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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROVISUR TECHNOLOGIES, INC.,

Petitioner,

v.

TEXTOR MASCHINENBAU GMBH,

Patent Owner.

Case IPR2024-00224

Patent No. 9,457,487 B2

Deposition of LAUREN KINDLER

Conducted Remotely

Friday, September 13, 2024

10:06 a.m.

Reported by: Matthew Goldstein, RMR, CRR

DIGITAL EVIDENCE GROUP

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Provisur EX1047
U.S. Patent No. 9,457,487

1 Deposition of LAUREN KINDLER, conducted
2 remotely:

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9 Pursuant to Notice, before Matthew Goldstein,
10 RMR, CRR, Notary Public in and for the State of
11 Maryland.

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1 A P P E A R A N C E S
2 ON BEHALF OF THE PETITIONER:
3 MICHAEL G. BABBITT, ESQUIRE
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9
10 ON BEHALF OF THE PATENT OWNER:
11 CHRISTINA CANINO, ESQUIRE
12 PAUL HART, ESQUIRE
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17 720.689.0679

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1 P R O C E E D I N G S

2 Whereupon,

3 LAUREN KINDLER,

4 being first duly sworn or affirmed to testify to
5 the truth, the whole truth, and nothing but the
6 truth, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE PETITIONER

8 MR. BABBITT: Good morning. My name is
9 Mike Babbitt, on behalf of the petitioner in this
10 proceeding.

11 Counsel, would you like to do your
12 introduction?

13 MS. CANINO: Sure. Christina Canino,
14 here on behalf of patent owner.

15 BY MR. BABBITT:

16 Q. And good morning, Ms. Kindler.

17 Can you just state your full name and
18 title for the record, please?

19 A. Sure. Good morning. My name is Lauren
20 Kindler, and I'm a managing principal at Analysis
21 Group.

22 Q. And where are you located today?

1 A. In my office in Dallas, Texas.

2 Q. Where did you grow up, Ms. Kindler?

3 A. Where did I grow up?

4 Q. Yeah.

5 A. In Dallas, not far from here.

6 Q. Oh. I'm curious, when was the last time
7 you were in Kansas City?

8 A. Actually, for a trial several months
9 ago, first and last time.

10 Q. Okay. And you've testified under oath
11 many times before today; right?

12 A. Yes.

13 Q. So I won't belabor the ground rules, but
14 I guess suffice to say, if you have any questions
15 or if you need me to clarify, just let me know and
16 I can try and do that throughout the day.

17 A. Sounds good.

18 Q. Is there any reason you won't be able to
19 give full and accurate testimony today?

20 A. No.

21 Q. Do you understand that you have given
22 opinions for patent owner, Textor, in this

1 proceeding?

2 A. I wouldn't characterize it that way. I
3 understand that certain of my opinions that I
4 provided in the federal court litigation on behalf
5 of Weber have also been submitted in this
6 proceeding.

7 Q. Okay. Do you understand that your
8 opinions have been submitted on behalf of patent
9 owner, Textor, in this proceeding?

10 A. Yes.

11 Q. And do you understand that Textor is
12 owned by Weber?

13 A. Yes.

14 Q. So today I might refer to Weber or
15 Textor, just kind of as a slip of the mind on my
16 behalf. I might do that interchangeably. And I
17 don't think there's a difference in this
18 proceeding for the purpose of our discussion, but
19 if you think you need to clarify, just please let
20 me know. Okay?

21 A. Okay.

22 Q. And as you mentioned, I think you

1 understand this deposition has to do with the
2 dispute between the patent owner, Weber or Textor,
3 and petitioner, Provisur; is that right?

4 A. Yes.

5 Q. And you also understand there's a
6 co-pending district court litigation between
7 Provisur and Weber?

8 A. Yes.

9 Q. What did you do to prepare for today?

10 A. I just revisited the portions of my
11 expert report that were submitted in this
12 proceeding and underlying documentary evidence
13 supporting those portions of my report. And I had
14 a short discussion with counsel for Weber.

15 Q. How much time did you spend preparing?

16 A. In total?

17 Q. Yes.

18 A. Probably a little bit over an hour.

19 Q. Besides your lawyers, do you recall
20 discussing the dispute between Provisur and Weber
21 with anyone at any other time?

22 A. Can you clarify "dispute"? Are we

1 talking about this proceeding, the PTAB
2 proceeding, or are we talking about the broader
3 litigation?

4 The answer is probably the same either
5 way, but I just want to make sure I'm clear what
6 you're asking.

7 Q. Yeah, why don't I try to -- if I'm
8 talking about the broader litigation, I'll say
9 "the dispute" today. And if I'm talking about
10 this specific IPR proceeding, I'll say "the IPR"
11 or "the proceeding."

12 So I guess my question was broader to
13 say, in connection with this entire dispute, do
14 you recall speaking with anyone about your
15 opinions?

16 MS. CANINO: Objection; form.

17 THE WITNESS: So, I mean, in that
18 context, I mean, going back to before I issued my
19 expert report, I obviously had discussions that
20 were outlined in that expert report. But is that
21 your question, or are you asking since I issued my
22 report?

1 BY MR. BABBITT:

2 Q. I'm asking in connection with your
3 original report.

4 A. Yes, I did. And those discussions are
5 detailed in my expert report.

6 Q. Do you recall who you spoke with?

7 MS. CANINO: Objection, relevance.

8 THE WITNESS: No. I mean, I can point
9 you to the page in that report that lists who I
10 spoke with, but I did not go back and refresh my
11 memory on that.

12 BY MR. BABBITT:

13 Q. Do you recall having a conversation with
14 Mr. McCarroll, Weber's CEO?

15 A. Yes. I'm looking at page 4 of my
16 report, yes.

17 Q. And for the record, why don't you tell
18 me what paper you have in front of me [sic] that
19 you said you're looking at?

20 A. I just have a bound copy of my expert
21 report dated April 24th, 2024.

22 Q. And I don't know if you can confirm or

1 perhaps your counsel can confirm, but I believe
2 that's been designated as Exhibit 2016 in this IPR
3 proceeding; is that right?

4 A. According to my affidavit, that's
5 accurate, yes.

6 Q. Okay. Do you recall -- strike that.

7 Did you rely on your conversation with
8 Mr. McCarroll in forming your opinions?

9 MS. CANINO: Objection; form.

10 THE WITNESS: So, again, we're talking
11 about my broader damages opinions in the district
12 court litigation? Yes, I did.

13 BY MR. BABBITT:

14 Q. And what do you recall about your
15 conversation with Mr. McCarroll?

16 A. I mean, it's months and months ago. So
17 I would have to look through my entire report to
18 grab that information.

19 Q. Do you recall anything about your
20 conversation with Mr. McCarroll?

21 A. I would rather not try to recall. I
22 didn't look at that. I'd have to go through my

1 report.

2 Q. Do you recall if Mr. McCarroll gave you
3 information about the TS700 product?

4 A. I don't recall, without looking through
5 my report.

6 Q. Do you recall if Mr. McCarroll gave you
7 information about the TS700 Flex product?

8 A. It would be the same answer.

9 Q. So you don't recall?

10 A. So, again, this would have been
11 discussions many months ago, and I did not go back
12 and look through my report for that information.

13 Q. Do you recall if you discussed with
14 Mr. McCarroll the TS750 product?

15 A. It would be the same answer.

16 Q. Do you recall having any conversations
17 with any employees of Weber about removable
18 conveyors?

19 MS. CANINO: Objection; form.

20 THE WITNESS: So I'm sure that was
21 discussed, absolutely; but I couldn't tell you
22 details of those conversations without looking

1 through my report.

2 BY MR. BABBITT:

3 Q. Do you recall if Mr. McCarroll told you
4 that the TS700 was a successful product?

5 A. I don't recall specifically without
6 looking through my report.

7 Q. Do you recall Mr. McCarroll telling you
8 if the TS700 Flex was a successful product?

9 MS. CANINO: Objection.

10 THE WITNESS: It would be the same
11 answer.

12 BY MR. BABBITT:

13 Q. And do you recall Mr. McCarroll's
14 information being reliable?

15 A. Yes, I absolutely believed that the
16 information I obtained from Weber personnel,
17 including Mr. McCarroll, was reliable.

18 Q. Did you find Mr. McCarroll to be
19 trustworthy?

20 A. Yes.

21 MS. CANINO: Objection.

22

1 BY MR. BABBITT:

2 Q. Okay. Let's look at your declaration
3 that I understand you have is Exhibit 2024 in this
4 IPR proceeding, that's your declaration.

5 A. It is. And I have an electronic copy in
6 front of me.

7 Q. So you recall that you submitted a
8 damages expert report in the district court on
9 April 24th of '24; is that right?

10 A. Yes.

11 Q. And that report was about the damages
12 for Provisur's infringement of Weber's patent; is
13 that right?

14 MS. CANINO: Objection; form.

15 THE WITNESS: Multiple patents, but yes.

16 BY MR. BABBITT:

17 Q. And then do you see that Textor
18 submitted this declaration marked as Exhibit 2024
19 on July 19th, 2024?

20 A. Yes.

21 Q. Do you recall when Textor contacted you
22 about this declaration, Exhibit 2024?

1 A. No.

2 Q. Do you recall when you learned that
3 Textor would be submitting an excerpt of your
4 report in the IPR?

5 A. No.

6 Q. Do you recall if Textor contacted you
7 about the declaration before July?

8 A. I have no recollection.

9 Q. How much time did you spend preparing
10 the declaration, Exhibit 2024?

11 A. Oh, I mean, not much time at all. I
12 don't recall specifics, but it wouldn't have taken
13 much time.

14 Q. What's your understanding of why you
15 signed the declaration?

16 MS. CANINO: Objection; form.

17 THE WITNESS: I mean, my understanding
18 is that it was to be submitted with excerpts of my
19 damages report in the IPR proceedings. And that
20 happens often in the course of my work.

21 BY MR. BABBITT:

22 Q. Do you recall if you learned that Textor

1 would be submitting excerpts of your report before
2 it submitted the excerpts of your report?

3 MS. CANINO: Objection; form.

4 THE WITNESS: Yeah, can you maybe either
5 ask that again or rephrase it?

6 BY MR. BABBITT:

7 Q. Did Textor tell you they were going to
8 submit excerpts of your report before they
9 submitted them to the PTAB?

10 MS. CANINO: Objection; form.

11 THE WITNESS: I don't know when they
12 submitted them, but that sounds tautological. I
13 mean, I was informed that there was this
14 proceeding, and they wanted to -- Weber wanted to
15 submit my report as part of a filing in that
16 proceeding and I executed this affidavit, and the
17 rest I don't have knowledge of.

18 BY MR. BABBITT:

19 Q. Did you have any role in deciding what
20 portions of your report were submitted to the IPR?

21 MS. CANINO: Objection; form.

22 THE WITNESS: No.

1 BY MR. BABBITT:

2 Q. So is it right that the lawyers decided
3 which portions of your report to submit to the
4 IPR?

5 A. I don't know how the decision was made,
6 but I just was asked to review those portions and
7 sign this affidavit.

8 Q. Do you recall you also submitted a
9 rebuttal report in the district court about the
10 damages for infringement of Provisur's patents?

11 MS. CANINO: Objection; relevance.

12 THE WITNESS: Yes.

13 BY MR. BABBITT:

14 Q. And did you review that rebuttal report
15 in preparation for today?

16 A. No.

17 Q. Do you see the front page of your
18 declaration lists U.S. Patent No. 9,457,487?

19 A. Yes.

20 Q. Are you familiar with the '487 patent?

21 A. I mean, just in the context of an
22 economist evaluating damages associated with

1 infringement of that patent.

2 Q. Have you read the '487 patent?

3 A. I'm sure before issuing my report, I had
4 reviewed the asserted claims from a non-technical
5 expert point of view, but I did not revisit that
6 for today.

7 Q. Do you consider yourself a non-technical
8 expert?

9 A. Yeah, I'm not a technical expert.

10 Q. Have you formed any opinions about the
11 substance of the '487 patent?

12 MS. CANINO: Objection; form.

13 THE WITNESS: No, I'm relying on inputs
14 from Dr. Meyer to inform me as to the teachings of
15 the '487 patent and associated benefits. But,
16 again, that was all done in my prior work as a
17 damages expert.

18 BY MR. BABBITT:

19 Q. Have you formed any opinions about the
20 validity or invalidity of the '487 patent?

21 A. No.

22 MS. CANINO: Objection; form.

1 BY MR. BABBITT:

2 Q. Have you formed any opinions about the
3 infringement or noninfringement of the
4 '487 patent?

5 MS. CANINO: Objection; form.

6 THE WITNESS: No.

7 BY MR. BABBITT:

8 Q. Have you formed any opinions about the
9 alleged benefits of the '487 patent?

10 MS. CANINO: Same objection.

11 THE WITNESS: So, I mean, I'd have to go
12 look at my report, which, again, you know, I
13 didn't review those portions of my report for
14 today. But my recollection is that I'm relying on
15 Dr. Meyer for the identification of those
16 benefits. But, again, I would just defer to my
17 entire report.

18 BY MR. BABBITT:

19 Q. And so you haven't formed any of your
20 own independent opinions about the technical
21 benefits of the '487 patent.

22 Is that fair to say?

1 MS. CANINO: Objection; form.

2 THE WITNESS: So, I mean, I'll repeat
3 the same answer. I did not go back and review my
4 entire report for that specific point, and my
5 recollection is I'm relying on Dr. Meyer for that.
6 But, again, I would just defer to my report on
7 that topic.

8 BY MR. BABBITT:

9 Q. Sitting here today, do you have any
10 opinions about what are the technical benefits of
11 the '487 patent?

12 MS. CANINO: Objection; form.

13 THE WITNESS: So, again, I did not
14 prepare for that question for today, because it's
15 not really relevant to the proceeding, as I
16 understand it, and I would just defer to my
17 report. None are coming to mind, but I would just
18 defer to my report.

19 BY MR. BABBITT:

20 Q. And you said earlier that you are not a
21 technical expert; is that right?

22 A. That's correct.

1 Q. And you are not an engineering expert?

2 A. Correct.

3 Q. You do not have a technical degree; is
4 that right?

5 A. That's correct.

6 Q. Do you have any engineering experience?

7 A. No.

8 Q. Do you have any prior ex- [inaudible]
9 machinery?

10 A. I'm sorry you cut out, can you repeat
11 that?

12 Q. Do you have any experience with food
13 processing machinery?

14 A. No.

15 Q. And you aren't a food processing
16 industry expert; are you?

17 A. I am not.

18 Q. Do you know if the '487 patent claims a
19 slicer?

20 MS. CANINO: Objection; form.

21 THE WITNESS: That would be a question
22 for the technical expert.

1 BY MR. BABBITT:

2 Q. And so is your answer no?

3 A. I mean, I can open up my --

4 MS. CANINO: Same objection.

5 THE WITNESS: Sorry, go ahead.

6 MS. CANINO: It's all right. I just
7 said same objection.

8 THE WITNESS: I can open up my report
9 and point you to where I describe my understanding
10 of the patent, but, again, I didn't review that
11 for the purpose of today. So I'd have to look at
12 my report.

13 BY MR. BABBITT:

14 Q. So sitting here today, do you have any
15 opinion that the '487 patent claims a slicer?

16 A. Oh, I don't have any opinion on that one
17 way or the other. I thought your question was
18 more about what I understood it to cover. I
19 definitely don't have opinions about that.

20 Q. Do you have any opinion about whether
21 the '487 patent claims a slicing line?

22 MS. CANINO: Objection; form.

1 THE WITNESS: I don't have an opinion
2 about that.

3 BY MR. BABBITT:

4 Q. Do you know what is a removable
5 conveyor?

6 MS. CANINO: Objection; form.

7 THE WITNESS: Only in the context of my
8 work on this case as a damages expert.

9 BY MR. BABBITT:

10 Q. What's your understanding of what is a
11 removable conveyor?

12 A. So, again, I would just point you to the
13 portions of my report, which I did not review for
14 today. I can't go into details about that. I
15 didn't prepare for that today.

16 Q. Do you know if the '487 patent claims a
17 removable conveyor?

18 MS. CANINO: Objection; form.

19 THE WITNESS: So, again, your question
20 is do I know. And I did not go back and review
21 the claims for the purposes of today, and I would
22 point you to the portion of my report that

1 describes my understanding of what the patent
2 claims.

3 BY MR. BABBITT:

4 Q. Sitting here today, do you have any
5 opinion if the '487 patent claims a toolless
6 removable conveyor?

7 MS. CANINO: Objection; form.

8 THE WITNESS: I have no opinion about
9 what the patent covers. That's a technical
10 question.

11 BY MR. BABBITT:

12 Q. And sitting here today, you don't have
13 any opinions about the benefits that Weber
14 attributes to the '487 patent; do you?

15 MS. CANINO: Objection; form.

16 THE WITNESS: So I think we went through
17 this before. And as I stated before, I don't have
18 a recollection today, but I would defer to what is
19 in my report on that topic.

20 BY MR. BABBITT:

21 Q. And so is your testimony that sitting
22 here today, you don't have any opinions about the

1 benefits that Weber attributes to the '487 patent?

2 MS. CANINO: Same objection.

3 THE WITNESS: Yeah, I can't agree with
4 that. Because, obviously, my damages report does
5 have opinions around the benefits and how those
6 are tied to demand for the products, but as an
7 input into that, my recollection is I'm relying on
8 Dr. Meyer for that.

9 But, again, I did not go back and reread
10 my entire report for today. So I can't state more
11 than that, and I would defer to what's in my
12 report.

13 BY MR. BABBITT:

14 Q. I want to make sure we're not talking
15 past each other. Because I think when I say, Do
16 you know, I think it's fair for you to go, I want
17 to defer to my report and what I've said in my
18 report and what my understanding is from then.

19 But I'm trying to make the distinction
20 when I ask you when you sit here today if you have
21 an opinion. You see where I'm trying to draw that
22 line?

1 A. I do, but my opinions for today's
2 proceeding are very narrow, and I didn't go back
3 and memorize all of my opinions in my report for
4 today. So that's the struggle that I'm having.
5 I'm happy to look through my report and point you
6 to the portions in my report that talk about
7 technical benefits.

8 And as I said before, my recollection is
9 I'm relying on Dr. Meyer for that as an input, but
10 I didn't go back and review that for today. So I
11 just can't say with 100 percent certainty without
12 looking at my report.

13 Q. I want to be efficient about what we're
14 doing today. So I don't know if you're suggesting
15 that you want to go back and read your 208-page
16 report. Because all I'm trying to figure -- it
17 sounds like you're saying you relied on the
18 technical expert for all the technical issues; is
19 that fair?

20 A. Yes, that's --

21 Q. Yeah.

22 A. Absolutely. But when you start to talk

1 about benefits, I would just need to go back and
2 look at my report. I didn't review that for
3 today, and it's been many months.

4 Q. Right.

5 A. And I don't think it's appropriate to
6 expect me to have that memorized.

7 Q. Yeah, I'm not trying to actually even
8 ask you if you remember what the benefits were.
9 I'm trying to just figure out what you have
10 opinions on and what you don't have opinions on.

11 A. In the damages context, but that's not
12 what today is about, was my understanding. And I
13 don't have my damages opinions committed to
14 memory.

15 Q. Do you recall analyzing whether Weber's
16 alleged benefits of the '487 patent were known in
17 the prior art?

18 A. I did not analyze that.

19 Q. So, for example, you don't recall
20 analyzing whether Provisur's PowerMax product and
21 patents had removable conveyors with the benefits
22 of the '487 patent before Weber?

1 MS. CANINO: Objection; relevance.

2 THE WITNESS: I don't have any
3 recollection of that. And, again, that's outside
4 of the scope of what I reviewed for today, but I
5 don't have any recollection of having evaluated
6 that.

7 BY MR. BABBITT:

8 Q. Why don't we get to this Exhibit 2008,
9 the excerpt that I think you focused on for today.

10 A. Okay.

11 Q. Can you just describe generally what
12 opinions you provided in the excerpt of your
13 report marked as Exhibit 2008?

14 A. So specifically, I think what is
15 referenced in Weber's response and the IPR
16 proceeding are paragraph 43 of Exhibit 2008 and
17 Table 6.

18 So are we limiting the question -- even
19 though on this excerpt there are additional minor
20 paragraphs before and after that, but is the
21 question limited to what was actually cited in
22 Weber's response?

1 Q. Sure.

2 Why don't you go ahead and describe
3 generally your opinion in paragraph 43 and Table 6
4 of Exhibit 2008.

5 A. Okay. So in paragraph 43, I'm
6 describing the revenues that Weber has generated
7 based on the sales data that was produced in this
8 case, and specifically revenues associated with
9 embodying products, some of which related to the
10 '487 patent that we're discussing today.

11 And then in Table 6 is the actual
12 summary of the analysis that I performed of those
13 revenues by Weber product. And I think for
14 today's purposes, the products that are relevant
15 are the weSLICE 9500 and the TS models.

16 Q. In Exhibit 2008, did you provide any
17 opinion about commercial success?

18 A. No, I think later in my discussion of
19 Georgia-Pacific Factor 8, for example, I repeat
20 this same data in the context of my analysis of
21 commercial success. But in these two portions of
22 my report, no.

1 Q. Is it your view then that later in your
2 report, you do provide an opinion about whether
3 Weber's products were commercially successful?

4 MS. CANINO: Objection; relevance.

5 THE WITNESS: I mean, as I do in every
6 case, Georgia-Pacific Factor 8 is -- touches on
7 that topic, and I did evaluate that factor with
8 respect to both Weber and Provisur's products.

9 BY MR. BABBITT:

10 Q. Have you provided any opinion in
11 Exhibit 2008 that Weber's products were
12 commercially successful?

13 A. No, that opinion is not contained in
14 Exhibit 2008.

15 Q. Have you provided any opinion that the
16 '487 patent was commercially successful?

17 MS. CANINO: Objection; form.

18 THE WITNESS: Yeah, so, again, I would
19 point you to Georgia-Pacific Factor 8, where I
20 evaluated the profitability and commercial success
21 of embodying products with respect to all of the
22 asserted patents, including the '487 patent.

1 BY MR. BABBITT:

2 Q. Did you provide any opinion in
3 Exhibit 2008 that the '487 patent was commercially
4 successful?

5 A. No, I think we already covered that.
6 That opinion is not in Exhibit 2008.

7 Q. Have you provided any opinion in
8 Exhibit 2008 that Weber's products that embody the
9 '487 patents have had commercial success?

10 A. So beyond -- are you asking now broadly?
11 I mean, is that the prior question not limited to
12 2008, or are we still on Exhibit 2008?

13 Q. I believe I said 2008. So I --

14 A. Oh, sorry.

15 Q. Let me ask the question again so the
16 record is clear.

17 Have you provided any opinion in
18 Exhibit 2008 that the Weber products that embody
19 the '487 patent has had commercial success?

20 A. No, that opinion is not in Exhibit 2008.

21 Q. Have you provided any opinion in
22 Exhibit 2008 that the TS700 has had commercial

1 success?

2 A. That opinion is not in Exhibit 2008.

3 Q. Have you provided any opinion that the
4 TS700, the weSLICE 9500, the TS500 or the TS750
5 have had commercial success in Exhibit 2008?

6 A. No, those opinions are not in
7 Exhibit 2008.

8 Q. Have you provided any opinion in
9 Exhibit 2008 that the alleged commercial success
10 of Weber's embodying products is attributable to
11 Weber's '487 patent?

12 A. No, not in Exhibit 2008.

13 Q. Have you provided any opinion that there
14 was a nexus between the '487 patent and sales of
15 products that embody the '487 patent in
16 Exhibit 2008?

17 MS. CANINO: Objection; form.

18 THE WITNESS: No.

19 BY MR. BABBITT:

20 Q. Have you provided any opinion that the
21 Weber '487 patent invention drives Weber's sales
22 of slicing lines in Exhibit 2008?

1 A. No.

2 Q. And have you opined that the Weber
3 '487 patent invention drives Weber sales of TS700
4 slicing lines in 2008?

5 A. Just for the record, Exhibit 2008 as
6 opposed to the year 2008. But, yes, no, I have
7 not.

8 Q. Thank you for that clarification.
9 Have you opined that the Weber
10 '487 patent invention drives customer demand for
11 Weber sales of slicing lines in Exhibit 2008?

12 A. No.

13 Q. Have you done your own independent
14 analysis about whether the commercial success of
15 Weber's products is attributable to Weber's
16 patents at any time not limited to Exhibit 2008?

17 MS. CANINO: Objection; relevance.

18 THE WITNESS: Yeah, can you repeat the
19 question?

20 BY MR. BABBITT:

21 Q. Yeah.

22 So just for context to remain clear,

1 I've been asking you questions about Exhibit 2008,
2 and now I'm asking you a broader question. Okay?

3 A. Yeah. But can you repeat it?

4 Q. Have you done your own independent
5 analysis about whether the commercial success of
6 Weber's products is attributable to Weber's
7 patents?

8 MS. CANINO: Objection; relevance.

9 THE WITNESS: So, again, I did not go
10 back and review those portions of my report, and I
11 don't have a recollection of the details of my
12 opinions, but I do know that I looked at, for each
13 of the asserted patents, what -- you know, the
14 patented features and the benefits associated with
15 the patented features and to what extent those
16 were responsible for customer demand for both
17 Weber embodying products and Provisur accused
18 products.

19 But beyond that, I can't give you
20 details without looking at those portions of my
21 report.

22

1 BY MR. BABBITT:

2 Q. But is it right that for all of the
3 technical details, you relied on Dr. Meyer as the
4 input to your opinion and did not do your own
5 independent analysis?

6 MS. CANINO: Objection; form.

7 THE WITNESS: So just to make it clear,
8 Dr. Meyer with respect to the '487 and the '321
9 patent, yes; but there's another technical expert
10 for the other two asserted patents. But
11 absolutely, any technical input into my opinions
12 is coming from technical experts and not from
13 myself.

14 BY MR. BABBITT:

15 Q. Thank you.

16 Looking back at paragraph 43, you refer
17 to the embodying product or products.

18 What is your understanding of the
19 products that embody the '487 patent?

20 MS. CANINO: Objection; form.

21 THE WITNESS: So as I mentioned in a
22 prior question, my understanding -- and, again,

1 this is described elsewhere in my report, but from
2 memory, I think it is weSLICE 9500 and the three
3 TS models.

4 BY MR. BABBITT:

5 Q. It's your understanding that the
6 weSLICE 9500, the TS500, the TS700, and the TS750
7 embody Weber's '487 patent?

8 A. Yes.

9 Q. And how did you come to that
10 understanding?

11 MS. CANINO: Objection; form.

12 THE WITNESS: From Weber's technical
13 expert, Dr. Meyer.

14 BY MR. BABBITT:

15 Q. Do you know whether Weber marks any of
16 the embodying products with the '487 patent?

17 MS. CANINO: Objection; relevance.

18 THE WITNESS: Yeah, I don't recall if I
19 knew that at one point in time or not. I don't
20 have any recollection, sitting here today.

21 BY MR. BABBITT:

22 Q. Do you know if Weber claims that other

1 patents besides the '487 patent cover any of the
2 products that embody the '487 patent?

3 MS. CANINO: Objection; relevance.

4 THE WITNESS: So, again, I mean, I can
5 turn to the table in my report that maps the
6 asserted patents to the products, but I don't have
7 that committed to memory.

8 BY MR. BABBITT:

9 Q. Okay. Well, why don't we do that, just
10 so the record is clear. I think I can direct you
11 to Table 4 in your report.

12 A. Okay. I am there.

13 Q. Can you actually remind me what page
14 that's on, just so I'm looking at it?

15 A. 30.

16 Q. 30. Okay. Great.

17 Is it your understanding that Weber
18 contends that the Weber weSLICE 9500 product is
19 covered by the Weber '487 patent, the Weber
20 '013 patent, and the Weber '823 patent?

21 MS. CANINO: Objection; relevance.

22 THE WITNESS: Yes, I might restate it as

1 my understanding is that Weber contends that the
2 weSLICE 9500 is an -- embodies each of those three
3 patents, yes.

4 BY MR. BABBITT:

5 Q. Looking back at the paragraph 43 of the
6 Exhibit 2008, is it your testimony that the sales
7 figures represent entire order revenues and, thus,
8 are inclusive of revenues generated through the
9 sale of other peripherals and line components that
10 were ordered by customers in addition to the
11 slicer component itself?

12 MS. CANINO: Objection; form.

13 THE WITNESS: So my understanding is
14 that the data reflected in paragraph 43 and also
15 summarized in Table 6 reflects total line revenues
16 associated with sales of the embodying products.
17 So yes, it would include other peripherals and
18 other components.

19 But as I state in, I think it's the last
20 sentence of Footnote 191, that there were data
21 limitations that prevented me from isolating what
22 portion of those revenues would be attributable to

1 just the slicers.

2 BY MR. BABBITT:

3 Q. Is it correct that your analysis of the
4 Weber sales included full slicer line sales
5 revenue?

6 MS. CANINO: Objection; form.

7 THE WITNESS: So I think if we're still
8 talking about paragraph 43 and Table 6, that is
9 accurate. In Table 5, I did have data sufficient
10 to break out the slicer component revenues for the
11 S6 and the weSLICE 9500.

12 BY MR. BABBITT:

13 Q. Is it correct, then, that for the
14 ASD460, the TS500, the TS700, and the TS750 that
15 you did not have data sufficient to allow you to
16 break out the cost of the slicer versus the
17 slicing line?

18 A. I would say -- I think we mean the same
19 thing, but I would call it the revenues. But yes,
20 that's right, there was not sufficient level of
21 detail in the data to do that.

22 Q. And do you know why there was not

1 sufficient level of data to allow you to break out
2 slicer versus slicing lines for the ASD460, TS500,
3 TS700, and TS750?

4 MS. CANINO: Objection; form.

5 THE WITNESS: No, I think that would be
6 a question for someone at Weber.

7 BY MR. BABBITT:

8 Q. Is it your understanding that Weber does
9 not have separate data separating the cost of the
10 slicer from the slicing line for those products?

11 MS. CANINO: Objection; form.

12 THE WITNESS: I don't have an
13 understanding one way or another. I just relied
14 on the data that was available to me in the case.
15 And I don't recall -- and I might have had a
16 discussion about this. I just don't recall
17 sitting here today.

18 BY MR. BABBITT:

19 Q. Can you please explain why you based
20 your analysis of the Weber sales on full line
21 sales revenue?

22 A. Because that was the data available to

1 me.

2 Q. Is it your understanding that Weber
3 sells full slicing line solutions?

4 MS. CANINO: Objection; form and
5 relevance.

6 THE WITNESS: Sometimes, but not always.

7 BY MR. BABBITT:

8 Q. What is your understanding of what is a
9 full slicing line solution?

10 MS. CANINO: Objection; relevance.

11 THE WITNESS: Yeah, I mean, I'm sure I
12 knew that at some point, but I didn't go back and
13 review those portions of my report. I mean, it
14 could include many other components, but I don't
15 recall the details. It's in my report. So I
16 definitely looked at it in forming my damages
17 opinions, but I haven't reviewed it for today.

18 BY MR. BABBITT:

19 Q. Is it your understanding that when Weber
20 sells a slicer, Weber sells the rest of the
21 slicing line components with it, too?

22 MS. CANINO: Objection; relevance.

1 THE WITNESS: Yeah, I did not go back
2 and refresh my memory on those details for today.

3 BY MR. BABBITT:

4 Q. Are you aware of any Weber sales in your
5 analysis that were just for a slicer and not the
6 rest of the slicing line components?

7 MS. CANINO: Objection; relevance.

8 THE WITNESS: Again, I am sure I looked
9 at that prior to issuing my damages report and had
10 some knowledge of that when I was deposed on my
11 damages opinions, but I did not refresh my memory
12 on any of that for today.

13 BY MR. BABBITT:

14 Q. So for the purposes of today and looking
15 at Table 6, you're not aware of any instance of a
16 product listed in Table 6 that was for the sale of
17 a slicer without the rest of the slicing line
18 components; is that right?

19 A. I would rephrase that as given the data
20 limitation, I can't observe that in the data.
21 What I don't recall is whether I heard from Weber
22 personnel information about instances where

1 slicers were sold separately and that would have
2 been discussed elsewhere in my report and I did
3 not review that for today.

4 So I just can't say whether or not I
5 have additional information that would inform that
6 question without looking at my report.

7 Q. Are you aware of any Weber sales in your
8 analysis that were just for an S6 slicer and not
9 the rest of the slicing line components?

10 MS. CANINO: Objection; form.

11 THE WITNESS: So, again, it would be the
12 same answer. I mean, it's possible I was aware of
13 that at some point. I'd have to look at my
14 report.

15 BY MR. BABBITT:

16 Q. Are you aware of any Weber customers
17 that had bought a slicer without the rest of the
18 components for a slicing line?

19 MS. CANINO: Same objection.

20 THE WITNESS: It would be the same
21 answer.

22

1 BY MR. BABBITT:

2 Q. And can you repeat the answer for the
3 record, please?

4 A. Sure. Sitting here today, I don't
5 recall. I'd have to look at my report to see if I
6 have -- I feel like I might have a discussion of
7 that elsewhere in the report, but I just don't
8 recall, sitting here.

9 Q. Are you aware of any Weber customers,
10 sitting here today, that bought components of a
11 slicing line without buying the slicer, as well?

12 A. It would be --

13 MS. CANINO: Objection; form.

14 THE WITNESS: Sorry.

15 It would be the same answer. I may have
16 been aware of that in forming my damages opinions,
17 but I have not reviewed those portions of my
18 report for today.

19 BY MR. BABBITT:

20 Q. Can you please explain why you say in
21 Exhibit 2008 that Weber generated substantial line
22 revenue from the TS700 product?

1 A. Because the TS700 product has [REDACTED]
2 [REDACTED] of revenue associated with it over
3 the relevant time period.

4 Q. Is it your opinion that the magnitude of
5 the [REDACTED] in sales reflects substantial
6 revenue?

7 A. I mean, that's what I state in my
8 report. I mean, again, this is line sales that
9 had a TS700 product in the line.

10 Q. I guess I'm asking you how you decided
11 to characterize [REDACTED] as substantial line
12 revenues?

13 A. I don't recall, because I'm sure I have
14 elsewhere other analyses of Weber, Inc., total
15 revenue. Again, I didn't look at for purposes of
16 today. But sitting here today, I think
17 [REDACTED] is substantial revenue.

18 Q. And coming to the opinion that Weber
19 generated substantial line revenue for its TS700
20 product, did you compare Weber's revenue to
21 anything else?

22 A. I don't recall, sitting here today.

1 Q. For example, did you compare Weber's
2 line revenue for the TS700 products to the revenue
3 for other products?

4 A. Like I said in my prior answer, I don't
5 recall, sitting here today.

6 Q. Do you recall comparing Weber's line
7 revenues for the TS700 to the sales of other
8 competitors?

9 A. I mean, I certainly did it with respect
10 to Provisur, which is one of its most significant
11 competitors, but, again, that discussion would be
12 elsewhere in my report.

13 Q. Did you say that you believe Provisur is
14 one of Weber's most significant competitors?

15 A. I'd have to -- I mean, I have a whole
16 discussion in my report elsewhere that I did not
17 review for today. So I can't speak to that
18 without looking at that Georgia-Pacific factor
19 about the commercial relationship between the
20 parties. But my recollection --

21 Q. I thought -- I'm sorry.

22 A. My recollection is that I have opinions

1 that they are direct competitors.

2 Q. Okay. Thank you.

3 And I apologize if there's any cross
4 talk here. We're doing this remotely. So I'm not
5 trying to cut you off. So bear with me on that.

6 A. Same here.

7 Q. Did you compare Weber's sales of the
8 TS700 to sales of other products that allegedly
9 practice the '487 patent?

10 A. I mean, there is a direct comparison in
11 Table 6, for example.

12 Q. So how did you compare Weber's sales of
13 the TS700 to the sales of other products that
14 practice the '487?

15 A. I mean, in the table you can see the
16 data that compares those sales.

17 Q. Do you have any view as to why the TS700
18 sold much more than the TS500?

19 MS. CANINO: Objection; form.

20 THE WITNESS: So these are U.S. sales,
21 and my recollection is that the TS500 is more for
22 bacon and it's like European-style bacon and is

1 primarily sold outside of the U.S. But, again, I
2 have discussion of these types of points elsewhere
3 in my report, and I did not go back and review all
4 of that for today.

5 BY MR. BABBITT:

6 Q. Do you have any view as to why the TS700
7 sold much more than the TS750?

8 MS. CANINO: Objection; form and
9 relevance.

10 THE WITNESS: So, again, my recollection
11 is that the TS750 would have been sold more
12 outside of the U.S. There's probably a discussion
13 elsewhere in my report about that, but I don't --
14 I didn't review that for today.

15 BY MR. BABBITT:

16 Q. So just now focusing on this Table 6, I
17 want to kind of run through the numbers with you
18 so they're in the record.

19 Do you see Table 6 showing the embodying
20 Weber product U.S. line revenue?

21 A. Yes.

22 Q. Does Table 6 accurately reflect your

1 opinions about the embodying Weber product U.S.
2 line revenues?

3 A. Yes, over that time period, which is
4 January 2015 through April 2024.

5 Q. Is it your opinion that Weber generated
6 [REDACTED] in slicing line revenue from 2015 to
7 April of 2024 for the S6?

8 A. Yes.

9 Q. Is it your opinion that Weber generated
10 [REDACTED] in slicing revenue from 2015 to April
11 of 2024 for the weSLICE 9500?

12 A. Yes, I'm just pausing, because it's
13 interesting to characterize this as opinion. I
14 mean, it's math, and it's facts. But, yes, I
15 mean, I guess it is -- I think of it more as a
16 summary of facts, but sure, I agree with the
17 number.

18 Q. Is it your opinion that Weber generated
19 [REDACTED] in slicing line revenue from 2015 to
20 April 2024 for the ASD460?

21 A. Yes, but just for clarification, all of
22 these figures are U.S. line revenue. But yes, in

1 the U.S.

2 Q. Is it your opinion that Weber generated
3 [REDACTED] in U.S. slicing line revenue from 2015 to
4 April 2024 for the TS500?

5 A. Yes.

6 Q. Is it your opinion that Weber generated
7 [REDACTED] in U.S. slicing revenue from 2015 to
8 April 2024 for the TS700?

9 A. Yes.

10 Q. Is it your opinion that Weber generated
11 [REDACTED] in slicing revenue from 2015 --
12 strike that. I'll make sure I get the U.S. part
13 in there, too.

14 Is it your opinion that Weber generated
15 [REDACTED] in U.S. slicing line revenue from
16 2015 to April 2024 for the TS750?

17 A. Yes. And just to point out,
18 Footnote 193 describes based on McCarroll's
19 deposition testimony that both the TS500 and 750
20 models were generally not marketed or sold in the
21 U.S. So that's why the TS750 is [REDACTED].

22 Q. So for the TS500 and the TS750, you

1 wouldn't opine that the '487 patent drives
2 commercial success in sales of those products,
3 would you?

4 MS. CANINO: Objection; form and
5 relevance.

6 THE WITNESS: Yeah, I don't agree with
7 that. I mean, commercial success -- first of all,
8 I have not opined beyond -- in the context of the
9 IPR proceeding, my opinions are limited to these
10 two pages, is my understanding.

11 But commercial success would need to
12 look beyond U.S. I mean, just because something
13 is not sold in the U.S. or marketed for the U.S.
14 market doesn't mean that it's not commercially
15 successful.

16 BY MR. BABBITT:

17 Q. So you think the TS750 could have been
18 commercially successful even though it had [REDACTED]
19 [REDACTED] of sales in the U.S.?

20 MS. CANINO: Objection; form and
21 relevance.

22 THE WITNESS: So, again, I think the

1 relevant analysis would need to look beyond just
2 U.S. sales, and these two pages of my report do
3 not do that.

4 BY MR. BABBITT:

5 Q. Is it right that in your chart, you used
6 the slicer name as the label for the line sales
7 revenue in each row?

8 A. Yes, but it's clear in the title, this
9 is line revenues associated with each of those
10 individual slicer models.

11 Q. Why did you use the S6 slicer name as an
12 example as the label for the line sales revenue in
13 the first row?

14 MS. CANINO: Objection; form.

15 THE WITNESS: So this section is
16 contained in my report under the section heading,
17 Accused Provisur Products and Embodying Weber
18 Products. And the intention is to show the sales
19 associated with the embodying products.

20 And the best data we have is at the line
21 level, and so I've organized the data and
22 summarized the data by embodying product. And

1 that data reflects total line revenues, because
2 that's the best data we have.

3 BY MR. BABBITT:

4 Q. Did you use the S6 slicer name as the
5 label for the line sales revenue because the S6
6 slicer is the most important part of the line?

7 MS. CANINO: Objection; form and
8 relevance.

9 THE WITNESS: Yeah, so, again, I've got
10 a discussion elsewhere in my report that I think
11 is relevant to that question, but I did not review
12 those sections of my report.

13 BY MR. BABBITT:

14 Q. Sitting here today, do you have any
15 understanding or opinion as to whether the slicer
16 is the most important part of a slicing line?

17 MS. CANINO: Objection; form.

18 THE WITNESS: I'd have to look at my
19 report.

20 BY MR. BABBITT:

21 Q. I'm asking you for your opinion, just
22 sitting here today.

1 A. So I'll state it again, I did not review
2 my report for today. I reviewed these two pages,
3 and I would have to go look at my report to answer
4 that. Sitting here today, I would need time to
5 look at my report to see what opinions I formed
6 about that.

7 Q. So sitting here today, you're not
8 prepared to testify of whether the slicer is the
9 most important part of a slicing line?

10 A. That's absolutely accurate. That's not
11 what I was asked to provide testimony on today.
12 What I'm providing testimony on today are these
13 two portions of my report.

14 Q. Okay. Is it your opinion that -- and
15 I'm referring to paragraph 43 here. Is it your
16 opinion that in total Weber generated [REDACTED]
17 [REDACTED] in revenue from processing lines sold
18 with one of the embodying products, primarily
19 driven by the TS700, which generated [REDACTED]
20 [REDACTED] in line revenues, and the S6 and
21 weSLICE 9500, which generated [REDACTED]
22 [REDACTED] in line sales, respectively?

1 A. Yes, that is an accurate reading of that
2 sentence.

3 Q. Is it your opinion that one of the
4 primary drivers of Weber's sales is the TS700?

5 A. That's pretty broad. Total sales? Can
6 you repeat that or maybe rephrase it?

7 You said Weber's total sales, like the
8 entire company.

9 Q. Okay. I could clarify.

10 Well, do you have any view about whether
11 the TS700 is a primary driver of Weber's overall
12 sales?

13 A. I have not formed an opinion one way or
14 another about that.

15 Q. Is it your opinion that one of the
16 primary drivers of Weber's sales of the embodying
17 products listed in Exhibit 2008 is the TS700?

18 MS. CANINO: Objection; relevance.

19 THE WITNESS: Yeah, I don't even think
20 about it that way. I'm not sure I understand that
21 question.

22

1 BY MR. BABBITT:

2 Q. All I'm trying to do is trying to break
3 up the sentence into smaller parts so that we have
4 a clean record.

5 A. Yeah, that's fair. I don't understand
6 that question as asked, sorry.

7 I don't understand what primary
8 driver -- like primary driver of demand across
9 products does not make sense to me. I mean, the
10 TS700 sold the most in terms of line revenues, if
11 that's what you --

12 Q. Yeah, I'm just trying to rephrase what
13 you said here. So you can say it however you
14 want, but your sentence says [REDACTED]

15 [REDACTED]
16 [REDACTED]; is that
17 fair?

18 A. Yes, meaning that [REDACTED] is the
19 most significant contributor to that total
20 [REDACTED].

21 Q. And it's your opinion that the TS700
22 generated [REDACTED] in Weber slicing line

1 sales?

2 A. I would say that the TS700 was sold with
3 line revenues totaling [REDACTED].

4 Q. And is it your opinion that the S6 was
5 sold with line revenues totaling [REDACTED]
6 in slicing lines?

7 A. Yes, that's what Table 6 shows.

8 Q. And is it your opinion that the
9 weSLICE 9500 generated [REDACTED] in Weber
10 slicing line sales?

11 A. Yes, in the U.S.

12 Q. Are you able to tell me what portions of
13 Weber's S6 slicing line revenues in the U.S. are
14 from the S6 slicer as opposed to other components
15 and peripherals on the line?

16 MS. CANINO: Objection; form.

17 THE WITNESS: No, that data is not
18 available.

19 BY MR. BABBITT:

20 Q. Are you able to tell me what portion of
21 Weber's weSLICE 9500 slicing line revenues are
22 from the S6 -- or the weSLICE 9500 as opposed to

1 other components?

2 MS. CANINO: Objection; form.

3 THE WITNESS: No, same reason, that data
4 is not available.

5 BY MR. BABBITT:

6 Q. Are you able to tell me what portion of
7 Weber's ASD460 slicing line revenues are from the
8 ASD slicer component compared to other components?

9 MS. CANINO: Same objection.

10 THE WITNESS: No, for the same reason,
11 the data is not available.

12 BY MR. BABBITT:

13 Q. Are you able to tell me what portion of
14 Weber's TS500 slicing line revenues are from the
15 TS500 slicer as distinct from other components on
16 the line?

17 MS. CANINO: Same objection.

18 THE WITNESS: No, for the same reason,
19 the data is not available.

20 BY MR. BABBITT:

21 Q. Are you able to tell me what portion of
22 Weber's TS700 slicing line revenues are from the

1 TS700 slicer as distinct from other components on
2 the line?

3 MS. CANINO: Objection; form.

4 THE WITNESS: No, for the same reason,
5 the data is not available at the product level for
6 these products.

7 BY MR. BABBITT:

8 Q. Are you able to tell me what portion of
9 Weber's TS750 slicing line revenues are from the
10 TS750 slicer as compared to the other components
11 on the line?

12 MS. CANINO: Same objection.

13 THE WITNESS: That one is a little
14 easier. It's going to be zero, because the TS750
15 was [REDACTED]. But I want to go back and correct one
16 thing, just because I forgot.

17 Up above in Table 5, for at least the S6
18 and the weSLICE 9500, we do -- from another data
19 source, we do have the ability to break out the
20 slicer component sales separate from the line
21 sales. So for those two products, I do have that
22 data.

1 BY MR. BABBITT:

2 Q. I believe you've also said that Table 5
3 is beyond the scope of the opinions that you're
4 providing for this proceeding, as you understand
5 it; is that right?

6 A. Oh, yes, I mean -- well, yeah, but
7 we've -- sure.

8 Q. Are you able to tell me what portion of
9 Weber's slicing line revenues for the embodying
10 products are from the removable conveyor of the
11 slicer as compared to other components of the
12 line?

13 MS. CANINO: Objection; relevance.

14 THE WITNESS: I mean, now we're getting
15 into my damages opinions. I mean, I obviously
16 have apportionment-related opinions and have
17 isolated the contribution of the patented features
18 and benefits to the sales of the products, which
19 would speak to that question. But, again, I
20 haven't reviewed that information for today.

21 BY MR. BABBITT:

22 Q. From Exhibit 2008, you aren't able to

1 tell me what portion of Weber's sales of the
2 embodying products are attributable to the
3 removable conveyor component; are you?

4 A. No, it is not contained in Exhibit 2008.

5 Q. Do you know what are the technical
6 differences between Weber's products that embody
7 the '487 patent?

8 MS. CANINO: Objection; form and
9 relevance.

10 THE WITNESS: Yeah, so I think I know
11 the answer independent of the rephrasing, but are
12 you talking about technical differences across the
13 embodying products?

14 BY MR. BABBITT:

15 Q. Yes.

16 A. No, I don't have insight into that,
17 beyond what I have in my report. So I have a
18 discussion elsewhere in my report about my
19 understanding of each of those products, but
20 beyond that, I don't have any technical
21 understanding.

22 Q. Do you know if the ASD460 product is a

1 slicer?

2 MS. CANINO: Objection; form and
3 relevance.

4 THE WITNESS: So, again, this would be
5 in my report. It's not relevant for today,
6 because it's not -- Weber does not contend it
7 embodies the '487 patent, but my memory is that
8 it's not a slicer. But, again, that's elsewhere
9 in my report.

10 BY MR. BABBITT:

11 Q. Do you know what is the TS700 Flex
12 product?

13 MS. CANINO: Same objection.

14 THE WITNESS: I might have at one point,
15 but sitting here for today's purposes, no.

16 BY MR. BABBITT:

17 Q. Do you know if your chart includes the
18 sales revenue for the TS700 Flex product?

19 A. I don't know. I would have to look at
20 the underlying sales data to see if that has been
21 aggregated into the TS700 or if it's a separate
22 line item. I just don't know.

1 Q. Are you aware of the differences, if
2 any, between the TS700 and the TS700 Flex product?

3 MS. CANINO: Objection; form.

4 THE WITNESS: So, again, I might have
5 been at some point, but that's not relevant for
6 today. It's not on these two pages, and I did not
7 refresh my memory on that.

8 BY MR. BABBITT:

9 Q. In your analysis, did you consider why
10 the TS700 has significantly more sales than the
11 weSLICE 9500?

12 A. Are you talking about in Exhibit 2008?
13 I mean, I did certainly consider that in forming
14 my damages opinions, but I did not review that for
15 today. And it's not contained in Exhibit 2008.

16 Q. Do you recall why you believe the TS700
17 has significantly more sales than the
18 weSLICE 9500?

19 MS. CANINO: Objection; relevance.

20 THE WITNESS: I don't understand that
21 question, why I believe. I mean, the data
22 reflects these sales. So the data speak for

1 themselves. Is your question more about what's
2 driving that differential?

3 BY MR. BABBITT:

4 Q. Yeah, I'm asking you if you remember why
5 there's that differential?

6 A. Again, I'm happy to look in my report,
7 because I have other exhibits that summarize
8 things over time and that -- I don't know today.
9 I didn't look at that specific question for
10 today's purposes.

11 Q. In your analysis of Weber's sales, did
12 you consider aftermarket sales?

13 MS. CANINO: Objection; form.

14 THE WITNESS: So, again, can we be a
15 little more clear? Are we talking about
16 Exhibit 2008? You just keep broadly talking about
17 analysis. So I just want to make sure I
18 understand the question.

19 BY MR. BABBITT:

20 Q. Sure.

21 In your analysis in Exhibit 2008 of
22 Weber's sales, did you consider aftermarket sales?

1 A. I would have to look at the underlying
2 sales document, but my recollection is that this
3 would not include aftermarket sales. I think
4 these are initial sales to customers.

5 Q. In your analysis of Exhibit 2008 of the
6 Weber sales, did you consider whether the products
7 that embody the '487 patent have both patented and
8 non-patented features?

9 MS. CANINO: Objection; form.

10 THE WITNESS: I mean, not on these two
11 pages, but I absolutely considered that in my
12 damages report.

13 BY MR. BABBITT:

14 Q. Does Exhibit 2008 provide an
15 apportionment analysis on the Weber sales to
16 determine the incremental value or contribution of
17 the Weber '487 patent?

18 A. No, that is elsewhere in my report.

19 Q. Does Exhibit 2008 provide an opinion
20 that the alleged commercial success of Weber's
21 products is attributable to Weber's patents?

22 A. I think we went through this before and

1 I brought up Georgia-Pacific Factor 8, but that is
2 not contained in these two pages in Exhibit 2008.

3 MR. BABBITT: Why don't we take a short
4 break.

5 (Recess from the record.)

6 BY MR. BABBITT:

7 Q. Welcome back.

8 A. Thank you.

9 Q. I'll direct you to Footnote 193 of
10 Exhibit 2008.

11 Is it your understanding that the TS500
12 and the TS750 were generally not marketed and sold
13 in the U.S. markets?

14 A. Yes.

15 Q. Do you know what is the typical life
16 cycle of a slicer for a customer in this industry?

17 MS. CANINO: Objection; relevance.

18 THE WITNESS: Yeah, again, I think I
19 touch on this in my report, but I didn't review
20 that for today and I don't remember. But I think
21 it's in there.

22

1 BY MR. BABBITT:

2 Q. Do you recall that the typical life
3 cycle of a slicer for a customer is approximately
4 10 to 15 years?

5 MS. CANINO: Objection; relevance and
6 foundation.

7 THE WITNESS: So that sounds right, but,
8 again, I would defer to what I have in my report.

9 BY MR. BABBITT:

10 Q. Do you understand that the typical life
11 cycle of a slicer for a customer may be up to
12 20 years?

13 MS. CANINO: Same objection.

14 THE WITNESS: I don't recall, and I
15 would have to look at my report.

16 BY MR. BABBITT:

17 Q. Do you know if the Weber products that
18 embody the '487 patent are covered by any other
19 patents besides the '487 patent?

20 MS. CANINO: Objection; relevance.

21 THE WITNESS: So I thought we covered
22 this before, and we looked at -- I think it was

1 Table 4 in my report.

2 BY MR. BABBITT:

3 Q. Yeah, I think I was asking you about the
4 weSLICE there, specifically.

5 A. Right. But I thought your question
6 covered all of the products, which would
7 include --

8 Q. Yeah, let me ask a better question.
9 Do you know if the TS700 is covered by
10 any other patents besides the '487 patent?

11 MS. CANINO: Objection; relevance.

12 THE WITNESS: So I don't know. All I
13 know is that with respect to the four asserted
14 patents in the federal court litigation, the
15 answer is no, but I can't speak to all of Weber's
16 patents. I don't know.

17 BY MR. BABBITT:

18 Q. Do you know if the TS500 is covered by
19 any products' patents besides the '487?

20 MS. CANINO: Objection; relevance.

21 THE WITNESS: It would be the same
22 answer. No, with respect to the asserted patents,

1 but I can't say beyond that.

2 BY MR. BABBITT:

3 Q. And do you know if the TS750 product is
4 covered by other patents besides the '487 patent?

5 MS. CANINO: Objection; relevance.

6 THE WITNESS: It would be the same
7 answer.

8 BY MR. BABBITT:

9 Q. Do you know if the weSLICE 9500 product
10 is covered by other patents besides the
11 '487 patent, the '013 patent, and the '823 patent?

12 MS. CANINO: Objection; relevance.

13 THE WITNESS: It would be the same
14 answer.

15 BY MR. BABBITT:

16 Q. So you don't know whether any of the
17 products that embody the '487 patent are covered
18 by other patents besides the asserted patents?

19 MS. CANINO: Objection; form and
20 relevance.

21 THE WITNESS: I don't know.

22

1 BY MR. BABBITT:

2 Q. Do you believe you're qualified to
3 assess whether the technical contribution of
4 Weber's patents to Weber's products?

5 MS. CANINO: Objection; form.

6 BY MR. BABBITT:

7 Q. Sorry, I have an extra word in there. I
8 have an extra word --

9 A. Yeah, I was waiting for the rest.

10 MS. CANINO: Sorry about that.

11 BY MR. BABBITT:

12 Q. So strike that.

13 Are you qualified to assess the
14 technical contribution of Weber's patents to
15 Weber's products?

16 A. No, I think that is a technical
17 question.

18 Q. And we referred a few times today to
19 Dr. Meyer assessing the technical contributions of
20 the asserted patents; is that right?

21 A. Yes, that is my -- again, that's my
22 recollection. I didn't review those portions in

1 my report, but I think I'm relying on him for that
2 information.

3 Q. Do you know how Dr. Meyer determined
4 what are the technical contributions of the Weber
5 patents?

6 MS. CANINO: Objection; form and
7 relevance.

8 THE WITNESS: No, you would have to ask
9 him.

10 BY MR. BABBITT:

11 Q. Do you know if Dr. Meyer relied on
12 things like marketing materials to assess the
13 technical contributions of the Weber patents?

14 MS. CANINO: Same objection.

15 THE WITNESS: You'd have to ask him. I
16 don't recall. I clearly relied on marketing
17 materials, and I -- he assisted me in the
18 apportionment factors, like determining those,
19 probably from those same marketing materials, but
20 you would have to ask him.

21 BY MR. BABBITT:

22 Q. Is it your opinion that marketing

1 materials can help you determine what is the
2 customer demand for a patent?

3 MS. CANINO: Objection; form and
4 relevance.

5 THE WITNESS: You had me until "customer
6 demand for a patent." So I don't know if --
7 certainly marketing materials and
8 advertising-related documents are relevant to the
9 question of customer demand. Whether or not it
10 gets to customer demand of a patent, we usually
11 think in terms of patented features, patented
12 benefits as opposed to the patent. That's how I
13 think about it as an economist.

14 BY MR. BABBITT:

15 Q. Okay. So let me try to rephrase that.

16 In your experience, do you think
17 marketing materials can demonstrate the customer
18 demand for a patented feature?

19 MS. CANINO: Objection; form and
20 relevance.

21 THE WITNESS: I mean, as one input, yes,
22 I think that is a relevant consideration.

1 BY MR. BABBITT:

2 Q. And would you agree that product pages
3 and websites can demonstrate the customer demand
4 for patented features?

5 MS. CANINO: Same objections.

6 THE WITNESS: So, again, as one input,
7 that can be relevant to an assessment of demand
8 drivers for a given product.

9 BY MR. BABBITT:

10 Q. Would you agree that product brochures,
11 presentations, internal correspondence, design
12 specifications, marketing materials, can all act
13 as inputs to determine what is a customer demand
14 for a patented feature?

15 MS. CANINO: Objection; relevance.

16 THE WITNESS: Yeah, so, again, I think
17 all of those can be relevant to an assessment of
18 customer demand.

19 BY MR. BABBITT:

20 Q. Have you provided any opinion about
21 whether Provisur copied the TS700 product?

22 MS. CANINO: Objection; form and

1 relevance.

2 THE WITNESS: Did you mean Provisur?

3 BY MR. BABBITT:

4 Q. I thought that's what I said. So, yes.

5 A. Weber.

6 Q. So strike that, let me ask again.

7 Have you provided any opinion about
8 whether Provisur copied the TS700 product?

9 A. No.

10 MS. CANINO: Objection; form and
11 relevance.

12 BY MR. BABBITT:

13 Q. Have you provided any opinion about
14 whether Provisur copied the '487 patent?

15 MS. CANINO: Same objection.

16 THE WITNESS: No.

17 BY MR. BABBITT:

18 Q. Are you aware that Mr. Schmeiser of
19 Weber testified that the '487 patent removable
20 conveyor is not a core technology for Weber?

21 A. So, again, I may have been at some
22 point. I didn't review my entire report. So I

1 can't say one way or another.

2 Q. Would that affect your analysis if you
3 knew that Mr. Schmeiser testified that the
4 '487 patent removable conveyor is not a core
5 technology for Weber?

6 MS. CANINO: Objection; form.

7 THE WITNESS: My analysis of what? I
8 mean, the two pages that we've been focused on
9 today, no, those are summaries of sales data.

10 BY MR. BABBITT:

11 Q. And I'm asking you more broadly about
12 your opinions.

13 A. Oh, so we're talking damages today? I
14 didn't prepare for that, sorry.

15 Q. So I'll ask you the question again.

16 Are you aware that Mr. Schmeiser of
17 Weber testified that the '487 patent removable
18 conveyor is not a core technology for Weber?

19 A. So it would be the same answer. I don't
20 know sitting here today, because I didn't review
21 my entire report for today. I may have been aware
22 of that and it may be in my report, I don't know.

1 Q. Do you believe it would affect your
2 opinion about commercial success of the
3 '487 patent if Mr. Schmeiser testified that the
4 '487 patent removable conveyor is not a core
5 technology for Weber?

6 MS. CANINO: Objection; form and
7 relevance.

8 THE WITNESS: No, not without seeing all
9 of the testimony and considering everything else
10 in my report.

11 BY MR. BABBITT:

12 Q. Are you aware that Mr. Schmeiser
13 testified that Provisur could easily do a
14 different design to reach similar results than
15 using the '487 patented invention?

16 MS. CANINO: Same objections.

17 THE WITNESS: It would be the same
18 answer. I don't recall. I didn't study my entire
19 report for today.

20 BY MR. BABBITT:

21 Q. I want to circle back to ask you more
22 about the conversation you remember having with

1 Mr. McCarroll, I think it was back in April of
2 2024.

3 Do you remember --

4 A. The one -- hold on, the one I don't
5 remember, but okay.

6 Q. Yeah, so you could go ahead and confirm
7 what you don't remember about that then. Okay?

8 A. Sure.

9 Q. Do you recall if Mr. McCarroll told you
10 that the TS700 Flex product was not successful?

11 A. I don't recall.

12 MS. CANINO: Objection; form.

13 THE WITNESS: Sorry.

14 I don't recall.

15 BY MR. BABBITT:

16 Q. Do you recall if Mr. McCarroll told you
17 that Weber did not sell that many TS700 Flex
18 products?

19 A. I don't recall.

20 Q. Do you recall if Mr. McCarroll told you
21 that Weber did not sell many TS700 Flex products
22 because is it's pretty basic?

1 A. I don't recall.

2 Q. Do you recall Mr. McCarroll telling you
3 most customers want the ability to run different
4 products, and the TS700 Flex is not as good at
5 that?

6 A. I don't recall.

7 Q. Do you recall Mr. McCarroll telling you
8 that Weber was not successful in selling the TS750
9 in the U.S.?

10 A. I don't recall.

11 Q. Do you recall Mr. McCarroll telling you
12 that the TS700 was a successful product?

13 A. I don't recall.

14 Q. Do you recall Mr. --

15 A. I don't recall anything from my
16 discussion with him other than what would be cited
17 in my report, which I did not review for today.

18 Q. Do you recall if Mr. McCarroll told you
19 that the weSLICE 9500 product was successful?

20 A. I don't recall.

21 Q. What's your current billing rate?

22 A. Excuse me?

1 Q. What's your current billing rate for
2 Weber?

3 A. It should be \$1100 an hour.

4 Q. Can you estimate how much Analysis Group
5 has billed for your work against Provisur in the
6 entire case?

7 MS. CANINO: Objection; relevance.

8 THE WITNESS: Yeah, I haven't looked at
9 that. I don't know.

10 BY MR. BABBITT:

11 Q. Do you know how many hours approximately
12 you have spent working on this case with your
13 team?

14 A. I didn't look at any of that information
15 for today. So I can't speak to that.

16 Q. Do you know how much time it took you to
17 prepare your report, your opening report?

18 MS. CANINO: Objection.

19 THE WITNESS: I mean, it would be the
20 same answer. I'm sure I was prepared to discuss
21 that when I was deposed on that report, because I
22 always look at that prior to being deposed on my

1 expert reports, but I have no recollection of that
2 information today.

3 BY MR. BABBITT:

4 Q. Do you know if you billed Weber more
5 than \$100,000?

6 MS. CANINO: Objection; form and
7 relevance.

8 THE WITNESS: I would assume it's more
9 than \$100,000, but, again, I haven't looked at the
10 data.

11 BY MR. BABBITT:

12 Q. Do you know if you billed Weber more
13 than \$200,000?

14 MS. CANINO: Objection; form and
15 relevance.

16 THE WITNESS: I would assume it's more
17 than \$200,000.

18 BY MR. BABBITT:

19 Q. Would you assume that you've billed
20 Weber more than \$300,000 for your work?

21 MS. CANINO: Objection; form and
22 relevance.

1 THE WITNESS: So, again, my work being
2 inclusive of two reports for both sides of the
3 case, I would assume it's more than \$300,000.
4 But, again, I have not looked at that data.

5 BY MR. BABBITT:

6 Q. What's your best estimate of the amount
7 of money that you have billed Weber for all of
8 your work on this matter?

9 MS. CANINO: Objection; form and
10 relevance.

11 THE WITNESS: I cannot give a good
12 estimate. I don't know. I mean, I haven't looked
13 at that data. Again, I was absolutely prepared to
14 answer that in my prior deposition, but I did not
15 revisit that data for today.

16 BY MR. BABBITT:

17 Q. Do you recall if you have billed Weber
18 more than \$500,000 for your work on this case?

19 MS. CANINO: Objection; form and
20 relevance. Counsel, I think the witness has made
21 clear that she can't give you an answer here.

22 THE WITNESS: I don't recall. And

1 beyond that number, I can't say one way or
2 another, and I haven't looked at the data.

3 BY MR. BABBITT:

4 Q. Before this case, did you have any
5 connection to Provisur or Weber?

6 A. No.

7 Q. Before this case, had you ever heard of
8 Provisur or Weber?

9 A. No.

10 Q. And before this case, you hadn't done
11 any other work for Provisur or Weber; had you?

12 A. No.

13 Q. Okay.

14 MR. BABBITT: Why don't we go off the
15 record.

16 (Recess from the record.)

17 MR. BABBITT: Thank you for your time
18 today, Ms. Kindler. I have nothing further.

19 MS. CANINO: Nothing further from us.

20 (Off the record at 11:32 a.m.)

21

22

1 STATE OF MARYLAND)

2 ss:

3 COUNTY OF MONTGOMERY)

4

5 I, Matthew Goldstein, Notary Public
6 within and for the State of Maryland, do hereby
7 certify:

8

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11 transcript is a true record of said proceedings.

12

13 I further certify that I am not related
14 to any of the parties to the action by blood or
15 marriage, and that I am in no way interested in
16 the outcome of this matter.

17

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 13th day of September, 2024.

20

21

22

Matthew Goldstein, RMR, CRR

1 Lauren Kindler, c/o
 ERISE IP, P.A.

2 717 17th Street, Suite 1400
 Denver, Colorado 80202

3

Case: Provisur Technologies, Inc. v. Textor Maschinenbau, GmbH

4 Date of deposition: September 13, 2024

Deponent: Lauren Kindler

5

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8 Case: Provisur Technologies, Inc. v. Textor Maschinenbau, GmbH

9 Witness Name: Lauren Kindler

10 Deposition Date: September 13, 2024

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12

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