ms. Rieger Page 7
8	before Victoria Russo, a Certified Realtime	8	
9	Reporter, Certified Shorthand Reporter and	9	Acknowledgement Page 119
10	Notary Public, commencing on the above date	10	
11	and time.	11	Errata Page 120
12		12	
13		13	Certification Page 122
14		14	
15		15	Word Index Page 123
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

Page 5		
1	ROBERT S. GIACHETTI, Ph.D., P.E.	JULY 30, 2024
2	P R E V I O U S L Y M A R K E D	
3	E X H I B I T S	
4	NUMBER	DESCRIPTION PAGE
5	Exhibit 1003	Declaration of Robert Giachetti, Ph.D. 16
6	Exhibit 1004	CV of Robert Giachetti, Ph.D., P.E. and Testimony 15
7	Exhibit 1011	Socwell Patent 5,897,461 34
8	Exhibit 1012	U.S. Patent 5,538,489 84
9	Exhibit 1017	Mechanisms and Mechanical Devices Sourcebook 87
10	Exhibit 1018	Emerson Catalog 111
11	Exhibit 1031	Tolkien Certified Translation 31
12		
13		
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15		
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Page 6

1 REMOTE DEPOSITION
2 JULY 30, 2024
3 - o0o -
4 THE COURT REPORTER: Do all
5 parties participating in this remote proceeding
6 acknowledge that I, the court reporter, am not
7 physically present and I will be reporting this
8 proceeding and administering the oath remotely
9 and the parties agree not to challenge the
10 validity of an oath not administered in person?
11 MS. RIEGER: Yes.
12 MR. TURNER: Yes.
13 THE COURT REPORTER: Please raise
14 your right hand.
15 Do you solemnly swear that the
16 testimony you are about to give will be the
17 truth, the whole truth and nothing but the truth
18 under penalty of perjury?
19 THE WITNESS: I do.
20 (Witness's ID was confirmed by an
21 Illinois driver's license.)
22 - o0o -
23 ROBERT S. GIACHETTI, Ph.D., P.E.,
24 called as a witness, having been first
25 duly sworn by a Notary Public of the

Page 7

1 State of York, was examined and
2 testified as follows:
3 EXAMINATION
4 BY MS. RIEGER:
5 Q. Good morning, Dr. Giachetti. We met
6 earlier this year but just for the record, my name
7 is Sarah Rieger and I represent the Patent Owner,
8 Woodway, USA Inc., in this matter.
9 Can you just state your full name
10 for the record, please?
11 A. Robert Salvatore Giachetti.
12 Q. And where are you located right now,
13 city and state?
14 A. I am in Naperville, Illinois.
15 Q. And are you in electronic
16 communication with anyone else today during this
17 deposition?
18 A. No.
19 Q. Do you have any windows open on your
20 computer besides what you're using for this
21 deposition?
22 A. No.
23 Q. Now, I know you have been deposed
24 before, so this is all going to sound familiar.
25 I'm just going to cover some basic ground rules

Page 8

1 before we get started.
2 As in your prior depositions, I will
3 ask questions and just ask that you respond orally
4 so that your answers can be recorded by the court
5 reporter.
6 Do you understand that rule?
7 A. I do.
8 Q. And do you understand that your
9 answers today will be under oath?
10 A. Yes.
11 Q. And do you understand that this oath
12 that you agreed to today is the same oath that you
13 would take before you testify in a trial or other
14 proceedings?
15 A. I do.
16 Q. I'm going to do my best to ask clear
17 questions. If you don't understand a question
18 that I ask or you find it confusing, can you
19 please just ask me to restate the question?
20 A. I will.
21 Q. So I'm going to assume that if you
22 answer my question, that you heard and understood
23 the question; is that fair?
24 A. That's fine with me.
25 Q. Your counsel my decide to object to

Page 9

1 certain questions. You still need to answer the
2 question unless he specifically instructs you not
3 to answer and you agree to follow his instruction.
4 Do you understand that?
5 A. Yes, I will follow his instruction.
6 Q. The court reporter will be
7 transcribing today's proceedings. Just to try to
8 make things easier on her, can you please just let
9 me finish my questions before you respond and I
10 will, in turn, try to do my best to let you finish
11 answering before asking the next question.
12 Does that sound good?
13 A. That's fine with me.
14 Q. If you need a break at any point
15 during the deposition, please just let me know.
16 All I would ask is that you don't have a pending
17 question before we take a break. So if there is a
18 pending question, please just answer before we go
19 off the record.
20 Is that agreeable to you?
21 A. Yes, that's pretty standard.
22 Q. Are you taking any medications or
23 have any other issues that would prevent you from
24 being able to testify accurately, completely, and
25 fully today?

Page 10

1 A. No, I'm not compromised at all.
2 Q. And without revealing the content of
3 any discussions you had with counsel for the
4 Petitioner, can you please just describe for me
5 what you did to prepare for your deposition today?
6 A. Sure. I reviewed my declaration. I
7 reviewed the art that's in the declaration. I
8 reviewed -- last night I reviewed the exhibits
9 that were sent over and I had a couple of
10 conversations with counsel.
11 Q. When you refer to counsel, would
12 that be Mr. Turner or someone else from his firm?
13 A. Mr. Turner.
14 Q. And what, if anything, did you do
15 differently in preparation for your deposition in
16 this proceeding relative to your depositions in
17 the three previous IPR proceedings that you
18 offered expert testimony in?
19 A. In this Woodway/LifeCORE, Mr. Turner
20 came to Chicago last time so we were face to face.
21 This time it was all done remotely.
22 Q. So other than, obviously, this
23 deposition and the preparation being conducted
24 remotely, whereas the other depositions were
25 conducted in person, do I understand you to say

Page 11

1 that there's effectively no meaningful difference
2 in the preparation that you did for this
3 deposition compared to the others?
4 A. Well, you know, I reviewed a
5 different declaration but, you know, outside of
6 you know, the specifics of this case, you know, my
7 preparations are pretty standard for reviewing
8 materials and that sort of thing, so that was all.
9 Q. You mentioned being sent some
10 exhibits. Do you have those open or printed in
11 front of you right now?
12 A. I have a folder open with the
13 exhibits and I have several of them open in the
14 PDF reader.
15 Q. Do you have any notes on those
16 documents or are they clean copies?
17 A. They would be exhibits that were
18 sent.
19 Q. And there are no notes or comments
20 or anything in those; is that correct?
21 A. Right, I got them last night.
22 Q. So you were deposed earlier this
23 year in connection with three other proceedings
24 between Woodway and LifeCORE Fitness, right?
25 A. I remember that.

Page 12

1 Q. And those were for IPR-2023-00836,
2 -00843 and -00849. Does that sound correct
3 appreciating that you may not remember the
4 specific --
5 A. I have no idea. If you say that's
6 what they are, I'll take your word for it.
7 Q. Sure. And those proceedings involve
8 three different patents that I will refer to as
9 the 580 Patent, the 884 Patent and the 745 Patent;
10 does that sound right?
11 A. That sounds right.
12 Q. I might refer to those proceedings
13 during this deposition as the earlier filed IPRs.
14 If I do that, will you know what I'm referring to?
15 A. I think so but I will ask you if I
16 don't understand.
17 Q. Sure. Sounds good. Thank you.
18 Do you understand that the patents
19 at issue in the earlier filed IPRs are related to
20 U.S. Patent Number 11465005 which is the patent at
21 issue in this proceeding?
22 A. They all seem very similar.
23 Q. And you will agree with me that some
24 of the references in your declaration here,
25 specifically the ones that you refer to as

Page 13

1 Socwell, Magid, and Sclater are also relied on, at
2 least some of your declarations in the earlier
3 filed IPRs, right?
4 A. Right.
5 Q. Compared to your opinions in the
6 earlier proceedings, have your opinions regarding
7 the teachings of Socwell, Magid, Sclater and any
8 of the other references that are cited in both
9 sets of declarations changed with respect to the
10 005 Patent?
11 A. I think I'm reading those prior art
12 references the same.
13 Q. So to put it another way, your
14 interpretation of the teachings in those
15 references are substantively the same here as they
16 were in the previous IPRs; is that fair?
17 A. Well, I haven't read through my
18 declarations in the other IPRs in preparation for
19 this but it's most likely that my opinions about
20 those references have not changed.
21 Q. You're not aware of any specific
22 differences as you sit here today?
23 A. Correct.
24 Q. Between the time of your depositions
25 and the earlier filed IPRs and today's deposition,

Page 14

1 have you reviewed any papers, declarations,
2 transcripts, or demonstratives from the earlier
3 filed proceedings?
4 A. Mr. Turner shared with me some
5 redacted publicly-facing demonstratives that we
6 looked at, that I looked at remotely but that was
7 it. It was kind of in passing.
8 Q. And did you review the transcript of
9 Dr. Blair's depositions in the earlier filed IPRs?
10 A. No.
11 Q. Did you review the transcript of
12 Mr. Weber's deposition in the earlier filed IPRs?
13 A. No.
14 Q. And you mentioned some redacted
15 demonstratives just now.
16 Are you aware that there was
17 recently an oral argument before the Patent Trial
18 and Appeal Board regarding the earlier filed IPRs?
19 A. Yes.
20 Q. And did you assist at all with the
21 preparation of demonstratives or preparations for
22 oral arguments in those IPRs?
23 A. No.
24 Q. And you said you had reviewed and
25 seen the demonstratives from the earlier IPR oral

Page 15

1 arguments though?
2 A. I would say I saw them.
3 Q. I'm going to put up our first
4 exhibit and this is going to be Exhibit 1004 and
5 this is your CV which was submitted in this
6 matter; is that correct?
7 A. It looks like it.
8 (Whereupon, previously marked
9 Exhibit 1004 was displayed.)
10 - o0o -
11 BY MS. RIEGER:
12 Q. Is your CV current as we sit here
13 today?
14 A. This is -- there has been, you know,
15 a couple of small updates since this was
16 submitted.
17 Q. And what would those be?
18 A. My title changed. I am now Senior
19 Vice President and then down under some of my
20 skills I just added in different -- in
21 Proficiencies, where it says EnglishXL, it is the
22 second to last bullet under Proficiencies, these
23 are all slip meters or word tribology. So I just
24 added another device which is the ASM 925.
25 Otherwise, the CV is the same.

Page 16

1 Q. Just for the record, so we have a
2 point to refer to, that's on Page 2 of your CV
3 here under "Proficiencies" you said?
4 A. Right, the second to last bullet.
5 Q. Understood. And were those changes
6 that were made -- not changes that were made but
7 changes that went into affect after your previous
8 depositions or before?
9 A. After.
10 Q. After, okay. And you are a licensed
11 professional engineer, correct?
12 A. That's correct.
13 Q. And am I correct in thinking that
14 your license has never been suspended or revoked;
15 is that right?
16 A. That's correct.
17 MS. RIEGER: I'm going to put up
18 another exhibit now and this is Exhibit 1003.
19 (Whereupon, previously marked
20 Exhibit 1003 was displayed.)
21 - o0o -
22 BY MS. RIEGER:
23 Q. Do you recognize this document?
24 A. Well, the cover page says it's my
25 declaration which it looks like my declaration.

Page 17

1 Q. I'm going to go to the last page of
2 this PDF which is on Page 203. Is that your
3 signature there next to "Executed on: October 24,
4 2023?"

5 A. That's correct.

6 Q. Does your declaration in this matter
7 reflect all of the opinions that you reached in
8 connection with the 005 Patent?

9 A. As far as I know, all my opinions
10 are in there.

11 Q. Could you previously summarize your
12 opinions for me?

13 A. Well, I would refer to my
14 declaration for those opinions but basically, I
15 provided several grounds that explain why the 005
16 Patent is basically a compilation of existing
17 technologies doing what those technologies are
18 intended to do.

19 So they are doing the same thing in
20 the ways that they are intend to do, they are
21 off-the-shelf parts, but that is really an ugly
22 compression of 203 pages of declarations. So I
23 would refer anyone for an opinion of what I -- my
24 opinion is to read the declaration as opposed to
25 what I just said.

Page 18

1 Q. Did you draft this declaration
2 yourself, Dr. Giachetti?

3 A. This was a collaborative effort with
4 Mr. Turner, myself, and his office.

5 Q. Approximately, how much time did you
6 spend drafting this declaration?

7 A. I could not tell you as I sit here.
8 I think it's dated sometime last year. Yes, it is
9 dated last October. I couldn't really remember
10 but it was a substantial amount of time.

11 Q. Do you have any sort of
12 approximation of how long you would have spent on
13 this declaration?

14 A. I would say, you know, somewhere
15 between two weeks and a month, give or take, you
16 know, over that course of time.

17 Q. And when did you first start
18 drafting this declaration?

19 A. I could not tell you.

20 Q. Were you working on this declaration
21 in parallel with your declarations in the earlier
22 filed IPRs or did you work on this after those
23 declarations had already been finalized?

24 A. I have no recollection.

25 Q. Did you conduct any prior art

Page 19

1 searches in connection with your preparation of
2 this declaration?

3 A. I definitely did a prior art search
4 at some point in this matter before writing
5 declarations. I'm not sure if I did a new one
6 when I started working on this or if I just relied
7 on my other searches but I did do a prior art
8 search.

9 Q. Do you have an approximate idea of
10 how much time you spent looking for prior art?

11 A. I don't.

12 Q. How about the amount of time you
13 spent reviewing the prior art that you found? Do
14 you have any recollection of how long you spent
15 reviewing the prior art?

16 A. Multiple days. I really don't.
17 This was a while ago but it was several days, you
18 know, probably more than three or four days worth
19 of time.

20 Q. In your prior art searching, did you
21 uncover the reference that is referred to in this
22 declaration as Tollkien, T-O-L-L-K-I-E-N?

23 A. I did not find Tollkien.

24 Q. Was it your idea to rely on the
25 Tollkien reference or did someone else suggest

Page 20

1 that you look at it?

2 MR. TURNER: Objection.

3 A. Well, once I reviewed Tollkien, of
4 course, I was sure that it applied here. So I
5 didn't need to be convinced that it was relevant
6 prior art. So just my reading of it was enough.

7 Q. But was it suggested to you that
8 Tollkien would be a reference you might want to
9 rely on before you decided to incorporate it into
10 these opinions?

11 MR. TURNER: Objection. I'd like
12 to caution the witness not to discuss privileged
13 conversations.

14 A. So I did my prior art search and I
15 did not turn up Tollkien but I was provided with
16 Tollkien and once I reviewed it, then I thought
17 that it was prior art that should be used to rely
18 on.

19 Q. I'm going to go to Page 4 of your
20 declaration here and on Page 4 and carrying on to
21 Page 5 you provide a list of exhibits; do you see
22 that?

23 A. Yes.

24 Q. So other than materials that are
25 listed in this list of exhibits, did you review or

Page 21 1 analyze any other publications or materials when 2 forming your opinions as to the patentability of 3 the challenged claims? 4 A. No, my opinions are based on these 5 exhibits. 6 Q. Are all of the assumptions that you 7 made when forming your opinions identified in your 8 declaration as well? 9 A. As far as I know. 10 Q. And is that also true for the 11 reasoning that forms the basis for your opinions? 12 A. Yes, I think I laid out my opinions 13 within this declaration. 14 Q. Are there any other reasons for the 15 opinions in this declaration that would not be 16 included in the declaration itself? 17 MR. TURNER: Objection. Form. 18 A. I don't think so. Unless you ask me 19 some sort of question that I hadn't considered, I 20 think everything is in the declaration that needs 21 to be in there. 22 Q. Are you aware of any facts or other 23 materials that are inconsistent with or at least 24 not fully consistent with the opinions in your 25 declaration?	Page 23 1 arguments in this declaration? 2 A. Well, it says in Paragraph 34 "for a 3 patent to be 'anticipated' by the prior art, each 4 and every limitation of the claim must be found, 5 expressly, implicitly or inherently, in a single 6 prior reference." So I guess my conclusion is 7 saying that I'm finding them in several here 8 because my grounds are combinations of different 9 pieces of prior art. So I haven't identified a 10 single one here. 11 I think, as far as this declaration 12 goes, all my bases are several pieces of prior art 13 go together to find the limitations of the claims. 14 Q. So extrapolating that then, is it 15 correct that you are not offering anticipation 16 arguments in your declaration but are instead 17 offering opinions on invalidity on different 18 bases? 19 A. I don't recall without going through 20 all 203 pages that I have put an anticipation 21 argument within the declaration. 22 Q. Let's go to this next page which has 23 the heading of Obviousness and you are welcome to 24 kind of review this section if you would like. I 25 am just going to check.
Page 22 1 MR. TURNER: Objection. Form. 2 A. No, I don't believe so. 3 Q. I'm going to go now to Page 16 of 4 your declaration. At Paragraphs 33 to 36, which 5 should be up on your screen and you are, of 6 course, welcome to reference your own copy of the 7 declaration as well if that is easier, you provide 8 what appears to be your understanding of the 9 standard for anticipation; is that right? 10 A. Correct. I'm not an attorney so I 11 was provided with the information that I need to 12 provide an opinion on this. 13 Q. Do any of the grounds that you opine 14 on in this declaration allege that the challenged 15 claims are anticipated? 16 A. I don't recall what -- let me just 17 reread these paragraphs briefly. 18 Q. Sure. 19 A. So my conclusion on Page 203 of this 20 states that all the elements of the challenged 21 claim limitations are disclosed by the references 22 within the disclosure. So I think that fits in 23 with these paragraphs. 24 Q. So sitting here today, it's your 25 understanding that you have offered anticipation	Page 24 1 It is unfortunately a little long 2 which is understandable but if you look there at 3 Paragraph 37, it references a combination of 4 references that may render obvious a claimed 5 invention. 6 Does that sound like a more accurate 7 description of the grounds in your Petition as you 8 understand them? Not in your Petition, in your 9 declaration. Sorry. 10 A. Yeah, I think so as far as what I 11 put forth in the declaration, the grounds are 12 different prior arts combined together. 13 Q. So let's move on. 14 I am going to go now to Page 20 of 15 your declaration and starting here at 16 Paragraph 44, you have provided some opinions 17 regarding the qualifications of a person of 18 ordinary skill in the art; do you see that? 19 A. I see that. 20 Q. If we go to not the next page but 21 the page following Page 22 in Paragraph 48, you 22 opine that "in my opinion, given the relevant 23 field and relevant time frame of the 005 Patent a 24 POSA would have a Bachelor's Degree in mechanical 25 engineering and at least one year of machine

Page 25

1 design experience related to power transmission
2 equipment and a demonstrated understanding of
3 exercise biomechanics, including anthropometry,
4 (i.e., the study of human proportion)."
5 Did I read that correctly?
6 A. You did.
7 Q. And, to your recollection, am I
8 correct that that definition of a POSA is the same
9 as the definitions that you provided in your
10 declarations in the earlier filed IPRs?
11 A. I believe so.
12 Q. Since you were deposed in the
13 earlier filed IPRs, have your opinions regarding
14 the level of ordinary skill in the art changed at
15 all?
16 A. No.
17 Q. What is the basis for your testimony
18 that a POSA must have a Bachelor's Degree in
19 mechanical engineering?
20 A. Well, the degree in engineering
21 provides the foundational knowledge for how
22 components go together, what components are what,
23 you know, how to balance forces, all sorts of
24 things that are the -- that lay the foundation for
25 the knowledge that the person has. So, you know,

Page 26

1 forces, accelerations, velocities, that sort of
2 thing goes hand and hand with the Bachelor's
3 Degree. That sort of education provides knowledge
4 of the basic machine elements that go together for
5 this device.
6 Q. Dr. Giachetti, are you aware that at
7 least some of the named inventors on the 005
8 Patent do not have degrees in mechanical
9 engineering?
10 A. I am aware that that statement has
11 been made. I don't know if it's true or not.
12 Q. Would the fact that certain
13 inventors do not have degrees in mechanical
14 engineering change your opinion regarding the
15 level of ordinary skill in the art in any way?
16 A. No, because I'm sure that they have
17 some sort of other life experience that provides
18 them with some of that knowledge and also, they
19 were working in a team. I don't know what the
20 legal standards are but certainly, this wasn't a
21 single investor but a single POSA in my mind needs
22 this sort of knowledge and this degree is the most
23 direct way of stating what that foundation
24 contains.
25 Q. Well, your definition of a POSA

Page 27

1 doesn't state a Bachelor's Degree in mechanical
2 engineering or some equivalent amount of
3 experience, does it?
4 A. That's true. It doesn't say that
5 here but I'M sure those inventors have something
6 that is equivalent.
7 Q. But you will agree with me that just
8 looking at the definition of a POSA that you have
9 provided here, if certain inventors did not have a
10 degree in mechanical engineering, they necessarily
11 could not meet the definition that you have
12 provided?
13 A. I think by the letter --
14 MR. TURNER: Objection to form.
15 A. -- by the letter of that that's
16 possible but I am sure if we dig into their
17 background, they have some sort of life experience
18 that gives them the knowledge that the Bachelor's
19 Degree provides.
20 Q. But as you just stated, your
21 definition does not expressly provide for
22 equivalent experience, right?
23 A. That's true.
24 Q. Are you familiar with the phrase
25 "claim construction?"

Page 28

1 A. I am.
2 Q. What is your understanding of what
3 claim construction is?
4 MR. TURNER: Objection. Form.
5 A. Let me see if it's in my
6 declaration.
7 Q. Sure. I actually may be able to
8 help with that, if you turn to Page 69 of your
9 declaration.
10 A. Okay. Thank you. Yes, so this is
11 my understanding right here on Page 69.
12 Q. Are you referring specifically to
13 that Paragraph 106 on Page 69?
14 A. Yes.
15 Q. So in Paragraphs 108 to 109 you
16 identify proposed constructions for the terms
17 "safety device" and "substantially prevent;" do
18 you see that?
19 A. I see that.
20 Q. Did you apply these constructions
21 when forming your opinions in all of the grounds
22 in your declaration?
23 A. Without reading through the entire
24 declaration, my recollection is that when I got to
25 these claims, that I applied multiple meanings to

Page 29

1 encompass both the Petitioner's and Patent Owner's
2 proposed construction of these terms.
3 Q. You haven't identified any
4 alternative constructions in this section, have
5 you?
6 A. Not in this section.
7 Q. Are you aware of ongoing litigation
8 in the Southern District of California between the
9 parties to this IPR regarding the 005 Patent?
10 A. I know that the two parties are
11 engaged in litigation. I don't know the specifics
12 as I sit here.
13 Q. Did you review either Patent Owner's
14 or Petitioner's claim construction positions in
15 preparation of your opinions?
16 A. I believe they were part of those
17 demonstratives that I looked at briefly and I
18 believe some of those are in the exhibits that
19 were sent over last night. So, I did see those.
20 Q. So I just want to make sure I
21 understand correctly.
22 Is it your understanding that the
23 demonstratives that you reviewed contained Patent
24 owner's and Petitioner's litigation claim
25 construction positions from the Southern District

Page 30

1 of California case or different claim construction
2 positions?
3 A. Oh, I don't know. I couldn't tell
4 you.
5 Q. Are you aware that the District
6 Court in the Southern District of California case
7 has entered a claim construction order construing
8 terms relevant to the 005 Patent?
9 A. I'm not sure as I sit here.
10 Q. You are not aware of having reviewed
11 any claim construction decisions from the District
12 Court in that event; is that right?
13 A. If I did, I don't recall as I sit
14 here.
15 Q. Would the adoption of claim
16 constructions that differ from the constructions
17 provided here on Page 69 of your declaration
18 affect your opinions regarding the asserted
19 grounds?
20 A. Like I said earlier, when I get to
21 these terms later in the declaration, I believe
22 that I did an analysis using both Petitioner's and
23 Patent Owner's claim constructions and took both
24 of them into account so that I accounted for both.
25 So I don't know that a ruling one way or the other

Page 31

1 would affect the conclusions in this declaration.
2 I don't believe it would.
3 Q. As you sit here today, are you aware
4 of how many grounds are presented in your
5 declaration for the 005 Patent?
6 A. In this one, this one just breezing
7 through the declaration here, we have ground 1 for
8 Socwell, Magid, and Sclater and ground 2 we have
9 Tollkien and Sclater.
10 Q. You will agree with me that it is
11 just the two grounds in your Petition then. You
12 don't have additional grounds asserting the same
13 prior art but under different claim constructions
14 in this declaration at least; is that right?
15 MR. TURNER: Objection. Form.
16 A. Well, like I said, I believe in
17 those analyses, I presented it from the
18 perspective of both claim constructions,
19 Petitioner and Patent Owner. So I think that's
20 included within the analysis within the
21 declaration.
22 MS. RIEGER: I'm going to put up
23 another exhibit now. This is going to be
24 Exhibit 1031.
25 (Whereupon, previously marked

Page 32

1 Exhibit 1031 was displayed.)
2 - o0o -
3 BY MS. RIEGER:
4 Q. I'm going to the second page of the
5 PDF that might be a little bit easier to identify.
6 Do you recognize this document,
7 Dr. Giachetti?
8 A. Yes.
9 Q. And this is German Patent Number
10 DE19922822-B4 which lists Ralf Tollkien as the
11 patent holder and inventor, correct?
12 A. Yes.
13 Q. If I refer to this document as
14 Tollkien, will you understand what I'm referring
15 to?
16 A. Yes.
17 Q. Was Tollkien originally written in
18 German?
19 A. It was.
20 Q. Do you read or understand German,
21 Dr. Giachetti?
22 A. About seven words.
23 Q. So this document that we are looking
24 at right now, at least the page that we are on at
25 the moment, is obviously in English.

Page 33	Page 35
1 Did you secure the translation of 2 the original Tollkien document? 3 A. I did not. 4 Q. Do you know who did? 5 A. Someone in Mr. Turner's office. 6 Q. But you don't know specifically who 7 would have done that? 8 A. I have no idea but I trust the 9 certification at the end and I actually work with 10 an Austrian who I asked to browse through this and 11 she said that she agreed with the translation. 12 Q. Have you read Tollkien in its 13 entirety or at least the English translation 14 portion of Tollkien? 15 A. Yes. 16 Q. And did you read it fully before or 17 after your declaration had been drafted? 18 A. Before. 19 Q. I'm looking back now at your 20 declaration which is Exhibit 1003. 21 Starting on Pages 147 to 148, you 22 argue here in ground 2 that Tollkien, in view of 23 Sclater renders claims 1 through 4, 6 to 13 and 15 24 to 16 of the 005 Patent obvious; is that accurate? 25 A. Yes, so on Page 147 that's the	1 A. I do. 2 Q. This is U.S. Patent Number 5,897,461 3 which lists Jeff D. Socwell as the inventor; is 4 that correct? 5 A. Correct. 6 Q. This is what you were referring to 7 when you refer to Socwell; is that right? 8 A. Correct. 9 Q. I'm going to go back to the 10 declaration now. In Paragraph 240, you state that 11 "a POSA reading Tollkien would have considered 12 Socwell's teachings;" is that correct? 13 A. That is correct. 14 Q. And is that because Socwell is cited 15 in Tollkien? 16 A. That's one reason. I mean the other 17 reason is that it's prior art for treadmills in 18 general, for curved ones, but yes, Tollkien 19 specifically refers to Socwell. Explicitly I 20 should say. 21 Q. If we go to the next page in 22 Paragraphs 241 to 242, you identify a few 23 disclosures in Socwell that you characterize as 24 explaining that "users may be injured by falling 25 off a treadmill while mounting or dismounting or
Page 34	Page 36
1 heading ground 2, claims 1 through 4, 6 through 13 2 and 15, 16 are obvious of Tollkien and Sclater. 3 Q. The reference that we referred to as 4 Magid is not part of this proposed combination; is 5 that right? 6 A. That's right. 7 Q. This is just Tollkien and Sclater? 8 A. That's correct. 9 Q. So I'm looking at this first 10 subsection which is titled Rationale To Combine 11 Tollkien and Sclater, if we go down to Paragraph 12 240 which is on Page 49, the last paragraph on 13 Page 49, you reference Socwell here; do you see 14 that? 15 A. I see that. 16 Q. And you indicate that Socwell is 17 cited in Tollkien; is that right? 18 A. That is right. 19 Q. I am going to very briefly pull up 20 Exhibit 1011. 21 (Whereupon, previously marked 22 Exhibit 1011 was displayed.) 23 - o0o - 24 BY MS. RIEGER: 25 Q. Do you recognize this document?	1 while exercising due to unexpected belt movement" 2 and as recognizing here in Paragraph 242, "that it 3 is difficult to stabilize the running belt in 4 manual treadmills." 5 Do you see those statements? 6 A. I'm looking for the part where you 7 just quoted. 8 Q. Oh, yes. I'm looking at the very 9 first sentence of Paragraph 241 and the very first 10 sentence of Paragraph 242. 11 A. Yes, so 242 is followed up with 12 Socwell is interested in balancing the frictional 13 and inertial qualities. Yes, I see that. 14 Q. In support of your statements here 15 in Paragraphs 241 and 242, you have cited to it 16 looks like three difference disclosures from 17 columns 1 and 2 of Socwell; do you see that? 18 A. Yes. 19 Q. I'm going to put Socwell up very 20 briefly once more. That's Exhibit 1011. 21 If we go to Page 12 of the PDF, do 22 you see that this page corresponds to columns 1 23 and 2 of Socwell? 24 A. Can you just scroll to the first 25 page. I don't remember the number off the top of

Page 37	Page 39
1 my head, just so I can see. Yes, this is Socwell. 2 Thank you. 3 Q. I assure you I am not trying to pull 4 a bait and switch on this. So Page 12 this page 5 corresponds to columns 1 and 2 of Socwell; do you 6 see that? 7 A. Yes. 8 Q. And all agree with the exception of 9 it looks like probably the first 12 lines or so of 10 column 1, everything in columns 1 and 2 are under 11 the heading Background of the Invention, right? 12 A. That's right. 13 Q. And just going back to your 14 declaration, so in Paragraphs 241 to 242 you quote 15 a cite to column 1, lines 32 to 36, column 2, 16 lines 45 to 48, and column 1, lines 30 to 56; is 17 that correct? 18 A. Yes, that's what's on that page. 19 Q. And all those disclosures are from 20 that Background of the Invention section, correct? 21 A. That's right. 22 Q. Based on your review of Socwell, 23 would you agree that the Background of Invention 24 section of that reference is primarily focused on 25 a discussion of what Socwell characterizes as the	1 Socwell's teachings? 2 A. I'm just reading the paragraphs 3 before and after my declaration. 4 Q. Sure. 5 A. I think from a holistic perspective 6 it's an accurate reading of Socwell. 7 Q. What do you mean when you say "from 8 a holistic perspective?" 9 A. This is talking about Socwell 10 overall and not specifically just those few little 11 snippets that were pulled out. So I think from a 12 holistic reading of reading the whole thing of 13 Socwell that this is accurate. 14 Q. When you say "this," you mean your 15 statement there in paragraph? 16 A. In 243. 17 Q. That Socwell explains that curved 18 running surfaces do not fully address the safety 19 issue of unexpected forward motion of the running 20 belt, et cetera, et cetera? 21 A. Correct. 22 Q. And then going to Paragraph 244, 23 similar question, you state in the first sentence 24 here that "a POSA reviewing Tolkien would have 25 been alerted to safety issues associated with
Page 38	Page 40
1 prior art rather than the invention in Socwell? 2 A. Well, I think what I'm citing here 3 is the safety features that Socwell is interested 4 in addressing in their inventions. So their 5 discussion of the issues, the safety issues with 6 prior art is going to be their motivation for 7 their invention. 8 Q. If you look next at Paragraph 243 of 9 your declaration, looking at that second sentence 10 which starts on the very last full line of this 11 page, you state that "Socwell explains that curved 12 running surfaces do not fully address the safety 13 issue, unexpected forward motion". My apologies. 14 I should have scrolled down further. Let me start 15 over. 16 You state "Socwell explains that 17 curved running surfaces do not fully address the 18 safety issue of unexpected forward motion of the 19 running belt, e.g., if a user steps onto the 20 rearward end of the running surface causing the 21 foot to unexpectedly move towards the lower 22 portion of the treadmill;" do you see that? 23 A. I see that. 24 Q. And sitting here today, do you 25 believe that's an accurate description of	1 curved running surfaces by reviewing the cited 2 Socwell reference." 3 Do you, similarly, sitting here 4 today believe that's an accurate statement? 5 A. Yes. 6 Q. Socwell does not disclose a safety 7 device or any other means for limiting the 8 treadmill's running belts to unidirectional 9 movement, correct? 10 A. I think Socwell uses a different 11 methodology which is balancing the frictional 12 qualities of the treadmill. 13 Q. So does that mean that you agree 14 that Socwell does not disclose a safety device or 15 another means of limiting a treadmill's running 16 belt to unidirectional movement? 17 A. It discloses tuning the friction in 18 the device as its safety means but I don't believe 19 it's directed as a unidirectional. 20 Q. So setting aside Socwell, does 21 anything in Tolkien acknowledge or reference the 22 purported risks associated with a curved running 23 surface? 24 A. Just that it pulls in explicitly 25 Socwell.

Page 41

1 Q. Other than pulling in Socwell, as
2 you sit here today, you're not aware of anything
3 else in Tollkien that expressly acknowledges any
4 supposed risks with a curved running surface or at
5 the very least, you will agree with me that your
6 declaration does not discuss any expressed
7 teachings in Tollkien about those kinds of risks,
8 right?
9 A. That I believe I can agree with
10 because Tollkien specifically pulls Socwell but
11 Tollkien does provide handlebars, handrails for
12 their apparatus which, you know, is certainly a
13 safety feature.
14 Q. Staying with Tollkien but shifting
15 gears a little bit, I would like to go to Page 166
16 of your declaration.
17 At the top of this page you discuss
18 what you have marked as element 1.4 of claim 1; do
19 you see that?
20 A. I see that.
21 Q. And that element has a wherein
22 clause that requires the running belt "to include
23 a running surface at least a portion of which is
24 curved;" is that right?
25 A. That's right.

Page 42

1 Q. And looking at Paragraph 271, just
2 the first paragraph in this section, it looks like
3 you identified Tollkien's continuous belt 12 as
4 the running belt; is that correct?
5 A. That's what I've identified in 271,
6 correct.
7 Q. And then you state that the cross
8 members 10 of Tollkien formed the running surface;
9 do I understand that correctly?
10 A. Where are you?
11 Q. Still in 271 but that last sentence
12 before the block quote?
13 A. Yes, the sentence says "the belt 12
14 is curved and has a running surface formed by
15 cross members 10."
16 Q. In that block quote that you include
17 in Paragraph 271, Tollkien explains that cross
18 members 10 are "attached with rivet 6 to a
19 continuous belt 12."
20 Is that, to your understanding, an
21 accurate representation of what Tollkien says?
22 A. Yes, I believe that whole thing is a
23 direct quote out of Tollkien.
24 Q. If we can go now to Paragraph 273
25 which starts on Page 168 and then contains another

Page 43

1 block quote on Page 169, you also appear to
2 identify a curved running belt 30; is that right?
3 A. So that is a direct quote out of
4 Tollkien, the bold faced font that says
5 "circulating belt 30." The belt 30 is analogous
6 to the belt 12. So that's a direct quote out of
7 Tollkien.
8 Q. Understood. I'm just looking for
9 clarity on what you are referring to here
10 actually.
11 So is the curved running belt 30
12 part of a different embodiment than belt 12 in
13 that earlier paragraph that we looked at?
14 A. Yes, so Tollkien basically takes
15 their treadmill from their figure 1 and mounts it
16 on a -- like a wheeled cart.
17 Q. And what would the running surface
18 be in that second embodiment that includes running
19 belt 30?
20 A. The running surface would be the
21 same portion as we previously identified.
22 Q. Another set of cross members; is
23 that what you mean?
24 A. Well, the running surface is not
25 necessarily a physical thing. It's an area that a

Page 44

1 person is expected to put their feet while using
2 the device. So the running surface isn't
3 necessarily the same spot on the running belt all
4 the time. So the running surface is like a
5 geometric space that the running belt passes
6 through while it's being used.
7 Q. Understood. I'm just referring to,
8 if we go back to Paragraph 271 here, that last
9 sentence before the block quote that we looked at
10 before you state "belt 12 is curved and has a
11 running surface formed by cross members 10."
12 I'm just trying to understand
13 whether for the second embodiment that we were
14 just discussing in Paragraph 273 whether you are
15 identifying an analogous structure to those cross
16 members 10 as the running surface in that
17 embodiment as well?
18 A. Well, yeah, I mean Tollkien
19 explicitly says that 30 is analogous to 12. So
20 that's what we are identifying there and in
21 Paragraph 274 in my declaration, I identify, you
22 know, "a running belt" and then in brackets there
23 it says "belt 12/30." So I have identified belts
24 12 and 30 as being the same.
25 Q. Understood. I think we might be

Page 45

1 talking past each other a little bit. Let me just
2 get to the main point.
3 With respect to the cross members
4 that are described in this block quote in
5 Paragraph 273, I'm referring to, roughly, halfway
6 down, some that bolded text that refers to
7 numerous cross members, is it your understanding
8 that those cross members that are associated with
9 belt 30 are also analogous to the cross members
10 associated with belt 12?
11 A. I'm not sure I understand your
12 question.
13 Q. Back to Paragraph 271, this might be
14 a better way to address it.
15 Looking at the block quote in
16 Paragraph 271, that first bit of bolded text reads
17 "the running surface is formed by cross members 10
18 that are transverse to the direction of movement
19 which are attached with rivet 6 to a continuous
20 belt 12;" do you see that?
21 A. I see that.
22 Q. With respect to continuous belt 30
23 in the other embodiment which is addressed in
24 Paragraph 273, there is language in the block
25 quote there that reads "belt 30 is analogous to

Page 46

1 the belt 12 shown in figure 1, in particular,
2 comprising numerous cross members;" do you see
3 that language?
4 A. I see that.
5 Q. Is it your understanding that the
6 cross members in this second embodiment that
7 incorporates belt 30 are attached to belt 30 in
8 the same way that the cross members 10 are
9 attached to belt 12 in the first embodiment that
10 you referenced?
11 A. Can you repeat that question?
12 Q. I will try to shorten it up a little
13 bit. I feel like I rambled a little bit.
14 A. Yes. Thank you.
15 Q. Are the cross members that are
16 attached to running belt 30 attached in the same
17 way that the cross members attached to belt 12 are
18 attached, so specifically with those rivets that
19 hold the cross members to the belt?
20 A. I don't believe that it specifies
21 in -- it's not explicit but it says it's
22 analogous. So that seems like it would be a
23 reasonable method.
24 Q. Other than belt 30 in this second
25 embodiment and belt 12 in that first embodiment,

Page 47

1 do you identify any other structures that would
2 constitute a running belt as recited in the
3 challenged claims in Tollkien?
4 A. Do I identify them? Is that what
5 you're asking?
6 Q. Yes, essentially, I just want to
7 confirm that the only running belts that you're
8 referring to when you discuss Tollkien are belt 30
9 and belt 12?
10 A. I'm going to have to review the
11 declaration to make sure that that's what's in
12 there but I would refer you to -- I will stand by
13 whatever is in the declaration.
14 MS. RIEGER: We have been going a
15 little over an hour. Why don't we take a short
16 maybe 10, 15-minute break unless you prefer to
17 power through.
18 THE WITNESS: That's fine. Do you
19 want to reconvene at 10:45? I assume you are
20 central.
21 MS. RIEGER: Yes, 10:45 sounds
22 good, if that works for you, Mr. Turner.
23 MR. TURNER: Sounds good.
24 (Whereupon, brief recess was taken
25 at 10:30 a.m.)

Page 48

1 - o0o -
2 (Whereupon, the deposition
3 reconvened at 10:45 a.m.)
4 BY MS. RIEGER:
5 Q. Welcome back, Dr. Giachetti. During
6 the break, did you speak with your counsel about
7 the substance of your testimony at all?
8 A. No.
9 Q. Staying with Tollkien, I would like
10 to turn to Page 178 of your declaration Exhibit
11 1003 and starting on this page, you provide some
12 opinions regarding claims 2 and 3 of the 005
13 Patent; do you see that?
14 A. I see that.
15 Q. And Paragraph 300 you opine that
16 "Tollkien discloses a shaft, (front shaft)
17 extending through the center of the front roller 2
18 (front pulley) and a shaft (rear shaft) extending
19 through the center of the rear roller 2 (rear
20 pulley);" did I read that correctly?
21 A. I think so.
22 Q. And it looks like in support of that
23 opinion you have cited to Tollkien's figure 1; is
24 that right?
25 A. Yes.

Page 49

1 Q. And the very next sentence you state
2 that "Tollkien illustrates an example coupling in
3 figure 3, wherein the frame defines holes and the
4 front shaft is receive through the holes;" do you
5 see that?
6 A. I see that.
7 Q. And the following page, still in
8 Paragraph 300, provides annotated versions of it
9 looks like a couple of copies of figure 1 and one
10 copy of figure 3; is that right?
11 A. Right.
12 Q. The original images, both figure 1
13 and figure 3, do not have any expressed callouts
14 or labels for the structures that you've
15 identified as the holes in shafts; is that right?
16 A. Well, I would say that figure 3
17 shows it graphically, maybe not in the text. I
18 don't recall as I sit here but certainly figure 3
19 shows it.
20 Q. But there are no reference numbers
21 or words in the original images that points to the
22 structures that you identify as the holes in
23 shafts; is that fair?
24 A. Right, this is purely based on
25 figure 1, you know, we point where it says front

Page 50

1 shafter there in that figure there. On Page 179
2 you can see the shaft graphically, you can see the
3 pulley graphically and you can see the holes
4 graphically in figure 3 just below it.
5 Q. But you didn't add any of those
6 labels for those structures to figure 3 either; is
7 that right?
8 A. Well, we put the labels in there in
9 figure 1, front shaft rear pulley.
10 Q. But not in figure 3?
11 A. Correct.
12 Q. With respect to Tollkien's expressed
13 teachings, is it your opinion that Tollkien
14 discloses a shaft based on anything other than
15 these figures 1 and 3?
16 A. Can you repeat that question?
17 Q. Sure. With respect to Tollkien's
18 expressed teachings, what Tollkien expressly says,
19 is it your opinion that Tollkien discloses a shaft
20 based on anything other than these figures 1 and
21 3?
22 A. Let me just refresh my memory on
23 what Tollkien says here. I would say it discusses
24 rollers in the specification and in the claims and
25 the rollers are shown graphically there to include

Page 51

1 shafts and pulleys. So there is some reference in
2 the specification and the claims of Tollkien.
3 Q. Where exactly in Tollkien is there a
4 written description that describes the alleged
5 holes and shafts that you identify in figures 1
6 and 3?
7 A. First of all, it says "rollers" and
8 you've got to connect the rollers somehow. So
9 rollers are shown or written in here right at the
10 beginning in the preamble it says "the treadmill
11 for fitness training with running surface formed
12 between two rollers."
13 Q. I'm sorry. Where are you right now?
14 A. On the very first page of the
15 patent. There you go, right there. So it
16 discusses the two rollers and it shows the image
17 right next to it that shows what it's talking
18 about. It's pointing to them as number 2 and it's
19 obvious that it's attached to the frame by the
20 circle in the very middle of the roller,
21 particularly, what is shown in figure 3.
22 Q. When I asked earlier with respect to
23 Tollkien's expressed teachings whether your
24 opinion that Tollkien discloses a shaft was based
25 on anything other than figures 1 and 3, again,

Page 52

1 with respect to Tollkien's expressed teachings,
2 would the answer to that question be no, it is not
3 based on anything other than figures 1 and 3?
4 MR. TURNER: Objection. Form.
5 A. Can we read that question back? I
6 just want to make sure I got all of it.
7 Q. Let me repeat the question straight.
8 With respect to Tollkien's expressed
9 teachings, is your opinion that Tollkien discloses
10 a shaft based on anything other than figures 1 and
11 3?
12 A. I think it does because it talks
13 about these two rollers and it's clear from the
14 images what Tollkien means.
15 Q. It's clear from the images you say
16 what Tollkien means?
17 A. By the rollers.
18 Q. So just looking at that, what is
19 referred to on this I suppose Page 2 of the PDF of
20 Tollkien, the written words, you will agree with
21 me that the written words on this page do not
22 refer to a shaft or anything that could be
23 characterized as a shaft, correct?
24 A. No.
25 Q. Why?

Page 53 1 A. Because you said anything that could 2 be characterized as a shaft and I have just been 3 discussing that these rollers are what they are 4 shown as in the picture. So I would characterize 5 and I believe a POSA would also characterize these 6 rollers as a shaft or some other similar machine 7 element, at least including a shaft. 8 Q. Well, that's a slightly different 9 issue, isn't it? Is it your opinion that the 10 rollers are the exact same structure as the shaft 11 as recited in the claims of the 005 Patent? 12 A. I believe that it meets that. 13 Q. You believe that the roller itself 14 meets the claim elements of -- going back up to 15 the actual language of the claim -- my apologies. 16 Let me pull your declaration back up, Exhibit 17 1003. 18 Right above Paragraph 300, looking, 19 for example, at claim 2, it recites "the manually 20 powered treadmill of claim 1 further comprising a 21 front shaft coupled to the frame, the front shaft 22 being adapted to support at least one front 23 running belt pulley." 24 Now, I understood from Paragraph 300 25 of your declaration that you identified roller 2	Page 55 1 shaft; is that not correct? 2 A. I don't believe that that is 3 correct. So roller 2 here is depicted as having a 4 large outer diameter and then there is another 5 part of it that has a smaller diameter which I 6 understand and I would argue that a POSA would 7 understand meets that shaft portion, which is what 8 I have pointed out in my declaration. 9 Q. And that understanding is based on 10 the figure and not the written words on this page; 11 is that correct? 12 A. Well, it's based on the numerous 13 positions in this patent where it discusses the 14 rollers and then it's also based on all the 15 figures, not just figure 1 and this unlabeled 16 figure on the front page. 17 Q. Well, this figure on the front page 18 is figure 1. Will you agree with me on that? 19 A. I think figure 1 is on Page 10 or 20 it's at the end. There is a sequence of three 21 images at the end of this patent and yes, you just 22 brought it up on the screen. 23 Q. Let's look at figure 1 and then I'm 24 going to go back to Page 2. 25 Will you not agree with me that
Page 54 1 as the front pulley and some separate element as 2 the shaft; is that not correct? 3 A. So Page 179 of my declaration does 4 show what I have identified from Tollkien as 5 pulley and shaft and yes, I believe according to 6 my declaration, that what I'm saying in the 7 declaration and what I'm saying here today is that 8 Tollkien meets those limitations. 9 Q. My question was actually slightly 10 different. 11 A. I understood that you asked me if 12 those elements met the claim limitations. 13 Q. Well, my question, Dr. Giachetti, 14 was I understood from your earlier testimony when 15 I asked you with respect to Tollkien and 16 specifically that disclosure that you identify on 17 Page 2, and I will pull that back up, Exhibit 18 1031, you testified that you believed this written 19 language on this page expressly disclosed a shaft 20 by virtue of its disclosure of roller 2 because 21 roller 2 would technically qualify as a shaft. 22 Now, looking at your declaration, 23 you do not appear to be identifying roller 2 as 24 the shaft for purposes of claim 2 and 3 but 25 rather, identifying some other structure as the	Page 56 1 Figure 1 is identical except for size to this 2 figure on Page 2? 3 A. No. 4 Q. Why? 5 A. Because they are different. 6 Q. How are they different? 7 A. Can you bring them up side by side? 8 Q. I can bring up this image on Page 2 9 side by side with your declaration which provides 10 mirrored images of figure 1 with your annotations. 11 A. Okay. I can see it. Thank you. 12 Q. Were there any differences between 13 figure 1 and this figure on Page 2? 14 A. I see at least one difference. 15 Q. What is the difference that you see? 16 A. So the very right most edge in 17 figure 1 appears to be truncated in comparison to 18 the figure on Page 1 of Tollkien's patent. 19 Q. Let's go back to Page 11. So that 20 is truncated on Page 11 as well. 21 Other than that, are there any 22 differences between these two figures? 23 A. Not that I see. I mean other than 24 the label, figure 1 doesn't appear on Page 1 on 25 the first page.

Page 57

1 Q. And you will agree with me what is
2 actually in your declaration is figure 1 and not
3 this very similar, nearly identical figure on
4 Page 2, correct?
5 A. I think on that specific page of my
6 declaration, that's true but I am pretty sure that
7 the cover page figure does appear in my
8 declaration.
9 Q. Well, in this section, I'm going to
10 go to your declaration now, in the section where
11 you discuss claims 2 and 3, which starts here on
12 Page 178, goes to 179 and then ends after the
13 first couple of lines on Page 180, you do not
14 identify that figure on Page 2 of Tollkien,
15 correct?
16 A. Correct, I am only using figure 1,
17 you know, and I have just scanned through from
18 Page 179 of my declaration to like 187 but I see
19 that it shows up on Page 190.
20 Q. But 190 is not discussing these
21 claims 2 and 3; is that correct?
22 A. I don't recall. I would have to
23 read through it. I was just looking for the
24 image.
25 Q. Well, on Page 190 even here you

Page 58

1 refer to that figure as figure 1 annotated; isn't
2 that correct?
3 A. Right, because I filled in the
4 truncated portion.
5 Q. So then you do agree that the figure
6 on Page 2 of Tollkien and figure 1 are identical
7 apart from that edge of the frame for what you
8 characterize as the frame in this figure?
9 A. Other than that, I think they are
10 depicting the same thing.
11 Q. Going back to Pages 178 to 180, you
12 don't actually cite to any written text from
13 Tollkien in this section; is that correct?
14 A. You're right. I say that Tollkien
15 discloses it.
16 Q. Right. And when you say that, you
17 follow it up with a citation only to figure 1 of
18 Tollkien, correct?
19 A. That's right.
20 Q. I asked you earlier a few questions
21 regarding Tollkien's written disclosures and I
22 just would like to get sort of a clean answer on
23 this.
24 With respect to the supposed
25 structure that you identify in this Paragraph 300,

Page 59

1 what you characterize as a shaft that Tollkien
2 discloses that meets the requirement for a front
3 shaft and a shaft that Tollkien discloses that
4 meets the requirements for a rear shaft, will you
5 agree me that Tollkien does not contain any
6 written description describing those structures?
7 MR. TURNER: Objection to form.
8 A. They call them rollers I believe, so
9 that would constitute a written description.
10 Q. Well, you identify roller 2 as the
11 front pulley and rear pulley in this paragraph;
12 isn't that correct?
13 A. So I write "Tollkien discloses a
14 shaft extending through the center of the front
15 roller 2 and a shaft extending through the center
16 of rear roller 2." So I suppose the
17 interpretation in Paragraph 300 is that that's
18 what is depicted as part of the roller description
19 but yeah, if that's the interpretation, then those
20 things could not exist without a shaft going
21 through them.
22 Q. Again, Dr. Giachetti, and this is a
23 yes or no question, does Tollkien identify in
24 words any structure that meets what you describe
25 as a front shaft and a rear shaft in Paragraph

Page 60

1 300?
2 MR. TURNER: Objection. Asked and
3 answered.
4 A. Can you repeat that? I just want to
5 make sure I understand the question.
6 Q. Again, a yes or no question. Does
7 Tollkien identify, in words, any structure that
8 meets what you describe as a front shaft and a
9 rear shaft in Paragraph 300?
10 Do you need me to repeat the
11 question Dr. Giachetti?
12 A. Sure. I'm just reading through
13 Tollkien again just to make sure that I provide a
14 precise answer.
15 Q. Yes or no, does Tollkien identify,
16 in words, any structure that meets what you
17 describe as a front shaft and a rear shaft in
18 Paragraph 300?
19 A. I'm sorry. You're asking if
20 Tollkien discloses that but then you are also
21 asking about my Paragraph 300?
22 Q. Well, your Paragraph 300 states that
23 "Tollkien discloses a shaft extending through the
24 center of front roller 2 and a shaft extending
25 through the center of the rear roller 2."

Page 61

1 My question to you is yes or no,
2 does Tollkien in words describe either of the
3 shafts that you identify in that sentence?
4 A. Well, I would say that Tollkien
5 identifies that the rollers are an assembly and it
6 also discloses that that assembly is used to drive
7 the wheels and the embodiment which requires a
8 shaft. So I would say given the description of
9 the rollers, that they are also an assembly, that
10 they are used to drive wheels in that embodiment,
11 that a shaft is disclosed inwards. However, the
12 pictures show it pretty clearly.
13 Q. Does the word "shaft" appear
14 anywhere in Tollkien?
15 A. No, but it's a translation. So I'm
16 unsure of all the different words that a German
17 could use for "shaft."
18 Q. Any synonyms of the word "shaft"
19 that could be used to describe what you identify
20 as the supposed shaft in Paragraph 300 appear
21 anywhere in Tollkien?
22 A. Well, like I said, it calls it an
23 assembly and so to a POSA, that puts the flag up
24 that there is a shaft there.
25 Q. Why?

Page 62

1 A. So if there is no shaft, then --
2 well, it's an assembly. So there are multiple
3 pieces to it. That's what an assembly is. It is
4 multiple components and then you have the rest of
5 the patent to figure out what that means.
6 Q. Where does Tollkien describe the
7 rollers as an assembly and we will put Tollkien?
8 You appear to have it in front of you but I would
9 like to see what you are referring to.
10 A. Sure. It is in the -- go to next
11 page, right there. Let's see. "These cross
12 members are supported over the entire surface on
13 which the user can stand when in use by a roller
14 assembly."
15 Q. Using the paragraph numbers, where
16 are you?
17 A. 0006.
18 Q. So that is describing a treadmill as
19 disclosed in U.S. 5,018,722. That's not the
20 invention of Tollkien, is it?
21 A. No, it's not but it's describing
22 rollers being in an assembly.
23 Q. You're not relying on that reference
24 in your grounds. You are relying on the invention
25 as described in Tollkien, aren't you?

Page 63

1 A. Correct, but he's describing
2 rollers. Here he is calling it a roller assembly.
3 Q. This says "these cross members are
4 supported over the entire surface in which the
5 user can stand when in use by a roller assembly
6 such that the running surface is relatively hard."
7 Are you testifying right now that
8 you understand that roller assembly to be
9 identical to the roller 2 described in Tollkien?
10 A. I don't know if they are identical.
11 Q. So what relevance does this roller
12 assembly which supports over the entire surface of
13 the cross members have to the structure of
14 Tollkien?
15 A. For me, it just points that talking
16 about a roller versus a roller assembly that it is
17 the same thing. For example, if you go to
18 paragraph 0020, he talks about his roller being
19 coated with rubber. So we already know that this
20 roller has multiple pieces to it. It's not just a
21 single lump of stuff. So I would say roller,
22 roller assembly here to be read the same.
23 Q. So the only roller assembly that you
24 have identified relates to a different patent on a
25 different invention. Where in Tollkien's

Page 64

1 description of roller 2 does it ever describe it
2 as a roller assembly or describe it in words as
3 having a shaft?
4 MR. TURNER: Objection. Misstates
5 the testimony.
6 MS. RIEGER: I disagree.
7 BY MS. RIEGER:
8 Q. But, please, Dr. Giachetti.
9 A. As I just pointed out in Paragraph
10 0020, it tells the reader this is isn't just a
11 single piece of material. There are multiple
12 parts to it. That means it's an assembly earlier
13 in Tollkien called something, a roller assembly,
14 and so that together is what tells me roller and
15 roller assembly could be read similarly and
16 likewise, as I cite in my declaration, the images
17 in Tollkien provide a conclusory piece of evidence
18 that there is a shaft as well as a pulley there on
19 the roller.
20 Q. So am I to understand your testimony
21 to mean that because Tollkien describes roller 2
22 as having a rubber coating, roller 2 must also
23 have a shaft?
24 A. I don't think I said that. All I am
25 saying is that there are multiple elements to

Page 65

1 roller 2, so that puts it under the umbrella of an
2 assembly and, accordingly, we can put together
3 that there is a shaft there because of the images.
4 Q. Again, I'm not referring to the
5 images when I ask you these questions. I am
6 asking solely about Tollkien's written
7 description.
8 Can you identify any word in this
9 reference that refers to the structures explicitly
10 that you have identified as the shafts for
11 purposes of claims 2 and 3, yes or no?
12 A. I think that everything that we
13 discussed points to the shaft, you know. I can't
14 speak for the German translation in terms of maybe
15 there could have been a word translated as
16 "shaft." In this English translation I see
17 roller, roller assembly, there is a mention of an
18 axle. Beyond that, I can't really speak to an
19 explicit particular word for shaft other than, you
20 know, what we've stated already.
21 Q. So, again, very simple yes or no
22 question and I will repeat it again, can you
23 identify any word in this reference that refers to
24 the structures explicitly that you have identified
25 as shafts for purposes of claims 2 and 3?

Page 66

1 A. No, because I don't speak German so
2 I can't to go that.
3 Q. I am not asking about the original
4 German. I am asking about this translation in
5 English.
6 Can you identify any word that meets
7 those criteria? You relied on the English
8 translation, correct?
9 A. I did rely on the English
10 translation but my reading of it is as through the
11 lens of a person of ordinary skill in the art and
12 the whole disclosure, not the disclosure but the
13 teachings of Tollkien are not just the words.
14 They are the pictures also. So I relied on all of
15 that and I know you are just asking me about the
16 words.
17 I think in there roller, roller
18 assembly, the way those are used in the context, I
19 see that as meaning "shaft."
20 Q. But you cannot identify sitting here
21 any particular word in the written description of
22 Tollkien in English that actually describes
23 explicitly that shaft, correct?
24 A. I would say if you look at Paragraph
25 0023, there is no other way to drive the axle of

Page 67

1 the wheels without a shaft. So is there a single
2 word, no, but there are a bunch of words that
3 point to a shaft existing here.
4 Q. Again, Dr. Giachetti, this is a very
5 simple yes or no question. It sounds like the
6 answer to my question is no, you cannot identify
7 any word or specific phrase that explicitly refers
8 to the shaft; is that correct?
9 MR. TURNER: Objection. Asked and
10 answered.
11 A. Well, I think I did just point to a
12 number of phrases. So in that case then the
13 answer is yes to that question that you just asked
14 me.
15 Q. Dr. Giachetti, is it your opinion
16 effectively that Tollkien, at best, implicitly
17 describes the shaft; is that a better description
18 of your opinion on this matter?
19 A. I don't know if I would say at best.
20 I know that it definitely tells the reader that
21 there is a shaft there. Whether that's an
22 explicit word, I can't speak for the translation
23 so I don't know but in this translation, I can see
24 that a shaft exists there and so could a POSA.
25 Q. But you cannot identify a specific

Page 68

1 word in the English translation that would
2 correspond to what you characterize as the shaft?
3 A. This English translator did not put
4 that word in this document.
5 Q. And this English translation is the
6 only English translation that you have, correct?
7 A. That's right.
8 Q. So, to your knowledge, there is no
9 word in this English translation that corresponds
10 to what you identify as the shafts?
11 A. There is not that single word in
12 this translation.
13 Q. Let's turn to Page 182 of your
14 declaration. So Page 182 of your declaration you
15 start to provide some opinions regarding claim 6;
16 do you see that?
17 A. I see that.
18 Q. And as shown here, claim 6 depends
19 from claim 1 and recites "a plurality of bearings
20 coupled to the frame, at least one bearing of the
21 plurality of bearings configured to at least
22 partially support the running belt;" did I read
23 that correctly?
24 A. I think so.
25 Q. In Paragraph 307 you identified

Page 69

1 portions of Tollkien's runners 14 as the recited
2 plurality of bearings; is that right?
3 A. Yes.
4 Q. And if we go to the next page, you
5 have an annotated version of figure 1 where it
6 appears that you have identified those portions of
7 runners 14 that you refer to as the plurality of
8 bearings in blue; am I understanding that figure
9 correctly?
10 A. Can you say that again?
11 Q. Maybe I can simplify it a bit.
12 Referring to this annotated version
13 of figure 1 on Page 183 of your declaration, are
14 the structures that you identify as the plurality
15 of bearings colored in blue in this figure?
16 A. Yes, that's what we're pointing to.
17 Q. And in the next paragraph, Paragraph
18 308, you state that "a POSA would have understood
19 that the runners 14 are mounted and fixed to the
20 frame and the bearings are mounted for rotation
21 about the axles and relative to the frames provide
22 rolling engagement with the continuous belt 12."
23 Did I read that correctly?
24 A. I think so.
25 Q. You don't cite anything in Tollkien

Page 70

1 to support that statement in this paragraph, do
2 you?
3 A. So Paragraph 308 is about what a
4 POSA would have understood based on what we wrote
5 in Paragraph 307 that cites Paragraph 20.
6 Q. Does Tollkien ever expressly
7 describe how runners 14 are mounted or fixed to
8 the rest of Tollkien's treadmill?
9 A. I believe that part of the goal of
10 Tollkien is to have that be adjustable. So my
11 recollection is that it's discussed. I need to
12 rereview Tollkien here to make sure that it's
13 explicitly discussed but that's my understanding
14 of one of the goals of Tollkien.
15 Q. Can you tell me where that is
16 discussed in Tollkien?
17 A. Yes, so in Paragraph 5, Tollkien is
18 complaining that the curvature of other prior
19 treadmills are not adjustable, at least I think
20 that's Socwell he's referring to. So he said his
21 running surface curvature is obtained with guide
22 rails and rollers and so that's in Paragraph 5
23 there.
24 Q. So the sentence that you're
25 referring to in Paragraph 5 reads "the curvature

Page 71

1 of the running surface is obtained in this
2 treadmill with guide rails and rollers, which has
3 the disadvantage, in addition to not being
4 adjustable to legs of different lengths, that it
5 has a relatively hard running surface." Isn't
6 that describing Socwell or at least the author of
7 this document's opinion regarding Socwell?
8 A. Yes, I think I might have read that
9 wrong if he is talking about Socwell there but he
10 does say in Paragraph 8 just below, the object of
11 his invention is to have a curving radius of which
12 can be adjusted. So that's Paragraph 8.
13 Q. That paragraph does not -- when I
14 refer to that paragraph, I mean Paragraph 8, that
15 does not discuss how runners 14 are attached to
16 the rest of Tollkien's treadmill, does it?
17 A. No, but that tells you that that's
18 part of this invention.
19 Q. That in your answer meaning the
20 adjustability of the curved surface?
21 A. Correct.
22 Q. So just to repeat my question from
23 earlier, does Tollkien ever expressly state how
24 runners 14 are attached to the rest of Tollkien's
25 treadmill?

Page 72

1 A. So it says, you know, in Paragraph
2 20 that the runners 14 are placed underneath the
3 running surface to prevent the belt from bouncing
4 while in use. So that means that the runners are
5 attached to the treadmill underneath the running
6 surface and that they provide an upward force to
7 that running surface while the person is on it.
8 That's all contained in that one sentence.
9 Q. Does that sentence disclose how the
10 runners 14 are attached though?
11 A. Again, the explicit words of take a
12 nut and take a bolt and take a bearing and take a
13 coating and screw Part A to Part B, which then
14 goes into Part C, which then goes into Part D
15 that's not there because Tollkien understands that
16 a POSA would understand how to attach that to the
17 frame.
18 Q. Well, does it even say it is
19 attached to the frame?
20 A. Well, it must be coupled to the
21 frame in some way, otherwise, it wouldn't provide
22 the upward force for what Tollkien is talking
23 about in terms of the bouncing.
24 Q. So is it more accurate to say that
25 in your opinion, Tollkien implies that the runners

Page 73

1 14 are attached to the frame?
2 A. I mean it shows it in figure 1.
3 Q. Where in figure 1 does it show that
4 runners 14 are attached to the frame?
5 A. The only element in figure 1 that
6 those could be attached to is the frame which is
7 that squarish outline and I should say coupled. I
8 am going to say coupled to the frame.
9 Q. Okay. Fair enough.
10 Can you identify any specific point
11 as depicted in figure 1 where runners 14 are
12 coupled to the frame?
13 A. It looks like midway between the top
14 surface and bottom surface of the frame,
15 approximately midway.
16 Q. Sorry. Let me clarify.
17 With reference to the runners 14,
18 what point on runners 14 do you contend figure 1
19 depicts as being coupled to the frame?
20 A. I'm not sure I understand that
21 question. What do you mean by which points are
22 coupled?
23 Q. Can you point to any structure
24 actually depicted here on figure 1 that is the
25 attachment point between runners 14 and the frame?

Page 74

1 A. Well, there could be a ton of
2 different ways that it's attached and it's not
3 specified because the POSA can pick. So there is
4 not a -- I think what you're asking me is do I see
5 like a hole for a screw or something like that and
6 I don't know that that's needed for these. There
7 are a number of different ways they could be
8 attached. So it's not depicted here.
9 Also, it's only a portion of the
10 runner that is shown. So there could be another
11 area there but Tollkien leaves it up to the POSA
12 who is more than confident to attach these to the
13 frames.
14 Q. Does Tollkien ever describe any of,
15 and to quote you, "a ton of different ways" that
16 the runners 14 could be attached to the frame?
17 A. I don't recall sitting here that
18 Tollkien discusses the method of fabrication.
19 Q. And going back to your declaration,
20 and I'm just referring now to Paragraphs 307
21 through I suppose 309 where you discuss this claim
22 6, you don't cite to anything in Tollkien that
23 would include such a disclosure, correct?
24 A. I mean we should say or I say as
25 shown in figure 1. So, you know, again, it

Page 75

1 doesn't have an explicit word of use super glue
2 and put these on or weld them because it leaves it
3 up to the POSA for that but it does depict it in
4 figure 1 and it describes its function in the
5 patent itself.
6 Q. When you say "depict it," you are
7 referring to just runners 14, correct?
8 A. It depicts the runners in
9 relationship to the running belt and to the frame,
10 so it shows you where it goes.
11 Q. And you said earlier you reference
12 the sentence that starts with "as shown in Figure
13 1," that sentence read "as shown in Figure 1, the
14 runners 14 include a base or short structure
15 annotated in red that supports a plurality of
16 bearings annotated in blue."
17 Did I read that sentence correctly?
18 A. That's correct.
19 Q. And that sentence doesn't refer to
20 how the runners are attached to the frame,
21 correct?
22 A. That's correct.
23 Q. I'm going to jump ahead to your
24 analysis of claim 13 which is on Page 196.
25 A. It has been about an hour. Can we

Page 76

1 take a five-minute break?
2 Q. Sure. We can take a five-minute
3 break, if you'd like. We can come back at 11:50?
4 A. That's great. That would work.
5 (Whereupon, a brief recess was
6 taken at 11:40 a.m.)
7 - oOo -
8 (Whereupon, the deposition
9 reconvened at 11:50 p.m.)
10 BY MS. RIEGER:
11 Q. Welcome back again, Dr. Giachetti.
12 Did you have any conversations with your counsel
13 about the substance of your testimony during the
14 break?
15 A. No.
16 Q. So before our break, we were
17 discussing claim 6 of the 005 Patent and your
18 related opinions regarding Tollkien.
19 If we look at your analysis in your
20 declaration regarding claim 13, would you agree
21 with me that the analysis for this claim just
22 refers back to your opinion regarding claim 6?
23 A. Yes.
24 Q. And, similarly, if we jump ahead to
25 Page 201 and on to Page 202 where you have your

Page 77	Page 79
1 analysis of claim 16, would you, again, agree that 2 this section just refers back to your analysis of 3 claim 6? 4 A. Yes, that's what I state in 5 Paragraph 364. 6 Q. So you didn't add any analysis to 7 either of those sections regarding the structures 8 that you identify as the plurality of bearings in 9 Tollkien, correct? 10 A. Correct. 11 Q. So shifting gears a bit, I'm going 12 to pull up Socwell again and that's Exhibit 1011. 13 As we previously discussed, this is 14 U.S. Patent Number 5,897,461 which lists Jeff 15 Socwell as an inventor. 16 Did you read Socwell in its 17 entirety? 18 A. Yes. 19 Q. And was that before or after you had 20 begun drafting your declaration? 21 A. Before. 22 Q. If we go back to your declaration, 23 Exhibit 1003, specifically at Page 78, the very 24 bottom you have a section Roman Numeral IX, 25 Subsection A, which states "ground 1, claims 1	1 Q. If we go ahead to Paragraph 196, you 2 state here "as illustrated above in figure 5, like 3 the deck 56 (bearing), the rollers 98 (bearings) 4 are coupled to the frame via a mountain bracket 96 5 and cover member 168 assembly. Socwell discloses 6 a plurality of belts securing assemblies 94 7 disposed along the right and left side of the 8 frame 12. As I explained in the State-of-the Art 9 Section, rollers, such as the rollers 98, are 10 bearings. Therefore, the rollers 98 and the deck 11 56 collectively provide a plurality of bearings 12 and at least the deck 56 supports the belt 16." 13 I know I skipped over the citations 14 within that but other than that, did I read that 15 correctly? 16 A. I think so. 17 Q. Would you agree with me that at 18 least according to your opinion in this 19 declaration, that Socwell only discloses a 20 plurality of bearings if its rollers 98 are in 21 fact, considered bearings? 22 A. Well, I think that in the 23 State-of-the Art Section I talk about what 24 constitutes a bearing. So even if there were only 25 one roller at the top or if there was another
Page 78	Page 80
1 through 4, 6 through 7, 9 through 13 and 15 2 through 16 are obvious over Socwell, Magid and 3 Sclater." 4 Do you see that? 5 A. I see that. 6 Q. I'm going to a jump ahead now to 7 Page 126 which is within ground 1 and starting on 8 this page, you discuss claim 6 of the 005 Patent, 9 right, that same claim 6 we were just looking at? 10 A. That's right. 11 Q. And in Paragraph 193 you state that 12 "Socwell discloses a deck 56 (bearing) that is 13 coupled to opposing sides of the frame 12" and 14 then you include a quote from, I believe, Socwell; 15 is that correct? 16 A. I think so. 17 Q. Would you agree with me that Socwell 18 only discloses a single deck 56, correct? 19 A. I think that's true. 20 Q. As you sit here, you're not aware of 21 any embodiments that would have multiple deck 56, 22 right? 23 A. Yes, unless you want to sit here 24 while I go through the whole thing. In this 25 analysis is deck 56.	1 plain bearing up there, that between the deck and 2 whatever low friction means was in the cover 3 member that that would constitute a plurality 4 because that's more than one. 5 Q. Okay. So you agree at least that 6 the term "plurality of bearings" does require more 7 than one bearing, right? 8 A. Yes. 9 Q. And in this declaration as it 10 pertains to Socwell, the only structures you have 11 identified as bearings are deck 56 and rollers 98; 12 is that right, at least within the context of 13 claim 6 which recites the plurality of bearings 14 element? 15 A. Yeah, I state that in Paragraph 196 16 that the rollers 98 and deck 56 collectively 17 provide the plurality of bearings. 18 Q. And you haven't identified anything 19 else in Socwell that would meet claim 6's 20 requirement for a plurality of bearings, correct? 21 A. Not explicitly but certainly Socwell 22 has alternative bearings as opposed to the rollers 23 but per this paragraph, I am only identifying the 24 roller bearing embodiment. 25 Q. Do you identify what you

Page 81

1 characterize as alternative bearings anywhere in
2 your declaration?
3 A. I don't recall if I do but, you
4 know, certainly Socwell shows a number of
5 different embodiments that satisfy what a bearing
6 is as identified in the State-of-the-Art section
7 of my report.
8 Q. I'm just going to go back to claim 6
9 just so we have that for context because I want to
10 clarify what you just said.
11 So claim 6 requires "a plurality of
12 bearings coupled to the frame, at least one
13 bearing of the plurality of bearings configured to
14 at least partially support the running belt."
15 Are you aware of anywhere in your
16 declaration that you identify a structure other
17 than Socwell's deck or Socwell's rollers 98 that
18 meet claim 6's requirement for a plurality of
19 bearings?
20 A. I don't recall as I sit here. I
21 think what I recall is, you know, this embodiment
22 was the primary embodiment that I was analyzing.
23 Q. Do you provide an analysis of any
24 other embodiments in Socwell?
25 A. I don't recall as I sit here right

Page 82

1 now.
2 Q. Well, at least in this section,
3 referring to claim 6, you are welcome to refer to,
4 I know you indicated you have either a local copy
5 or a physical copy of your declaration with you,
6 can we agree that the only structures that you
7 identify as bearings in this section are deck 56
8 and rollers 98?
9 A. I think that that's true.
10 Q. Now, in certain of the earlier filed
11 IPRs which we discussed earlier this morning, you
12 also opined that Socwell's rollers 98 and deck 56
13 collectively formed a plurality of bearings; is
14 that correct?
15 A. I didn't review those opinions
16 before I sat here but if, you know, I am on the
17 record as stating that, then I will support that.
18 Q. With respect to the plurality of
19 bearings limitation, do you understand the 005
20 Patent use of that term to be the same as the use
21 of that term in the other patents that were at
22 issue in the earlier filed IPRs?
23 MR. TURNER: Objection. Form.
24 MS. RIEGER: That's actually a bad
25 question. Let me rephrase.

Page 83

1 BY MS. RIEGER:
2 Q. With respect to the claim elements
3 of a plurality of bearings which appears in both
4 the 005 Patent and in the patents in the earlier
5 filed IPRs, do you understand that term to have
6 the same meaning in the 005 Patent than it does in
7 the 580, 745 and 884 Patents?
8 A. I couldn't tell you right now
9 because I haven't reviewed those other patents in
10 preparation for this. So I really would be giving
11 you an uneducated opinion just because I didn't
12 review those in advance of today.
13 Q. Do you recall in some of the earlier
14 filed IPRs at least that you argued that certain
15 claims that recited a plurality of bearings were
16 obvious over Socwell in combination with Magid and
17 Sclater?
18 A. I could have. I haven't reviewed
19 any of those things before sitting down for this
20 and, you know, that was one more than six months
21 ago that I sat for that last deposition. So I
22 could not tell you, you know, much about most of
23 the arguments in those things. I know that
24 "plurality of bearings" as a phrase appears and I
25 am sure that I have opinions on it but honestly,

Page 84

1 as I sit here right now, I could not tell you what
2 my specific opinions were.
3 Q. Do you have any reason to believe
4 that your opinions in the earlier filed IPRs would
5 be substantively different from your opinions in
6 the 005 IPR?
7 A. Only if the language in the 005 was
8 somehow different.
9 Q. So if the language in the other
10 patents, for example, similarly recited a
11 plurality of bearings coupled to the frame, do you
12 believe that your opinion regarding that phrase
13 would be the same here for the 005 as it would be
14 for the 580, 745 and/or the 884 Patent?
15 A. I would expect that I would have a
16 similar opinion if similar words were used across
17 those patents.
18 MS. RIEGER: I may come back to
19 that but for now, we can move on to another
20 exhibit. I am going to put up Exhibit 1012.
21 (Whereupon, previously marked
22 Exhibit 1012 was displayed.)
23 - oOo -
24 BY MS. RIEGER:
25 Q. Do you recognize this document?

Page 85

1 A. It looks like Magid.
2 Q. So this is U.S. Patent Number
3 5,538,489 which lists Sidney Magid. He is listed
4 as the inventor, correct?
5 A. Sounds right to me.
6 Q. And if I refer to this as Magid or
7 reasonable variations of those pronunciations,
8 will you understand what I'm referring to?
9 A. Yes, and I will ask you to clarify
10 if I don't.
11 Q. Understood. Thank you.
12 Did you read Magid in its entirety?
13 A. I did.
14 Q. And did you read it fully before or
15 after drafting your declaration?
16 A. Before.
17 Q. In your declaration in this matter
18 it appears that you rely on Magid to modify
19 Socwell in ground 1; is that correct?
20 A. Yes.
21 Q. In the earlier filed IPRs
22 challenging certain claims of the 580, 745 and 884
23 Patents, do you recall that you also relied on
24 Magid to modify the primary references in each of
25 these sorted grounds?

Page 86

1 A. I know that I used Magid. I don't
2 recall if it was the primary or something used to
3 modify another one as I sit here.
4 Q. Do you have any reason to believe
5 that your opinions in the instant IPR relating to
6 the 005 Patent regarding the motivation to combine
7 Socwell and Magid would be different substantively
8 in any way from your opinions in the earlier filed
9 IPRs regarding those two references?
10 A. You know since I didn't review those
11 in advance and it has been a while, I don't really
12 have a basis to give you an opinion either way on
13 that right now. I reviewed those patents and I
14 didn't review my declarations in those. The last
15 time I looked at those was sometime in early
16 January and I could not tell you what my opinions
17 were exactly in that and how I formed them.
18 Q. Well, as you sit here today, are you
19 aware of any inconsistencies between your opinions
20 and the earlier IPRs and what you say with respect
21 to the 005 Patent?
22 A. Well, I would say that if there are
23 differences in opinion, it is probably due to
24 differences between the 005 and those other
25 patents and that's probably the best answer I can

Page 87

1 give you right now.
2 Q. Sure. I understand. Assuming that
3 your opinions are consistent, do you have any
4 reason to believe that you would have reached
5 those conclusions for different reasons with
6 respect to the 005 Patent than you did with
7 respect to other patents?
8 A. Only in regards to if the 005 is
9 different from those other ones.
10 Q. So provided that the claim language
11 that you are addressing is the same or at least
12 very similar, you would not expect your reasoning
13 to have been any different in the earlier IPRs
14 than it is here?
15 A. You're right. So if I see the same
16 plain language, I would have applied the same
17 analysis.
18 MS. RIEGER: I'm going to go to
19 another exhibit now which is Exhibit 1017.
20 (Whereupon, previously marked
21 Exhibit 1017 was displayed.)
22 - oOo -
23 BY MS. RIEGER:
24 Q. Do you recognize this exhibit?
25 A. Yes.

Page 88

1 Q. And this is what you refer to in
2 your declaration as Sclater, correct?
3 A. Correct.
4 Q. I'm going to go back to your
5 declaration, specifically to Paragraph 141 which
6 is on Page 84, and in this section you state in
7 the first sentence "a POSA would have been further
8 motivated to substitute Sclater's one way
9 sprag-type bearing assembly for Magid's
10 ratchet-and-pawl one-way clutch mechanism to
11 obtain predictable results, e.g. reduced noise and
12 improved durability, while maintaining the
13 backstopping functionality and resultant safety
14 benefits of Magid."
15 Did I read that sentence correctly?
16 A. I think so.
17 Q. With respect to that statement as
18 well as the remainder of the opinions in this
19 section which goes through Paragraph 151, would
20 you agree that you offered similar opinions in the
21 earlier filed IPRs regarding replacing Magid's
22 ratchet-and-pawl type clutch with Sclater's
23 sprag-type clutch?
24 A. I think that that's -- again, I did
25 not review that and it was more than six months

Page 89

1 ago the last time I looked at those opinions and
2 those pieces of art.
3 Q. But you have no reason to believe
4 that provided that the elements that you are
5 addressing are similar across all of the patents
6 that your opinions would differ substantively
7 between the different IPRs, correct?
8 A. I mean only based on differences in
9 those claims and those specifications.
10 Q. Did you conduct any different or
11 additional analyses in connection with your
12 declaration in the 005 Patent IPR than you did for
13 the earlier filed IPRs?
14 MR. TURNER: Objection to form.
15 A. Can you explain what you mean by
16 that?
17 Q. Yes, so I mean I asked you earlier,
18 you know, just some baseline questions about
19 whether your opinions were fully reflected in the
20 declaration and whether your analysis and
21 assumptions that you might have made are reflected
22 in the declaration; do you recall that?
23 A. Yes.
24 Q. To your knowledge, did any of the
25 analyses that are documented in your declaration

Page 90

1 differ from what you did in the earlier filed
2 IPRs?
3 A. I think my methodology remained the
4 same. I don't know what the differences are.
5 Again, that was more than six months ago the last
6 time I looked at those. So I could not tell you
7 what the differences are in the outcome of that
8 analysis but I am assuming that it would be
9 similar. I know that, you know, replacing the
10 ratchet with the one-way bearing is something that
11 I said previously as well. So I would assume that
12 my analysis, the outcome of the analysis is going
13 to be similar here.
14 Q. So you testified earlier this year
15 in connection with the earlier filed IPRs, just as
16 an example, that you did not do specific testing
17 or other analysis to determine the amount of noise
18 that a ratchet-and-pawl clutch makes compares to a
19 sprag-type clutch; do you recall that testimony?
20 A. Yes, and I followed up with the
21 testimony that's part of my knowledge base as an
22 engineer and someone who has played with toys and
23 used a bicycle and things along those lines that I
24 have an understanding like a POSA would of the
25 noises that ratchets make versus a one-way

Page 91

1 bearing.
2 Q. And in advance or in connection with
3 preparing your declaration in the 005 Patent, did
4 you do any testing like that when forming your
5 opinions or did you similarly rely on, you know,
6 that knowledge base that you referred to in your
7 last answer?
8 A. Right, so I maintain that knowledge
9 base. I didn't do any testing but I will
10 supplement that by saying Sclater also discloses
11 that these are much quieter than their ratchet
12 counterparts.
13 Q. So let's address that. So if we go
14 to ground 2 of your declaration, that's the ground
15 where you opine that a POSA would have been
16 motivated to combine Tollkien and Sclater without
17 relying on Magid, correct?
18 A. Correct.
19 Q. Let's look at Paragraph 245 of your
20 declaration on Page 152 and just to show you, this
21 is in that same section we talked about earlier
22 with respect to Tollkien that's titled Rationales
23 Combined Tollkien and Sclater.
24 So in Paragraph 245, you state that
25 "it would have been obvious to a POSA to combine

Page 92

1 the off-the-shelf one-way bearing assembly of
2 Sclater to the treadmill of Tollkien to permit
3 only unidirectional movement of the running belts
4 to reduce the risk of a user stepping on to the
5 running belt of the treadmill and losing their
6 balance when the belt moves in the forward
7 direction."
8 Did I read that correctly?
9 A. You did.
10 Q. And then if you go down to Paragraph
11 247 which starts on the same page, you state "this
12 modification would have been a simple combination
13 of known elements in the prior art, Tollkien's
14 manual treadmill with a curved running surface and
15 Sclater's one-way bearing" and then you go on to
16 describe some examples of how you propose
17 attaching Sclater's one-way bearing to Tollkien;
18 is that right?
19 A. Yes, I think that that's reasonable.
20 Q. And in that same paragraph you
21 provide this image from Page 318 of Sclater which
22 shows the device that you were discussing,
23 correct?
24 A. Correct.
25 Q. Was this specific sprag-type clutch

Page 93

1 that you identify in this paragraph ever
2 commercially available?
3 A. I believe that this is commercially
4 available and that's why I brought in the Emerson
5 catalog that shows a sprag. They sell these type
6 of bearings.
7 Q. Emerson does not reference Sclater,
8 does it?
9 A. It doesn't but I would say that it
10 has a picture nearly identical to this one from
11 Sclater in it.
12 Q. Your grounds don't rely on a
13 combination of Tollkien and Emerson or Socwell and
14 Emerson, do they?
15 A. No, Emerson is just there to give a
16 state of the art and to show that these things
17 were commercially available for a long time before
18 the disclosure of the 005.
19 Q. How do you know that the sprag that
20 you identify in Sclater is identical or nearly
21 identical to one of the sprags shown in Emerson?
22 A. Can you repeat that question?
23 Q. How do you know that the sprag that
24 you identified from Sclater shown here on Page 153
25 of your declaration is, and I think I am using

Page 94

1 your words when I say this, identical or nearly
2 identical to at least one of the sprags shown in
3 Emerson?
4 A. Yes, so there is a picture. It's EX
5 1018, Page 9, and if you look at the top left-hand
6 corner of that page where it describes how a sprag
7 works and shows graphics, I think it is the next
8 page, the top left image there is essentially the
9 same. It doesn't show the threads but it shows
10 the holes and it shows the sprags and it shows the
11 roller balls and it shows the rings.
12 Q. You don't actually cite to this
13 disclosure in Emerson in the paragraphs that we
14 just discussed, do you?
15 A. No, because, again, this is just the
16 state of the art showing that it's available.
17 Sclater is the reference that tells you that a
18 sprag one-way bearing is appropriate for conveyor
19 belts and illustrates that and shows you how to
20 put it in and tells you what advantages you would
21 get from it. So that's all from Sclater. Emerson
22 is just there to say this has been around for
23 ages. This is something that's commercially
24 available. It's sold as something for exercise
25 equipment. So I'm not using Emerson as a

Page 95

1 combination here. It's just to show what was
2 commercially available.
3 Q. So why in your opinion would a POSA
4 have selected this specific sprag that you
5 reference from Sclater to combine with Tollkien?
6 A. Basically because on Page 320
7 Sclater says here are applications for sprag-type
8 clutches and then it shows the conveyor belt and
9 says, you know, to backstop this, you would use a
10 sprag-type clutch which is what's shown in this
11 image right here in my declaration and in other
12 places it tells you that all these sprags gives it
13 good characteristics and tells you that it is
14 quiet. In advance of Page 320 Sclater bills this
15 up as being pretty ideal for this use and then on
16 Page 320 actually shows it's used on a conveyor
17 belt for this particular function.
18 Q. So where in Sclater are those
19 characteristics that you just described actually
20 tied to this specific sprag that you reference
21 rather than to broader categories of devices such
22 as friction-type devices generally?
23 A. Right under the picture of this in
24 Sclater it shows this image and then it shows two
25 other images of the -- this is Page 318 in

Page 96

1 Sclater.
2 Q. I am bringing it up.
3 A. I think you just past it. There it
4 has a description right there. It shows that the
5 precision sprags act like wedges and it tells you
6 how they work and then you can basically see those
7 two little pictures that show the overrunning and
8 the wedging action. Those are basically shown on
9 Page 316 as well and it talks about how they
10 transmit torque and by putting so many of those
11 sprags in a limited space, you can get higher
12 torque loads and that you don't need special
13 surfaces. This is at the very bottom there.
14 So it tells you that and then at the
15 top of this page it tells you it's quieter and so
16 it's all building up to that portion where it
17 says, you know, sprag clutches are the way to go
18 for this conveyor system.
19 Q. So this section discusses many
20 different types of clutches, not only that
21 specific sprag that you cite to, correct?
22 A. Right. So this figure 1 is
23 basically showing the evolution of the one-way
24 clutch technology.
25 Q. So that brings me back to my earlier

Page 97

1 question. So, for example, you refer to, I
2 believe, this figure 1 which describes a
3 friction-type clutch as quieter.
4 How are you imparting that statement
5 specifically to the sprag that you have cited and
6 not just to any of the other devices described in
7 this section?
8 A. Well, a POSA understands that the
9 ratchet-and-pawl, every time the ratchet goes
10 over -- every time the pawl goes over the tooth of
11 the ratchet, that it makes the click noise when it
12 comes down and collides with a little part of that
13 tooth. So the pictures here show how you go from
14 that to basically a friction device where the
15 friction causes it to jam up and wedge to the
16 roller and then as you get down to the bottom of
17 the page, it then tells you oh, this is -- well,
18 it doesn't tell you explicitly but it is basically
19 like the sprag is really good because you can get
20 a lot more in there and it shows it. You just
21 past it. One more page up. I am not going to go
22 into it too deep here. It is like two previous
23 pages here.
24 Figure 1 shows a variant where there
25 is symmetrical rollers that get wedged and then as

Page 98

1 you read through the page, you get to figure 4
2 that shows a sprag-type bearing and it gives you
3 the advantages of those that you can get way more
4 sprags in there and it shows you graphically that
5 there are more sprags in comparison to that roller
6 style at the top and then it gives you the
7 advantage.
8 So it says this one gives you better
9 torque characteristics and as you continue
10 reading, it shows you that picture that I put in
11 the declaration which is figure 1 on Page 318 and
12 calls it sprag and then a couple of pages later it
13 says here is what to do with a sprag-type clutch.
14 So it literally tells you here is
15 the advantage of a sprag. It shows you in the
16 picture and it shows you what a picture of the
17 sprag-type clutch is and then a page or two later
18 it tells you here is an application for it and it
19 shows you the picture of the conveyor belt and
20 says it's good for backstopping this application.
21 So it leads you 1, 2, 3 right to it.
22 Q. So is it your opinion that
23 treadmills are just a kind of conveyor?
24 A. I think that they are a type of
25 conveyor and I think that I've asserted that

Page 99

1 previously.
2 Q. And is it your opinion that every
3 possible sprag-type clutch would be suitable for
4 use in any kind of conveyor?
5 MR. TURNER: Objection. Form.
6 A. No, you would have to size it
7 appropriately but that's more of a construction as
8 opposed to the concept of putting one in just like
9 you can't put any bearing in the bearing rail.
10 You have to make sure of the size. You wouldn't
11 want to send it to space and have someone use it
12 in space and have it break but that's not a
13 function of the design. That's like the
14 reliability aspect of it. So when you actually
15 build it, you have to make those considerations
16 which I don't think are a part of this analysis.
17 Q. Just so I understand, are you in
18 your grounds proposing modifying Tollkien and I
19 suppose also Socwell because you also identify
20 Sclater in ground 1, are you proposing modifying
21 Tollkien and Socwell to include the concept of a
22 sprag or to include that specific sprag that you
23 identify in your declaration?
24 A. I'm saying that a sprag clutch
25 satisfies those limitations and would perform as

Page 100

1 expected. You have to pick the right size one
2 just like Magid didn't specify how big the teeth
3 are or how long the pawl is or what the tension in
4 the spring is. These are all considerations that
5 don't really apply here.
6 If I was building a treadmill and
7 said I needed a backstopping, which I can look up
8 in Sclater and it says hey, sprags are good for
9 backstopping, I could just call up the help desk
10 and say "hey, I am building this application.
11 What do you have for me" and then they would
12 probably give me the bearing that I would need.
13 Q. So are you not opining that a POSA
14 would select that exact sprag from Sclater but
15 rather arguing that a POSA could select some sprag
16 generally given some other knowledge or input from
17 others?
18 A. What do you mean by this sprag
19 exactly? I think maybe I am misinterpreting what
20 you are talking about.
21 Q. Let me pull it back up. So in your
22 declaration, and this is in Paragraph 247, you
23 provide this specific image of this specific
24 sprag.
25 Are you not arguing that this

Page 101

1 specific sprag would be incorporated or that a
2 POSA would be motivated to incorporate this sprag
3 into either Tollkien or Socwell and instead
4 arguing that a POSA could select this or some
5 other kind of sprag or are you actually viewing
6 that a POSA would put this sprag into Tollkien or
7 Socwell?
8 MR. TURNER: Objection to form.
9 A. So this sprag, as depicted here,
10 meets the limitations in the 005. This is just a
11 picture of a sprag. We have no idea how big this
12 specific one is and this design would work just
13 fine in the 005 provided that it's the right size.
14 So this specific one I think would
15 work fine. I think if you look at the
16 State-of-the-Art Section, you can see that Morse
17 offers sprag clutches for exercise equipment and
18 the POSA could have gone there and just ordered
19 one off the shelf that would work.
20 Q. So a POSA could have gone to Emerson
21 and asked for some sort of sprag and then
22 incorporated it into Tollkien or Socwell; is that
23 what you are saying?
24 A. That's right. I mean the
25 specification of this particular one that I'm

Page 102

1 showing meets everything that is stated about the
2 sprag in the 005, to my knowledge.
3 Q. And did you identify this sprag on
4 the basis that it meets those limitations?
5 A. No, I identified it because Sclater
6 said that this is what you would use for
7 backstopping on a conveyor.
8 Q. And you referenced earlier that
9 before POSA would be able to actually select a
10 specific sprag, they would have to take into
11 account, I don't recall the exact words you used,
12 but certain factors regarding whether that sprag
13 would be suitable for that application; is that
14 correct?
15 A. Yes, so just like they have to pick
16 the bearings for every other component in a
17 treadmill, they would have to pick this one based
18 on the same specifications.
19 Q. And I'm going to pull up Sclater.
20 Here on Page 320 I'm going to zoom in so it is a
21 little bit easier to read this.
22 Is this the introductory paragraph
23 which states "overrunning sprag clutches, transmit
24 torque in one direction and reduce speed. Rest,
25 hold or free will in the reverse direction.

Page 103

1 Applications include overrunning, backstopping and
2 indexing. Their selection, similar to other
3 mechanical devices require a review of the torque
4 to be transmitted, overrunning speed, type of
5 lubrication, mounting characteristics,
6 environmental conditions and shock conditions that
7 might be encountered."
8 Did I read that correctly?
9 A. You did.
10 Q. Based on this expressed in Sclater,
11 wouldn't a POSA understand that different
12 spray-type clutches may not be suited for
13 particular uses?
14 A. Just like this says, you have to
15 pick it just like you have to pick the same
16 qualities for other mechanical elements. If you
17 want to put a bearing, just a plain old roller
18 bearing in something, you need to pick the size so
19 that it can handle the forces that are exerted on
20 it. That's all this is saying.
21 So you can't pick a sprag clutch
22 that's the size of an M&M for this. It probably
23 wouldn't work. You have to put a little thought
24 into which one you pick. That's like all
25 academic. I don't believe that any of this shows

Page 104

1 up in the 005 about how you pick it out or
2 whatever. Sclater is very clear that this is an
3 application for it.
4 So like if I'm making a conveyor
5 belt that pushes paper clips around, maybe I can
6 use an itsy-bitsy tiny one. If I am using a
7 conveyor belt that can bring cars up a hill, I
8 must pick a much larger one and that's all this is
9 saying. It's not taking away from sprag clutches
10 at all for conveyor belts. It's just saying pick
11 the size of it based on your application and
12 that's common knowledge in fabrication and
13 engineering. Anyone who build things has to take
14 those things into consideration.
15 Q. Are you saying that size is the only
16 consideration when selecting a specific sprag for
17 a specific application?
18 A. No, you want to pick something that
19 gives you the reliability that you're looking for
20 as well as the -- well, for the load-holding
21 characteristics. So when I say size, I don't just
22 mean like a geometrical size. I mean it has to be
23 able to withstand the forces that you're expecting
24 to be exerted on.
25 Q. With respect to your opinions

Page 105

1 regarding the 005 Patent, did you consider the
2 torque to be transmitted, overrunning speed, type
3 of lubrication, mounting characteristics,
4 environmental conditions and shock conditions that
5 might be encountered before you concluded that the
6 specific sprag-type clutch that you cited in
7 Sclater could be combined with Socwell or
8 Tollkien?
9 A. I don't recall any of those things
10 being considerations in the 005 for it. I have no
11 doubt that you could take that sprag clutch that's
12 shown in my declaration and put it in if it's the
13 correct size and I think it would function just
14 fine.
15 Q. But you didn't do any testing or
16 analysis to confirm that?
17 A. Other than the Morris/Emerson guide
18 says they sell them for exercise equipment and
19 Sclater says this is great for conveyor belts, I
20 know that it would work.
21 Q. But you testified earlier that
22 Emerson is not one of the -- not part of the
23 grounds that you would have proposed in your
24 declaration, didn't you?
25 A. I said it's the state of the art

Page 106

1 which tells you what things are out there and what
2 they can be used for and so it's pretty obvious
3 that one-way clutches of the sprag type are
4 suitable for exercise equipment.
5 Q. One-way clutches of the sprag type.
6 So, again, how does that relate to the specific
7 sprag identified in Sclater that you expressly
8 rely on in your declaration?
9 A. Because that's a sprag-type clutch.
10 Q. But it's a specific sprag-type
11 clutch, right? Unless your opinion is that any
12 sprag-type clutch could be incorporated into
13 Tollkien or Sclater, aren't you relying on that
14 specific sprag as depicted in Sclater?
15 A. Sclater doesn't have a model number,
16 it doesn't have a manufacturer number. It says
17 this is a sprag clutch and if we know what's going
18 on in the state of the art, I can, you know, if I
19 am back in 2001 or whatever, I don't even recall
20 what the Emerson catalog came out in, it was well
21 before the 005 was written.
22 You know, I can go in and I can look
23 up and it says we sell these, we sell sprag
24 clutches for exercise equipment and not only that,
25 it has the same picture virtually as what's in

Page 107

1 figure 1 of Sclater. If I wanted to, you know,
2 back in the early 2000s, I could have easily
3 purchased one of these and put it in and I think
4 it would have worked. If it didn't, I could call
5 their help desk. They would tell me "you should
6 use the one that we sell for exercise equipment or
7 this one is for exercise equipment but maybe
8 something too small for you or too large" and they
9 would set me straight.
10 So there is no model number in
11 Sclater. It's an exemplar that tells you what a
12 sprag is and then the next few pages tell you how
13 to use it. Picking it is something that any
14 fabricator would be able to do. In particular, a
15 POSA has plenty of skills to pick one out.
16 Q. Pick one out, so pick a sprag out?
17 A. Yes.
18 Q. Not necessarily that specific sprag,
19 just a sprag?
20 A. They could use that one. They could
21 use another one.
22 Q. But they would have to refer to
23 something like Emerson or call up the manufacturer
24 fabricator to determine which one they would use?
25 A. I mean that's the same as every

Page 108

1 other component in a treadmill when you put it
2 together.
3 Q. So is that a yes, they would have to
4 consult someone else, consult Emerson or call the
5 fabricator to select a specific sprag?
6 A. I don't think they would need to
7 call them but certainly a POSA has the skills to
8 say "here are my expected loads." I can look in
9 the catalog. The catalog tells me these are the
10 loads that we expect this bearing to be able to
11 support and then they would go through and say
12 okay, I think this one would be suitable for my
13 application and then they would go ahead and build
14 it after they purchased it.
15 Q. But your grounds are not Tollkien
16 plus the sprag that's depicted on Page 9 of
17 Emerson. It's Tollkien plus the sprag depicted in
18 Sclater, correct?
19 A. Let me review my declaration.
20 Q. Sure.
21 A. So I say on Paragraph 246 that "a
22 POSA would have been motivated to modify Tollkien
23 to include Sclater's one-way bearing to the front
24 roller or the rear roller as discussed above."
25 So yes, I am calling this picture

Page 109

1 out as Sclater's one-way bearing but I think the
2 part that's getting lost here is that this is just
3 a picture of a one-way bearing. It is not a
4 specific model. It is not a specific -- it
5 doesn't have any data to go along with it that
6 tells you what it's capabilities are in terms of
7 the load.
8 So I think that's maybe where we are
9 crossing paths. This is a depiction of a bearing
10 with no scale to it. So I would say yes, I am
11 using this as an example of the one-way bearing
12 but the POSA still needs to know that they have to
13 size it appropriately. So this picture from
14 Sclater doesn't have any scale to it other than
15 Sclater says you can use it in the conveyor belt
16 and this is a good application of it.
17 Q. So based on the information in
18 Sclater alone, a POSA would not know whether that
19 particular sprag would work when applied to
20 Tollkien or Socwell. They would have to refer to
21 something like Emerson to get that information; is
22 that right?
23 A. No, because it is not a particular
24 sprag. This thing represents a family of sprags
25 and through the course of their education or

Page 110

1 experience, a POSA would say "I want to pick one
2 that has these properties. I want the rolling
3 elements. I want the sprags. Now I am going to
4 pick one out that suits my application that has
5 these features." It shows you the features of the
6 sprag that Sclater is advocating.
7 Q. So I suppose that brings me back to
8 what I think is one of my original questions.
9 Is it your position that a POSA
10 would know to select the specific sprag depicted
11 in that image in Sclater and that it would be
12 applicable to Tollkien and Socwell or
13 alternatively, would a POSA simply understand that
14 something like what is depicted in Sclater could,
15 theoretically, be used in one of those
16 applications or is it something else?
17 MR. TURNER: Objection to form.
18 A. I would say that a POSA would
19 understand both of those to be true.
20 Q. But you just testified that what is
21 depicted in Sclater, to your understanding, is not
22 a specific sprag; isn't that what you just said?
23 A. In terms of the size. So it's a
24 particular style of sprag that a POSA could
25 implement that style and have great success. They

Page 111

1 could also implement a different style and have
2 equally good success.
3 MS. RIEGER: Why don't we take a
4 short 15-minute break and then come back if
5 that's all right with you, Dr. Giachetti?
6 THE WITNESS: That's great.
7 (Whereupon, 12:51 a.m. a brief
8 recess was taken.)
9 - oOo -
10 (Whereupon, the deposition resumed
11 at 1:10 p.m.)
12 BY MS. RIEGER:
13 Q. Welcome back, Dr. Giachetti. Did
14 you have any conversations with your counsel about
15 the substance of your testimony during the break?
16 A. I did not.
17 Q. Now, I have put up on the screen
18 Exhibit 1018 which you referenced earlier.
19 (Whereupon, previously marked
20 Exhibit 1018 was displayed.)
21 - oOo -
22 BY MS. RIEGER:
23 Q. Do you recognize this as the Emerson
24 catalog that is cited in your declaration?
25 A. Yes, it looks like that.

Page 112

1 Q. When did you first review Emerson?
2 A. Before I started writing any of the
3 declarations.
4 Q. So including the earlier
5 declarations and the earlier filed IPRs?
6 A. Correct.
7 Q. Did you read this catalog in its
8 entirety?
9 A. To the extent that it's readable.
10 There is a lot of pictures in it but yes, I read
11 through it.
12 Q. Now, earlier you referenced Page 9
13 of this exhibit, actually Page 10 of the PDF but
14 you specifically referenced this image in the top
15 left-hand corner of the page and you testified,
16 and correct me if I'm wrong, but you testified
17 effectively that what's depicted here is more or
18 less the same as the sprag that's depicted in
19 Sclater; isn't that right?
20 A. Yes.
21 Q. Under that figure, there are two
22 sections. One is titled B200A, B500, PBA, HT, CB,
23 M, NSS, NFS, MZEU Series and the other is titled
24 KK Series; do you see that?
25 A. I see that.

Page 113	Page 115
1 Q. Do you understand those headers to 2 refer to the different series of clutches that the 3 Emerson catalog offers or describes? 4 A. Yes, so in this particular catalog 5 they sell the M, MZEU conveyor backstop clutches, 6 KK Series, NSS, NFS, B, PB, HT and BR Series 7 clutches. 8 Q. And do you know which of those 9 series, if any, the clutch in the upper left-hand 10 corner of this Page 9 belongs to? 11 A. Well, I think the features that we 12 can see in it corresponds to a number of the 13 different kinds here. I think that particular 14 picture probably goes with the M series. It seems 15 similar to the M. It's not quite the same but it 16 is similar but also, if you go to the KK style, 17 the KK style schematic shows basically the same 18 features. 19 Q. And for the various series of 20 clutches described in Emerson, you will agree with 21 me that not all of them are described as being 22 conducive for use in exercise equipment, correct? 23 A. Well, I would say that it just omits 24 mention of fitness equipment. Some are 25 specifically -- some specifically highlight	1 have been motivated to use an off-the-shelf 2 component as opposed to designing their own. 3 Q. You don't identify a specific sprag, 4 for example, from Emerson itself as a, you know, a 5 specific component that a POSA would necessarily 6 look at or select, correct? 7 A. I don't remember if I -- well, I 8 didn't pick a specific model but I believe I do 9 state they are commercially sold for exercise 10 equipment which, you know, Emerson uses as an 11 example. 12 Q. We previously discussed a series of 13 factors described in Sclater that are relevant to 14 selecting a particular overrunning sprag clutch 15 for a particular application. 16 Did you consider any of those 17 factors when looking at the devices disclosed in 18 Emerson? 19 A. Well, I certainly saw it mentioned 20 in Emerson. For example, you know I believe that 21 KK Series talks about being appropriate for 22 fitness equipment and exercise equipment and it 23 says that you can get them with grease to extend 24 their life and you can get different seals for it. 25 So all those things are part and parcel of the
Page 114	Page 116
1 fitness equipment and others just don't mention 2 it. 3 Q. But some of these are not explicitly 4 described as being particularly suited to use in 5 fitness equipment, right? 6 A. Right. So it might just say 7 something like self-contained clutch design for a 8 wide variety of applications. 9 Q. As we discussed earlier, Emerson is 10 not cited as a primary or secondary reference in 11 any of the grounds in your declaration, right? 12 A. That's right. It is just state of 13 the art showing what was available, you know, for 14 these sprag-type one-way clutches that have been 15 available since like World War II. 16 Q. And Sclater does not cite Emerson 17 and Emerson does not cite Sclater, correct? 18 A. That's right. 19 Q. In the grounds in your declaration 20 you don't argue that a POSA would have been 21 motivated to use a particular sprag from Emerson 22 with either Socwell or Tollkien, do you? 23 A. No, because I think Emerson is just, 24 like I said, a state of the art showing what is 25 available and I believe I do state that POSA would	1 commercially available one-way clutch for fitness 2 equipment. 3 Q. And when you refer to the 4 commercially available one-way clutch, do you mean 5 that just in a general sense or are you referring 6 to a specific sprag from this document? 7 A. Well, I'm just using the example of 8 the one that Emerson says is appropriate for 9 fitness equipment. I'm sure that there are others 10 in here that you could also use but just as far as 11 a POSA would be concerned, they would be drawn 12 immediately to the one for fitness equipment 13 specifically which does give you the options for 14 the different sizes, for the different load 15 characteristics and then tells you can get it 16 filled with grease to increase its life expectancy 17 and you can put seals on it for the different 18 environments. 19 So all that stuff is contained here 20 and this is similar to most catalogs. This is 21 literally a catalog, you know, as if you went on 22 Amazon and were ordering shoes. You want to pick 23 the shoes that are the right size for your foot 24 and that's like what's going on here. 25 Q. And when you refer in that answer to

Page 117

1 I believe you said the example of the one that
2 Emerson says is appropriate for fitness equipment,
3 you already testified earlier that you are not
4 incorporating a specific sprag from Emerson into
5 either of the grounds in your declaration,
6 correct?
7 A. Right, Emerson is just state of the
8 art, this is what exists and is available, readily
9 available to a POSA.
10 MS. RIEGER: With that, I actually
11 think I am finished with my questions. I will
12 turn it over to Mr. Turner if he has any
13 redirect.
14 MR. TURNER: No, I don't have
15 anything for redirect. We can close out.
16 MS. RIEGER: Yes, we can close out.
17 Thank you for your time,
18 Dr. Giachetti. I am glad I'm able to give you
19 back a decent chunk of your afternoon.
20 THE COURT REPORTER: Can I have
21 your orders for the record?
22 MS. RIEGER: Yes, we would like
23 a three-day expedite as well as a rough, if
24 possible.
25 Thank you.

Page 118

1 THE COURT REPORTER: Mr. Turner?
2 MR. TURNER: We don't need anything
3 on our end.
4 (Time noted: 1:25 p.m.)
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Page 119

1 **ACKNOWLEDGEMENT**
2
3 I, ROBERT S. GIACHETTI, Ph.D., P.E.,
4 having appeared for my remote deposition on
5 JULY 30, 2024, do this date declare under penalty
6 of perjury that I have read the foregoing
7 deposition, I have made any corrections, additions
8 or deletions that I was desirous of making in
9 order to render the within transcript true and
10 correct.
11 IN WITNESS WHEREOF, I have hereunto
12 subscribed my name this _____ day
13 of _____, 2024.
14
15 _____
16 ROBERT S. GIACHETTI, Ph.D., P.E.
17 Notary Public for the State of _____.
18 My commission expires on _____, 20____.
19
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Page 120

1 **DEPONENT'S CHANGES OR CORRECTIONS**
2 Note: If you are adding to your testimony, print
3 the exact words you want to add. If you are
4 deleting from your testimony, print the exact
5 words you want to delete. Specify with "Add" or
6 "Delete" and sign this form.
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8 PAGE _____ OF _____
9
10 DEPOSITION OF: ROBERT S. GIACHETTI, Ph.D., P.E.
11 CASE: WOODWAY USA VS. LIFECORE FITNESS
12 DATE TAKEN: JULY 30, 2024
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14 PAGE LINE CHANGE/ADD/DELETE
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Page 121

1 DEPONENT'S CHANGES OR CORRECTIONS

2 Note: If you are adding to your testimony, print
3 the exact words you want to add. If you are
4 deleting from your testimony, print the exact
5 words you want to delete. Specify with "Add" or
6 "Delete" and sign this form.

7 PAGE ____ OF ____

8 DEPOSITION OF: ROBERT S. GIACHETTI, Ph.D., P.E.
9 CASE: WOODWAY USA vs. LIFECORE FITNESS
10 DATE TAKEN: JULY 30, 2024

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Page 122

1 C E R T I F I C A T E

2
3 I, VICTORIA RUSSO, a Certified Shorthand
4 Reporter and Notary Public, do hereby certify:

5 I reported the proceedings in the
6 within-entitled matter, and that the within
7 transcript is a true record of such proceedings.

8 I further certify that I am not related,
9 by blood or marriage and that I am in no way
10 interested in the outcome of this matter.

11 IN WITNESS WHEREOF, I have hereunto set
12 my hand this 2nd day of August, 2024.

13
14
15
16 VICTORIA RUSSO, RPR, CRR
17 NOTARY PUBLIC
18 Registration No. 01RU4849015
19 My commission expires: October 31, 2026
20 Registration No. 2347397
21 My commission expires: July 20, 2026
22
23
24
25

A able (7) 9:24;28:7;102:9;104:23; 107:14;108:10;117:18 above (3) 53:18;79:2;108:24 academic (1) 103:25 accelerations (1) 26:1 according (2) 54:5;79:18 accordingly (1) 65:2 account (2) 30:24;102:11 accounted (1) 30:24 accurate (8) 24:6;33:24;38:25;39:6,13; 40:4;42:21;72:24 accurately (1) 9:24 acknowledge (2) 6:6;40:21 acknowledges (1) 41:3 across (2) 84:16;89:5 act (1) 96:5 action (1) 96:8 actual (1) 53:15 actually (17) 28:7;33:9;43:10;54:9;57:2; 58:12;66:22;73:24;82:24; 94:12;95:16,19;99:14;101:5; 102:9;112:13;117:10 adapted (1) 53:22 add (2) 50:5;77:6 added (2) 15:20,24 addition (1) 71:3 additional (2) 31:12;89:11 address (5) 38:12,17;39:18;45:14; 91:13 addressed (1) 45:23 addressing (3) 38:4;87:11;89:5 adjustability (1) 71:20 adjustable (3) 70:10,19;71:4	adjusted (1) 71:12 administered (1) 6:10 administering (1) 6:8 adoption (1) 30:15 advance (4) 83:12;86:11;91:2;95:14 advantage (2) 98:7,15 advantages (2) 94:20;98:3 advocating (1) 110:6 affect (3) 16:7;30:18;31:1 afternoon (1) 117:19 again (18) 51:25;59:22;60:6,13;65:4, 21,22;67:4;69:10;72:11; 74:25;76:11;77:1,12;88:24; 90:5;94:15;106:6 ages (1) 94:23 ago (4) 19:17;83:21;89:1;90:5 agree (24) 6:9;9:3;12:23;27:7;31:10; 37:8,23;40:13;41:5,9;52:20; 55:18,25;57:1;58:5;59:5; 76:20;77:1;78:17;79:17;80:5; 82:6;88:20;113:20 agreeable (1) 9:20 agreed (2) 8:12;33:11 ahead (5) 75:23;76:24;78:6;79:1; 108:13 alerted (1) 39:25 allege (1) 22:14 alleged (1) 51:4 alone (1) 109:18 along (3) 79:7;90:23;109:5 alternative (3) 29:4;80:22;81:1 alternatively (1) 110:13 Amazon (1) 116:22 amount (4) 18:10;19:12;27:2;90:17 analogous (6) 43:5;44:15,19;45:9,25; 46:22	analyses (3) 31:17;89:11,25 analysis (18) 30:22;31:20;75:24;76:19, 21;77:1,2,6;78:25;81:23; 87:17;89:20;90:8,12,12,17; 99:16;105:16 analyze (1) 21:1 analyzing (1) 81:22 and/or (1) 84:14 annotated (6) 49:8;58:1;69:5,12;75:15,16 annotations (1) 56:10 answered (2) 60:3;67:10 anthropometry (1) 25:3 anticipated (1) 22:15 anticipated' (1) 23:3 anticipation (4) 22:9,25;23:15,20 apart (1) 58:7 apologies (2) 38:13;53:15 apparatus (1) 41:12 Appeal (1) 14:18 appear (7) 43:1;54:23;56:24;57:7; 61:13,20;62:8 appears (6) 22:8;56:17;69:6;83:3,24; 85:18 applicable (1) 110:12 application (11) 98:18,20;100:10;102:13; 104:3,11,17;108:13;109:16; 110:4;115:15 applications (4) 95:7;103:1;110:16;114:8 applied (4) 20:4;28:25;87:16;109:19 apply (2) 28:20;100:5 appreciating (1) 12:3 appropriate (4) 94:18;115:21;116:8;117:2 appropriately (2) 99:7;109:13 approximate (1) 19:9 Approximately (2) 18:5;73:15	approximation (1) 18:12 area (2) 43:25;74:11 argue (3) 33:22;55:6;114:20 argued (1) 83:14 arguing (3) 100:15,25;101:4 argument (2) 14:17;23:21 arguments (5) 14:22;15:1;23:1,16;83:23 around (2) 94:22;104:5 art (34) 10:7;13:11;18:25;19:3,7,10, 13,15,20;20:6,14,17;23:3,9, 12;24:18;25:14;26:15;31:13; 35:17;38:1,6;66:11;79:8,23; 89:2;92:13;93:16;94:16; 105:25;106:18;114:13,24; 117:8 arts (1) 24:12 aside (1) 40:20 ASM (1) 15:24 aspect (1) 99:14 assemblies (1) 79:6 assembly (26) 61:5,6,9,23;62:2,3,7,14,22; 63:2,5,8,12,16,22,23;64:2,12, 13,15;65:2,17;66:18;79:5; 88:9;92:1 asserted (2) 30:18;98:25 asserting (1) 31:12 assist (1) 14:20 associated (4) 39:25;40:22;45:8,10 assume (3) 8:21;47:19;90:11 Assuming (2) 87:2;90:8 assumptions (2) 21:6;89:21 assure (1) 37:3 attach (2) 72:16;74:12 attached (21) 42:18;45:19;46:7,9,16,16, 17,18;51:19;71:15,24;72:5, 10,19;73:1,4,6;74:2,8,16; 75:20 attaching (1)
---	---	---	---

92:17 attachment (1) 73:25 attorney (1) 22:10 Austrian (1) 33:10 author (1) 71:6 available (13) 93:2,4,17,94:16,24,95:2; 114:13,15,25;116:1,4;117:8,9 aware (13) 13:21;14:16;21:22;26:6,10; 29:7;30:5,10;31:3;41:2; 78:20;81:15;86:19 away (1) 104:9 axle (2) 65:18;66:25 axles (1) 69:21	baseline (1) 89:18 bases (2) 23:12,18 basic (2) 7:25;26:4 basically (10) 17:14,16;43:14;95:6;96:6,8, 23;97:14,18;113:17 basis (4) 21:11;25:17;86:12;102:4 bearing (29) 68:20;72:12;78:12;79:3,24; 80:1,7,24;81:5,13;88:9;90:10; 91:1;92:1,15,17;94:18;98:2; 99:9,9;100:12;103:17,18; 108:10,23;109:1,3,9,11 bearings (32) 68:19,21;69:2,8,15,20; 75:16;77:8;79:3,10,11,20,21; 80:6,11,13,17,20,22;81:1,12, 13,19;82:7,13,19;83:3,15,24; 84:11;93:6;102:16 beginning (1) 51:10 begun (1) 77:20 belongs (1) 113:10 below (2) 50:4;71:10 belt (54) 36:1,3;38:19;39:20;40:16; 41:22;42:3,4,13,19;43:2,5,5,6, 11,12,19;44:3,5,10,22,23; 45:9,10,20,22,25;46:1,7,7,9, 16,17,19,24,25;47:2,8,9; 53:23;68:22;69:22;72:3;75:9; 79:12;81:14;92:5,6;95:8,17; 98:19;104:5,7;109:15 belts (8) 40:8;44:23;47:7;79:6;92:3; 94:19;104:10;105:19 benefits (1) 88:14 besides (1) 7:20 best (5) 8:16;9:10;67:16,19;86:25 better (3) 45:14;67:17;98:8 Beyond (1) 65:18 bicycle (1) 90:23 big (2) 100:2;101:11 bills (1) 95:14 biomechanics (1) 25:3 bit (9) 32:5;41:15;45:1,16;46:13,	13;69;11;77:11;102:21 Blair's (1) 14:9 block (7) 42:12,16;43:1;44:9;45:4,15, 24 blue (3) 69:8,15;75:16 Board (1) 14:18 bold (1) 43:4 bolded (2) 45:6,16 bolt (1) 72:12 both (9) 13:8;29:1;30:22,23,24; 31:18;49:12;83:3;110:19 bottom (4) 73:14;77:24;96:13;97:16 bouncing (2) 72:3,23 BR (1) 113:6 bracket (1) 79:4 brackets (1) 44:22 break (11) 9:14,17;47:16;48:6;76:1,3, 14,16;99:12;111:4,15 breezing (1) 31:6 brief (3) 47:24;76:5;111:7 briefly (4) 22:17;29:17;34:19;36:20 bring (3) 56:7,8;104:7 bringing (1) 96:2 brings (2) 96:25;110:7 broader (1) 95:21 brought (2) 55:22;93:4 browse (1) 33:10 build (3) 99:15;104:13;108:13 building (3) 96:16;100:6,10 bullet (2) 15:22;16:4 bunch (1) 67:2	call (6) 59:8;100:9;107:4,23;108:4, 7 called (2) 6:24;64:13 calling (2) 63:2;108:25 callouts (1) 49:13 calls (2) 61:22;98:12 came (2) 10:20;106:20 Can (64) 7:9;8:4,18;9:8;10:4;36:24; 37:1;41:9;42:24;46:11;50:2,2, 3,16;52:5;56:7,8,11;60:4; 62:13;63:5;65:2,8,22;66:6; 67:23;69:10,11;70:15;71:12; 73:10,23;74:3;75:25;76:2,3; 82:6;84:19;86:25;89:15; 93:22;96:6,11;97:19;98:3; 100:7;101:16;103:19;104:5,7; 106:2,18,22,22;108:8;109:15; 113:12;115:23,24;116:15,17; 117:15,16,20 capabilities (1) 109:6 carrying (1) 20:20 cars (1) 104:7 cart (1) 43:16 case (4) 11:6;30:1,6;67:12 catalog (9) 93:5;106:20;108:9,9; 111:24;112:7;113:3,4;116:21 catalogs (1) 116:20 categories (1) 95:21 causes (1) 97:15 causing (1) 38:20 caution (1) 20:12 CB (1) 112:22 center (6) 48:17,19;59:14,15;60:24,25 central (1) 47:20 certain (7) 9:1;26:12;27:9;82:10; 83:14;85:22;102:12 certainly (7) 26:20;41:12;49:18;80:21; 81:4;108:7;115:19 certification (1) 33:9
B			
B200A (1) 112:22 B500 (1) 112:22 Bachelor's (5) 24:24;25:18;26:2;27:1,18 back (30) 33:19;35:9;37:13;44:8; 45:13;48:5;52:5;53:14,16; 54:17;55:24;56:19;58:11; 74:19;76:3,11,22;77:2,22; 81:8;84:18;88:4;96:25; 100:21;106:19;107:2;110:7; 111:4,13;117:19 background (4) 27:17;37:11,20,23 backstop (2) 95:9;113:5 backstopping (6) 88:13;98:20;100:7,9;102:7; 103:1 bad (1) 82:24 bait (1) 37:4 balance (2) 25:23;92:6 balancing (2) 36:12;40:11 balls (1) 94:11 base (4) 75:14;90:21;91:6,9 based (17) 21:4;37:22;49:24;50:14,20; 51:24;52:3,10;55:9,12,14; 70:4;89:8;102:17;103:10; 104:11;109:17	beginning (1) 51:10 begun (1) 77:20 belongs (1) 113:10 below (2) 50:4;71:10 belt (54) 36:1,3;38:19;39:20;40:16; 41:22;42:3,4,13,19;43:2,5,5,6, 11,12,19;44:3,5,10,22,23; 45:9,10,20,22,25;46:1,7,7,9, 16,17,19,24,25;47:2,8,9; 53:23;68:22;69:22;72:3;75:9; 79:12;81:14;92:5,6;95:8,17; 98:19;104:5,7;109:15 belts (8) 40:8;44:23;47:7;79:6;92:3; 94:19;104:10;105:19 benefits (1) 88:14 besides (1) 7:20 best (5) 8:16;9:10;67:16,19;86:25 better (3) 45:14;67:17;98:8 Beyond (1) 65:18 bicycle (1) 90:23 big (2) 100:2;101:11 bills (1) 95:14 biomechanics (1) 25:3 bit (9) 32:5;41:15;45:1,16;46:13,	C California (3) 29:8;30:1,6	

cetera (2) 39:20,20	33:23;34:1;47:3;48:12;50:24; 51:2;53:11;57:11,21;65:11, 25;77:25;83:15;85:22;89:9	communication (1) 7:16	consideration (2) 104:14,16
challenge (1) 6:9	clarify (3) 73:16;81:10;85:9	compared (2) 11:3;13:5	considerations (3) 99:15;100:4;105:10
challenged (4) 21:3;22:14,20;47:3	clarity (1) 43:9	compares (1) 90:18	considered (3) 21:19;35:11;79:21
challenging (1) 85:22	clause (1) 41:22	comparison (2) 56:17;98:5	consistent (2) 21:24;87:3
change (1) 26:14	clean (2) 11:16;58:22	compilation (1) 17:16	constitute (3) 47:2;59:9;80:3
changed (4) 13:9,20;15:18;25:14	clear (4) 8:16;52:13,15;104:2	complaining (1) 70:18	constitutes (1) 79:24
changes (3) 16:5,6,7	clearly (1) 61:12	completely (1) 9:24	construction (9) 27:25;28:3;29:2,14,25;30:1, 7,11;99:7
characteristics (7) 95:13,19;98:9;103:5; 104:21;105:3;116:15	click (1) 97:11	component (4) 102:16;108:1;115:2,5	constructions (8) 28:16,20;29:4;30:16,16,23; 31:13,18
characterize (7) 35:23;53:4,5;58:8;59:1; 68:2;81:1	clips (1) 104:5	components (3) 25:22,22;62:4	construing (1) 30:7
characterized (2) 52:23;53:2	close (2) 117:15,16	compression (1) 17:22	consult (2) 108:4,4
characterizes (1) 37:25	clutch (25) 88:10,22,23;90:18,19; 92:25;95:10;96:24;97:3; 98:13,17;99:3,24;103:21; 105:6,11;106:9,11,12,17; 113:9;114:7;115:14;116:1,4	comprising (2) 46:2;53:20	contain (1) 59:5
check (1) 23:25	clutches (15) 95:8;96:17,20;101:17; 102:23;103:12;104:9;106:3,5, 24;113:2,5,7,20;114:14	compromised (1) 10:1	contained (3) 29:23;72:8;116:19
Chicago (1) 10:20	coated (1) 63:19	computer (1) 7:20	contains (2) 26:24;42:25
chunk (1) 117:19	coating (2) 64:22;72:13	concept (2) 99:8,21	contend (1) 73:18
circle (1) 51:20	collaborative (1) 18:3	concerned (1) 116:11	content (1) 10:2
circulating (1) 43:5	collectively (3) 79:11;80:16;82:13	concluded (1) 105:5	context (3) 66:18;80:12;81:9
citation (1) 58:17	collides (1) 97:12	conclusion (2) 22:19;23:6	continue (1) 98:9
citations (1) 79:13	colored (1) 69:15	conclusions (2) 31:1;87:5	continuous (5) 42:3,19;45:19,22;69:22
cite (9) 37:15;58:12;64:16;69:25; 74:22;94:12;96:21;114:16,17	column (4) 37:10,15,15,16	conclusory (1) 64:17	conversations (4) 10:10;20:13;76:12;111:14
cited (10) 13:8;34:17;35:14;36:15; 40:1;48:23;97:5;105:6; 111:24;114:10	columns (4) 36:17,22;37:5,10	conditions (4) 103:6,6;105:4,4	conveyor (15) 94:18;95:8,16;96:18;98:19, 23,25;99:4;102:7;104:4,7,10; 105:19;109:15;113:5
cites (1) 70:5	combination (6) 24:3;34:4;83:16;92:12; 93:13;95:1	conductive (1) 113:22	convinced (1) 20:5
citing (1) 38:2	combinations (1) 23:8	conduct (2) 18:25;89:10	copies (2) 11:16;49:9
city (1) 7:13	Combine (5) 34:10;86:6;91:16,25;95:5	conducted (2) 10:23,25	copy (4) 22:6;49:10;82:4,5
claim (41) 22:21;23:4;27:25;28:3; 29:14,24;30:1,7,11,15,23; 31:13,18;41:18;53:14,15,19, 20;54:12,24;68:15,18,19; 74:21;75:24;76:17,20,21,22; 77:1,3;78:8,9;80:13,19;81:8, 11,18;82:3;83:2;87:10	combined (3) 24:12;91:23;105:7	confident (1) 74:12	corner (3) 94:6;112:15;113:10
claimed (1) 24:4	comments (1) 11:19	configured (2) 68:21;81:13	correctly (12) 25:5;29:21;42:9;48:20; 68:23;69:9,23;75:17;79:15; 88:15;92:8;103:8
claims (19) 21:3;22:15;23:13;28:25;	commercially (8) 93:2,3,17;94:23;95:2; 115:9;116:1,4	confirm (2) 47:7;105:16	correspond (1) 68:2
	common (1) 104:12	confirmed (1) 6:20	corresponds (4) 36:22;37:5;68:9;113:12
		confusing (1) 8:18	counsel (7) 8:25;10:3,10,11;48:6; 76:12;111:14
		connect (1) 51:8	
		connection (6) 11:23;17:8;19:1;89:11; 90:15;91:2	
		consider (2) 105:1;115:16	

counterparts (1) 91:12 couple (5) 10:9;15:15;49:9;57:13; 98:12 coupled (12) 53:21;68:20;72:20;73:7,8, 12,19,22;78:13;79:4;81:12; 84:11 coupling (1) 49:2 course (4) 18:16;20:4;22:6;109:25 COURT (9) 6:4,6,13;8:4;9:6;30:6,12; 117:20;118:1 cover (5) 7:25;16:24;57:7;79:5;80:2 criteria (1) 66:7 cross (20) 42:7,15,17;43:22;44:11,15; 45:3,7,8,9,17;46:2,6,8,15,17, 19;62:11;63:3,13 crossing (1) 109:9 current (1) 15:12 curvature (3) 70:18,21,25 curved (14) 35:18;38:11,17;39:17;40:1, 22;41:4,24;42:14;43:2,11; 44:10;71:20;92:14 curving (1) 71:11 CV (4) 15:5,12,25;16:2	20;19:2,22;20:20;21:8,13,15, 16,20,25;22:4,7,14;23:1,11, 16,21;24:9,11,15;28:6,9,22, 24;30:17,21;31:1,5,7,14,21; 33:17,20;35:10;37:14;38:9; 39:3;41:6,16;44:21;47:11,13; 48:10;53:16,25;54:3,6,7,22; 55:8;56:9;57:2,6,8,10,18; 64:16;68:14,14;69:13;74:19; 76:20;77:20,22;79:19;80:9; 81:2,16;82:5;85:15,17;88:2,5; 89:12,20,22,25;91:3,14,20; 93:25;95:11;98:11;99:23; 100:22;105:12,24;106:8; 108:19;111:24;114:11,19; 117:5 declarations (12) 13:2,9,18;14:1;17:22;18:21, 23;19:5;25:10;86:14;112:3,5 deep (1) 97:22 defines (1) 49:3 definitely (2) 19:3;67:20 definition (5) 25:8;26:25;27:8,11,21 definitions (1) 25:9 Degree (8) 24:24;25:18,20;26:3,22; 27:1,10,19 degrees (2) 26:8,13 demonstrated (1) 25:2 demonstratives (7) 14:2,5,15,21,25;29:17,23 depends (1) 68:18 depict (2) 75:3,6 depicted (14) 55:3;59:18;73:11,24;74:8; 101:9;106:14;108:16,17; 110:10,14,21;112:17,18 depicting (1) 58:10 depiction (1) 109:9 depicts (2) 73:19;75:8 deposed (3) 7:23;11:22;25:12 DEPOSITION (15) 6:1;7:17,21;9:15;10:5,15, 23;11:3;12:13;13:25;14:12; 48:2;76:8;83:21;111:10 depositions (6) 8:2;10:16,24;13:24;14:9; 16:8 describe (12) 10:4;59:24;60:8,17;61:2,	19;62:6;64:1,2;70:7;74:14; 92:16 described (9) 45:4;62:25;63:9;95:19; 97:6;113:20,21;114:4;115:13 describes (8) 51:4;64:21;66:22;67:17; 75:4;94:6;97:2;113:3 describing (5) 59:6;62:18,21;63:1;71:6 description (12) 24:7;38:25;51:4;59:6,9,18; 61:8;64:1;65:7;66:21;67:17; 96:4 design (4) 25:1;99:13;101:12;114:7 designing (1) 115:2 desk (2) 100:9;107:5 determine (2) 90:17;107:24 device (9) 15:24;26:5;28:17;40:7,14, 18;44:2;92:22;97:14 devices (5) 95:21,22;97:6;103:3; 115:17 diameter (2) 55:4,5 differ (3) 30:16;89:6;90:1 difference (4) 11:1;36:16;56:14,15 differences (8) 13:22;56:12,22;86:23,24; 89:8;90:4,7 different (39) 11:5;12:8;15:20;23:8,17; 24:12;30:1;31:13;40:10; 43:12;53:8;54:10;56:5,6; 61:16;63:24,25;71:4;74:2,7, 15;81:5;84:5,8;86:7;87:5,9, 13;89:7,10;96:20;103:11; 111:1;113:2,13;115:24; 116:14,14,17 differently (1) 10:15 difficult (1) 36:3 dig (1) 27:16 direct (4) 26:23;42:23;43:3,6 directed (1) 40:19 direction (4) 45:18;92:7;102:24,25 disadvantage (1) 71:3 disagree (1) 64:6 disclose (3)	40:6,14;72:9 disclosed (5) 22:21;54:19;61:11;62:19; 115:17 discloses (18) 40:17;48:16;50:14,19; 51:24;52:9;58:15;59:2,3,13; 60:20,23;61:6;78:12,18;79:5, 19;91:10 disclosure (8) 22:22;54:16,20;66:12,12; 74:23;93:18;94:13 disclosures (4) 35:23;36:16;37:19;58:21 discuss (8) 20:12;41:6,17;47:8;57:11; 71:15;74:21;78:8 discussed (10) 65:13;70:11,13,16;77:13; 82:11;94:14;108:24;114:9; 115:12 discusses (5) 50:23;51:16;55:13;74:18; 96:19 discussing (5) 44:14;53:3;57:20;76:17; 92:22 discussion (2) 37:25;38:5 discussions (1) 10:3 dismounting (1) 35:25 displayed (7) 15:9;16:20;32:1;34:22; 84:22;87:21;111:20 disposed (1) 79:7 District (5) 29:8,25;30:5,6,11 document (9) 16:23;32:6,13,23;33:2; 34:25;68:4;84:25;116:6 documented (1) 89:25 documents (1) 11:16 document's (1) 71:7 done (2) 10:21;33:7 doubt (1) 105:11 down (8) 15:19;34:11;38:14;45:6; 83:19;92:10;97:12,16 Dr (17) 7:5;14:9;18:2;26:6;32:7,21; 48:5;54:13;59:22;60:11;64:8; 67:4,15;76:11;111:5,13; 117:18 draft (1) 18:1
D			
data (1) 109:5 dated (2) 18:8,9 days (3) 19:16,17,18 DE19922822-B4 (1) 32:10 decent (1) 117:19 decide (1) 8:25 decided (1) 20:9 decisions (1) 30:11 deck (13) 78:12,18,21,25;79:3,10,12; 80:1,11,16;81:17;82:7,12 declaration (106) 10:6,7;11:5;12:24;16:25, 25;17:6,14,24;18:1,6,13,18,	20;19:2,22;20:20;21:8,13,15, 16,20,25;22:4,7,14;23:1,11, 16,21;24:9,11,15;28:6,9,22, 24;30:17,21;31:1,5,7,14,21; 33:17,20;35:10;37:14;38:9; 39:3;41:6,16;44:21;47:11,13; 48:10;53:16,25;54:3,6,7,22; 55:8;56:9;57:2,6,8,10,18; 64:16;68:14,14;69:13;74:19; 76:20;77:20,22;79:19;80:9; 81:2,16;82:5;85:15,17;88:2,5; 89:12,20,22,25;91:3,14,20; 93:25;95:11;98:11;99:23; 100:22;105:12,24;106:8; 108:19;111:24;114:11,19; 117:5 declarations (12) 13:2,9,18;14:1;17:22;18:21, 23;19:5;25:10;86:14;112:3,5 deep (1) 97:22 defines (1) 49:3 definitely (2) 19:3;67:20 definition (5) 25:8;26:25;27:8,11,21 definitions (1) 25:9 Degree (8) 24:24;25:18,20;26:3,22; 27:1,10,19 degrees (2) 26:8,13 demonstrated (1) 25:2 demonstratives (7) 14:2,5,15,21,25;29:17,23 depends (1) 68:18 depict (2) 75:3,6 depicted (14) 55:3;59:18;73:11,24;74:8; 101:9;106:14;108:16,17; 110:10,14,21;112:17,18 depicting (1) 58:10 depiction (1) 109:9 depicts (2) 73:19;75:8 deposed (3) 7:23;11:22;25:12 DEPOSITION (15) 6:1;7:17,21;9:15;10:5,15, 23;11:3;12:13;13:25;14:12; 48:2;76:8;83:21;111:10 depositions (6) 8:2;10:16,24;13:24;14:9; 16:8 describe (12) 10:4;59:24;60:8,17;61:2,	19;62:6;64:1,2;70:7;74:14; 92:16 described (9) 45:4;62:25;63:9;95:19; 97:6;113:20,21;114:4;115:13 describes (8) 51:4;64:21;66:22;67:17; 75:4;94:6;97:2;113:3 describing (5) 59:6;62:18,21;63:1;71:6 description (12) 24:7;38:25;51:4;59:6,9,18; 61:8;64:1;65:7;66:21;67:17; 96:4 design (4) 25:1;99:13;101:12;114:7 designing (1) 115:2 desk (2) 100:9;107:5 determine (2) 90:17;107:24 device (9) 15:24;26:5;28:17;40:7,14, 18;44:2;92:22;97:14 devices (5) 95:21,22;97:6;103:3; 115:17 diameter (2) 55:4,5 differ (3) 30:16;89:6;90:1 difference (4) 11:1;36:16;56:14,15 differences (8) 13:22;56:12,22;86:23,24; 89:8;90:4,7 different (39) 11:5;12:8;15:20;23:8,17; 24:12;30:1;31:13;40:10; 43:12;53:8;54:10;56:5,6; 61:16;63:24,25;71:4;74:2,7, 15;81:5;84:5,8;86:7;87:5,9, 13;89:7,10;96:20;103:11; 111:1;113:2,13;115:24; 116:14,14,17 differently (1) 10:15 difficult (1) 36:3 dig (1) 27:16 direct (4) 26:23;42:23;43:3,6 directed (1) 40:19 direction (4) 45:18;92:7;102:24,25 disadvantage (1) 71:3 disagree (1) 64:6 disclose (3)	40:6,14;72:9 disclosed (5) 22:21;54:19;61:11;62:19; 115:17 discloses (18) 40:17;48:16;50:14,19; 51:24;52:9;58:15;59:2,3,13; 60:20,23;61:6;78:12,18;79:5, 19;91:10 disclosure (8) 22:22;54:16,20;66:12,12; 74:23;93:18;94:13 disclosures (4) 35:23;36:16;37:19;58:21 discuss (8) 20:12;41:6,17;47:8;57:11; 71:15;74:21;78:8 discussed (10) 65:13;70:11,13,16;77:13; 82:11;94:14;108:24;114:9; 115:12 discusses (5) 50:23;51:16;55:13;74:18; 96:19 discussing (5) 44:14;53:3;57:20;76:17; 92:22 discussion (2) 37:25;38:5 discussions (1) 10:3 dismounting (1) 35:25 displayed (7) 15:9;16:20;32:1;34:22; 84:22;87:21;111:20 disposed (1) 79:7 District (5) 29:8,25;30:5,6,11 document (9) 16:23;32:6,13,23;33:2; 34:25;68:4;84:25;116:6 documented (1) 89:25 documents (1) 11:16 document's (1) 71:7 done (2) 10:21;33:7 doubt (1) 105:11 down (8) 15:19;34:11;38:14;45:6; 83:19;92:10;97:12,16 Dr (17) 7:5;14:9;18:2;26:6;32:7,21; 48:5;54:13;59:22;60:11;64:8; 67:4,15;76:11;111:5,13; 117:18 draft (1) 18:1

drafted (1) 33:17 drafting (4) 18:6,18;77:20;85:15 drawn (1) 116:11 drive (3) 61:6,10;66:25 driver's (1) 6:21 due (2) 36:1;86:23 duly (1) 6:25 durability (1) 88:12 during (6) 7:16;9:15;12:13;48:5; 76:13;111:15	80:19;108:4;110:16 embodiment (14) 43:12,18;44:13,17;45:23; 46:6,9,25,25;61:7,10;80:24; 81:21,22 embodiments (3) 78:21;81:5,24 Emerson (34) 93:4,7,13,14,15,21;94:3,13, 21,25;101:20;105:22;106:20; 107:23;108:4,17;109:21; 111:23;112:1;113:3,20;114:9, 16,17,21,23;115:4,10,18,20; 116:8;117:2,4,7 encompass (1) 29:1 encountered (2) 103:7;105:5 end (5) 33:9;38:20;55:20,21;118:3 ends (1) 57:12 engaged (1) 29:11 engagement (1) 69:22 engineer (2) 16:11;90:22 engineering (8) 24:25;25:19,20;26:9,14; 27:2,10;104:13 English (12) 32:25;33:13;65:16;66:5,7,9, 22;68:1,3,5,6,9 EnglishXL (1) 15:21 enough (2) 20:6;73:9 entered (1) 30:7 entire (4) 28:23;62:12;63:4,12 entirety (4) 33:13;77:17;85:12;112:8 environmental (2) 103:6;105:4 environments (1) 116:18 equally (1) 111:2 equipment (19) 25:2;94:25;101:17;105:18; 106:4,24;107:6,7;113:22,24; 114:1,5;115:10,22,22;116:2,9, 12;117:2 equivalent (3) 27:2,6,22 essentially (2) 47:6;94:8 et (2) 39:20,20 even (4) 57:25;72:18;79:24;106:19	event (1) 30:12 evidence (1) 64:17 evolution (1) 96:23 EX (1) 94:4 exact (3) 53:10;100:14;102:11 exactly (3) 51:3;86:17;100:19 EXAMINATION (1) 7:3 examined (1) 7:1 example (12) 49:2;53:19;63:17;84:10; 90:16;97:1;109:11;115:4,11, 20;116:7;117:1 examples (1) 92:16 except (1) 56:1 exception (1) 37:8 Executed (1) 17:3 exemplar (1) 107:11 exercise (11) 25:3;94:24;101:17;105:18; 106:4,24;107:6,7;113:22; 115:9,22 exercising (1) 36:1 exerted (2) 103:19;104:24 Exhibit (28) 15:4,4,9;16:18,18,20;31:23, 24;32:1;33:20;34:20,22; 36:20;48:10;53:16;54:17; 77:12,23;84:20,20,22;87:19, 19,21,24;111:18,20;112:13 exhibits (8) 10:8;11:10,13,17;20:21,25; 21:5;29:18 exist (1) 59:20 existing (2) 17:16;67:3 exists (2) 67:24;117:8 expect (3) 84:15;87:12;108:10 expectancy (1) 116:16 expected (3) 44:1;100:1;108:8 expecting (1) 104:23 expedite (1) 117:23	experience (6) 25:1;26:17;27:3,17,22; 110:1 expert (1) 10:18 explain (2) 17:15;89:15 explained (1) 79:8 explaining (1) 35:24 explains (4) 38:11,16;39:17;42:17 explicit (5) 46:21;65:19;67:22;72:11; 75:1 Explicitly (11) 35:19;40:24;44:19;65:9,24; 66:23;67:7;70:13;80:21; 97:18;114:3 expressed (8) 41:6;49:13;50:12,18;51:23; 52:1,8;103:10 expressly (8) 23:5;27:21;41:3;50:18; 54:19;70:6;71:23;106:7 extend (1) 115:23 extending (6) 48:17,18;59:14,15;60:23,24 extent (1) 112:9 extrapolating (1) 23:14
E			
earlier (49) 7:6;11:22;12:13,19;13:2,6, 25;14:2,9,12,18,25;18:21; 25:10,13;30:20;43:13;51:22; 54:14;58:20;64:12;71:23; 75:11;82:10,11,22;83:4,13; 84:4;85:21;86:8,20;87:13; 88:21;89:13,17;90:1,14,15; 91:21;96:25;102:8;105:21; 111:18;112:4,5,12;114:9; 117:3 early (2) 86:15;107:2 easier (4) 9:8;22:7;32:5;102:21 easily (1) 107:2 edge (2) 56:16;58:7 education (2) 26:3;109:25 effectively (3) 11:1;67:16;112:17 effort (1) 18:3 eg (2) 38:19;88:11 either (9) 29:13;50:6;61:2;77:7;82:4; 86:12;101:3;114:22;117:5 electronic (1) 7:15 element (6) 41:18,21;53:7;54:1;73:5; 80:14 elements (10) 22:20;26:4;53:14;54:12; 64:25;83:2;89:4;92:13; 103:16;110:3 else (7) 7:16;10:12;19:25;41:3;			
F			
			fabrication (2) 74:18;104:12 fabricator (3) 107:14,24;108:5 face (2) 10:20,20 faced (1) 43:4 fact (2) 26:12;79:21 factors (3) 102:12;115:13,17 facts (1) 21:22 fair (4) 8:23;13:16;49:23;73:9 falling (1) 35:24 familiar (2) 7:24;27:24 family (1) 109:24 far (5) 17:9;21:9;23:11;24:10; 116:10 feature (1)

41:13 features (5) 38:3;110:5,5;113:11,18 feel (1) 46:13 feet (1) 44:1 few (4) 35:22;39:10;58:20;107:12 field (1) 24:23 figure (66) 43:15;46:1;48:23;49:3,9,10, 12,13,16,18,25;50:1,4,6,9,10; 51:21;55:10,15,16,17,18,19, 23;56:1,2,10,13,13,17,18,24; 57:2,3,7,14,16;58:1,1,5,6,8, 17;62:5;69:5,8,13,15;73:2,3,5, 11,18,24;74:25;75:4,12,13; 79:2;96:22;97:2,24;98:1,11; 107:1;112:21 figures (8) 50:15,20;51:5,25;52:3,10; 55:15;56:22 filed (23) 12:13,19;13:3,25;14:3,9,12, 18;18:22;25:10,13;82:10,22; 83:5,14;84:4;85:21;86:8; 88:21;89:13;90:1,15;112:5 filled (2) 58:3;116:16 finalized (1) 18:23 find (3) 8:18;19:23;23:13 finding (1) 23:7 fine (6) 8:24;9:13;47:18;101:13,15; 105:14 finish (2) 9:9,10 finished (1) 117:11 firm (1) 10:12 first (19) 6:24;15:3;18:17;34:9;36:9, 9,24;37:9;39:23;42:2;45:16; 46:9,25;51:7,14;56:25;57:13; 88:7;112:1 Fitness (10) 11:24;51:11;113:24;114:1, 5;115:22;116:1,9,12;117:2 fits (1) 22:22 five-minute (2) 76:1,2 fixed (2) 69:19;70:7 flag (1) 61:23 focused (1)	37:24 folder (1) 11:12 follow (3) 9:3,5;58:17 followed (2) 36:11;90:20 following (2) 24:21;49:7 follows (1) 7:2 font (1) 43:4 foot (2) 38:21;116:23 force (2) 72:6,22 forces (4) 25:23;26:1;103:19;104:23 Form (12) 21:17;22:1;27:14;28:4; 31:15;52:4;59:7;82:23;89:14; 99:5;101:8;110:17 formed (7) 42:8,14;44:11;45:17;51:11; 82:13;86:17 forming (4) 21:2,7;28:21;91:4 forms (1) 21:11 forth (1) 24:11 forward (4) 38:13,18;39:19;92:6 found (2) 19:13;23:4 foundation (2) 25:24;26:23 foundational (1) 25:21 four (1) 19:18 frame (27) 24:23;49:3;51:19;53:21; 58:7,8;68:20;69:20;72:17,19, 21;73:1,4,6,8,12,14,19,25; 74:16;75:9,20;78:13;79:4,8; 81:12;84:11 frames (2) 69:21;74:13 free (1) 102:25 friction (4) 40:17;80:2;97:14,15 frictional (2) 36:12;40:11 friction-type (2) 95:22;97:3 front (22) 11:11;48:16,17,18;49:4,25; 50:9;53:21,21,22;54:1;55:16, 17;59:2,11,14,25;60:8,17,24; 62:8;108:23	full (2) 7:9;38:10 fully (8) 9:25;21:24;33:16;38:12,17; 39:18;85:14;89:19 function (4) 75:4;95:17;99:13;105:13 functionality (1) 88:13 further (3) 38:14;53:20;88:7 G gears (2) 41:15;77:11 general (2) 35:18;116:5 generally (2) 95:22;100:16 geometric (1) 44:5 geometrical (1) 104:22 German (7) 32:9,18,20;61:16;65:14; 66:1,4 Giachetti (17) 7:5,11;18:2;26:6;32:7,21; 48:5;54:13;59:22;60:11;64:8; 67:4,15;76:11;111:5,13; 117:18 given (3) 24:22;61:8;100:16 gives (6) 27:18;95:12;98:2,6,8; 104:19 giving (1) 83:10 glad (1) 117:18 glue (1) 75:1 goal (1) 70:9 goals (1) 70:14 goes (10) 23:12;26:2;57:12;72:14,14; 75:10;88:19;97:9,10;113:14 Good (11) 7:5;9:12;12:17;47:22,23; 95:13;97:19;98:20;100:8; 109:16;111:2 graphically (6) 49:17;50:2,3,4,25;98:4 graphics (1) 94:7 grease (2) 115:23;116:16 great (4) 76:4;105:19;110:25;111:6 ground (11)	7:25;31:7,8;33:22;34:1; 77:25;78:7;85:19;91:14,14; 99:20 grounds (19) 17:15;22:13;23:8;24:7,11; 28:21;30:19;31:4,11,12; 62:24;85:25;93:12;99:18; 105:23;108:15;114:11,19; 117:5 guess (1) 23:6 guide (3) 70:21;71:2;105:17 H halfway (1) 45:5 hand (3) 6:14;26:2,2 handle (1) 103:19 handlebars (1) 41:11 handrails (1) 41:11 hard (2) 63:6;71:5 head (1) 37:1 headers (1) 113:1 heading (3) 23:23;34:1;37:11 heard (1) 8:22 help (3) 28:8;100:9;107:5 hey (2) 100:8,10 higher (1) 96:11 highlight (1) 113:25 hill (1) 104:7 hold (2) 46:19;102:25 holder (1) 32:11 hole (1) 74:5 holes (7) 49:3,4,15,22;50:3;51:5; 94:10 holistic (3) 39:5,8,12 honestly (1) 83:25 hour (2) 47:15;75:25 HT (2) 112:22;113:6
--	--	--	---

human (1) 25:4	include (10) 41:22;42:16;50:25;74:23; 75:14;78:14;99:21,22;103:1; 108:23	invalidity (1) 23:17	100:16;102:2;104:12
I	included (2) 21:16;31:20	invention (11) 24:5;37:11,20,23;38:1,7; 62:20,24;63:25;71:11,18	known (1) 92:13
ID (1) 6:20	includes (1) 43:18	inventions (1) 38:4	L
idea (5) 12:5;19:9,24;33:8;101:11	including (3) 25:3;53:7;112:4	inventor (4) 32:11;35:3;77:15;85:4	label (1) 56:24
ideal (1) 95:15	inconsistencies (1) 86:19	inventors (4) 26:7,13;27:5,9	labels (3) 49:14;50:6,8
identical (10) 56:1;57:3;58:6;63:9,10; 93:10,20,21;94:1,2	inconsistent (1) 21:23	investor (1) 26:21	laid (1) 21:12
identified (21) 21:7;23:9;29:3;42:3,5; 43:21;44:23;49:15;53:25; 54:4;63:24;65:10,24;68:25; 69:6;80:11,18;81:6;93:24; 102:5;106:7	incorporate (2) 20:9;101:2	involve (1) 12:7	language (8) 45:24;46:3;53:15;54:19; 84:7,9;87:10,16
identifies (1) 61:5	incorporated (3) 101:1,22;106:12	inwards (1) 61:11	large (2) 55:4;107:8
identify (37) 28:16;32:5;35:22;43:2; 44:21;47:1,4;49:22;51:5; 54:16;57:14;58:25;59:10,23; 60:7,15;61:3,19;65:8,23;66:6, 20;67:6,25;68:10;69:14; 73:10;77:8;80:25;81:16;82:7; 93:1,20;99:19,23;102:3;115:3	incorporates (1) 46:7	IPR (6) 10:17;14:25;29:9;84:6; 86:5;89:12	larger (1) 104:8
identifying (5) 44:15,20;54:23,25;80:23	incorporating (1) 117:4	IPR-2023-00836 (1) 12:1	last (18) 10:8,20;11:21;15:22;16:4; 17:1;18:8,9;29:19;34:12; 38:10;42:11;44:8;83:21; 86:14;89:1;90:5;91:7
ie (1) 25:4	increase (1) 116:16	IPRs (28) 12:13,19;13:3,16,18,25; 14:9,12,18,22;18:22;25:10, 13;82:11,22;83:5,14;84:4; 85:21;86:9,20;87:13;88:21; 89:7,13;90:2,15;112:5	later (3) 30:21;98:12,17
II (1) 114:15	indexing (1) 103:2	issue (7) 12:19,21;38:13,18;39:19; 53:9;82:22	lay (1) 25:24
Illinois (2) 6:21;7:14	indicate (1) 34:16	issues (4) 9:23;38:5,5;39:25	leads (1) 98:21
illustrated (1) 79:2	indicated (1) 82:4	itsy-bitsy (1) 104:6	least (26) 13:2;21:23;24:25;26:7; 31:14;32:24;33:13;41:5,23; 53:7,22;56:14;68:20,21; 70:19;71:6;79:12,18;80:5,12; 81:12,14;82:2;83:14;87:11; 94:2
illustrates (2) 49:2;94:19	inertial (1) 36:13	IX (1) 77:24	leaves (2) 74:11;75:2
image (10) 51:16;56:8;57:24;92:21; 94:8;95:11,24;100:23;110:11; 112:14	information (3) 22:11;109:17,21	J	left (2) 79:7;94:8
images (10) 49:12,21;52:14,15;55:21; 56:10;64:16;65:3,5;95:25	inherently (1) 23:5	jam (1) 97:15	left-hand (3) 94:5;112:15;113:9
immediately (1) 116:12	injured (1) 35:24	January (1) 86:16	legal (1) 26:20
imparting (1) 97:4	input (1) 100:16	Jeff (2) 35:3;77:14	legs (1) 71:4
implement (2) 110:25;111:1	instant (1) 86:5	JULY (1) 6:2	lengths (1) 71:4
implicitly (2) 23:5;67:16	instead (2) 23:16;101:3	jump (3) 75:23;76:24;78:6	lens (1) 66:11
implies (1) 72:25	instruction (2) 9:3,5	K	less (1) 112:18
improved (1) 88:12	instructs (1) 9:2	kind (5) 14:7;23:24;98:23;99:4; 101:5	letter (2) 27:13,15
Inc (1) 7:8	intend (1) 17:20	kinds (2) 41:7;113:13	level (2) 25:14;26:15
	intended (1) 17:18	KK (5) 112:24;113:6,16,17;115:21	license (2) 6:21;16:14
	interested (2) 36:12;38:3	knowledge (14) 25:21,25;26:3,18,22;27:18; 68:8;89:24;90:21;91:6,8;	licensed (1) 16:10
	interpretation (3) 13:14;59:17,19		life (4) 26:17;27:17;115:24;116:16
	into (15) 16:7;20:9;27:16;30:24; 72:14,14;97:22;101:3,6,22; 102:10;103:24;104:14; 106:12;117:4		
	introductory (1) 102:22		

LifeCORE (1) 11:24 likely (1) 13:19 likewise (1) 64:16 limitation (2) 23:4;82:19 limitations (7) 22:21;23:13;54:8,12;99:25; 101:10;102:4 limited (1) 96:11 limiting (2) 40:7,15 line (1) 38:10 lines (6) 37:9,15,16,16;57:13;90:23 list (2) 20:21,25 listed (2) 20:25;85:3 lists (4) 32:10;35:3;77:14;85:3 literally (2) 98:14;116:21 litigation (3) 29:7,11,24 little (12) 24:1;32:5;39:10;41:15; 45:1;46:12,13;47:15;96:7; 97:12;102:21;103:23 load (2) 109:7;116:14 load-holding (1) 104:20 loads (3) 96:12;108:8,10 local (1) 82:4 located (1) 7:12 long (5) 18:12;19:14;24:1;93:17; 100:3 look (13) 20:1;24:2;38:8;55:23; 66:24;76:19;91:19;94:5; 100:7;101:15;106:22;108:8; 115:6 looked (8) 14:6,6;29:17;43:13;44:9; 86:15;89:1;90:6 looking (18) 19:10;27:8;32:23;33:19; 34:9;36:6,8;38:9;42:1;43:8; 45:15;52:18;53:18;54:22; 57:23;78:9;104:19;115:17 looks (10) 15:7;16:25;36:16;37:9; 42:2;48:22;49:9;73:13;85:1; 111:25	losing (1) 92:5 lost (1) 109:2 lot (2) 97:20;112:10 low (1) 80:2 lower (1) 38:21 lubrication (2) 103:5;105:3 lump (1) 63:21 M M&M (1) 103:22 machine (3) 24:25;26:4;53:6 Magid (17) 13:1,7;31:8;34:4;78:2; 83:16;85:1,3,6,12,18,24;86:1, 7;88:14;91:17;100:2 Magid's (2) 88:9,21 main (1) 45:2 maintain (1) 91:8 maintaining (1) 88:12 makes (2) 90:18;97:11 making (1) 104:4 manual (2) 36:4;92:14 manually (1) 53:19 manufacturer (2) 106:16;107:23 many (3) 31:4;96:10,19 marked (8) 15:8;16:19;31:25;34:21; 41:18;84:21;87:20;111:19 material (1) 64:11 materials (4) 11:8;20:24;21:1,23 matter (6) 7:8;15:6;17:6;19:4;67:18; 85:17 may (6) 12:3;24:4;28:7;35:24; 84:18;103:12 maybe (8) 47:16;49:17;65:14;69:11; 100:19;104:5;107:7;109:8 mean (21) 35:16;39:7,14;40:13;43:23; 44:18;56:23;64:21;71:14; 73:2,21;74:24;89:8,15,17; 100:18;101:24;104:22,22; 107:25;116:4 meaning (3) 66:19;71:19;83:6 meaningful (1) 11:1 meanings (1) 28:25 means (9) 40:7,15,18;52:14,16;62:5; 64:12;72:4;80:2 mechanical (8) 24:24;25:19;26:8,13;27:1, 10;103:3,16 mechanism (1) 88:10 medications (1) 9:22 meet (3) 27:11;80:19;81:18 meets (13) 53:12,14;54:8;55:7;59:2,4, 24;60:8,16;66:6;101:10; 102:1,4 member (2) 79:5;80:3 members (20) 42:8,15,18;43:22;44:11,16; 45:3,7,8,9,17;46:2,6,8,15,17, 19;62:12;63:3,13 memory (1) 50:22 mention (3) 65:17;113:24;114:1 mentioned (3) 11:9;14:14;115:19 met (2) 7:5;54:12 meters (1) 15:23 method (2) 46:23;74:18 methodology (2) 40:11;90:3 middle (1) 51:20 midway (2) 73:13,15 might (10) 12:12;20:8;32:5;44:25; 45:13;71:8;89:21;103:7; 105:5;114:6 mind (1) 26:21 mirrored (1) 56:10 misinterpreting (1) 100:19 Misstates (1) 64:4 model (4) 106:15;107:10;109:4;115:8 modification (1) 92:12 modify (4) 85:18,24;86:3;108:22 modifying (2) 99:18,20 moment (1) 32:25 month (1) 18:15 months (3) 83:20;88:25;90:5 more (16) 19:18;24:6;36:20;72:24; 74:12;80:4,6;83:20;88:25; 90:5;97:20,21;98:3,5;99:7; 112:17 morning (2) 7:5;82:11 Morris/Emerson (1) 105:17 Morse (1) 101:16 most (5) 13:19;26:22;56:16;83:22; 116:20 motion (3) 38:13,18;39:19 motivated (5) 88:8;101:2;108:22;114:21; 115:1 motivation (2) 38:6;86:6 motived (1) 91:16 mountain (1) 79:4 mounted (3) 69:19,20;70:7 mounting (3) 35:25;103:5;105:3 mounts (1) 43:15 move (3) 24:13;38:21;84:19 movement (5) 36:1;40:9,16;45:18;92:3 moves (1) 92:6 much (5) 18:5;19:10;83:22;91:11; 104:8 Multiple (8) 19:16;28:25;62:2,4;63:20; 64:11,25;78:21 must (5) 23:4;25:18;64:22;72:20; 104:8 myself (1) 18:4 MZEU (2) 112:23;113:5
--	---

	111:9,21	68:6;73:5;74:9;78:18;79:19; 24;80:10;23;82:6;84:7;87:8; 89:8;92:3;96:20;104:15; 106:24	90:7,12
N	oath (5) 6:8,10;8:9,11,12	onto (1) 38:19	outer (1) 55:4
name (2) 7:6,9	object (2) 8:25;71:10	open (4) 7:19;11:10,12,13	outline (1) 73:7
named (1) 26:7	Objection (17) 20:2,11;21:17;22:1;27:14; 28:4;31:15;52:4;59:7;60:2; 64:4;67:9;82:23;89:14;99:5; 101:8;110:17	opine (4) 22:13;24:22;48:15;91:15	outside (1) 11:5
Naperville (1) 7:14	obtain (1) 88:11	opined (1) 82:12	over (14) 10:9;18:16;29:19;38:15; 47:15;62:12;63:4,12;78:2; 79:13;83:16;97:10,10;117:12
nearly (4) 57:3;93:10,20;94:1	obtained (2) 70:21;71:1	opining (1) 100:13	overall (1) 39:10
necessarily (5) 27:10;43:25;44:3;107:18; 115:5	obvious (8) 24:4;33:24;34:2;51:19; 78:2;83:16;91:25;106:2	opinion (26) 17:23,24;22:12;24:22; 26:14;48:23;50:13,19;51:24; 52:9;53:9;67:15,18;71:7; 72:25;76:22;79:18;83:11; 84:12,16;86:12,23;95:3; 98:22;99:2;106:11	overrunning (6) 96:7;102:23;103:1,4;105:2; 115:14
need (11) 9:1,14;20:5;22:11;60:10; 70:11;96:12;100:12;103:18; 108:6;118:2	obviously (2) 10:22;32:25	opinions (41) 13:5,6,19;17:7,9,12,14; 20:10;21:2,4,7,11,12,15,24; 23:17;24:16;25:13;28:21; 29:15;30:18;48:12;68:15; 76:18;82:15;83:25;84:2,4,5; 86:5,8,16,19;87:3;88:18,20; 89:1,6,19;91:5;104:25	own (2) 22:6;115:2
needed (2) 74:6;100:7	Obviousness (1) 23:23	opposed (4) 17:24;80:22;99:8;115:2	Owner (2) 7:7;31:19
needs (3) 21:20;26:21;109:12	October (2) 17:3;18:9	opposing (1) 78:13	Owner's (4) 29:1,13,24;30:23
new (1) 19:5	off (4) 9:19;35:25;36:25;101:19	options (1) 116:13	Page (104) 16:2,24;17:1,2;20:19,20,21; 22:3,19;23:22;24:14,20,21; 21;28:8,11,13;30:17;32:4,24; 33:25;34:12,13;35:21;36:21; 22,25;37:4,4,18;38:11;41:15; 17;42:25;43:1,48:10,11;49:7; 50:1,51:14;52:19,21;54:3,17; 19;55:10,16,17,19,24;56:2,8, 13,18,19,20,24,25;57:4,5,7,12, 13,14,18,19,25;58:6;62:11; 68:13,14;69:4,13;75:24; 76:25,25;77:23;78:7,8;88:6; 91:20;92:11,21;93:24;94:5,6, 8;95:6,14,16,25;96:9,15; 97:17,21;98:1,11,17;102:20; 108:16;112:12,13,15;113:10
next (13) 9:11;17:3;23:22;24:20; 35:21;38:8;49:1;51:17;62:10; 69:4,17;94:7;107:12	offered (3) 10:18;22:25;88:20	orally (1) 8:3	pages (7) 17:22;23:20;33:21;58:11; 97:23;98:12;107:12
NFS (2) 112:23;113:6	offering (2) 23:15,17	orders (1) 117:21	paper (1) 104:5
night (3) 10:8;11:21;29:19	offers (2) 101:17;113:3	ordinary (4) 24:18;25:14;26:15;66:11	papers (1) 14:1
noise (3) 88:11;90:17;97:11	office (2) 18:4;33:5	original (5) 33:2;49:12,21;66:3;110:8	Paragraph (74) 23:2;24:3,16,21;28:13; 34:11,12;35:10;36:2,9,10; 38:8;39:15,22;42:1,2,17,24; 43:13;44:8,14,21;45:5,13,16, 24;48:15;49:8;53:18,24; 58:25;59:11,17,25;60:9,18,21, 22;61:20;62:15;63:18;64:9; 66:24;68:25;69:17,17;70:1,3, 5,5,17,22,25;71:10,12,13,14, 14;72:1,77:5;78:11;79:1; 80:15,23;88:5,19;91:19,24; 92:10,20;93:1,100:22;102:22; 108:21
noises (1) 90:25	off-the-shelf (3) 17:21;92:1;115:1	originally (1) 32:17	
Notary (1) 6:25	old (1) 103:17	others (4) 11:3;100:17;114:1;116:9	
noted (1) 118:4	omits (1) 113:23	Otherwise (2) 15:25;72:21	
notes (2) 11:15,19	once (3) 20:3,16;36:20	out (18) 21:12;39:11;42:23;43:3,6; 55:8;62:5;64:9;104:1;106:1, 20;107:15,16,16;109:1;110:4; 117:15,16	
NSS (2) 112:23;113:6	one (54) 19:5;23:10;24:25;30:25; 31:6,6;35:16;49:9;53:22; 56:14;68:20;70:14;72:8; 79:25;80:4,7;81:12;83:20; 86:3;88:8;93:10,21;94:2; 97:21;98:8;99:8;100:1; 101:12,14,19,25;102:17,24; 103:24;104:6,8;105:22;107:3, 6,7,15,16,20,21,24;108:12; 110:1,4,8,15;112:22;116:8, 12;117:1	outcome (2)	
Number (14) 12:20;32:9;35:2;36:25; 51:18;67:12;74:7;77:14;81:4; 85:2;106:15,16;107:10; 113:12	ones (3) 12:25;35:18;87:9		
numbers (2) 49:20;62:15	one-way (17) 88:10;90:10,25;92:1,15,17; 94:18;96:23;106:3,5;108:23; 109:1,3,11;114:14;116:1,4		
Numeral (1) 77:24	ongoing (1) 29:7		
numerous (3) 45:7;46:2;55:12	only (20) 47:7;57:16;58:17;63:23;		
nut (1) 72:12			
O			
ooO (12) 6:3,22;15:10;16:21;32:2; 34:23;48:1,7;6:7;84:23;87:22;			

Paragraphs (10) 22:4,17,23;28:15;35:22; 36:15;37:14;39:2;74:20; 94:13 parallel (1) 18:21 parcel (1) 115:25 part (18) 29:16;34:4;36:6;43:12; 55:5;59:18;70:9;71:18;72:13, 13,14,14;90:21;97:12;99:16; 105:22;109:2;115:25 partially (2) 68:22;81:14 participating (1) 6:5 particular (15) 46:1;65:19;66:21;95:17; 101:25;103:13;107:14; 109:19,23;110:24;113:4,13; 114:21;115:14,15 particularly (2) 51:21;114:4 parties (4) 6:5,9;29:9,10 parts (2) 17:21;64:12 passes (1) 44:5 passing (1) 14:7 past (3) 45:1;96:3;97:21 Patent (48) 7:7;12:9,9,20,20;13:10; 14:17;17:8,16;23:3;24:23; 26:8;29:1,9,13,23;30:8,23; 31:5,19;32:9,11;33:24;35:2; 48:13;51:15;53:11;55:13,21; 56:18;62:5;63:24;75:5;76:17; 77:14;78:8;82:20;83:4,6; 84:14;85:2;86:6,21;87:6; 89:12;91:3;105:1 patentability (1) 21:2 patents (13) 12:8,18;82:21;83:4,7,9; 84:10,17;85:23;86:13,25; 87:7;89:5 paths (1) 109:9 pawl (2) 97:10;100:3 PB (1) 113:6 PBA (1) 112:22 PDF (6) 11:14;17:2;32:5;36:21; 52:19;112:13 PE (1) 6:23	penalty (1) 6:18 pending (2) 9:16,18 per (1) 80:23 perform (1) 99:25 perjury (1) 6:18 permit (1) 92:2 person (7) 6:10;10:25;24:17;25:25; 44:1;66:11;72:7 perspective (3) 31:18;39:5,8 pertains (1) 80:10 Petition (3) 24:7,8;31:11 Petitioner (2) 10:4;31:19 Petitioner's (4) 29:1,14,24;30:22 PhD (1) 6:23 phrase (4) 27:24;67:7;83:24;84:12 phrases (1) 67:12 physical (2) 43:25;82:5 physically (1) 6:7 pick (20) 74:3;100:1;102:15,17; 103:15,15,18,21,24;104:1,8, 10,18;107:15,16,16;110:1,4; 115:8;116:22 Picking (1) 107:13 picture (14) 53:4;93:10;94:4;95:23; 98:10,16,16,19;101:11; 106:25;108:25;109:3,13; 113:14 pictures (5) 61:12;66:14;96:7;97:13; 112:10 piece (2) 64:11,17 pieces (5) 23:9,12;62:3;63:20;89:2 placed (1) 72:2 places (1) 95:12 plain (3) 80:1;87:16;103:17 played (1) 90:22 Please (8) 6:13;7:10;8:19;9:8,15,18; 10:4;64:8	plenty (1) 107:15 plurality (24) 68:19,21;69:2,7,14;75:15; 77:8;79:6,11,20;80:3,6,13,17, 20;81:11,13,18;82:13,18; 83:3,15,24;84:11 plus (2) 108:16,17 pm (3) 76:9;111:11;118:4 point (11) 9:14;16:2;19:4;45:2;49:25; 67:3,11;73:10,18,23,25 pointed (2) 55:8;64:9 pointing (2) 51:18;69:16 points (4) 49:21;63:15;65:13;73:21 portion (8) 33:14;38:22;41:23;43:21; 55:7;58:4;74:9;96:16 portions (2) 69:1,6 POSA (48) 24:24;25:8,18;26:21,25; 27:8;35:11;39:24;53:5;55:6; 61:23;67:24;69:18;70:4; 72:16;74:3,11;75:3;88:7; 90:24;91:15,25;95:3;97:8; 100:13,15;101:2,4,6,18,20; 102:9;103:11;107:15;108:7, 22;109:12,18;110:1,9,13,18, 24;114:20,25;115:5;116:11; 117:9 position (1) 110:9 positions (4) 29:14,25;30:2;55:13 possible (3) 27:16;99:3;117:24 power (2) 25:1;47:17 powered (1) 53:20 preamble (1) 51:10 precise (1) 60:14 precision (1) 96:5 predictable (1) 88:11 prefer (1) 47:16 preparation (8) 10:15,23;11:2;13:18;14:21; 19:1;29:15;83:10 preparations (2) 11:7;14:21	prepare (1) 10:5 preparing (1) 91:3 present (1) 6:7 presented (2) 31:4,17 President (1) 15:19 pretty (6) 9:21;11:7;57:6;61:12; 95:15;106:2 prevent (3) 9:23;28:17;72:3 previous (4) 10:17;13:16;16:7;97:22 previously (13) 15:8;16:19;17:11;31:25; 34:21;43:21;77:13;84:21; 87:20;90:11;99:1;111:19; 115:12 primarily (1) 37:24 primary (4) 81:22;85:24;86:2;114:10 printed (1) 11:10 prior (23) 8:2;13:11;18:25;19:3,7,10, 13,15,20;20:6,14,17;23:3,6,9, 12;24:12;31:13;35:17;38:1,6; 70:18;92:13 privileged (1) 20:12 probably (7) 19:18;37:9;86:23,25; 100:12;103:22;113:14 proceeding (4) 6:5,8;10:16;12:21 proceedings (8) 8:14;9:7;10:17;11:23;12:7, 12;13:6;14:3 professional (1) 16:11 Proficiencies (3) 15:21,22;16:3 pronunciations (1) 85:7 properties (1) 110:2 proportion (1) 25:4 propose (1) 92:16 proposed (4) 28:16;29:2;34:4;105:23 proposing (2) 99:18,20 provide (17) 20:21;22:7,12;27:21;41:11; 48:11;60:13;64:17;68:15; 69:21;72:6,21;79:11;80:17;
--	---	---	--

81:23;92:21;100:23 provided (11) 17:15;20:15;22:11;24:16; 25:9;27:9,12;30:17;87:10; 89:4;101:13 provides (6) 25:21;26:3,17;27:19;49:8; 56:9 Public (1) 6:25 publications (1) 21:1 publicly-facing (1) 14:5 pull (7) 34:19;37:3;53:16;54:17; 77:12;100:21;102:19 pulled (1) 39:11 pulley (10) 48:18,20;50:3,9;53:23;54:1, 5;59:11,11;64:18 pulleys (1) 51:1 pulling (1) 41:1 pulls (2) 40:24;41:10 purchased (2) 107:3;108:14 purely (1) 49:24 purported (1) 40:22 purposes (3) 54:24;65:11,25 pushes (1) 104:5 put (25) 13:13;15:3;16:17;23:20; 24:11;31:22;36:19;44:1;50:8; 62:7;65:2;68:3;75:2;84:20; 94:20;98:10;99:9;101:6; 103:17,23;105:12;107:3; 108:1;111:17;116:17 puts (2) 61:23;65:1 putting (2) 96:10;99:8	113:15 quote (13) 37:14;42:12,16,23;43:1,3,6; 44:9;45:4,15,25;74:15;78:14 quoted (1) 36:7	38:20 reason (6) 35:16,17;84:3;86:4;87:4; 89:3 reasonable (3) 46:23;85:7;92:19 reasoning (2) 21:11;87:12 reasons (2) 21:14;87:5 recall (18) 22:16;23:19;30:13;49:18; 57:22;74:17;81:3,20,21,25; 83:13;85:23;86:2;89:22; 90:19;102:11;105:9;106:19 receive (1) 49:4 recently (1) 14:17 recess (3) 47:24;76:5;111:8 recited (5) 47:2;53:11;69:1;83:15; 84:10 recites (3) 53:19;68:19;80:13 recognize (6) 16:23;32:6;34:25;84:25; 87:24;111:23 recognizing (1) 36:2 recollection (5) 18:24;19:14;25:7;28:24; 70:11 reconvene (1) 47:19 reconvened (2) 48:3;76:9 record (6) 7:6,10;9:19;16:1;82:17; 117:21 recorded (1) 8:4 red (1) 75:15 redacted (2) 14:5,14 redirect (2) 117:13,15 reduce (2) 92:4;102:24 reduced (1) 88:11 refer (24) 10:11;12:8,12,25;16:2; 17:13,23;32:13;35:7;47:12; 52:22;58:1;69:7;71:14;75:19; 82:3;85:6;88:1;97:1;107:22; 109:20;113:2;116:3,25 reference (22) 19:21,25;20:8;22:6;23:6; 34:3,13;37:24;40:2,21;49:20; 51:1;62:23;65:9,23;73:17;	75:11;93:7;94:17;95:5,20; 114:10 referenced (5) 46:10;102:8;111:18; 112:12,14 references (10) 12:24;13:8,12,15,20;22:21; 24:3,4;85:24;86:9 referred (4) 19:21;34:3;52:19;91:6 referring (18) 12:14;28:12;32:14;35:6; 43:9;44:7;45:5;47:8;62:9; 65:4;69:12;70:20,25;74:20; 75:7;82:3;85:8;116:5 refers (7) 35:19;45:6;65:9,23;67:7; 76:22;77:2 reflect (1) 17:7 reflected (2) 89:19,21 refresh (1) 50:22 regarding (21) 13:6;14:18;24:17;25:13; 26:14;29:9;30:18;48:12; 58:21;68:15;71:7;76:18,20, 22;77:7;84:12;86:6,9;88:21; 102:12;105:1 regards (1) 87:8 relate (1) 106:6 related (3) 12:19;25:1;76:18 relates (1) 63:24 relating (1) 86:5 relationship (1) 75:9 relative (2) 10:16;69:21 relatively (2) 63:6;71:5 relevance (1) 63:11 relevant (5) 20:5;24:22,23;30:8;115:13 reliability (2) 99:14;104:19 relied (5) 13:1;19:6;66:7,14;85:23 rely (8) 19:24;20:9,17;66:9;85:18; 91:5;93:12;106:8 relying (4) 62:23,24;91:17;106:13 remainder (1) 88:18 remained (1) 90:3
Q	R		
qualifications (1) 24:17 qualify (1) 54:21 qualities (3) 36:13;40:12;103:16 quiet (1) 95:14 quieter (3) 91:11;96:15;97:3 quite (1)	ratchet-and-pawl (1) 88:22 radius (1) 71:11 rail (1) 99:9 rails (2) 70:22;71:2 raise (1) 6:13 Ralf (1) 32:10 rambled (1) 46:13 ratchet (4) 90:10;91:11;97:9,11 ratchet-and-pawl (3) 88:10;90:18;97:9 ratchets (1) 90:25 rather (4) 38:1;54:25;95:21;100:15 Rationale (1) 34:10 Rationales (1) 91:22 reached (2) 17:7;87:4 read (27) 13:17;17:24;25:5;32:20; 33:12,16;48:20;52:5;57:23; 63:22;64:15;68:22;69:23; 71:8;75:13,17;77:16;79:14; 85:12,14;88:15;92:8;98:1; 102:21;103:8;112:7,10 readable (1) 112:9 reader (3) 11:14;64:10;67:20 readily (1) 117:8 reading (11) 13:11;20:6;28:23;35:11; 39:2,6,12,12;60:12;66:10; 98:10 reads (3) 45:16,25;70:25 really (8) 17:21;18:9;19:16;65:18; 83:10;86:11;97:19;100:5 rear (12) 48:18,19,19;50:9;59:4,11, 16,25;60:9,17,25;108:24 rearward (1)		

remember (5) 11:25;12:3;18:9;36:25; 115:7 REMOTE (2) 6:1,5 remotely (4) 6:8;10:21,24;14:6 render (1) 24:4 renders (1) 33:23 repeat (8) 46:11;50:16;52:7;60:4,10; 65:22;71:22;93:22 rephrase (1) 82:25 replacing (2) 88:21;90:9 report (1) 81:7 REPORTER (7) 6:4,6,13;8:5,9;6;117:20; 118:1 reporting (1) 6:7 represent (1) 7:7 representation (1) 42:21 represents (1) 109:24 require (2) 80:6;103:3 requirement (3) 59:2;80:20;81:18 requirements (1) 59:4 requires (3) 41:22;61:7;81:11 reread (1) 22:17 rereview (1) 70:12 respect (18) 13:9;45:3,22;50:12,17; 51:22;52:1,8;54:15;58:24; 82:18;83:2;86:20;87:6,7; 88:17;91:22;104:25 respond (2) 8:3;9:9 rest (5) 62:4;70:8;71:16,24;102:24 restate (1) 8:19 resultant (1) 88:13 results (1) 88:11 resumed (1) 111:10 revealing (1) 10:2 reverse (1)	102:25 review (15) 14:8,11;20:25;23:24;29:13; 37:22;47:10;82:15;83:12; 86:10,14;88:25;103:3;108:19; 112:1 reviewed (14) 10:6,7,8,8;11:4;14:1,24; 20:3,16;29:23;30:10;83:9,18; 86:13 reviewing (5) 11:7;19:13,15;39:24;40:1 revoked (1) 16:14 RIEGER (27) 6:11;7:4,7;15:11;16:17,22; 31:22;32:3;34:24;47:14,21; 48:4;64:6,7;76:10;82:24; 83:1;84:18,24;87:18,23; 111:3,12,22;117:10,16,22 right (83) 6:14;7:12;11:11,21,24; 12:10,11;13:3,4;16:4,15;22:9; 27:22;28:11;30:12;31:14; 32:24;34:5,6,17,18;35:7; 37:11,12,21;41:8,24,25;43:2; 48:24;49:10,11,15,24;50:7; 51:9,13,15,17;53:18;56:16; 58:3,14,16,19;62:11;63:7; 68:7;69:2;78:9,10,22;79:7; 80:7,12;81:25;83:8;84:1; 85:5;86:13;87:1,15;91:8; 92:18;95:11,23;96:4,22; 98:21;100:1;101:13,24; 106:11;109:22;111:5;112:19; 114:5,6,11,12,18;116:23; 117:7 rings (1) 94:11 risk (1) 92:4 risks (3) 40:22;41:4,7 rivet (2) 42:18;45:19 rivets (1) 46:18 Robert (1) 7:11 roller (49) 48:17,19;51:20;53:13,25; 54:20,21,23;55:3;59:10,15,16, 18;60:24,25;62:13;63:2,5,8,9, 11,16,16,18,20,21,22,23;64:1, 2,13,14,15,19,21,22;65:1,17, 17;66:17,17;79:25;80:24; 94:11;97:16;98:5;103:17; 108:24,24 rollers (33) 50:24,25;51:7,8,9,12,16; 52:13,17;53:3,6,10;55:14; 59:8;61:5,9;62:7,22;63:2; 70:22;71:2;79:3,9,9,10,20;	80:11,16,22;81:17;82:8,12; 97:25 rolling (2) 69:22;110:2 Roman (1) 77:24 rotation (1) 69:20 rough (1) 117:23 roughly (1) 45:5 rubber (2) 63:19;64:22 rule (1) 8:6 rules (1) 7:25 ruling (1) 30:25 runner (1) 74:10 runners (20) 69:1,7,19;70:7;71:15,24; 72:2,4,10,25;73:4,11,17,18, 25;74:16;75:7,8,14,20 running (49) 36:3;38:12,17,19,20;39:18, 19;40:1,8,15,22;41:4,22,23; 42:4,8,14;43:2,11,17,18,20, 24;44:2,3,4,5,11,16,22;45:17; 46:16;47:2,7;51:11;53:23; 63:6;68:22;70:21;71:1,5;72:3, 5,7;75:9;81:14;92:3,5,14 S safety (12) 28:17;38:3,5,12,18;39:18, 25;40:6,14,18;41:13;88:13 Salvatore (1) 7:11 same (35) 8:12;13:12,15;15:25;17:19; 25:8;31:12;43:21;44:3,24; 46:8,16;53:10;58:10;63:17, 22;78:9;82:20;83:6;84:13; 87:11,15,16;90:4;91:21; 92:11,20;94:9;102:18;103:15; 106:25;107:25;112:18; 113:15,17 Sarah (1) 7:7 sat (2) 82:16;83:21 satisfies (1) 99:25 satisfy (1) 81:5 saw (2) 15:2;115:19 saying (11) 23:7;54:6,7;64:25;91:10;	99:24;101:23;103:20;104:9, 10,15 scale (2) 109:10,14 scanned (1) 57:17 schematic (1) 113:17 Sclater (55) 13:1,7;31:8,9;33:23;34:2,7, 11;78:3;83:17;88:2;91:10,16, 23;92:2,21;93:7,11,20,24; 94:17,21;95:5,7,14,18,24; 96:1;99:20;100:8,14;102:5, 19;103:10;104:2;105:7,19; 106:7,13,14,15;107:1,11; 108:18;109:14,15,18;110:6, 11,14,21;112:19;114:16,17; 115:13 Sclater's (6) 88:8,22;92:15,17;108:23; 109:1 screen (3) 22:5;55:22;111:17 screw (2) 72:13;74:5 scroll (1) 36:24 scrolled (1) 38:14 seals (2) 115:24;116:17 search (3) 19:3,8;20:14 searches (2) 19:1,7 searching (1) 19:20 second (8) 15:22;16:4;32:4;38:9; 43:18;44:13;46:6,24 secondary (1) 114:10 section (22) 23:24;29:4,6;37:20,24; 42:2;57:9,10;58:13;77:2,24; 79:9,23;81:6;82:2,7;88:6,19; 91:21;96:19;97:7;101:16 sections (2) 77:7;112:22 secure (1) 33:1 securing (1) 79:6 seem (1) 12:22 seems (2) 46:22;113:14 select (7) 100:14,15;101:4;102:9; 108:5;110:10;115:6 selected (1) 95:4
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selecting (2) 104:16;115:14 selection (1) 103:2 self-contained (1) 114:7 sell (6) 93:5;105:18;106:23,23; 107:6;113:5 send (1) 99:11 Senior (1) 15:18 sense (1) 116:5 sent (4) 10:9;11:9,18;29:19 sentence (18) 36:9,10;38:9;39:23;42:11, 13;44:9;49:1;61:3;70:24; 72:8,9;75:12,13,17,19;88:7,15 separate (1) 54:1 sequence (1) 55:20 Series (10) 112:23,24;113:2,6,6,9,14, 19;115:12,21 set (2) 43:22;107:9 sets (1) 13:9 setting (1) 40:20 seven (1) 32:22 several (5) 11:13;17:15;19:17;23:7,12 shaft (65) 48:16,16,18,18;49:4;50:2,9, 14,19;51:24;52:10,22,23; 53:2,6,7,10,21,21;54:2,5,19, 21,24;55:1,7;59:1,3,3,4,14,15, 20,25,25;60:8,9,17,17,23,24; 61:8,11,13,17,18,20,24;62:1; 64:3,18,23;65:3,13,16,19; 66:19,23;67:1,3,8,17,21,24; 68:2 shafter (1) 50:1 shafts (8) 49:15,23;51:1,5;61:3;65:10, 25;68:10 shared (1) 14:4 shelf (1) 101:19 shifting (2) 41:14;77:11 shock (2) 103:6;105:4 shoes (2) 116:22,23	short (3) 47:15;75:14;111:4 shorten (1) 46:12 show (9) 54:4;61:12;73:3;91:20; 93:16;94:9;95:1;96:7;97:13 showing (5) 94:16;96:23;102:1;114:13, 24 shown (16) 46:1;50:25;51:9,21;53:4; 68:18;74:10,25;75:12,13; 93:21,24;94:2;95:10;96:8; 105:12 shows (32) 49:17,19;51:16,17;57:19; 73:2;75:10;81:4;92:22;93:5; 94:7,9,10,10,11,19;95:8,16, 24,24;96:4;97:20,24;98:2,4, 10,15,16,19;103:25;110:5; 113:17 side (5) 56:7,7,9,9;79:7 sides (1) 78:13 Sidney (1) 85:3 signature (1) 17:3 similar (15) 12:22;39:23;53:6;57:3; 84:16,16;87:12;88:20;89:5; 90:9,13;103:2;113:15,16; 116:20 similarly (5) 40:3;64:15;76:24;84:10; 91:5 simple (3) 65:21;67:5;92:12 simplify (1) 69:11 simply (1) 110:13 single (9) 23:5,10;26:21,21;63:21; 64:11;67:1;68:11;78:18 sit (16) 13:22;15:12;18:7;29:12; 30:9,13;31:3;41:2;49:18; 78:20,23;81:20,25;84:1;86:3, 18 sitting (6) 22:24;38:24;40:3;66:20; 74:17;83:19 six (3) 83:20;88:25;90:5 size (15) 56:1;99:6,10;100:1;101:13; 103:18,22;104:11,15,21,22; 105:13;109:13;110:23;116:23 sizes (1) 116:14	skill (4) 24:18;25:14;26:15;66:11 skills (3) 15:20;107:15;108:7 skipped (1) 79:13 slightly (2) 53:8;54:9 slip (1) 15:23 small (2) 15:15;107:8 smaller (1) 55:5 snippets (1) 39:11 Socwell (65) 13:1,7;31:8;34:13,16;35:3, 7,14,19,23;36:12,17,19,23; 37:1,5,22,25;38:1,3,11,16; 39:6,9,13,17;40:2,6,10,14,20, 25;41:1,10;70:20;71:6,7,9; 77:12,15,16;78:2,12,14,17; 79:5,19;80:10,19,21;81:4,24; 83:16;85:19;86:7;93:13; 99:19,21;101:3,7,22;105:7; 109:20;110:12;114:22 Socwell's (5) 35:12;39:1;81:17,17;82:12 sold (2) 94:24;115:9 solely (1) 65:6 solemnly (1) 6:15 somehow (2) 51:8;84:8 someone (6) 10:12;19:25;33:5;90:22; 99:11;108:4 sometime (2) 18:8;86:15 somewhere (1) 18:14 Sorry (4) 24:9;51:13;60:19;73:16 sort (10) 11:8;18:11;21:19;26:1,3,17, 22;27:17;58:22;101:21 sorted (1) 85:25 sorts (1) 25:23 sound (5) 7:24;9:12;12:2,10;24:6 sounds (6) 12:11,17;47:21,23;67:5; 85:5 Southern (3) 29:8,25;30:6 space (4) 44:5;96:11;99:11,12 speak (5) 48:6;65:14,18;66:1;67:22	special (1) 96:12 specific (36) 12:4;13:21;57:5;67:7,25; 73:10;84:2;90:16;92:25;95:4, 20;96:21;99:22;100:23,23; 101:1,12,14;102:10;104:16, 17;105:6;106:6,10,14;107:18; 108:5;109:4,4;110:10,22; 115:3,5,8;116:6;117:4 specifically (16) 9:2;12:25;28:12;33:6; 35:19;39:10;41:10;46:18; 54:16;77:23;88:5;97:5; 112:14;113:25,25;116:13 specification (3) 50:24;51:2;101:25 specifications (2) 89:9;102:18 specifics (2) 11:6;29:11 specified (1) 74:3 specifies (1) 46:20 specify (1) 100:2 speed (3) 102:24;103:4;105:2 spend (1) 18:6 spent (4) 18:12;19:10,13,14 spot (1) 44:3 sprag (62) 93:5,19,23;94:6,18;95:4,20; 96:17,21;97:5,19;98:12,15; 99:22,22,24;100:14,15,18,24; 101:1,2,5,6,9,11,17,21;102:2, 3,10,12,23;103:21;104:9,16; 105:11;106:3,5,7,14,17,23; 107:12,16,18,19;108:5,16,17; 109:19,24;110:6,10,22,24; 112:18;114:21;115:3,14; 116:6;117:4 sprags (11) 93:21;94:2,10;95:12;96:5, 11;98:4,5;100:8;109:24;110:3 sprag-type (15) 88:9,23;90:19;92:25;95:7, 10;98:2,13,17;99:3;105:6; 106:9,10,12;114:14 spray-type (1) 103:12 spring (1) 100:4 squarish (1) 73:7 stabilize (1) 36:3 stand (3)
---	---	---	--

47:12;62:13;63:5 standard (3) 9:21;11:7;22:9 standards (1) 26:20 start (3) 18:17;38:14;68:15 started (3) 8:1;19:6;112:2 starting (4) 24:15;33:21;48:11;78:7 starts (5) 38:10;42:25;57:11;75:12; 92:11 State (29) 7:1,9,13;27:1;35:10;38:11, 16;39:23;42:7;44:10;49:1; 69:18;71:23;77:4;78:11;79:2; 80:15;88:6;91:24;92:11; 93:16;94:16;105:25;106:18; 114:12,24,25;115:9;117:7 stated (3) 27:20;65:20;102:1 statement (6) 26:10;39:15;40:4;70:1; 88:17;97:4 statements (2) 36:5,14 State-of-the (2) 79:8,23 State-of-the-Art (2) 81:6;101:16 states (4) 22:20;60:22;77:25;102:23 stating (2) 26:23;82:17 Staying (2) 41:14;48:9 stepping (1) 92:4 steps (1) 38:19 still (4) 9:1;42:11;49:7;109:12 straight (2) 52:7;107:9 structure (11) 44:15;53:10;54:25;58:25; 59:24;60:7,16;63:13;73:23; 75:14;81:16 structures (11) 47:1;49:14,22;50:6;59:6; 65:9,24;69:14;77:7;80:10; 82:6 study (1) 25:4 stuff (2) 63:21;116:19 style (6) 98:6;110:24,25;111:1; 113:16,17 submitted (2) 15:5,16	subsection (2) 34:10;77:25 substance (3) 48:7;76:13;111:15 substantial (1) 18:10 substantially (1) 28:17 substantively (4) 13:15;84:5;86:7;89:6 substitute (1) 88:8 success (2) 110:25;111:2 suggest (1) 19:25 suggested (1) 20:7 suitable (4) 99:3;102:13;106:4;108:12 suited (2) 103:12;114:4 suits (1) 110:4 summarize (1) 17:11 super (1) 75:1 supplement (1) 91:10 support (8) 36:14;48:22;53:22;68:22; 70:1;81:14;82:17;108:11 supported (2) 62:12;63:4 supports (3) 63:12;75:15;79:12 suppose (5) 52:19;59:16;74:21;99:19; 110:7 supposed (3) 41:4;58:24;61:20 Sure (30) 10:6;12:7,17;19:5;20:4; 22:18;26:16;27:5,16;28:7; 29:20;30:9;39:4;45:11;47:11; 50:17;52:6;57:6;60:5,12,13; 62:10;70:12;73:20;76:2; 83:25;87:2;99:10;108:20; 116:9 surface (29) 38:20;40:23;41:4,23;42:8, 14;43:17,20,24;44:2,4,11,16; 45:17;51:11;62:12;63:4,6,12; 70:21;71:1,5,20;72:3,6,7; 73:14,14;92:14 surfaces (5) 38:12,17;39:18;40:1;96:13 suspended (1) 16:14 swear (1) 6:15 switch (1)	37:4 sworn (1) 6:25 symmetrical (1) 97:25 synonyms (1) 61:18 system (1) 96:18 T talk (1) 79:23 talked (1) 91:21 talking (7) 39:9;45:1;51:17;63:15; 71:9;72:22;100:20 talks (4) 52:12;63:18;96:9;115:21 teachings (11) 13:7,14;35:12;39:1;41:7; 50:13,18;51:23;52:1,9;66:13 team (1) 26:19 technically (1) 54:21 technologies (2) 17:17,17 technology (1) 96:24 teeth (1) 100:2 tells (19) 64:10,14;67:20;71:17; 94:17,20;95:12,13;96:5,14, 15;97:17;98:14,18;106:1; 107:11;108:9;109:6;116:15 tension (1) 100:3 term (4) 80:6;82:20,21;83:5 terms (8) 28:16;29:2;30:8,21;65:14; 72:23;109:6;110:23 testified (8) 7:2;54:18;90:14;105:21; 110:20;112:15,16;117:3 testify (2) 8:13;9:24 testifying (1) 63:7 testimony (11) 6:16;10:18;25:17;48:7; 54:14;64:5,20;76:13;90:19, 21;111:15 testing (4) 90:16;91:4,9;105:15 theoretically (1) 110:15 Therefore (1) 79:10	thinking (1) 16:13 though (2) 15:1;72:10 thought (2) 20:16;103:23 threads (1) 94:9 three (6) 10:17;11:23;12:8;19:18; 36:16;55:20 three-day (1) 117:23 tied (1) 95:20 tiny (1) 104:6 title (1) 15:18 titled (4) 34:10;91:22;112:22,23 today (15) 7:16;8:9,12;9:25;10:5; 13:22;15:13;22:24;31:3; 38:24;40:4;41:2;54:7;83:12; 86:18 today's (2) 9:7;13:25 together (7) 23:13;24:12;25:22;26:4; 64:14;65:2;108:2 Tollkien (124) 19:22,23,25;20:3,8,15,16; 31:9;32:10,14,17;33:2,12,14, 22;34:2,7,11,17;35:11,15,18; 39:24;40:21;41:3,7,10,11,14; 42:8,17,21,23;43:4,7,14; 44:18;47:3,8;48:9,16;49:2; 50:13,18,19,23;51:2,3,24; 52:9,14,16,20;54:4,8,15; 57:14;58:6,13,14,18;59:1,3,5, 13,23;60:7,13,15,20,23;61:2, 4,14,21;62:6,7,20,25;63:9,14; 64:13,17,21;66:13,22;67:16; 69:25;70:6,10,12,14,16,17; 71:23;72:15,22,25;74:11,14, 18,22;76:18;77:9;91:16,22, 23;92:2,17;93:13;95:5;99:18, 21;101:3,6,22;105:8;106:13; 108:15,17,22;109:20;110:12; 114:22 T-O-L-L-K-I-E-N (1) 19:22 Tollkien's (16) 42:3;48:23;50:12,17;51:23; 52:1,8;56:18;58:21;63:25; 65:6;69:1;70:8;71:16,24; 92:13 ton (2) 74:1,15 took (1) 30:23 tooth (2)
--	---	--	---

97:10,13 top (9) 36:25;41:17;73:13;79:25; 94:5,8;96:15;98:6;112:14 torque (6) 96:10,12;98:9;102:24; 103:3;105:2 towards (1) 38:21 toys (1) 90:22 training (1) 51:11 transcribing (1) 9:7 transcript (2) 14:8,11 transcripts (1) 14:2 translated (1) 65:15 translation (16) 33:1,11,13;61:15;65:14,16; 66:4,8,10;67:22,23;68:1,5,6,9, 12 translator (1) 68:3 transmission (1) 25:1 transmit (2) 96:10;102:23 transmitted (2) 103:4;105:2 transverse (1) 45:18 treadmill (18) 35:25;38:22;40:12;43:15; 51:10;53:20;62:18;70:8;71:2, 16,25;72:5;92:2,5,14;100:6; 102:17;108:1 treadmills (4) 35:17;36:4;70:19;98:23 treadmill's (2) 40:8,15 trial (2) 8:13;14:17 tribology (1) 15:23 true (8) 21:10;26:11;27:4,23;57:6; 78:19;82:9;110:19 truncated (3) 56:17,20;58:4 trust (1) 33:8 truth (3) 6:17,17,17 try (3) 9:7,10;46:12 trying (2) 37:3;44:12 tuning (1) 40:17	turn (6) 9:10;20:15;28:8;48:10; 68:13;117:12 TURNER (29) 6:12;10:12,13,19;14:4; 18:4;20:2,11;21:17;22:1; 27:14;28:4;31:15;47:22,23; 52:4;59:7;60:2;64:4;67:9; 82:23;89:14;99:5;101:8; 110:17;117:12,14;118:1,2 Turner's (1) 33:5 two (13) 18:15;29:10;31:11;51:12, 16;52:13;56:22;86:9;95:24; 96:7;97:22;98:17;112:21 type (7) 88:22;93:5;98:24;103:4; 105:2;106:3,5 types (1) 96:20	31:22;34:19;36:11,19;46:12; 53:14,16;54:17;55:22;56:7,8; 57:19;58:17;61:23;74:11; 75:3;77:12;80:1;84:20;90:20; 95:15;96:2,16;97:15,21; 100:7,9,21;102:19;104:1,7; 106:23;107:23;111:17 updates (1) 15:15 upper (1) 113:9 upward (2) 72:6,22 USA (1) 7:8 use (24) 61:17;62:13;63:5;72:4; 75:1;82:20,20;95:9,15;99:4, 11;102:6;104:6;107:6,13,20, 21,24;109:15;113:22;114:4, 21;115:1;116:10 used (14) 20:17;44:6;61:6,10,19; 66:18;84:16;86:1,2;90:23; 95:16;102:11;106:2;110:15 user (4) 38:19;62:13;63:5;92:4 users (1) 35:24 uses (3) 40:10;103:13;115:10 using (10) 7:20;30:22;44:1;57:16; 62:15;93:25;94:25;104:6; 109:11;116:7	101:5 virtually (1) 106:25 virtue (1) 54:20
	U	ugly (1) 17:21 umbrella (1) 65:1 uncover (1) 19:21 under (10) 6:18;8:9;15:19,22;16:3; 31:13;37:10;65:1;95:23; 112:21 underneath (2) 72:2,5 understandable (1) 24:2 understands (2) 72:15;97:8 understood (11) 8:22;16:5;43:8;44:7,25; 53:24;54:11,14;69:18;70:4; 85:11 uneducated (1) 83:11 unexpected (4) 36:1;38:13,18;39:19 unexpectedly (1) 38:21 unfortunately (1) 24:1 unidirectional (4) 40:8,16,19;92:3 unlabeled (1) 55:15 unless (5) 9:2;21:18;47:16;78:23; 106:11 unsure (1) 61:16 up (38) 15:3;16:17;20:15;22:5;	W
		validity (1) 6:10 variant (1) 97:24 variations (1) 85:7 variety (1) 114:8 various (1) 113:19 velocities (1) 26:1 version (2) 69:5,12 versions (1) 49:8 versus (2) 63:16;90:25 via (1) 79:4 Vice (1) 15:19 view (1) 33:22 viewing (1)	War (1) 114:15 way (15) 13:13;26:15,23;30:25; 45:14;46:8,17;66:18,25; 72:21;86:8,12;88:8;96:17; 98:3 ways (4) 17:20;74:2,7,15 Weber's (1) 14:12 wedge (1) 97:15 wedged (1) 97:25 wedges (1) 96:5 wedging (1) 96:8 weeks (1) 18:15 welcome (6) 22:6;23:23;48:5;76:11; 82:3;111:13 weld (1) 75:2 what's (7) 37:18;47:11;95:10;106:17, 25;112:17;116:24 wheeled (1) 43:16 wheels (3) 61:7,10;67:1 whereas (1) 10:24 wherein (2) 41:21;49:3 Whereupon (13) 15:8;16:19;31:25;34:21; 47:24;48:2;76:5,8;84:21; 87:20;111:7,10,19 whole (5) 6:17;39:12;42:22;66:12; 78:24 wide (1) 114:8 windows (1) 7:19 within (8) 21:13;22:22;23:21;31:20, 20;78:7;79:14;80:12 without (6) 10:2;23:19;28:23;59:20; 67:1;91:16 withstand (1)

104:23 WITNESS (5) 6:19,24;20:12;47:18;111:6 Witness's (1) 6:20 Woodway (2) 7:8;11:24 Woodway/LifeCORE (1) 10:19 word (18) 12:6;15:23;61:13,18;65:8; 15,19,23;66:6,21;67:2,7,22; 68:1,4,9,11;75:1 words (18) 32:22;49:21;52:20,21; 55:10;59:24;60:7,16;61:2,16; 64:2;66:13,16;67:2;72:11; 84:16;94:1;102:11 work (10) 18:22;33:9;76:4;96:6; 101:12,15,19;103:23;105:20; 109:19 worked (1) 107:4 working (3) 18:20;19:6;26:19 works (2) 47:22;94:7 World (1) 114:15 worth (1) 19:18 write (1) 59:13 writing (2) 19:4;112:2 written (14) 32:17;51:4,9;52:20,21; 54:18;55:10;58:12,21;59:6,9; 65:6;66:21;106:21 wrong (2) 71:9;112:16 wrote (1) 70:4	0023 (1) 66:25 005 (34) 13:10;17:8,15;24:23;26:7; 29:9;30:8;31:5;33:24;48:12; 53:11;76:17;78:8;82:19;83:4; 6;84:6,7,13;86:6,21,24;87:6; 8;89:12;91:3;93:18;101:10; 13;102:2;104:1;105:1,10; 106:21 00843 (1) 12:2 00849 (1) 12:2	56:19,20 11:40 (1) 76:6 11:50 (2) 76:3,9 11465005 (1) 12:20 12 (21) 36:21;37:4,9;42:3,13,19; 43:6,12;44:10,19,24;45:10; 20;46:1,9,17,25;47:9;69:22; 78:13;79:8 12/30 (1) 44:23 12:51 (1) 111:7 126 (1) 78:7 13 (5) 33:23;34:1;75:24;76:20; 78:1 14 (17) 69:1,7,19;70:7;71:15,24; 72:2,10;73:1,4,11,17,18,25; 74:16;75:7,14 141 (1) 88:5 147 (2) 33:21,25 148 (1) 33:21 15 (3) 33:23;34:2;78:1 151 (1) 88:19 152 (1) 91:20 153 (1) 93:24 15-minute (2) 47:16;111:4 16 (6) 22:3;33:24;34:2;77:1;78:2; 79:12 166 (1) 41:15 168 (2) 42:25;79:5 169 (1) 43:1 178 (3) 48:10;57:12;58:11 179 (4) 50:1;54:3;57:12,18 180 (2) 57:13;58:11 182 (2) 68:13,14 183 (1) 69:13 187 (1) 57:18 190 (3)	57:19,20,25 193 (1) 78:11 196 (3) 75:24;79:1;80:15
	1		2
	1 (65) 31:7;33:23;34:1;36:17,22; 37:5,10,10,15,16;41:18; 43:15;46:1;48:23;49:9,12,25; 50:9,15,20;51:5,25;52:3,10; 53:20;55:15,18,19,23;56:1,10, 13,17,18,24,24;57:2,16;58:1, 6,17;68:19;69:5,13;73:2,3,5, 11,18,24;74:25;75:4,13,13; 77:25,25;78:7;85:19;96:22; 97:2,24;98:11,21;99:20;107:1		2 (45) 16:2;31:8;33:22;34:1; 36:17,23;37:5,10,15;48:12,17, 19;51:18;52:19;53:19,25; 54:17,20,21,23,24;55:3,24; 56:2,8,13;57:4,11,14,21;58:6; 59:10,15,16;60:24,25;63:9; 64:1,21,22;65:1,11,25;91:14; 98:21 20 (3) 24:14;70:5;72:2 2000s (1) 107:2 2001 (1) 106:19 201 (1) 76:25 202 (1) 76:25 2023 (1) 17:4 2024 (1) 6:2 203 (4) 17:2,22;22:19;23:20 22 (1) 24:21 24 (1) 17:3 240 (2) 34:12;35:10 241 (4) 35:22;36:9,15;37:14 242 (6) 35:22;36:2,10,11,15;37:14 243 (2) 38:8;39:16 244 (1) 39:22 245 (2) 91:19,24 246 (1) 108:21 247 (2) 92:11;100:22 271 (7) 42:1,5,11,17;44:8;45:13,16 273 (4) 42:24;44:14;45:5,24 274 (1) 44:21
Y	1004 (2) 15:4,9 1011 (4) 34:20,22;36:20;77:12 1012 (2) 84:20,22 1017 (2) 87:19,21 1018 (3) 94:5;111:18,20 1031 (3) 31:24;32:1;54:18 106 (1) 28:13 108 (1) 28:15 109 (1) 28:15 11 (2)		3
year (5) 7:6;11:23;18:8;24:25;90:14 York (1) 7:1			
Z			
zoom (1) 102:20			
0			
0006 (1) 62:17 0020 (2) 63:18;64:10			3 (22)

48:12;49:3,10,13,16,18; 50:4,6,10,15,21;51:6,21,25; 52:3,11;54:24;57:11,21; 65:11,25;98:21	580 (4) 12:9;83:7;84:14;85:22		
30 (17) 6:2;37:16;43:2,5,5,11,19; 44:19,24;45:9,22,25;46:7,7, 16,24;47:8	6		
300 (12) 48:15;49:8;53:18,24;58:25; 59:17;60:1,9,18,21,22;61:20	6 (17) 33:23;34:1;42:18;45:19; 68:15,18;74:22;76:17,22; 77:3;78:1,8,9;80:13;81:8,11; 82:3		
307 (3) 68:25;70:5;74:20	69 (4) 28:8,11,13;30:17		
308 (2) 69:18;70:3	6's (2) 80:19;81:18		
309 (1) 74:21	7		
316 (1) 96:9	7 (1) 78:1		
318 (3) 92:21;95:25;98:11	745 (4) 12:9;83:7;84:14;85:22		
32 (1) 37:15	78 (1) 77:23		
320 (4) 95:6,14,16;102:20	8		
33 (1) 22:4	8 (3) 71:10,12,14		
34 (1) 23:2	84 (1) 88:6		
36 (2) 22:4;37:15	884 (4) 12:9;83:7;84:14;85:22		
364 (1) 77:5	9		
37 (1) 24:3	9 (5) 78:1;94:5;108:16;112:12; 113:10		
4	925 (1) 15:24		
4 (6) 20:19,20;33:23;34:1;78:1; 98:1	94 (1) 79:6		
44 (1) 24:16	96 (1) 79:4		
45 (1) 37:16	98 (9) 79:3,9,10,20;80:11,16; 81:17;82:8,12		
48 (2) 24:21;37:16			
49 (2) 34:12,13			
5			
5 (5) 20:21;70:17,22,25;79:2			
5,018,722 (1) 62:19			
5,538,489 (1) 85:3			
5,897,461 (2) 35:2;77:14			
56 (12) 37:16;78:12,18,21,25;79:3, 11,12;80:11,16;82:7,12			