

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROVISUR TECHNOLOGIES, INC.,	)
	) CASE IPR2024-00224
PETITIONER,	)
	) PATENT NO.
v.	) 9,457,487 B2
	)
TEXTOR MASCHINENBAU GMBH,	)
	)
PATENT OWNER.	)
	)

EXPERT DEPOSITION OF DAVID LEATHERS
TAKEN REMOTELY VIA ZOOM VIDEOCONFERENCE
THURSDAY, SEPTEMBER 26, 2024
9:09 A.M. CDT

REPORTED BY AUDRA E. CRAMER, CSR NO. 9901

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 EXPERT DEPOSITION OF DAVID LEATHERS, TAKEN REMOTELY
2 VIA ZOOM ON BEHALF OF THE PETITIONER AT 9:09 A.M. CDT,
3 THURSDAY, SEPTEMBER 26, 2024, BEFORE AUDRA E. CRAMER,
4 CSR NO. 9901, PURSUANT TO NOTICE.

5

6 APPEARANCES OF COUNSEL

7

8 ON BEHALF OF THE PETITIONER:

9

WILLKIE FARR & GALLAGHER LLP

10 BY: REN-HOW HARN, ESQUIRE

MITCHELL FELDHAKE, ESQUIRE

11 RACHEL KREAGER, ESQUIRE

300 NORTH LaSALLE DRIVE

12 CHICAGO, ILLINOIS 60654

(312) 728-9000

13 rharn@willkie.com

mfeldhake@willkie.com

14 rkreager@willkie.com

15

ON BEHALF OF THE PATENT OWNER:

16

ERISE IP

17 BY: HUNTER HORTON, ESQUIRE

CHRISTINA CANINO, ESQUIRE

18 7015 COLLEGE BOULEVARD

OVERLAND PARK, KANSAS 66211

19 (913) 777-5604

hunter.horton@eriseip.com

20 christina.canino@eriseip.com

21

22

1 I N D E X

2 EXAMINATION PAGE

3 BY MR. HARN 4

4 E X H I B I T S

5 NO. PAGE DESCRIPTION

6 Exhibit 2017 17 EXPERT REPORT OF DAVID

7 LEATHERS DATED 4/24/24

8 TEXTOR EX2017 PAGE 1-91

9 Exhibit 1 70 LINK (HTTPS://MSP-MAGAZINE.COM/T

10 EXTOR-UNVEILS-THE-TS700-THE

11 -LATEST-IN-SLICER-TECHNOLOG

12 Y-AT-IFFA-2013/) TO WEBSITE

13 MAGAZINE ARTICLE "TEXTOR

14 UNVEILS THE TS700, THE

15 LATEST IN SLICER TECHNOLOGY

16 AT IFFA 2013" (NO PHYSICAL

17 EXHIBIT PROVIDED)

18 Exhibit 2 74 INTERVIEW NOTES DATED

19 4/16/24 WEBER3A-00207138-00207142

20 Exhibit 3 89 EMAIL CHAIN WEBER-0451039-0451043

21 Exhibit 4 116 EXCERPT OF TRANSCRIPT FROM

22 3/1/22 DEPOSITION OF RUDY KOELEWYN

1 REMOTELY VIA ZOOM VIDEOCONFERENCE
2 THURSDAY, SEPTEMBER 26, 2024, 9:09 A.M. CDT
3

4 DAVID LEATHERS,
5 having been first duly sworn, was
6 examined and testified as follows:
7

8 MR. HARN: My name is Ren-How Harn.
9 With me today are my colleagues Rachel Kreager
10 and Mitchell Feldhake from the law firm Willkie
11 Farr & Gallagher, on behalf of Petitioner,
12 Provisur Technologies, Incorporated.

13 MR. HORTON: I'm Hunter Horton with
14 Erise IP. Here with me is Christina Canino of
15 Erise IP, both on behalf of Patent Owner,
16 Textor.
17

18 EXAMINATION

19 BY MR. HARN:

20 Q. Mr. Leathers, it's good to see you
21 again.

22 Can you please state your full name for

1 the record.

2 A. Sure. It's David McLeod Leathers.

3 Q. Do you recall I deposed you back on
4 June 11, 2024, of this year?

5 A. Yes.

6 Q. And you submitted two expert reports in
7 connection with that district court proceeding;
8 right?

9 A. Yes.

10 Q. And do you understand you are here
11 being deposed in relation to what's called an
12 inter partes review, or an IPR?

13 A. Yes.

14 Q. Have you been deposed in an IPR before?

15 A. No.

16 Q. First time?

17 A. Yes.

18 Q. Do you know which Weber patent is at
19 issue in this IPR proceeding?

20 A. Yes.

21 Q. Which patent?

22 A. '487 patent.

1 Q. Okay. And do you understand that an
2 excerpt of your opening report from the district
3 court proceeding was submitted by counsel for
4 Weber in this proceeding?

5 A. Yes.

6 Q. Do you have any documents in front of
7 you this morning, Mr. Leathers?

8 A. I have a clean printout of Exhibit 2021
9 and Exhibit 2011, just my -- I guess my
10 declaration, and then the exhibit -- the
11 excerpts from my report. That's it.

12 Q. Got it. Nothing else?

13 A. Nothing else.

14 Q. Nothing open on your computer or
15 anything like that?

16 A. Nope.

17 Q. And I imagine you've been deposed in a
18 virtual deposition before, Mr. Leathers?

19 A. Yes.

20 Q. You know the rules here. Don't refer
21 to any documents unless I instruct you
22 otherwise?

1 That's a yes?

2 A. Yes.

3 Q. Thank you for acknowledging.

4 Just get some formalities out of the
5 way. Exhibit 2011, can you take a look at that.

6 That's a clean copy you said; right?

7 A. Yes, sir, it is.

8 Q. And can you just confirm that excerpt
9 is actually an excerpt from your district court
10 opening report?

11 A. Yes, it is.

12 Q. Nothing added or changed from the
13 district court report?

14 A. Correct.

15 Q. Can you tell me how the excerpt,
16 Exhibit 2011, was prepared, Mr. Leathers?

17 A. The excerpt was prepared by counsel.
18 The redactions to the paragraphs are not
19 excluded -- or not included in 2021 were
20 performed by counsel.

21 Q. Can you identify the portions of your
22 district court report to submit for this IPR

1 proceeding, Mr. Leathers?

2 A. No.

3 Q. Were you sent a draft of your excerpted
4 report before it was submitted for this IPR,
5 Mr. Leathers?

6 A. I believe that I was, and if I was not,
7 it was communicated to me prior to signing my
8 declaration the portions of my report that would
9 be included in or be submitted as part of this
10 IPR proceeding.

11 Q. Did you provide any input into which
12 portions of your district court report should be
13 in the excerpt, Mr. Leathers?

14 A. No.

15 Q. And when were you first notified that
16 your opinions from the district court would be
17 submitted in this IPR, Mr. Leathers?

18 A. Sometime in the early part of July of
19 2024.

20 Q. Thank you for that answer.

21 So you said you recall being deposed by
22 me back in June; right?

1 A. Yes.

2 Q. Since your deposition in June,
3 approximately how much time have you billed to
4 Provisur -- I mean Weber?

5 MR. HORTON: Object to form.

6 THE WITNESS: I would say probably
7 about -- me personally, probably about six or
8 seven hours.

9 BY MR. HARN:

10 Q. Okay. How about your team?

11 I know you have a team; right?

12 A. Yes.

13 Q. How much time have they billed to
14 Weber?

15 A. I would say, collectively, excluding
16 me, would have probably billed another 30 hours
17 or so. 30, 40 hours.

18 Q. Okay. And since your deposition in
19 June, how much of that time has been spent in
20 relation to this IPR, Mr. Leathers?

21 A. I don't think when I answered that
22 question that I was specifically including time

1 spent on the IPR.

2 Q. Uh-huh.

3 A. The time spent on the IPR would have
4 been the period of time, say, half an hour, for
5 reviewing my declaration, and then probably four
6 or five hours in terms of preparing for the
7 deposition today.

8 Q. Okay. Did you spend any additional
9 time in connection with the IPR between June and
10 today?

11 A. In addition to what I just answered?

12 Q. Yeah.

13 A. No.

14 Q. Mr. Leathers, you did not consider any
15 IPR materials in forming the opinions in your
16 opening report; is that right?

17 A. I don't understand the question.

18 Q. In connection with your district court
19 opening expert report, you did not consider any
20 IPR materials; is that right?

21 A. I did not consider.

22 Q. Let me --

1 A. -- any court filings or documents,
2 correspondence that related to the IPR
3 proceeding.

4 Q. Okay. You didn't consider any of the
5 parties briefs submitted in connection with the
6 IPR either; right?

7 A. That is correct, unless there were
8 briefings that may have been relied upon or
9 referenced by one of the engineering or
10 technical experts in the district court case.

11 Q. And what did you do in preparation for
12 the deposition today, Mr. Leathers?

13 A. I read through Exhibit 2021 and through
14 Exhibit 2011, and I took a brief look at the
15 materials -- supporting materials cited where
16 there were footnotes as part of Exhibit 2011.

17 Q. Did you review anything else?

18 A. No.

19 That's not true. I reviewed the -- I
20 forget the actual court proceeding, but I
21 reviewed the sections of an IPR filing by Weber
22 that made reference to my report or made

1 reference to Exhibit 2011.

2 Q. Sitting here today, do you recall which
3 sections those were?

4 A. I believe that one was related to
5 commercial success and the second was related to
6 copying.

7 Q. Anything else?

8 A. No.

9 Q. Did you review your deposition
10 transcript from June?

11 A. I did not review the entire transcript.
12 I reviewed select pages that related to the
13 testimony in Exhibit 2011.

14 Q. Did you meet with counsel?

15 A. Yes.

16 Q. How long did you meet with counsel?

17 A. About an hour and a half.

18 Q. Did you review the '487 patent in
19 preparation for the deposition today?

20 A. No.

21 Q. When was the last time you reviewed the
22 '487 patent?

1 A. It would have been as part of the
2 preparation of my initial report in the district
3 court case.

4 Q. Okay. So at least since your
5 deposition in June you have not reviewed the
6 '487 patent; correct?

7 A. That's correct.

8 Q. Did you review Provisur's IPR petition
9 in this IPR?

10 A. No.

11 Q. Did you review the board's institution
12 decision in this IPR?

13 A. No.

14 Q. Did you talk to anyone else besides
15 counsel in preparation for your deposition
16 today?

17 A. No.

18 Q. Didn't talk to any of the subject
19 matter experts, the technical experts, for
20 example?

21 A. Correct.

22 Q. Didn't talk to Mr. McCarroll, for

1 example?

2 A. Correct.

3 Q. Let's talk about the '487 patent for a
4 minute, Mr. Leathers.

5 You're not an expert on the
6 '487 patent, are you?

7 A. Correct.

8 Q. And you're familiar with the term
9 "person of ordinary skill in the art"?

10 A. Generally, yes.

11 Q. You would agree you are not a person of
12 ordinary skill in the art with respect to the
13 '487 patent; right?

14 A. I don't have an opinion on that one way
15 or another.

16 Q. I think last time you agreed with me
17 that you are not a technical expert at least;
18 right?

19 A. Correct.

20 Q. And you don't know, sitting here today,
21 what the definition of a person of ordinary
22 skill in the art is?

1 A. Correct.

2 Q. And in looking through the excerpt
3 marked Exhibit 2011 there's no reference to the
4 '487 patent; right?

5 A. That is correct.

6 Q. And, similarly, there's no statement in
7 your report acknowledging or disclosing an
8 understanding of the invention disclosed in the
9 '487 patent; right?

10 A. Correct.

11 Q. Do you disclose any opinions on the
12 '487 patent in your report marked as
13 Exhibit 2011, Mr. Leathers?

14 A. No.

15 Q. Similarly, you disclose no opinions in
16 your report that the TS700 embodies any patent
17 claims of the '487 patent; right?

18 A. Can you repeat the question, please.

19 Q. You disclose no opinions in your report
20 that the TS700 embodies any patent claims of the
21 '487 patent; right?

22 A. I didn't go back and look at my entire

1 report. What I can tell you is that
2 Exhibit 2011 does not provide a reference to the
3 embodiment of the '487 patent.

4 Q. Do you think your entire report
5 somewhere in there discloses an opinion
6 consistent with the question I just asked?

7 MR. HORTON: Objection. Scope.

8 THE WITNESS: I've just not gone back
9 and reviewed my report outside of what is the
10 portion that's in Exhibit 2011.

11 BY MR. HARN:

12 Q. So I'm asking you: Do you think you
13 have a disclosed opinion that any of the claims
14 of the '487 patent is embodied in the TS700 in
15 your entire report? Because if so, I can make
16 that report available to you.

17 MR. HORTON: Objection. Scope. Form.

18 THE WITNESS: Again, I haven't looked
19 at my report in a long time. Recognizing the
20 scope of my report with regards to
21 misappropriation of trade secrets, I don't
22 believe that I would have had an affirmative

1 opinion with regards to the '478 patent.

2 BY MR. HARN:

3 Q. So I will drop the full report from the
4 district court in the Zoom chat for you to
5 review, Mr. Leathers, but I do want to confirm
6 that you disclosed no opinions that any of the
7 patent claims of the '487 patent is embodied by
8 the TS700.

9 MR. HORTON: Objection --

10 MR. HARN: Give us a minute to drop
11 that document in the Zoom chat.

12 Just for the record I'll note that the
13 full opening report is marked as Exhibit 2017.
14 It's currently identified as "Supplemental
15 Evidence by Patent Owner Weber, which has been
16 served but not filed on" in connection with this
17 IPR.

18 (Whereupon, Exhibit 2017 was
19 marked for identification.)

20 MR. HARN: I have been informed that
21 the entirety of your report should be available
22 for download in the Zoom chat, Mr. Leathers.

1 Let me know if you have any difficulties opening
2 a copy of that report.

3 THE WITNESS: Okay. Can you just
4 repeat your question one more time for me, and I
5 think I can answer it.

6 BY MR. HARN:

7 Q. Sure. Give me one second to pull up my
8 real-time.

9 You disclosed no opinions that the
10 TS700 embodies any patent claims of the
11 '487 patent in your full report marked as
12 Exhibit 2017; correct?

13 A. Correct.

14 Q. You can set that to the side, and I do
15 want to revisit a question about the person of
16 ordinary skill in the art.

17 So, Mr. Leathers, I'll recite to you
18 the definition of the person of ordinary skills
19 in the art, and you can tell me if you think you
20 meet the definition of a person of ordinary
21 skill in the art. Okay?

22 A. Okay.

1 Q. So a person of ordinary skill in the
2 art would have had, 1, a bachelor's degree or
3 equivalent in mechanical engineering or a
4 similar field and at least two years of
5 experience working as an engineer or similar
6 role on food processing and/or packaging systems
7 or in a similar field.

8 You don't meet any of those
9 requirements; right?

10 A. Correct.

11 Q. And then there's a second part of this
12 definition that I'll just confirm you do not
13 meet.

14 No. 2 is at least seven years of
15 experience working as an engineer or similar
16 role on a food processing and/or packaging
17 systems or any similar field.

18 You don't meet that one either; right?

19 A. Correct.

20 Q. So we can agree that you are not a
21 person of ordinary skill in the art with respect
22 to the '487 patent; right?

1 A. Correct.

2 Q. Your report does not contain --
3 apologies. Strike that.

4 Your report does not disclose any
5 opinions on the advantages of the '487 patent;
6 right?

7 A. Correct.

8 Q. Sitting here today, do you know if
9 Weber sells a product that embodies the
10 '487 patent?

11 MR. HORTON: Objection. Scope.

12 THE WITNESS: It's not something that I
13 have evaluated or been asked to evaluate.

14 BY MR. HARN:

15 Q. Okay. So you have no opinions on that;
16 right?

17 A. Correct.

18 Q. Have you seen any evidence that
19 Provisur knew of the '487 patent before the IPR
20 petition was filed?

21 A. Again, that's not something that I have
22 evaluated.

1 Q. So no opinions on that; right?

2 A. Correct.

3 Q. Have you seen any evidence that
4 Provisur thought that it was infringing the
5 '487 patent before the district court complaint
6 was filed?

7 A. Again, that's not something that I have
8 reviewed as part of this proceeding.

9 Q. So no opinions either; right?

10 A. No opinions as it relates to this IPR
11 proceeding.

12 Q. Are you trying to draw nuance between
13 the IPR proceeding and the district court
14 proceeding?

15 A. I just know that in the district court
16 proceeding there was evidence around use,
17 knowledge of various features associated with
18 the slicing machines, and so I just would want
19 to be very careful about -- without, you know --
20 now that it's been months since I've done that,
21 be very careful about having said I have no
22 opinion about that.

1 Q. Okay. And we can talk about the
2 copying opinions in a moment. I want to first
3 turn to your commercial success opinions,
4 Mr. Leathers.

5 You have no opinions that the TS700 --
6 strike that.

7 You're familiar with the TS700 slicer;
8 right?

9 A. Yes.

10 Q. Are you familiar with the TS500 slicer?

11 A. No. I mean, I'm aware of the product,
12 but my familiarity with its features and
13 functionalities, I have not refreshed my
14 recollection of that.

15 Q. Is it safe to say that none of your
16 analysis or opinions in Exhibit 2011 relate to
17 the TS500 slicer?

18 A. Not correct.

19 Q. Okay. Can you point me to the
20 paragraph of Exhibit 2011 you're referring to.

21 A. So, for example, in paragraph 33,
22 Table 3 that's in paragraph 33 makes reference

1 to the TS500 revenues -- or makes reference to
2 revenues of the TS500.

3 Q. Okay. So you don't know if the patent
4 claims in the '487 patent are embodied by the
5 TS500 slicer; right?

6 A. Correct.

7 Q. Do you disclose any opinions about the
8 commercial success of the TS500 slicer?

9 A. Not other than is referenced in
10 Exhibit -- well, the only opinions that I have
11 with regards to the TS500 that are included in
12 Exhibit 2011 relate to the equipment revenues.

13 Q. Okay. And the same with regard to the
14 TS750.

15 You're familiar with that slicer?

16 A. Yes.

17 Q. Do you disclose any opinions about the
18 TS750 anywhere in your report marked as
19 Exhibit 2011?

20 A. I do not see any written opinions in
21 TS -- excuse me -- in Exhibit 2011. There may
22 be some supporting materials or reference

1 materials that are part of a reference to a
2 general statement that may have had some
3 reference to the TS750.

4 Q. Okay. But you don't have any opinions
5 about the TS750; right?

6 A. Not as I sit here today.

7 Well, let me clarify that question. I
8 think that -- do I have any opinions whatsoever
9 about the 750? Without understanding a question
10 about what sort of opinion I may have, it's hard
11 for me to say that I have zero opinions. I have
12 zero opinions without being posed a question
13 specific to the 750.

14 Q. So we can take a look at your larger
15 report that you should have in front of you
16 electronically, Mr. Leathers.

17 And can you identify where in your
18 larger report you disclose opinions about the
19 TS500 or the TS750 aside from paragraph 33 of
20 your report.

21 MR. HORTON: Objection. Scope.

22 THE WITNESS: Exhibit 4.1 includes

1 reference to the 500.

2 BY MR. HARN:

3 Q. Okay. Anywhere else?

4 A. Not with regard to the 500. And no
5 reference to the TS750 in the body of my initial
6 expert report --

7 Q. Okay.

8 A. -- which is marked as Exhibit 2017.

9 Q. Thank you for confirming that for me,
10 Mr. Leathers.

11 You disclose no opinions about the
12 commercial success of the '487 patent anywhere
13 in your report; correct?

14 A. I don't reference the '487 patent with
15 regards to commercial success.

16 Q. So you have no opinions on the
17 commercial success of the '487 patent; correct?

18 A. Well, I have to be hesitant about that.

19 My opinions relate to the commercial
20 success of Weber's products; also opinions with
21 regards to Provisur's products. What I have not
22 done as part of this proceeding is to carve out

1 that commercial success between -- that it may
2 be driven by the '487 patent versus trade
3 secrets, for example.

4 Q. Understood.

5 Just backing up for a moment, are you
6 familiar with the legal concept called
7 commercial success as a secondary consideration
8 in patent law?

9 MR. HORTON: Objection. Form.

10 THE WITNESS: No.

11 BY MR. HARN:

12 Q. You were provided no understanding of
13 the law behind commercial success as a secondary
14 consideration; correct?

15 A. Correct.

16 Q. And you provide no opinions about the
17 legal concept kept of the commercial success of
18 the '487 patent in your report; right?

19 A. Correct.

20 Q. I understand you talk about the
21 financial aspects of the TS700.

22 We can agree on that; right?

1 A. Yes.

2 Q. And you just said you did not make any
3 determination as to which feature of the TS700
4 drove those sales; right?

5 MR. HORTON: Object to form.

6 THE WITNESS: If I said that, let me
7 clarify that.

8 As part of my initial report and
9 analysis, I would have considered that, but as
10 part of the work that I was asked to do and what
11 has been disclosed as part of Exhibit 2011, I
12 have not done that.

13 BY MR. HARN:

14 Q. Do you disclose an opinion that the
15 '487 patent drove sales of the TS700?

16 A. No.

17 Q. Do you disclose any opinions that
18 Provisur copied any features of the TS500
19 slicer?

20 A. Again, I have not -- outside of
21 Exhibit 2011, which is what I focused on today,
22 I don't believe that I have disclosed

1 affirmative opinion with regards to the TS500.

2 Q. So I just need to confirm that by
3 looking at your full report, Mr. Leathers, when
4 you make statement like that.

5 So can you just open your full report
6 marked as Exhibit 2017 and confirm that you do
7 not disclose any opinions that Provisur copied
8 the TS500 or the TS750.

9 MR. HORTON: Objection. Scope.

10 THE WITNESS: I don't in my report have
11 a -- let's call it affirmative opinion or a
12 statement that they specifically copied
13 features. However, I have not gone back and
14 studied the entire report and the supporting
15 information and documents that are cited in that
16 report, of which may contain information or
17 reference to the copying of features that may be
18 in the TS700 or TS500.

19 BY MR. HARN:

20 Q. And turning to Exhibit 2011, which is
21 the excerpt of your report, Mr. Leathers,
22 paragraph 30, do you understand that Patent

1 Owner's brief cites to paragraph 30 in support
2 of their commercial success opinion assertions?

3 A. I'd have to go back and look. I mean,
4 I believe that they do, because I recall reading
5 the court filing that made reference to this.

6 Q. So rather than show you the full brief
7 by the Patent Owners, I can just recite the
8 sentence that they cite to your report on in the
9 commercial succes opinion, and you can confirm
10 that for me. Okay?

11 A. Sure.

12 Q. So the paragraph where they cite to
13 your report in the commercial success section
14 starts with -- starts on page 52 of the Patent
15 Owner's response: "These commercial embodiments
16 contributed significantly to Patent Owner's
17 financial success as set forth in the expert
18 report of David Leathers, an excerpt of which
19 has been filed under seal in this proceeding as
20 Exhibit 2011. Weber's US entity, Weber, Inc.,
21 achieved it's largest increase in year-over-year
22 revenues following the first sales of the TS700

1 in the US in 2016," and then they cite to
2 Exhibit 2011, paragraph 30 of your report.

3 A. Okay.

4 Q. They also cite to paragraphs 32 and 33
5 for the following sentence: "During this
6 period, commercial embodiment TS700 represented
7 nearly half of Weber, Inc.'s equipment sales."

8 A. Yes.

9 Q. So in the commercial success section
10 they cite to paragraphs 30, 32 and 33 of your
11 report; right?

12 A. Yes.

13 Q. There's no assumptions anywhere in
14 Exhibit 2011, your excerpt, where you were asked
15 to assume that the TS700 is a commercial
16 embodiment of the '487 patent; correct?

17 A. Correct.

18 Q. There's no reference anywhere in your
19 excerpt, 2011, that you relied on any technical
20 analysis from other experts, such as Dr. Meyer
21 or Dr. Kindler -- or Ms. Kindler; right?

22 A. Correct as it relates to paragraphs 30

1 and 33. And with regards to Ms. Kindler, I'd
2 have to go back and look at the latter sections.
3 I believe some of the latter sections may have
4 made reference -- no, that's correct. I'm
5 sorry. You're correct.

6 Q. I don't think you reviewed
7 Ms. Kindler's report, so I just need that
8 confirmation. So thank you for that.

9 A. Yes.

10 Q. So, sitting here today, you did not
11 analyze whether the alleged commercial success
12 of the TS700 was driven by the invention
13 disclosed in the '487 patent; right?

14 A. Correct.

15 Q. And focusing on Weber's brief for a
16 moment, I just recited the paragraph that they
17 cite to your report in support of, and part of
18 that sentence says, "Weber, Inc. achieved its
19 largest increase in year-over-year revenues
20 following the first sales of the TS700 in the US
21 in 2016."

22 Is it your opinion that Weber, Inc. --

1 Weber sold the TS700 for the first time in 2016?

2 A. No.

3 Q. When did Weber make the first sale of
4 the TS700?

5 A. In the United States or globally?

6 Q. Either. Just if you have any knowledge
7 on either.

8 A. And do I need to separate between
9 Textor and Weber.

10 Q. For the purposes, sure.

11 A. So my recollection is that the first
12 sale in the United States of the TS700 was in
13 2016.

14 Q. And what's that understanding based on,
15 Mr. Leathers?

16 A. The documents produced by Weber.

17 Q. Can you identify a specific document
18 for me?

19 A. Those documents would include, among
20 various email correspondence and marketing
21 information, the financial statements that are
22 the support -- that support Exhibits 3.1 and 4.1

1 to my expert report.

2 Q. So I'm going to direct your attention
3 to your full report for a moment, Mr. Leathers,
4 Exhibit 2017, paragraph 26.

5 The last sentence in paragraph 26
6 states, "In 2013 Textor, now Weber, released its
7 most successful slicing machine. The TS700 was
8 rebranded in 2024 to the weSLICE 7500"; right?

9 A. That's what it says, yes.

10 Q. So the product TS700 was released in
11 2013; correct?

12 A. I have not gone back to study the
13 supporting documents for paragraph 20 and
14 compared that to the supporting materials that
15 are in Exhibit 2011 to be able to answer that
16 question.

17 Q. Okay. So I'll ask you the question
18 another way, Mr. Leathers.

19 Is it your opinion that, prior to 2016,
20 none of the Weber or Textor entities made a
21 TS700 sale in the US?

22 MR. HORTON: Object to form.

1 THE WITNESS: I have not performed that
2 analysis to render that opinion.

3 BY MR. HARN:

4 Q. Well, you just -- I apologize.

5 You just told me that the first sale in
6 the US was 2016. So I'm trying to understand
7 and make sure that it is your opinion that
8 there's not been a sale in the US prior to 2016,
9 Mr. Leathers.

10 MR. HORTON: Object to form.

11 THE WITNESS: Based on Exhibit 20, 21
12 and -- which is what I reviewed for this matter,
13 the first sale of the TS700 in the United States
14 was in 2016.

15 BY MR. HARN:

16 Q. Okay. So, sitting here today, prior to
17 2016 neither Weber nor Textor made any sales in
18 the US with regard to the TS700; right?

19 MR. HORTON: Object to form.

20 THE WITNESS: That's correct.

21 BY MR. HARN:

22 Q. Let's switch gears for a moment,

1 Mr. Leathers. I think in the last deposition we
2 agreed that -- well, let me just ask you a
3 question.

4 Are you an expert in this industry?

5 A. I don't understand. How do you want me
6 to define "expert"?

7 Q. Well, do you have experience in the
8 food processing industry?

9 A. Yes.

10 Q. What kind of experience do you have?

11 A. I have experience in, obviously, the
12 work that I have done in -- the extensive work
13 that I have done in the district court case, and
14 I have also been involved in matters in the food
15 distribution business -- food processing and
16 distribution business.

17 Q. How many other matters have you been
18 involved in relating to the food processing
19 industry?

20 A. Two that I recall as I sit here now.

21 Q. But you have no sales experience, for
22 example, in the food processing industry; right?

1 A. That's correct.

2 Q. You have no technical experience in the
3 food processing industry; correct?

4 A. I have analyzed technical information
5 in the food processing industry, but I have not
6 worked as a technical expert or engineer in the
7 food processing industry.

8 Q. So do you think you're a technical
9 expert in the food processing industry?

10 A. No.

11 Q. You're not involved in any trade
12 associations relating to the food processing
13 industry; right?

14 A. Correct.

15 Q. You have not attended any trade shows
16 in the food processing industry; correct?

17 A. That's correct.

18 Q. So let's talk about trade secret and
19 confidential information for a moment,
20 Mr. Leathers.

21 Would you agree with me that what
22 constitutes a confidential information or trade

1 secret is context-dependent?

2 MR. HORTON: Objection. Scope.

3 THE WITNESS: Yes, it's not -- my
4 review of trade secret information as it relates
5 to this case is not something that I've reviewed
6 as part of this proceeding, No. 1.

7 And then, No. 2, I don't understand
8 your question.

9 BY MR. HARN:

10 Q. In your last deposition, you recall, I
11 was asking you about whether or not something
12 constitutes confidential information or trade
13 secret, and we had some discussion about that;
14 right?

15 MR. HORTON: Objection. Scope.

16 THE WITNESS: I don't recall.

17 BY MR. HARN:

18 Q. Okay. Are you an expert qualified to
19 determine what constitutes confidential
20 information in the food processing industry?

21 MR. HORTON: Object to form.

22 THE WITNESS: Not from a legal

1 perspective, no.

2 BY MR. HARN:

3 Q. Is there another perspective that you
4 think you're an expert on?

5 A. I often provide -- I have expertise in
6 corporate and financial investigations and
7 valuation, of which that skill set is often used
8 to assist in determining and evaluating
9 confidential information and trade secrets.

10 Q. And are you an expert qualified to
11 determine what constitutes trade secrets in the
12 food processing industry?

13 MR. HORTON: Object to form.

14 THE WITNESS: Not from a legal
15 perspective, no.

16 BY MR. HARN:

17 Q. In your expert report -- and I don't
18 believe this is in the excerpt marked as 2011,
19 Mr. Leathers. But you provide, I believe, six
20 elements as to what constitutes a trade secret
21 under the Defense of Trade Secret Act; right?

22 Do you recall that?

1 MR. HORTON: Objection. Scope.

2 THE WITNESS: I recall some reference
3 to -- likely in the background, of trade secrets
4 or trade secret damages that would have been
5 included in my district court report.

6 BY MR. HARN:

7 Q. Sure. And we can take a look -- since
8 you have the full report open, you can take a
9 look at paragraph 57 of Exhibit 2017.

10 A. Okay. I'm there.

11 Q. And those are the six elements; right?

12 A. Yes.

13 Q. And one must -- and those are the six
14 elements for defining a trade secret under the
15 Defense of Trade Secret Act; right?

16 MR. HORTON: Object to form.

17 THE WITNESS: Yes, that's correct. I'm
18 not sure which trade secret act -- I assume
19 you're talking about -- when you say "the trade
20 secret act," you're referencing the DTSA.

21 BY MR. HARN:

22 Q. Or the MUTSA. I think in paragraph 58

1 you state that the two are basically the same,
2 for this purpose at least.

3 A. Yes, that's correct.

4 Q. So I'm not going to spend too much time
5 on that. I just wanted to refresh your
6 recollection as to where I'm going here.

7 Have you ever served as an expert in
8 determining what constitutes a trade secret as
9 you define it in paragraph 57 of your report?

10 MR. HORTON: Objection. Scope.

11 THE WITNESS: I have and periodically
12 provide information as an expert to support one
13 or more of the six principles.

14 BY MR. HARN:

15 Q. Have you ever in any case that you've
16 been an expert witness on provided opinions that
17 something constitutes a trade secret because
18 they met these six principles?

19 MR. HORTON: Objection. Scope.

20 THE WITNESS: I'm not aware that anyone
21 would do that, as it is the trier of fact that
22 would ultimately determine if something is a

1 trade secret or not a trade secret.

2 BY MR. HARN:

3 Q. So is that a no, you have not served as
4 an expert on a previous case in which you have
5 walked through the analysis of these six
6 principles to explain what constitutes a trade
7 secret?

8 A. Oh, no. I've absolutely gone through
9 on multiple times, just like I did in this case
10 and summarized in this case the six principles.

11 My opinion on the case and the
12 information in that case and the nature of that
13 case, I would often testify with regards to, for
14 example, the value of the information to the
15 business or to its competitors. I would do that
16 in almost every trade secret or confidential
17 information-related matter.

18 Q. And you just testified that you did
19 that in this case; right?

20 A. Excuse me?

21 MR. HORTON: Object to form and scope.

22 THE WITNESS: Sorry.

1 BY MR. HARN:

2 Q. You just testified that you did that in
3 this case. You applied these six principles in
4 this case; right?

5 A. I considered these six principles, yes.

6 Q. Okay. Identify for me where in your
7 report you discuss these six principles, aside
8 from paragraph 57, please.

9 A. Well --

10 MR. HORTON: Objection. Form.

11 THE WITNESS: -- again, I have not
12 prepared for this deposition or gone back and
13 reviewed my report or the supporting information
14 for that report for this particular proceeding.

15 BY MR. HARN:

16 Q. Sure. Let's talk about Exhibit 2011.
17 Let's go back to Exhibit 2011, paragraphs 69
18 through 106.

19 Identify for me where in paragraphs 69
20 through 106 you apply any of these six
21 principles as you articulate in paragraph 57.

22 A. I'm not sure how you want me to answer

1 that in terms of how I apply those.

2 Do you want me to go through 69 through
3 106 and tell you how those tie in to one of the
4 six principles.

5 Q. No. I'm just -- let's start with where
6 do you reference any of these six principles in
7 paragraphs 69 through 106?

8 A. In Exhibit 2011 there would be -- there
9 would not be a direct reference to one of the
10 six principles, but there would likely be
11 multiple -- I could call it indirect references
12 that support one or more of these six legal
13 principles.

14 Q. Can you give me an example?

15 A. So, for example, ease or difficulty
16 with regards to information that could be
17 acquired or duplicated by others. There is
18 ample information in paragraphs 69 through 106
19 and likely in the supporting materials behind
20 there with regards to the efforts that Provisur
21 took to attempt to acquire knowledge and skill
22 around the development of a new slicer.

1 Q. So can you identify a specific
2 paragraph where you talk about or indirectly
3 talk about the ease or difficulty with which
4 information could be acquired or duplicated by
5 others?

6 MR. HORTON: Object to form.

7 THE WITNESS: So there's -- obviously
8 there's discussion with regards to research and
9 development and the amount of money that Weber
10 spent with regards to what Provisur spent. That
11 relates to it.

12 The acquisition of employees from Weber
13 speaks to the difficulty.

14 Paragraph 76 speaks to poor performance
15 in its slicing business.

16 In a discussion around in through 77
17 and 78 in terms of hiring new employees and
18 their attempts to capture market share.

19 BY MR. HARN:

20 Q. Maybe I'll ask another question,
21 Mr. Leathers.

22 Are you providing an opinion -- an

1 affirmative opinion in that Provisur
2 misappropriated trade secrets?

3 A. No.

4 Q. The answer to that is no?

5 A. No.

6 Q. For example, I believe last time we
7 discussed and you stated that you did not do a
8 can comparison of the technical features between
9 the SX380 and the TS700; correct?

10 A. If you can point to my deposition. I
11 haven't read my full deposition to be able to
12 answer that question.

13 Q. Did you do a technical comparison of
14 the features between the SX380 and the TS700?

15 MR. HORTON: Objection. Scope.

16 THE WITNESS: Right. Setting aside how
17 you want me to define a technical comparison --

18 BY MR. HARN:

19 Q. Sure. Let's back up.

20 A. -- I definitely looked at the different
21 features of the different products of both
22 Provisur and Weber.

1 Q. Sure.

2 Tell me, Mr. Leathers: What is the
3 throat size of the SX380?

4 MR. HORTON: Objection. Scope.

5 THE WITNESS: I don't recall the
6 specific throat size. I believe that it is in
7 the range of 300 to 450 millimeters, but, again,
8 something that I have not gone back to analyze.

9 I certainly believe that we may have
10 talked about that in my initial deposition, and
11 I believe that in Exhibit 2011 there are
12 references to the throat size and changes that
13 were made in the development of the SX330 and
14 380, reconciling those are slightly
15 different-sized products, that relate to throat
16 size.

17 BY MR. HARN:

18 Q. Sure.

19 Sitting here today, you cannot tell me
20 the exact throat size of the SX380; right?

21 A. I couldn't tell you the exact throat
22 size, because I recall that it is -- the

1 documentations relate to a range of throat
2 sizes.

3 Q. Sure.

4 And you do not disclose the exact
5 throat size of the SX380 anywhere in
6 paragraphs 69 through 106 of your report;
7 correct?

8 A. I don't agree with that. I don't
9 believe that in 69 to 106 there is text that
10 tells you what the throat size is. I can go
11 back and reread it, but I believe that the
12 supporting documentations to those paragraphs
13 would include a reference to or a document that
14 would specifically state the throat size of the
15 SX380.

16 Q. Where is it affirmatively disclosed in
17 your report between paragraphs 69 through 106,
18 Mr. Leathers?

19 A. Well, affirmative disclosure would mean
20 the text in my report as well as the supporting
21 materials.

22 Q. Sure. Let's talk about it. I'm asking

1 you to identify that for me, because I don't
2 think you identified it, and you're saying that
3 you think you did. So I'm asking you for your
4 disclosure here.

5 A. I'm not saying that I identified. What
6 I thought I was pretty clear about is that I
7 don't believe that in the text of the report
8 that you will see this is -- you know, some
9 chart or some number of what the exact throat
10 size of the SX380 is.

11 However, I believe if we were to gather
12 the supporting documents to those paragraphs,
13 you would find a document that would speak to
14 that exact throat size, which is part of
15 analysis I did in the district court case.

16 Q. Sure.

17 And you're aware that the Patent Owner
18 has cited to paragraphs 69 through 106 in
19 support of their copying assertions in this
20 proceeding?

21 A. Yes.

22 Q. So it's fair for me to ask you these

1 questions today; right?

2 MR. HORTON: Object to form.

3 BY MR. HARN:

4 Q. You keep referring to your preparation
5 for the district court, but it doesn't seem like
6 you're prepared for the IPR deposition today.

7 So are you prepared to testify today,
8 or do we need to suspend this deposition until
9 you have a chance to prepare further?

10 MR. HORTON: Counsel, I'm going to have
11 to pause you there. That's starting to get to
12 harassment of the witness, which is expressly
13 disallowed by the practice guide. Those
14 inferences aren't well taken, and I need to make
15 that note on the record.

16 MR. HARN: Sure. And I'll make the
17 note that the witness does not seem fully
18 prepared today.

19 MR. HORTON: The witness is prepared to
20 talk about Exhibit 2011 and questions within
21 that scope. You have repeatedly asked questions
22 outside that scope throughout the entirety of

1 this in what seems to be an effort to get
2 information for the litigation. If we have to
3 pause that, we can get on the phone with the
4 board and get lead counsel and discuss this if
5 needed.

6 MR. HARN: Sure. We obviously
7 disagree. I'm trying to be efficient with the
8 use of my time, so I'm not going to continue to
9 waste my time responding.

10 Q. Mr. Leathers, are you prepared to
11 continue to testify today?

12 A. Yes.

13 Q. Okay. Do you know the RPM of the
14 SX380?

15 MR. HORTON: Objection. Scope.

16 THE WITNESS: Not as I sit here, no.

17 BY MR. HARN:

18 Q. Do you know the throat size of the
19 SX550?

20 MR. HORTON: Objection. Scope.

21 THE WITNESS: Again, I cannot cite that
22 as I sit here without looking at additional

1 documents.

2 BY MR. HARN:

3 Q. Understood.

4 Do you know where a removable cassette
5 is located in the SX380?

6 MR. HORTON: Objection. Scope.

7 THE WITNESS: I don't understand the
8 question.

9 BY MR. HARN:

10 Q. What is a removable cassette? Let's
11 start with that.

12 A. Well, my nontechnical understanding of
13 a removable cassette is a component of the
14 slicer that is removed for purposes of cleaning
15 and has other advantages associated with that.

16 Q. Where is it located on the SX380?

17 MR. HORTON: Objection. Scope.

18 THE WITNESS: I have a general
19 recollection that it is under the slicing
20 machine -- under the actual slicing component of
21 the machine, but, again, something that I have
22 not gone back and studied for purposes of this

1 deposition.

2 BY MR. HARN:

3 Q. You talk about the removable cassette
4 in paragraph 84 of Exhibit 2011.

5 Do you see that?

6 A. Yes. I see that reference, yes.

7 Q. So you did not study what that
8 removable cassette is for purposes of this
9 deposition today. That's what you're telling
10 me; right?

11 MR. HORTON: Object to form.

12 THE WITNESS: I just don't -- you're
13 using words like "expert" and "technical" and
14 "study," and I'm cautious to how that meaning
15 may be used in this proceeding or not be used in
16 this proceeding. So it's difficult for me to
17 answer your question yes or no.

18 BY MR. HARN:

19 Q. So you're unable -- strike that.

20 Sitting here today, you're unable to
21 answer my question of where the removable
22 cassette is on the SX380?

1 MR. HORTON: Object to form.

2 THE WITNESS: I believe that I cited --
3 just stated and testified to what my
4 recollection of where the removable cassette
5 was.

6 BY MR. HARN:

7 Q. Okay. And how is a removable cassette
8 removed? Put it that way.

9 MR. HORTON: Objection. Scope.

10 THE WITNESS: Again, that's outside of
11 the work that I have done in this case, or
12 certainly as it relates to this IPR proceeding.

13 BY MR. HARN:

14 Q. Sure.

15 Do you know how many lanes of product
16 an SX380 slicer can slice?

17 MR. HORTON: Objection. Scope.

18 THE WITNESS: I -- as part of my -- the
19 district court case, I had information on that,
20 but as I sit here for purposes of this
21 proceeding, I do not recall the specific number.

22

1 BY MR. HARN:

2 Q. Do you know lanes of product the TS700
3 can slice?

4 MR. HORTON: Objection. Scope.

5 THE WITNESS: Again, I believe that
6 some of the documentation that supports the
7 paragraphs that are referenced in 2011 would
8 make reference to that, but as I sit here today,
9 I could not tell you the exact number of lanes.

10 BY MR. HARN:

11 Q. Identify for me where in paragraphs 69
12 through 106 you talk about how many lanes a
13 TS700 can slice. Or anywhere in Exhibit 2011,
14 for that matter.

15 A. So beginning in paragraph 76, there is
16 discussion about the release of the TS700 slicer
17 in Germany.

18 Q. Uh-huh.

19 A. This paragraph and the release.

20 You see in the second-to-last
21 paragraph, "In comparison to Weber's existing
22 slicers, the TS700 had a larger cutting throat

1 and smaller footprint. TS700 also introduced a
2 new design of hygienic features."

3 This is summarizing the information
4 that is in documents and information that was
5 produced by Weber and Provisur and would
6 reference -- in those documentations would
7 likely reference the specific number of slicing
8 lanes.

9 Q. Sitting here today, you cannot tell me
10 how many lanes of product the TS700 can slice;
11 right?

12 A. Sitting here without -- I have
13 knowledge that there were multiple lanes, but
14 sitting here today, I can't tell you the exact
15 number.

16 Q. And in preparation for your deposition
17 today, earlier you testified that you haven't
18 looked at the documents cited in this portion of
19 your report; right?

20 A. I reviewed back to them to get an
21 understanding of what were the basis of these
22 opinions maybe, were they depositions, were they

1 marketing materials, but I would be hesitant to
2 say that I studied them in great detail.

3 Q. Since we're on page 30 -- well, page 7
4 of Exhibit 2011, I want to direct your attention
5 to paragraph 78, Mr. Leathers.

6 A. Okay.

7 Q. And just a few more questions. Then we
8 can take a quick break.

9 Tell me your understanding of vision
10 weight control disclosed in paragraph 78 of your
11 report.

12 A. I do not -- I mean, I have a general
13 understanding that it is a feature of the
14 slicer, but I don't have a technical
15 understanding of how it fits in or the -- how,
16 from a technical perspective, it has some
17 improvement or benefit to the slicer.

18 Q. Can you explain to me how vision weight
19 control functions?

20 A. No.

21 MR. HORTON: Object to form.

22

1 BY MR. HARN:

2 Q. Can you explain to me what an X-ray
3 scanner is, disclosed in paragraph 78 of your
4 report?

5 MR. HORTON: Object to form.

6 THE WITNESS: I cannot. I believe -- I
7 cannot.

8 MR. HARN: Now might be a good time for
9 a quick break.

10 (Recess from 10:19 a.m. to
11 10:29 a.m. CDT.)

12 BY MR. HARN:

13 Q. Mr. Leathers, I am showing you Paper 12
14 on this Zoom.

15 Can you see that?

16 A. Yes.

17 Q. And, again, I want to frame kind of the
18 course of the next line of questions here.

19 Under No. 3, "Copying," you'll see that
20 Weber states, you know, as detailed in your
21 report, "Petitioner implemented a strategy to
22 steal confidential information, as well as key

1 personnel, related to the TS700 in order to
2 bring its own infringing products with similar
3 features to the marketplace," and they cite
4 paragraphs 69 through 106 of your report.

5 A. Okay.

6 Q. You reviewed that section prior to your
7 deposition today, Mr. Leathers?

8 A. This section of the response or
9 paragraphs 69 through 106?

10 Q. This section of the response.

11 A. Yes.

12 Q. Okay. And I assume you also reviewed
13 paragraphs 69 through 106 --

14 A. Yes.

15 Q. -- of your report.

16 A. Yes.

17 MR. HARN: Okay. You can take that
18 down.

19 Q. So you don't understand the legal
20 standard for showing copying as a secondary
21 consideration; is that right, Mr. Leathers?

22 A. That's correct.

1 MR. HORTON: Object to form.

2 BY MR. HARN:

3 Q. Is it your understanding or your
4 opinion -- strike that.

5 Is it your opinion that Provisur copied
6 the '487 patent, Mr. Leathers?

7 A. No.

8 Q. You don't have an opinion that Provisur
9 copied the invention disclosed in the
10 '487 patent; right?

11 A. Correct.

12 Q. Sitting here today, do you know what is
13 the alleged invention in the '487 patent,
14 Mr. Leathers?

15 MR. HORTON: Objection. Scope.

16 THE WITNESS: No. I mean, I have a
17 general understanding in terms of that it
18 relates to the removable cassette and some of
19 the features associated with that, but broader
20 than that I don't have a recollection.

21 BY MR. HARN:

22 Q. You don't know specifically what the

1 claims of the '487 claim; right?

2 A. Yes. I was not asked to -- as part of
3 this, to review the claims or even review the
4 patent itself.

5 Q. Do you know which employee allegedly
6 misappropriated the alleged invention of the
7 '487 patent to Provisur?

8 A. No.

9 Q. Do you know who at Provisur implemented
10 or incorporated the alleged '487 invention into
11 their SX380 slicer?

12 A. No.

13 MR. HORTON: Object to form.

14 And, Mr. Leathers, give me just a
15 second to be able to lodge an objection in
16 between questions, please.

17 THE WITNESS: Absolutely. I apologize.

18 MR. HORTON: No problem.

19 BY MR. HARN:

20 Q. And aside from the reference to the
21 removable cassette identified in paragraph 84 of
22 Exhibit 2011, you make no other references to

1 the removable cassette or the '487 patent

2 anywhere in your report; correct?

3 A. Well, I have not gone back and studied

4 my entire report, but my recollection with

5 regards to Exhibit 2011 is there is that one

6 paragraph in the parentheses that referenced the

7 removable cassette.

8 Q. Can you just confirm that by looking at

9 Exhibit 2017, which is your full report.

10 And I'll reask the same question:

11 Aside from paragraph 84, there's no other

12 references to the removable cassette disclosed

13 in your report; correct?

14 MR. HORTON: Objection. Scope.

15 THE WITNESS: That's correct.

16 BY MR. HARN:

17 Q. And is it your understanding that your

18 reference to "removable cassette" in

19 paragraph 84 identifies the alleged invention of

20 the '487 patent?

21 A. No.

22 MR. HORTON: Object to form.

1 BY MR. HARN:

2 Q. So I'll put it another way: You don't
3 know if the removable cassette referenced in
4 paragraph 84 refers to the invention of the
5 '487 patent; correct?

6 A. Correct.

7 Q. And nowhere else in your full report,
8 Exhibit 27 [sic], do you talk about the
9 invention of the '487 patent; right?

10 MR. HORTON: Objection. Scope.

11 THE WITNESS: That's correct.

12 BY MR. HARN:

13 Q. And let's look at paragraph 84 of your
14 report. And for purposes of this discussion,
15 I'll refer to Exhibit 2011, which is your
16 excerpt.

17 A. Okay.

18 Q. Your understanding of the removable
19 cassette is based on your interview with
20 Mr. Schmeiser and Mr. McCarroll dated April 16,
21 2024, as identified in Footnote 174 at the end
22 of that sentence; right?

1 A. It would not be limited to that
2 interview, no.

3 Q. What's a cassette?

4 What's your understanding of a
5 cassette, Mr. Leathers?

6 MR. HORTON: Object to form.

7 THE WITNESS: I don't know how to
8 describe it from a technical perspective, but my
9 understanding of a cassette is a -- it's a
10 component that's contained within itself that
11 can be removed, similar to pulling out a
12 cassette or a copying function within a
13 photocopier to remove a piece of jammed paper.

14 BY MR. HARN:

15 Q. Okay. And what function does that
16 cassette serve in the slicing process for a
17 slicer?

18 MR. HORTON: Objection. Scope.

19 THE WITNESS: I don't have a technical
20 knowledge of that with regards to the
21 functionality or purpose it serves. I may
22 have -- as part of my work in the district court

1 case, I would have reviewed that and had some
2 familiarity, but for purposes of this
3 proceeding, I don't have a specific
4 understanding.

5 BY MR. HARN:

6 Q. Do you have a nontechnical
7 understanding of what function the cassette
8 serves in the slicer?

9 MR. HORTON: Objection.

10 THE WITNESS: Not as part of this
11 proceeding, no.

12 BY MR. HARN:

13 Q. And can you explain why you keep trying
14 to limit it to not as part of this proceeding.

15 A. Yes. Because I did a tremendous amount
16 of work for my -- as part of my work in the
17 district court case that is summarized in
18 multiple reports and discussed in a deposition,
19 and I have not, as part of this proceeding, gone
20 back and reviewed all of the documentation and
21 information that I reviewed or cited as part of
22 that district court proceeding.

1 So I just want to be very careful that
2 I don't answer a question in this proceeding
3 that's not part of this proceeding that three or
4 four months from now in the district court case
5 you go, "Aha! Mr. Leathers you testified XYZ in
6 the IPR proceeding."

7 So that's why -- I'm not trying to be
8 argumentative or difficult, but that's why I'm
9 trying to be careful about how I answer these so
10 that it is -- you know, not be misconstrued
11 somewhere down the road.

12 Q. So I understand your position,
13 Mr. Leathers.

14 But you understand that the Patent
15 Owner, Weber here, provided these excerpts from
16 the district court in its IPR proceeding; right?

17 A. That's correct.

18 Q. And these are the same excerpts that
19 were disclosed in the district court proceeding;
20 right?

21 A. Well, I don't believe these experts
22 [sic] were disclosed in the district court

1 proceeding. The district court proceeding
2 included an entire report and deposition
3 testimony along with a new format of supporting
4 insider documents.

5 Q. Sure.

6 And we just -- I think you just
7 testified the only instance in which you
8 referred to the removable cassette is in
9 paragraph 84 of your entire report,
10 Exhibit 2017; right?

11 MR. HORTON: Objection --

12 THE WITNESS: And let me make sure
13 we're perfectly clear on that.

14 The only reference in the text of a
15 removable cassette is in paragraph 84. There
16 are a number of documents that were cited
17 throughout my initial report -- hold on. I'm
18 sorry.

19 Nobody ever calls me on my regular
20 office phone anymore. It's ringing. I
21 apologize.

22 There are numerous documents that are

1 cited throughout my full report in background
2 sections and variety of other sections, and many
3 of those documents that are cited will have
4 reference to the removable cassette, the
5 description of the slicing machine with the
6 location of the removable cassette, all of that
7 sort of information.

8 BY MR. HARN:

9 Q. Sure. Sitting here today, can you
10 identify any of the underlying documents cited
11 in at least the excerpt, Exhibit 2011, where you
12 also rely on the removable cassette discussion
13 or, you know, rely on it for your understanding
14 of the term "removable cassette"?

15 MR. HORTON: Object to form.

16 THE WITNESS: There are various
17 documents that would make reference to the
18 removable cassette, and I believe that I
19 testified about them just a moment ago,
20 beginning with paragraph 76, for example, in
21 Footnote 151, which is a magazine article with
22 regards to the release of the Textor TS700 in

1 Germany.

2 And although I have not studied that in
3 detail for part of this proceeding, I believe
4 that that document is an example of a document
5 that would include some reference to the
6 removable cassette and the description and
7 footprint of the TS700.

8 BY MR. HARN:

9 Q. Sure. And we'll work on pulling up
10 that document. So give me a minute here.

11 Anywhere else that you think discloses
12 references to "removable cassette"?

13 A. I believe that other documents that are
14 cited throughout this section that make
15 reference to the TS700 and the SX380 would
16 include reference to the overall features and
17 functions of those slicing machines and
18 including reference to the removable -- or
19 the -- the removable cassette.

20 Q. So any document that discusses features
21 or functions of the TS700 or the SX380 you think
22 makes -- discloses removable cassette features?

1 MR. HORTON: Object to form.

2 THE WITNESS: Well, for purposes of
3 this analysis, I didn't know what questions you
4 were going to ask, so, therefore, I didn't
5 endeavor to go beyond, you know, the -- these
6 pages and look into each of the individual
7 supporting documents to be able to cite for you
8 where those are.

9 I'm just telling you, based on the work
10 that I did to prepare for this and my
11 understanding of the supporting documents, that
12 that's where you'll find other references to the
13 removable cassette.

14 BY MR. HARN:

15 Q. I believe we can pull up this document
16 cited in Footnote 151 on page 7 of Exhibit 2011.

17 And we can scroll to the extent you
18 need to, Mr. Leathers, but please identify for
19 me where the removable cassette feature is
20 discussed in this exhibit.

21 And just for the record I'll note that,
22 based on the footnote, this appears to be a

1 magazine article dated March 19, 2013, in a
2 magazine called Meat, Seafood and Poultry
3 Magazine.

4 We can drop it in the Zoom chat.

5 We'll drop this document into the Zoom
6 chat, Mr. Leathers, so you can peruse at your
7 leisure, but I do want to understand where you
8 are identifying the removable cassette on this
9 document.

10 So for purposes of this discussion --
11 deposition, we'll mark this as Leathers
12 Deposition Exhibit 1.

13 (Whereupon, Exhibit 1 was
14 marked for identification.)

15 THE WITNESS: So you can see in the
16 second paragraph it talks about "Textor
17 Slicer 700 combines a new design within
18 innovative slicing functionalities, particularly
19 a hygienic concept with open-frame
20 construction."

21 That hygienic concept in open-frame
22 construction, my understanding is that's part of

1 the removable cassette.

2 BY MR. HARN:

3 Q. Okay. But no express reference to a
4 removable cassette; right?

5 A. The text does not say "removable
6 cassette."

7 Q. Okay. And if you scroll down in that
8 article a little bit, you see two photos of a
9 slicer.

10 Are you there in that Exhibit 1?

11 A. I see that, yes.

12 Q. Can you identify on there where the
13 removable cassette feature is?

14 MR. HORTON: Object to form.

15 THE WITNESS: You know, I believe the
16 removable cassette is in the bottom right where
17 you see the clear --

18 My Zoom is quitting. I'm getting a...

19 THE REPORTER: You're back now.

20 THE WITNESS: Okay. I believe the
21 removable cassette is in the bottom right-hand
22 component of the slicer. But, again, it's not

1 something that I --

2 (Witness freezes.)

3 MR. HARN: We're going to screen-share
4 this, and I just want to make sure I understand
5 what feature you're pointing out.

6 So Ms. Kreager has a mouse. If you can
7 see that mouse, perhaps you can direct her to
8 where your understanding of where the removable
9 cassette feature here is.

10 MR. HORTON: Object to form. Scope.

11 THE WITNESS: Yeah, again, it's just
12 not something that I have analyzed. I believe
13 that it is part of the -- what you see in the
14 bottom right-hand corner just above her arrow
15 there.

16 BY MR. HARN:

17 Q. That box over there on the very right
18 side of the slicer --

19 MR. HORTON: Object to form. Scope.

20 BY MR. HARN:

21 Q. -- with the clear panel, is that what
22 you're referring to, Mr. Leathers?

1 A. Yes, that's what I'm referring to. But
2 I'm really hesitant to be specific about it,
3 again, because it's just not something that I,
4 you know, focused on for purposes of this
5 matter.

6 MR. HARN: Okay. You can take that
7 exhibit down, Ms. Kreager.

8 Q. Going back to that paragraph 84, where
9 you discuss -- you reference "removable
10 cassette," Mr. Leathers, Footnote 174 refers to
11 an interview with Mr. Schmeiser and
12 Mr. McCarroll; right?

13 A. Yes, that's correct.

14 Q. How much time did you spend with
15 Mr. Schmeiser and Mr. McCarroll discussing a
16 removable cassette feature?

17 MR. HORTON: Object to form.

18 THE WITNESS: I mean, I would -- in my
19 initial deposition I would have had a -- would
20 have likely cited to the length of that
21 interview. My recollection is I had multiple
22 interviews with Mr. Schmeiser and Mr. McCarroll,

1 and as part of those interviews, we talked about
2 a bunch of different things.

3 I don't know that I would be able to or
4 it would be appropriate for me to speak to the
5 exact amount of time that was focused on the
6 removable cassette, recognizing that the
7 removable cassette could overlap in terms of
8 project features as well as commercial success
9 as well as product sales, among other things.

10 MR. HARN: So I will drop another
11 document, which I'll mark up as Leathers
12 Deposition Exhibit 2, which are interview notes
13 that have been produced to Provisur.

14 (Whereupon, Exhibit 2 was
15 marked for identification.)

16 BY MR. HARN:

17 Q. And you can take a look at that, and
18 we'll also screen share this.

19 But I believe, Mr. Leathers, that there
20 is a reference, a bullet point there, [REDACTED]

[REDACTED] If
22 you give me a minute, I'll put it up in my own

1 notes.

2 Well, for a moment -- just pause for a
3 moment, Mr. Leathers.

4 Do you know who took these notes marked
5 as Exhibit 2, which bears the Bates stamp
6 WEBER3A-00207138.

7 MR. HORTON: Object to form.

8 THE WITNESS: I mean, these would be
9 notes that I took where I would have also
10 included any notes where that Mr. Toal or
11 Mr. Loseke had taken and kind of combined them
12 with maybe what I had summarized.

13 BY MR. HARN:

14 Q. Okay. And turning your attention to
15 page 3 of your interview notes, ending in Bates
16 label 7140, you'll see a bullet point that says,
17 [REDACTED]; right?

18 A. Okay.

19 Q. So I just want to understand: Sitting
20 here today, do you recall how much time you
21 spent talking about that feature?

22 MR. HORTON: Object to form.

1 THE WITNESS: Again, that's a difficult
2 question to answer, because the removable
3 cassette, you know, speaks to both the specifics
4 here with regards to, you know, new components,
5 if you will; with regards to the slicing
6 machine. But, you know, it also would likely
7 fall within other aspects of our conversation.

8 So it's difficult for me to -- and I
9 would just be hesitant to put a specific amount
10 of time on that [REDACTED]
11 piece.

12 BY MR. HARN:

13 Q. Okay. Maybe I'll abstract that
14 question a little bit.

15 How much time in total, approximately,
16 did you spend on this call with Mr. Schmeiser
17 and Mr. McCarroll dated April 16, 2024?

18 A. First of all, I would refer back to the
19 extent that I testified to that in my
20 deposition. I would have a better recollection
21 of that amount of time in my deposition.

22 But my recollection for this particular

1 call would have been approximately two hours.

2 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 Q. Are you familiar with a Provisur slicer

17 called the PowerMax series slicer?

18 A. Yes, I have seen reference to the

19 PowerMax.

20 Q. Do you know if the PowerMax slicer

21 includes a removable cassette as well?

22 MR. HORTON: Object to form.

1 THE WITNESS: I don't know.

2 BY MR. HARN:

3 Q. So you did no investigation into to
4 whether or not the removable cassette on the
5 PowerMax slicer is similar to the removable
6 cassette on the SX380; correct?

7 MR. HORTON: Object to form.

8 THE WITNESS: Can you repeat the
9 question, please.

10 BY MR. HARN:

11 Q. You performed no analysis to determine
12 any similarities or differences between the
13 removable cassette on the PowerMax versus the SX
14 slicers; correct?

15 MR. HORTON: Same objection.

16 THE WITNESS: Incorrect.

17 BY MR. HARN:

18 Q. You just told me that you don't know if
19 the PowerMax includes a removable slicer.

20 So how did you perform that analysis on
21 it?

22 A. I don't think I testified one way or

1 another with regards to the PowerMax. I said I
2 was familiar with the PowerMax.

3 Q. Okay. So let's start over.

4 Do you know if the PowerMax slicer
5 includes a removable cassette?

6 MR. HORTON: Objection --

7 THE WITNESS: I -- I'm sorry, Hunter.
8 I keep interrupting you.

9 I have reviewed information that talks
10 about and references the components between the
11 two products. As part of my work in preparing
12 for this, I did not look specific to see the
13 differences or if specifically there was a
14 removable cassette.

15 My recollection is that the SX300 [sic]
16 included similar features as the PowerMax,
17 essentially replaced that, and I do believe
18 that -- and as you can see in paragraph 84, I
19 make reference to the PowerMax having removable
20 cassettes.

21 BY MR. HARN:

22 Q. So the --

1 A. Sorry. Let me clarify that answer.

2 In paragraph 84 I make reference to
3 your specific question there where I state that
4 the PowerMax slicers did not include removable
5 cassettes.

6 Q. Okay. So it's your understanding that
7 the PowerMax slicers do not have removable
8 cassettes?

9 A. Yes, that's correct.

10 Q. Did you review any technical documents
11 on the removable cassette of the TS700,
12 Mr. Leathers?

13 A. As part of this proceeding or as part
14 of the district court proceeding?

15 Q. I think that's part of your report.

16 We'll start with, as part of
17 Exhibit 2011, did you review any documents --
18 technical documents on the removable cassette of
19 the TS700?

20 A. Yes.

21 Q. What technical documents did you
22 review?

1 A. Well, first of all would be how do you
2 want me to -- I know I just answered yes -- how
3 you would define "technical documents."

4 But I reviewed various documents that
5 speak to the specifications of the various
6 slicing machines that include the removable
7 cassette.

8 Q. Did you review operating manuals of the
9 TS700 slicer?

10 A. I don't -- I think as part of my work
11 in the district court case, I may have received
12 and reviewed certain operating manuals or
13 components to the operating manuals, but I did
14 not review them as part of this proceeding.

15 Q. Okay. Maybe I'll -- if it's cited in
16 your report or in your materials considered,
17 then you did review it; right?

18 MR. HORTON: Objection --

19 THE WITNESS: Yes.

20 MR. HORTON: -- form.

21 BY MR. HARN:

22 Q. If it is not cited anywhere in your

1 report or your materials considered, can we
2 safely assume that you did not review it, then?

3 THE WITNESS: Correct.

4 MR. HORTON: Object to form.

5 BY MR. HARN:

6 Q. Okay. And how did you develop an
7 understanding that the PowerMax slicer does not
8 have a removable cassette?

9 A. It would be a combination of my
10 discussion with Mr. Schmeiser and Mr. McCarroll
11 as well as other documents that were produced in
12 the case -- in the district court case.

13 Q. Do you think Mr. Schmeiser and
14 Mr. McCarroll have knowledge about the removable
15 cassette of the PowerMax slicer?

16 MR. HORTON: Object to form. Scope.

17 THE WITNESS: I mean, I think you would
18 have to ask Mr. Schmeiser or Mr. McCarroll that
19 question.

20 BY MR. HARN:

21 Q. Okay. Staying on paragraph 84, that
22 last sentence about the Textor copy -- we talked

1 at some length about the Textor copy during your
2 deposition, Mr. Leathers.

3 I want to understand: Is it your
4 opinion that the SX380 is a Textor copy of the
5 TS700?

6 A. Is it my understanding?

7 Q. Is it your opinion?

8 A. No.

9 Q. Do you agree with the statement made by
10 Mr. McCarroll that the SX380 is a Textor copy?

11 MR. HORTON: Object to form.

12 THE WITNESS: I have seen evidence that
13 supports Mr. McCarroll's opinion, but other than
14 my review of the evidence, I do not have an
15 opinion one way or another.

16 BY MR. HARN:

17 Q. And what's your understanding of
18 Mr. McCarroll's -- because you cite, again, to
19 the interview notes and Footnote 175; right?

20 A. Right.

21 Q. Or the deposition transcript. I
22 apologize.

1 So you cite to Mr. McCarroll's
2 deposition transcript for the understanding that
3 the SX380 is a Textor copy; right?

4 A. Yes.

5 Q. Do you know when Mr. McCarroll
6 developed that understanding that the SX380 is a
7 Textor copy?

8 MR. HORTON: Object to form.

9 THE WITNESS: In part, yes.

10 BY MR. HARN:

11 Q. Can you please elaborate.

12 A. Sure. I recall reviewing email
13 correspondence and some documentation that led
14 up to his belief that it was a Textor copy.

15 Q. Okay. And what's your understanding of
16 when Mr. McCarroll developed that understanding
17 that the SX380 was a Textor copy?

18 MR. HORTON: Object to form.

19 THE WITNESS: I'd have to go back and
20 look specifically at the documentation, but
21 based on the discussion that I have in
22 paragraph 84, it would be sometime in or around

1 mid of 2017.

2 BY MR. HARN:

3 Q. Okay. I do have one document I want to
4 pull up, but before we move on from Exhibit 2, I
5 want to ask about one more bullet point here,
6 Mr. Leathers, and it's right underneath the
7 [REDACTED] bullet.

8 You have a note stating that [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Do you see that?

13 A. Yes.

14 Q. What's your understanding of [REDACTED]

15 [REDACTED]

16 A. Well, these notes and that reference to
17 [REDACTED], do you have a part of my --
18 what is Exhibit 2011 that you're referencing for
19 that?

20 Q. No. I'm just asking you, based on
21 these notes, what's your understanding of [REDACTED]

22 [REDACTED] from your interview with

1 Mr. Schmeiser?

2 A. So outside of Exhibit 2011 or this IPR
3 proceeding, you know, I would have spent a lot
4 of time, obviously, as part of the district
5 court case. So I would want to, you know, rely
6 upon that deposition testimony or to the extent
7 we discuss it in my deposition.

8 My recollection as I sit here is that
9 Provisur tried and tried and tried to create an
10 improved-upon design of a slicer and could never
11 just get there, and they needed information from
12 Weber to kind of, essentially, get to that next
13 component and get it across the line.

14 Q. And which features are part of that
15 [REDACTED], Mr. Leathers?

16 MR. HORTON: Objection. Scope.

17 THE WITNESS: Again, as part of this
18 analysis, I have not gone back and evaluated
19 which features are part of that or not part of
20 that.

21 BY MR. HARN:

22 Q. Well, I'm just trying to understand:

1 Do you think -- is it your understanding that
2 that removable cassette is part of that [REDACTED]
3 [REDACTED] or not?

4 A. Again, this is not something that I've
5 evaluated as part of this proceeding.

6 Q. So you're unable to answer my question
7 today; right?

8 A. I just answered your question.

9 Q. So you don't know if the [REDACTED]
10 includes the removable cassette?

11 MR. HORTON: Object to form.

12 THE WITNESS: Again, I'm not trying to
13 be difficult here, but as part of this
14 proceeding, I have not gone back and evaluated
15 or apportioned between the various components of
16 the systems.

17 BY MR. HARN:

18 Q. Would you agree with me that the
19 alleged invention disclosed in the '487 patent
20 is not a trade secret, Mr. Leathers?

21 MR. HORTON: Objection. Scope.

22 Counselor, the trade secret questions

1 are well outside the scope of his direct
2 testimony. If that questioning continues, we
3 may have to pause this.

4 BY MR. HARN:

5 Q. You may answer the question,
6 Mr. Leathers.

7 A. Can you repeat the question, please.

8 Q. Would you agree with me that the
9 alleged invention disclosed in the '487 patent
10 is not a trade secret?

11 MR. HORTON: Same objection.

12 THE WITNESS: I have not evaluated that
13 as part of my work in this matter. I know that
14 if something is disclosed in a patent, there are
15 specifics of that that may not meet the
16 definition of a trade secret because it is
17 disclosed. Other than that, I don't have an
18 opinion.

19 MR. HARN: Let's take a look at another
20 document in relation to that Textor discussion
21 we were just having.

22 I'm going to mark this document as

1 Leathers Deposition Exhibit 3, Bates-stamped,
2 WEBER-0451039.

3 (Whereupon, Exhibit 3 was
4 marked for identification.)

5 THE WITNESS: I've got it in front of
6 me.

7 BY MR. HARN:

8 Q. Do you recall reviewing this document
9 in forming the opinions disclosed in your
10 report, Mr. Leathers?

11 Do you recall reviewing this document,
12 I should ask?

13 A. This document looks familiar to me.
14 I'm not sure if it's familiar because of the
15 Interpack reference. I'd have to go back and
16 look at my report.

17 Q. I want to direct your attention to the
18 earliest-in-time email, ending on Bates 1041.
19 It's an email sent by [REDACTED]

[REDACTED]
[REDACTED], among others.

22 Are you there, Mr. Leathers?

1 A. I am.

2 Q. In that first bullet point -- well,

3 [REDACTED] starts the document off with "[REDACTED]

[REDACTED]

[REDACTED]"

6 Do you see that?

7 A. I do.

8 Q. And then he goes on to say in that

9 first bullet point that "[REDACTED]

[REDACTED]

[REDACTED]"

12 Do you see that?

13 A. No, I do not.

14 Q. The first bullet, [REDACTED]

[REDACTED]

[REDACTED]" with two exclamation points?

17 A. I see that, yes.

18 Q. And earlier you said that your

19 understanding that Mr. McCarroll -- your

20 earliest understanding that Mr. McCarroll had of

21 the Textor copy was mid-2017.

22 Does this -- would you agree with me by

1 February 1 Mr. Schmeiser thought the SX380 was a
2 copy of the Textor TS700?

3 MR. HORTON: Object to form. Scope.

4 THE WITNESS: Yeah, I mean, the date of
5 the email is February 1, 2017, and in the email
6 he says that it is a one-to-one copy of the
7 Textor TS700.

8 MR. HARN: Okay. Put that to the side.

9 Q. Mr. Leathers, the "Copying" section
10 that we just looked at in Paper 12, the Patent
11 Owner's response, part of the sentence states
12 that "Petitioner implemented a strategy to steal
13 confidential information as well as key Weber
14 personnel related to the TS700."

15 Do you recall reading that with me
16 earlier?

17 I can put it up again if you need.

18 A. Yeah, I don't recall that we read that
19 specific part of it, but I take your
20 representation.

21 Q. We'll just put it up real quick so you
22 can confirm that for me. Page 56 of Paper 12.

1 So did you see where I was reading from
2 it in that "Copying" section, Mr. Leathers?

3 A. No. But I can read it here.

4 Q. "Petitioner implemented a strategy to
5 steal confidential information as well as key
6 Weber personnel."

7 A. I'm sorry. I don't see it here.

8 Am I looking under paragraph 3,
9 "Copying"?

10 Q. Yeah, that section --

11 A. Okay. It describes, "Petitioner
12 implemented a strategy to steal confidential
13 information as well as key Weber personnel."

14 Yes, I see that.

15 Q. So I want to focus the next half hour
16 or so on the "key Weber personnel" aspect of
17 that sentence.

18 A. Okay.

19 Q. And for that discussion it may be
20 helpful to direct your attention to
21 paragraph 74, page 6 of Exhibit 2011. And above
22 paragraph 74 there is a Table 16 entitled

1 "Employees Provisur Hired from Weber."

2 Can you let me know when you're there,
3 Mr. Leathers.

4 A. I'm there, yes.

5 Q. Are these the key Weber personnel
6 identified that allegedly stole information
7 about the TS700?

8 A. I didn't write the Patent Owner's
9 response. That's not my wording.

10 Q. Sure.

11 A. So I don't have an opinion on that.

12 Q. So can you identify which key Weber
13 personnel stole confidential information related
14 to the TS700 for me in your report,
15 Exhibit 2011?

16 A. Well, I can identify in my report, as I
17 have here, based on my investigation,
18 individuals that were -- that were moved --
19 essentially moved from or were retained -- hired
20 by Provisur --

21 Q. Sure.

22 A. -- but I cannot testify to which of

1 those are referenced as "key" as is referenced
2 in the Patent Owner's response.

3 Q. Okay. Can you identify for me which
4 Weber personnel stole confidential information
5 related to the TS700?

6 A. It's not my role to render a conclusion
7 with regards to if somebody stole information or
8 did not steal information or copy or not copy
9 information. This part of my report is a
10 summary of the investigation that I did that
11 essentially summarizes factual documents and
12 testimony with regards to Weber's claim that
13 Provisur misappropriated confidential
14 information and trade secrets.

15 Q. Okay. Well, setting aside Table 16,
16 paragraph 74, can you identify which Weber
17 personnel allegedly stole confidential
18 information relating to the TS700?

19 A. I can reference for you evidence based
20 on individual -- based on the analysis that I've
21 done, but I don't -- I'm hesitant to go so far
22 as to say -- or render a conclusion about what

1 somebody stole or didn't steal.

2 Q. So, for example, you don't know if
3 Mr. Gerd Stratenwert stole confidential
4 information relating to the TS700?

5 MR. HORTON: Objection --

6 MR. HARN: Strike that. I'll rephrase.

7 Q. You have no opinions as to whether or
8 not Mr. Gerd Stratenwert stole confidential
9 information relating to the TS700.

10 A. That's correct. My report is simply
11 a -- a little more than simply, but it is a
12 summary of the evidence that supports Weber's
13 claim with regards to copying.

14 Q. And maybe -- it may be helpful to
15 direct your attention to paragraph 73,,
16 Mr. Leathers.

17 The first sentence of your report
18 states, "Weber claims that while it dedicated
19 significant resources to product development,
20 Provisur solicited and hired key Weber employees
21 necessary for it to compete."

22 A. Okay.

1 Q. So are the employees identified in
2 Table 16 the key Weber employees?

3 A. They are not intended to be or not to
4 be.

5 Q. I don't understand. Can you explain.

6 A. Well, it's -- what you see in 73 is my
7 citing what Weber claims as key employees.
8 Okay?

9 The second sentence shifts to my
10 analysis, which is the list of the eight former
11 employees that Provisur hired during that period
12 of time and then continues on with the remaining
13 evidence.

14 Q. Okay.

15 A. I didn't endeavor to create a specific
16 conclusion or opinion with regards to,
17 quote/unquote, key employees.

18 Q. Understood. And thank you for that
19 clarification.

20 So you have no opinions as to whether
21 the employees identified in Table 16 are key
22 Weber employees?

1 A. Incorrect.

2 Q. Can you explain.

3 A. Sure.

4 First, how would you like me to define
5 "key employees"?

6 Q. Well, you used the term "key Weber
7 employees" in the first sentence of
8 paragraph 73. So in the same manner of your
9 understanding of "key Weber employees."

10 A. Well, the first paragraph of 73, "key
11 employees" is a resuscitation [sic] of Weber's
12 claim separate and apart from Weber's claim with
13 regards to employees.

14 I can see reference to, for example,
15 Mr. Lowden as a sales manager of being a key
16 employee given his involvement with Weber prior
17 to going to work for Provisur.

18 Q. Anyone else?

19 A. I think that each one of these have key
20 aspects to them, as identified and referenced in
21 the evidence that I have gathered.

22 Q. So every single one of these witnesses

1 listed in Table 16 have key aspects, but you've
2 made no conclusion as to whether or not they're
3 key Weber employees?

4 MR. HORTON: Object to form.

5 THE WITNESS: Correct.

6 BY MR. HARN:

7 Q. Okay. For the individuals listed in
8 Table 16, the left-hand column, the "Date"
9 column, are those the dates that these employees
10 went over to Provisur?

11 A. I don't understand your question.

12 Q. Can you explain what that left-hand
13 "Date" column is for me in Table 16.

14 A. Yes. That is the hire date of each of
15 these employees.

16 Q. The hire date [garbled]?

17 A. Yes.

18 Q. Okay. Do you know the employment --
19 well, let me just break it down.

20 For example, for Mr. Tom Van Doorn,
21 presumably he used to work at Weber; correct?

22 A. I need to be careful about that,

1 because I believe some of these individuals may
2 have worked for Textor, or their immediate prior
3 employee may not have been Weber. So let me
4 take a minute, and I can review this and provide
5 you an answer if you like.

6 Q. Sure.

7 A. Yes, that's correct. Mr. Van Doorn was
8 a former Weber employee. He was the Midwestern
9 sales manager.

10 Q. And what were the employment dates of
11 Mr. Van Doorn at Weber?

12 A. I don't have those specific employment
13 dates in the information that I have in front of
14 me in Exhibit 2011.

15 Q. Okay. Similar to Mr. Gerd Stratenwert:
16 Do you know Mr. Gerd Stratenwert's employment
17 dates at any of the Weber or Textor entities?

18 A. The employment dates for each of these
19 individuals, I would have had that information
20 as part of my work in the district court case,
21 recognizing that it's not perfect information.
22 But as I sit here, I don't believe that I can

1 recite for you the exact employment dates for
2 Mr. Stratenworth.

3 Q. Where else in your report, in
4 connection with your district court opinions,
5 would this information be disclosed,
6 Mr. Leathers?

7 MR. HORTON: Objection. Scope.

8 THE WITNESS: What information would
9 have been disclosed?

10 BY MR. HARN:

11 Q. The employment dates of these employees
12 at any of the Weber or Textor entities.

13 MR. HORTON: Objection. Scope.

14 THE WITNESS: I don't -- I mean, as
15 part of the work that I did in the district
16 court case or in this case, I would not have
17 found it necessary to have some table about how
18 many years they were at Weber before they went
19 to Provisur. But I would have had that
20 information and considered that information as
21 part of my analysis, and you would find that in
22 a variety of supporting documents and materials.

1 BY MR. HARN:

2 Q. So I'll ask the question again.

3 Why is that information relevant for
4 your district court analysis but not your IPR
5 analysis?

6 MR. HORTON: Object to form.

7 THE WITNESS: I'm not saying that it is
8 important to either case, depending on how you
9 want to evaluate importance.

10 I mean, I look at all the information
11 that I have as part of my analysis and opinions.
12 I summarize that my report to support the
13 ultimate opinions that I have in the district
14 court case.

15 There's not a -- I don't know -- a bar
16 or a reference point for me to say it's
17 important or not important to have the specific
18 period of time that they were at Weber before
19 they came to Provisur, but I'm also not saying
20 that that's not relevant information that I did
21 not review.

22

1 BY MR. HARN:

2 Q. So, sitting here today, you cannot tell
3 me Mr. Gerd Stratenworth's employment date at
4 any of the Weber or Textor entities; correct?

5 A. Not without referencing other
6 materials; that's correct.

7 Q. Okay. And are there any of the
8 underlying documents cited in paragraph 73 or
9 paragraph 74 the underlying materials that you
10 need to make this assessment?

11 A. I don't know without going back and
12 reviewing those documents.

13 Q. And the same is true for all the
14 individuals listed in Table 16; is that right?

15 A. I don't understand the question.

16 Q. Sitting here today, can you tell me the
17 employment dates of any of the individuals
18 listed on Table 16 at any of the Weber or Textor
19 entities?

20 MR. HORTON: Object to form.

21 THE WITNESS: I could read back through
22 here, and I believe that there is some reference

1 to some of these individuals with regards to
2 their employment dates. But without going and
3 looking at other underlying documents, I
4 wouldn't be able to create a chart or a summary
5 of when they started and ended at each of the
6 different companies.

7 BY MR. HARN:

8 Q. And picking another individual on
9 Table 16, can you tell me what information
10 Mr. Fatih Yaman misappropriated from any of the
11 Weber or Textor entities and brought over to
12 Provisur?

13 MR. HORTON: Object to form.

14 THE WITNESS: In paragraphs 101 through
15 103 --

16 BY MR. HARN:

17 Q. Okay.

18 A. -- provide a summary of the information
19 that Mr. Abdessamad had with him and provided to
20 Weber -- provided to Provisur.

21 Q. And I believe you're referring to
22 Mr. Abdessamad Aainani, also known as Sammy?

1 A. Yes.

2 Q. I was specifically asking about
3 Mr. Fatih Yaman, Yaman.

4 A. Oh, I'm sorry.

5 I could not tell you the specific
6 information without going back to reviewing some
7 of the supporting information.

8 Q. Okay. Well, maybe I'll help -- this
9 will help you a little bit. Paragraph 104 --

10 A. Yes.

11 Q. -- of your report, I believe makes
12 reference to Mr. Yaman.

13 A. Yes.

14 Q. I don't see a reference to Mr. Yaman
15 anywhere else in your report.

16 So maybe that's the first question:
17 Can you confirm for me that, aside from
18 paragraph 104, you don't discuss Mr. Yaman aside
19 from Table 16 and paragraph 104.

20 A. Well, without going back and looking at
21 my entire report, as I sit here today, I do not
22 recall, other than paragraph 104 through 106,

1 actually -- 105 -- excuse me -- would have been
2 reference to or discussion with regards to
3 Mr. Yaman.

4 Q. All right. Let's talk about
5 paragraph 105 first.

6 Where do you see reference to
7 Mr. Yaman?

8 A. I do not.

9 Q. Okay. So it's only in paragraph 104
10 then; correct?

11 A. That's correct.

12 Q. And, based on paragraph 104, can you
13 tell me what confidential information or trade
14 secret Mr. Yaman misappropriated from Weber to
15 Provisur?

16 MR. HORTON: Object --

17 THE WITNESS: No.

18 MR. HORTON: -- to form.

19 BY MR. HARN:

20 Q. Sitting here today, can you tell me
21 what confidential information or trade secret
22 Mr. Yaman misappropriated from Weber to

1 Provisur?

2 A. No.

3 MR. HORTON: Object to form and scope
4 to the extent it relates to trade secrets.

5 We've talked about this, Counselor.

6 MR. HARN: Counsel, there's numerous
7 references to trade secrets in paragraph 69
8 through 106. So I will continue my questioning.

9 MR. HORTON: Do you see the word "trade
10 secret" in there?

11 MR. HARN: So you're saying
12 Mr. Leathers does not provide a trade secret
13 opinion in those paragraphs now. I'll take your
14 representation if that's what you want.

15 MR. HORTON: I'm just asking if you're
16 seeing specific references to trade secrets for
17 this IPR if you're asking litigation-based
18 questions here.

19 MR. HARN: You have cited paragraphs 69
20 through 106, and I've stayed within the scope of
21 the excerpted opinion, and I will continue to
22 ask my questions.

1 Q. Mr. Leathers, moving on to Mr. Terry
2 Albrecht, can you identify for me what
3 confidential information or trade secret
4 Mr. Albrecht misappropriated from Weber to
5 Provisur?

6 MR. HORTON: Objection. Form. Scope.

7 BY MR. HARN:

8 Q. And, again, not trying to trick you
9 here, Mr. Leathers, but I'll direct your
10 attention to paragraph 81.

11 A. Yeah, based on the text of
12 Exhibit 2011, I cannot tell you what trade
13 secrets specifically Mr. Albrecht may have
14 been -- or confidential information Mr. Albrecht
15 may have misappropriated.

16 Q. Okay. And I'll ask you the same
17 question with respect to Mr. Tom Van Doorn: Can
18 you identify for me what confidential
19 information or trade secret Mr. Van Doorn
20 misappropriated from Weber to Provisur.

21 MR. HORTON: Objection. Form and
22 scope.

1 THE WITNESS: Again, as part of my
2 district court case, I would have done and was
3 up to speed on the amount of confidential
4 information and trade secrets that may have
5 related to Mr. Van Doorn, but as I sit here
6 today, I cannot tell you the specific ones that
7 Mr. Van Doorn specifically may have copied or
8 misappropriated.

9 BY MR. HARN:

10 Q. So are you saying Mr. Van Doorn's
11 alleged misappropriation of confidential
12 information or trade secret is not relevant to
13 the IPR?

14 MR. HORTON: Object to form.

15 THE WITNESS: No. I think what --
16 well, first of all, it's not my role to
17 determine what's relevant or not relevant to the
18 IPR.

19 I believe that this section of my
20 report provides a summary of the investigation
21 that I did and the analysis that I did that
22 relates to the allegation or supports the

1 allegation of Provisur copying confidential
2 information, and I think that one thing you have
3 to consider as part of this is not to be
4 specific to one individual, but also to look at
5 the combination of those individuals, the
6 underlying evidence, and how that fits together
7 in the alleged actions of Provisur.

8 BY MR. HARN:

9 Q. I appreciate that.

10 So, sitting here today, can you direct
11 me to a paragraph in Exhibit 2011 where you
12 identify the alleged confidential information or
13 trade secret Mr. Van Doorn misappropriated from
14 Weber to Provisur?

15 MR. HORTON: Object to form.

16 THE WITNESS: Again, based on what I
17 have summarized in Exhibit 11 [sic], I can't
18 tell you the specific piece of confidential
19 information or trade secret that Mr. Van Doorn,
20 he himself alone misappropriated.

21 BY MR. HARN:

22 Q. Are you alleging Mr. Van Doorn acted

1 with someone else to misappropriate information
2 from Weber to Provisur?

3 A. No.

4 MR. HARN: Now's probably a good time
5 for another break.

6 (Recess from 11:37 a.m. to
7 11:50 a.m. CDT.)

8 BY MR. HARN:

9 Q. Okay. Mr. Leathers, let's switch gears
10 a little bit and turn your attention to page 8
11 of Exhibit 2011.

12 Right before paragraph 82 there's a
13 Romanette with the subheading "Provisur
14 Extricates Weber Confidential Information and
15 Releases the SX380."

16 Do you see that?

17 A. Knowing where you are, I'm now on
18 page 8.

19 Q. Yeah, the Romanette iii subheading --

20 A. Okay.

21 Q. -- "Provisur Extricates Weber
22 Confidential Information and Releases the

1 SX380."

2 A. Okay.

3 Q. Are you there?

4 A. I am.

5 Q. That first sentence, "Weber claims that
6 Provisur then began mining these former Weber
7 employees for confidential information," is it
8 your opinion that Weber -- Provisur began mining
9 former Weber employees for confidential
10 information?

11 A. No.

12 Q. Do you agree with that statement that
13 Provisur began mining these former employees for
14 confidential information?

15 A. I believe that the evidence supports
16 Weber's claim.

17 Q. And how did you identify the evidence
18 to support -- in coming to your agreement with
19 that claim?

20 A. The review of the documents and
21 deposition testimony -- the documents produced
22 by both parties in this matter as well as

1 deposition testimony.

2 Q. Okay. Do you believe you performed an
3 objective analysis to determine the accuracy of
4 that statement?

5 A. Yes.

6 MR. HORTON: Object to form.

7 BY MR. HARN:

8 Q. But someone informed you that that was
9 one of Weber's contentions; correct?

10 MR. HORTON: Object to form.

11 THE WITNESS: I don't -- I think that
12 Weber's documentation as well as my
13 interviews -- it's kind of the combination of
14 that information that led me to summarize their
15 claim that Provisur began to mine former
16 employees.

17 BY MR. HARN:

18 Q. Okay. You developed that opinion on
19 your own, then; is that right?

20 A. What opinion?

21 Q. The opinion that you agree that
22 Provisur began mining former Weber employees for

1 confidential information.

2 A. I don't think I have an opinion that I
3 agree with it one way or another.

4 Q. All right. Well, let's talking about
5 an example on paragraph 83.

6 That last sentence in paragraph 83 you
7 state, "Weber claims that confidential
8 information relating to the TS700 provided by
9 Mr. Koelewyn (e.g., throat size, X-ray
10 capabilities, single-lane scanning issues,
11 dual-land scanning, and autoloading) influenced
12 and were incorporated into Provisur's product
13 development efforts."

14 I read that correctly?

15 A. Yes.

16 Q. Do you agree with Weber's contention in
17 that sentence?

18 A. I believe that the evidence supports
19 Weber's claim with regards to that confidential
20 information.

21 Q. Did you perform an independent analysis
22 to determine whether or not that claim is true?

1 A. I don't understand the question.

2 Q. How did you determine what documents to
3 look at in support of that claim?

4 A. Well --

5 Q. What evidence -- go ahead. I
6 apologize.

7 A. I mean, my investigation and analysis
8 would be taking -- which is summarized here,
9 would be taking the documents in evidence that I
10 had or were produced by both parties, as well as
11 those depositions, and essentially putting them
12 in chronological order and overlapping the
13 product features of the respective parties'
14 slicing machines.

15 Q. Did you come across any evidence that
16 contradicts that claim that Weber stated in the
17 last sentence in paragraph 83 of your report?

18 MR. HORTON: Object to form.

19 THE WITNESS: No.

20 BY MR. HARN:

21 Q. Sitting here today, it is your opinion
22 that there is no evidence that contradicts that

1 statement?

2 A. Correct.

3 Q. You reviewed Mr. Koelewyn's deposition
4 transcript; right?

5 A. Yes.

6 Q. I want to show you an excerpt of
7 Mr. Koelewyn's deposition transcript here.

8 It is in the chat, but we'll also
9 screen-share, and we can walk through it
10 together, Mr. Leathers.

11 The first page here, cover sheet, shows
12 that it is the deposition transcript of Mr. Rudy
13 Koelewyn dated March 1, 2022; right?

14 This is the one that you reviewed?

15 A. I'd have to go back and look at my
16 report to confirm that.

17 Q. I can represent to you --

18 A. I don't believe that I reviewed
19 Mr. Koelewyn's deposition as part of this
20 particular paragraph.

21 Q. If you look at Footnote 164 of your
22 opinion --

1 A. Yes.

2 Q. -- you see the deposition transcript of
3 Mr. Rudy Koelewyn dated March 1, 2022; right?

4 A. Yes.

5 Q. And you cite to page 31 even; right?

6 A. Correct.

7 Q. So you reviewed at least a portion of
8 Mr. Koelewyn's deposition transcript; correct?

9 A. Yes.

10 MR. HARN: And what I'm going to show
11 you here marked as Leathers Exhibit 4 is an
12 excerpt of this transcript.

13 (Whereupon, Exhibit 4 was
14 marked for identification.)

15 BY MR. HARN:

16 Q. And turning your attention to page 31
17 line 14 -- can you let me know when you're
18 there.

19 A. I'm there.

20 Q. If you will follow along.

21 [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

1 [REDACTED]

2 [REDACTED] [REDACTED]

3

Line 18: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6

And then turning your attention to

7

page 36 line 16: "

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED]

12

Do you see that?

13

A. I do.

14

Q. And that would contradict the

15

statement, at least part of that statement, that

16

features were incorporated into Provisur's

17

product development efforts; right?

18

MR. HORTON: Object to form. Scope.

19

THE WITNESS: I don't see how that

20

contradicts it.

21

BY MR. HARN:

22

Q. Okay. Can you explain how this does

1 not contradict that statement?

2 MR. HORTON: Same objections.

3 THE WITNESS: I don't -- the fact that
4 Mr. Koelewyn says that he did not make changes
5 to product features doesn't necessarily change
6 that what he may have provided or other evidence
7 of what he provided influenced or ultimately
8 were included in Provisur's product development
9 efforts.

10 BY MR. HARN:

11 Q. He says they were not implemented in
12 the deposition transcript, though; right?

13 A. Right. But, as we all know, this
14 deposition transcript goes back and forth on a
15 variety of different topics, and there's other
16 information that you have to take into
17 consideration in coming to what he may have
18 provided or not provided.

19 Q. Setting aside any information he may or
20 may not have provided, he says they were not
21 incorporated; right?

22 They were not implemented -- apologies.

1 They were not implemented in this deposition.

2 MR. HORTON: Object to form. Scope.

3 THE WITNESS: He does state that;

4 that's correct.

5 BY MR. HARN:

6 Q. And 83, at least part of that sentence
7 says, "Confidential information relating to the
8 TS700 provided by Mr. Koelewyn," it goes on to
9 say, "were incorporated into Provisur's product
10 development plan"; right? "Efforts"; right?

11 A. Correct.

12 Q. So you're saying that's not
13 inconsistent with what I just read to you in
14 your report?

15 MR. HORTON: Object to form.

16 THE WITNESS: I don't understand the
17 question.

18 BY MR. HARN:

19 Q. What aspect of that question do you not
20 understand?

21 A. Well, you said it was not inconsistent.

22 Q. Do you think it's inconsistent with

1 that statement in your report?

2 A. Well, my recollection, from what you
3 just read, the sentences from Mr. Koelewyn
4 related to features that were implemented into
5 the TS700. Paragraph 84 speaks to influences
6 that were incorporated into Provisur's product
7 development efforts.

8 Q. The question on page 36, line 16, says,

9 "

█

█

12

And his answer is, █

█

14

So he's talking -- he's answering a

15

question about Provisur's product PM2K; correct?

16

We can agree on that?

17

MR. HORTON: Object to form. Scope.

18

THE WITNESS: This particular question

19

is related to the PM2K, that's correct, which --

20

BY MR. HARN:

21

Q. And if you look at the preceding

22

sentence in paragraph 83, your report makes

1 reference also to the PM2K; correct?

2 A. Correct.

3 Q. And then you go on to say, at least in
4 part in that last sentence, that "Confidential
5 information relating to the TS700 provided by
6 Mr. Koelewyn were incorporated into Provisur's
7 product development efforts."

8 A. Okay. Yes.

9 Q. Can you please explain to me how that
10 is not inconsistent with Mr. Koelewyn's
11 deposition response here.

12 MR. HORTON: Object to form.

13 THE WITNESS: Well, because
14 Mr. Koelewyn is speaking to were they
15 incorporated or not incorporated. In one place
16 he does not say how -- you know, what he's
17 speaking to in terms of incorporation; was it --
18 was it the SX380 or SX330, or was it into their
19 overall product development efforts.

20 I mean, you can look at --
21 paragraph 83, you know, goes through the
22 chronology of events here, and when you take his

1 testimony as well as the other documents, it
2 seems pretty clear that Mr. Koelewyn, one,
3 provided information and, two, that that
4 information was received and evaluated,
5 acknowledged, et cetera, by Provisur.

6 BY MR. HARN:

7 Q. Subheading 3 of Exhibit 2011 states,
8 "Provisur Extricates Weber Confidential
9 Information and Releases the SX380."

10 A. Right.

11 Q. So presumably paragraph 82 through 86
12 of that section is a discussion relating to the
13 SX380; correct?

14 A. Yes.

15 Q. And --

16 A. Although there were discussions like we
17 see in 83, which is a little bit broader in
18 terms of the overall product development
19 efforts.

20 Q. So is it your opinion today that
21 Mr. Koelewyn's suggestions were implemented into
22 other Provisur products?

1 A. No.

2 Q. So your understanding is Mr. Koelewyn's
3 suggestions were only implemented into the SX380
4 development; correct?

5 A. No.

6 Q. I'm not quite understanding your
7 responses here. Can you please explain that to
8 me.

9 A. Well, I mean, you're just asking me a
10 specific question about was something
11 implemented or not implemented, or was
12 Mr. Koelewyn providing information or not
13 providing information. So I'm just answering
14 your particular, specific question.

15 I don't -- I see his deposition
16 testimony supporting what is being written under
17 subparagraph 3.

18 Q. Setting aside Mr. Koelewyn's deposition
19 transcript for a minute, I want to understand
20 your testimony today, Mr. Leathers.

21 Is it your understanding that Provisur
22 stole Weber information and incorporated it into

1 other machines aside from the SX380?

2 A. No.

3 Q. It's limited to the SX380; correct?

4 A. No.

5 Q. Can you explain what other machines
6 they were incorporated into, then?

7 A. No.

8 Q. So, sitting here, you're unable to tell
9 me what other machines made by Provisur
10 incorporate stolen information from Weber; is
11 that right?

12 MR. HORTON: Object to form. Scope.

13 THE WITNESS: No. I think that what
14 I've said before is it's not my role to render a
15 conclusion with regards to what information --
16 specific information was stolen; what specific
17 information was implemented or not implemented.
18 That is for the fact finder to conclude.

19 Weber is making claims with regards to
20 the misappropriation and stealing of
21 confidential information. I've done an analysis
22 that provides evidence that supports that claim.

1 That's where my analysis stops, and I believe
2 that I testified in my first deposition about
3 this in terms of why do I have all this in here.

4 And the sole purpose of this in here
5 for me, for my analysis, is to create an
6 analysis between the claims that were in the
7 district court case and the damages; in other
8 words, is there evidence that supports and
9 creates a nexus between the claims and the
10 ultimate damages.

11 BY MR. HARN:

12 Q. Understood.

13 A. That's where I think we're missing each
14 other.

15 Q. So I'm trying to understand your
16 analysis, Mr. Leathers.

17 And are we in agreement, at least with
18 respect to the SX380, that you performed an
19 analysis as to confidential information relating
20 to the TS700 were provided by Mr. Koelewyn and
21 incorporated into the SX380 development?

22 A. I did do analysis and investigation

1 related to evidence of Provisur misappropriating
2 Weber's confidential information. How that
3 specific information from a technical piece was
4 implemented or not implemented is outside the
5 scope of my work.

6 Q. So you have no opinions as to whether
7 or not the information relating to TS700 was
8 implemented into the SX380; correct?

9 MR. HORTON: Object to form.

10 THE WITNESS: My opinion is that Weber
11 claims that and the evidence supports that
12 claim.

13 BY MR. HARN:

14 Q. Okay. Is it your understanding that
15 Weber is also claiming that information from the
16 TS700 was incorporated into other Provisur
17 products?

18 MR. HORTON: Object to form.

19 THE WITNESS: I don't recall that I
20 made a specific analysis with regards to
21 confidential information that was included in
22 the TS700 was incorporated into other Provisur

1 products.

2 In other words, I didn't endeavor with
3 regards to that to -- I'm just looking more
4 broader at information that Weber had, and with
5 regards to other Provisur products, I didn't
6 look specifically to the TS700 versus other
7 Provisur products.

8 BY MR. HARN:

9 Q. Did you look specifically at TS700
10 versus the SX380?

11 MR. HORTON: Object to form.

12 THE WITNESS: I don't understand your
13 question.

14 BY MR. HARN:

15 Q. You said you didn't look specifically
16 to the TS700 versus other Provisur products.

17 And I'm asking you: Did you look at
18 the TS700 versus SX380?

19 A. Yes.

20 Q. And it is your testimony that you agree
21 with Weber's claim that confidential information
22 relating to the TS700 provided by Mr. Koelewyn

1 was implemented into the SX380 development?

2 A. No.

3 Q. Do you have an opinion as to whether or
4 not confidential information relating to the
5 TS700 provided by Mr. Koelewyn was implemented
6 into the SX380 development?

7 A. No. Other than the evidence that I've
8 provided.

9 Q. And can we agree that the PM2K was
10 later rereleased as -- released as the SX380?

11 A. Yes.

12 Q. And Mr. Koelewyn's deposition
13 transcript that we were just looking at a minute
14 ago specifically asked about the PM2K, which is
15 the SX380; correct?

16 A. Yes. The lines that we were
17 referencing; that's correct.

18 Q. And Mr. Koelewyn's answer on page 36,
19 line 19 and 20, states that he had suggested
20 them; they were not implemented.

21 And that's a direct response to the
22 PM2K question?

1 A. Correct.

2 MR. HORTON: Objection. Form and
3 scope.

4 BY MR. HARN:

5 Q. And that does not influence your
6 conclusion that you agree with Weber's claim
7 that confidential information relating to the
8 TS700 provided by Mr. Koelewyn was incorporated
9 into the SX380 development?

10 MR. HORTON: Objection --

11 THE WITNESS: Incorrect.

12 I'm sorry, Hunter. I keep going over
13 you. I apologize.

14 MR. HORTON: That's okay.

15 BY MR. HARN:

16 Q. Can you explain how that is incorrect?

17 A. I think in your question you said that
18 I agreed with Weber's contention.

19 Q. Weber's claim in that sentence.

20 A. Weber's claim. I mean, sometimes you
21 said "contention"; sometimes you said "claim."

22 Q. Fair enough.

1 So do you disagree with that claim,
2 then?

3 A. It's not my role to agree or disagree
4 with the claim. My role is to evaluate the
5 evidence, and I've summarized my analysis of the
6 evidence.

7 Q. And this was not something that you had
8 considered in relation to paragraph 83, correct,
9 your deposition Exhibit 4, which is the excerpt
10 from Mr. Koelewyn's deposition transcript?

11 MR. HORTON: Objection. Scope.

12 THE WITNESS: Incorrect.

13 BY MR. HARN:

14 Q. So you did consider it?

15 A. Yes. I just didn't -- I didn't cite --
16 I don't -- I did not cite Mr. Koelewyn's
17 deposition in paragraph 84 or paragraph 83.

18 Q. And why is that?

19 A. I'm sorry. I didn't hear your
20 question.

21 Q. Why did you not cite this deposition
22 excerpt marked as Deposition Exhibit 4 in

1 paragraph 83?

2 A. Same reason why I may not have cited
3 other testimony. It is -- as part of
4 summarizing the analysis, oftentimes you cite
5 things that are an example of or in support of
6 the summary of your opinions.

7 Q. Do you believe this excerpt from
8 Mr. Koelewyn's deposition transcript, marked as
9 Exhibit 4, is relevant to the conclusion of
10 paragraph 83 in your expert report?

11 MR. HORTON: Objection --

12 THE WITNESS: Yes.

13 MR. HORTON: -- form and scope.

14 BY MR. HARN:

15 Q. I have a question -- follow-up question
16 about paragraph 84.

17 Second-to-last sentence there is a
18 parens saying "e.g., an open concept design and
19 removable cassette."

20 I know we talked at length about the
21 removable cassette, but just for my
22 understanding, is the removable cassette part of

1 the open concept design, or are those two
2 separate features?

3 MR. HORTON: Object to form.

4 THE WITNESS: I think the description
5 of that is a -- you know, something better for a
6 technical expert.

7 BY MR. HARN:

8 Q. And we agree that you didn't refer to
9 any technical experts in forming the opinions
10 disclosed in paragraphs 69 through 106 of your
11 report; correct?

12 A. Correct.

13 Q. This is your first time being deposed
14 in an IPR proceeding; right, Mr. Leathers? We
15 talked about that in the beginning?

16 A. Yes.

17 Q. Do you understand there is a little bit
18 of difference between the rules in an IPR
19 deposition and a district court proceeding?

20 A. No.

21 MR. HORTON: Object to form.

22

1 BY MR. HARN:

2 Q. All right. So I can explain a little
3 bit of it to you.

4 You understand that you submitted
5 Exhibit 2011, which is an excerpt of your
6 report, in this proceeding; right?

7 A. Weber submitted it, yes.

8 Q. And in an IPR proceeding, that
9 functions as direct testimony.

10 Do you understand that?

11 MR. HORTON: Object to form.

12 THE WITNESS: Yes.

13 BY MR. HARN:

14 Q. It's the same as if you were testifying
15 as a live witness in front of the board.

16 Do you understand that?

17 A. Yes.

18 MR. HORTON: Object to form.

19 BY MR. HARN:

20 Q. And you understand that's a little bit
21 different than a district court proceeding,
22 where your expert report itself is not

1 admissible evidence; right?

2 MR. HORTON: Object to form.

3 THE WITNESS: I don't understand -- I
4 don't have specific knowledge of that one way or
5 another. I've had my reports as evidence in
6 proceedings and have had reports submitted where
7 the report is the direct testimony in district
8 court proceedings.

9 BY MR. HARN:

10 Q. Okay. Do you understand that in
11 this -- in the district court proceeding you can
12 provide on whether your report currently is not
13 admissible evidence?

14 MR. HORTON: Object to form.

15 THE WITNESS: I don't have an opinion
16 one way or another or knowledge one way or
17 another.

18 BY MR. HARN:

19 Q. So when Weber in their Patent Owner
20 response states that "Mr. Leathers' expert
21 report describes Petitioner implemented a
22 strategy to steal confidential information as

1 well as key Weber personnel relating to the
2 TS700 in order to bring its own infringing
3 products with similar features to the
4 marketplace are" and cites to your expert
5 report, that functions as direct testimony to
6 the board in this proceeding.

7 Do you understand that?

8 MR. HORTON: Object to form.

9 THE WITNESS: I don't have an
10 understanding one way or another. If that's
11 what you're representing to me, I don't have
12 reason to disbelieve -- to not believe it.

13 BY MR. HARN:

14 Q. Fair.

15 Sitting here today, I'm simply trying
16 to understand what opinions you are providing to
17 the board in this IPR proceeding, and at various
18 points in time you have said you don't have
19 opinions, for example, that Weber provides, you
20 know, confidential information relating to the
21 TS700 provided by Mr. Koelewyn influenced and
22 incorporated into Provisur's product development

1 efforts.

2 So you're not telling the board that it
3 is your opinion that Mr. Koelewyn stole TS700
4 information and incorporated them into
5 Provisur's product development plans; correct?

6 A. Correct.

7 MR. HORTON: Object to form.

8 BY MR. HARN:

9 Q. And we agree that you're not a
10 technical expert; correct?

11 A. Correct.

12 Q. So you've not done the analysis to
13 determine whether or not the SX380 does, in
14 fact, include features copied from the TS700?

15 MR. HORTON: Object to form.

16 THE WITNESS: Correct.

17 BY MR. HARN:

18 Q. And the same goes for, really, the bulk
19 of your opinions cited from paragraphs 69
20 through 106. I think earlier you said these are
21 facts that you're reciting to bridge a nexus
22 based on your layperson's understanding for your

1 damages opinion.

2 That's not part of this proceeding;
3 correct?

4 A. Can you repeat the question.

5 Q. Earlier you had explained to me that
6 you're trying to basically identify facts to
7 bridge a -- to find a nexus between the
8 liability in your damages opinion; right?

9 A. That was part of the purpose of this
10 section of my report in the district court
11 proceeding.

12 Q. So I'm trying to understand: In
13 paragraphs 69 through 106 are you providing
14 affirmative opinions that Provisur implemented a
15 strategy to steal confidential information as
16 well as key Weber personnel related to the TS700
17 in order to bring Provisur's own infringing
18 products with similar features to the
19 marketplace?

20 Is that what you're telling the board?

21 MR. HORTON: Object to form.

22 THE WITNESS: Can we review what you're

1 reading there one more time, and I can probably
2 answer the question better.

3 BY MR. HARN:

4 Q. So, yeah, we'll pull up the Patent
5 Owner's response, page 56.

6 Starting in that second sentence -- you
7 can read along with me. It says, "Mr. Leathers'
8 expert report describes Provisur implemented a
9 strategy to steal confidential information as
10 well as key Weber personnel related to the TS700
11 in order to bring its own infringing products
12 with similar features to the marketplace";
13 right?

14 A. Yes.

15 Q. What I'm trying to understand is are
16 you providing that affirmative opinion to the
17 board in this proceeding?

18 A. Yeah, I'm just not -- I'm having
19 trouble with your question and how it relates to
20 this proceeding and how it's written here.

21 I mean, the way that I see this is that
22 this is a response that the Patent Owner is

1 making, and it's providing as support for its
2 response and evidence of its response my expert
3 report.

4 Q. It's described in -- they say it's
5 described in your expert report; right?

6 "Mr. Leathers' expert report
7 describes" --

8 A. Right.

9 Q. -- and there's a long sentence there
10 that I will not continue to repeat.

11 So they say it's described in your
12 report. Can we agree on that?

13 A. That's what it says, yes.

14 Q. So I'm trying to understand: Are you
15 telling the board or the court that it is your
16 opinion that Provisur implemented a strategy to
17 steal confidential information as well as key
18 Weber personnel related to the TS700 in order to
19 bring its own infringing products with similar
20 features to the marketplace?

21 A. No. I am telling the board what is
22 described in and summarized in Exhibit 2011.

1 Q. Sure.

2 A. That is it.

3 Q. So I'm not sure -- I don't think you
4 answered that question.

5 So is it your opinion that Provisur
6 implemented a strategy to steal Weber
7 confidential information?

8 MR. HORTON: Objection --

9 THE WITNESS: No.

10 BY MR. HARN:

11 Q. Is it your opinion that Provisur stole
12 key Weber personnel?

13 A. Again, that's not an opinion that I
14 believe that, one, I was asked to make or would
15 be appropriate for me to make. All of my work
16 is simply to illustrate or to provide -- it
17 is -- it evidences Weber's claim.

18 I think where we're having trouble here
19 is you're asking me questions to create an
20 opinion that is outside the scope of what is
21 written in Exhibit 2011. My testimony and the
22 summary of my analysis is what is in

1 Exhibit 2011, and that is it.

2 Q. So do you agree with the statement that
3 I've been reciting on page 56 of the Patent
4 Owner's response?

5 MR. HORTON: Object to form.

6 THE WITNESS: Yes.

7 BY MR. HARN:

8 Q. So you agree that Provisur implemented
9 a strategy to steal confidential information?

10 A. No. I agree that my expert report
11 describes the Petitioner's implementation of a
12 strategy to steal confidential information.

13 Q. And you agree with Weber's claim that
14 Provisur also stole key Weber personnel?

15 MR. HORTON: Object to form.

16 THE WITNESS: No.

17 BY MR. HARN:

18 Q. You don't agree with that?

19 A. Yeah, it's not my -- my report
20 describes the Petitioner's implementation of a
21 strategy to steal confidential information as
22 well as Weber key personnel. It describes that

1 and provides that evidence.

2 I have not been asked to provide an
3 opinion -- affirmative opinion that they
4 misappropriated or didn't misappropriate or
5 steal or did not steal information.

6 Q. So you agree, then, that Provisur stole
7 confidential information relating to the TS700
8 to bring its product to the marketplace?

9 MR. HORTON: Object to form.

10 THE WITNESS: No.

11 BY MR. HARN:

12 Q. Can you explain.

13 Do you disagree with that statement?

14 A. Again, I think I've said it multiple
15 times: It's not my role to render a conclusion
16 with regards to Provisur stealing confidential
17 information or not stealing confidential
18 information.

19 Q. I'm asking you if you agree with that
20 statement.

21 A. Are you asking me, outside of my expert
22 role here, do I personally agree based on what I

1 see.

2 Q. I'm asking you as an expert witness on
3 behalf of Patent Owner Weber based on your
4 report.

5 I think you're drawing a distinction
6 between an opinion and an agreement, and I'm
7 just trying to understand what that means.

8 MR. HORTON: Object to form.

9 THE WITNESS: Well, I think we're
10 missing each other is, my role is to evaluate
11 the data, investigate the data and summarize my
12 analysis of that data. I believe -- although I
13 don't believe that I have an opinion in the --
14 in Exhibit 2011, but that opinion is that what I
15 see in Exhibit 2011 is that that supports
16 Weber's claims.

17 BY MR. HARN:

18 Q. So you just said your role was to
19 evaluate the data and investigate the data and
20 summarize the analysis of that data; right?

21 A. Yes.

22 Q. Do you believe you are a qualified

1 expert, despite having no technical expertise,
2 to evaluate and investigate and summarize that
3 data?

4 MR. HORTON: Object to form.

5 THE WITNESS: I don't understand the
6 question.

7 BY MR. HARN:

8 Q. Do you believe you are a qualified
9 expert, despite having no technical expertise,
10 to evaluate, investigate and summarize that
11 data?

12 MR. HORTON: Object --

13 THE WITNESS: Absolutely.

14 MR. HORTON: -- to form.

15 THE WITNESS: Absolutely.

16 BY MR. HARN:

17 Q. What's the basis of your expertise?

18 MR. HORTON: Same objection.

19 THE WITNESS: My 25 years of performing
20 financial analysis, investigation of data,
21 evaluation of data, aligning data, testimony and
22 market information to various claims of

1 misappropriation, breach of contract, and
2 intellectual property misappropriation and
3 infringement.

4 BY MR. HARN:

5 Q. And do you believe that expertise lends
6 itself to the technical analysis described in
7 paragraphs 69 through 106 of your report?

8 MR. HORTON: Object to form.

9 THE WITNESS: I don't understand the
10 question.

11 BY MR. HARN:

12 Q. Do you believe that expertise lends
13 itself to the technical analysis described in
14 paragraphs 69 through 106 of your report?

15 MR. HORTON: Object to form.

16 THE WITNESS: That's where we're
17 missing. I don't -- 69 through 104 is my
18 report. I'm not a technical -- I'm not a
19 technical expert.

20 BY MR. HARN:

21 Q. Okay. So I want to understand your
22 investigation and evaluation of your data

1 relating to the alleged misappropriation of
2 confidential information or trade secrets by
3 Mr. Scott Scriven.

4 Can you identify that for me in your
5 report marked as Exhibit 2011?

6 A. By Mr. whom? I'm sorry. I couldn't
7 understand your -- you're breaking up.

8 Q. Mr. Scott Scriven.

9 A. I'm trying to think about how do I
10 answer your question, the analysis related
11 specifically to Mr. Scriven.

12 Q. Yes.

13 A. Mr. Scriven was a participant in the
14 alleged misappropriation that -- when you look
15 at his activities, his involvement in hiring,
16 retaining, the chronology of events, he was part
17 of this -- the evidence illustrates he was part
18 of the recruitment and misappropriation of
19 information.

20 Q. Can you identify a paragraph for me in
21 your report, Exhibit 2011?

22 A. So you can see, for example, in

1 paragraph 79 where I talk about and summarize
2 the -- Provisur's continued recruitment of key
3 Weber employees, including Mr. Scriven.

4 Q. Okay.

5 A. As I summarize here, Mr. Scriven was
6 the vice president of slicing, he was previously
7 Weber, Inc.'s president and was involved in the
8 recruitment of Mr. Koelewyn --

9 Q. Okay.

10 A. -- with the belief that Mr. Koelewyn
11 would help Provisur gain traction with key
12 customers.

13 So these paragraphs summarize
14 Mr. Scriven's involvement in the alleged
15 misappropriation of confidential information.

16 Q. Okay. [Garbled.] Mr. Scriven hired
17 Mr. Koelewyn.

18 Is there any other allegations or data
19 that you evaluated or investigated cited
20 anywhere in paragraphs 69 through 106 of your
21 report relating to Mr. Scriven's misconduct?

22 A. Well, Mr. Scriven is involved in and

1 copied on multiple documents that are referenced
2 throughout paragraph 69 through -- 69 through
3 105. So his involvement is throughout that --
4 throughout this entire time period.

5 Q. I have a question for you,
6 Mr. Leathers: How are you able to evaluate and
7 investigate the data if you don't have a
8 technical understanding of the underlying
9 technology?

10 MR. HORTON: Object to form.

11 THE WITNESS: I don't understand when
12 you say "the underlying technology" or
13 "understanding of the underlying technology."

14 BY MR. HARN:

15 Q. Sure. I think we had talked about some
16 technical concepts earlier that you were not
17 very familiar with; right? Vision weight
18 control was one example. X-ray scanner was
19 another example.

20 So how do you evaluate and investigate
21 the underlying data when you don't understand
22 what "vision weight control" means?

1 MR. HORTON: Object to form.

2 THE WITNESS: It's the combination of
3 my work as well as the combination of the
4 technical experts' work that provides the
5 underlying evidence to support or refute a claim
6 of misappropriation or a claim of infringement.
7 I have expertise in evaluating and tying
8 underlying product information and testimony to
9 what's happening in the marketplace as well as
10 sales and profit information.

11 So it's the combination of both of
12 those aspects that lends to this. I don't have
13 to have a technical knowledge of X-ray scanning
14 or dual-lane scanning to be able to go and
15 evaluate and summarize evidence associated with
16 misappropriation.

17 BY MR. HARN:

18 Q. But A technical expert should have an
19 understanding of X-ray scanning and vision
20 weight control; right?

21 A. That's correct. But a technical expert
22 would not, for example -- or may not, for

1 example, have an understanding of how that ties
2 into the financial performance of a company --

3 Q. I appreciate that --

4 A. -- nor to the hiring of employees or to
5 evaluating and investigating and summarizing the
6 chronology of events and how they relate to such
7 financial performance.

8 Q. To your knowledge, you don't know if a
9 technical expert has provided any evaluation and
10 investigation of the underlying technical
11 misconduct; right?

12 You don't cite it anywhere in your
13 report.

14 MR. HORTON: Object --

15 THE WITNESS: That's correct.

16 MR. HARN: I think I'm almost done.

17 Can we take a five-, ten-minute break
18 just so I can go through my outline?

19 MR. HORTON: Sure.

20 MR. HARN: Thanks.

21 (Recess from 12:40 p.m. to
22 12:51 p.m. PDT.)

1 BY MR. HARN:

2 Q. All right, Mr. Leathers. Just a few
3 remaining questions for you, and we'll wrap.

4 I understand you've been at trial,
5 right --

6 MR. HORTON: Objection --

7 MR. HARN: -- [overspoken]?

8 THE WITNESS: I'm sorry. You broke up.

9 BY MR. HARN:

10 Q. I understand you've been at trial for
11 another case.

12 A. Yes.

13 Q. Can you tell me which dates you were at
14 trial?

15 A. Which dates I was at trial?

16 Q. Which days you were at trial recently.

17 MR. HORTON: Objection. Scope.

18 THE WITNESS: The trial started last
19 Tuesday, and then the trial ultimately settled.

20 BY MR. HARN:

21 Q. Okay. So when were you done with
22 trial?

1 MR. HORTON: Objection. Scope.

2 THE WITNESS: I was notified of a
3 potential settlement, as I recall, middle of
4 last week.

5 BY MR. HARN:

6 Q. So about Wednesday or Thursday of last
7 week you were notified that you were done with
8 trial?

9 A. Yes. Probably would have been probably
10 Wednesday.

11 Q. Okay. So last Tuesday was the 17th,
12 and you probably were notified that Wednesday
13 the 18th?

14 A. Yes. I think by the end of Wednesday I
15 knew that the trial was coming -- was likely to
16 settle.

17 Q. Okay. So you were no longer at trial
18 or preparing for trial after the 18th; is that
19 right?

20 MR. HORTON: Objection. Scope.

21 THE WITNESS: I'm trying to -- let me
22 just think. I know it's obvious. It was just

1 last week.

2 I think I probably put pencils down on
3 probably Thursday, I believe. Actually,
4 probably Thursday morning.

5 BY MR. HARN:

6 Q. And were you available the earlier part
7 of this week to potentially sit for a deposition
8 in this proceeding?

9 MR. HORTON: Objection. Scope.

10 THE WITNESS: Well, I think that's a
11 difficult question to answer, because, based on
12 the trial schedule, I had not prepared for this
13 deposition. So I think that given the
14 chronology of events, it would have been
15 difficult for some to sit for this deposition
16 earlier this week.

17 BY MR. HARN:

18 Q. Okay.

19 A. Obviously if we had known the trial was
20 going to settle two weeks ago, then, yes, I
21 would have been available.

22 Q. Sure.

1 And were you available for a deposition
2 prior to last Tuesday, September 17?

3 MR. HORTON: Objection. Scope.

4 THE WITNESS: No.

5 BY MR. HARN:

6 Q. Why is that?

7 A. Well, I'd have to go back and look at
8 my calendar. But I always endeavor, to the best
9 I can, to find a date to do a deposition and
10 also to ensure that I have some time to prepare
11 so I can, you know, best answer questions in
12 that deposition.

13 Q. Fair.

14 So that means you had no availability
15 the first two weeks of September to do that
16 preparation and sit for a 3.5-hour deposition;
17 is that right?

18 MR. HORTON: Objection. Scope.

19 THE WITNESS: Yeah, I'd have to go back
20 and look at my calendar, but my recollection is
21 that -- I think I specifically asked, you know,
22 when we needed to try to get this done by, and I

1 endeavored to find a date, you know, earlier in
2 September that, you know, I could take this
3 deposition.

4 BY MR. HARN:

5 Q. Sure.

6 How about in August -- the end of
7 August? Were you also not available then?

8 MR. HORTON: Objection --

9 THE WITNESS: Yes. That's correct.

10 MR. HARN: All right. Mr. Leathers, I
11 appreciate your time today. I have no further
12 questions.

13 MR. HORTON: And I'd just like to make
14 a note on the record that we're reserving our
15 rights to strike all inappropriate testimony
16 outside the scope of Mr. Leathers' direct, and
17 we'll reserve the right to seek guidance from
18 the board on that.

19 That's everything from me.

20 MR. HARN: That's fine. I'll just
21 briefly respond.

22 We do not believe we have gone beyond

1 the scope. I have limited much of my testimony
2 and questionings to Exhibit 2011, which is the
3 excerpt that Patent Owner Weber has cited in
4 support in their Patent Owner's response. To
5 the extent I have had to rely on the full
6 report, that is largely because Mr. Leathers
7 believed he had disclosed opinions consistent in
8 other aspects of his reports that were not
9 accepted here. We obviously disagree.

10 (At 12:56 p.m. CDT the
11 deposition of DAVID LEATHERS was
12 adjourned.)
13
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22

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

4 Date of deposition: September 26, 2024

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7

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9 Witness Name: David Leathers

10 Deposition Date: September 26, 2024

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