EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FUMA INTERNATIONAL, LLC,
an Ohio Limited Liability
Company,

Plaintiff/Counterdefendant,

vs. CASE NOS. 1:19-cv-00260 and
1:19-cv-00660

RJ REYNOLDS VAPOR COMPANY,
a North Carolina Company,

Defendant/Counterplaintiff.

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Videotaped Deposition of GREGORY D. CONLEY, taken as if upon cross-examination before Laura L. Ware, a Notary Public within and for the State of Ohio, at the offices of Medina Court Reporters, Inc., 209 North Broadway Street, Medina, Ohio, at 9:34 a.m. on Wednesday, December 4, 2019, pursuant to notice and/or stipulations of counsel, on behalf of the Defendant/Counterplaintiff in this cause.

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by Dirk D. Thomas, Esq.

- and -

The Law Firm of Brandon M. Jordan, PLLC
by Brandon M. Jordan, Esq.

On behalf of the Plaintiff/Counterdefendant;

Haynes and Boone, LLP,
by Ralph J. Gabric, Esq.
Laura Beth Miller, Esq.

- and -

RAI Services Company,
Drew Leyes, Esq.

On behalf of the Defendant/Counterplaintiff.

ALSO PRESENT:

Scott Smith, Videographer

- - -

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THE VIDEOGRAPHER: This is the deposition of Gregory Conley in the case of Fuma International, LLC, an Ohio Limited Liability Company, versus RJ Reynolds Vapor Company, a North Carolina company. Case number 1:19-cv-00660 in the United States District Court for the Middle District of North Carolina.

We are at 209 North Broadway, Medina, Ohio 44256. The date is December 4th, 2019, and the time on record is 9:35 a.m.

Will counsel please identify themselves.

MR. GABRIC: Good morning. Ralph Gabric on behalf of the defendant, RJ Reynolds Vapor.

MS. MILLER: Laura Beth Miller, same.

MR. LEYES: Drew Leyes on behalf of RJ Reynolds Vapor Company.

MR. THOMAS: Dirk Thomas on behalf of the witness and Fuma.

MR. JORDAN: Brandon Jordan on behalf of plaintiff, Fuma International.

THE VIDEOGRAPHER: The court reporter may swear in the witness.

GREGORY D. CONLEY, of lawful age, called by

the Defendant for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF GREGORY D. CONLEY

BY MR. GABRIC:

Q. Good morning, Mr. Conley.

A. Good morning, Mr. Gabric.

Q. Could you state your name and home address for the record, please.

A. My name is Gregory Conley. My home address is 664 Tremain Place, Medina, Ohio.

Q. And what is your current position?

A. I'm currently the president of Fuma International.

Q. And what are your job responsibilities in that position?

A. It's a small company, so I wear a lot of hats so I have a lot of responsibilities.

Q. Can you summarize them for me, please?

A. I'm sorry?

Q. Can you summarize them?

A. The responsibilities could be anything from research and development to sales, to operations, whatever is needed at the time.

Q. And how many employees?

A. Currently, we have three.
Q. Who are they?
A. Three employees?
Q. Yes.
A. The three employees we currently have would be Angela Nagy, Jessica Conley, and Kyle Hillenbrandt.
Q. Anybody else involved in the day-to-day operations of Fuma?
A. Not that I'm aware of. Sorry.
Q. Have you been deposed before?
A. No.
Q. Okay. I just want to kind of take you through a little bit of the ground rules.
A. Yes.
Q. I'm going to ask you a series of questions, and if you don't understand my questions, please let me know. Okay?
A. Thank you.
Q. And if at any time you need a break, this is not an endurance contest, just ask for one. Okay?
A. All right.
Q. I would just prefer that you not ask for a break while a question is pending. Fair enough?
A. Fair enough.
Q. And is there any reason why you can't testify

completely and truthfully today?
A. No, there's no reason.
Q. You're not on any medication, anything like that?
A. No.
Q. Okay. So explain to me how you first got involved in the e-cigarette business.
A. That actually was because I was a smoker.
Q. Okay. And how did you get involved in the e-cigarette business?
A. Because I actually was introduced to a Chinese product that was kind of the original version of an e-cigarette.
Q. What Chinese product?
A. At the time, I didn't know which one it was.
Q. And how did you come to be introduced to this Chinese product?
A. Through my friend's wife.
Q. And when was this, approximately?
A. Approximately it would have been sometime in 2008.
Q. And what's the name of your friend's wife?
A. That would be Kim O'Connor.
Q. And how did she come to introduce you to this Chinese product, describe the circumstances.
A. Well, she had been introduced to it through some kind of multilevel marketing thing that I was

unaware of.
Q. Did she provide you the product?
A. She actually had one and I tried it with her.
Q. And what was your experience with that product?
A. It was something that had merit.
Q. What do you mean?
A. I mean that it had merit in the sense that that idea or that concept in general was not a bad one.
Q. And describe the product for me.
A. It was a very long, heavy, three-piece design.
Q. And can you identify the three pieces?
A. I'm sorry, I don't have the product in front of me.
Q. Do you recall what those three pieces were?
A. Yeah, I believe there was a battery and some kind of separate heating element and there was a plastic cap.
Q. And this was approximately the end of 2008 time frame?
A. I'm sorry, I don't recall when in 2008, but it was in 2008.
Q. And whatever happened to that product you tried? What did you do with it?
A. That wasn't my product, so I don't know what happened to it.
Q. Well, you -- she gave you one to try, correct?

A. Actually, no. She had one I tried.
Q. Okay. You were both sharing the same product?
A. Yes.
Q. I see. What did you do next?
A. I'm sorry, can you clarify the question?
Q. Tried the product, you thought it had merit. What was the next step in the process of you getting involved in the e-cigarette business?
A. I'm sorry. Thank you.
It had merit and I tried to find what else was out there.
Q. And what did you do to try to find what else is out there?
A. I did probably what anyone would do, I looked all over the Internet.
Q. And did you identify any products to order?
A. Yes, I found one to try.
Q. And which one was that?
A. That would have been at that time the Smoke 51 product.
Q. And why did you decide to order the Smoke 51 product over the other products that were available at that time?
A. It appeared to have a different design.
Q. What was different about it?

A. It was a two-piece design instead of a three-piece design.
Q. And what were the two pieces?
A. The two pieces would have been a cartomizer and a battery.
Q. What do you mean by cartomizer?
A. A cartomizer is when the heating element is actually included in the same component as the solution is included. That's a -- kind of a standard industry term.
Q. Approximately what time frame did you obtain a Smoke 51 product?
A. I believe that would have been in later 2008.
Q. Now, at this time frame, later 2008, were there any other two pieces available on the market as far as you knew?
A. As far as I knew, no.
Q. And who did you obtain the Smoke 51 product from? Is that the company's name, Smoke 51. If I wasn't clear, I apologize.
A. No, that's okay. I obtained the product from Smoke 51; however, I think you just asked two questions.
Q. Okay.
A. Can I answer the second one?
Q. You can answer -- yeah, take your pick.

A. Okay. The Smoke 51 was the DBA but they -- I believe their name was Smoke Anywhere USA, or something to that effect.
Q. Okay. And they had a Website?
A. Yes.
Q. And that's how you located them?
A. Correct.
Q. All right. And so you saw this Smoke 51 product on the Smoke Anywhere Website, correct?
A. I believe -- don't know exactly. I don't remember, but it was a Website.
Q. Okay. And you ordered the Smoke 51 product?
A. Yes.
Q. And you ordered it from Smoke Anywhere?
A. I don't remember if it's Smoke Anywhere or Smoke Everywhere. Those names always confused me, but Smoke 51 is what they knew them by.
Q. And how many products did you order?
A. I believe I ordered one, but I had to think about that.
Q. And why did you order this product?
A. I wanted to try it.
Q. And did you try it?
A. Yes, I did.
Q. Okay. And what was your reaction?

A. It was better than the other one I had tried.
Q. In what sense was it better?
A. Just better flavor.
Q. And do you have any documents relating to this product that you ordered?
A. I don't know.
Q. Did you look for documents relating to this first product that you ordered?
A. We have looked, but I don't know.
Q. You don't know whether you have any documents relating to that product?
A. Correct.
Q. When's the last time you saw any documents relating to that product?
A. When I bought it.
Q. Who was responsible for collecting documents to provide Reynolds in this case, do you know?
A. I believe my legal counsel has been given access to everything.
Q. Now, this device was a two-piece device, you mentioned, a cartomizer and a battery?
A. Yes.
Q. And was the cartomizer, was that a disposable piece and the battery reusable?
A. That --

MR. THOMAS: Object to the form of the question.

Q. Do you understand the question?

A. Can you rephrase the question, please?

Q. Yeah.

The cartomizer, how many cartomizers did you get with this initial order?

A. I don't recall.

Q. Did you get more than one?

A. I believe so.

Q. Is this product that you ordered at the time, was it designed to be a disposable cartomizer to be used with any battery? Do you have a recollection of that?

MR. THOMAS: Object to the form of the question.

Q. Do you understand the question?

A. No, I don't, actually, understand the question.

Q. Did you attach the cartomizer to the battery yourself?

A. Yes.

Q. How did you go about doing that?

A. It had a screw thread.

Q. And so the cartomizer would screw to the battery?

A. Correct. It's an inclined plane.

Q. And was that screw thread, was that a screw thread electrode?

MR. THOMAS: Object to the form of the question.

Q. Do you know?

A. I'm sorry, can you rephrase the question?

Q. Yes.

This product you initially ordered back in -- the first product we've been talking about, do you know whether the screw threads that you mentioned were screw thread electrodes?

MR. THOMAS: Object to the form of the question.

A. Can I -- can you clarify the question, please?

Q. Let me try it this way. So the threads that you referred to, did they mechanically attach the cartomizer to the battery?

A. Yes.

Q. Did they also electrically connect the cartomizer to the battery?

A. Yes.

- - - -

(Thereupon, Defendant's Exhibit 1 was marked for identification.)

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Q. I'm going to show you what I've marked as Defendant's Exhibit 1 and ask you if you recognize that document. And for the record, it bears Bates Number Fuma 12107 through 116.

MR. THOMAS: You marked it Exhibit 1, right?

MR. GABRIC: Yes, sir.

MR. THOMAS: Are we saying like Conley exhibit?

MS. MILLER: DX.

MR. GABRIC: Defendant's Exhibit 1.

MR. THOMAS: Defendant's Exhibit 1. Gotcha.

Q. And while you review that, I'll preview my question. My question is going to be focused on the pages ending in Bates Number 113 at the bottom right-hand corner.

My question is, does that look like the product that you ordered back in, I believe you said, early 2009 time frame? You just let me know when you're done reviewing the document, okay?

A. Thank you, sir.

Q. Do you recognize that document?

A. I believe I do.

Q. What is Defendant's Exhibit 1?

A. It appears to be an old PowerPoint from Smoke 51 Ohio.
Q. And who was Smoke 51 Ohio?
A. That was actually a DBA of Tri-C Technology.
Q. And that was your company?
A. It was a company I owned.
Q. Okay. And did you -- did your company prepare all these materials or did you get materials from the supplier of the Smoke 51 and modified them in some respect?
MR. THOMAS: Object to the form of the question. It's compound.
Q. Did you prepare these materials, the entire document, your company?
A. I believe my company did.
Q. All right. And there's a device depicted on the page that ends in Bates Number 113. Do you see that?
A. Are you referring to this page?
Q. Yes.
A. Okay.
Q. Does that look like the product you ordered back in early 2009?
A. I'm sorry, I'm -- when did I order a product in 2009?

Q. Did you -- I thought you said the first product you ordered was a product from -- a Smoke 51 product that we were talking about.

MR. THOMAS: I think he said late 2008.

MR. GABRIC: Was it late 2008? I apologize.

MR. THOMAS: No worries.

A. I'm sorry, go ahead.

Q. Yes. I didn't mean to -- look, I'm not trying to fool you. If it was late 2008, you mentioned a product that you ordered, a Smoke 51 product. Are you with me?

A. Yeah, and I believe it was late 2008, but I'm --

Q. Okay.

A. -- not sure of the exact time frame.

Q. Okay. Now, that product you ordered in late 2008, does it look like the product that's illustrated here in Defendant's Exhibit 1 at the page ending in 113?

A. Yes, this appears to be similar.

Q. Okay. Are there any differences, as far as you know?

A. Not that I'm aware of.

Q. Now, this -- now, on page -- the prior page, yeah,

you're open to it, 112, do you see that, page 112 of the Exhibit 1?
A. Yes.
Q. All right. There's a reference to US patent. Do you see that?
A. Yes.
Q. Do you know what that's a reference to?
A. Yes.
Q. What's that a reference to?
A. That is in reference to false information we received from the supplier.
Q. Please explain. What do you mean?
A. Meaning that when this document was created, the people at 51 conveyed to us that they had a US patent on this product.
Q. And when did they convey that to you?
A. Verbal conversations somewhere during discussions.
Q. Approximately what time frame?
A. It would have been -- could have been any time in 2008, late 2008, early 2009.
Q. And who at the supplier conveyed that information?
A. I don't remember.
Q. Can you identify a universe of people it may have been?
A. There were several people involved.

Q. All right. Who were the supplier that you deal with?
A. On a regular basis, that would have been a gentlemen by the name of Charlie.
Q. Do you know Charlie's last name?
A. No, I don't.
Q. Who else did you deal with?
A. That's really the go-between for us, and I don't remember the other people verbatim.
Q. And when they conveyed this information that it was patented, did you take any steps to confirm that, in fact, that was the case?
A. Not at that time.
Q. At some point in time did you?
A. At some point in time.
Q. Okay. What did you do?
A. I started researching.
Q. And how did you go about that?
A. To the best of my ability.
Q. What did you research?
A. Looking for a patent number.
Q. And how did you go about doing that?
A. First, I requested one from them.
Q. And what was their response?
A. I don't remember, but I know I didn't get a patent

number.
Q. Then after that, what did you do?
A. I went out and looked on the Internet.
Q. And where did you look?
A. I don't recall all the places I looked. I just remember looking.
Q. Do you recall any of the places you looked?
A. Off the top of my head, no.
Q. And was your search restricted to US patents or did you look for patents outside the US?
A. At that point in time, I don't remember.
Q. At some point in time did you investigate whether this product that's illustrated in Defendant's Exhibit 1 was patented outside the US?
A. I believe at some point in time there was a search, but it was not constrained to the US but it wasn't focused outside of the US.
Q. It was a search with respect to the 51 product that's in Defendant's Exhibit 1?
A. Correct.
Q. When was that search conducted?
A. I don't recall.
Q. Who did it?
A. I did some of it.
Q. Okay. Who else was involved?

A. I know we hired legal counsel to represent us for patent prosecution and I know they looked as well.
Q. What counsel was that?
A. At that time?
Q. Yes, sir.
A. It would have been Walker & Jocke, I believe.
Q. I'm sorry?
A. Walker & Jocke.
Q. And who at Walker & Jocke did you engage to do this search?
MR. THOMAS: Object to the form of the question.
A. I'm confused. I didn't -- yeah, I'm confused by the question, the phrasing. I don't understand what you're asking.
Q. All right. Let me try again.
It's my understanding from the testimony is that you engaged counsel to do a search on whether this 51 product was patented, correct?
A. No. It's not.
Q. Okay. Did you or did you not engage counsel to do a search to determine whether the 51 product of Defendant's Exhibit 1 was patented?
A. No, I engaged counsel to prosecute a patent to which part of that procedure was they searched.

Q. Okay. And I don't want to put words in your mouth; I just want to make sure I understand. So what you're referring to is you engaged counsel to do a patent search in connection with a patent application that you were interested in filing?
A. No.
Q. Okay. What was the purpose of the search?
A. The -- the search was done because -- and this is the counselor that we had engaged and told about the technology and wanted a patent execution done to try to get a patent, excuse me, so in the process they did their own search. They were not hired specifically to do a search.
Q. Who at Walker & Jocke were you dealing with at this time frame?
A. In this time frame, I believe that would have been Mike Medley.
Q. And did you disclose the Smoke 51 product to Mr. Medley in connection with your communications with him at this time frame?
A. Absolutely. We brought samples with us to a meeting.
Q. You brought samples of the Smoke 51 product?
A. Along with our product as well.
Q. Okay. And that's the product depicted in

Defendant's Exhibit 1?
A. I'm sorry, can you clarify the question?
Q. Yeah.
The Smoke 51 product, the samples that you brought to Mr. Medley, is the Smoke 51 product depicted in Exhibit 1 in front of you?
A. It may have been one of these. They had multiple products.
Q. Which product samples did you bring?
A. I know we brought the Fuma product.
Q. Okay.
A. And I remember the Trio, the three-piece from Smoke 51, and we showed Mr. Medley other examples of this exact technology.
Q. Did you bring a sample of the Smoke 51 two-piece that's illustrated in Defendant's Exhibit 1?
A. I believe we did.
Q. And what time frame would this have been?
A. It was sometime after we started selling our design.
Q. "Our design" being the Fuma design?
A. Fuma design, correct.
Q. And when did you start selling the Fuma design?
A. We actually had our first physical showing of the final prototypes to -- to actual customers at the

Tri-State in 2009, which is a convention.
Q. And why do you believe that you also brought a sample of the Smoke 51 two-piece design to this -- to the attention of Mr. Medley?
A. Because I know I showed Mr. Medley a two-piece product that was not ours. I'm just not sure if it was the 51 product or not.
Q. And what was the reason for showing him a two-piece design?
A. To show him what the differences were.
Q. Differences were between what?
A. The differences between all the other products that were in the market that were based on the Smoke 51, which there were multiple products and they were all the same and how we had drastically changed it.
Q. Okay. And what was discussed with Mr. Medley regarding the differences between the Fuma design and the Smoke 51 two-piece design?
A. There's a lot of differences in the two products.
Q. And I want you to focus on your communications with Mr. Medley. What differences do you recall actually being discussed with him?
A. It was a long time ago and remembering specific details of that exact conversation I don't recall verbatim, and I don't have an eidetic memory, but I

1 know some of the things that we specifically talked
2 about was definitely putting the heating element in
3 or around the airflow, and that's a big part of
4 what Fuma did along with a lot of other things.
5 Q. And when you say "in or around the airflow," what
6 are you referring to?
7 A. The atomizing heating element, that's one of the
8 key components to the Fuma design, but there's many
9 key components, so you're asking a very large
10 question with a lot of answers.
11 Q. Yeah, I'm just -- but I want to focus on your
12 discussions with Mr. Medley --
13 A. I understand.
14 Q. -- and what you recall.
15 So you recall discussing with him the location
16 of the heating element being different in the Fuma
17 design versus the Smoke 51 two-piece design,
18 correct?
19 A. That's correct. Well, Smoke 51 and everyone else
20 was doing the same thing.
21 Q. And what else do you recall discussing with
22 Mr. Medley regarding the differences?
23 A. There was a lot discussed that day and I can't
24 remember all the details of those conversations. I
25 know that we discussed many different things.

Q. Were there any notes taken of these discussions?
A. I don't believe I took any notes of those discussions, but I might have had a sketch or a drawing I showed him.
Q. Who was in the -- who was involved in these discussions besides you and Mr. Medley?
A. I can't remember if Mr. Hillenbrandt was there or not, but he might have been.
Q. And approximately when did these discussions take place?
A. It -- if recollection serves me, I know it was after we had made enough money to be able to afford to hire a counselor to help us.
Q. So when was that, approximately?
A. I don't know if it was late in 2009 or if it was in 2010, but it -- somewhere in that time frame would have been when we engaged him.
Q. And this discussion, was it one discussion, multiple discussions? And I'm focused on the differences between the Smoke 51 Duo and the Fuma e-cigarette.
A. I understand. The discussions, I remember there was an initial consult, and I know we had subsequent follow-up meetings after that, but exact timing and how many meetings there were, I cannot

recollect.
Q. And this initial consult, was that -- was one of the topics discussed the difference you thought that existed between the Smoke 51 two-piece and the Fuma e-cigarette?
A. No.
Q. It wasn't discussed in the first consultation?
A. The discussion was about a two-piece design, not specifically Smoke 51.
Q. Well, you -- at some point you brought a sample of the Smoke 51 Trio to Mr. Medley, correct?
A. Correct.
Q. And do you recall whether you brought a sample of the Smoke 51 Duo to Mr. Medley?
A. Again, I believe I did; however, all of those products at that time were all made the same.
Q. And how do you know that?
A. Because I looked at several variations, several different suppliers.
Q. Did you break down the Smoke 51 Duo?
A. I tore the cap off the top, and it became evident through my investigation that way of the deficiencies.

- - - -

(Thereupon, Defendant's Exhibit 2 was marked

for identification.)

- - - -

Q. I've handed to you Defendant's Exhibit 2. And for the record, it's a document bearing Bates Number Fuma 7750. Do you recognize that document?

A. Yes, I do.

Q. What is this document?

A. It appears to be some notes of mine.

Q. And what are these notes of?

A. These appear to be some of my original notes in regards to the Fuma design.

Q. And when did you prepare this document?

A. I'm sorry?

Q. When did you prepare this document?

A. I'm sorry. Can you rephrase the question?

Q. You don't have to be sorry. What are you sorry about?

A. Rephrase the question, please.

Q. These are your notes, right?

A. Yes.

Q. When did you prepare them?

A. I can't give you an exact date.

Q. Can you give me an estimate, if you can?

A. This would have been back in the day.

Q. What do you mean by back in the day?

A. This would have been a correlation back when the creation process was going on.
Q. Okay. Approximately when was the creation process? Let me back up. What creation process are you talking about?
A. In the original creation of the Fuma product.
Q. And what time frame was that?
A. It was something I began thinking about from the very first time I saw the products in the first place.
Q. So do you know when you prepared the notes in Defendant's Exhibit 2?
A. No.
Q. Was it before you filed -- you do recall filing some provisional patent applications?
A. Yes.
Q. And you recall those were filed sometime in the time frame of July of 2009?
A. That would be correct.
Q. Okay. Did you prepare these notes prior to that time?
A. It appears so.
Q. Well, why does it appear so?
A. This appears to be what I was -- my thought process was at that time.

Q. So were these prepared before the provisional?
A. I believe so.
Q. And why do you believe that?
MR. THOMAS: Objection; asked and answered. You can go ahead.
THE WITNESS: Thank you.
A. Because it's consistent with my thought process around that time.
Q. And this document is not dated, correct? Or am I missing something?
A. I don't believe so.
Q. So why did you prepare this document?
A. Because I took -- I would write things down sometimes. It's just notes for me.
Q. Now, I have a few questions about your notes, okay, so I'm going to dig in a little deeper. On the left-hand side there's a drawing of something. Do you see that?
A. Yes, I do.
Q. What is that?
A. That appears to be a cartomizer.
Q. A cartomizer from any particular company?
A. No particular company. It could be Smoke 51, Loong Totem, or any of the number of others that were doing the exact same thing at that time.

Q. So you mentioned that you took the top off the Smoke 51 two-piece device, correct?
A. Yes, sir.
Q. Did you investigate the internal structure of any other two-piece device prior to filing your provisional application?
A. Yes, I did.
Q. What other pieces did you investigate the internal structure of?
A. I specifically remember looking at a Loong Totem. I tore the cap off of it, too.
Q. Any others?
A. I believe there might have been others, but right now my memory, I cannot recollect that, which ones or how many.
Q. And so you can't say whether this device in Defendant's Exhibit 2, whether that's the Smoke 51 two-piece that you ordered?
A. I can't say it is or isn't, but it very well may be.
Q. Why may it be? What causes you to say that?
A. Because all those cartomizers, before we made our engineering changes and our patented design, were all made the same.
Q. Had the same structure?

A. The same general build.
Q. What do you mean by same general build?
A. Where the heating element was in the batting material.
Q. And what do you mean by that?
A. The liquid holding area.
Q. So let's go through Defendant's Exhibit 2.
A. Can I ask before we begin the next question, can we have a quick break? I'm having a little bit of nicotine attack here.

MR. GABRIC: Yeah.

MR. THOMAS: Do you mind? We want to try to keep them short because we don't want to stretch the day out and I know you don't either.

MR. GABRIC: No, that's fine.

MR. THOMAS: We'll keep it down to a few minutes.

MR. GABRIC: Yeah, I don't want him to have nicotine withdrawal. You may, too, I don't know.

THE VIDEOGRAPHER: Okay. Off the record at 10:16.

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(Thereupon, a recess was had.)

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THE VIDEOGRAPHER: We are back on the record at 10:22.

Q. Okay. Back to Defendant's Exhibit 2, Mr. Conley. And I want to focus on this sketch. Now, did you have a piece with you contemporaneously with drawing this sketch?

A. I don't remember.

Q. And there's a squiggly line near the top of the piece. It looks like O something D or something. Do you know what that is?

A. I believe that's old.

Q. Okay. And what's that referring to?

A. As in the old preFuma design.

Q. And then there's a reference to the left. And when you say preFuma design, what do you mean?

A. I mean that this is how everything that I saw was manufactured and made before we manufactured our patented product.

Q. Now, did you understand that this -- this preFuma design was prior art to your invention?

MR. THOMAS: Object to the form of the question.

A. Can you ask the question in a different way?

Q. Yeah.

Do you know what "prior art" means? Do you have an understanding?

A. I have a basic understanding but I'm not a lawyer. I do have an -- a basic understanding of something that preexisted.

Q. And did you understand that what's sketched here is a design that preexisted prior to your invention?

A. Yes.

Q. And did you have an understanding that you were only obligated to bring to the attention of the patent office designs that preexisted prior to your invention? Did you have that understanding?

A. Our counselor informed us that that was part of the process.

Q. So you understood from day one when you filed your provisional applications that you had an obligation to bring to the attention of the patent office preexisting designs?

A. Can you rephrase the question?

Q. Yeah, was my question not clear?

A. No, it was not.

Q. Prior to filing your patent application -- well, let's back up.

At some point in time you had an understanding that you were obligated to bring to the patent

office's attention preexisting designs to your invention, correct?
A. Correct.
Q. At what point in time did you obtain that understanding?
A. I don't recall.
Q. Was it before you filed your provisional applications?
A. I don't recall.
Q. How did you come to obtain that understanding?
A. My understanding of that was -- the earliest recollection I have of that kind of knowledge would have been when I met with Mr. Medley.
Q. And you met with Mr. Medley before or after filing your provisional applications?
A. I believe the meeting with Mr. Medley would have happened post the provisionals, because we did not have the financial means to engage in before that.
Q. And you filed a nonprovisional application in and around the end of July 2010, correct?
A. I believe that is correct.
Q. And so you would have met with Mr. Medley sometime between the filing of your provisionals and the filing of your nonprovisional in July 2010?
A. That seems to make sense.

Q. And so that's when you obtained this understanding about your obligations about disclosing preexisting designs?

MR. THOMAS: Object to the form of the question.

A. Can you -- I'm confused by the question a little bit. Can you help me out here and --

Q. Yeah, sure.

A. -- understand what you're trying to say.

Q. I'm not trying to say anything. I'm trying to obtain your understanding of things.

And so we have a meeting that you had with Mr. Medley sometime between the filing of -- or sometime after the filing of your provisional applications of July two thousand -- July 2009 and the filing of your nonprovisional in July of 2010, correct?

A. That seems correct.

Q. All right. And in these initial meetings with Mr. Medley, you obtained an understanding of your obligations to the patent office with respect to disclosing preexisting designs, correct?

MR. THOMAS: Object to the form of the question.

A. Mr. Medley, when we actually met with him, he did

inform us that there is a process and procedure about disclosing information.

Q. Disclosing information to the patent office?

MR. THOMAS: Object to the form of the question.

Q. What did he inform you of?

A. I'll just wait until you get that on.

Q. Thank you.

A. You're welcome.

MR. GABRIC: Sometimes we forget to put them back on.

Q. Mr. Medley informed you of your obligations to disclose information to the patent office?

A. That's correct.

Q. What did he tell you?

A. I don't remember exactly what he told us, but he covered it in -- to some detail, and I know that when we filed the final application that I know we cited the Wikipedia page on our -- on our filing, and that was part of the disclosure.

Q. Okay. So sometime between July 2009 to July 2010, you obtained some understanding from Mr. Medley regarding a duty of disclosure to the patent office?

A. To some degree, yes.

Q. Okay. And what do you recall was your understanding at that time frame?
A. Just my basic understanding at that time would have been that we have to disclose anything we knew about, which we did.
Q. And that would include the design depicted in Defendant's Exhibit 2?
A. That would be correct.
Q. And you believe you disclosed the design depicted in Defendant's Exhibit 2 to the patent office with your nonprovisional filing, the July 2010 time frame?
A. I believe so.
Q. And how did you -- why do you believe that?
A. I completely believe that we showed Mr. Medley products and we also, I don't know if it was me or Mr. Medley, found the Wikipedia page, but that is included as a reference to the patent office.
Q. So you're relying on a Wikipedia page as being a disclosure to the patent office that is a disclosure of the design depicted in Defendant's Exhibit 2?
A. Absolutely.
Q. And it's your recollection that you actually brought the Wikipedia page to the attention of the

patent office?

MR. THOMAS: Objection; asked and answered.

A. I believe I already said I don't know who found the Wikipedia page, but I know it was included in the filing.

Q. So there's a reference here to heater, I believe, correct me if I'm wrong.

A. I'm sorry, where are you looking?

Q. I'm on the sketch, Exhibit 2.

A. Thank you. Okay.

Q. Is that word "heater"?

A. I believe that is the word, "heater."

Q. And what are you referring to here?

A. If you'll note it's pointing to a wire coming down the side and that wire is -- that portion of wire is the heating element.

Q. And what portion of that wire becomes heated, to the best of your understanding, when you sketched this?

A. This is a rough sketch, and there's no specific part of that wire that is directly heated. It could be any part of it, but it's specifically not in the center of airflow or in the airflow itself.

Q. Where -- where does the airflow travel through this

design you sketched?
A. I believe there's the word "airflow" at the bottom of the sketch pointing an arrow up the center middle.
Q. And where does the airflow exit?
A. Well, in this particular sketch, it appears to be in the top center.
Q. So there's an aperture for airflow in the bottom center and an aperture for airflow coming out at the top center of this cartridge?
A. In this particular drawing.
Q. And is this an accurate depiction of the Smoke 51 two-piece device that you had ordered?
A. Yes, as well as many others.
Q. Now, I see a heater wire and it looks like -- where does it begin and where does it end?
A. I'm sorry, where are you looking?
Q. Well, you have the heater with an arrow to a wire you referred to, and --
A. Yes.
Q. -- I'm trying to figure out when you sketched this where does the wire begin and where does the wire end.
A. Well, it appears from the drawing that the wire at one end is terminated to the side. If you note at

the bottom of the drawing to the left it appears that wire comes down and goes to the side.

Q. Uh-huh.

A. Then also if you look into the drawing, and I know it's hard to see in the squiggly lines here because I was talking and sketching, but there -- wire comes down -- the actual wire comes down through the middle and terminates down to the center in this particular drawing, it appears so.

Q. And so a portion of the wire is in the airflow?

A. A portion of the electrically conductive wire is in the airflow, but not the heater.

Q. How do you know that?

A. Because that's where the drawing depicts -- where it points the heater to the side.

Q. So what -- what's the squiggly stuff in the airflow channel, is that the wire?

A. There's a line and there is meant to be the wire -- the electrically conductive wire, not heating wire and this squiggly is just depicting airflow. I'm not great at drawings.

Q. And you mentioned you had a hard time, I'm not going to quote you, I'm going to paraphrase you, drawing and talking. Do you remember just saying that?

A. No, I didn't say that.
Q. Well, I'll quote you then.
A. Please.
Q. It's not important. Were you alone when you made this drawing?
A. I don't remember.
Q. Now, is this drawing of the cartomizer portion of the device?
A. Yes, that's what this is meant to depict.
Q. Now, did this device also have a battery that came with it?
A. I'm sorry, clarify the question, please.
Q. Well, this is a drawing of a preexisting cartomizer design, correct?
A. Correct.
Q. And I think I heard you say that all these cartomizers had basically the same design in this time frame?
A. Before we came along, yes.
Q. Right. And these cartomizers also had batteries, didn't they?
A. The cartomizer itself never had a battery.
Q. Well, let me say they were designed to connect to a battery, correct?
A. Correct.

Q. Did they all have that same design for connecting to a battery?

MR. THOMAS: Object to the form of the question.

A. They had to be powered by a power source.

Q. And the power source typically would be a battery, correct?

A. Could be.

Q. What other power sources were available at this time that you recall?

A. At this time, you could get what looked like a battery but had a wire off of it and would plug into a USB and it would use the USB's power, so there was no battery; however, that was an option.

Q. Now, I want to know the universe of cartomizers this drawing, Exhibit 2, could be, and I think it's -- you mentioned Loong Totem, Smoke 51 Duo. Any others?

A. There were others. I don't remember them off the top of my head.

Q. Now, the Smoke 51 device, it had a threaded piece on the cartomizer, correct?

A. Correct, I believe it did.

Q. And how about the Loong Totem device?

A. I also believe it had an inclined plane, too.

Q. When you say inclined plane, what do you mean?
A. Well, that's an inclined plane.
Q. That's what you call threads?
A. Well, it can be.
Q. What do you mean by inclined plane?
A. A definition of a screwed thread is an inclined plane.
Q. Where do you get that definition from?
A. You can look it up. I Googled it.
Q. Have you discussed that definition in preparing for your deposition?
MR. THOMAS: Object to the form of the question. You're not to disclose any communications you had with your litigation counsel and I instruct you not to answer if you can't otherwise respond to that.
Q. Can you answer the question?
A. No, I cannot.
Q. Because you're following counsel's instruction?
A. I will always follow counsel's instruction.
Q. Yeah, I'm not saying you shouldn't. I just need to make a record.
A. I understand.
Q. So in the Smoke 51 device and the Loong Totem device, there was a threaded connection portion to

the cartomizer?
A. Correct.
Q. Okay. And is there a reason why it's -- well, is that threaded connection illustrated in Exhibit 2?
A. No, I don't believe it is. That's irrelevant to what Exhibit 2 drawing meant to me or the function of it.
Q. Okay. And what do you mean by that?
A. How it connects is not important for the purposes of this drawing, for me.
Q. What was important to illustrate for you in this drawing?
A. The location of the heating element.
Q. And why was that important?
A. Because it was a major deficiency in that design.
Q. And why in your view was that a deficiency in the design?
A. It caused a lot of problems.
Q. What kind of problems?
A. It causes a vast array of problems. Just for beginners, when you have the heating element pulled down through the cotton batting material where the liquid is being held, then its isolation of the vaporization of the liquid to a sectional area of the actual batting material.

Furthermore, you will get -- the capillary action of the batting material lacks the capacity to flow at a consistent rate based on how tightly it's wound based on a lot of other factors as well.

And ultimately when the user begins to use it at a very high rate you will end up burning the batting material, thus causing a burn flavor and causing the cartridge to go bad early when there's plenty of liquid in it and that's just the beginning of the problems.

Q. You referred to batting material. What do you mean?

A. It's a solution holding medium. You can use any number of ways to do this, but in this particular original design, they used a cotton material, batting material of sorts, to suspend the liquid in so that the liquid had something it was adhering to within the cartridge.

Q. Now, did the batting material in the Smoke 51 cartomizer surround the airflow channel?

A. It appeared to.

Q. And is that illustrated in Defendant's Exhibit 2?

A. The batting material is not necessarily exhibit -- shown here. It's implied, but, again, it appears to be that that's the way it's drawn.

Q. Okay. I'm going to mark as Defendant's Exhibit 2 A -- sorry, I threw you a curve ball.

What I'm going to ask you -- I'm sorry. Go ahead and mark it.

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(Thereupon, Defendant's Exhibit 2 A was marked for identification.)

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Q. I'm going to hand you what I've marked as Exhibit 2 A, which for the record is a duplicate of Exhibit 2. It's Fuma 7750, and I would like you to identify where the batting material is located in 2 A.

A. There's no batting material shown in this drawing.

Q. Right, but in the Smoke 51 Duo there was batting material, right?

A. It appeared to be so.

Q. In the cartomizer?

A. It appeared to be so.

Q. Based on your review of that product, correct?

A. Correct.

Q. All right. I want you to show me in Exhibit 2 A where that batting material existed in the Smoke 51 product that you investigated.

A. It appeared to be on either side of the airflow,

and that's it.
Q. Could you mark that with the blue pen, please.
A. (Drawing).
Q. Could you write "batting material" with an arrow, and tell me where the batting material existed.
MR. THOMAS: Object to the form of the question.
A. Well, when you're asking this, the batting material was never consistent, other than it was on either side of the airflow.
Q. Okay.
A. But the airflow wasn't always necessarily linear and clear.
Q. What do you mean -- well, let me take this one step at a time. Then just write the word "batting material" and point an arrow to where the batting material existed.
MR. THOMAS: Object to the form of the question.
Q. In the Smoke 51 Duo.
A. It's -- again, this is not a Smoke 51 Duo. It could be, but it could be any number of them.
Q. Well, you -- you looked at the Smoke 51 Duo and that's the one I want to talk about right now, right?

A. I looked at several, though.
Q. Okay. And they all had the same basic structure, correct?
A. Correct.
Q. So I want to focus on the Smoke 51 Duo right now.
A. Okay.
Q. All right. And so that sketch is an accurate representation of the Smoke 51 Duo, as far as you're concerned, right?
MR. THOMAS: Object to the form of the question.
A. Can you reask the question?
Q. Yeah.
A. I'm --
Q. Is -- that sketch in Exhibit 2 is your understanding of the structure of the Smoke 51 Duo cartomizer, correct?
MR. THOMAS: Object to the form of the question.
Q. When you made that sketch.
MR. THOMAS: Object to the form of the question.
A. Again, when I made this sketch, it wasn't specific to the Smoke 51. It was just the same as everybody else.

Q. Okay. Which includes Smoke 51, correct?
A. Correct.
Q. All right. And so I want to get an understanding of what the structure of the Smoke 51 Duo was.
A. Okay.
Q. Okay. Because you did look at it, correct?
A. Yes, I did. I tore the top off.
Q. Right. Prior to filing your nonprovisional application, correct?
A. That would be correct.
Q. And, in fact, prior to filing your provisional applications, correct?
A. That would be correct.
Q. All right. So I would like to use Exhibit 2 as a vehicle to get your understanding of what that structure was prior to filing your provisional applications. Are you with me?
A. Yes, I understand.
Q. All right. So is that an accurate illustration of the Smoke 51 Duo that you took the top off and looked at prior to filing your provisional applications?
MR. THOMAS: Object to the form of the question.
Q. Yes or no?

MR. THOMAS: Object to the form of the question.

A. I would have to say that's an accurate representation -- not an accurate representation of anything. It's a rough sketch. So saying it's an accurate representation is something I don't feel comfortable saying because that's not a truth. It's a rough sketch of what all those cartomizers were at that time, including Smoke 51.

Q. Okay. So it's a rough sketch of the Smoke 51 Duo cartomizer?

A. It could be.

Q. It's fair a rough sketch?

MR. THOMAS: Object to the form of the question.

Q. Is it not?

A. It could be.

Q. Okay. Where was the batting material located in the Smoke 51 Duo, using the rough sketch of Exhibit 2 A?

A. I marked that with an X on either side. It was typically surrounding; however, didn't necessarily have to be.

Q. Okay. Could you label that batting material, please?

A. Okay.
(Drawing.)
Q. And could you do it on the other X as well?
A. Well, can I just draw a line over?
Q. Whatever you're more comfortable with.
A. (Drawing).
It doesn't necessarily have to be batting, though. That doesn't have to be a batting material.
Q. But in the Smoke 51 Duo, it was a batting material, correct, the one you looked at?
A. It appeared to be.
Q. Right. And the Smoke 51 Duo that you looked at also had a battery as a power source?
A. That would be correct.
Q. And the Smoke 51 Duo that you looked at had a threaded connection between the cartomizer and the battery, correct?
A. That's correct.
Q. And that threaded connection provided a mechanical and electrical connection between the battery and the cartomizer, correct?
MR. THOMAS: Object to the form of the question.
A. No.

Q. What's incorrect about that?
A. It didn't -- it didn't have to and not all of them did, and while -- where I'm discussing is the products at that time. Smoke 51 is part of that corral of products, but -- and I believe the Smoke 51 did use the threads to pass power; however, I'm not sure every one did.
Q. Right. And we're focused on the Smoke 51 two-piece that you ordered back in late 2008 and you took the top off of the cartomizer. That's what I want to focus on. Are you with me?
MR. THOMAS: Object to the form of the question, misrepresents prior testimony.
Q. Are you with me?
A. I understand that's what you're inquiring about.
Q. Okay.
A. However, I'm -- I think that I'm -- I'm clear about the fact that they -- this is a general category of products.
Q. And in the Smoke 51 Duo that you took the top off prior to filing your provisional applications, that product had a battery as a power source, correct?
A. It could.
Q. Did it or did it not, the one you had in your possession?

A. I had ones that did.
Q. And the ones you had in your possession had a threaded connection between the cartomizer and the battery, correct?
A. Correct, they used an inclined plane that was a thread.
Q. And just so we're clear, you like to call a threaded connection an inclined plane. That's what we're referring to.
A. It's one version of an inclined plane.
Q. And the version of an inclined plane that the Smoke 51 Duo had is a threaded connection version of an inclined plane, correct?
A. The thread --
MR. THOMAS: Object to the form of the question.
Q. A threaded connection.
MR. THOMAS: Object to the form of the question, if that was a question. Go ahead, if you understand.
A. I don't.
Q. You don't understand what a threaded connection is?
A. I do understand what a threaded connection is, but they all used an inclined plane to connect and whether the inclined plane was short or long it

didn't matter, so, yes, they used an inclined plane.

Q. And did it use a threaded connection?

A. They did. They used an inclined plane.

Q. And the threaded connection was used to mechanically connect the cartomizer to the battery in the Smoke 51 Duo, correct?

A. Correct.

Q. And it also was the means by which an electrical connection was made between the cartomizer and the battery power source, correct?

A. In the Smoke 51 product, yes. Again, other products could have done it differently.

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(Thereupon, Defendant's Exhibit 3 was marked for identification.)

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Q. That's for you.

A. Thank you.

Q. Let me have it real quick.

A. Yeah.

Q. I'm going to show you what I've marked as Defendant's Exhibit 3. It's a certified copy of the '604 Patent that you folks produced to us. It bears Fuma 19 through 37 and I'll ask if you

recognize that document.
A. Did you want your pen back?
Q. Thank you. We'll just keep it there just in case.
Have you seen that document before?
A. Yes, I have seen this document before.
Q. It's one of the patents that you're a named inventor on at issue in this lawsuit, correct?
A. It appears to be so.
Q. Okay. Turn to Claim 1, the end of the patent. You know what patent claims are, right?
A. I am aware.
Q. Let me know when you get to Claim 1. It's column 17.
A. I'm sorry?
Q. It's at column 17.
A. Yes.
Q. I would like you to identify for me anything in Claim 1 that was not in the Smoke 51 two-piece device that you had in your possession and investigated prior to filing your provisional applications.
MR. THOMAS: Object to the form of the question. It seeks expert testimony, but if you've got any information in that regard, go ahead.

THE WITNESS: Can you please read that question back to me that he just asked.

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(Thereupon, the following was read:

Q. I would like you to identify for me anything in Claim 1 that was not in the Smoke 51 two-piece device that you had in your possession and investigated prior to filing your provisional applications.)

- - - -

Q. Can you identify what, if anything, in Claim 1 is missing from that device?

A. From what device?

Q. The smoke --

A. Sorry, I don't understand.

Q. The Smoke 51 two-piece device with the cartomizer and the battery that you had in your possession back in early 2009, before filing your provisional applications. Are you with me?

A. Yes.

Q. And that's the device you took the top off, correct?

A. Yes.

Q. And I'm asking you what, if anything, in Claim 1 was not in that device?

A. Absolutely there is.
Q. Identify it for me, please.
A. Just before line 50 you will see, "The heating element is electrically configured to vaporize at least a portion of" --
COURT REPORTER: I'm sorry, can you slow down?
MR. THOMAS: Just read it slowly so she can get it.
THE WITNESS: Yeah, I'm sorry.
A. "Wherein the heating element is electrically configured to vaporize at least a portion of the solution for oil provision to the individual in the airflow."
Q. Anything else missing?
A. In Claim 1, that is the key part of it.
Q. So it had everything else in Claim 1 except what you just read?
MR. THOMAS: Object to the form of the question.
A. Please clarify.
Q. I'm asking you to identify what it was missing and you identified column 17, the language around line 48 through 50, the wherein clause. Do you see that? "Wherein the heating element is electrically

1 configured to vaporize at least a portion of the
2 solution for oil provision to an [sic] individual
3 in the airflow."
4 You said that that device, the Smoke 51 that
5 you had, did not have that feature, correct?
6 A. Correct.
7 Q. Any other features in Claim 1 that it did not have?
8 A. It doesn't appear to be.
9 Q. All right. So explain to me why you think it was
10 missing the language that you just identified in
11 Claim 1.
12 A. I'm sorry, please clarify that question.
13 Q. You said that the Smoke 51 Duo that we've been
14 talking about was missing the language in Claim 1
15 that you just read.
16 A. If you mean by missing the language you mean
17 missing it functionally in a product, is that what
18 you're saying?
19 Q. Well, what was your basis for identifying this
20 language? Explain to me why you think it's missing
21 from the Smoke 51 device that you had.
22 A. If I can -- just for explanation purposes, can I
23 use Exhibit 2 A?
24 Q. Sure.
25 A. If you notice in Exhibit 2 A in the sketch the

heating element is not in the airflow way or surrounding it, henceforth it does not vaporize the solution in the airflow and that is what Claim 1 specifically describes.

Q. So your understanding of Claim 1 in identifying this is that it's actual liquid in the airflow channel that needs to be vaporized, according to this language?

MR. THOMAS: Object to the form of the question.

A. Can you please rephrase that, because I don't understand what you're saying.

Q. Well, let me ask you this question. Let me try it this way. Using 2 A, does that heating wire vaporize solution in the Smoke 51 device that you investigated?

A. Does it vaporize solution, is that the question?

Q. That's the question.

A. Yes.

Q. How does it do that?

A. In the holding medium area.

Q. And what happens to the solution when it's vaporized? Where does it go?

A. From my sketch, you could not tell that.

Q. From your investigation, what did you know?

A. I know that it went to an area at the top of the cartridge or somewhere in the cartridge, other than where the batting material was.
Q. Did the vaporized solution ever get into the airflow?
A. Ultimately, it had to.
Q. And why do you say it had to?
A. Or the product would not have worked at all.
Q. And you understood that at the time?
A. Yes.
Q. And that liquid that ultimately got into the airflow, that vaporized liquid that ultimately got in the airflow, that would exit at the top part of the device, the cartomizer?
A. I'm not clear on the question you're asking. Can you rephrase it, please?
Q. Okay. We've established that the device, the 51 two-piece that you were investigating, the vaporized solution ultimately had to get into the airflow at some point.
A. Correct.
Q. Okay. And how did it exit the cartomizer? Where did it exit?
A. The vapor would exit some orifice.
Q. An aperture?

A. Orifice or aperture.
Q. And that aperture was centrally located at the one end of the cartomizer, correct?
A. It could be.
Q. Well, it was, wasn't it? You investigated it?
A. In the one I investigated, yes.
Q. And it exited that aperture and went where?
A. Assuming the user was puffing on it, into their mouth.
Q. Correct. And you understood that before you filed your provisional applications, correct?
A. Yes.
Q. And did you discuss the operation of the Smoke 51 two-piece with Mr. Medley before filing the nonprovisional application?
A. I believe I did.
Q. Did you tell him anything different than what you've just testified about today?
A. I don't believe so.
Q. And was there discussion with Mr. Medley about actually disclosing literature regarding the Smoke 51 Duo to the patent examiner and explaining how that device worked?
MR. THOMAS: Object to the form of the questions.

A. Can you please clarify that question?
Q. Yes.
Was there any discussion with Mr. Medley -- you testified earlier today that you disclosed -- you believe you disclosed a Wikipedia page.
MR. THOMAS: Object to the form of the question, mischaracterizes prior testimony.
Q. Do you remember that testimony? Your testimony is what it is, and I'm not trying to mischaracterize it, and I'm assuming that's a good faith objection.
Do you recall discussing a Wikipedia page this morning with me?
A. Yes, I do.
Q. All right. And it's your recollection that it was you folks who actually disclosed that Wikipedia page to the examiner, correct?
MR. THOMAS: Object to the form of the question.
A. I believe I was -- testified earlier today that I said I don't know who found the Wikipedia page.
Q. Okay, fair. I didn't mean to cut you off. Sorry.
A. No, it's okay.
Q. And so my question is focused on the Smoke 51 Duo that you were actually -- you actually became a distributor for them, correct, of the Smoke 51 Duo?

A. Correct.
Q. All right. And was there any discussion with Mr. Medley about actually disclosing literature about the Smoke 51 Duo to the patent examiner and explaining to the patent office how this device works?
MR. THOMAS: Object to the form of the questions.
A. Can you please clarify the question? It seems like a compound question.
Q. Boy, you sound like a lawyer.
A. I'm not a lawyer and it's just -- it's just -- it's confusing me and I want to answer the question accurately for you.
Q. All right. Let's break it up in pieces.
Was there a discussion with Mr. Medley to actually disclose literature involving the Smoke 51 Duo device to the patent examiner?
MR. THOMAS: Object to the form of the question.
A. There was a discussion with Mr. Medley that disclosed the Smoke 51 product to the patent office.
Q. Okay. And what was discussed?
A. He saw samples of product that was existing in the

market before our design and how they functioned versus how ours functioned.

Q. And that would include the Duo, to the best of your recollection?

A. It would include the Duo and devices like the Duo.

Q. And was there a decision made to disclose samples of that product?

MR. THOMAS: Object to the form of the question.

Q. What decision was made regarding disclosing to the patent examiner samples of the products?

MR. THOMAS: Object to the form of the question.

A. We disclosed the Wikipedia page which clearly identifies those products.

Q. Does it disclose the internal structure of those products?

A. Yes, it describes it.

Q. And were you concerned at all that the Wikipedia page didn't tell the whole story about the operation of the Smoke 51 Duo?

A. To my understanding, patent examiners are very intelligent people and we -- my legal counsel, I provided all the information to and he provided the patent examiner with all the necessary tools that

they would need to investigate.
Q. So -- strike that.
MR. GABRIC: I need more space.
MS. MILLER: I'm sorry.
MR. GABRIC: No, no, you're fine.
MR. THOMAS: Do you need a minute to get organized?
MR. GABRIC: No, I'm fine. To get organized would take more than a minute.
MR. THOMAS: I hear that. I hear that.
THE WITNESS: There's never enough desk space.
MR. GABRIC: It's crazy. All right.
THE WITNESS: While we get organized, can I get another drink of water?
THE VIDEOGRAPHER: Stand by. We're going off the record at 11:12.
- - - -
(Thereupon, a recess was had.)
- - - -
THE VIDEOGRAPHER: We are back on the record at 11:26.
Q. Welcome back.
A. Thank you.

Q. Now, the initial Smoke 51 product you ordered back in late 2008, it was a two-piece device, correct?
A. I don't remember if it was 2008 -- late 2008 or 2009. Just in that time frame.
Q. Fair. Fair enough. But it was a two-piece?
A. Correct.
Q. And at some point in time, did that two-piece become known as a Smoke 51 Duo, D-U-O?
A. At some point in time, Smoke 51's brand of that general product became known as a Duo.
Q. And they also had a Smoke 51 Trio device, T-R-I-O?
A. Yes, there was a three-piece device that was on the market that they brand labeled as their Trio.
Q. Now, you still have in your possession a sample of the Smoke 51 Trio device, correct?
A. I believe we do.
Q. But you don't have a sample of the Smoke 51 Duo device, correct?
A. I don't believe we do.
Q. And when's the last time you had possession of a Smoke 51 Duo device?
A. I don't honestly remember.
Q. When's the last time you've seen one?
A. I remember seeing them before we settled a lawsuit with Smoke 51 Corporation, which is -- and that

was -- as part of the settlement, that lawsuit, everything we could send back to them we got money for and at the time we needed it, so we collected everything we had and sent it back for cash.

Q. Did you send back all your Smoke 51 Trios that you had?

A. Well, I think we have one of those there at the offices and it must have gotten missed.

Q. So then maybe you've answered my next question, is how has it come to pass that you still have a Smoke 51 Trio but not a Smoke 51 Duo?

A. We must have just missed sending it back.

MR. GABRIC: All right. Can we mark this as the next exhibit.

- - - -

(Thereupon, Defendant's Exhibit 4 was marked for identification.)

- - - -

Q. Showing you what we've marked as Defendant's Exhibit 4. It's a collection of materials bearing Bates Number FUMA 73224.

MR. THOMAS: Do you have a copy of that?

MS. MILLER: I'm sorry.

Q. Through 230. Maybe I gave it back to you.

MR. THOMAS: Thank you.

Q. And I -- I believe these were produced as a collection from Fuma. I could be wrong, but that's my understanding. That's why they're all attached. And I want to focus on the first page of the document, though.

MR. THOMAS: Is the exhibit two-sided, just for clarification purposes?

MR. GABRIC: It is two-sided, yeah. We saved some trees.

MR. THOMAS: No worries. You know when copies get made you're going to miss every other page, you know that, right?

MR. GABRIC: Good point.

Q. Can you identify the drawings in this exhibit? Did they belong together or not, as far as you can tell?

A. From what I can tell, some do and some don't.

Q. All right. Which ones belong together, as best you can tell?

A. It appears that the first four sketches are one set, then I believe it's -- I don't know what this -- what did you call this, the 3228 number?

MR. THOMAS: We call it a Bates Number.

THE WITNESS: A Bates Number, okay.
A. That Bates Number 3228, this is a different drawing, not part of this set. And then it appears the last two drawings are a different set.
Q. Okay. Thank you.
A. You're welcome.
Q. Let's start with 224 --
A. Okay.
Q. -- through 227, which I believe you said belong together as a set. Why do you think they belong together?
A. It appears to be sketches from a notebook of mine, possibly.
Q. Do you still have that notebook?
A. I believe we do.
Q. And what are these sketches of, this first set?
A. These are various renditions and drawings of sketches -- well, sketches of -- some are -- some are just of basic working of the inside of a cartomizer, some have more detail of a cartomizer, potential cartomizer, not necessarily even one that's been made yet, and some are of existing technology before we got involved in the industry.
Q. And on this first set, there's a designation GEN. Do you see that?

A. Yes, I see that.
Q. What does that refer to?
A. This -- in this particular set that we're viewing right now in Exhibit 4, and I'm only referring to the first four drawings here --
Q. Correct.
A. -- when I say GEN 2, I'm referring to generation of the industry, not Fuma generational, but industry generational.

So GEN 2 would be the second generation of the vapor industry as a whole.

Q. And was there a GEN 1?
A. Yes, there was a GEN 1, but I was not -- it's not included here.
Q. Okay. So let's start with what is included. What's illustrated in GEN 2?
A. In GEN 2, which you will see, is there is a cylinder that has no bottom to it necessarily, because it's illustrating that there is an airflow through that tube and that tube doesn't have to be the entire length of a cartridge. It doesn't have to be on the center. It doesn't have to be anything.

It shows a wire, and you see the positive symbol at the bottom there, that's a positive

connection. That wire comes up, comes out the top of that tube, down the side, and you see the little coil down the side, that coil represents a heating element.

And then you see it comes down and goes out to a negative connection for power. This is representative of all the cartomizers that were in the industry as a two-piece design that took a heating element and put it into the solution holding medium to try to vaporize the solution separate from the airflow. And included in that would be Loong Totem and Smoke 51 and everybody else that was doing it.

Q. And what was GEN 1?

A. GEN 1, the reason there's not a drawing for GEN 1 is I couldn't figure out exactly what GEN 1 was because there was a whole other court fight over that with different companies that I'm not part of, so I wasn't going to put that in my drawings.

Q. Do you recall what the basic design was of GEN 1?

A. Basic design -- well, what I understood to be basic design of GEN 1 doesn't mean that's what it is --

Q. Your understanding, fair enough.

A. -- is a three-piece design.

Q. Do you -- can you tell when these drawings in the

first set, GEN 2 through -- well, it's GEN 2, GEN 3, GEN 4 -- well, it gets kind of off, I think, GEN something, I think it's GEN 4 plus, but I could be wrong, and then GEN 6E, can you tell when these drawings were made?

A. There is no date on this; however, I can look at this first drawing of GEN 2 and I can look at the second drawing of GEN 3 and I know those are definitely early drawings.

Q. How do you know that?

A. Just that would correlate with what was going on during that time frame when we were creating our invention. The other drawings I cannot attest to; however, it could have been back then. It was a very creative time.

Q. What other drawings are you referring to?

A. GEN 4 and GEN 6E.

Q. Okay. But the first two drawings, GEN 2 and GEN 3, this would have been approximately what time frame?

A. It would have been early on. I don't know exactly what time.

Q. Do you know if it was before your provisional application?

A. I don't know.

Q. And what was the purpose for making these GEN

drawings?
A. Initially, when this is a sketch book, I would be sitting around and trying to concept and get -- and come up with the new ideas, so the best way to think about things is look at what the problems are and sketch it up and then that helps you visualize to figure out solutions.
Q. So GEN 2, the first drawing, was that prepared before or after that Defendant's Exhibit 2 we spent so much time on, do you know?
A. Are you asking me to look for it?
Q. Yeah, it's in your -- the small pile.
A. I cannot tell you. It could be.
Q. I really don't want you to speculate and I'm sure your counsel doesn't. I mean --
A. No.
Q. -- if you have a reasonable belief --
A. Again.
Q. -- and basis for it, that's fine.
A. And that's why I say, could be.
Q. But you don't know one way or the other?
A. I -- there was so much going on at that point in time.
Q. So GEN 2, did you identify problems with GEN 2 that at least you can tell based on this sketch?

A. Well, yeah, actually, and that's -- there's a couple of clear problems that jump off the paper to me here, and that's where we were talking about Claim 1 of the patent, and the biggest problem initially is the vaporization of liquid is not taking place in the airflow. That's the number one problem.

The other problem is that tube doesn't necessarily go all the way through, and it could cause things such as constrictions and airflow issues. It can cause reversed air pressures for -- because the liquid is being vaporized outside of the air stream, users would get liquid back in their mouth.

I mean, the number of problems from this design is just horrendous and to that effect, yes, the fact the tube doesn't continue down, that's -- tells me right there is why did I not finish drawing that.

Well, obviously I was thinking there might have been an issue elsewhere. The fact the heating element is outside of the airflow and it's not vaporizing the liquid in the airflow, and the fact that there's this gap at the top tells me that there's -- you know, this is just things that I

think about. Now, I'm looking back ten years ago. Do I remember everything? Obviously not, but these are just notes, sketches.

Q. Did you -- did you identify or recognize these problems you just mentioned with GEN 2 prior to becoming a distributor of the Smoke 51 device?

A. Some problems. I believe I -- I was aware of some problems.

Q. Did you -- did you -- prior to becoming a distributor of the Smoke 51 device, did you believe it was a good or a not very good device?

A. I believed at the time it was the best thing that was in the market at that time.

Q. At some point in time, did you no longer believe that?

A. At some point in time I believed I could do it better.

Q. I just threw you a softball.

MR. THOMAS: Yes, he did.

A. Yes, he did.

Q. So it's your belief that your device was the device that improved upon the Smoke 51 device?

A. No. I believe that we didn't improve on the Smoke 51 device. We improved on a core basic design that the entire industry was using, and I

1 think we perfected the perfect e-cigarette.
2 Q. And what did you do differently that was this major
3 design change that you felt?
4 A. There was a lot of things we did. You know, I go
5 back to -- and can I look at a piece of paper --
6 Q. Yeah.
7 A. -- here? So if you go back to talking about the
8 patent, and we go back to that Claim 1, if you look
9 at all these things we cite in Claim 1, that all
10 made it in here because those were all problems
11 with that original design to everyone that was
12 using, including Smoke 51 and Loong Totem and
13 everyone else, because there was a whole myriad of
14 problems they had.
15 There was constricted airflow. There was no
16 guarantee that that centralized axial passageway or
17 just an air passageway to flow through the center
18 was not constricted and not functional enough to
19 give the user a full hit.
20 We were all smokers before we started this,
21 and the point is this original design, you would
22 pick one up and it would be like trying to suck a
23 milkshake through a straw. Liquid would blow back
24 in your mouth. It would have a burnt taste and
25 just -- it was like sucking on a burnt cigarette

butt. You would screw it on and it wouldn't even work. Then you would screw it on and you get the first two hits and it's great, and then the next thing you know you get a mouthful of liquid. The next time you suck on it, you get hardly no airflow.

This thing was littered with problems. I mean, littered. It was an absolute nightmare. Initially, it seemed great because it's the best thing I had ever seen, but then after I tore the top off of it and looked at it, then my mind really started ticking. That investigation process is what led to the '604.

Q. Okay. And GEN 3, the second page of Exhibit 4 --

A. Yes.

Q. -- what's that a reference to?

A. GEN 3 is the core concept or the beginning concepts of the '604 Patent. GEN 3 is Fuma. And you can see one of the things we did is we took -- and it's not labeled here, but if you see the little squiggly line in the middle there, that is a heating element.

And if you see the little tassels coming off the end, that's wicking material. You see the cylinder that that sits inside of, that would be

the central axial passage airflow that we've placed it in. And that -- and that shows, and you'll see, "Place heating element in the center with the wicking material extending into the medium."

It goes on to say some more, but the gist of it is this is the beginning concepts. This is the ground -- the foundational groundwork for the Fuma-designed cartomizer.

Q. So just so I'm clear, so then GEN 2 is near my what was done before you and then as we get to GEN 3, that's transitioning into your inventive work. Am I understanding that incorrectly?

A. Into our inventive work, yes.

Q. So how did you -- who came up with the idea of placing the heating element in the airflow channel with this -- with the wick material?

A. Actually, it would be the heating element in or around the airflow. The key with it is that, yes, the heating element is in the airflow or around the airflow. The real key behind this, and I'll go back to Claim 1, it's vaporizing the solution into a vapor in the airflow and that -- that original idea was mine.

Q. And when did you have that idea?

A. It was -- it was in two thousand -- it was in 2009.

Q. Before the provisionals?
A. Yes.
Q. You seem pretty certain of that.
A. Yeah, I am very certain of that.
Q. Why are you so certain of that?
A. Because it was a major aha moment for me, as I was so told --
Q. I love that band.
A. -- what an aha moment is. Yeah, right.
Q. And what do you mean by "aha moment"? I think most of us do know, but somebody looking at this . . .
A. It's the moment that it -- that all the pieces of the puzzle come together and you have that creative idea of how to solve a very complex problem, and this is an extremely complex problem.
Q. And so this aha moment, it consisted of conceiving the idea of putting the heating element in the airflow?
A. It consisted of vaporizing the solution in or around the airflow so that the vaporization process actually takes place in the actual airflow.
Q. And where were you when you had this aha moment?
A. I don't remember. I -- it was -- I was -- but you've got to understand at that point in time I was thinking about this all the time.

Q. Was anybody with you when you had this aha moment?
A. I remember being alone for this part of the aha moment.
Q. And who did you report this aha moment to, if anyone? Who was the first person you reported it to?
A. That would be Rebecca, my wife.
Q. And how soon after this aha moment did you report it to her?
A. I don't remember. It was shortly after, but I don't -- I couldn't give you exact timing.
Q. Where were you when you reported it to her?
A. I don't remember.
Q. Where did --
A. I remember telling her. That's all I remember.
Q. What did you tell her?
A. "I figured out the problem."
Q. I'm assuming you said more than that, but maybe I'm wrong. You just said, "I figured out the problem" or did you elaborate?
A. I probably elaborated, but, I mean, I don't remember the exact conversation. I know I was complaining to her about using this other product and I was so absolutely frustrated as a prior smoker.

Q. What was her reaction?
A. "That's great, honey."
Q. "Now do the dishes"?
A. "I'll walk the dog."
MS. MILLER: "I'll go to work."
THE VIDEOGRAPHER: Mr. Gabric, we have five minutes left on this DVD before we have to change.
MR. THOMAS: You can keep going. It's up to you.
THE VIDEOGRAPHER: Do you want to do it now or go for five?
MR. GABRIC: Let's go another five minutes.
THE VIDEOGRAPHER: Okay.
Q. So what did you do next after reporting it to your wife, Rebecca?
A. I don't remember. I don't remember exactly what I did and I don't know exact order or sequence of events. I just -- I just remember having the aha moment because it was like everything came together. It's like when you're so frustrated with a big problem about something that's really bothering you and you finally figure it out, everyone has been there and that's what it was

like.
Q. So this drawing, generation 3, was this an effort to record your aha moment?
A. It was around this time, I believe. I believe. But I had a lot of sketches in a lot of different books, and I'm -- I doodle. I believe you might find a maze in one of my notebooks that I wrote.
Q. Pardon me?
A. I believe you might find a maze in one of my notebooks that I drew.
Q. I'm not remembering that, but . . .
MR. THOMAS: He means doodles.
A. Doodles.
MR. GABRIC: Okay. Do you have this, by chance?
MS. MILLER: I can get it.
MR. GABRIC: Sorry. You know, we might as well take a break since we're running low on --
MR. THOMAS: He can just change the tape and we can keep going. It's entirely up to you.
MR. GABRIC: Okay. That's fine. That's cool.
THE VIDEOGRAPHER: Off the record to

change, 11:50.

- - - -

(Thereupon, a recess was had.)

- - - -

THE VIDEOGRAPHER: We are back on the record at 12:03.

- - - -

(Thereupon, Defendant's Exhibit 5 was marked for identification.)

- - - -

Q. Okay. I've marked as Defendant's Exhibit 5 a document bearing FUMA Inspection 25. I'll ask you if you recognize that document.

MR. THOMAS: I can't figure out which way is up and which way is down.

MR. GABRIC: It may be -- I think the Bates Number is upside down when it was marked.

MR. THOMAS: We had this as 5, right?

MR. GABRIC: Yes.

Q. Do you recognize this document?

A. Honestly, no, but it doesn't mean it's not one of my sketches. I don't know. I doodle a lot.

Q. Do you recognize this as being a sketch by you?

A. Could be. I don't know.

Q. Do you have any idea what's illustrated in Exhibit

5?
A. Which part?
Q. Well, let's start with -- let's agree on the orientation of the document.
A. Yeah, please.
Q. I think --
MR. THOMAS: It's a Fuma Inspection number. Do you think that's upside down or do you think that's correct?
MR. GABRIC: I think it's upside down.
MR. THOMAS: Okay. We can just -- we'll just be all on the same page. It doesn't matter. It's easy to identify.
Q. Right now the Fuma Inspection number is on the upper left-hand corner. Are we all orientated the same way?
MR. THOMAS: Gotcha.
Q. Okay. Let's start at the very bottom. Do you know what that's illustrating?
A. I mean, the point is I could guess, but not exactly.
Q. Do you have a suspicion what it might be with the caveat that you're not positive?
MR. THOMAS: Object to the form of the question.

A. Can you rephrase the question?
Q. Is it the Smoke 51 Duo cartridge?
A. No.
Q. So you have no idea what this is?
A. No, I have -- I really don't know what this is.
Q. Is this your -- is this a prior design to your work or is this your work, do you know that much?
MR. THOMAS: Object to the form of the question.
A. I don't know what this is. The only thing I recognize is this block diagram up at the top.
Q. Okay. Well, let's start with what you recognize. What is that?
A. That appears to be a flow diagram for some plans we were making to build a manufacturing facility to make cartomizers in the United States.
Q. And do you know whether those are cartomizers illustrated below the flow diagram?
A. Could be. It appears possibly so.
Q. Are these cartomizers you were contemplating manufacturing?
A. I don't know.
Q. When were you contemplating manufacturing cartomizers in the United States? When did you start doing that?

A. We really started thinking about that after we started working with China. You know, it was an early concept. We wanted to, but there was no efforts put into doing that type of thing here, because we didn't have the funds, the resources, the manpower or anything to do it with.

So it was a dream in the sense of it would -- oh, would you -- we could do this, it would be nice to do here, but this kind of functional block diagram kind of thought process didn't happen until later.

Q. And when did the thought process referred to in the flow diagram, what time frame did that occur?

A. I honestly can't answer that. It probably happened -- because after we started manufacturing in China and we started hitting the problems in China, then that's when we started wanting to manufacture here from the standpoint that just the headaches of dealing with China.

Q. Can you put a year on it?

A. Not -- again, we had our first production run in 2009 and were selling product in 2009. It could have been in 2009. It could have been 2010. I don't know. It could have been 2011.

Q. Do you know a person by the name of Jasmin Guo?

A. Yes, I do.
Q. Who is Jasmin Guo?
A. Jasmin Guo.
Q. Thank you.
A. You're welcome.
Jasmin Guo is one of the leader management in a company called Trans-Power.
Q. When was the last time you've spoken with Jasmin Guo?
A. Oh, wow. I have to think about that. It's been a long time.
Q. When was the last time you communicated with her in any way?
A. I couldn't tell you. She was our -- she was the original company we were working with with Trans-Power when we first started making the Fuma devices.
Q. So is it fair to say that it's been at least several years since your last communication with her?
A. Maybe. She would reach out to me occasionally here and there over the years since I broke off that relationship, but actually communicated with her I couldn't tell you.
Q. Now, your first contact with Jasmin Guo -- is that

how you pronounce it?
A. Guo.
Q. Did she initiate the contact or did you?
A. The very first contact with Jasmin Guo she initiated contact.
Q. Okay. And when did that occur?
A. That would have been early 2009.
Q. Pardon me?
A. Early in 2009.
Q. And what was the nature of that contact?
A. She was offering to supply me direct with e-cigarettes.
Q. And what e-cigarettes -- I'm sorry, what e-cigarettes was she offering to supply you with?
A. A two-piece.
Q. From where?
A. From China.
Q. Do you know who made them?
A. No, not at that time.
Q. At some time did you get an understanding of who made them?
A. At some time later on I, yes, did come to an understanding to some people that made it.
Q. And who did you come to understand were making the two-piece in China?

MR. THOMAS: Object to the form of the question.

Q. A company by the name of Kanger ring a bell?

A. Kanger was one of the people that were making the two-piece, but they just recently got into it.

Q. Had just recently got into it in the 2009 time frame?

A. I believe so, from what I understand.

Q. And do you have an understanding of how Jasmin Guo knew to reach out to you regarding e-cigarettes?

A. No, I don't.

Q. How did she reach out to you?

A. I can't honestly remember what medium she used.

Q. And she just -- and I'm just trying to understand. Just out of the blue this lady from China contacts you and says, "I can supply you e-cigarettes"?

A. Yes.

Q. So what happened -- approximately when did that happen?

A. Again, that was in early 2009.

Q. All right. So what happened after she contacted you?

MR. THOMAS: Object to the form of the question.

A. I don't understand what you're asking exactly.

Q. Yeah, she contacted you about offering you e-cigarettes. Did you do any investigation or follow up with her on what she had to offer you?
A. Not at that time, but later I did.
Q. Okay. Why not at that time?
A. I honestly don't remember what my reasoning was.
Q. At some point later in time, though, you did follow up with her?
A. At some later time I followed up just in general also.
Q. Okay. Approximately when was that?
A. Again, it was in 2009.
Q. I'm just asking what you recall.
A. I understand, and . . .
Q. So what did you do when you contacted her again?
A. Well, I contacted her and other people, too, to try to find out who can make things in China and trying to find a supplier that could build our new design that would be capable.
Q. Did you ever come across the Kanger products prior to Jasmin Guo reaching out to you?
A. No.
Q. As part of your research on the Internet you talked about this morning, did you ever come across their products that you recall?

A. At some point I did, but I remember -- I remember Loong Totem. I remember Jasmin Guo, Trans-Power. I think there was another company that I touched base with, too, but I can't remember the name of them off the top of my head.

MR. GABRIC: Can you mark this?

- - - -

(Thereupon, Defendant's Exhibit 6 was marked for identification.)

- - - -

Q. I'm showing you what we've marked as Defendant's Exhibit 6. For the record, it's a native document that was produced to us. It bears Bates Number FUMA 14221.

MS. MILLER: Yep.

Q. Do you recognize that document? Do you recognize that document?

A. Oh, I'm sorry. I didn't hear you.

Q. That's okay.

MR. THOMAS: Do you need this or do you want it out of the way?

THE WITNESS: I wanted it out of the way. Thank you.

MR. THOMAS: Okay.

Q. Do you recognize that document?

A. It looks familiar in the sense that she would send out these email blasts with this kind of thing or somehow convey it to people she was trying to do business with.
Q. What's your understanding of what Exhibit 6 is?
A. It seems to be a marketing piece from Trans-Power.
Q. And let me ask you this. In or around early 2009 time frame, did you ever access the Alibaba Website in looking for potential manufacturers?
A. Yes.
Q. And did you download the Alibaba Website with respect to any potential manufacturers or products?
A. I'm sorry, please clarify the question.
Q. Did you download any portions of the Alibaba Website in your effort to identify potential suppliers of the product in or around the early 2009 time frame?
A. I'm sorry, I apologize. I really don't understand the question.
Q. All right. Let me try again.
Isn't it the case that in the early 2009 time frame, you actually went on the Internet and did some searching for potential suppliers of electronic cigarettes?
A. That's correct.

Q. And as part of those efforts, did you visit the Alibaba Website?
A. Yes, I visited the Alibaba Website, but I wasn't necessarily looking for suppliers to supply me with e-cigarettes. I was looking for manufacturers who could build something for me.
Q. And did you do that in the early 2009 time frame?
A. Somewhere in 2009 I started.
Q. Before you became a distributor of the Smoke 51 device?
A. I don't know the exact timing on that.
Q. And at some point in time -- well, let me ask you this. Do you recognize Exhibit 6 as something that perhaps you downloaded from the Alibaba Website?
A. I recognize this exhibit as something that may have existed. If I -- but -- however, you're saying downloaded from Alibaba. That's not necessarily the case with this. It could be; it couldn't be. I don't know.
Q. Let me refer you to the upper left-hand corner of the first page of the exhibit.
A. Yes.
Q. See if that refreshes your recollection.
A. This page or this page?
Q. I'm sorry, got me. Second page.

A. Okay.
Q. Do you see where it says in the upper left-hand corner, Trans-Power International Company Limited Website, HTTP, some slashes, trans-power.en.allibaba.com. Do you see that?
A. Yes, I do.
Q. Okay. So perhaps there was a Website that Trans-Power had at the time?
A. Perhaps.
Q. Do you recall visiting their Website?
A. I don't recall. I may have.
Q. Do you recall downloading anything from their Website?
A. I don't ever recall downloading anything from, like, Alibaba or their Website in the sense of a download like we would think; however, did people send me stuff? Yes.
Q. So to the best of your belief, Exhibit 6 is something that Jasmin Guo sent to you?
A. Very possibly could be.
Q. Can you think about -- what else could it be if it wasn't -- if it's not that?
A. That's the only -- it could be something she sent to someone else that I don't know where this came from, so it's very possible.

Q. Have you seen this before?
A. I've seen stuff like this before.
Q. Now, there's a -- let me ask you this. When approximately would Jasmin Guo have sent this to you?
MR. THOMAS: Object to the form of the question.
A. Yeah, I'm unclear on your question.
Q. Right. So you at some point initiated communications or she reached out to you initially, Jasmin Guo, sometime in early 2009?
A. Correct.
Q. Okay. And how long did you stay in contact with her, over what time frame?
A. Can you -- can you phrase the question a little differently?
Q. I'm going to move on.
A. I'm sorry, I just don't -- I'm having trouble understanding.
Q. That's okay. We'll help you out.
A. Thanks.
Q. Let's go to -- let's see. It's the --
MR. GABRIC: Thanks.
Q. Let's go to the -- it would be the third page of your document, yeah.

A. This one (pointing)?
Q. No, go back.
A. This one (pointing)?
Q. Let's see here.
A. We're not on the same document, are we? That looks different.
Q. Yeah, let me take a look at your exhibit. It's just printed out differently. It's the same.
A. Okay.
Q. Yeah, it's the page that refers to the KR808D. Do you see that?
A. Okay. Yes, I do.
Q. Okay. And the reference here, it says, "Cartridge and atomizing together, rechargeable battery, each set includes."
Do you see that?
A. Uh-huh. Yes, I do.
Q. And did you ever come to order a KR808D product from Ms. Guo?
MR. THOMAS: I'll object to the form of the question.
A. Can you rephrase the question, please, so I can understand what you're looking for?
Q. Did you ever order a KR808D-1 product?
A. I ordered products from Jasmin Guo who I worked

with, not just to order the Fuma products, but to help in the development process in building prototypes.

So to that effect, you know, the Fuma product used a standard KR808 battery that we had some changes made to, but the cartridges and the cartomizers were strictly Fuma.

Was there a KR808 ever ordered from Jasmin Guo? The answer to that would have to be yes, because when we were testing the fluids out to get the flavoring correct, she sent us KR808Ds to test flavor on because our patented design wasn't finished yet.

Q. What changes were made to the batteries?

A. Timers because when you actually use the product the battery has not just a battery there, but there's a battery, there's a circuit board, there's a flow sensor. There's multiple things going on in there, so some things were -- everybody in the market had things where it was such things as the amount of time you could draw on a cartridge and have the power source actually power the cartomizer had a time out in the circuit, so we changed that. We changed some other facets about it, and that's -- I mean, that's the changes we made to the

battery, the power source. The cartomizer was completely ours.

Q. Okay. So with respect to the battery changes, did you communicate those changes to Ms. Guo?

A. That is correct.

Q. And then is it your understanding she would then communicate those changes to Kanger?

A. No, actually. Initially, I didn't understand she was working with Kanger. She worked as a broker interpreter and she told me she was working with a factory and ultimately she told me she was working with Kanger.

Q. Okay. But she was the conduit for these changes?

A. Correct.

Q. And --

A. She acted as translator.

Q. Okay. Did you provide -- these changes to the battery you just mentioned, were they in writing or were they orally?

A. Typically, all my conversations with her were done almost exclusively through Skype.

Q. And is there any written record of the changes you requested to the battery?

A. No.

- - - -

(Thereupon, Defendant's Exhibit 7 was marked for identification.)

- - - -

A. Is this for me?

Q. Yep.

A. Thank you.

Q. Showing you what I've marked as Exhibit 7, and it bears -- may I borrow your exhibit, please?

A. Yes.

Q. It bears FUMA Inspection 0010. I'll ask you --

MS. MILLER: And 11.

Q. Oh, and one more, and 11. Thank you. I'll ask you if you recognize that document.

Do you recognize that document?

A. That was a long time ago. I don't specifically remember it, but I vaguely remember.

Q. Okay. And what is this document?

A. This appears to be an email from Ms. Guo to me.

Q. It says -- well, there's an attachment, a JPG attachment. Do you know what that attachment is referring to?

A. No, I do not.

Q. When's the last time you've seen this document?

A. Probably in two thousand -- July 6th, 2009.

Q. You didn't look at this document preparing for your

depo?
A. No, I did not.
Q. Do you know what the attachment is referring to?
A. No, I do not.
Q. And she says here, "Would like to email you the packing for KR808D-1 as per enclosed file."
Do you see that?
A. Yes, I do.
Q. Okay. What's that referring to, to the best of your understanding?
A. Reading this and looking at the time to this, which would have been July 6th of 2009, I believe what this document is referring to is -- and if we will note, it says, "One piece sample, USD Camel, 16 milligram," that's what MG stands for, "10 piece cartridge free."
At this point in time we were trying to work out flavor profiles for our e-cigarette cartridges, and since our actual prototypes had not been completed yet, we were utilizing the KR808 products to test flavor profiles, and I believe this is the Camel flavor, which we call our desert blend, but it started as their Camel flavor.
So this would be something probably relative to perfecting flavor profiles. We didn't take

anything they had off the shelf. Everything was ours.

Q. Well, there's a reference here to "10 piece cartridge free." What's that referring to?

A. I don't know for sure, but during that time she would include test pieces.

Q. Did you receive some KR808D-1 pieces from her?

A. I'm not sure. I know we did receive some for the flavor profiles we were working on. I don't know if it's this one.

Q. Okay. Well, what other pieces would you have received?

A. Different flavors.

Q. Okay. Did you receive two-piece devices from her?

A. The KR808D-1 is a two-piece just like the Smoke 51 and the Loong Totem. It's no different.

Q. So you did receive a two-piece device from Ms. Guo during this time frame?

A. Oh, I know we received some.

Q. And was it the KR808D-1?

A. I believe it was.

Q. Okay. And what was the purpose, again, for receiving those devices?

A. The purpose for receiving those devices were that the cartridges were filled with liquids that we had

specified changes to for us to test flavor profiles. And while we knew it wouldn't be nearly as good as our finished patented design, at least it got us in the ballpark so we could finalize that in order to go to production.

Q. So you had provided specifications to Ms. Guo regarding the formulation of the flavorings?

A. That would be correct.

Q. And then she was the conduit for Trans -- leading that over to the folks at Kanger?

A. Actually, to the folks who made the liquids for that.

Q. All right. Did you ever deal directly with anybody at Kanger?

A. No, other than Ms. Guo always acted as my translator and there has points in time where engineers were standing there on a video Skype call who did not speak English and she would be directly translating trying to convey ideas.

Q. Is there any written record of the e-liquid specifications you provided Ms. Guo?

A. We didn't provide a specific formula. We gave them profiles that we wanted to achieve and how to change the flavor format to make it what we wanted it to be.

Q. And so what type of information did you provide, give me an example.

A. Example, we would -- she would say these are the standard flavors. We would get those. We would try them. And this needs to taste more woody or this needs to have more citrus or this needs to have more vanilla or it needs to be spicier, it needs to be more earth toned.

Put it -- we would communicate -- because communicating with China as we all know is very complicated and the more technical data you add, the more chance for mistakes. The more lay you keep it, the better chance you have of getting it right.

Q. Did you have a written confidentiality agreement with Ms. Guo or Guo?

A. We had a -- we had a verbal well-known confidentiality agreement between us.

Q. Did you have any written agreement with Kanger?

A. No, but Ms. Guo was told to tell Kanger that it was a confidentiality and she assured us that Kanger knew it was confidential and that all communications with Fuma were confidential.

Q. Now, this KR808D -1 device, did you receive this in or around early July 2009? That's the date of the

communication, that's why I'm asking.
A. Yeah, I know, and I can't tell you exactly. There was a lot going on at that time period. I know we received KR808 product for testing flavors. When we exactly got them and how much we exactly got, I can't tell you. I know we did, though.
Q. Was it before or after you had your aha moment?
A. Long after I had my aha moment.
Q. How much after your aha moment?
A. I can't be specific to that. I can say it was definitely months.
Q. So you think your aha moment was months prior to July 2009?
A. Yes, it absolutely was.
Q. Do you have anybody who can corroborate that, the timing of your aha moment and what it was?
MR. THOMAS: Object to the form of the questions.
Q. Do you have any documents?
MR. THOMAS: Object to the form of the questions.
Q. Do you have any contemporaneous documents that demonstrate you had this aha moment several months prior to July 2009?
A. We've produced everything to our lawyers.

Q. Have you seen any documents that show that you had this aha moment several months before July 2009?
A. I would believe I do. There's sketches.
Q. The undated sketches?
MR. THOMAS: Object to the form of the question.
Q. Do you have anything with a date on it that was put on at the time the sketch was made?
A. I'm unaware.
Q. What human beings can corroborate you had this aha moment besides I guess you mentioned you told your wife? Anyone else?
A. Daniel Hillenbrandt.
Q. Anybody else?
A. No. I kept it pretty close to the chest.
Q. And as far as you know, can they confirm that you had this aha moment several months before July 2009?
MR. THOMAS: Object to the form of the question.
A. Can you reask that in a different way?
Q. Yeah.
Have you discussed with Mr. Hillenbrandt or your wife in connection -- in the last year or so even about the timing of your aha moment and

whether they can confirm that this is when you had it?

MR. THOMAS: Object to the form of the question.

A. I really don't understand the question.

Q. Well, you know, let me try again because it's -- I'm not trying to be confusing.

You claim to have this aha moment you testified earlier. And you think it was several months before July 2009. And I would like to know as you sit here today, who can confirm that that, in fact, happened at the time you say it happened?

A. I think what's fair is that Mr. Hillenbrandt and my wife both can confirm it happened before the July time frame. Exactly when, I can't even tell you exactly when.

Q. And why do you think that they can confirm that?

A. Because I talked to them both and Mr. Hillenbrandt and I collaborated on the '604 Patent.

Q. And have you discussed with either Mr. Hillenbrandt or your wife in the last year or so whether or not they can confirm that you had this aha moment prior to July of 2009?

A. We've never discussed specific dates. We know about -- we know about when, early 2009 sometime.

We know when we got our -- we know when we actually got our first working prototypes and proof of concept done. We're very aware of that. So to put a specific date on it, no, I don't think -- I know I can't put a specific date on it. I can't speak for them.

Q. So this KR808D-1 that you received, did you receive it prior to Kanger making your prototype?

MR. THOMAS: Object to the form of the question.

Q. Your prototype cartomizer.

MR. THOMAS: Object to the form of the question.

A. I don't quite understand exactly what you're asking.

Q. All right. Let me try to make you or help you understand. You testified that you provided some specifics to Jasmin Guo who would provide them to Kanger regarding the e-liquid, regarding, you know, what you wanted on the e-liquid, about the battery, and then you said the cartomizer and the cartridge was brand new to you, correct?

A. Correct.

Q. And they made something that you believed was brand new to you, for you, correct?

A. Correct.
Q. And my question is, did you receive the KR808D-1 prior to Kanger making what you believed was brand new to you?
A. I can say what I know, and that is that we received these KR808D-1s post to me having discussions with Ms. Guo and her being the interpreter going to the engineers and taking our designs to get our cartomizers built. That much I do know.
Q. So you believe you gave the designs to Kanger on what you believed was new to you before you received any KR808D-1 cartridges?
A. No, I believe I gave the designs to Ms. Guo to take to Kanger or take to someone because at the time I wasn't sure who she was working with, and I believe -- yes, I believe that before we received any of these she had already received the designs from me.
Q. Okay. Because this is important, I want to make sure I understand it. You believe the sequence of events was that you provided your designs for what you believed was a cartridge unique for you to Ms. Guo before you received any KR808D-1 cartridges?
A. From Ms. Guo possibly, yes.

Q. All right. What -- did you receive any KR808D cartridges from anyone on the planet before you gave your design that you thought was unique to you to Ms. Guo?
A. I don't know. Smoke 51 and everyone at Kanger and everyone made the same thing so maybe.
Q. Well, how do you know the KR808D-1 was the same thing as the Smoke 51 Duo?
A. Because it came out later that Smoke 51 had used Kanger as a supplier.
Q. You never took a look at the KR808D-1, the internals of it?
A. I pulled the cap off of one, but I pulled the cap off and it's the same thing. It's more of the same.
Q. Do you have any documents that show the insides of the KR808D-1?
A. No.
Q. So this KR808D-1 that you got, it was a two-piece, right?
A. That's correct.
Q. Okay. And it had a battery?
A. Yes.
Q. Did the battery have a thread connection?
A. It had an inclined plane thread, yes.

Q. Okay. And it had a cartomizer?
A. Correct.
Q. And the heating element was inside the cartomizer, correct?
A. That's correct.
Q. And the cartomizer was connected to the battery via a threaded connection?
A. It had a twist-on connection.
Q. Was it a threaded connection?
A. Yes, it was an inclined thread.
Q. All right. And that inclined thread would mechanically connect the cartomizer to the battery?
A. Yes, those inclined planes would lock it on.
Q. And would also those threaded -- threads would provide an electrical connection between the cartomizer and the battery?
A. In that particular instance, yes.
Q. Okay. And you knew all this before you filed your nonprovisional application in July of 2010, correct?
A. That's correct.
Q. Did you disclose the KR808D-1 to the patent office?
A. Absolutely. We disclosed all those products through the Wikipedia entry.
Q. So you were relying on the Wikipedia page as being

a disclosure of the KR808D-1 to the patent office?
A. My attorney disclosed everything to the patent office. I disclosed everything to my attorney. And I took samples to my attorney. We looked at the Wikipedia page. And my attorney, Mike Medley, handled all that.
Q. So did you actually give Mr. Medley a sample of the KR808D-1?
A. Mr. Medley saw an example of multiple devices.
Q. Did you give him a sample of the KR808D-1?
A. I can't remember exactly what we showed him. It could have been a 51. It could have been a KR808D-1. They're one and the same. And it could have been a KR808D-1 that wore a Smoke 51 label for all I know.
Q. What happened to the KR808D-1 that you received from Ms. Guo?
A. I honestly don't know.
Q. When's the last time you saw one?
A. It's been a couple -- it's been probably five, six years ago the last time I saw a box laying around the factory. I never was really worried about it. They were readily available in the market, so it just didn't really hit me to worry about it.
Q. And you understood, though, as early as July 2010

that the KR808D-1 was a preexisting design to what you invented, correct?
A. It was a completely different design to what I invented.
Q. And it was a preexisting design, correct?
A. Yes, the cartomizer was a well-known entity.
Q. And you understood that the Smoke 51 Duo was a preexisting design to what you invented, correct?
A. Yes, absolutely.
Q. And so how is it that you don't make any efforts to preserve these preexisting designs and bring copies or samples of them to your patent attorney for disclosure to the patent office?
A. I did bring samples to the patent attorney, as I said previously.
Q. Exactly what samples did you bring Mr. Medley?
A. I don't remember exactly what samples I brought, but I do know I brought a two-piece, I brought ours, I brought a three-piece, as well the Wikipedia entry clearly states it.
Q. What two-piece did you bring him?
A. I don't remember.
Q. Okay. Well, we know you had a Smoke 51 Duo in your possession at some point in time, right?
A. Correct.

Q. And you had a KR808D-1 in your possession at some point in time, correct?
A. Correct.
Q. What other two pieces did you have in your possession prior to meeting with Mr. Medley?
A. We had the Fuma and then we had the Smoke 51 and I don't even remember what other ones we had before we met with Mr. Medley. At that point in time, we were focused on our products.
Q. So then when you met with Mr. Medley, we -- I'm trying to narrow the universe, this is before filing your nonprovisional in July 2010, right?
A. Right.
Q. You brought a sample of what you thought was your product unique to you, the Fuma product, correct, you brought an actual physical sample?
A. Yes.
Q. And then you brought a physical sample of the three-piece, right?
A. That is correct.
Q. And that's the Smoke 51 Trio?
A. I believe it was.
Q. All right. So now kind of the gray area is which two pieces did you bring? And I want to narrow the universe, can you narrow the universe to any

1 particular product or potential products?
2 A. We brought another two-piece because I had the cap
3 pulled off and I showed Mr. Medley the difference.
4 Q. Okay.
5 A. And I don't remember which one it was.
6 Q. How many two pieces have you taken the cap off of
7 prior to meeting with Mr. Medley?
8 A. Definitely the Kanger 808, definitely the Smoke 51,
9 definitely the Loong Totem.
10 Q. Did you bring the sketch of Defendant's Exhibit 2,
11 did you bring that to the meeting with Mr. Medley?
12 A. I'm sorry, what document were you referring to?
13 Q. Defendant's Exhibit 2. You can go in there and
14 look.
15 A. Thank you. Where did that go? Oh.
16 Q. You're getting off easy today. Usually there's
17 like hundreds of exhibits.
18 A. Okay.
19 Q. Did you bring that sketch to Mr. Medley?
20 A. I might have. I might -- I might have even
21 sketched something right in front of him also. I
22 don't remember exactly how the conversation went.
23 That was almost ten years ago. But it was -- we
24 made it very clear in the differentiators.
25 Q. And did you -- strike that.

And so you had a conversation with Mr. Medley about the differentiators between your device and the two-piece device you brought, whichever one it may have been?

A. We had a discussion about the differentiators, absolutely.

Q. And at the risk of touching on some prior ground, what do you recall, what differences were discussed?

MR. THOMAS: Objection; asked and answered.

A. Well, I go back to there were quite a few differentiators, and I really go back to, you know, I can just tell you that the form factors of the two while physically look very similar on the outside function drastically differently internally.

So when you say the differentiators, we -- you know, you talk about the problems that the existing product had, so we discussed how we fixed the problems. And that goes back to the patent itself and the claims that are written and how they're written, because it's addressing those solutions to those problems.

Q. So how did -- the KR808D-1, did you actually

physically test that device with the flavorings you had requested?

A. Yes.

Q. And what was your reaction? How did it perform relative to the Smoke 51 two-piece?

A. The performance of the KR808D-1 was almost identical to the Smoke 51, and doing flavoring tests since our patented product at the time, hopefully patented product wasn't done when we got our final version in, it was night and day difference.

Q. But it performed well enough for you to actually evaluate the flavors?

A. It was what we had to work with, and to that point it did a good enough job so we could get the profiles at least close, close enough that it tasted at least decent. We're not going to be able to fully quantify the flavors until we had our patented design, so we used the tools we had at the time.

Q. So at some point in time you had discussions with Jasmin Guo regarding what you wanted made for Fuma, your design, correct?

A. Yes.

Q. When did those discussions take place?

A. Those discussions began far prior to July.
Q. How do you know that?
A. Because it was a lengthy process. I don't remember exactly when I started. I just remember the painful process.
Q. And over what time frame did these discussions take place?
A. It was a lengthy amount of time, and I don't even remember how much time it took because I lost track of days. I lost track of weeks. I lost track of time itself.
Q. So did it go for months? You said days or weeks.
A. It could have been months.
Q. Well, was it months?
A. It was a significant amount of time.
Q. Can you put an approximation on it?
A. No, I cannot put an approximation on it.
Q. And who was involved in these discussions? I mean, we obviously have you. Who else?
A. We obviously have Jasmin.
Q. Okay.
A. Who acted as interpreter.
Q. All right.
A. Who on her side, I could not even tell you. I saw some people when we would video chat occasionally.

A majority of the time it was just her and me, and I would be trying to convey what it was we wanted to do. And it was a very painful process because the Chinese did not want to make this because they said why change it. What we have works. And I said not good enough.

Q. So let's break this down a little bit. So then we've got Jasmin, we have some engineers from Kanger who didn't speak English.

A. From wherever. I don't know.

Q. You can't tell me their names?

A. No. And I do not know they were from Kanger.

Q. Okay. All right. And then who -- anybody else from Fuma?

A. Typically, no. I was the point person. I would -- as I was doing this, I would go back during the daytime and circle up with Dan and Rebecca, but then when it came to the Chinese and I was the point person, so it was pretty much seven days a week working around the clock nonstop.

Q. Well, what exactly did you ask them to do?

A. Who?

Q. What did you ask Jasmin to do? What did you ask her to make for you?

A. Our patented cartomizer and make the changes to the

battery that we need and get us the flavor profiles we wanted and needed.

Q. What about the cartomizer, what did you ask her to do?

A. We asked her to make our design.

Q. And what did you describe to her was your design?

A. That's a very long, lengthy process, because it's all the things that are in the claims of the patent, in both the '604 and '81 are all the things that was conveyed to Jasmin that we wanted to get done and --

Q. What -- go ahead, I'm sorry.

A. No, please.

Q. The nonprovisional hadn't even been filed yet, right?

A. Correct.

Q. So what did you tell her?

A. I explained to her first and foremost the heating element has to be in or around the airflow, and that the vaporization process has to take place in the airflow and that was the first key thing. I mean, it's solving all the problems and explaining to her how to do it.

Q. So you asked Jasmin, "Hey, just make sure the heating element is in or around"? You didn't

specify whether it should be in or around?

MR. THOMAS: Object to the form of the question.

Q. You must have given her some direction.

MR. THOMAS: Object to the form of the question.

Q. Or did you leave it up to them to decide whether to put it in or around?

MR. THOMAS: Same objection. Object to the form of the question.

A. Yeah, and to that, can you -- can you ask the question a different way that I can understand what you're asking here?

Q. Well, you've got Jasmin Guo over in China, right?

A. Correct.

Q. And she's going to make a product to your specification, correct?

A. She's going to make the product we designed.

Q. Okay. And do you know whether they made these handmade or were they made on machines?

A. I believe at the time, and I'm not sure, that the majority of all these were handmade.

Q. All right. And so presumably whoever is hand making these needs some instruction on exactly what to put together for you, correct?

A. Correct.
Q. What information did you provide so that they could do that?
A. Via the Skype and utilizing the whiteboard app that the Skype used back then, I was able to convey exactly the design that I wanted them to build.
Q. And what design did you convey? What exact design did you convey for them?
A. I conveyed the design. That is, again, I conveyed the exact design for the e-cigarette cartridge that has a transverse heating element through the air passageway with a wicking material, along with a -- cleaning up the air passageway, making sure it flowed properly, along with eliminating the problems where it would spit liquid and leaking and everything else. You're asking for a question that has a very long answer.
Q. And you did all this orally?
A. No. I just stated I did this with Skype and a whiteboard. That was an app on Skype. So I'm sorry, I don't understand what you're asking.
Q. Did you make any record of the whiteboard communications? Did you take photos of the whiteboard?
A. No. It was an app that was an add-on that just

once you closed it, I mean, you closed it. You lost all the data. You erased it. It's gone.

Q. Were you concerned at all that they may use your design for others?

A. That's why we filed for a provisional patent.

Q. So you were concerned?

A. That's why we filed for a patent.

Q. Well, did you take any other precautions besides filing for a patent?

A. Yeah, we had a nondisclosure agreement.

Q. And an oral one, right, as far as you understand?

A. As far as I -- very clearly had an oral agreement with Jasmin and anyone who was working with her.

Q. Did you ever ask them to do a written agreement, confidentiality agreement?

A. At that point in time, no.

Q. Why not?

A. We were a small company. I didn't have those kind of resources.

Q. To what, do a nondisclosure agreement?

A. I didn't have one.

Q. And you -- it never occurred to you to make a record of exactly what you were providing them in case they ever did use your design, you could show that, hey, this is what I told them on this date?

It never occurred to you?

MR. THOMAS: Object to the form of the questions.

Q. Did that never occur to you?

MR. THOMAS: Object to the form of the question.

Q. You seem angry with the question. Are you upset? I don't mean to upset you.

A. No, you're not -- I'm trying to understand the question because I previously answered that we filed for patents for protection because we trust and believe in the US legal system. We trust and believe in the US Patent Office and we believed that we did the right thing to protect ourselves and that's why we're sitting here today.

Q. So it never occurred to you to make a record of exactly what you were providing to Jasmin Guo on the date you were providing her with respect to these design specifications?

A. I'm not that technically savvy. I didn't know how.

Q. It didn't occur to you?

A. I don't know. Again, maybe I didn't think about it. It was in the moment, but then I trusted that the nondisclosure agreement would withhold -- would hold. Sorry. Misspoke.

Q. Now, did part of the specifications that were provided to Ms. Guo relate to the size of the screw thread on the cartomizer?

A. Actually, there was -- in a particular instance because of a competitor and we were looking to be cross functional on some of these existing batteries that were out there, so there was a specification given on screw threads and Mr. Hillenbrandt took care of that part of it so we could have cross -- you know, be able to -- be able to capture customers that already had existing e-cigarette batteries of some kind.

Q. Was there any particular manufacturer of batteries that you were trying to get a screw thread on the cartomizer that would match with their battery?

A. Oh, yes, actually.

Q. Who?

A. Smoke 51.

Q. So they have good batteries?

A. No, they had horrible batteries. What they had was -- we had been a distributor for them and we had spent a lot of money, put in a lot of work and developed a lot of consumers in Ohio and we were looking to capitalize on that because it was our marketing dollars and efforts that got those

customers.
Q. I see. So you wanted a cartomizer to be compatible with the batteries that customers you had developed, that customer base had?
A. Correct. Can I ask a favor?
MR. THOMAS: What's up?
Q. You may.
A. I've really got to use the restroom.
Q. No, you can't use the restroom.
MR. THOMAS: You can ask for a break, yes.
THE VIDEOGRAPHER: Stand by. Off the record at 1:04.
- - - -
(Thereupon, a lunch recess was had.)
- - - -
THE VIDEOGRAPHER: We are back on the record at 2:06.
Q. Welcome back.
A. Thank you.
Q. One thing I forgot to mention this morning -- well, let me back up.
Have you discussed your testimony today with anyone so far during breaks or during lunch?
A. As far as?

Q. Did you have any discussion with counsel regarding your testimony that you gave this morning?
A. We had sidebar discussions.
MR. THOMAS: We talked at lunch.
MR. GABRIC: About his testimony?
MR. THOMAS: No, just about things in general.
MR. GABRIC: Okay.
Q. Yeah, that's one thing I forgot to caution you about. You shouldn't speak to counsel about your testimony. Did you discuss your testimony with counsel during lunch?
A. No, no, not testimony itself, just other things.
Q. Okay. All right.
MR. THOMAS: Thanks.
MR. GABRIC: Mark this as Exhibit 8.

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(Thereupon, Defendant's Exhibit 8 was marked for identification.)

- - - -

Q. Showing you what's been marked as Exhibit 8. It bears FUMA Inspection 16. I'll ask you if you recognize that document.
Do you recognize this document?
A. Not specifically.

Q. Do you recognize it generally?
A. After reviewing it, yes.
Q. Okay. What is this document?
A. It appears to be an email.
Q. It's an email to -- who is it to?
A. It's to greg@smoke51ohio.com, becca@smoke51ohio.com, and dan@smoke51ohio.com.
Q. Is that you, your wife, and Mr. Hillenbrandt?
A. That would be correct.
Q. Who is the email from?
A. I can't see. It's not listed on here.
Q. Yeah, what's in this email, that seems to be a communication between you and Ms. Guo, correct?
A. Yes, that appears to be correct.
Q. And how were you guys communicating?
A. This appears to be possibly a Skype conversation.
Q. And did someone make an effort to record that Skype conversation and include it in this email?
A. Yes.
Q. Do you know who did that?
A. If it says my name on it, I assume it's me, but I don't know.
Q. And why -- was there more of this Skype communication other than what's set forth here?
A. I don't know.

Q. Do you know whatever happened to that Skype communication?
A. No, I don't know what happened to it.
Q. How did you mechanically transfer a Skype communication into this email, how did you go about doing that?
A. If I did that, the way it could happen is a copy and paste function that's very clunky, at best, and I had done that on previous times or various -- not various but previous times, and it's a very lengthy and painful process to do this.
Q. Given that it's lengthy and painful, what would dictate circumstances that you would endure that pain and do it?
A. If someone specifically asked me for something.
Q. Did you have Skype communications with Jasmin regarding the design specs with respect to the Fuma product that you had asked for?
A. Yes. Skype I used with Jasmin, like I previously said. I used Skype with Jasmin to communicate what we wanted for our design and needed for our design, so, yes, I used Skype both verbal, typewritten, and the whiteboard app that was an add-on to it.
Q. Did you cut and paste any of those Skype communications for preservation?

A. I don't know.
Q. Are you aware of any as you sit here today?
A. Not aware of any today.
Q. The email address, greg@smoke51 --
MS. MILLER: That one.
MR. GABRIC: I don't know what you're asking me. Oh, smoke51ohio.
MS. MILLER: Sales@smoke51ohio.
Q. Who controlled Smoke -- the sales@smoke51ohio?
A. I don't know who was in control of that. I might have been, but I can't remember.
Q. Do you have any explanation of why this particular communication would have been preserved by cutting and pasting it into an email versus others that apparently weren't?
A. No.

- - - -

(Thereupon, Defendant's Exhibit 9 was marked for identification.)

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Q. All right. Showing you what I've marked as Defendant's Exhibit 9. And for the record it bears FUMA Bates Number 7752.
Do you recognize that document?
A. I recognize it vaguely from reviewing documents for

this case.
Q. Did you prepare this document?
A. As in "prepared," do you mean did I draw this? And to that, I might have drawn some of this and Dan might have drawn some of this.
Q. Any other candidates besides you and Mr. Hillenbrandt?
A. No, this would -- if it was two of us, it would be me and Mr. Hillenbrandt.
Q. When is the last time you saw the original of this document?
A. It's been quite some time ago. That was when we were collecting all the documents for the case.
Q. And when was that?
A. It was after my attorney, Mr. Thomas, told me to put a hold on everything.
Q. And about what time frame was that?
A. I honestly can't answer that. I don't know.
Q. And do you believe there was an original of this exhibit?
A. I believe there is an original of this exhibit.
Q. Do you know where that original is?
A. No. Actually, I don't, because I, again, don't know where it is.
Q. So whose handwriting is it that says "initial

date"?
A. That would be Mr. Hillenbrandt.
Q. Why are you chuckling?
A. Well, because we were doing things and I asked him to date and initial the document as being part of working on it with me. Instead of putting the actual date, he put initial date. Like I said, initial date, initial date that, please.
Q. Okay. And when did he place that date on the document?
A. I don't remember.
Q. When did you give him that instruction?
A. When we were sitting there going back and forth with a notebook.
Q. Was the date placed on this document contemporaneous with its preparation or did somebody go back and date it?
A. No, it would have been at the time it happened.
Q. And why did you instruct Mr. Hillenbrandt to date this document?
A. This particular document, I always -- I always was thinking about these things, but thinking about things and doing things are two different things.
Q. Right. So why did you ask him to date this document?

A. Initial date it?
Q. Yeah.
A. Particularly because we were drawing and talking about things and my notebooks are my notebooks and I can't tell you why I told him to do it. It was just something I thought about.
Q. Do you recall placing a date on any other document that you prepared in the 2009 time frame regarding your sketches?
A. Can you reask that?
Q. Yeah, let me ask a different question.
A. In a different way, yeah.
Q. I've looked at some sketches from 2009, none of them are dated except this one. I'm trying to get an understanding of why there's a date on this one.
A. Oh, well, I can't give you a good answer for that because even though I thought about initialing and dating things, I obviously was not good at practicing it, and obviously I said something to Mr. Hillenbrandt to initial and date it and the only way it became a chuckle and even an memory for me, because in pulling together all the information for this case, the fact he wrote initial date on it was actually comical.
Q. Your expectation was he would just put a date

without "initial date"?
A. Right.
MR. THOMAS: Object to the form of the question.
Q. So what were you referring to when you said "initial" as in initial date?
A. Well, what I was referring to, I assume, and I don't know, I think about things but following through on those activities you get very busy.
Q. So does this document record your aha moment?
A. No.
Q. Your aha moment was prior to the date of this document?
A. My -- my aha moment would have definitely been far prior to this moment.
Q. So what is illustrated in -- I'm sorry, let me back up.
So the July 31st, 2009 initial date, you believe that's Mr. Hillenbrandt writing?
A. Yes.
Q. There's a sketch in the middle top of the document. Whose sketch is that?
A. Mr. Hillenbrandt and I, when we -- if we are talking about July 31st, 2009, and that's the time frame, Mr. Hillenbrandt and I were collaborating

and we would draw in notebooks and we would pass them back and forth, so what part of this is his drawing and what part of it is mine, I don't know.

Q. What is that drawing a sketch of?

A. Which sketch?

Q. The one we're talking about at the top middle of the page.

A. Can we please identify that?

Q. Yeah. I'll ask you to -- well --

MS. MILLER: Just do you want to circle it or what do you want to do with it?

MR. GABRIC: Yeah, I'll --

MS. MILLER: Yeah, a marker.

MR. GABRIC: I'll put a green marker for the record, a pointer to the sketch I'm talking about (drawing).

A. Okay. Thank you.

Q. What's that a sketch of?

A. It appears to be a cartomizer, a Fuma cartomizer.

Q. Did you ever sell this cartomizer?

MR. THOMAS: Object to the form of the question.

A. I'm sorry?

Q. Let me strike that.

Explain to me what's depicted in here, how did

that cartomizer work?
A. It -- this appears to be very -- in nature it appears to be our Fuma e-cigarette cartridge with the heating element going through the center of the airflow.
Q. And where is the -- is there a liquid solution in this cartomizer?
A. Yes, it appears that the -- on both sides of the central axial airflow way there is holding medium for the liquid.
Q. In the green marker can you define the area where the liquid is?
A. It appears to be here and here (drawing). That's -- but liquid holding medium with liquid or just liquid. Either way.
Q. And was this part of the invention that you and Mr. Hillenbrandt came up with?
A. Yes.
Q. Now, where does the liquid get vaporized in the sketch?
A. I think that what you're asking is that where does the vaporization occur at, and that is in the heating element that's in the airflow and to that there's -- this sketch is not complete.
Q. How does the liquid get to the heating element?

A. Again, I just stated the sketch is not complete.
Q. Okay. What's missing?
A. The wicking material to bring the liquid into the heating element. That's one thing that's missing here.
Q. Now, do you know what the purpose of this sketch was?
A. I don't want to guess. We had so many conversations that I couldn't tell you because I'm looking at the sketch and even beside it there is a top down view of the coil, heating coil, and so I don't want to guess what the purpose of the sketch or the purpose of this particular conversation was, but this was not out of character for Mr. Hillenbrandt and I to do this.
Q. Now, there's another sketch. I'll -- this is -- kind of like this procedure in green marker on the left-hand side (drawing), what's that a sketch of? Well, strike that.
Whose sketch is that, do you know?
A. No idea whose it is, and no idea what it's for.
Q. Was the sketch -- were these sketches provided to anybody?
A. I'm sorry?
Q. Did you provide these sketches to Mr. Medley?

A. I don't know if we did or did not provide these to Mr. Medley. We did provide some sketches to him. We showed him all examples of everything in the market, physical products, we showed him our product, we provided him with all the information. Really, if I may.

Q. You may.

A. I really didn't have to show Mr. Medley any of these sketches, although I know we showed him some and drew some with him sitting there. But the fact that I brought a two-piece in that was one of the preexisting products on the market. It was just like the Loong Totem or the Smoke 51 or the Kanger. I brought one of those in, I brought a three-piece in, and I brought ours in and we showed him the various differences in all three products.

We turned it all over to Mr. Medley to make the right decisions to make sure we got all the disclosures to the patent office that needed to be done, and we counted on our attorney for that.

MR. GABRIC: Okay. Next one.

- - - -

(Thereupon, Defendant's Exhibit 10 was marked for identification.)

- - - -

Q. Showing you what I've marked as Defendant's Exhibit 10. We're in double digits. We're making progress. FUMA 5131 through 5132, and ask you if you recognize that document.

Do you recognize this document?

A. Actually, yes, because this is something I saw previously.

Q. What do you mean by that?

A. I've seen it in our files.

Q. Okay. And what is this document?

A. This appears to be our first OEM order with Jasmin Guo post the finished prototypes.

Q. What do you mean by OEM order?

A. OEM is original equipment manufacturer is what they call an OEM order, so this would be an order that's ordering the Fuma-patented cartridges, which are labeled filters here, and it's also going to include batteries, which are going to be the Kanger 808 batteries altered to our specifications.

It's -- also looks like it's including the decane liquids that have been altered, you know, to our specifications also, so this looks like an original OEM order. There's other various items on here as support items to go with that.

Q. Okay. And did you get Kanger cartridges altered to

meet your specifications?
A. No. We never had Kanger cartridges altered to meet our specifications. We had Fuma-designed cartridges. Now -- I'm sorry.
Q. Now what?
A. Oh, no, I'm saying that's what we did at that time.
Q. Now, there's a reference to attachments JPGs. Do you see that? Do you know what that's a reference to?
A. I can guess by the names, but I'm not sure.
Q. Do you know where the attachments are?
A. No, I don't.
Q. Were you subsequently invoiced for this order?
A. I would assume so, but I don't know.

- - - -

(Thereupon, Defendant's Exhibit 11 was marked for identification.)

- - - -

Q. Exhibit 11 for the record. It's a native document, FUMA 2942. We printed out the spreadsheet.
A. Thank you.
Q. I'll ask you if you recognize that document.
A. Possibly.
Q. All right. Why do you say "possibly"?
A. It appears to be a pro forma invoice from

Trans-Power, which I've seen quite a few of these. I don't know if I -- at some point I most likely saw this.

Q. Does this invoice correspond to the order that's in Exhibit 10?

And just for the record, I don't know if this will help you or not, Exhibit 10 is dated September 16th, 2009 and this invoice, Exhibit 11, is dated September 17th, 2009.

A. Thank you.

There seems to be inconsistencies in the two documents.

Q. Okay. Where do you see inconsistencies?

A. There's an inconsistency where there's 625 cartridges of a full. That's all. I just -- you asked me if they're the same. I say I see inconsistencies.

Q. I'm sorry, I didn't hear you on inconsistency.

A. I'm sorry. You said are these two documents the same.

Q. I'm asking you if Exhibit 11 is an invoice for the order depicted in Exhibit 10?

A. Could be, but there's inconsistencies between the two.

Q. Where do you see inconsistencies?

A. One inconsistency, right here, comes down to 1250 cartridges, 875 of which are tobacco, which I can cross-reference over here for the 875 pieces, but if you keep going down the list you'll come down to -- you'll find 625 cartridges, which is currently nowhere on this list. So there's inconsistencies.

Q. So is there inconsistencies in the volume?

A. That's the first one I found. I still need to review it.

Q. Now, if you go to the last page of Exhibit 11, you see a reference to KR808D-1 cartridge?

A. Okay. Are we on -- we're on here?

Q. Yeah, we're on the last page of Exhibit 11. Do you see that?

A. I'm sorry, where am I looking?

Q. The last page of Exhibit 11.

A. Okay.

Q. Where it says KR808D-1 cartridges. Do you see that?

A. D-1 cartridges?

Q. Under "items."

A. Okay.

Q. Why were you being invoiced for KR808D-1 cartridges in this time frame?

A. Actually, if you look down right below that, it says 118 and 100 millimeter. The cartridge nomenclature there is a translation problem. That's not cartridge. It's supposed to be battery. There is no 118 millimeter and there is no 100 millimeter cartridge. Those are actually batteries.

If you further look to the right, the 110 millimeter has a 12 milligram beside it. That makes no sense and that's nonsensical for any standpoint, because you just made a cartridge out of a battery and a battery out of a cartridge.

This particular document here was used by Jasmin Guo for customs purposes only, and that's why this particular document exists. And this misnaming by her is what she used from her side.

And it's also -- you'll note it's in renminbi, which is RMB. This is all for Chinese customs.

So the actual naming and the fact that there's a flaw there or an inconsistency actually has no bearing on us from the standpoint that that is -- so what is that, is that a cartridge? I would love to see an 118 millimeter cartridge. I'd love to see a 100 millimeter cartridge. They would be that long (indicating).

Q. So is it your testimony you did not get invoiced -- you did not receive KR808D-1 cartridges in or around this time frame?
A. Absolutely not. We received Fuma cartridges at this time and that right there, if I saw 118 millimeter or 100 millimeter cartridge, I would remember that.
Q. Well, that's the size of the battery, right?
A. That's correct.
Q. And those cartridges fit either side of -- either battery, right?
A. Actually, no. The Kanger cartridges would not fit the Fuma battery and the Fuma cartridges did not fit the Kanger battery. They had to be altered to fit ours.
Q. That's not what I asked you. The Kanger KR808D-1 would fit on the end of the 118 or the 110 millimeter battery of Kanger, correct?
MR. THOMAS: Object to the form of the question.
Q. Do you know that one way or the other?
A. I think I -- I'm -- I hear the question and I think what you're trying to say is that a Kanger would fit a Kanger battery that was designed to fit it. And that would be correct. In this case, though,

none of these cartridges are Kanger's. They're all Fuma cartridges.

Q. Well, they don't call them Fuma cartridges. These are Kanger cartridges.

A. No, this is called -- this is 118 millimeter cartridge and 100 millimeter cartridge, which I received none of.

Q. So let's look at the price, the unit price. Maybe this will help clarify things for you. The first entry, the KR808D-1 with 118 and 110 millimeter batteries, it's $95 per piece.

MR. THOMAS: Object to the form.

Q. Or 95 RMB per piece.

MR. THOMAS: Object to the form of the question, that mischaracterizes this exhibit and misstates what's written there. I hope you didn't do that intentionally.

MR. GABRIC: No, I'm characterizing the document correctly.

MR. THOMAS: No, you're not. No, you're not. You're mischaracterizing this document intentionally, so -- and that's not right.

MR. GABRIC: I'm not going to get into an argument with you, and if anybody is not

characterizing a document right, I'll let the factfinder control the evidence.

MR. THOMAS: Well, I'm not going to let you sit here and misquote a document into this record without making an objection, because that's just what you did.

Q. So the KR808D-1 cartridge, you would agree, fits with the KR battery, the 118 millimeter battery and 110 millimeter battery, correct?

A. Are you referring to this document? Because -- or are you just asking that question without this document? I'm sorry, I'm confused.

Q. Okay. Let me ask it this way. Do you have an explanation of why the unit pricing is different for the first entry versus the second entry?

A. I do not know.

Q. Okay. And do you know whether the first entry relates to cartridges that also include batteries, whereas the second entry is just cartridges alone, do you know that?

MR. THOMAS: Object to the form of the question.

A. No, actually the second entry does not say it's just cartridges, because it cites 110 millimeters also, so that would be an inaccurate statement if I

said anything to that.

Q. And how many -- how many cartridges come in a piece?

MR. THOMAS: Object to the form of the question.

Q. Do you see the quantity, it says, "50 pieces per 500 pieces." Do you know how many cartridges come per piece? Do they come in a pack?

A. The counts from China were always varying, depending on how they counted it. I don't know how it was counted here. Was it counted in a pack or was it counted as individuals? I don't know. This is a customs document that had nothing to do with me.

Q. Did you receive this document in September 2009?

A. I received documents like this, not -- I don't know I received this exact one, but I've received documents like this before. This is Ms. Guo. I have nothing to do with this.

Q. And do you know what the Chinese lettering refers to on this page of the exhibit?

A. Absolutely not.

Q. And so where can I find the invoice, if this isn't it, for the 2,500 filters that are the exhibit -- the subject matter of Exhibit 10?

A. This invoice, which it seems there's multiple documents printed here because it seems that we have an invoice as the first page here, which is going to be page 1 and page 2, and if you note at the bottom it says page 1 of 2 and page 1 of 2.

The follow-up document here says page 1 of 1. This is a completely separate document that's been clustered together with this and these two do not belong together. I do believe this is our original OEM invoice from China for our Fuma cartridges.

Q. So where are the cartridges -- let's back up here a second. I'm just printing out what we were given by you folks.

A. I understand. I understand.

Q. Okay.

MR. THOMAS: Yeah, but you're attaching them together as if they're one document.

MS. MILLER: They were all one Excel document.

MR. THOMAS: That doesn't necessarily -- it says one of two, two of two and one of one.

MR. GABRIC: We're just putting in front of you what we got.

Q. So let me ask you this question. Where on this --

MR. THOMAS: Let's make this clear. These were not stapled together the way they were presented to you and the way you've presented it to him. That's not true.

MR. GABRIC: It's a spreadsheet.

MR. THOMAS: It doesn't necessarily mean the spreadsheets came at the same time. They were separate spreadsheets, you put them together, and you're treating them as if they're one document.

MR. GABRIC: Okay. We don't have to argue about it.

Q. So where on this invoice are the filters, billing for the filters?

A. They're cartomizers, the Fuma-designed cartomizers.

Q. Yeah, where is it on here?

A. It's very simply. It says "cartridge tobacco." If we may look, please, at the page 1 of 2 on the very front, there's even a UPC label attached with it.

It says "Wild West tobacco lights." To the left of that you will see "cartridge tobacco but with Marlboro taste, yellow paper, "Marlboro Light 16 milligram cartridge paper with L, cartridge box with UPC."

Here is the label with the UPC, it says, "875 pieces, USD 62 cents, amount USD $542.50."

Q. Those are for the labels, though.

A. No, that is for the cartridges.

Q. How do I know -- how do I know that's for the cartridges?

A. Because that's a discussion I had with Ms. Guo in how she wrote the pro forma invoices. You would have to ask her, not me.

Q. So the cartridges and the labels were charged together?

A. Actually, the way it was sold is when I bought -- I paid per cartridge, but what was delivered was a finished five pack of cartridges with a label on them filled and ready to sell.

Q. So they put the labels on over in China?

A. Sometimes.

Q. And sometimes they would send you the labels?

A. Sometimes early on we would have to print the labels and put them on ourselves. Ultimately, we had China print them on there.

Q. Well, with respect to this invoice, were the labels shipped to you or were they put on in China?

A. I don't remember. I believe we printed the labels and put these on here. She just used our label as

a form to track it on the pro forma invoice to know what we were supposed to receive and what she was supposed to make.

Q. I just want to make sure I understand this correctly. So were you shipped labels that you applied to the device, or did they apply them in China?

A. No, on this first run, we made our own labels and put them on the packaging.

Q. You made your own labels?

A. Correct. This is an image on the invoice and she's supposed to have cartridge box with UPC. Now, if she printed and had those on there, I don't remember -- again, like I said previously, we may have printed those here and put them on ourselves. She may have printed them and put them on. I don't honestly remember and that's the point.

The point is that -- the big thing here is that the 62 cents price is the cost per prefilled cartridge placed in a blister pack of five, placed in a box and at 62 cents a cartridge this is the cost for that Fuma cartomizer.

Q. And so the reference to the KR808D-1 cartridge, you think is a typographical error made on Kanger's or Jasmin's end?

A. And again, as we previously said, we are switching to a new document, which is document one of one, not the pro forma invoice. This is a customs invoice. And what Ms. Guo put on here, I have no knowledge of. I never received a 110 millimeter or 118 millimeter cartridge ever.

Q. Did you receive 118 and 110 millimeter batteries?

A. Yes, I received 118 and 110 millimeter batteries. If you please switch back to the original pro forma invoice on page 1, you will see 118 millimeter batteries and 100 millimeter battery.

However, in keeping with the spirit of what you're saying, let's please go back to page 1 of 1. And that is -- it says here that I have 110 millimeter cartridge and 118 millimeter cartridge, which I never received those, so this document I don't understand.

Q. And what does the 12 and 6 milligram in the description refer to?

A. I have no idea.

Q. Well, they made cartridges in 12 and 6 milligram sizes, correct?

A. Not for me. Please note -- again, can we please go back to the original invoice here and you will note that the milligram strength is attached to every

one of our cartridges. Did they make 12 and 6 milligram? Sure, I guess they did. I didn't really care. It's not what we made.

Q. Did you receive KR808D-1 cartridges in or around September 2009?

A. Not that I'm aware of. Everything I did with Ms. Guo, once our designs were complete, when the prototypes are done, everything was supposed to be the Fuma-patented cartomizer that we told her to build.

Q. Yet I can't find the Fuma name in the description of the products being shipped to you, though, correct?

A. Actually, it's right at the top. It says USA customer Fuma right there.

Q. Yeah, I see that. But I'm looking at the description.

A. Well, that's because the header precedes the description below --

Q. Yeah.

A. -- and quantifies that everything below should be Fuma.

Q. Okay. I see it in the labels.

A. And if you may note, to the left it says -- if we look at the first line here, the 175 pieces, to the

left it says "cartridge, tobacco." That says "cartridge" first.

Now, using your definition earlier where you read cartridge over here on this other document, if we go back here to the original document and that says cartridge, then that's a cartridge and there's no Chinese writing here.

This is crystal clear, that is a cartridge. No mistakes. And it is a Fuma cartridge, not anything else.

Q. And you think it's a mistake in the sense that you never received any KR808D-1 cartridges in September 2009 time frame?

A. I don't know if I received any K808 cartridges in the September time frame. I can tell you this production time frame for OEM is Fuma cartridges done to our patent and that's what they were all supposed to have been, and we did random samples of them when they came in and it was our design.

Q. And did you ever open a KR808D-1 to compare that design to the Fuma design?

A. Yes. I pulled the cap off of an 808 when we were doing the flavoring samples, and I took one of those to Medley, too. He's seen that. He's seen the 808, the Smoke 51, the Loong Totem. They were

all the same.
Q. So does the buck stop with Medley, so to speak, as far as getting information to the patent office?
A. Absolutely. He was my attorney and I turned everything over to him. He knew it all.
Q. So were -- who was the primary liaison at Fuma in connection with the -- working with the patent lawyers during the prosecution of the patents in suit?
A. No, the primary liaison for what function, payments?
Q. Communications with the patent office on the substance.
MR. THOMAS: Object to the form of the question.
A. No.
MR. THOMAS: Go ahead.
A. Yeah, the primary liaison was Mr. Medley and our patent attorneys that subsequently came after him.
Q. Did you have any role in reviewing office actions and responses to office actions and approving responses to office actions?
A. If there was office actions by the patent office to our counsel, our counsel would notify us and we would have a meeting.

Q. Okay. And would you review the responses?
A. Counsel would talk to us about it and show us and, yes, we would have a meeting.
Q. And who would have final authority on authorizing responses filed in the patent office to office actions?
A. The ultimate responsibility of the patent comes back to us. The -- however, the communication with the patent office falls on our attorney.
Q. Right. I just want to make sure I understand the procedure. You were involved in reviewing and authorizing the responses?
MR. THOMAS: Object to the form of the question.
A. My -- my legal counsel communicated with the patent office. He would discuss anything that was going on with any office actions, talk to us, ask us what we wanted to do, communicate, but then he or she or they would take the actions and do -- and perform those communications.
Q. Were they able to respond to office actions without having your authorization to file the response?
A. Our legal counsel had power of attorney.
Q. Right.
A. And, again, the decisions on the patent itself fell

back on us, and obviously as the inventors, we had the responsibility to our legal counsel to make sure we made the decisions on the patent and we did.

Q. Yeah, my question is simple. Did counsel have authority to file responses to office actions without you authorizing the filing?

A. We had to be notified and we had to know about it and we proceeded in a very proper manner.

Q. And did there ever come a time when you reviewed a response to an office action that you felt was inaccurate in some way and you requested changes be made?

A. I'm sorry, can you ask that -- I'm -- I'm not an attorney and I don't understand what you're asking. Please.

Q. All right. Let me try to make it a little simpler.

A. Please. Thank you.

Q. Did you ever provide revisions or changes to draft office actions you were provided?

A. We reviewed and we made -- we made suggestions. We would suggest, hey, we don't want to see this or we don't want to do that, and of course the attorney would then make those changes for us, review it again and then we would submit it.

Q. Okay. And who would be involved at Fuma on that? Was it just you, was it you and Mr. Hillenbrandt? Who was it?

A. It depends. It could be me. It could be me and Mr. Hillenbrandt. It could be all three of us, me, Mr. Hillenbrandt, Ms. Conley, depends on what's going on. Whoever the inventors were.

Q. And did you make it your business to understand what was going on in the patent office in connection with your patents?

A. I made it my business to talk to my lawyer and stay abreast through my attorney.

- - - -

(Thereupon, Defendant's Exhibit 12 was marked for identification.)

- - - -

Q. Showing you what we've marked as Defendant's Exhibit 12. I'd ask if you recognize this document?

A. May I ask a favor? Before we get into the next line of questioning, can we have a quick two-minute restroom break?

Q. Sure.

THE VIDEOGRAPHER: Okay. We are off the record at 2:56.

- - - -

(Thereupon, a recess was had.)

- - - -

THE VIDEOGRAPHER: We are back on the record at 3:09.

Q. Okay. We marked, before the break, Exhibit 12. Can you identify what Exhibit 12 is? And for the record, it's FUMA 83213 through 220.

A. It appears to be pages out of a notebook.

Q. Okay. And is it pages out of -- we have a red notebook here. Can you confirm it's pages out of this notebook?

A. It appears to be so.

Q. And that red notebook, that's your notebook?

A. It could be one of the ones I used. I used a lot of different ones.

Q. Do you recognize that notebook?

A. Yeah, that's -- there's one of many.

Q. All right. And that's your handwriting on what we've marked as the Exhibit 12?

A. It appears to be so.

Q. Okay. Now, were all these pages prepared at the same time or was there --

A. No.

Q. They weren't, okay. Do you know what sequence

these pages were prepared?
A. No.
Q. The ordering within the notebook, does that provide you any answer on whether, you know, the first page of this exhibit was prepared before later pages of the exhibit?
A. No, absolutely not. I would pick a notebook up and just pull open a page and start scribbling and I was random on notebooks I grabbed.
Q. All right. So can you identify what the pages that are labeled FUMA 832014 and 83 -- I'm sorry, 83214 and 83215 are?
A. They appear to be notes.
Q. Are these your notes?
A. It seems so.
Q. And notes of what?
A. I'm sorry, can you be more specific?
Q. They would be notes from a meeting?
A. It doesn't appear to be.
Q. Okay. And I'll just read. There's a bullet point or the first entry, generate claims, dash, Sunday noon. Then there's a 10:30 a.m. at our place, et cetera, and then there's a reference to engage Medley, patent validation. Any of this ringing a bell of what this relates to?

A. No, none of this really rings a bell except the drawing.
Q. What's -- which -- there's two drawings there, right?
A. One is a very bad sketch and the other is a better sketch of the same thing.
Q. Really, okay. What is it a drawing of?
A. It's a drawing of a product that we have never made. It's a -- it's actually a cartomizer that actually instead of filling with liquid it uses gel caps in the top to keep the liquid out of the batting material and out of the leakable areas that you would actually click the top down. And if you note the two little horns at the very top, if you see those --
Q. Uh-huh.
A. -- above the gel caps, those are to pierce the gel caps, then the liquid would drain down into the batting material, that the user would do that at that time. Whether they push it down or twist it down, it doesn't matter; it's just a concept to solve an issue.
Q. Above the drawing there's an item 3, patent validation, subheading one, engage Medley. Do you see that?

A. Yes.
Q. Do you know what that's referring to?
A. Yeah. I believe, and I don't know for sure because this is a long time ago, but if I'm doing some kind of drawing and talking about all this, then it's -- all this is probably most likely around the drawing.

My notes typically go on a page and in this particular instance, I believe that this was something we were trying to achieve and this all would have been post to the original filings.

Q. Would this have been after July 2010?
A. Most likely, yes.
Q. What about the next page, do you know what that's referring to?
A. Yeah, that would have been the same time frame as the first page. I just looked in the notebook, and that would have been -- this is all relative to this product we never created.
Q. Okay. So this relates to --
A. Nothing here.
Q. -- a different invention --
A. Completely.
Q. -- than brings us here today?
A. Yes.

Q. That will move things along.
MS. MILLER: What did you say, I'm sorry?
MR. GABRIC: That will move things along.
MS. MILLER: Oh, I thought you were talking to me.
MR. THOMAS: Laura, don't you always move things along for him?
MS. MILLER: Oh, man.
MR. GABRIC: Sometimes I get --
MS. MILLER: Some days are better than others.
Is this in the second stack or the first stack that you gave me.

- - - -

(Thereupon, Defendant's Exhibit 13 was marked for identification.)

- - - -

A. Thank you.
Q. Okay. Marked as exhibit -- Defendant's Exhibit 13, FUMA 8300 --
MS. MILLER: 83000.
Q. I'm sorry 83000 through 83004. Do you recognize that document?

A. Can we turn the temperature down here a little bit? It's kind of warm.

MS. MILLER: We can open the window.

THE WITNESS: Is that all we got?

MR. THOMAS: Yeah. Maybe we can open the window a little bit. Thank you.

THE WITNESS: It's just a bit stuffy. I'm sorry. Thank you.

MR. THOMAS: Thanks.

Q. Do you recognize the handwritten notes?

A. It appears to be my handwriting on some of them.

Q. Can you identify where your handwriting is?

A. I'll stop what I'm doing and give you that. I wasn't quite done.

The notes at the top of page 1 appear to be mine. The notes on the top of page 1 appear to be mine.

Q. Why don't you just read them, what's yours.

A. Okay.

Q. Thanks.

A. No problem. Number one, retainer, hyphen, Mike talk to partner. Number two, drop paperwork. Number three, adding embodiments. Number one, claims. Number two, drawings. Green light. Asterisk, bullet points.

PCT app, arrow to the right, file utility patent. Two to three -- 2K to 3K. $175 per hour. EU arrow to the right, dollar sign, blank drawings. 3K to 5K per case.

In the bottom right it says drawings, hyphen, all type of -- I can't even read my own writing.

Q. Connectors?

A. Connectors, I guess, drawings, all type of connectors. To the bottom left, I don't know if that's my handwriting or not, so . . .

The top of the second page, number one, read over, hyphen, Mike.

Q. Can I just interrupt you for a second. There's a drawing on the back side of the first page.

A. Oh, oh, I'm sorry. Thank you. There's a drawing on the back. It says 2004 Ruyan. And then there's a drawing showing an adapter for a different style of cartridges.

Q. Okay. Let me stop you there. Do you know what the "2004 Ruyan" is a reference to?

A. No, and that does not look like my handwriting. That R is not mine.

Q. What about the drawing here, is this --

A. That looks like my chicken scratch.

Q. All right. And so what is being -- you mentioned

an adapter.
A. Yeah, this drawing is just depicting this adapter and how it can adapt different style cartridges to a battery.
Q. Okay. And can you -- so we have it clear, can you circle the adapter with the green highlighter?
A. Yes. Adapter is right here and that's all this drawing is talking about (drawing).
And if you please flip back to the first page and it says power source to cartridge adapter for electronic cigarettes, the drawing on the back is showing that. That's what it's for.
Q. Okay. And the I guess adapter that you circled, is that something you invented?
A. That's something -- something that Mr. Hillenbrandt and I invented.
Q. Okay. And did Fuma ever sell the adapter?
A. Yes, we did sell some.
Q. How did it do commercially?
A. It did not do well.
Q. And what's being depicted? There's a metal and there's a device. I mean, there's something labeled metal. What is that?
A. They're just -- it's -- what's depicted is different styles of cartomizers, cartridges. It's

depicting that you could have a three-piece or a two-piece, that this adapter could adapt anything to anything.

Q. And this metal -- well, let me strike that.

Did you share this drawing with anybody?

A. Perhaps Mr. Medley.

Q. Do you know whether these are notes that were made to -- for purposes of discussing your invention with Mr. Medley?

A. It very well may have been, because the document this is all writing on is the original provisional applications, and the notes on top of the original provisionals would indicate that we were getting information or I was getting information of costing and things of that nature.

If you look, $175 per hour, somebody is telling me something, the cost of something per hour. And then if I look back and I look at 2,000 to 3,000 K, right, PCT app, so what is PCT? I'm not sure. But it says out to the right of it, file utility patent. So I can make the leap of faith in assumptions; however, I don't know.

Q. Can you recall whether you had a meeting with Mr. Medley where these items were discussed?

A. Costs of -- how much it would cost to file for a

patent and hourly fees would have definitely been a part of my discussions with -- in one of many meetings with Mr. Medley.

Q. Do you know whether this -- these notes were made in the meeting prior to your filing the nonprovisional in July 2010?

A. I don't know. I would assume so, but I have no idea.

Q. And this -- the pieces labeled metal, there's two pieces labeled metal, actually. The piece on the far left-hand side, is that -- that's a cartomizer?

A. If you're looking at the drawing and your orientation is that the adapter which we circled in green is on the bottom and everything else is on the top, the discussion was being able to adapt anybody's cartridge to anybody's battery to convey the concept of an adapter in the broadest sense. So there's nobody's specific product outlined there.

Q. And then the other device depicted is a three-piece device you're trying --

A. One is a two-piece and one is a three-piece and it's irrelevant to what it is. It's just to convey the concept you could do it with a two-piece or a three-piece. It's just the point that you could

adapt anybody's stuff to anyone else's stuff.

THE WITNESS: Can I continue reading?

MR. GABRIC: I'm done with the exhibit.

THE WITNESS: Oh, okay.

MR. THOMAS: Thank you.

MR. GABRIC: We'll mark this Exhibit 14.

- - - -

(Thereupon, Defendant's Exhibit 14 was marked for identification.)

- - - -

Q. For the record, I've marked as exhibit -- Defendant's Exhibit 14 a document bearing FUMA 82529. Do you recognize that document?

A. No.

Q. Never seen this before?

A. I didn't say I've never seen it before. I said I don't recognize it.

Q. Okay. Have you seen it before?

A. Possibly.

Q. When was the last time you saw it?

A. I don't know. Can I have a minute to read it, please?

Q. Yeah, sure.

A. Thanks.
Q. Ready? Have you reviewed it?
A. I reviewed it, yes.
Q. Okay. Do you know what this document is?
A. No, I don't.
Q. Do you know whether these are notes of the meeting you had with Mr. Medley?
A. No, I don't.
Q. Okay. Did you discuss the topics identified in this document with Mr. Medley?
A. I very possibly could have had this discussion -- some of these discussions with Mr. Medley, specifically citing -- one thing that jumps out at me would be, "The internal workings provide for electronically -- electrical conductivity, provides for air to pass into and over or through the heating element or heating elements, and allows for vapor to come out the opposite end."

That part jumps out at me, that sounds like me, but the rest of the document, I don't remember it.

Q. There's a statement here, "The patent is going to provide that we have the threads and electrically conductive connection."

Do you see that? It's about four bullet points

down. I can point you to it.
A. Please.
Q. Right here, the patent. Do you see that? Did you discuss that with Mr. Medley?
A. That sounds appropriate, because the patent is going to provide that we have threads and an electrically conductive connection, because it has to have both.
Q. And that's something that the Smoke 51 two-piece had, correct?
A. Everyone had a methodology for doing it. You can't -- you have a separate power source and a power heating element. You have to connect and power; however, having a separate power connection and a separate connection methodology was something we were thinking about.
Q. Is there a reference to a methodology in this statement?
A. That's what it just said. It says the patent is going to provide we have -- have the threads and an electrically conductive connection. Those are two separate components. Everyone else was doing it only through the threads.
Q. Pardon me?
A. At the time, everyone else was only doing it

through the threads. So we were thinking about having a separate connector for electric independent of the connection technology. That went back to the adapter as well and we were thinking about a lot of things. It was a very busy time.

Q. There's a reference here, I'll point it to you, "In other words, the heating element is a separate piece, you push on the battery, then you push the cartridges on to that."

Do you see that?

A. Yes.

Q. Is that something you discussed with Mr. Medley?

A. Perhaps, but that's in reference to the three-piece unit. And this is further down the document if you look, and, again, I don't recognize this document, so it could have been.

Q. All right. If you don't recognize the document then we'll move on.

- - - -

(Thereupon, Defendant's Exhibit 15 was marked for identification.)

- - - -

Q. Showing you what we've marked as Defendant's Exhibit 15. For the record, it bears FUMA Numbers

81603 through 604.

Are you done?

A. Yes.

Q. Okay. This is an email stream between you and Mr. Medley, fair?

A. Fair.

Q. All right. So I want to focus on the email, the portion down at the bottom of the page of 1603 where Mr. Medley -- this is a July 20th, 2010 email. It says, "Greg, please find attached the first draft of the subject patent application and drawings related thereto."

Do you see that?

A. Yes.

Q. All right. He goes on to say, the next paragraph, "Additionally, please provide me with inventorship information. The claims of this application are directed towards the plastic polymer housing of the cartridge."

Do you see that?

A. Yes.

Q. Do you have an understanding of why the claim is directed towards a plastic polymer housing on the cartridge?

A. That was -- if you actually refer back to the

provisional application, that's how it was outlined there.

Q. So did you ever in words or substance explain to Mr. Medley that your invention involved having a cartridge housing made from plastic?

A. That's one of the variations of it, but not the only variation. And if you go back and review Document Number 13, on the second page you will see that the title to the provisional was called that, Polymer and Electrically Conductive Cartridge Filter With Integrated Atomizer For Electronic Cigarette. That was just a title, nothing more.

Q. What was just a title and nothing more?

A. The claims of the application are directed towards the plastic polymer housing of the cartridge. And that goes back to this is the title of that original provisional and that's how he was speaking to me, polymer electrically conductive cartridge.

Q. Okay.

A. So the actual claims and embodiment or the claims in the write-up and artwork and everything around the application was the full application. That's just the title, again.

Q. Did you ever tell Mr. Medley at around this time that you weren't the first one to come up with an

integrated atomizer in a cartridge?

A. Absolutely he knew that. Unequivocally he knew that. We took samples of what existed in the market, everything. We took him one sample but they were all the same, no difference. And he knew everything.

And this email chain is that, it's a chain from him to me. I do not see a response email from me in this chain, so it's him communicating directly to me.

Q. And with respect to that paragraph, you know, "Additionally, please provide me with the inventorship information." He goes on to say, "The claims of this application are directed towards" -- I'm sorry, we just read that.

The next sentence. "The inventorship is based upon the claims. Someone is properly named as inventor if they contributed to the conception and the invention is embodied in one or more of the claims."

Do you see that?

A. Yes, I do.

Q. Did you understand that?

A. At that point in time, yes, I understood to the best of my ability.

Q. Did anybody ever give you any advice that's different than what's set forth in Exhibit 15 regarding inventorship?
A. In regards to inventorship it's always been a very gray area for me. I've struggled with that.
Q. So has anybody ever given you different advice than what's set forth in Exhibit 15 on the legal requirements of inventorship?
A. That's a summation -- that's a -- that's around the same thing that what I've been told, but again, I've never had truly clear direction --
Q. Did your --
A. -- of what constitutes an inventor.
Q. But nobody ever told you anything differently as far as it's the claimed subject matter that's the litmus test for that purpose?
A. That's my understanding.
Q. It's always been your understanding?
A. Again, that is such a gray area on what is an inventor. I have had struggles understanding that.
Q. Now, he goes on -- he mentions a duty of disclosure in two places. He does it on the second page of this document. "You're under an affirmative duty to disclose to the USPTO prior art that you know of. It is pertinent to patentability."

Do you see that?
A. I'm sorry, where are you looking?
Q. I'm on the second page --
A. Where at?
Q. -- that page of the document. I'm sorry, at the very top. "Also please recollect."
A. Okay.
Q. Okay. He's referring to a duty of disclosure as an inventor that you owe to the patent office, correct?
A. That's what this document says.
Q. Okay. And you understood you owed the patent office that duty?
A. I understand I owe it to my attorney to tell him everything I know.
Q. And you understand it's your obligation to make sure that your attorney knows everything so he can convey it to the patent office?
A. Yes. Everything that I was aware of.
Q. And if you're aware of that he's incorrect about something or has incomplete information, you have a duty to bring that to the attention of your attorney so he can bring that to the patent office's attention, correct?
A. If I become aware of anything, I'm supposed to

bring it to his attention and I did.

Q. Is there anything you brought to his attention that he was unaware of, that you recall?

MR. THOMAS: Object to the form of the question.

Q. Was there any time during the prosecution of your patents that it came to your understanding that, gee, my patent lawyer doesn't have all the facts or the relevant facts and I need to clarify things with him. Did that ever occur at any point in time?

A. No. There was -- when I went to meet my patent attorney, I made everything completely crystal clear of what was out there before we filed application. Everything that we knew about. And we made sure that if we knew something, we told our attorney.

Q. And did you also make sure if your lawyer was saying something to the patent office that was inconsistent with what you knew that you would bring that to his attention?

A. If we saw that we would, but we didn't see anything like that.

Q. Do you have any family members that were in the tobacco industry?

MR. THOMAS: I'm sorry, I didn't catch that.

Q. Did you have any family members that were in the tobacco industry?

MR. THOMAS: Oh.

A. Yes, my grandfather was a plant manager in Celanese in Virginia and they made the filters for Marlboro cigarettes. He's deceased. And I miss him. I wanted that on record.

Q. Showing you what we've marked as Defendant's Exhibit 16.

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(Thereupon, Defendant's Exhibit 16 was marked for identification.)

- - - -

Q. Do you recognize Exhibit 16, Defendant's Exhibit 16? And for the record, it's FUMA 503 through 509. I'll preview the question as you're reviewing that. You mentioned a Wikipedia page earlier this morning. I'm asking you whether this is that Wikipedia page you were referring to?

THE VIDEOGRAPHER: Off the record, 3:49.

- - - -

(Off the record.)

- - - -

THE VIDEOGRAPHER: Back on record, 3:50.

Q. Do you recognize this document?

A. Yes. I'm just reading it.

Q. Are you reading the entire document?

A. Yes, I am. I want to make sure I'm familiar.

Q. Are you done reading the document yet?

A. Almost. Thank you. I'll skip the hyperlinks in the interest of time.

Q. Do you recognize the document, Exhibit 16?

A. Yes, I do.

Q. What is it?

A. It appears to be the Wikipedia page back at the time that -- when we filed the patent application.

Q. The -- what, the -- the nonprovisional July of 2010?

A. I'm not sure. I believe 2010, I believe, is correct.

Q. And is this the document you had in mind when we were talking about the Wikipedia page during your testimony this morning?

A. Actually, the -- this, I believe, cites February 9th, 2010 from the Wayback Machine.

Q. Right.

A. And, yes, this is the Wikipedia page I was referring to this morning.
Q. Now, you started out working with Mr. Medley. At some point you transitioned to Mr. Jocke?
A. Yes. Mr. Medley was a lawyer within Walker & Jocke's firm, and at some point Mr. Medley split off from the firm, but we stayed with the firm even though Mr. Medley went on to other ventures.
Q. And who did you work with next at the firm?
A. I believe it was someone named Parmelee next or maybe it was Mr. Jocke next. I can't remember.
Q. And the information that you brought to the attention of Mr. Medley that you testified about earlier today regarding the preexisting designs, did you bring that information to Mr. Parmelee's attention?
A. I asked Mr. Medley if he had passed off all of the information to Mr. Parmelee because he called me. We had a discussion and he said he had. And Mr. Parmelee informed me also that he had gotten all the information and data from Mr. Medley.
Q. And do you know whether Mr. Jocke was provided that information?
A. According to Mr. Jocke, he was well aware of all the information and it was all passed on to him as

well.
Q. So Mr. Jocke confirmed to you that he was aware of the preexisting designs that you had brought to Mr. Medley's attention?
A. Mr. Jocke told me he was aware of everything that I had conveyed and communicated to Mr. Medley and Mr. Medley and Mr. Parmelee conveyed that they knew everything that I had given Mr. Medley.
Q. Let's break this down a little bit. I'm not asking about the information about what you thought was your intention. I want to focus on the preexisting designs that existed out there before your invention, such as the Smoke 51 that we discussed and the KR808. Was that information conveyed to Mr. Parmelee, then to Mr. Jocke, as far as you know?
A. As far as I know, that information was clearly conveyed in more than one way, from what I can tell.
Q. How do you -- how do you know that it was conveyed? What's the basis for your belief?
A. My belief is I believe my attorneys communicated that to me, and I believe that what was cited as references to the patent by Mr. Medley, after us showing him everything, that he had done what had

to be done. I trusted my attorney to do the right thing.

Q. So did Mr. Medley communicate to you that he had conveyed the information about preexisting designs that you had provided Mr. Medley, that he conveyed that to Mr. Parmelee, did he tell you that?

A. He told me he conveyed all the information.

Q. Did he say anything beyond just a general all the information that caused you to believe that he conveyed the specific information about the preexisting designs to Mr. Parmelee?

A. I think more importantly is he didn't convey anything to make me think he didn't do that.

Q. So he never told you in words or substance specifically that he had pre- -- that he had conveyed the information about preexisting designs that you had provided Mr. Medley that he went out and conveyed that to Mr. Parmelee?

MR. THOMAS: Object to the form of the question.

Q. And if he did I would like to tell -- I would like you to tell me exactly what he said to cause you to believe that.

MR. THOMAS: Object to the form of the questions now.

A. I guess I don't really understand the question you're asking because I feel that -- I want to answer the question you're asking. I felt I answered it, so can you please phrase it in a different way so that I can understand it better?

Q. You had conveyed, you testified this morning, information about preexisting designs to Mr. Medley, correct?

A. That is correct.

Q. Okay. And other than a general "I conveyed," quote, all the information to Mr. Parmelee, did Mr. Medley say anything else that caused you to believe that he specifically conveyed information about those specific preexisting designs to Mr. Parmelee?

MR. THOMAS: Object to the form of the question.

A. Again, this goes back to when Mr. Medley told me he conveyed all the information. I -- that is my legal counsel and I have to trust that he conveyed all the information, including all that information, as well the application had already been submitted and the citations are citing anything before was put in with the application.

Q. Did you ever discuss the preexisting Smoke 51 that

we talked about this morning with Mr. Jocke? Did you ever discuss that with him?
A. I don't remember.
Q. Do you remember one single discussion about the Smoke 51 Duo with Mr. Jocke?
A. I don't remember.
Q. Did you have any discussions with Mr. Jocke about the Kanger 808 preexisting design that we discussed this morning?
A. I don't remember.
Q. Did you have any discussions with Mr. Parmelee about the preexisting Smoke 51 design?
A. I don't -- I don't remember.
Q. Did you have any discussions with Mr. Parmelee with the preexisting KR808D-1 design?
A. I don't remember. Those were early discussions that were all had with Mr. Medley for sure.
Q. And did anything happen during the prosecution of these patents that we're here today cause you to question that perhaps the information was not conveyed to either Mr. Jocke or Mr. Parmelee?
A. I had no reason to question that.
Q. And if you had seen reason to question it, would you have brought it to Mr. Jocke's attention, like, "Hey, do you know about the Smoke 51 Duo that I

told Mr. Medley about"?

MR. THOMAS: Object to the form of the question.

Q. Would you have done that?

MR. THOMAS: Object to the form of the question.

A. I'm -- it sounds like you're asking several questions.

Q. Right. So did anything happen during the prosecution of these patents that caused you to ask yourself maybe all the information about the preexisting designs did not get conveyed to Mr. Jocke?

A. I don't believe there was anything that would raise a red flag.

Q. And you understood your duty of candor obligated you to raise a red flag if you saw something?

A. If I saw something to bring to my attorney's attention, I understand that I have to let them know.

MR. GABRIC: Let's mark this.

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(Thereupon, Defendant's Exhibit 17 was marked for identification.)

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Q. I'll show you what we've marked as Defendant's Exhibit 17. And it bears Bates Number FUMA 82634 through 635.

Do you recognize Exhibit 16 -- or 17?

MS. MILLER: 17.

A. 17, yes. I don't remember it, but I recognize Ralph's email and generalization of the communication. Do I have the right one?

Q. Go ahead. Yeah, you have the right one. The question was whether I had the right one. Go ahead.

A. Okay. Right. That's it.

Q. Okay. So did you receive this email on or about January 31st, 2014, to the best of your knowledge?

A. It appears so according to the header on it.

Q. Okay. And with this communication, Mr. Jocke was disclose -- providing you a draft patent application response?

A. It appears so from the email.

Q. Okay. And in this email he tells you that he's emphasizing the feature of a threadable electric connection. Do you see that?

A. I do see that he's emphasizing an inclined plane thread.

Q. Well, that's not what he said there.

A. That's not what he said, but that's what we said.
Q. Okay. I'm going to quote what he said. And he says, "In order to try to obtain patent coverage, I am emphasizing the feature of the threadable electrical connection. I feel that by emphasizing this feature we have the best chance of obtaining some initial patent coverage."
Do you see that?
A. Yes, I do.
Q. So he's telling you that I'm going to emphasize this threadable electrical connection in order to get you a patent, right?
A. He said he -- that's not my takeaway from this. He said he's going to emphasize that in part of the overall process. That's, I guess, my takeaway from this communication and yours is not the same.
Q. Well, I'm just reading the language that he used.
A. I understand.
Q. All right. So we can agree that the Smoke 51 Duo had a threadable electrical connection, correct? That's preexisting design?
A. Yes, I would agree.
Q. And the KR808D-1 had that design as well, right?
A. Yes.
Q. Did this statement by Mr. Jocke raise a red flag

with you at all that perhaps he was not aware of those preexisting designs?

A. No. This does not raise a red flag at all and I'll tell you because of the fact that we discussed things from an inclined plane standpoint as threadable and for Mr. Jocke he had heard us speak that language before.

Q. What do you mean by inclined plane?

A. He calls it a threadable electrical connection and in a threadable electrical connection, if I could, Mr. Jocke writes this, cited on the patent would be the Wikipedia page that he is reviewing himself.

Q. Well, how do you know that?

A. Because that's on the application.

Q. How do you know he reviewed the Wikipedia page?

A. I would have to assume he did. He used our patent attorney and I have to trust our attorneys, correct? So I'm trusting he did his job and to that effect in this document it cites -- it specifically talks about those kind of features already available.

Now, he's talking about in here is a short verb of a much larger conversation that is not encompassed within an email, but he's reciting a specific piece of verbiage that emphasizing not

making it -- emphasizing the feature of, not making it the thing, but emphasizing the feature of threadable electrical connection. Threadable in the sense of an inclined plane thread for the connection.

Q. Well, did you understand that everything else in your claim the examiner thought was disclosed by the prior art and what Mr. Jocke was trying to do here is to add the threadable electrical connection feature to distinguish your claims over that prior art?

MR. THOMAS: Object to the form of the question.

Q. Did you have that understanding or no?

MR. THOMAS: Same objection. Multiple questions.

A. I think -- it sounds to me that reading the email for face value and taking word for word, I can't understand what you're really asking because the context of this -- and if we could, we'll go back up in the email, and if we say, "This response must be" --

MR. THOMAS: Read slowly.

A. Okay. Sorry. "This response must be filed no later than Tuesday, February 4th. I plan to send

it near the close of business on Monday." He said "close" of business, not even "closed."

His thought process in this email is incomplete. He's using wrong words. He is an attorney. And to have a -- something of that effect, so is there a close of business on Monday? So let's look and examine that.

There is no close of business on Monday. I've never heard of such a thing. Henceforth, it's the same thing with what he's saying down here, emphasize the feature of the threadable electrical connection. This is a quick communication with flaws in it. I understand Mr. Jocke. There were communications with him after this email, verbal.

Q. So did you ever get back to Mr. Jocke when he sent you -- after he sent you this letter and tell him, "Hey, Mr. Jocke, I want to make sure you understand that the preexisting Smoke 51 Duo design had a threadable electrical connection"?

A. And to that effect, Mr. Jocke had seen our products --

Q. Can you just answer the question. Did you ever do that?

A. I had a conversation with Mr. Jocke after this email.

Q. All right. And what was that -- answer my question first, did you ever get back to Mr. Jocke and tell him the Smoke 51 preexisting design had a threadable electrical connection?

A. Mr. Medley was shown and made aware, who was an attorney in his firm. He is the owner and the lead attorney in that firm.

Q. Can you answer my question, sir?

A. I cannot answer your question, sir, because I told Mr. Medley and disclosed it to my firm.

Q. Did you -- we'll try it one more time.

Did you or did you not after receiving this communication get back to Mr. Jocke and say, "Hey, the Smoke 51 preexisting design had a threadable electrical connection"?

A. Mr. Jocke was aware there were other devices out there that had threadable electrical connections.

Q. That's not my question. I would appreciate an answer to my question.

A. And I did give an answer, sir, that there was -- he was already aware and there was a phone conversation after this email.

Q. We'll get to that phone conversation. Did you ever get back to Mr. Jocke and tell him the Smoke 51 preexisting design had a threadable electrical

connection, yes or no?
A. I don't remember the exact conversation I had with Mr. Jocke. There was a lot of communication with Walker & Jocke law firm. Whether it was Mr. Medley or Mr. Parmelee or Mr. Jocke. That was our firm that represented us, and we disclosed all information to them. That's it.
Q. Did you have that conversation or not?
A. I don't remember.
Q. Did you ever get back to Mr. Jocke and say the preexisting KR808D-1 had a threadable electrical connection?
A. I don't remember exactly what went on in that conversation with Mr. Jocke himself, but we definitely told the law firm about the 808D-1, the Ruyan device, the Loong Totem device, about the Smoke 51 device. They knew about all of them.
Q. So you never had that conversation with Mr. Jocke?
A. I don't know if I did.
Q. So what exactly -- aside from -- well, what gives you -- did Mr. Jocke ever express to you anything that causes you to believe that he was aware of the preexisting Smoke 51 design?
MR. THOMAS: Object to the form of the question. Asked and answered a dozen times

now.

Q. No, I'm asking about anything Mr. Jocke told you other than "I was provided all the information." Did you ever use the words "Smoke 51"?

A. I don't know if I used the exact words "Smoke 51" with Mr. Jocke; however, repeatedly today, and I will repeat myself again for the record, Walker & Jocke law firm knew everything about Smoke 51, everything about Kanger, everything about Loong Totem. They know I tore the top off of all these cartridges and they were all exactly the same thing verbatim, and I even showed Mr. Medley. That is everything disclosed to my law firm who represented me to the patent office. Unequivocally.

Q. And given the statement in Mr. Jocke's letter here to you, Exhibit 17, does it raise a question in your mind whether Mr. Jocke was aware of the Smoke 51 or Kanger 808D-1 preexisting designs?

A. Given the state of this email and the statement "I plan to send it near close of business," not close, close of business, a -- on Monday, a very short verbiage answer for someone such as Mr. Jocke. The point is, is that we had a phone conversation after this communication.

Q. What was that phone conversation? When did it take

place?
A. I don't remember when it took place. This is in 2014.
Q. Who was --
A. There was a lot going on at that time.
Q. Who was involved in that conversation?
A. I don't remember.
Q. What was said during that conversation?
A. There were multiple communications with Walker & Jocke law firm repeatedly over many years. I could not give you what was exactly said during that communication. But if there was an open issue, it would have been something we talked about.

For the record, Mr. Jocke did have the Wikipedia page reference also, and if I could point out one thing in the Wikipedia, just because it's a discussionary point, it talks about multiple connection technologies in here, including screw threads and electrically connected, as well as it talks about cartomizers and atomizers with prefilled cartridges, one of which disposable heating element as well as threads.
Q. Where are threadable electrical connections discussed in here?
A. It talks about multiple connections. Let me find

that part for you.
Q. Don't waste your time. It's either there or it isn't.
A. Yeah, it's there.

- - - -

(Thereupon, Defendant's Exhibit 18 was marked for identification.)

- - - -

A. Is it marked?
Q. Yep. I'll show you Defendant's Exhibit 18, and it bears Bates Number FUMA 82544 through 545. I'll ask you if you recognize that document.
Greg, do you recognize this document, Exhibit 18?
A. Not specifically, but again, it's another communication from Ralph Jocke to me.
Mr. Hillenbrandt is copied on it.
Q. Okay. And it's a communication that I sent along a draft to respond to an office action, fair?
A. It seems so.
Q. And when Mr. Jocke would send these to you, was it your practice to review, make sure the draft responses were accurate and make sure any corrections necessary were made?
A. Yes, I would read them and then I would communicate

with Mr. Jocke one way or another for the most part.

Q. And on the last -- second to last paragraph, "Also, I always need to mention that if you or Dan are aware of any other prior art please let me know the details as the applicants, inventors, and owner of application have a continuing duty to disclose pertinent prior art to the United States Patent Office while the application is pending."

Do you see that?

A. Yes.

Q. So he's asking you to make sure and he's aware of all information that you consider important, fair?

A. Fair.

Q. And did it ever occur to you when getting this request from Mr. Jocke to make absolutely certain that he was aware of the preexisting Smoke 51 Duo?

A. Again, the communication had been made with Walker & Jocke law firm through legal counsel. That was done.

Q. So given what you were told that Mr. Medley had conveyed everything to Parmelee and Parmelee conveyed everything to Jocke, you assumed Jocke was aware of the Smoke 51 preexisting design; is that fair?

A. Fair is that it is one law firm and if they're going to pass one case from one attorney to another, I have to count on them to be thorough and accurate.

Q. Even though if you see things in correspondence or draft filings that might suggest that perhaps something slipped through the cracks?

A. I have no --

MR. THOMAS: Object to the form of the question if that was the question. It's hypothetical. Go ahead.

A. Again, I communicated to my law firm regardless of what counselor I was working with. They had been made fully aware. They had -- the firm had seen everything. The firm knew everything. And I have to believe that they were completely aware and knowledgeable that -- and we had shown and disclosed everything to our counselors at that firm, absolutely.

Q. So did it ever seem odd to you that Mr. Jocke was going to emphasize this threaded electrical connection, something that you knew was, you know, preexisting design, did that strike you as odd?

A. Early on it may have struck me as odd, but the one thing I did learn through working with a lot of

1 legal counselors, that they say things that come
2 off odd to normal people like me and in their world
3 and in your world, those kind of terminologies and
4 definitions and explanations are very commonplace.
5 And so when I see something like that, after
6 I've already disclosed everything to them
7 completely, absolutely, 100 percent, then a little
8 odd, yeah, we'll pick it up in a conversation.
9 Help me understand. But odd, no. That doesn't
10 come off as odd to me.
11 Q. And did you ever have a conversation with him to
12 help you understand why he was emphasizing a
13 feature that it -- was in a preexisting design of
14 the Smoke 51?
15 MR. THOMAS: Objection; asked and
16 answered.
17 A. We've already -- I say, again, we had those -- I
18 talked to him. I don't know what I discussed. It
19 had already all been discussed before and disclosed
20 to the patent office repeatedly -- or not to the
21 patent office, to the law firm repeatedly.
22 And, again, I go back to the -- you know, we
23 took actual product in and showed Medley. He saw
24 hard examples. I did hand sketches. Mr. Jocke was
25 in the office, the same office, with Mr. Medley as

well as Mr. Parmelee. They were all there.
Q. Did you leave the product behind with Mr. Medley?
A. I don't remember if I did or didn't, what I did leave there or didn't leave there. And that's a good question and a fair question.
Q. It took me a long time, but thank you.
MS. MILLER: You got one, though.
A. You got one. I don't remember that. I honestly don't remember.
Q. All right. So Exhibit 18, fourth paragraph, Mr. Jocke is reporting to you --
A. One, two, three --
Q. -- "Specifically the central air passage feature, which was an original Claim 4, is now included in the independent Claims 1, 13, and 20. Also added is the feature of the absorbent material, including the solution that is vaporized, surrounding the airflow passageway in the interior of the housing."
Do you see that?
A. Yes, I see that.
Q. All right. So did you have an understanding that these were features that Mr. Jocke was going to point to as distinguishing your invention from what the examiner had in front of them in rejecting your claims?

A. Can you rephrase that question because I -- you really lost me there.

Q. Yeah. Let me shorten it. It was a bad question. I followed a good question with a bad question.

So did you -- at any time did you understand that Mr. Jocke was emphasizing the features I identified in paragraph 4?

A. I -- again, this goes back to this particular communication. They would say things of, you know, "I'm identifying the air passage feature which is now included in" da, da, da, da. It just says -- I'm sorry, I need to read that. I apologize.

"Specifically the central air passage feature which was" --

MR. THOMAS: Slowly.

A. "Which was" -- thank you -- "an original Claim 4 is now included in the independent Claims 1, 13, and 20."

Now, to break that down, "it's included" doesn't mean it's the feature or it's the crux or it's the linchpin or it's anything else. It's just included in the claim and it could be part of a description for all I know.

Again, this goes back to when you folks speak, I feel very challenged and I try my best to

1 understand. So when he sends me a communication
2 like this, it doesn't send up a red flag to me. It
3 just says, "Okay, wait a second. I need to give
4 him a call. We need to talk about this." That's
5 what this email says to me.
6 Q. All right. Read paragraph 3. Did that give you a
7 red flag?
8 A. One, two, three. No, because that was based on a
9 previous discussion I had with him.
10 Q. And what he's telling you in paragraph 3, "I'm
11 going to emphasize the features that I'm now
12 identifying in paragraph 4."
13 Is that fair?
14 MR. THOMAS: Object to the form of the
15 question.
16 Q. Is that a fair interpretation?
17 MR. THOMAS: Object to the -- same
18 objection.
19 Q. Did you understand him to be emphasizing the
20 features in paragraph 4, given the context of
21 paragraph 4 following paragraph 3?
22 MR. THOMAS: Object to the form of the
23 question.
24 A. This would not have triggered any knee-jerk
25 response from me. This would have triggered a let

me call him and talk to him.
Q. Did you call him and talk to him about this?
A. I don't know for sure, but that would be my normal course of action.
Q. What about this would cause you to think you would have called him about this? Is there something incorrect about this?
A. No. I didn't say there was anything incorrect.
Q. All right.
A. And I didn't say there's anything -- I made no assertions about this. You actually are the one that said something is incorrect. I didn't.
And to that, the fact that there's things going on, this would be the point that I would feel more comfortable picking up the phone and calling Mr. Jocke and having a conversation.
Q. Okay. So in paragraph 3, he's telling you, "I have amended the claims to include features that you consider key to your invention in which it helped to differentiate your invention from the earlier patents that were filed by the examiner."
MR. THOMAS: Also, just for the record, we object to the fact that you're asking him about exhibits that aren't complete. There were attachments to these emails that you

haven't shown him, but I'll just make that objection for the record.

Q. Do you understand what he was saying there in paragraph 3?

A. I can read and understand that he's talking about specific features that are not necessarily complete thoughts.

Q. Okay. The features in paragraph 4, were they key to your invention, in your mind?

MR. THOMAS: Object to the form of the question.

A. Can you do me a favor and break that down into kind of a more direct question, please?

Q. Okay.

In paragraph 3, Mr. Jocke is amending the claims to include features that he says you considered key to your invention. Do you see that?

A. I see that.

Q. All right. And my question is, are the features identified in paragraph 4, were they key to your invention, in your mind?

A. The description of those features could be key, depending on how it's structured in the claim.

Q. Okay.

A. That's a very ambiguous question because of the

fact of while this is what he writes in the email, could be the central air passage feature, yes, that was very key, because you had to vaporize in the central passage feature, you had to vaporize in the airflow, which is an incomplete thought process.

Again, I go back to how Mr. Jocke structures all his emails and every email you bring up from Mr. Jocke is going to have similar problems. He has a very incomplete thought process, I've noticed.

Q. Okay.

MR. GABRIC: Why don't we take a short break.

MR. THOMAS: Sure.

THE VIDEOGRAPHER: Sure. Off the record at 4:37.

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(Thereupon, a recess was had.)

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(Thereupon, Defendant's Exhibit 19 was marked for identification.)

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THE VIDEOGRAPHER: We are back on the record at 4:56.

Q. I'm going to show you what we've marked as

Defendant's Exhibit 19. And for the record, it's a certified copy of the '628 Patent. It bears Bates Number FUMA 338 through 355.

Do you recognize that as one of your patents?

A. Yes, I believe it is.

Q. Were you involved at any time in any discussions to remove any of the inventors from this patent?

MR. THOMAS: And I'm going to caution the witness. You're not to disclose communications you had with litigation counsel regarding any of the status of the inventorship of that patent. Do you understand?

THE WITNESS: I do.

MR. THOMAS: Okay. But if you had discussions with your patent prosecution counsel at Walker & Jocke, you can describe -- you can answer the question.

A. I'm sorry, can you reread the question to me, please?

MR. THOMAS: That's based on attorney-client privilege.

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(Thereupon, the following was read:

Q. Were you involved at any time in any discussions to remove any of the inventors from this patent?)

- - - -

MR. THOMAS: And again, I'll repeat my instruction. You can answer that question with respect to any discussions you may have had with your patent prosecution counsel at Walker & Jocke. I would instruct you not to respond about any communications you had with any other lawyer.

A. Very well. Thank you.

Q. Let me break it up.

A. Please.

Q. At any point in time up to or prior -- up to or after the issuance of the '60 [sic] patent, did you have any discussions with any lawyer at Walker & Jocke regarding changing the named inventors on what became the '628 Patent?

A. Yes. There was a discussion with Mr. Jocke about filing a -- for the purposes of filing patent and assignments, and he -- because I was having trouble getting everyone together to get assignments done and he offered to remove people from the patent, and to that I declined him because I do know that if you do not include all the people who possibly could be inventors, it could invalidate the patent, so I erred to the side of caution and I did not do

that.
Q. And which inventors was Mr. Jocke suggesting may be candidates to be removed?
A. He didn't specify.
Q. Did you provide Mr. Jocke the full transcripts of the Ohio State court testimony in connection with this discussion?
A. Can you specify which court case you're discussing?
Q. The Ohio lawsuit amongst Steiger and you and Fuma where you testified in May of 2016, did you tell Mr. Jocke the substance of your testimony regarding inventorship?
A. That discussion with Mr. Jocke happened before the court case happened.
Q. Okay. And did you have an understanding that if you -- well, did you tell Mr. Jocke that you don't want to remove inventors because you want to err on the side of being overinclusive rather than under inclusive?
A. No, I didn't give a reason.
Q. Did he ask you what your reason was?
A. No.
Q. Did you have a discussion of who, in fact, were inventors on what became the '628 Patent?
A. We did not have a lengthy discussion about that.

Q. Did Mr. Jocke make any investigation and give you an opinion on whether he considered all five or -- any of the five listed people to be accurately named as inventors?
A. I don't remember.
Q. And at any point in time did you discuss with Mr. Jocke the substance of the testimony you gave in May of 2016 in the Ohio State case?
A. Can you please add more definition to that question so I can understand it better?
Q. Okay.
Well, you know, if you recall, in May of 2016 you testified that only you and Hillenbrandt were inventors on the '628 Patent, that the other three didn't contribute anything. Do you recall that testimony?
A. They would --
MR. THOMAS: Object to the form of the question, but go ahead.
Q. Did you tell Mr. Jocke at any time that you had provided that testimony under oath in the Ohio State case?
A. I'm sorry, can you ask that question again, please?
Q. Did you at any time advise Mr. Jocke that you had testified in the Ohio State case in May of 2016

that the only true people who conceived the subject matter claimed in the '628 Patent were you and Mr. Hillenbrandt?

A. Mr. Jocke was actually at that court case and he was on the stand as part of it and if I do remember correctly, that was a federal case that was amalgamated into the state case as a separate matter, but then there were -- I don't know the proper terminology. The two were joined together is all I know, so it was all handled at once, and Mr. Jocke was one of the individuals who took the stand.

Q. So did you -- was he there when you gave your testimony?

A. I don't know.

Q. Okay. Did you ever discuss your testimony about who conceived the subject matter in the '628 Patent with Mr. Jocke?

A. I don't remember.

MR. THOMAS: By the way, I think it's Jocke.

MR. GABRIC: Jocke.

A. It's Jocke.

MR. THOMAS: I said Jocke, too, and I got corrected on that.

MR. GABRIC: Thanks.
A. It's Ralph Jocke. He's a nice guy.
Q. Did you ever discuss with -- now, at some point you replaced the Walker & Jocke firm with new prosecution counsel?
A. That is correct.
Q. Okay. Why did you do that?
A. We felt --
MR. THOMAS: Now, don't -- you're not to disclose the substance of any communication you had with a lawyer regarding any decision to move any work from the Jocke firm to anywhere else. I instruct you not to answer -- not to answer the question to the extent you would have to divulge any communications you had with any of your trial counsel or with Mr. Martin, okay?
THE WITNESS: Thank you.
A. The simplest answer is the most direct answer, right, and that is that there just -- it's a better fit for us now.
Q. Were you unhappy with Mr. Jocke, Mr. Jocke?
A. No.
Q. And who was involved in the decision to replace Mr. Jocke?

A. We all were.
Q. Who's "we"?
A. All the members of Fuma.
Q. And who is that?
A. That would be Mr. Hillenbrandt, Mrs. Conley, my wife, and myself.
Q. And yes or no, did you discuss transitioning the work from Mr. Jocke to Mr. Martin with litigation counsel?
MR. THOMAS: I would instruct you not to answer that on grounds of attorney-client privilege.
Q. Are you following counsel's instruction?
A. I always will.
Q. I just need to make a record, that's all.
A. I understand.
Q. And you're refusing to answer that question?
A. I'm following the advice of my attorney.
Q. Now, did you ever discuss with Mr. Martin, your current prosecution counsel, whether to remove any of the inventors from the '628 Patent?
MR. THOMAS: I'm going to instruct you not to answer on the grounds of attorney-client privilege.
THE WITNESS: Okay.

Q. I'm just -- so we don't have to repeat this exercise. When you're instructed not to answer based on advice of counsel, that you're going to follow that instruction and not answer?
A. Yes, sir, I will always follow his advice.
Q. Now, did you have any discussions with Mr. Jocke or anybody at the -- let me back up.
Did you have any discussions with anybody at the Walker & Jocke firm whether to remove any of the people named as inventors from what became the '604 Patent, which is one of the patents in suit and we marked as an exhibit earlier today, Exhibit 3?
A. Yes, I understand. And, no, I'm not saying yes to your question. I'm saying I understand it is the exhibit from earlier, so we're clear.
Q. Okay. So did you have any discussions with anybody at Walker & Jocke -- I'm going to remember that -- regarding removing any of the inventors from what became the '604 Patent?
A. I don't recall the exact patent we were talking about when he said -- well, just -- when he made that comment to me it would have been prelitigation, but I can't remember what patent or what CIP we were discussing at that point in time,

so I can't answer that question.
Q. And in your mind, did Mr. Steiger, Mr. Mandela, and your wife, Rebecca, contribute to any of the subject matter claimed in the '604 Patent?
A. Inventorship is -- the exact definition of inventorship is still a gray area for me of what defines an inventor precisely, so to that note they could be and maybe they're not. I don't know.
Q. Have you sought the assistance of counsel to help you understand since you gave testimony in May of 2016 whether or not Mr. Mandela, Mr. Steiger, or your wife are properly listed as inventors on the '604 Patent?
MR. THOMAS: I'm going to instruct you not to answer with respect to any such communications with anybody other than the Walker & Jocke firm. Do you understand my instruction?
THE WITNESS: Yes, I do.
MR. THOMAS: Okay.
A. I've had no communication with Walker & Jocke since.
Q. And I'll ask the question and I'm sure I'll get the objection. Did you discuss it with Mr. Martin whether or not Mr. Mandela, Mr. Steiger, or your

wife are properly listed as inventors on the '604 Patent?

MR. THOMAS: Object to the -- objection on the grounds of attorney-client privilege. I instruct the witness not to answer.

Q. And you're following instruction, correct?

A. I -- like I said, I will always follow my attorney's instructions.

Q. And did you discuss with Mr. Thomas whether or not Mr. Mandela, Mr. -- Ms. -- I'm sorry, Mr. Mandela, Mr. Steiger or Rebecca Conley should -- are properly listed as inventors on the '604 Patent?

MR. THOMAS: Attorney-client privilege. Objection. Instruct the witness not to answer.

Q. Following the instruction?

A. As always.

Q. So is there --

MR. THOMAS: You should just say yes.

A. Yes.

Q. And as we sit here today, and I understand you said in words or substance that inventorship is a gray area for you. Is there anything you can point to in the claims of the '604 Patent that you believe

was conceived by someone other than you or Mr. Hillenbrandt?

A. Can you phrase the question a different way so I can more cleanly understand what you're asking?

Q. Yeah.

There's a list of claims at the end of the '604 Patent. You know what patent claims are, correct?

A. Correct.

Q. All right. And my question is simply, is there anything in those claims that you can point to that was conceived by someone other than you or Mr. Hillenbrandt?

A. I go back to what I said before. My understanding of what truly defines inventorship is a gray area that I'm still trying to fully understand.

Q. So can you identify any subject matter in the claims of the '604 Patent that was the idea of someone other than you or Mr. Hillenbrandt?

MR. THOMAS: If you need to refer to the '604 Patent to do that, why don't you do that.

A. Please. Thank you. I believe this is the document here, correct?

MR. THOMAS: If it says '604.

THE WITNESS: Exhibit 3?

MR. GABRIC: Yes, sir.

THE VIDEOGRAPHER: Do you want to go off the record?

MR. GABRIC: No, you don't want to go off the record, trust me. For the record, I'm more than happy to go off the record while he reads documents. In fact, I've been very patient about it, I think, probably more patient than most lawyers Dirk comes across.

MR. THOMAS: Are you ready to respond?

A. Yes, I am.

MR. THOMAS: Have you got a question there?

A. Yes.

MR. GABRIC: Why don't you read it back whatever the last question was.

A. Please.

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(Thereupon, the following was read:

Q. So can you identify any subject matter in the claims of the '604 Patent that was the idea of someone other than you or Mr. Hillenbrandt?)

- - - -

A. In the '604 Patent, the area where I'm unclear whether they are or are not inventors, and there's

a potential they could be, so erring to caution is the direction I chose.

Claim 20 that talks about the metered dose inhaler specifically is where I still don't know if they are or are not inventors, and if a judge ever wants to look at this and makes a decision if they are or are not, I am fine with whatever a judge decides.

Q. Have you asked any lawyer to make an evaluation based on the facts that you know their opinion on whether they are or are not inventors with respect to Claim 20?

MR. THOMAS: Instruct the witness not to answer to the extent you would have to reveal communications you had with me or any other lawyer representing Fuma other than at Walker & Jocke.

A. There's no one from Walker & Jocke.

Q. And did you ever have the understanding that if you err on the side of having too many inventors your patent could be invalid?

A. I was on the side that if they were inventors and you didn't include them, you can invalidate your patent. That was my understanding.

Q. At some point did you get an understanding of

1 people who are on the patent that aren't inventors
2 that that could create a validity problem for the
3 patent?
4 A. Again, my knowledge base on what -- of that area is
5 not that strong.
6 Q. So as you sit here today, you have no information
7 at all whether having too many people on the
8 patent -- well, whether having somebody listed on
9 the patent who's not, in fact, an inventor could
10 invalidate your patent?
11 MR. THOMAS: Object to the form of the
12 question.
13 A. Can you read that question back to me, please.
14 - - - -
15 (Thereupon, the following was read:
16 Q. So as you sit here today, you have no information
17 at all whether having too many people on the
18 patent -- well, whether having somebody listed on
19 the patent who's not, in fact, an inventor could
20 invalidate your patent?)
21 - - - -
22 A. Well, first I would have to know the clear
23 definition of an inventor.
24 Q. Okay. So you're an inventor, right?
25 A. I -- I clearly believe I am.

Q. Why do you think you're an inventor of the subject matter of the '604 Patent?
A. Because there's a lot of material in here that I directly contributed to, and the definition of what an inventor is and as I understand it today, it's a very -- for me on my contributions, I know what I contributed, so I feel absolutely I'm an inventor. My feelings on what they contributed and their feelings on what they contributed maybe don't line up, so . . .
Q. Has your understanding of what qualifies somebody as an inventor changed between May 2016 when you gave sworn testimony in the Ohio litigation with Steiger and today?
A. My understanding of an inventor is still muddy, at best.
Q. Is it any different than your understanding in May of 2016 when you gave sworn testimony in the Ohio litigation?
A. When we're talking about the Ohio litigation, can you please clarify which part.
Q. The part where you got up on the stand, swore to tell the truth, the whole truth, and nothing but the truth in May of 2016 and where you testified about who you thought were inventors.

My question is, has your understanding of what qualifies someone as an inventor changed between that point in time and as we sit here today?

MR. THOMAS: I'm going to object to the form of the question. Ralph, I think the only difference is he distinguishes between the federal court case and the Ohio court case, so when you say Ohio litigation --

MR. GABRIC: Okay.

MR. THOMAS: -- I think that's where the --

MR. GABRIC: The state case where you testified.

MR. THOMAS: Okay.

A. Okay.

MR. GABRIC: Thank you for that clarification.

THE WITNESS: Thank you.

A. I -- and to that, from the point I testified until today, I would say that my understanding of what an inventor is precisely is probably even more murky just from the standpoint of everything that came out through trial and the process I went through and the education that the legal system put me through going through that process. I would say

that's part of the reason I wanted a judge to make this decision.

Q. How about having your counsel make that decision for you? That's how it's normally done.

MR. THOMAS: Object to the form of the question.

Q. You do understand that people go to their patent lawyers, disclose relevant facts, and ask their attorney help me identify who the inventors are so I get this right on the application. Did that ever happen with the Walter & Jocke firm -- Walker & Jocke firm?

MR. THOMAS: Object to the form of the question. Go ahead if you can answer it.

A. There was initial discussions on -- with Mike Medley, but that discussion never really took place beyond that.

Q. And so you never had that discussion with Mr. Jocke?

A. Yes, there was a discussion with Mr. Jocke, like I said.

Q. Well, was there a discussion where you set out the facts as you knew them and asked for his assistance to help you identify who should be named as inventors on what issue is the '604 Patent?

A. I don't recall that specific conversation.
Q. And has your understanding of the -- of who contributed to the idea of a meter dosed inhaler, has that changed since you gave testimony in the state court action in Ohio in May of 2016 and today?
A. I would say that to that effect it goes back to -- I've said it before and I just keep saying it and I'm telling you -- that what actually constitutes an inventor I really don't have a clear picture.
Q. Let me ask you this. What was Rebecca's, your wife, Rebecca Conley, what was her contribution to the metered dose inhaler?
A. I think you would have to ask her. That's her contribution. It's her thoughts. And I really don't feel comfortable answering for her.
Q. Well, did you feel comfortable answering for her in May of 2016 when you said that the only people who contributed to the subject matter of the '620 -- '628 Patent were you and Mr. Hillenbrandt?
A. And I go back to the same thing I said before. My understanding of what an inventor is today versus then is very murky. I do not have a clear understanding of exactly where the delineation mark is.

Q. I'm not asking you about inventor right now. What I'm asking you right now is what was Rebecca Conley's contribution to the idea of a metered dose inhaler. What was her role? I'm not trying to classify that as an inventor or not inventor. I just want to know what her role was, if any?

A. Right. And I think the best way to explain this would be very simply put. We were all sitting around a room, in a conference room much like this and Rebecca Conley was there, and Michael Mandela was there, and there was a lot of us sitting in the room and we were spitballing ideas about this metered dose inhaler.

So I go back to can I clearly identify the contributions of any one individual? Based on calling them an inventor or not an inventor, I don't have a clear delineation on what constitutes that.

Q. So can you point to anything specifically that Rebecca Conley contributed with respect to the idea of a metered dose inhaler?

A. Again, we were all sitting around the room and people were blurting out ideas.

Q. I understand that. Do you -- can you pinpoint -- anything you can point to, you know, "Rebecca, she

came up with this particular idea"?
A. As we sit here today, I cannot pinpoint anyone in that room on any particular idea because the ideas were flying around so fast and everyone was speaking without a speaking stick, so to speak.
Q. Now, did -- can you point to anything specifically that Mr. Steiger contributed to the metered dose inhaler idea?
A. I am aware of his testimony during trial; however, I'm also aware what happened in that room, so I go back to based on what happened in that room I could not specifically pinpoint any individual in that room for any one specific piece.
Q. And that would be the same with respect to Mr. Mandela?
A. Yes, exactly.
Q. And so you think the metered dose inhaler concept is embodied in Claim 20 of the '604 Patent?
A. I believe that it is embodied within -- within that. "Wherein a controller's operative response of at least in part to the airflow a metered termination data representative of the amount of vaporized solution is provided from the second aperture." And that's the second to last paragraph on the -- on Claim 20. There's -- that part alone

quantifies it for me.
Q. And do you recall testifying in the Ohio State case that the '628 Patent was also directed to the -- or embodied the metered dose inhaler concept?
A. Yes.
Q. And do you stand by that testimony?
A. It's what I believed at that time.
Q. Do you still believe it?
A. What part?
Q. That the '628 Patent also embodies the metered dose inhaler concept.
A. I believe there's portions of the '628 that do.
Q. Is it claimed?
A. I would want to look at it before I answer that question.
Q. Okay. You can look.
MR. THOMAS: It's Exhibit 19.
THE WITNESS: Okay. Thank you. Oh, Exhibit 18, too. I'm just picking up multiple exhibits.
MR. THOMAS: No worries.
Q. And I can try to help you out. If you look at Claim 14, I don't know if that helps you.
A. Then to that respect of Claim 14, and it seems also 15 and you get into some others, and the metered

dose inhaler is part of the '628 along with power harvester.

Q. So the metered dose inhaler is claimed?

A. Yes.

MR. GABRIC: So I'm going to mark as an exhibit --

MR. THOMAS: Can I have that?

MS. MILLER: Uh-huh.

MR. THOMAS: Thank you.

MR. GABRIC: -- the next exhibit.

- - - -

(Thereupon, Defendant's Exhibit 20 was marked for identification.)

- - - -

Q. Defendant's Exhibit 20. I'll ask you -- I'll represent to you this is your sworn testimony from the Ohio State action. Okay?

A. Okay.

Q. I'm not trying to trick you. When's the last time you reviewed this testimony?

A. I don't even know if I've ever reviewed it completely.

Q. Did you ever get a hard copy of it to review?

A. I don't believe so.

Q. Did you ever arrange for the Walter Jocke [sic]

firm to get a hard copy of your testimony to review?

A. I don't believe so.

Q. And you testified at length about who you thought were -- should be listed as inventors on the '628 Patent, correct?

A. I believe that was part of the testimony.

Q. All right.

A. At that point in time.

Q. Okay. So if we go to -- so in the Ohio action, did you testify that Mr. Mandela did not contribute to the conception of the claimed subject matter of the '628 Patent?

A. I would need to read the transcripts.

Q. Okay. Let me refer you to page 295 starting at line 14. You were asked the question: "So is there anything in the patent, the '628 Patent that you can point to that is attributable to Mr. Mandela?"

Answer: "With my better understanding, the answer would be no."

Did you give that testimony?

A. I believe that's me from what you say. I don't know. I haven't had a chance to fully review the document. And again, my understanding of what an

inventor is now is murky at best.
Q. Is it different than your understanding when you gave this testimony in May of 2016?
MR. THOMAS: Objection; asked and answered. You can go ahead.
A. I was going to say, I -- with all due respect, I already covered that.
Q. Okay. And then you were asked starting on line 19 --
A. I'm sorry, where are we looking?
Q. Page 295.
A. Okay.
Q. Okay. "And is there anything in that patent application that specifically was contributed by Mr. Steiger, Esquire?"
Answer: "Again, with my better understanding, no."
Do you see that?
A. Yes, I do.
Q. Did you give that testimony?
A. Taking it for credit that that is my testimony, I see it, yes.
Q. Okay. And then you were asked starting at line 23, "Okay, and to your knowledge did you have the patent application that became the final patent,

'628 signed by all of your members of your executive team, whatever you want to call it at Fuma?"

MR. THOMAS: I'm sorry, was there a question there?

Q. Oh, I'm sorry. I'm sorry. I -- strike that?

MR. THOMAS: That's okay.

A. That's okay.

Q. So if you go to page 360 and starting at line 18, there is a question: "Mr. Steiger" -- and he corrects himself -- "Mr. Conley, I'm sorry, we've just been through this. We've already established that there are claims in the 2012 application that weren't in the original application which is why you had to file another application, so I'm asking you, who -- let me put it this way. Who were the inventors? Who contributed to the claims to the 2012 application that became a patent in 2014?"

And your answer is: "All of the original ideas were contributed by Mr. Hillenbrandt and myself."

Do you see that?

A. Yes, I see that.

Q. And the '628 Patent is the application that was filed in 2012 that became a patent in 2014; isn't that correct?

A. I am not sure, but I believe that's true.
Q. The testimony I've just read to you, did it at any time occur to you to bring this testimony to the attention of Mr. Jocke and ask him to assist you in evaluating whether or not inventorship should be evaluated on the '628 Patent and/or the '604 Patent?
THE WITNESS: God bless you.
MR. THOMAS: God bless you.
MS. MILLER: Thank you.
A. I'm sorry, can you ask that question again, please?
Q. Yeah.
Did you at any time bring this testimony to Mr. Jocke's attention?
A. Mr. Jocke was well aware of the case.
Q. He wasn't there when you testified, I'll tell you that.
A. I don't know if he was or wasn't.
Q. So did you bring this testimony to his attention?
A. Again, like I said previously, Mr. Jocke knew of the court case, knew what was going on, and to that effect I assume he knew that everything was happening.
Q. And you --
A. He was even called for as a witness.

Q. Right. Are you telling me he assumed the substance of the testimony you gave?
A. No. Did I not say that?
Q. Okay. So do you know one way or the other whether he was aware of the substance of the sworn testimony you gave in the Ohio State action?
A. I don't know.
Q. Now, you had an expert witness testify on your behalf, do you recall that, Mr. Campbell?
A. I recall the expert witness, yes.
Q. And he prepared a declaration and testified. Do you recall that?
A. I cannot recall the testimony. I don't recall exactly what was said, but I remember he did testify.
Q. And you recall the substance of his opinions were that only you and Mr. Hillenbrandt were true inventors on the subject matter of the '60 -- '628 Patent?
A. Again, I don't remember exactly.
Q. Did you ever bring Mr. Campbell's testimony and declaration to the attention of the Walter Jocke firm?
A. Again, the same answer as previous, and that is that I know that Mr. Jocke was aware of all the

proceedings and trials. Mr. Steiger and Mr. Jocke were friendly with each other. And Mr. Jocke was our counsel. And he was called in to testify. I did not specifically go -- order a transcript and hand it to him, no. But was he aware? I know he was aware.

Q. He was aware of the proceeding?

A. He was -- yes.

Q. Do you know whether he was aware of Mr. Campbell's opinions?

A. I don't know.

Q. Why was Rebecca Conley listed as an inventor on what became the '881 Patent? Well, let me back up. Do you have the '881 marked as an exhibit?

MS. MILLER: Do you need the '881?

A. Are we done with this document?

Q. Yeah.

A. Okay.

THE WITNESS: Can we have a quick break while we're doing this?

MR. GABRIC: Yeah, that's fine.

THE VIDEOGRAPHER: Off the record, 5:38.

- - - -

(Thereupon, a recess was had.)

- - - -

THE VIDEOGRAPHER: We are back on the record at 5:54.

MR. GABRIC: We can mark the next exhibit.

- - - -

(Thereupon, Defendant's Exhibit 21 was marked for identification.)

- - - -

Q. Showing you what I've marked as Defendant's Exhibit 21, and for the record it's from the certified file history of the 955 application that Fuma provided, FUMA 228 through 234.

And I'll just represent to you it's a series of declarations signed by you and the other named inventors on the '604 Patent, along with an electronic acknowledgment from the patent office that these were filed on November 15th, 2016. I'm just trying to orientate you. Feel free to review the document.

Is that your signature on the first page?

A. Yes, it is.

Q. Okay. Do you understand what this first page of this document is?

A. I believe it's a declaration page for a patent

application.
Q. And it's -- the application is identified on the document here, 14, slash, 510955?
A. Well, yes, I see that on the document.
Q. Okay. And you understand that this application is issued to the '604 Patent. You can double check Exhibit 3, but I'll make that representation.
A. Well, I'll trust your representation.
Q. Did you understand that the other four named inventors were signing a similar document?
A. Yes, I believe so.
Q. And there's a statement in this document that says -- it's about one, two, three, four lines in, I'll just point it out. It says, "I believe that I am."
Do you see that? "I believe that I am the original inventor or original joint inventor of a claimed invention in the application."
Do you see that?
A. Yes.
Q. All right. What do you understand the representation you were making in this document that you signed to the patent office?
A. I -- I believe when I executed this document, this instrument, that I was claiming to be either

inventor or a joint inventor of this patent application.

Q. So you were making an either/or representation, either on the original or on the joint inventor?

A. No, it says right here, "I am the original inventor or an original joint inventor."

Q. Which clause did you think applied to you when you signed this document?

A. At that exact time, all I can tell you is I knew I was one of the two.

Q. Did you know that Mr. Steiger was signing a similar document?

A. I was aware.

Q. That included a similar representation?

A. Correct.

Q. And you were aware that Rebecca Conley was filing a similar document with a similar representation, correct?

A. Correct.

Q. And you understood that Mr. Mandela was signing a similar document with a similar representation, correct?

A. Correct.

Q. And did you feel like you had any obligation to bring to the attention of your patent counsel that

you did not -- other than you and Mr. Hillenbrandt, you did not believe the other three were inventors of the claimed subject matter?

A. My definition, again, as previously stated, of what a joint inventor is now is more muddy than ever and it goes back to at that point in time what I believed to be true then I believed and what I believe to be true today I believe.

Q. So when you gave the testimony in the Ohio State action that we just looked at regarding the '628 Patent, you testified it was your belief that only you and Mr. Hillenbrandt were inventors of that subject matter?

A. At that time, I truly believed that.

Q. Okay. And at that time, the '628 Patent you understood covered the metered dose inhaler, correct?

A. I understood that the '628 did cover the metered dose inhaler, yes.

Q. All right. And so we go forward. That was May 2016 and this document, according to the electronic filing receipt, was filed with the patent office November 15th, 2016.

MR. THOMAS: I'm sorry, was there a question pending?

MR. GABRIC: I believe there was.
A. I don't think there was.
MR. GABRIC: I could be mistaken.
MR. THOMAS: I mean, you may have intended it but it didn't quite come out that way, I think.
Q. Okay. So this document, these declarations, were filed with the patent office, according to the filing receipt, on November 15th, 2016. Do you understand that?
A. Yes, I see that here.
Q. All right. So that means these declarations were signed sometime on or before November 15th, 2016, fair?
A. Fair.
Q. All right. So what I'm trying to get my head around is you just got done testifying in May of 2016 that you and Hillenbrandt are the only inventors on the '628 Patent and that patent claimed the metered dose inhaler. How do you -- how does it come to pass that these three other people who you didn't believe were inventors are signing declarations and you don't raise a red flag with counsel?
A. First off, to answer your question, it's a little

confusing, but I think what you're asking is how come these were -- declarations were executed and -- by all these people. This says October 9th of 2014 is when this application number was filed. There's no date on any of these signatures of when these were actually signed. I don't remember exactly, but Walker & Jocke may have had these already executed previous to any court case, previous to any understanding that I had and may have been sitting on these for -- but I don't know. I don't know the answer to that. I cannot answer that question because I don't know.

These declarations, I've seen them come over from Walker & Jocke. I would get them, sign them, send them back, but that doesn't say when he files them. I don't know. So I can't answer that. I don't know.

MR. GABRIC: Do you want this sheet?

Q. Would you -- according -- the -- did you have a practice with Mr. Jocke where he would run documents by you before he filed them with the patent office?

A. If we had already previously seen these and these were already signed and executed -- I'm sorry.

Q. Go ahead. I'm multi-tasking.

A. Oh, that's okay. If we had already seen these and they would have already been executed, I don't know when his office sent them in versus when they were signed, because there's no dates on any of these. So I honestly can't answer that question.
Q. Do you have an explanation why there's not a date on these?
A. No.
Q. Did you deliberately omit placing a date on these?
A. No.
Q. Do you know when you signed it, approximately?
A. No.
MR. THOMAS: I will note for the record that the date line on each of these says optional.
Q. Let me -- would you mark this.
A. So to answer your question is I don't know.

- - - -

(Thereupon, Defendant's Exhibit 22 was marked for identification.)

- - - -

MR. THOMAS: I don't think Ralph had asked another question yet, so why don't you wait for him.
Q. Showing what we marked as Defendant's Exhibit 22.

MR. THOMAS: Thank you.

Q. And I want to direct you to an email string. What I want to ask you about is the first email in the string from Ralph Jocke -- well, let me back up and identify the document.

It bears Bates Number FUMA 77839 through 844, and it appears to be an email string. The first email starts on 77842. It's an email from Ralph Jocke dated November 1st to Rebecca Conley and it CCs Greg Conley and Dan Hillenbrandt. The subject, assignment of Fuma patents, importance high.

And if you go through here on the page that begins at 77843, Mr. Jocke is discussing declaration forms, they need to be executed by the remaining inventors. Do you see that? Take a -- you know, review what you need to do.

I'm just asking you if this document refreshes your recollection whether you were aware that these declarations were going to be filed with the patent office in or around November twenty -- excuse me, 2016.

Have you seen that email before?

A. I'm sorry?

Q. Have you seen that email before?

A. I'm on it and to the degree that I see I'm

addressed on it. Do I remember the email? No. Have I seen it before? Probably. There's a lot of communication.

Q. All right. So on the page 77842.

A. I'm sorry, 77842?

Q. Right, it's the --

A. Let me get to that one, please. Okay. Yes, I'm there. Go ahead. Thank you.

Q. In the third paragraph it says, "As we discussed and is outlined in my letter of September 7th, 2016, the key to getting the patent issued is to submit signed declaration forms from each named inventor before the patent issue fee is paid."

Do you see that?

A. Yes, I see that.

Q. Do you recall having any discussions with Mr. Jocke about that -- Mr. Jocke about that?

A. Mr. Jocke. To put clarity to this question, there was a lot going on around that time, so I don't have a very -- there's things that were going on that I don't have specific memory without seeing reference documents to clarify the situation.

Q. So you just don't remember one way or the other whether you discussed this with Mr. Jocke?

A. I don't remember this specific discussion. And --

and I'm only citing what you said and I don't remember specifically when the Steiger lawsuit settled, the exact dates and all that, but there were a lot of contentions around patent assignments to the effect of that's why I went to federal court, to ask a judge to sort out who was inventors and who was not inventors and then anyone that was an actual inventor, according to the judge, to have them assigned their rights to the company as they should have in the first place.

And that was where the federal suit came in that got conjoined or joined or whatever you call it legally to the state suit, and all these assignments and all of these declarations people were holding and not doing and not executing or did or would send them into Jocke, maybe he was sitting on them, I don't even know.

All I know for sure is there was a lot of contention around that lawsuit, so these declarations not having dates on them, and it is optional, as I can see. Am I shocked? No. But, again, it goes back to when this lawsuit was all said and done, what is an inventor? Where does that demark happen?

Q. Right, and you were copied on this email. Did it

ever occur to you to approach Mr. Jocke and say, "Hey, you know, I'm not so sure if these other three should be signing declarations. I just testified five months earlier that they're not inventors." That never occurred to you?

A. It occurred to me after the lawsuit that I knew less about inventors than when I started. And it was better to err to caution.

And as you can see further on in this email, it -- I did have a discussion with Mr. Jocke about inventors. If you look at 7843 and paragraph one, two, three, four down. "As we discussed today, a person is properly named as an inventor if they contribute to the development features that include at least one claim in the patent application."

Q. Right.

A. But that still did not clarify what is a contribution.

Q. Well, did you ever tell Mr. Jocke -- Mr. Jocke whether you thought the other three, Rebecca, Mr. Steiger, or Mr. Mandela contributed to any of the claimed subject matter; did you ever have that discussion?

A. Well, obviously I had some form of discussion with him based on this email, but still even with

this -- whatever discussion I had, he sends this back. And the bottom line comes down to it still does not define what a contribution is and what level of contribution has to be in a claim to qualify them as an inventor, and I'm more murky today than I've ever been.

Q. So do you recall having any discussion with Mr. Jocke bringing his attention to the substance of your testimony, sworn testimony in the Ohio State action and asking for his advice in connection with seeking these declarations, "Do we really need declarations from these other three given what I believe"?

MR. THOMAS: Object to the form of the question. I think it's been asked and answered and is compound, but you go ahead.

THE WITNESS: Thanks.

A. Can you break the question out, first off?

Q. I'm just trying to understand and maybe you did answer it, you never had a -- at least you don't recall having a discussion with Mr. Jocke despite the correspondence here regarding declarations about the substance of your testimony that you gave five months earlier regarding who you thought contributed to the claimed subject matter?

A. As I stated earlier, Mr. Jocke was completely well aware of the lawsuit and all the allegations flying around. His firm is small and he's right here in town and he was completely aware of what's going on. So to that degree Mr. Jocke was well aware, as even to the point he testified in court.

Furthermore, to the second part of your question, since it was a multi-part question, is that I am more murky today on what qualifies an inventor than I was back then because that clear delineation is not clear at all, at least to me.

Q. So it was clear enough to you, though, that you had Rebecca Conley removed as an inventor from the '881 Patent, though, correct?

A. Actually, when it comes to that, on the '881 Rebecca was removed because many of the claims that were produced on the '881, I do feel confident she did not contribute to any of those claims as an inventor.

Q. And why are you confident of that?

A. Because it has nothing to do with the metered dose inhaler. It has only to do with the core concepts that Mr. Hillenbrandt and I worked on originally.

Q. So why was the application filed in the first place with Rebecca Conley's name on it?

A. Just standard protocol. We didn't know where we were going to go with all the claims and then when we got done constructing it, then we realized there was nothing that was part of her core -- part of her contributions.

Q. Well, then -- okay. Well, then how come it was filed with Rebecca's name on it but not Steiger's and Mandela's?

A. Because Steiger and Mandela are all out of the company, so they can't contribute unless it's something previous.

Q. Well, that's what the '881 was directed to, was a continuation of previous applications, right?

A. It was a continuation of previous applications, but we didn't know what the claims were going to look like. We had to construct those.

Q. Okay. So you didn't know what the claims would look like. How do you make a determination that Steiger and Mandela don't get listed as inventors but Rebecca does?

A. It was standard protocol. We just -- we were following a -- excuse me. We were following a CIP and we wouldn't know what it looked like until we got done. We -- it's just part of the process and when we were done, we cleaned it up and made sure

that the proper inventors were named on it, which was Mr. Hillenbrandt and I for the '881.

Q. Who was involved in the decision to clean it up and remove Rebecca Conley?

A. All of us were.

Q. Who's "all of us"?

A. Myself, Mr. Hillenbrandt, and Rebecca.

Q. Did you have input from counsel?

MR. THOMAS: I'm going to instruct you not to answer unless that -- unless that input came from the Walker & Jocke firm on prior issuance of the '604 Patent.

A. There was no -- nothing from Walker & Jocke that was used as input for this decision.

Q. And just so I understand something, is it -- the reason why Mr. Steiger and Mr. Mandela weren't listed as inventors in the application that led to the '881 Patent is because they had left the company at that point in time?

MR. THOMAS: Object to the form of the question.

A. Can you -- well, I can just -- I would say that we, the three of us, and I'm referring to Mr. Hillenbrandt, Mrs. Conley, myself, are still at Fuma working every single day and when we were

performing the creative process we know the three of us are around. We don't know who's going to contribute or not contribute and we don't know what those claims are going to look like, so when we filed the CIP we put all three of us on the CIP just because we didn't know what it was going to look like when it was done.

Q. Did you understand the claims couldn't claim anything that wasn't already in the applications that existed and were filed when Mr. Mandela and Mr. Steiger were with the company?

A. There was an embodiment that predated Mr. Steiger and Mr. Mandela and we seek advice of counsel and we listen to our counselors.

Q. So you sought advice of counsel on who to properly list as inventors on the '881 Patent, fair?

MR. THOMAS: I think you can answer that yes or no.

Q. And that counsel was the Martin firm?

MR. THOMAS: You can answer that yes or no.

A. Yes.

Q. Was Mr. Thomas included in that analysis and advice?

A. No.

MR. THOMAS: Too late.

MR. GABRIC: Don't worry. You already waived. It's a joke.

MR. THOMAS: You know, any time we do anything that sounds like a waiver, you wonder why everybody collects everything that might possibly be privileged, just because they don't want to be accused of waiving anything and so it's your fault there's 2,000 items on privilege logs.

Q. So when is the first time you became aware of the RJR VUSE product?

A. That's a good question.

Q. Two of them today.

A. The first time I became aware of the RJR VUSE product would have been twenty -- I believe it was 2014 or 2013. Please don't quote me. I can't remember exactly.

Q. What were the circumstances of how you became aware of it?

A. Well, being a plank owner in this industry in the original vendors on our patented designs, we keep our ear very close to the news about anything vapor related, so I don't remember exactly how we heard about it.

Q. Did you -- did there come a time where you actually got possession of a VUSE product?
A. Yes.
Q. When did that happen?
A. As soon as we could get one.
Q. And when approximately did that happen?
A. I don't remember. We get all our competitor's stuff to look at.
Q. Okay. How soon after you first learned of it?
A. Probably the first time it was available locally.
Q. Can you give me a year, to the best of your recollection?
A. Not really.
MR. THOMAS: Your client might know better than him.
MR. GABRIC: Well, I know my client knows. I'm just curious what he -- my client doesn't know when he got it, though.
MR. THOMAS: Yeah, but he knows when it was available locally.
Q. So why did you obtain a -- which product was it, do you recall, was it the Solo?
A. We obtained -- on a regular ongoing basis, we try to pick up one of every competitor's products when we find something new just so we can keep an eye on

the market. It's just good competitive knowledge.
Q. Have you reviewed the complaint that your company has filed against RJR?
A. Yes.
Q. Okay. And you're familiar with the products that your company is asserting infringed your patents?
A. I believe I am.
Q. That product that you obtained, is it similar to the other products identified in your complaint?
A. I'm sorry, can you clarify the question, please?
Q. Yeah.
I'm curious, this product of RJR that you obtained, is it similar to any of the products identified in the RJR -- in your complaint against RJR?
A. The complaint we have against RJR, the product that I obtained back then versus the one -- because we've obtained multiple products over the years.
Q. Okay.
A. It's not just one.
Q. All right. So when did you first obtain a Solo product?
A. Again, I don't remember. We've had multiple versions of everybody's products.
Q. And what did you do with it when -- let's use the

Solo as an example. What did you do when you first obtained the Solo product? What did you do with it? Tear it down, put it on the nightstand to look at? What did you do with it?

MR. THOMAS: Object to the form of the questions.

A. It depends on when you're talking, what time frame you're talking about. If you want to talk what time frame can you please help me understand what you're asking?

Q. The first Solo product of RJR you got, what did you do with it?

A. The first Solo product, most of the time we would just try to use it and see how it worked.

Q. Okay. And did you tear it down, take a look inside?

A. I don't know. Maybe. Maybe not. I couldn't answer that.

Q. What about the Zero product?

A. The same answer.

Q. Do you recall if you ever looked inside it, tore it down?

A. I know at some point we tore down the Solo and the Zero and along with everything else.

Q. And do you have any documents or records of when

that took place?
A. Myself, no.
Q. Well, who does?
A. I don't know, but someone might.
Q. Well, who's the logical universe of someones?
MR. THOMAS: I'm going to instruct you not to answer to the extent that that's going to require you to divulge the communications you had with me or any other of your counsel, other than at Walker & Jocke prior to the issuance of the '604 Patent. Okay, so if you can answer without divulging that communication, any such communications, go ahead.
A. I can't answer.
Q. Okay. And I'm not -- I just want to make sure I understand something. So to the best of your knowledge, the first time anybody on behalf of Fuma obtained either a Solo and/or a Zero and tore it down would have been in connection with the efforts of Mr. Thomas?
MR. THOMAS: I'm going to instruct you not to answer on the grounds of attorney-client privilege. Every time I let him answer something, Ralph, you say it's not a waiver so

we're not going to go anywhere close to that boundary.

Q. Are you following his advice?

A. Yes.

Q. Okay. Do you know whether you ever obtained a Solo or a Zero product prior to engaging Mr. Thomas?

MR. THOMAS: Or any other attorneys.

A. I can't answer that then.

MR. THOMAS: Then I instruct you not to answer.

MR. GABRIC: All right. Why don't we take -- we may be close to a logical break.

MR. THOMAS: It sounds good.

THE WITNESS: Sounds good.

THE VIDEOGRAPHER: Off the record, 6:29.

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(Thereupon, a recess was had.)

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THE VIDEOGRAPHER: We are back on the record at 6:50.

Q. Mr. Conley, do you have a college degree?

A. Yes, I do.

Q. And what's your degree in?

A. It's in computer science.

Q. And what kind of degree, BA, BS?
A. It's a bachelor's of science.
Q. And any other degrees?
A. I've got other formal education from the Navy and other places.
Q. Okay.
A. And factory schools.
Q. Your college degree is from where?
A. I believe the university, it's called Trinity Southern.
Q. And where is that located?
A. Well, now I couldn't tell you. Back then it was supposedly in Texas.
Q. And do you have an actual diploma that says Trinity Southern University?
A. As soon as I can find it. Both of my children moved out of my home, and it went missing.
Q. Okay. Did you attend any classes at Trinity Southern University?
A. Online.
Q. They were online classes that they offered?
A. Correct.
Q. And how many credits or classes did you take online from Trinity Southern?
A. I don't remember exactly.

Q. Well, was it one, two?
A. It was a couple.
Q. A couple. Over what time frame?
A. At that time, I was working for ABB, so I couldn't give you the exact time frame. I just know where I was working.
Q. Can you give me an approximate time frame?
A. For?
Q. Your diploma probably has the year on it, correct?
A. Yeah, I -- it does, but when I can find it --
MR. THOMAS: You need to raise your microphone.
THE VIDEOGRAPHER: Just turn it. It's upside down.
MR. THOMAS: Yeah, there you go.
THE WITNESS: No, it was right side up. Oh, there it is. I'm sorry.
MR. THOMAS: There you go.
THE WITNESS: Okay. There. Is that better?
THE VIDEOGRAPHER: Yes.
THE WITNESS: Okay.
A. Sorry.
Q. And did the Trinity Southern University give you any credits for classes you didn't actually take

from them?
A. Yes. As a matter of fact, a majority of my credits were earned through going through a whole process with them. They were an online university and it was recommended by my HR department and my boss at ABB and it was -- a lot of it was through life skills and military experience and other things I had done in my life. And I went through a very lengthy, painful process with them trying to get that all accomplished.
Q. Who did you deal with at Trinity University to get that accomplished?
MR. THOMAS: Trinity Southern University.
Q. Trinity Southern University.
A. Trinity Southern University. I don't remember my person that I worked with.
Q. Okay. Are you aware of Trinity Southern University ever getting into any problems with their regulators?
A. Yes, they got in trouble and I believe they lost their accreditation.
Q. Were they accredited when you went there?
A. They claimed accreditation. I don't know which accreditation. I can't remember. Again, it was

recommended to me.
Q. Do you know whether they were charged with running a bogus degree scam?
A. I don't know. They might have been. I remember Google-ing something on the Internet and something about a cat getting a degree.
Q. I think we can all agree it's probably not appropriate?
A. Probably not, but who knows what the exact scenario was, too.
Q. So you mentioned some military service. You were discharged from the military?
A. Yes, I was.
Q. What type of discharge?
A. I had a general under honorable conditions.
Q. Pardon me, what did you say?
A. I had a general discharge under honorable conditions.
Q. Okay. What does that mean?
A. It's a discharge that's a general discharge but it's under honorable conditions.
Q. And it's not the same thing as an honorable discharge, correct?
A. Correct.
Q. And it's some level below an honorable discharge?

A. It's still an honorable discharge. It's not a complete honorable, but it's still an honorable discharge. I get all my benefits.

MR. GABRIC: Could you mark this.

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(Thereupon, Defendant's Exhibit 23 was marked for identification.)

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Q. I'm going to mark as Defendant's Exhibit 23 and ask you if you can identify this document?

A. Yes, this is a copy of my DD 214, which is my discharge paperwork from the United States Navy.

Q. And there is a -- down there at the bottom in the box labeled 28, narrative, reason for separation. Do you see that?

A. Yes.

Q. It says pattern of misconduct. Do you know what that's referring to?

A. Yes, I actually do.

Q. What's that referring to?

A. The pattern of misconduct is I made mistakes on paperwork.

Q. What kind of mistakes?

A. It was more than one piece of paperwork and the last one was a leave chit and I got the date wrong

on it --
Q. I'm sorry, a what?
A. In the Navy if you want to go on vacation or leave, as they call it, you have to put in a request form and it's called a chit and then everybody has to sign off on it.
Q. And, what, you got the date wrong you said?
A. I messed up the date on it, yes.
Q. And was there a pattern of these type of mistakes?
A. I had made a mistake before.
MR. THOMAS: Do you have a copy of his most recent exhibit for me?
MR. GABRIC: I'm sorry. I thought I gave you one.
MR. LEYES: I'll just give you the one I have.
MS. MILLER: I gave you one to give him.
MR. THOMAS: Thanks.
MR. GABRIC: Sorry.
Q. So did they ask you to leave?
A. Yes, they asked me to leave.
Q. And there's a separation code, box 26, GKA, I think that is.
A. Okay.

Q. Do you know what that stands for?
A. No, I don't. I know what the RE 4 stands for, but not the GKA.
Q. You anticipated my question. What's RE 4?
A. RE 4 is no reentry.
Q. So you can't reenlist?
A. I could not reenlist, correct.
Q. With the Navy?
A. Correct.
Q. I mean, if we were in World War III, they wouldn't let you reenlist?
A. I don't know that answer.
MR. THOMAS: Might be a little old for that one. And hopefully there's no World War III.
MR. GABRIC: I'm with you there.
Q. Have you ever been charged with any felonies?
A. Charged, yes, I have been charged with one felony.
Q. When was that?
A. It was more recently, just over the period of this year.
Q. What were you charged with?
A. I don't -- I can't remember the exact name of the charge, but I know what it was for.
Q. What was it for?

A. I actually got an OVI and I had a -- my CCW weapon on me in my vehicle.
Q. What's an OVI?
A. OVI also known as DUI, but in Ohio we call them OVI.
Q. And you referred to a CCW?
A. Concealed weapons permit, concealed carry weapon.
Q. Do you have one of those?
A. The weapon or the permit?
Q. The permit.
A. Not currently. But I'm eligible to get another one.
Q. Okay. So you were pulled over for an OVI?
A. Correct.
Q. And you had a weapon on you?
A. I had a loaded weapon on me.
Q. What kind of weapon did you have?
A. A pistol.
Q. And where were you pulled over?
A. On Route 71.
Q. In Ohio?
A. Correct.
Q. And did you enter a plea or are you fighting this matter?
MR. THOMAS: Object to the form of the

1 question.
2 A. Can you restructure the question, please?
3 Q. Yeah.
4 Are you defending against this matter?
5 A. Not anymore, no. The matter has been reduced to a
6 misdemeanor and all matters have been cleared up.
7 Q. And did you have to plead to a misdemeanor, enter a
8 plea of guilty?
9 A. Entered a plea of guilty to the misdemeanor,
10 correct.
11 Q. And what was the misdemeanor?
12 A. I can't remember what the misdemeanor's exact
13 charge was right now, but it's an M1.
14 Q. Was there a fine associated with that?
15 A. Yes.
16 Q. What was the fine?
17 A. $100.
18 Q. And are you on probation?
19 A. No.
20 Q. And --
21 A. And I'm eligible to get a CCW again.
22 Q. And there was no -- I take it, no prison time?
23 A. I was arrested on a felony warrant and I did spend
24 time in jail.
25 Q. Where were you arrested?

A. Florida.
Q. Were you extradited to Ohio from Florida?
A. Yes, I was. I spent ten days in jail in Florida and then I got extradited from Florida to Ohio where I was released on my own recognizance.
Q. Yeah, what was the -- was the felony warrant for this OVI?
A. The felony warrant was for -- there was a charge in Ohio that if you have a CCW and you have a loaded firearm on you while you're intoxicated, that qualifies as a felony charge and I got two felony charges, an F -- an F4 and an F5 for the same instance.
Q. Okay. And that -- and so -- and I'm a patent lawyer, obviously, not a criminal lawyer, so I apologize --
A. No.
Q. -- so you were pulled over in Ohio within the last year or so, OVI, you had a loaded weapon?
A. Yes.
Q. And that's against the law in Ohio. They -- when you were pulled over, did the officer just write you a ticket and let you go home or what happened?
A. No, it's an OVI. It's standard procedure in Ohio. I was pulled over, procedurally I had to let the

officer know I had a weapon there. I did.
Q. Yeah.
A. I was administered a field sobriety test.
Q. Okay.
A. They determined I was intoxicated and they arrested me at that point and took me to jail. The next day I was bonded out of jail. No charges were brought on the felony side, all the way until July. I was in Florida on business and I got -- I got pulled over in Florida in a zone that was an unmarked speed zone and that's when I found out that the day before that a secret Grand Jury had issued a warrant and charged me on the felony charges.
Q. So you were pulled over for speeding down in Florida. The officer in Florida runs a check on you and sees this --
A. Correct.
Q. -- warrant. They bring you into jail in Florida and they transfer you back up here to Ohio?
A. Correct.
Q. All right.
A. That's it.
MR. THOMAS: And you're not a criminal lawyer. You had that just right.
MR. GABRIC: I'm not -- I'm taking the

Fifth on how maybe I would know that, but . . .
Q. Who's paying for this lawsuit?
MR. THOMAS: Object to the form of the question. I'm sorry, don't answer that on the ground of privilege. I instruct you not to answer.
Q. Who has a financial stake in this lawsuit?
MR. THOMAS: Same instruction.
Q. I'm assuming you're following counsel's advice?
A. Yes.
Q. What did you do to prepare for today's deposition?
A. Today's deposition, I met with my legal counsel prior to this, before this, not prior -- well, same thing. Met with legal counsel.
Q. Who did you meet with?
A. I met with Mr. Thomas and, well, Dirk and Brandon, and Chris.
Q. Chris Sullivan?
A. Yes.
Q. Anybody else?
A. No.
Q. And when did you meet with them?
A. I met with them over the last 48 hours, last couple days.
MR. GABRIC: So I think this is

probably a good time to --

MR. THOMAS: Okay, I've got some redirect, so whenever you're finished you just let me know.

MR. GABRIC: Okay. I'm finished.

MR. THOMAS: Okay.

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DIRECT EXAMINATION OF GREGORY D. CONLEY

BY MR. THOMAS:

Q. Do you recall you had given some testimony earlier today, Mr. Conley, concerning a Smoke 51 device, a Kanger device and a Loong Totem two-piece design, I believe you called it. Do you recall that?

A. Yes, I do.

Q. Okay. Were there any differences, to your knowledge, between the two-piece devices that I just described?

A. No. As far as how they functioned, they all functioned the same and they were all built the same. I pulled the top off of all of them, looked down in there, saw the same burnt batting material. All of them were identical.

Q. Where did you see -- when you pulled the top off and looked inside, what did you notice, if anything, about where the heating element was?

A. It was the same configuration, all three. The heating element went down through the batting material and was the source of all the problems I initially encountered when I got into this industry.

Q. I'm going to show you what we've marked as Exhibit 2 or if you could pull it out. We marked it as Exhibit 2 earlier in the case. Could you pull that out?

A. Okay. I have that document here.

Q. Hang on a second. I've got to find mine.

Hold on. I've got the wrong exhibit number.

A. It's not Exhibit 2?

MR. THOMAS: It's not Exhibit 2.

A. Okay.

MR. JORDAN: It's -- hang on. We just have to find it in our copy.

A. No worries.

Q. Yes, Defendant's Exhibit 2. I did have the right one, so if you could pull that out, please.

A. Okay.

Q. You were asked some questions about the image that's shown on the left that I believe Mr. Gabric had you mark some pieces of. Do you recall that?

A. Yeah, he had me mark that up on Exhibit 2 A, which

I believe I have a copy of here.
Q. Okay.
A. Let me look and see if I have that. Yeah.
Q. Okay.
A. 2 A is the one he had me mark that on.
Q. What device was that sketch intended to represent?
A. That --
Q. To your knowledge or your knowledge, what devices was that sketch intended to represent, to your knowledge?
A. That device represents either the Smoke 51 or the Loong Totem or the Kanger 808. They were all the same. They were all built the same, so in general it's meant to represent all of them.
Q. Okay. I'm going to draw your attention now to Exhibits 9 and Exhibits 4.
A. Okay. All right. I got those.
Q. Starting with what's been marked as Defendant's Exhibit 9 --
A. Yes.
Q. -- do you see up there you were asked some questions about this phrasing. It says initial date. Do you see that?
A. Yes, I do.
Q. All right. And you testified, I believe, that you

had asked Mr. Hillenbrandt to do something, correct?

A. That is correct. I -- we were collaborating on some of this, and I asked him to initial and date it.

Q. When you asked him to initial and date it, what did you intend that he do?

A. I intended that he actually put his initials and then put the date on it. Instead, he wrote "initial date" on it.

Q. Do you know whether or not Mr. Hillenbrandt had ever maintained any sort of documents that required initialling and dating for corroboration?

A. Not that I'm aware of.

Q. Drawing your attention again to Exhibit 4, the last page, the last page of Exhibit 4, it's got Bates Number FUMA 00073230. Do you see that?

A. 230, yes, I do.

Q. Okay. Can you identify that for me?

A. Yes. This is a -- this is actually a drawing that was done by Mr. Hillenbrandt and it was done in August of 2009 and it was used in preparation for our first production run.

Q. Okay. And does this show the Fuma design for a cartomizer or a cartridge?

A. Yes, it does. At the top left there is a cartomizer design to show tolerances.
Q. And does that illustrate where the heating element is located?
A. Yes, it actually represents and shows where the heating element is in the airflow itself.
Q. And exactly what does it show by way of the placement of the heating element?
A. In this exact configuration, the heating element is placed at the bottom of the airflow through the center of the airflow with a transverse coil within that.
Q. Okay. And are these drawings consistent with your original production run of the devices that you ordered from Trans-Power?
A. Absolutely.
Q. Okay. And were -- is this drawing dated on or about the time when you received the original prototypes from I believe it was Trans-Power?
A. That's correct.
Q. And these are original prototypes of the Fuma design, correct?
A. Correct.
Q. And the Defendant's Exhibit 009, the one that has the date July 31st, 2009, does this also

corroborate your possession of your invention as of the -- at or around the time you received the original prototypes?

A. Yes, it does.

MR. GABRIC: Objection to form.

Q. What does this drawing represent to you that we've seen and marked as Exhibit DX 009?

A. If you look at the top center drawing sketch, whatever you want to call if that has heating element labeled on it, that represents our original prototypes that we actually made, built, and went to production on and took to market.

Q. Does this drawing corroborate that no later than the date that you received the original prototypes of your design that you had a drawing depicting what the configuration was for your design?

MR. GABRIC: Objection to form.

Q. You can answer.

A. Yeah, this actually clearly shows that not only did we have the intent, but we were in the -- we knew exactly what we were doing.

MR. THOMAS: Okay. I'm going to have the reporter mark as a next exhibit, we'll call this Conley Exhibit 1. We'll call it Conley -- I don't want to make it a Defendant's Exhibit

so I'll just call it Conley Exhibit 20. I believe that was the next -- was that the next number?

MR. JORDAN: Next number is 24.

MS. MILLER: We're going to have a number 24.

MR. GABRIC: Plaintiff's 1.

MR. THOMAS: I don't like marking deposition exhibits sequentially because it could be going at the same time, so that's not going to be my process in this case. So I'm just going to mark this as Conley Exhibit 1, okay.

Would you mark that for me.

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(Thereupon, Conley Exhibit 1 was marked for identification.)

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Q. Mr. Conley, I'm going to ask you to pull out what's been marked as Defendant's Exhibit 3. It's a copy of the '604 Patent.

A. Okay. Exhibit 3, okay. I've got that.

Q. Okay. And I'm going to hand you what we've marked as Conley Exhibit 1, and for the record I represent that this is a copy of a Wikipedia page titled

"electronic cigarette." It's just in a color version of it and a better copy than the one that was marked as Defendant's Exhibit 16.

But if you could take a look --

MR. GABRIC: I'll just note for the record the one marked as Defendant's Exhibit 16 is from the certified copy of the file history from the US Patent Office.

MR. THOMAS: The patent office when it scans documents only scans them in black and white and only scans them at a hundred dots per inch, so that does not mean that that was the only version that the patent office got. It just was the version the patent office -- the way they scanned it.

So the record will be clear that the one that was presented to the patent office isn't the one that was -- does not have the same contrast and the same resolution as the copy you marked, but regardless.

Q. If you could take a look at what we've marked as Conley Exhibit 1, and I want you to compare the URL, uniform resource locator, here --

A. Yes.

Q. -- with the page 2 of the '604 Patent under other

publications.
A. Yes.
Q. And you see where it says Wikipedia electronic cigarette?
A. Yes, I do.
Q. Can you compare and confirm for me that the URL address and what we've marked as Conley Exhibit 1 is the same as the URL address that's reported on the '604 Patent under other publications?
MR. GABRIC: Objection; foundation.
Q. Just the first HTTP address.
A. Yes. Yes, it is the same.
Q. Okay. Does this -- what we've marked as Conley Exhibit 1, does it depict what you understood to be the two-piece Smoke 51 Duo device?
A. Yes, it does.
Q. Where?
A. It's the third -- it's in the picture up here. It's the third device down. They all look -- you know, the colors change, the marking, the outside graphics change, but they all look the same.
Q. And when you say they all look the same, what are you referring to when you say "they"?
A. They would be Kanger 808, Kanger 808, a Loong Totem, whatever, you know, Smoke 51, whoever they

were having them make their brand label, it was all the same devices.

Q. And is there a written description of the existence of a two-piece device with a cartomizer in that Wikipedia entry?

A. In fact, there is.

Q. And could you point that out to us, please?

A. If we go to page 2 of 9, about the fourth section down called heating element, in parentheses, and commas [sic], atomizer, it says, "The heating element serves to vaporize the liquid in the mouthpiece so that it can be inhaled. This component is referred to in the industry as an atomizer. Some models combine an atomizer and a prefilled cartridge into one disposable component referred to as a cartomizer."

Q. And do you have an understanding -- what was your understanding as to what the cartomizer was that was being referred to there?

A. The cartomizer being referred to would have been just exactly like the -- you know, the Smoke 51 cartridge or the Kanger 808 cartridge or the Loong Totem cartridge or any number of others that were exactly the same in form and function and design.

Q. Okay. Thank you. You can hold on to that.

MR. THOMAS: I have no further questions.

MR. GABRIC: I just have a few.

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RECROSS-EXAMINATION OF GREGORY D. CONLEY

BY MR. GABRIC:

Q. Why don't we start with Plaintiff's Exhibit 1 and pull out Defendant's Exhibit 16, please.

A. Yes. Sorry. Did I bump that?

Q. No, I did that. I did it all by myself.

A. Okay. What exhibit, please?

Q. Defendant's Exhibit 16.

A. Okay. Thank you.

Q. I want you to compare the headers in Defendant's Exhibit 16 with Plaintiff's Exhibit 1. Do you see there's a difference?

A. I'm sorry, what header are you referring to?

Q. I'm referring to Defendant's Exhibit 16 header that says Internet archive Wayback Machine 28 captures. Do you see that header there?

A. Yes.

Q. All right. Is that header on Plaintiff's Exhibit 1?

A. No, that Wayback Machine header is not on Conley 1.

Q. All right. Do you have an explanation for the

difference?
A. One is actually pulled directly off the Wayback Machine, obviously. The other one is -- I don't know how it was printed, but it's printed off the -- it's printed directly from the archive site.
Q. Did you ever submit Conley Exhibit 1 to the patent office, that actual document in color?
A. This Website was actually cited and submitted with the patent application as referenced on the patent application.
Q. Did you actually ever -- based on personal knowledge, are you aware whether or not a color copy of plaintiff -- or Conley Exhibit 1 was submitted to the patent office?
A. It was made aware to the attorney and I don't know who discovered it, him or I, but it was referenced on the application. Do I know if this actual hard copy was mailed or not, I don't know.
Q. Well --
A. I trust my patent attorney. He handled it.
Q. Did you provide your patent attorney with a color copy of Plaintiff -- or Conley Exhibit 1?
A. I don't know.
Q. How do you know that a color copy of Plaintiff's Exhibit 1 was provided to the patent office?

A. I don't know that a color copy was provided to the patent office.

Q. And so do you have an explanation of why Defendant's Exhibit 16, which is from the certified copy file history, the official records at the patent office, is different than Plaintiff's -- or Conley Exhibit 1?

A. I don't know. I can look at that same -- I can read from the plaintiff -- I can read from Defendant's Exhibit 16 the same section that I just read from this, and that is the heating element atomizer. And I will read from Defendant's Exhibit 16, again, what I just read from Conley -- Plaintiff's Conley 1 exhibit.

"The heating element serves to vaporize the liquid in the mouthpiece so that it can be inhaled. This component is referred to in the industry as an atomizer. Some models combine an atomizer and a prefilled cartridge into one disposable component referred to as a cartomizer."

It appears to be exactly the same.

Q. Do you have a personal knowledge of the examiner actually having a color copy?

A. I have no knowledge.

Q. All right. So let's take a look at the first page,

that third device you just testified about.
A. Yes.
Q. And is that a C -- what is that, a CTM 401?
A. I don't know what device that is. Just looking at it from the picture only, it looks like every other two-piece that was on the market.
Q. Did you testify that was a Smoke 51 device?
A. No, I testified it could be a Smoke 51 device. They were all the same.
Q. Are you just speculating which device is illustrated here?
A. I'm just looking at a picture and I'm telling you exactly what I see.
Q. Is it a Smoke 51 Duo?
A. It does not have the Smoke 51 Duo markings on it, but, again, it looks exactly like a Smoke 51 Duo product.
Q. So you --
A. With different colors.
Q. So you don't know whether or not that's a Smoke 51 Duo?
A. I don't know. It's -- they were all pretty much the same.
Q. And you don't know whether or not that device is a Kanger KR -- 808D-1?

A. I do not know if that's a Kanger 808 or the Smoke 51 or a Loong Totem because they were all exactly the same.
Q. Or maybe none of those three?
A. Could be none of those three. Could be a different two-piece. They were, again, all built the same.
Q. And does this Wikipedia site disclose the details of the internal structure of a two-piece cigarette at the level of detail shown in your Defendant's Exhibit 2?
A. I do not see any drawings further explaining that in detail. There are a mass number of hyperlinks after that. I don't know where they take you. I do know that you can go on the Internet and Google an e-cigarette form and a bunch of other places that show the Smoke 51 device or the Loong Totem or Kanger 808, that during that time frame that had been taken apart.
Q. So the level of detail shown in your Defendant's Exhibit 2, that sketch is not found in the Defendant's Exhibit 16, correct? Is that correct?
A. Oh, I'm sorry, I didn't hear you.
Q. The level of detail of the internal structure of the two-piece device illustrated in Defendant's Exhibit 2 is not shown at that level of detail in

Defendant's Exhibit 16?
A. No.
Q. No, it's not shown in that level of detail?
MR. THOMAS: Object to the form of the question.
A. It's not shown in that level of detail on this particular reference, but it is easily ascertainable off the Internet.
Q. Do you expect the examiner to go looking at the Internet to figure it out?
A. The examiner is a very intelligent person. They're all very intelligent and given this as a starting point, I expect that they could be able to find innumerous amounts of data.
Q. Why didn't you just give him Exhibit 2? Why didn't you make sure the examiner had Defendant's Exhibit 2?
A. I don't know.
Q. Do you have any explanation for that?
A. No.
Q. All right. Let's look at Defendant's Exhibit 4, the last drawing you testified about. FUMA 73230. Where is the wick?
A. This is a tolerance drawing. It would not represent a wick. It's not a complete drawing.

Q. There's no wick in there?
A. There's no wick shown in that drawing because this is a tolerance drawing, not a complete drawing.
Q. Okay. What else is missing? Is there a solution holding medium in here?
A. No, it is not represented in this drawing.
Q. Any threaded electrodes in here?
MR. THOMAS: Object to the form of the question.
A. Can you rephrase the question for me, please?
Q. Yeah.
Show me where the threaded electrodes are in this drawing. I don't see any. Am I missing something?
A. No, there is no threads represented here except for the actual size of the threads is called out. Here M 7.62 by .75, that is actually calling out the thread pattern for the battery and the opposite for the cartridge.
Q. How do I know that's the size of threads?
A. Because it's called out here. M 7.62 by .75, and that is a thread pitch that's commonly used, and I did not do this drawing and I would not be the right person to ask this. Mr. Hillenbrandt is going to be much more informed on this.

Q. What kind of heating element is this depicted here?
A. That's not specified in this drawing.
Q. Is it a porous heating element?
A. It's not specified in this drawing.
Q. Okay. Do we know whether that heating element has the ability to pull liquid from a liquid solution medium?
A. That's not specified in this drawing.
Q. And how does the liquid get to the heating element?
A. There is other previous art work we've reviewed today that showed that.
Q. But that's not shown in this drawing either?
A. Correct. This is -- this is a tolerance drawing for trying to get manufacturing done, accomplished.
Q. And this was a tolerance drawing for who?
A. This is a tolerance drawing that we made that it was -- we were trying to be able to get our Chinese suppliers to hold tolerances.
MR. THOMAS: I'm sorry, what's the exhibit number here?
THE WITNESS: 4.
MR. THOMAS: 4. Gotcha.
Q. Did you testify earlier today that your prototypes arrived sometime prior to the tobacco show that you went to?

A. Yes, the prototypes arrived. This was for production run.
Q. So tolerances weren't necessarily for the prototypes, but they were for the production run?
A. For the prototypes, as long as they fit together that's all we cared about. The cartridge, specifically the cartomizer, our patented design worked and functioned the way it was supposed to. For a full production run, we needed some production drawings to be able to hold tighter tolerances.
Q. Where are the rest of the production drawings and tolerances for the rest of the device?
A. This was the core component as far as tolerances being able to hold with these threads. Threads were our problem with China, and actually holding the diameters and thread tolerances is what was causing the problem, so we addressed the problem at hand.
Q. Did you provide tolerance diagrams for anything other than the threads?
A. All the engineering specifications and specifics to the design of the cartomizer itself and the Fuma design I did through the whiteboard with Jasmin operating as my interpreter working with the

engineering staff there. They were doing the grunt drawings after I gave them the technical specifications. I requested those drawings from China and I never received them.

Q. When did you request those drawings?

A. A long time ago.

Q. So the only drawings that have managed to survive and be in your possession are tolerance drawings for threads?

A. No, and the artwork and the sketch books and everything else.

Q. Well, the artwork, those aren't tolerance drawings, correct?

A. That's correct, they're not.

Q. The only tolerance drawings that managed to make it to, what are we, November [sic] 2019, are tolerance drawings for threads; is that true?

A. That would be correct.

Q. All right. So take a look at Defendant's Exhibit 9.

A. Okay. I'm sorry, what exhibit?

Q. Exhibit 9, Defendant's Exhibit 9.

A. Okay. Hang on one second, please. I'm just going to clean some of this up.

Q. Okay. You testified in response to questions from

your counsel about that figure at the top middle part of the page, right?

A. That is correct.

Q. All right. Where is the wick?

A. In this sketch, there is not a wick. It's assumed, not drawn.

Q. Why is the wick not drawn?

A. Whatever our discussion was at that point in time, it was not relevant to the discussion.

Q. How did the liquid get to the heating element?

A. Through a wick.

Q. Isn't that a pretty important piece?

A. Obviously not for this discussion.

Q. And who drew this?

A. I don't know if Mr. Hillenbrandt drew it or I drew it or we both drew it. It was something to that effect.

Q. Okay. Are there threaded electrodes illustrated here?

MR. THOMAS: Object to the form of the question.

A. In this particular drawing, the threads were not drawn but obviously whatever we were discussing at the moment it served no purpose.

Are we done with this piece, sir?

Q. Yes, we are, sir.
Can you pull up the '604 Patent that you have in front of you, Exhibit 3.
A. Okay. Exhibit 3. I keep trying to stay organized here.
THE VIDEOGRAPHER: I'm sorry, we need to stop, change DVDs here in a second.
MR. GABRIC: This is probably my last question.
THE VIDEOGRAPHER: Okay.
MR. GABRIC: Do you have time or no? What have you got?
MR. THOMAS: I've got a few more questions after that.
THE VIDEOGRAPHER: I have a minute. I have a minute left on this DVD.
MR. GABRIC: Go ahead and change it.
THE VIDEOGRAPHER: Off the record at 7:33.
- - - -
(Thereupon, a recess was had.)
- - - -
THE VIDEOGRAPHER: Back on the record, 7:39.
MR. THOMAS: Do you want to say for

the record you don't have any?

MR. GABRIC: Yeah, yeah, yeah. Thank you. I have nothing further at this time.

MR. THOMAS: Mr. Conley, I do have a few follow-up questions.

- - - -

RE-DIRECT EXAMINATION OF GREGORY D. CONLEY

BY MR. THOMAS:

Q. If you could take a look at what was marked as Defendant's Exhibit 4. It's the Fuma International drawing. It's the last page of Defendant's Exhibit 4.

A. Yes.

Q. Does that drawing only show thread tolerances?

A. No, it doesn't only show thread tolerances. The thread tolerances were the initial thrust of it, but also making sure that the Chinese manufactured our atomizer in the airflow was part of this drawing.

Q. You see the term "atomizer coil" with the arrow in the upper left corner?

A. Yes, I do.

Q. What is that referring to?

A. That's referring to the atomizer coil that's in the cartomizer that goes to the center of the airflow.

Q. Okay. And if you could now pull out, if you will, what I've marked as Conley Exhibit 1, and what was marked as Defendant's Exhibit 16. They're the two Wiki page entries.
A. Yes. Okay. I have both of those.
Q. Yes. Now, by identifying to the -- to your patent attorney and to the patent office the web page that is in the Wikipedia URL address that we've marked as Exhibit Conley 1 and Defendant's Exhibit 16, did you believe that was sufficient to inform the examiner about the existence and the structure of the -- all the preexisting devices of which you were aware?
A. Yes. We felt that was more than adequate because not only does it show the device or a device here, but it shows the battery. It shows the threaded connection. It shows all of it.
Q. Okay. And you say it shows a threaded connection. A threaded connection between what elements?
A. If you look at the -- in the picture on the front page, there's four devices on the front and the very bottom picture, so it's just the battery and you can see the threaded portion.
Q. And what does that thread connect to?
A. It connects to the cartomizer.

Q. Do you believe -- did you believe that this described for the examiner the existence of a threaded connection between a battery and a cartomizer and a two-piece electronic cigarette of which you were aware?
A. Absolutely.
Q. I had asked you some questions earlier and had directed your attention to Conley Exhibit 1. Would your answers to my questions have been the same if I had directed your attention to what's been marked as Defendant's Exhibit 16?
A. My answers would have been the same.
MR. GABRIC: Objection; compound.
Q. Why?
A. My answers would have been the same because these two documents appear to be identical.
Q. Bear with me for one second. I'm going to direct your attention to what was marked as Defendant's Exhibit 8.
A. Okay.
Q. Now, I direct your attention to the body of this email. What was the subject matter of the exchange between you and Ms. Guo?
A. Well, the subject matter is we were trying to arrange for a payment.

Q. And what information was she giving to you?
A. She was giving me specific instructions on how to make the payment.
Q. Okay. And what did you do with the instructions on how to make the payment? Did you give them to somebody?
A. Yes. As you can see, I emailed it to all three owners, myself, Becca, and Dan, and Becca typically handles the payments and things of that nature, so I needed to communicate to her how to pay Ms. Guo.
Q. And was this a payment -- was this the first time you had made payments in this manner to Ms. Guo, to your knowledge?
A. To my knowledge, I don't think so, but I can't be sure.
Q. Okay. And does that refresh your recollection of why you may have cut and pasted this particular exchange with Ms. Guo into this email and sent it to Mrs. Conley and Dan?
A. That would make sense.
Q. And what would make sense?
A. Is that I'm trying to pass the information along to Mrs. Conley because I would work all night while they slept and then I would -- and then I would have to sleep and she needed to get this

information to be able to start her job early.
Q. And who was responsible for making these payments?
A. That would have been Rebecca Conley.
MR. THOMAS: Okay. I have no further questions.
- - - -
FURTHER CROSS-EXAMINATION OF GREGORY D. CONLEY
BY MR. GABRIC:
Q. Take a look at Defendant's Exhibit 4, the last page.
A. Is this the correct one?
Q. Yeah.
A. Okay. Thank you.
Q. Are there any tolerances for the atomizer coil shown there?
A. No.
MR. GABRIC: You'll all be disappointed I have nothing further.
MR. THOMAS: You don't?
MR. GABRIC: Yeah.
MR. THOMAS: Oh, okay.
- - - -
FURTHER DIRECT EXAMINATION OF GREGORY D. CONLEY
BY MR. THOMAS:
Q. Just one quick question. Going back to Exhibit 4.

MR. GABRIC: Starting to feel like a ping-pong ball?

MS. MILLER: Wait a minute. How can he go back to a question if you didn't ask him any questions?

MR. GABRIC: Well, I asked him a question about that.

MR. THOMAS: And he did.

MR. GABRIC: I did.

Q. You see where you had identified the position of the atomizer coil?

A. Is this the right drawing?

Q. Yes, that's the drawing. It's Bates Number FUMA 73230. Do you see that?

A. Yes, I do.

Q. Okay. And you had described the image that showed the atomizer coil, correct?

A. Correct.

Q. Is the position of the atomizer coil a tolerance?

A. It's not a tolerance. It was -- it was to make sure that when they were producing it they got it right because they didn't want to do this because no one had ever done this before, and we had a lot of pushback about this.

Q. Who's "they"?

A. China.
Q. And who in China?
A. Specifically the suppliers working with Trans-Power.
Q. Okay.
MR. THOMAS: I have no further questions.
- - - -
FURTHER CROSS-EXAMINATION OF GREGORY D. CONLEY
BY MR. GABRIC:
Q. Do you know whether these suppliers, these people in China, they -- you say they claim this was never done before, the orientation of the heating wire?
A. This orientation of the heating wire, they did not want to do.
Q. And why didn't they want to do it?
A. They wanted -- initially when I was trying to convey to them our design, they kept trying to tell Ms. Guo to tell me don't do it like that, do it the way we do it now.
Q. So they had informed you through Ms. Guo that they had never orientated the heating wire in that orientation before; is that your understanding?
A. They had never orientated the heating wire in a transverse -- transverse in the airflow before.

Q. But they didn't know whether anybody else had ever done that before, correct?
A. I'm unaware.
Q. And did Ms. Guo --
MR. THOMAS: Guo.
Q. -- Guo provide this information that it was apparently coming from them in any type of written format to you?
MR. THOMAS: Objection to the form of the question.
A. Actually, it sounds like a compound or multiple questions. Can you restructure it a little bit for me, please, so I can understand?
Q. Well, you just testified that they, these people at Kanger, the engineers, had never orientated the heating wire in this orientation depicted in this exhibit previously.
A. Whoever Ms. Guo was working with initially --
Q. Uh-huh.
A. -- and later I came to find out it was most likely Kanger, had never -- they wanted to build it the way they have always built it, which is the heating element going down the side through the batting material. That's how they wanted to build it. They didn't want to build it like this.

Q. That's what Ms. Guo told you?
A. Yes.
Q. And she told you this orally?
A. I'm sorry?
Q. She told you this orally?
A. Yes. Well, through Skype.
Q. And is there any record of this?
A. No.
Q. Was anybody else present when she told you this?
A. I worked mostly alone at night because I worked on their hours to get the maximum mind share. Engineers typically don't work American hours over there, they work Chinese hours, so if you want to be able to interface with the engineers, you have to stay up all night and work their hours.
Q. So the answer is nobody else was present when she told you this?
A. That's correct.

MR. GABRIC: Nothing further right now.

MR. THOMAS: No, I'm good.

THE VIDEOGRAPHER: Okay. Reading or waiving?

MR. THOMAS: No, we are not waiving. Read and sign.

THE VIDEOGRAPHER: Okay. We are off the record at 7:51.

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(Thereupon, a discussion was had off the record.)

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MR. THOMAS: Fuma designates the entirety of this transcript for present purposes as confidential under the protective order. When the witness has an opportunity to read it, he will designate any portions of it that are to remain confidential, if any, and we will inform opposing counsel if there are any such portions of the transcript that we desire to have treated as confidential under the protective order or whether the entirety of it can be treated as nonconfidential.

(Deposition concluded at 7:53 p.m.)

I have read the foregoing transcript from Page 1 to Page 301, and note the following corrections:

PAGE	LINE	CORRECTION	REASON

_____
GREGORY D. CONLEY

Subscribed and sworn to before me this ____ day of _____, 2019.

_____

Notary Public within and for the State of Ohio. My commission expires:

THE STATE OF OHIO,)
) ss:
COUNTY OF MEDINA.)

CERTIFICATE

I, Laura Ware, Notary Public within and for the State of Ohio, duly commissioned and qualified, hereby certify that the before the giving of his deposition, GREGORY D. CONLEY was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; and that the testimony was taken by me by means of stenotype in the presence of said witness.

I further certify that said deposition was held at the time and place specified in the above caption and was concluded on the 4th day of December, 2019.

Further, I certify that I am not a relative, counsel or attorney at law for any party to this suit, nor am I interested in the event of same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Medina, Ohio on this 6th day of December, 2019.

_____
Laura Ware, Notary Public
within and for the State of Ohio
My commission expires 05/17/23.

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