

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PROVISUR TECHNOLOGIES, INC.,
Petitioner,

v.

WEBER FOOD TECHNOLOGY GMBH,
Patent Owner.

IPR2024-00235
Patent 8,529,321 B2

Record of Oral Hearing
Held: March 5, 2025

Before: CARL M. DEFRANCO, RYAN H. FLAX, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

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P R O C E E D I N G S

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JUDGE DEFRANCO: I am Judge DeFranco, and I am joined by Judges Flax and Silverman. This is a hearing for IPR2024-00235 in which Provisur Technologies challenges a patent owned by Weber Food Technology, that patent being U.S. Patent 8,529,321. So, why don't you go ahead and make your appearances now? Petitioner -- here, why don't you start.

MR. THOMAS: Thank you so much. Good afternoon. My name is Henry Thomas. I represent the Petitioner, Provisur Technologies. With me is co-counsel, Mr. Keaton Sheeler, and lead counsel, Ms. Sara Horton.

JUDGE DEFRANCO: Okay. And Mr. Sheeler will be the LEAP practitioner? Is that what you said earlier?

MR. THOMAS: That's correct.

JUDGE DEFRANCO: Okay. And for Patent Owner?

MR. HART: Good afternoon, Your Honors. It's Paul Hart with Erise IP for Patent Owner, Weber Food Technology.

JUDGE DEFRANCO: So, Petitioner, based on your LEAP request, you will have 60 minutes to argue your case, and Patent Owner, you will have 45 minutes. You may use your time as you please, reserving half your time -- up to half your time for rebuttal. Just let me know how much time you'd like to reserve before you start, and I'll try to warn you when you're into your rebuttal time or close to it. Also, I would ask that you keep track of your time -- of the time yourself, if possible, and as I said, I'll do the same. Finally, please mute yourselves when you're not speaking.

1 Sometimes there's audio feedback that we'd like to try to avoid if at all
2 possible.

3 We do have your demonstratives, and we have the full record.
4 And feel free, if you want to share your screen with us, if you choose, but
5 you don't need to. I'll leave that choice up to you. So, unless there's any
6 questions, we're ready when you are, Petitioner, please proceed.

7 MR. THOMAS: Thank you so much. So, yes, my hope is to
8 reserve the full 30 minutes available for rebuttal, and in terms of who's
9 addressing what arguments, my plan is discuss Ground 1 and Ground 2 with
10 Your Honors, and have Mr. Sheeler, who is the LEAP participant, address
11 Ground 3.

12 JUDGE DEFRANCO: Okay, great.

13 MR. THOMAS: So, at a high level, the challenged patent is
14 directed to a straightforward concept of using an electromechanical system
15 to remove the layer of fat and skin from a cut of meat in order to make that
16 meat more palatable. The claims and specifications of the challenge patent
17 describe a situation where that process is automated, a camera locates the fat
18 layer, and an adjustable-height knife blade trims around that fat layer. All
19 total, the challenge patent is six pages long, has only two figures, both of
20 which depict the system at a high level. There's no real discussion of the
21 algorithm involved in analyzing the camera images, no real discussion of the
22 mechanics involved in controlling the blade, and the claims themselves
23 generically describe this sort of automated separation.

24 As it relates to Petitioner's anticipation argument, Ground 1
25 anticipation by Young, Patent Owner's entire argument at this point is that

1 the Young reference does not perform the determination of the thickness of
2 the fat cover and does not cut the meat in, space, dependence. And I will try
3 to take that term slowly, in dependence -- does not cut the meat in
4 dependence on the thickness of that fat cover.

5 So, I'm going to turn now to Slide 3 of our presentation. And what
6 is Young? Young describes an apparatus that, just like the challenge patent
7 is used to slice fat and skin off of a cut of meat. In Young's described
8 embodiments -- or preferred embodiment, that meat is a side of pork, so
9 effectively half of a pig. And what's shown in Petitioner's demonstrative
10 Slide 3 is Young's U-shaped knife blade. This is what is actually cutting
11 out, doing the separation of the fat cover from the loin. Young provides a
12 very detailed description of the mechanics of that knife blade, and in
13 particular how it can move and be controlled in four axes of movement in
14 order to follow sophisticated motion profiles.

15 Young's motion profiles -- and here I'm turning to Slide 4 of the
16 presentation. Young's motion profiles are generated or modified in relation
17 to analysis performed on image data from Young's camera system.
18 Demonstrative Slide 4 shows Figure 13 from the Young reference and, in
19 particular, Figure 13 shows processing routine Number 240, where this
20 analysis takes place. And then, the specification and words of Young give
21 much more detail explaining that process, and that description begins in
22 Young on column 22, line 33 and continues through column 24, line 39.

23 So, the Petition and the supporting declaration of Dr. Collins were
24 clear that it's routine 240, where Young is determining a distance between
25 the edge of the pork side and the fat/lean line. That distance corresponds to

1 the thickness of the fat cover, so the element of the determination of the
2 thickness is present in Young, it's taught by Young.

3 To preview what I expect Patent Owner will argue, Patent Owner
4 has taken the position that Young does not measure the thickness of the fat
5 cover. It does not teach providing an actual distance measurement between
6 those two lines. The evidence, however, shows that Young does teach
7 measuring the thickness.

8 To be transparent about that, those facts rely on Dr. Collins, who
9 was Petitioner's expert. Those facts rely on Dr. Collins' testimony of what
10 the Young reference would disclose to a person of skill. Young does not,
11 itself, use the word thickness. Young does not explicitly state that a
12 measurement across those two particular lines, the fat line and the edge line,
13 is taking place. But what is written in Young is sufficient to disclose that
14 step to a person of skill. That's what Dr. Collins opines on. And so, Young
15 does participate --

16 JUDGE FLAX: And how much -- this is Judge Flax. Can I ask
17 you a question?

18 MR. THOMAS: Of course, Your Honor.

19 JUDGE FLAX: Something struck me when going through the
20 record in this case. What is the advantage of measuring the thickness of the
21 fat from one edge to the other edge? I understand, from the Young
22 reference, that in the field, they want to keep some fat on the edge of meat
23 for one reason or another, to keep it hydrated or whatever - - the look of it,
24 or whatever the reason might be, so when you cut the fat off, you want to
25 leave a certain amount -- it has, like, some optimal thickness of that fat that's

1 left. What is the -- it's not explained, as I read the patent, it's not explained
2 in the prior art, why do you care how thick the part is that you're removing?

3 MR. THOMAS: Thank you, Your Honor.

4 JUDGE FLAX: Why do you care how thick the fat is to begin
5 with. I understand that it is a data point that is measured in the patent, and
6 it's measured in the prior art, why?

7 MR. THOMAS: Thank you, Your Honor. So, I think a lot of this
8 was discussed in our briefing with respect to Ground 2, the Young-Norrie
9 combination, because they're, under Section 103, obviousness, we're, of
10 course, looking for that motivation to combine. So, the motivation that was
11 discussed there, at a high level, it includes: this allows you to increase
12 efficiency, increase yield; increase precision. And I think a very specific
13 example of that it was discussed by Dr. Collins at his deposition. So, this is
14 Exhibit 2011, page 33, and in particular, line 1 through 20.

15 And what Dr. Collins said there is, if the operator puts in an offset,
16 which is larger than the calculated fat thickness, then that would be an error
17 signal. That would be an example. So, that was an exemplary specific
18 benefit of being able to know the fat thickness. I think what he is meaning
19 there is if a pork side comes through the process that for whatever reason
20 that pork has a smaller fat layer than expected, and if the operator expects to
21 retain 5 centimeters of pork fat, but the belly, itself -- or the side, itself, only
22 had 4 centimeters, if there was a system that didn't know that, didn't know
23 the total fat thickness, the knife would continue to attempt to move, but it
24 would be in an out of bounds position. It wouldn't actually trim off any of
25 the pork fat, and the end product would still have the skin attached, making

1 it less palatable to a customer and likely being a reject cut of meat.

2 Whereas, if you know the fat thickness, as Dr. Collins testified, that would
3 allow you to generate the error signal. So, that was one sort of non-limiting,
4 but I think highly specific example Dr. Collins provided for this
5 combination.

6 And I think important to keep in mind, as well, that -- to begin
7 with, we have an anticipation argument. Young, on its own, actually
8 discloses that and for anticipation, motivation isn't required. But even -- and
9 so Ground 2 is the obviousness argument. That Ground was pled in the
10 alternative, assuming that Your Honors disagree with our position that
11 Young alone discloses this. So, in that alternative position, where we agree
12 that Young discloses drawing these lines, Young discloses algorithms for
13 assigning coordinates to these lines, Young discloses algorithms for
14 assigning real-world heights to those coordinates, and Young discloses
15 algorithms for calculating the distance between lines.

16 If we then assume that all of those disclosures do not reach a
17 disclosure of fat thickness calculation, then the modification proposed by the
18 Young-Norrie combination is an incredibly minor change to the algorithm.
19 It's perhaps one -- if you're envisioning this as system with actual lines of
20 code, perhaps one line of code to say, yes, let's take those two lines, the
21 fat/lean line, and take the edge line and feed those into the distance
22 algorithm to get that distance. And so, for such a minor change, I think,
23 really, any motivation that is identified should be sufficient to motivate a
24 person of skill to make it, especially given Young's explicit teachings that it
25 is generally beneficial to have more data and not less.

1 So, I think Dr. Collins' very specific, very low-level example of
2 generating that error code is more general, high-level examples of yield and
3 accuracy generally. I think that's more than sufficient to serve as the
4 backbone of the Ground 2 obviousness argument. Does that address Your
5 Honor's question?

6 JUDGE FLAX: Yeah, I think it does. I think I couldn't imagine a
7 scenario where measuring from the outside in made more sense than
8 measuring from the inside out, but that is a scenario, so thank you.

9 MR. THOMAS: Thank you. So, I'm going to continue to discuss
10 the Young reference then in a bit more detail, and I'm looking at Slide 5.
11 And some of this is perhaps a bit cumulative of what I just discussed. But
12 Slide 5 breaks out in detail the explicit disclosures of Young. The left-hand
13 column is a series of callouts from the Young patent, showing that as
14 relevant to the fat thickness determination, Young, from the top-view image,
15 that's on the top right of this slide, it's Figure 10A from the patent. From
16 the top view image, Young calculates a fat/lean separation line, that's in
17 blue, it calculates an edge line, that's in brown below it, and it calculates a
18 plurality of points on both those lines, gives those points X/Y coordinates
19 that can be mapped to real-world height values.

20 And then, separately from the front view image, which is on the
21 bottom right of Slide 5, this is Figure 10C from Young, Young determines
22 the position of the edge fat/lean line, and the end fat/lean line -- I'm sorry,
23 and the end edge lines. So, again, two other lines that define a fat thickness.
24 It also gives those two lines points with the X/Y coordinates. It also has
25 algorithms for calculating the distance between lines and points.

1 And so, with these disclosures, it was Dr. Collins' opinion that
2 these disclosures teach a person of skill that Young, on its own, is
3 calculating the distance between either of those two pairs -- either on both of
4 those two pairs of lines, both of which calculations give a measurement of
5 fat thickness.

6 JUDGE DEFRANCO: So, Mr. Thomas --

7 MR. THOMAS: Next, I'll address --

8 JUDGE DEFRANCO: -- this is Judge DeFranco. So, you're
9 relying on what a skilled artisan would have -- how they -- what they would
10 have understood from reading Young's disclosure, but you can see that
11 Young does not expressly disclose determining the distance between those
12 coordinate lines that you have on Slide 5 -- is that -- am I correct?

13 MR. THOMAS: Yes, Your Honor, I'd agree with that. I think the
14 patent claims determination of the fat thickness, and we've sort of accepted
15 Patent Owner's interpretation of the meaning of that of requiring a
16 measurement in inches of centimeters of the distance. We've at least
17 tailored our proof to that to avoid a claim construction dispute. And while
18 Young discloses measuring the distance between lines generally, it does not
19 explicitly say that the fat/lean separation line and the edge line are a pair of
20 lines where that distance is calculated. However, we do cite in the -- repeat
21 your question, Your Honor.

22 JUDGE DEFRANCO: Where does it say that it measures that
23 distance, generally? Where in Young?

24 MR. THOMAS: So, in Young, at column 24, lines 11 through 12,
25 it discusses the height, width, and length of the pork side is calculated. So,

1 that is disclosing that Young requires an algorithmic way to calculate the
2 width between two lines. Again, it's not these two lines -- these two
3 exemplary lines as drawn are not the explicit disclosure, but Dr. Collins
4 analyzing this patent from the viewpoint of a person of skill, opines that with
5 all of those teachings that are in Young, a person of skill would be taught
6 that a distance is being done between the fat/lean line and the edge line.

7 JUDGE DEFRANCO: So, it's your position that it doesn't
8 expressly disclose measuring that particular distance, but it has the capability
9 of measuring that distance?

10 MR. THOMAS: So, capability is probably not the word I would
11 use. I would instead direct Your Honor to the case Arthrocare Corp. vs.
12 Smith & Nephew that's cited in our briefing. And the reporter number of
13 that is 406 F(3d), 1365. The Federal Circuit decided that in 2005. And that
14 case stands for the principle that the prior art can anticipate, even if a
15 disclosure or a teaching is implicit not explicit. The prior art doesn't need to
16 use those words if that concept would be readily apparent to a person of
17 skill, which is the argument -- which is the analysis that Dr. Collins did. I
18 think there are other cases I've since read, and I'm happy to provide
19 citations for Your Honors, that say that the test might be whether a limitation
20 is readily envisageable by a person of skill, and if -- from the testimony
21 provided by Dr. Collins that that is his conclusion.

22 So, I'll turn now to Slide 6 of the presentation. This is the other set
23 of challenged claim limitations that Patent Owner says are not present. The
24 patent claims controlling the position of the cutting blade in dependence on
25 the thickness measured. This happens in the algorithmic steps shown in

1 Young's Figure 14, which I've included on this slide, which is where the
2 position of the blade is set after doing the imaging. And I think this is
3 shown well on my next slide, Slide 7, where I prepared side-by-side views.
4 On the left is Young's end-view image as shown in the patent with the fat
5 thickness drawn there. On the right is Young's end-view image modified to
6 show a thicker fat layer. And the position of the blade, which is in blue in
7 both of these images, necessarily depends on the thickness of the fat cover.
8 Because the meat is resting on the fat cover as the fat cover is thicker, the
9 blade to cut off -- to have the same amount of fat retained, the blade is
10 necessarily at a higher position. That's the Y plus Delta annotation on the
11 right of this slide. So, because the position of the blade, because the position
12 of the cut depends on how thick the fat layer is, this claim element is met.

13 Then I think I wanted to preview briefly one other argument that I
14 saw in Patent Owner's demonstrative deck, which is this argument that, at
15 least from the top-view image -- so, turning back to Slide 5, the top, right
16 image here, Figure 10A, that that would necessarily lead to an inaccurate
17 determination of thickness. And I just wanted to be clear for the Board that
18 this is an argument that appeared for the first time in Patent Owner's
19 surreply. It's not backed by any expert testimony from their expert, Dr.
20 Reinholtz, and when asked about this at his deposition, Dr. Collins was
21 pretty clear that that argument assumes a lot from these diagrams. It
22 assumes a literal reading of the shapes and orientations that a person of skill
23 wouldn't necessarily apply, and that throughout this proceeding, Dr. Collins
24 has been clear that the distance between the two lines annotated on Slide 5,
25 that distance does correspond to the thickness of the fat cover.

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So, I'm happy to address that in rebuttal as needed, but just wanted to flag that now. And I believe that I am somewhat eating into Mr. Sheeler's time, and that we also address the motivation issue in Ground 2, the Norrie-Young combination Ground. So, if Your Honors don't have additional questions, I'll allow Mr. Sheeler to come up and discuss Ground 3, but happy to address anything else you have.

All right, thank you, Your Honors.

MR. SHEELER: Your Honors hear me okay?

JUDGE DEFRANCO: Yes. Yes, Mr. Sheeler.

MR. SHEELER: Thank you. I will begin. May it please the Board, my name is Keaton Sheeler. As mentioned by my colleague, Mr. Thomas, I will be addressing Ground 3, the proposed obviousness combination of Johnson and Belk.

If Your Honors will turn to Slide 14, as explained in the Petition, this combination is fairly simple and clearly meets all the limitations of the '321 Patent. Johnson, itself, is a fat-trimming apparatus that explicitly discusses measuring the thickness of the fat cover and trimming based on that fat cover. The difference is, Johnson uses physical needle-like probes that physically penetrate the product to make those measures. Belk, by contrast, is a food industry image analysis system that is designed to automate Yield Grading; that is, taking of a variety of different measurements from a piece of meat, or a whole carcass, and then use those measurements to grade the meat. It would be obvious in a -- also it would be highly motivated to incorporate the teachings of Belk's image analysis into

1 Johnson's meat-trimming system for a variety of benefits that will be
2 discussed later.

3 But first, just to explain what's truly at issue here on the
4 limitations, if Your Honors would turn to Slide 15. All that's really disputed
5 is whether Belk, itself, teaches the measurement of thickness, and Belk does.
6 Belk teaches that it is capable of analyzing an area of interest, and it's very
7 clear, in that area, it can measure lengths, widths, heights, cross-sectional
8 areas, and in a variety of different characteristics. These characteristics
9 include that for meat, Belk clearly being able to recognize what is fat and
10 take the width area, length, height, or whatever of that area is able to
11 measure the thickness of that area.

12 Patent Owner reads Belk's disclosure as "Limiting that area of
13 interest to an arbitrarily small area, 100 to 300 pixels," or some other such
14 number. That's not supported by the plain language of the Patent's
15 disclosure.

16 When we look at the patent, it discusses that it can identify
17 muscles, it can identify surrounding organs from muscles, and that's, I
18 believe, on the left side of that Slide 15 identified, and it can take
19 measurements of characteristics in all those areas. Dr. Collins explained in
20 his deposition that what Belk means is: it identifies an area, it cares about
21 that area, and then areas outside that can be excluded, but that doesn't mean
22 the area is arbitrarily small. This makes sense when we consider Belk's
23 purpose.

24 Belk's is designed to automate Yield Grading, which is a time-
25 intensive manual process where you take a lot of measurements from a

1 whole carcass or piece of meat. These measurements can include the
2 measurement of subcutaneous fat. Therefore, in order to automate that
3 process, you need to be able to look at a whole piece of meat to be able to
4 actually replace that function. Therefore, Belk clearly teaches this
5 limitation, and Patents Owner's argument reads in a restriction on the term
6 "area of interest," that just simply isn't present by the claim disclosure of the
7 Patent.

8 Therefore -- moving on to motivation to combine. If we were to
9 turn to Slide 16, with all the limitations met, what really matters here is if a
10 POSA would want to make this modification, and it's clear that they would
11 be extremely motivated to do so. Our Petition identifies a variety of strong
12 motivating factors, but I'll focus on two that I think are the most key.

13 So, first is hygiene. Both Dr. Reinholtz and Dr. Collins have
14 testified that that it's extremely important in the food industry and a key
15 consideration. Belk would be able to replace Johnson's needle probes,
16 which are a known hygiene risk. These probes puncture the meat, they
17 create area for bacteria to grow, and they also -- if they are contaminated,
18 themselves; that is, the needles, they transfer contamination from product to
19 product, this reduces the amount of product that is available that is for sale
20 and needs to be thrown out, and it prevents an extreme safety risk. Patent
21 Owner claims that this argument is based on hindsight and only supported
22 by the disclosure of the '321 Patent. That's just false.

23 If we turn to Slide 17, Exhibit 1018, Barten, which was cited in the
24 Petition on, I believe, page 62 to 63, Barten itself recognizes that these
25 probes are regarded as a particular disadvantage. These apparatus parts must

1 be carefully cleaned after each use. Why do they require additional
2 cleaning? Because they are a hygiene and contamination risk. When Patent
3 Owner challenged this motivation, on reply, Petitioner introduced evidence
4 of the American Meat Industry Standards, which are the leading standards in
5 the food industry that indicate that contact points are extremely sensitive
6 areas for hygiene purposes and should be treated with more care. Therefore,
7 removing these probes essentially just removes an entire safety risk, and it
8 allows for more product to be sold to market. It's a highly compelling
9 motivation.

10 We turn to Slide 18, a secondary motivation I would like to focus
11 on, or at least the second. That's the damage that these probes, Johnson's
12 probes, cause to the meat product. They physically puncture, and by causing
13 those punctures, they ruin the esthetic appearance of the meat, they can ruin
14 the texture, they can ruin the palatability, they effectively lower the sale
15 value of that meat. In an industry trying to make money, that, itself, is an
16 undesirable characteristic of these needle probes. So, by moving to optical
17 measurement, as taught in Belk, that entire disadvantage is removed, and
18 that is similarly extremely motivating to a POSA. Patent Owner similarly
19 argues that this is a hindsight argument that is not present in the Petition, and
20 only based on the disclosure of the '321 patent. That's incorrect.

21 In a Petition, Patent Owner discussed Exhibit 1014 to Cate, and
22 Cate mentions that these probes puncture the product and can cause damage
23 to the product. Additionally, Belk, one of the primary references here,
24 discusses that one of the things that goes into considering Yield Grading and
25 sale value of product is damage to the product. It doesn't discuss probes

1 specifically, but that's clearly a consideration a POSA should be aware of
2 and care about.

3 We turn to Slide 19. We can see that this is actually undisputed.
4 Patent Owner's expert, Dr. Reinholtz, agreed that these probes are generally
5 disadvantageous because they can damage the meat. He agreed that the
6 probes also have the disadvantage that they can become contaminated, and
7 he's not even sure if that was in the '321 Patent. This is not a hindsight
8 argument, it's an argument highly supported in the prior art, and it only
9 shows up in the '321 Patent because the '321 Patent is obvious.

10 If there are no questions on those motivations to combine, Your
11 Honor, I'd like to move on to Patent Owner's remaining arguments.

12 Hearing none. Turning to Slide 20, Patent Owner's remaining
13 arguments simply attempt to rebut the motivation to combine, but they're
14 factually unfounded and legally flawed. They do not present a reason that
15 these desirable modifications would not be made.

16 First, Patent Owner relies on a case called Medtronic v. Teleflex.
17 Patent Owner argues that that case stands for the proposition, that if a prior
18 art references entire purpose, or entire premise, or intended purpose was
19 destroyed by the combination, that there's no obviousness in that case.

20 Well, and then, Patent Owner argues. Johnson is capable of taking
21 a 3D measurement of the fat cover using these needle-like probes, and
22 because Belk does not penetrate, that 3D measurement is unable to be made.
23 That's just factually incorrect as to what Johnson is trying to do. Johnson's
24 entire premise is not to take a 3D map. Johnson takes a 3D map as part of
25 trying to trim a fat cover. Its purpose is as a thickness-determining and

1 thickness-removing fat trimmer. The 3D map is just a step that it takes to
2 get there. It is not the entire purpose. Patent Owner latches onto that as an
3 attempt to dissuade from motivation, even though it is not correct.

4 Secondly, that is not the proposition that Medtronic itself actually
5 stands for. If we turn to Slide 27, Medtronic itself actually explained that
6 the entire premise being destroyed in a prior art reference does not actually
7 remove obviousness, it's simply one factor that is not determinative. This is
8 an obviousness analysis. You've determined whether or not that destruction
9 of the entire premise outweighs the motivating factors, and the motivating
10 factors here are extremely large. So, even if the entire premise were
11 destroyed of Johnson's 3D map, that wouldn't matter, this patent would still
12 be obvious.

13 To further belabor that point, Medtronic itself discusses a case,
14 Intel v. Qualcomm, reporter number 21 F.4th, 784, decided by the Federal
15 Circuit in 2021. And that case found that the entire premise was destroyed,
16 but the patent was obvious anyway. What this is, is this is a weighing of the
17 pros and cons. This is how obviousness works, and the presence of the 3D
18 map does not counsel against obviousness here.

19 Turning to Patent Owner's other argument regarding the position
20 of the camera on Slide 25. Patent Owner argues that this combination would
21 not be made because, according to the Patent Owner response on page 41, at
22 best, Petitioner's vague passage suggests that Belk's camera would simply
23 be installed at the same location as Johnson's probes. Johnson's probes are
24 installed, in part, underneath the meat product. If they were so installed, a
25 POSITA would understand Belk's cameras would be facing the fat side of

1 the beef strip as it is conveyed to Johnson's system. That's bodily
2 incorporation. That's incorrect, and that's not how an obviousness analysis
3 works. Patent Owner is saying that we suggest you would rip out Belk's
4 camera and place it physically in the exact same location as the probes of
5 Johnson's pre-built apparatus. No, Petitioner is suggesting is, that you look
6 at the disclosure of Belk, which teaches these optical measurements, and
7 teaches being able to measure thickness optically. And you look at Johnson,
8 which teaches all the other limitations, including itself determining the
9 thickness of the fat cover, just not optically. And from those teachings, will
10 you be able to render the Claims of the '321 Patent obvious? And the
11 answer is, yes. So that argument --

12 JUDGE DEFRANCO: Mr. Sheeler --

13 MR. SHEELER: -- cannot be persuasive. Yes.

14 JUDGE DEFRANCO: Mr. Sheeler, you're now eating into your
15 rebuttal time.

16 MR. SHEELER: I see that. Your Honor, I have one last point to
17 address, and I think I will stop, if that's okay?

18 JUDGE DEFRANCO: Okay, please.

19 MR. SHEELER: Turning to Slide 21 to address a final point.
20 Patent Owner claims that Belk itself is also limited to its camera
21 embodiments, and it wasn't discussed that Belk has other embodiments other
22 than cameras in the Petition. That's just incorrect. On page 56, Petitioner
23 made clear that Belk may be a video camera, preferably a video camera, but
24 it can be any imaging device known to a POSA. Additionally, those devices
25 described in Belk include x-rays, MRIs, radio wave, ultrasound, all capable

1 of penetrative scanning.

2 Finally, on this point, Patent Owner, himself, actually -- or excuse
3 me, Patent Owner's Counsel questioned Dr. Collins in his deposition prior to
4 the reply on Exhibit 2006, page 47, lines 18 to 48, line 4. Dr. Collins was
5 asked if he discussed or analyzed anything other than the camera
6 embodiment of Belk? Dr. Collins replied, "I gave an example of an imaging
7 device, but the patent clearly shows there are a number of different imaging
8 devices with the camera being one embodiment." This argument was in the
9 Petition. He was questioned during his deposition. It's not a new argument,
10 and we are not limited to the camera.

11 With that, Your Honor, I think that is everything I have to
12 discuss on Ground 3. Thank you.

13 JUDGE SILVERMAN: Counsel, if I may interject -- one
14 question -- this is Judge Silverman. If I can refer to your Slide 15, this is
15 where you're talking about the Belk reference and the statement that it
16 teaches measuring thickness of the fat layer. The citation that you have on
17 the left-hand side refers to measuring cross-sectional area of portions of the
18 carcass, but is there a specific reference to thickness or the measure -- or
19 how thickness is measured in Belk?

20 MR. SHEELER: Your Honor, Belk doesn't specifically -- use the
21 word "thickness" in its variety of its claims. It uses --

22 JUDGE SILVERMAN: Regardless -- sorry, regardless of their use
23 of the word "thickness," is there a disclosure of using that dimension?

24 MR. SHEELER: I believe so, or I believe a POSA would
25 understand it to be so. Claim 30 discussed height, length, and widths of any

1 area of interest, which would include an area where you're analyzing the fat
2 cover. In this portion cited here, or at and around it; that is, in -- or sorry, in
3 column 9, line 7 through 26, Belk discusses that it takes L, A, and B scores,
4 and that these scores may be displayed in numerical format. And then, that
5 leads to the citation we're reading here on Slide 15, which discusses "taking
6 the cross-sectional area of surrounding organs, such as fat, bone, and
7 connective tissue."

8 So, when you're being able to look at organs, such as fat, you're
9 able to provide scores for the organs, such as fat, and the analysis of those
10 characteristics that can be provided includes width, lengths, and heights. A
11 POSA would understand that to be thickness, but the word thickness does
12 not appear in the Patent except for that USDA graders, themselves, measure
13 subcutaneous fat thickness.

14 I do think that leads though -- or that's how a POSA would
15 understand this. This is automating that grading process. So, if you were
16 doing it manually, the idea is Belk would do it automatically.

17 JUDGE SILVERMAN: Thank you, Counsel.

18 MR. SHEELER: Thank you very much.

19 JUDGE SILVERMAN: You're muted, Judge DeFranco.

20 JUDGE DEFRANCO: Thank you, Judge Silverman. So,
21 Petitioner, you'll have about 28 minutes left in your rebuttal. Patent Owner,
22 whenever you're ready.

23 MR. HART: Thank you, Your Honor. I'll reserve 10 minutes for
24 rebuttal.

25 JUDGE DEFRANCO: Okay, thank you.

1 MR. HART: Petitioner argues that Young anticipates the
2 challenged claims. Fatal to this theory, Young never once teaches that fat
3 thickness is measured. Its process is entirely agnostic to fat thickness and
4 therefore it cannot anticipate. Now, what we heard from Petitioner
5 throughout this proceeding is, that Young is a sophisticated system, it
6 deploys multiple cameras, and it takes many measurements of a pork loin in
7 order to break down that pork loin.

8 It is true that Young's system does have multiple cameras. It's
9 also true that it takes many measurements, but it is not the case that Young's
10 complexity means it anticipates these claims. Young's process determines a
11 curved-cutting profile using a number of inputs. None of those inputs is fat
12 thickness. Instead, Young identifies an internal line where lean transitions to
13 fat in that pork loin. It adds a user-selected amount of retained fat, and then
14 it tracks that internal reference line in order to remove the fat cover from the
15 pork loin. At no point in Young's process is fat thickness ever considered.

16 On this record, Petitioner has failed to identify anything in Young
17 that teaches measuring fat thickness. And I think we heard from Counsel --
18 Petitioner's Counsel today, that he concedes that. Implicitly acknowledging
19 this failure, Petitioner, today, seeks to rely on an entirely new portion of
20 Young that no party has previously discussed.

21 Now, this is not simply a Petitioner elaborating on a previously
22 alluded to theory. It is an attempt to abandon the only specific theory
23 advanced in this case, and to replace it with something entirely new. Indeed,
24 Petitioner has proffered a specific theory in this case.

25 JUDGE DEFRANCO: Mr. Hart?

1 MR. HART: Yes, Your Honor.

2 JUDGE DEFRANCO: So, what was the original theory you're
3 saying that they relied on? Was that the theory that Young only teaches
4 using a fixed distance from the separation line --

5 MR. HART: No.

6 JUDGE DEFRANCO: -- that you alluded to in column 20?

7 MR. HART: No, Your Honor. So, that is the user-defined
8 retained fat, and that can't meet the claimed fat measurement. So, neither
9 party is disputing that anymore, and I don't believe Petitioner will contend
10 that that user-selected retained fat satisfies the claim.

11 The specific theory advanced by Petitioner and discussed by its
12 expert in this case, focuses on Block 246 in Young. This is a processing
13 block within the overall 240 algorithm. Petitioner and its expert contended
14 that that processing Block 246, identifies a fat/lean separation line and also
15 an edge line. They contend, as we heard today, that a POSITA would have
16 understood that the distance between those two lines represents fat thickness.

17 Now, this is also -- this Block 246, is also the portion of Young
18 cited by the Board at institution. It is the only specific theory that Petitioner
19 and its expert have addressed in detail in this proceeding.

20 JUDGE DEFRANCO: What's the new theory? What does it rely
21 on?

22 MR. HART: The new theory relies on Block 254, and we saw that
23 in Slide 5 from Petitioner this morning -- I'm sorry, this afternoon -- this
24 morning --

25 JUDGE DEFRANCO: My understanding was, they were relying

1 on columns 23 and 24, the whole routine that's described in those columns.

2 MR. HART: So, those two columns describe many steps in
3 Young's process.

4 JUDGE DEFRANCO: But it's all part of the same routine; am I
5 correct?

6 MR. HART: Well, they are independent processing steps. 246,
7 which is what they relied on, is processing images from the top-view camera
8 in Young's system. It is generating lines from the top-view camera in
9 Young's system. What they are newly trying to rely on today, for the first
10 time, is Block 254 that is discussed toward the bottom of column 23 in
11 Young, and that analyzes different images from a different camera. It is the
12 end camera. It generates different lines. It demonstrates an end fat/lean line
13 and an end edge line. Prior to today's hearing, neither Petitioner, nor its
14 expert, had ever discussed Block 254. You will not find a single reference
15 to 254 in their papers, nor have they discussed the end edge line. It is
16 completely new today. It finds absolutely no support in the record, and it
17 must be rejected.

18 But importantly, Petitioner's new theory still gets it wrong. As I
19 will explain, with reference to their Slide 5, they fundamentally
20 misunderstand even what Block 254 does and what that end edge line is. So,
21 in some -- even with repeated attempts to mine Young's disclosure for
22 something -- anything, there's simply nothing in this record that supports
23 concluding Young's system determines fat thickness. It is fat thickness
24 agnostic, and it cannot anticipate.

25 Now, turning to Ground 2, this is simply a backstop obviousness

1 theory to account for the possibility that the Board will reject anticipation. It
2 was given short shrift in the Petition. Petition dedicated fewer than three
3 pages to the entire theory, but even the fully developed record on the papers
4 here that goes well-beyond the Petition, fails to identify any motivation to
5 combine Young and Norrie.

6 Petitioner's expert admitted that there'd be no reason to add
7 Norrie's camera hardware to Young, that it's entirely duplicative of the
8 camera hardware that Young already includes. And he admitted on cross-
9 examination that he hadn't identified any meaningful change to Young's
10 process that would result from an addition of Norrie. Where there is no
11 material impact from combining two references, there can be no motivation
12 to make that combination, and that is the case with Ground 2 in this case.

13 Finally --

14 JUDGE DEFRANCO: Well, I thought you just told me -- I
15 thought you just said that -- okay, Young doesn't disclose determination of
16 fat thickness, but you do agree that Norrie does disclose determination of fat
17 thickness, correct?

18 MR. HART: Norrie does, yes. Norrie's a fundamentally different
19 system than Young. Norrie is a single-axis system. It uses a camera to
20 detect the difference between fat and lean as a piece of meat comes down
21 that is conveyed down the platen --

22 JUDGE DEFRANCO: Right.

23 MR. HART: -- and it has a single-axis blade that can either move
24 up or down in order to track that single measurement, single-axis
25 measurement.

1 Now, incorporating that into Young, Young is a fat thickness
2 agnostic system. It does not use a blade that tracks a single axis, it does not
3 move in one dimension. As we heard from counsel from Petitioner, it moves
4 in four different dimensions and it -- or four different axes, in order to create
5 a sophisticated curved profile in order to break down a much more
6 sophisticated and complicated piece of meat.

7 JUDGE DEFRANCO: Yeah, but one of the axes in Young that is
8 -- that the blade actually does move with -- is the axis that's disclosed in
9 Norrie, correct?

10 MR. HART: I assume you mean the Y axis. It does move up or
11 down to track those internal reference lines, absolutely. It determines where
12 the blade enters, or it determines where that blade goes, the shape of that
13 blade, in order to track these internal references.

14 JUDGE DEFRANCO: And that's Young?

15 MR. HART: That is exactly right, that is Young. It does not use
16 fat thickness to do that.

17 JUDGE DEFRANCO: But it already has the same type of
18 movement in the Y axis, right, in order to determine fat thickness?

19 MR. HART: It does not have the same type. It has one axis of
20 movement. It is a blade that only moves up or down. The key here on
21 motivation to combine is --

22 JUDGE DEFRANCO: My question -- my question is: Young
23 does that up and down movement, too, right?

24 MR. HART: Young does an up and down movement.

25 JUDGE DEFRANCO: Okay.

1 MR. HART: Young does not do anything similar to -- I'm sorry,
2 Young does movements in many different dimensions. Norrie only does up
3 and down movement.

4 JUDGE DEFRANCO: One of Young's movement is akin to
5 Norrie's movement?

6 MR. HART: Yes.

7 JUDGE DEFRANCO: That's my question.

8 MR. HART: One of the movements that Young makes is up and
9 down.

10 JUDGE DEFRANCO: Okay.

11 MR. HART: The key deficiency in Ground 2 is that there is no
12 explanation --

13 JUDGE FLAX: So --

14 MR. HART: -- whatsoever on this record.

15 JUDGE FLAX: -- also, can I follow up on Judge DeFranco's
16 question?

17 MR. HART: Yes, Your Honor.

18 JUDGE FLAX: So, you've identified that Norrie does disclose
19 measuring fat thickness in the abstract -- let's say, it's measuring fat
20 thickness in the same way that your patent is measuring fat thickness. Why
21 does Norrie do that?

22 MR. HART: Norrie -- so, all of these references -- let's just focus
23 on Young and Norrie, these are both references that are breaking down a
24 piece of meat in -- a significant goal in breaking down a piece of meat to
25 make it saleable for consumers is to remove some or all of the fat cover, and

1 oftentimes, this will include skin as well as a thickness of fat. So, Young is
2 a much more complicated and sophisticated system that models the meat and
3 takes a -- and creates a curved profile that --

4 JUDGE FLAX: I get that, all right? I don't doubt that you're
5 right, that Young is more sophisticated.

6 MR. HART: And so, in Norrie --

7 JUDGE FLAX: How does Norrie do that measurement? What
8 advantage does that provide Norrie's cutting mechanism, or plan for cutting,
9 or product that's produced? Why does it measure the thickness of the fat?

10 MR. HART: In order to place its blade. So, it is attempting to
11 remove the fat. The fat is face down on the platen, the blade in Norrie
12 moves up from the platen. And so, if it measures 1.8 inches of fat, and it is
13 programmed to remove all 1.8 inches of fat, it will move its blade 1.8 inches
14 above the platen in order to separate the lean from the fat as that piece of
15 meat.

16 JUDGE FLAX: I get it. I see. So, does Young have a different
17 position of its cut that it's sending through the machine that it would not
18 need that data point, or does it position it the same way as it's going through
19 the machine?

20 MR. HART: It positions -- it has a blade that comes down from
21 above and is much more controllable and customized, so it does not bring a
22 blade up from the platen like Norrie does. Norrie is a single-axis simple
23 system. In Young's system, that comes down, and it sits on these
24 controllable Servo motors that allow it to define the exact angles of that
25 blade. And so, as the pork loin comes down the platen, in Young's system,

1 it has precisely placed that blade from above floating in the space. It is not
2 moving at a set distance up from that platen. That is a fundamental
3 difference between how Young attacks the problem and how Norrie attacks
4 the problem.

5 JUDGE FLAX: Is the meat itself positioned differently?
6 Meaning, I guess, you said in Norrie the fat is primarily on the surface. The
7 hunk of meat is resting upon its fat on the surface that's moving through the
8 machine in Norrie; is that correct?

9 MR. HART: That's right, Your Honor.

10 JUDGE FLAX: Is it the same or is it different in Young?

11 MR. HART: It's different. Young is designed to break down a
12 different type of meat, a pork loin. And so, the fat that is being removed
13 on -- in Young's system and by Young's system, the fat cover wraps around
14 the pork loin as it's coming down -- it's conveyed down the platen. And so,
15 this is not a system where you could use a simple blade that moves in one
16 axis, up or down. That's why it needs to take all of these internal
17 measurements and base its cut line on these internal references rather than
18 on a simple fat thickness measurement like Norrie. So, it is attempting to
19 break down a fundamentally different piece of meat, and it attacks the
20 problem in a fundamentally different way.

21 JUDGE FLAX: Okay. All right, thank you.

22 MR. HART: Thank you, Your Honor.

23 JUDGE DEFRANCO: Mr. Hart, how is the meat sitting on the
24 platen in Young?

25 MR. HART: We can look at -- I believe the best image of that

1 on the record is Slide 7 of Petitioner's slides. And I'll give you a second to
2 pull that up. So, Petitioner's Slide 7, on the left -- on the right is their mock-
3 up intending to show varying thicknesses of fat, but on the left is a
4 representation of the pork loin in Young's system. This is Figure 10C in
5 Young. And as they depicted it here, and as Dr. Collins testified in his case,
6 the pork loin sits on the platen as depicted in 10C. So, a portion of the fat
7 sits on the platen, like we see here, and most of the fat cover does not touch
8 the platen. Most of the fat cover wraps around the right side of that pork
9 loin, up to the top of the pork loin that we're seeing here in Slide 7.

10 And so, the blue line that is annotated on Slide 7 is the cut line.
11 And so, that's -- that is the fundamental distinction between Young, and
12 something very simplistic like Norrie is, you are trying to track these kind of
13 complicated typologies on the internal -- internals of this pork loin. And so,
14 they can't use and don't use fat thickness like Norrie does in the Young
15 system.

16 JUDGE DEFRANCO: Has Norrie used a U-shaped blade?

17 MR. HART: It does not, Your Honor. Norrie is a single-axis
18 blade that just moves up or down to track fat thickness as it sits on the
19 platen. And I -- I know I always run out of time with you guys. You always
20 have a lot of questions for me, which I really appreciate. Let me go to my
21 slides just to make sure I can cover some of this ground, and make sure you
22 have an opportunity to ask questions.

23 I do think one of the really important concepts here is to get to
24 the heart of what Petitioner advanced in this case and what it did not
25 advance in this case. So, if I can draw your attention to PX-4 from Patent

1 Owner's slide. This really sets out the theories here. The only discernible
2 theory, which is what we heard from Petitioner's counsel this morning -- I'm
3 keep saying it, this afternoon -- I'm in a different time zone than you guys.
4 You'll have to cut me some slack -- is that Young determines two lines, and
5 that a POSITA would understand the difference between these two lines,
6 either corresponds to or relates to fat thickness. Those two lines, as we see
7 here on PX-4, are the fat/lean separation line and an edge line.

8 Now, this theory suffers two fatal flaws, one legal and one
9 factual. Legally, Young never actually discusses measuring the difference
10 between these two lines. I believe Petitioner's counsel admitted that this
11 morning. For an anticipation ground, it's simply insufficient that it might be
12 modified to meet the claim -- that it might be modified to take that
13 measurement. Young does not make that measurement so Ground 1 fails on
14 a legal basis. It does not anticipate. Factually, Petitioner relies entirely on
15 Block 246 to generate the fat/lean separation line and the edge line that it
16 relies on in this case. It is physically impossible to determine fat thickness
17 from the top-view camera used in Block 246 as I will get to in the next slide.

18 So, turning to PX-5, when discussing generating the fat/lean
19 separation line, and an edge line, as Petitioner has relied on this case, it cites
20 to Block 246 and only Block 246. There are no other specific portions of
21 Young cited by or relied on by Petitioner or its expert for these two lines in
22 this case. As we see here, Block 246 generates lines from a top-view
23 image -- the top-view camera. At the bottom of PX-5, this is what Petitioner
24 and its expert contend is created from those lines. This is the information
25 they contend is gleaned from Block 246, the edge line, which they depict as

1 the intersection of fat in the platen, and then the fat/lean separation line
2 above that. And they contend that a POSITA would have understood that
3 the difference between those lines, even though they now concede that's not
4 actually measured in Young, represents fat thickness. This is not the
5 information gleaned from Block 246. It is not information that can be
6 gleaned from the data that the top-view camera collects.

7 Turning to PX-6, on the left side of PX-6, I show the top-view
8 camera in Young looking down on the pork loin. So, what we see on the left
9 side is the end of the pork loin. On the top right of PX-6, this is actually the
10 top of the pork loin. This is the view of the pork loin that is seen by that top-
11 view camera that they have relied on in Block 246. So, looking down on the
12 pork loin, you cannot see the thickness of the fat. I have indicated, in PX-6,
13 what those lines, the fat/lean separation line and the edge line actually are
14 when viewed from the top-view camera in Block 246. On the left, we see a
15 fat/lean separation line. This is what the top-view camera sees where the
16 lean transitions to fat. On the right dashed line, this is the edge line, this is
17 where from the top-view camera, the fat cover transitions to platen.

18 As we can see from PX-6, the distance between those two lines,
19 from the top-view camera, does not represent fat thickness. It is not close to
20 the fat thickness. It is simply not possible to determine the thickness of fat
21 on this pork loin from that top-view camera on which Petitioner has relied
22 on. This is a fatal evidentiary flaw in Petitioner's case. It has relied
23 exclusively on that top-view analysis, and as we see here, that top-view
24 analysis physically cannot provide the fat thickness information that it needs
25 for its theory of invalidity here.

1 Now, I'd like to draw the Board's attention back to Petitioner's
2 slide, Slide 5 from Petitioner. So, what we see in Slide 5 from Petitioner is
3 an implicit admission that what it relied on in Block 246 is insufficient. On
4 the top left, we have an excerpt from Young, showing Block 246, discussing
5 generating a fat/lean separation line and an edge line. On the top right of
6 Petitioner Slide 5, we see that top view of the pork loin. So, they are
7 conceding here in Slide 5, that the lines generated in Block 246, are those
8 lines that I just walked through on the top view of that pork loin. What is
9 new today, for the first time, is the citations starting at the center left of Slide
10 5 for Petitioner; Block 254, Block 256, these are different image analyses
11 blocks that have not been discussed in this case. Neither Petitioner, nor its
12 expert, has ever mentioned Block 254 or 256. Nobody has discussed what
13 an edge end line is and how it differs from the edge line that is derived from
14 Block 246 on which Petitioner did rely.

15 At no point in this proceeding has there been any analysis if
16 Block 254, 256, or the annotations that we see in the bottom right corner of
17 Slide 5. This is all brand new. And because it's brand new, it cannot be
18 relied upon to prove invalidity.

19 Now, the problems with Slide 5 don't end with this attempt to
20 introduce and rely upon new evidence.

21 JUDGE DEFRANCO: You're into your rebuttal time, but
22 we'll give you a few minutes, Mr. Hart.

23 MR. HART: Thanks very much, Your Honor. They actually --
24 Petitioner misunderstands what the end edge line is. As we see on the
25 annotations in the bottom right corner of Slide 5 for Petitioner, they've

1 depicted an end fat/lean line in green and an end edge line in orange, and
2 they depict that end edge line going all the way around the fat cover from the
3 bottom all the way to the top. That is not actually what is being described by
4 Young. This Block 254 excerpt on Petitioner's Slide 5 is only a portion of
5 what is actually disclosed in Young.

6 So, if I may, I'm going to share my screen very quickly here.
7 You should be able to see my screen, which includes Slide 5, and then on
8 top of Slide 5 is an excerpt from Young, that same paragraph, Block 254, but
9 including the entirety of that discussion of the end edge line. As we see
10 here, we see that Young teaches that the end edge line will be distinguished
11 by the interface between the fat covering and the platen. And as we see on
12 the top right, this is from Petitioner's Slide 7, only a small portion of that fat
13 cover actually intersects the platen. So, there is no teaching in Young of an
14 end edge line that wraps all the way around the fat cover as Petitioner has
15 depicted in Slide 5.

16 This really highlights how important it is to exclude this new
17 evidence and this new reliance on the end image processing. Not only is it
18 new, and we have had no opportunity to respond to it, but it's wrong.
19 Petitioner's interpretation directly conflicts with what Young actually says
20 about the end edge line.

21 Now, one additional point -- actually, you know what, let me go
22 down, since I am eating into my time. I think the papers -- our papers
23 adequately cover the problems with Young and Norrie in Ground 2. There
24 is simply no theory, no cognizable theory that has been advanced in this case
25 as to how the simplistic process from Norrie would be incorporated into

1 Young in order to modify Young's system in any meaningful way. And
2 that's really the heart of the problem with Norrie.

3 I think, additionally, one thing that I'd like to point out,
4 Petitioner relies heavily on the fact that Young expressly calls out Norrie in
5 the background section. If I can draw the Board's attention to PX-10, I'd
6 like to quickly address what Young actually says about Norrie.

7 So, Petitioner makes a big deal about the fact that Norrie
8 explicitly points to Norrie, and that is a huge hook in Petitioner's
9 combination in Ground 2 as to why a POSITA would have been motivated
10 to combine Norrie and Young. If we see in PX-10 of Patent Owner slides,
11 Young points to Norrie, but it points to Norrie in disparagement rather than
12 encouragement. Young points to Norrie as an example of a prior art system
13 that seems to automate the process of separating loins. It says that many of
14 the prior automated systems are limited in their degree of control; some can
15 move in at most one or two axes. And then, it notes that these prior art
16 systems often result in unacceptable waste product and lower yields. That is
17 what Norrie's system is. It is a single-axis system. It does not support the
18 complexity of the sophisticated profiles that Young's system is targeting.
19 And Petitioner has not explained, with any detail whatsoever, how that
20 disparaged, simple single-axis system of Norrie could ever be incorporated
21 into Young to benefit Young, and that's fatal to Ground 2, the combination.
22 There is simply no beneficial -- no benefit that results from the combination,
23 and therefore there is no motivation to make the combination.

24 Lastly, I want to turn quickly, with my very limited time, to
25 Ground 3, Johnson and Belk. So, the key concept here is Johnson. What is

1 Johnson? And if I can draw the Board's attention to PX-15.

2 Johnson is a system, in its background section, that
3 acknowledges that many meat cuts, including beef strips, have erratic fat
4 covers that have no correlation one to another. The goal of Johnson is to
5 take probes and insert probes across the width of these meat products at
6 points along the meat product as that meat product is conveyed, in order to
7 create a contour map, or a 3D map in order to precisely map that erratic and
8 unpredictable fat cover. It then uses a series of controllable -- independently
9 controllable blades to track that 3D map. As we see in PX-15, that is the
10 entire purpose of Johnson. That's what sets it apart from other probe-based
11 systems in the prior art.

12 It notes advantages on the right side of PX-15 to its invention, and
13 two of those advantages are better mapping, right? It is creating this 3D map
14 through its probe system. The third advantage is controlled blades capable
15 of following a 3-dimensional fat/lean interface map. The only other benefit
16 it mentions is a hook that allows it to hold the meat in tight as it's doing this
17 probe-based analysis. The probe-based analysis is the key to Johnson's
18 design.

19 If we go to PX-16, I've illustrated here how it works. Here we see
20 four probes, which is what the figures in Johnson depict. Four probes that
21 are inserted into that fat cover as Johnson travels down the platen. And
22 those are what are used to obtain what are used to obtain internal fat
23 thickness information in order to create that 3D contour map of the fat cover,
24 and then it has independently controllable blades. In Johnson's express
25 examples, there is one blade per probe, so those blades can track the fat

1 thickness data obtained by the probes in Johnson's system.

2 There is no question in this record, turning to PX-17, that Belk
3 destroys that 3D mapping functionality. Belk's cameras cannot obtain
4 internal fat thickness information. They obtain only exterior information.
5 They can only see the seam between the fat and the lean from the outside of
6 the product. They are incapable of determining any fat thickness inside the
7 meat product, and therefore they destroy Johnson's primary goal of
8 responding to and accommodating these erratic and unpredictable fat covers
9 like in beef loins. So, it is not simply balancing pluses and minuses in this
10 combination. The use of Belk, to replace the probes in Johnson,
11 fundamentally destroys what Johnson is intended to do.

12 One last point on this. Petitioner, today, has harped on the fact that
13 Belk itself teaches that other non-camera-based environments are possible.
14 The key here is that Petitioner and its expert have not applied any of those
15 other embodiments. There is no analysis whatsoever, in this record, of using
16 anything other than a camera embodiment from Belk to replace the probes.
17 And if you do that, you fundamentally destroy the purpose of Johnson.
18 Johnson cannot do 3D mapping. It cannot accommodate erratic fat covers if
19 its probes are replaced by cameras.

20 And I am probably over, but I will open it up. Are there any
21 questions based on that rapid-fire attempt to get through my arguments?

22 JUDGE DEFRANCO: No, Mr. Hart, you still have some
23 rebuttal time -- time for more rebuttal anyway. Let me ask, Mr. Hart, what's
24 going on in the District Court case?

25 MR. HART: The District Court trial concluded in a mistrial, so

1 presumably it --

2 JUDGE DEFRANCO: Why?

3 MR. HART: There was a death. There was an unfortunate
4 accident with one of the primary attorneys for Provisur. He was hit by a car
5 one night during trial, and the judge declared a mistrial.

6 JUDGE DEFRANCO: Okay. All right, thank you. It's
7 unfortunate.

8 MR. HART: It is.

9 JUDGE DEFRANCO: Sorry to hear that. Okay, Petitioner?

10 MR. THOMAS: Thank you, Your Honors, there are a few
11 points that Mr. Hart raised that I would like to address with the Board. The
12 first is something he came back to a number of times, which is that any
13 theory outside of Block 246 in the control program is a new theory. And I
14 think a lot of his presentation was based on taking that as a sort of an
15 uncontested truth, because that seemed to be what the majority of his
16 argument was directed as.

17 But as Your Honors expressed, the Petition was based on
18 Routine 240 in its entirety as far as the calculation of a thickness. So, you
19 see that the Petition, in particular at page 32, Controller 172, Via Routine
20 240, calculates height, width, and length a portions of the meat, such as the
21 distance between the fat/lean separation line and the edge of the meat
22 product related to the thickness of the fat cover, so there was never an intent
23 to limit our argument to Block 246. I did an automatic word search of the
24 briefing. I'm not sure if Block -- if the numbers 246 appear more than once
25 in either the Petition or the reply. If I recall correctly, I can only find the

1 explicit reference to 246 in the reply. The Petition was also quite clear that
2 it was Block 240.

3 That's what the -- our expert, Dr. Collins, was clear about as
4 well. I think there was a specific moment in his first deposition, where Mr.
5 Hart asked him about where is this from the top-view camera, and Dr.
6 Collins was very clear that there are three sets of cameras, it uses all of the
7 cameras. This is Exhibit 2006, pages 25 and 26. So -- and in his opening
8 expert declaration, Paragraph 112 of Exhibit 1003, Dr. Collins again says,
9 that it's the fat cover as measured by Imaging System 190. No reference to
10 a particular control block.

11 I also did want to clear up. Mr. Hart, I believe used the word
12 conceded. He said, we conceded a claimed construction position. The claim
13 construction hasn't been briefed. For the convenience of the Board and for
14 space of this oral argument, our proofs are tailored to the most restrictive
15 possible construction of the word determination, which is -- I believe was
16 probably best said in the deposition of Patent Owner's expert, which is Dr.
17 Reinholtz. His read of the term was that it required a measurement -- a
18 dimensional measurement in inches or centimeters. That's Reinholtz
19 Deposition page 67, lines 8 through 16, then again, page 68, lines 7 through
20 14 of his deposition. Our facts meet that construction. We don't concede
21 that that's the proper construction. I'm trying to stay in the order of Ground
22 1 then Ground 2.

23

24 Mr. Hart identified what he described as two fatal flaws to our
25 Ground 1. The first one he said was legal and a flaw in the law. That's not

1 what the law supports. As I mentioned in my opening presentation, the
2 briefs cite Arthrocare, which supports the proposition that implicit
3 understandings of what a reference teach are perfectly fine for an
4 anticipation ground.

5 Another case I could direct Your Honor's attention to is the
6 Kennametal case. This is in Reporter -- on page 7 -- or 780 F.3d, page 1376,
7 decided by the Federal Circuit in 2015. That's another example, showing
8 that anticipation still succeeds even if it relies on an expert's opinion of what
9 is taught when the bare words of the reference are not explicit about that.

10 So, there's no legal error here. Patent Owner is trying to
11 reframe this as requiring a modification to Young. Young is not a physical
12 machine that can be modified. It is a set of teachings that a person of skill
13 would understand, and in this case those teachings anticipate -- they
14 disclose, they teach this measurement of fat cover thickness, that at least in
15 Patent Owner's view, is required under the claim term of determination.

16 JUDGE FLAX: Counsel, this is Judge Flax. I can appreciate
17 your discussion of Ground 1. I would be very interested to hear a bit about
18 Ground 2. Particularly, what is your response to what your opposing
19 counsel had to say about the fact that Norrie's process is looking at meat
20 from a different way and relying on measurements of fat for a different
21 purpose because its mechanisms are different and they're cutting the meat
22 differently?

23 And so, his point -- and he'll correct me if I'm wrong, was that
24 because of these differences, you don't really need Norrie's fat thickness
25 measurement, right? Because you're not moving the cutting blade in the

1 same way. What is your response to all that?

2 MR. THOMAS: So, a few different things that I think are
3 worthwhile to point out. So, the first is, regardless of whether the blade is
4 being moved from the top out or the bottom in, there are other advantages to
5 knowing this thickness. There's a process advantage. Again, Young is --
6 Young teaches that more data is contemplated. And in my opening
7 presentation, in response to Your Honor's question, I discussed the example
8 Dr. Collins gave of the out-of-bound's thickness. And it's interesting to me,
9 I'm looking at Patent Owner's Demonstrative Slide 12, they have a
10 deposition portion from Dr. Collins' deposition, and in the middle of that
11 excerpt there are three dots. Those three dots are the elision of that exact
12 argument that I explained. This is where Dr. Collins explains that, yes, of
13 course, I can think of a specific example; for example, if there's not enough
14 fat to be trimmed, we should throw an error code. And so, it's -- I want to
15 be clear that this slide is perhaps taking the most important part of that
16 deposition exchange and omitting it from the Demonstrative.

17 Then, another response I would give is, as Mr. Hart was asked,
18 specifically, does Norrie use a U-shaped blade? And he quite
19 unambiguously answered that it does not. I would direct Your Honor's
20 attention to Figure 3 of Norrie, which shows a blade that is -- perhaps
21 wouldn't be in alphabet book, but is quite curved, quite U-shaped, and also
22 column 3, line 22 of Norrie, which describes the shape of the blade as
23 arcuate, arc-shaped. So, Norrie has an arc-shaped blade, Young has a U-
24 shaped blade. Both of these apparatuses involve a situation where there's --
25 yes, there's fat immediately tangent to the support surface, but there's also

1 fat on sort of the surrounding walls.

2 And I think Petitioner's exhibit -- Petitioner's Demonstrative 7, if I
3 can pull this up -- it is an interesting sort of acknowledgement of this. So, in
4 Petitioner's Demonstrative Slide 7, there is shown a green zone of -- here
5 it's Young, but it's right at the bottom of that U. With the
6 acknowledgement, that zone is green because certainly there, the height of
7 the fat/lean edge from the platen, certainly there, that is equal to the
8 thickness of the fat, and certainly there, that's what's seeing the Y direction
9 of the blade. So, Young's blade --

10 JUDGE FLAX: Counsel, another point that your opposing counsel
11 made was based on the views from certain cameras. And he pointed to one
12 being from the top, where you really didn't get a good impression of how
13 thick the fat was surrounding the leaner meat. What is your response to
14 that?

15 MR. THOMAS: Thank you, Your Honor. So, that's the argument
16 I mentioned. That came up for the first time in their surreply. There's no
17 support from their expert that Mr. Hart's interpretation of those diagrams,
18 and sort of attorney argument from first principles is really supported by the
19 factual record. And there's some good reason to believe that it's now.

20 So, to begin with, Young describes the edge line as, and I'll quote,
21 "representing the outer surface of the pork side proximate to the fat/lean
22 line." And from the slide that Patent Owner used, which is Demonstrative
23 Slide 6, those two points, it's not the proximate points. Mr. Hart annotated
24 one point at the top and one point farther away. So, that's not what's really
25 taught by the words of Young. And then, we have expert support for this as

1 well. Dr. Collins says, “The distance between the fat/lean separation line
2 and the edge line corresponds to the thickness of the fat cover.” That’s in
3 Exhibit 1035 at Paragraph 17. In his deposition, he was asked about this, so
4 Exhibit 2011, page 26, lines 3 through 11 he responded, in no uncertain
5 terms, “So, in the top view, you see the thickness of the fat viewed from the
6 top.” So, Dr. Collins has testified, both in the papers and live, that this top
7 view is a thickness.

8 And then, I think setting up this argument about sort of, well,
9 doesn’t this show that it’s a bit bowed out? He was asked about the
10 positioning shown from these figures. And again, Dr. Collins answered, “I
11 believe more or less as it’s shown, not sure if it’s flat or if it’s curved.”
12 Figure 10C doesn’t show the platen. This is at page 20 of Exhibit 2011. So,
13 Dr. Collins, I think, recognized this sort of uncontested point of Patent laws,
14 that going from the figures like this, and treating them hyperliterally isn’t the
15 only question to ask. You still have to do an analysis.

16 Though interestingly enough, since receiving these slides from
17 Patent Owner last week, I actually took out -- took out a ruler and I
18 measured Figure 10A, the ratio between the total width of the meat shown
19 there and the width of the fat cover. And I measured Figure 10C right across
20 the middle of it, so a horizontal line even with the shoulder bone, the width
21 shown there, or the ratio of that to the width of the fat cover. And regardless
22 of whether I measured 10A or 10C, I was left with a ratio of 3 to 31. So,
23 that’s -- it was a compelling gut check that even taking these figures
24 literally, you are getting an accurate ratio -- an accurate distance reading
25 from either the top or the side, it doesn’t matter which angle you’re using it

1 as. So, I think consistent with Dr. Collins' analysis, even my own somewhat
2 slap-dash attorney analysis reached the same position.

3 Oh, the last thing I wanted to respond to, and to your point of
4 particular interest in the Ground 2 obviousness is, Mr. Hart mentioned that a
5 huge hook to our obviousness case was that Young includes a reference to
6 Norrie, and I wouldn't describe it as a huge hook. I think it's interesting to
7 point out, I think it unambiguously settles any issue with analogous art. The
8 drafters of Young clearly thought Norrie was analogous enough to mention.

9 And then, the real thrust of Mr. Hart's argument was that there's a
10 disparagement. I think this comes through quite clear in the briefing and
11 from the references themselves. But the disparagement, if you want to call it
12 that, is only to sort of the degrees of freedom that the blade has. There's no
13 disparagement to the imaging processing. Again, Young quite explicitly
14 says, more imaging processing is something we envision as better.

15 And so, this combination was never about replacing Young's blade
16 with Norrie's blade. It's taking the clear teaching in Norrie to actually
17 measure thickness, and applying that to the teachings in Young about how to
18 do this to a sophisticated blade with cameras and combining those two. So,
19 the disparagement argument is not one that feels particularly relevant to the
20 combination we've actually proposed.

21 And then, if you have further questions, I'm happy to take them,
22 but hopefully I have at least a few minutes left to return the microphone to
23 Mr. Sheeler.

24 JUDGE DEFRANCO: Mr. Thomas, so, exactly what is being
25 modified in Young by Norrie?

1 MR. THOMAS: So, thank you, Your Honor. And our main
2 position is that Young teaches measuring this layer. If, however, we are
3 wrong about that, if Your Honors believe that Young, alone, does not teach
4 that, then the teaching that is taken from Norrie is the explicit teaching to do
5 that calculation to get a distance value. And that could be -- I don't want to
6 get to a bodily incorporation sort of issue of, is it building both of these from
7 the ground up, and then yanking the camera and computer out of Norrie and
8 sticking it into Young somewhere? I think that would work. I think that's
9 preserved in the Petition, but I think the better way to frame it is, just as a
10 person of skill is designing this machine, they would be using the teaching
11 of Young extensively and also using the teaching of Norrie to add this bit of
12 functionality to the extent that that functionality was not already taught
13 through Young alone.

14 JUDGE DEFRANCO: So, your position is that Young already
15 has all the equipment that's necessary to accomplish that measurement that
16 Norrie teaches?

17 MR. THOMAS: I think, yes. If you built a machine from the
18 teachings of Young alone, that machine would anticipate -- it would practice
19 the claimed features. And to the extent that the only claimed feature missing
20 from that machine is the final arithmetical step of calculating a distance, we
21 know that based on Young's teaching we find the lines, we know that we
22 assigned them X/Y coordinates, we know that there's an algorithm that must
23 be programmed to find the distance between some lines, and then it would
24 be Norrie's additional nudge to -- among the lines we're finding the distance
25 between, let's do the fat/lean line, let's do the edge line.

1 JUDGE DEFRANCO: Okay, thank you.

2

3 MR. SHEELER: Your Honors, just a few quick points
4 regarding Patent Owner's arguments on Ground 3. I think the key dispute,
5 at least here today, is about the importance of the 3D mapping and whether
6 that counsels against a finding of obviousness.

7 Patent Owner discussed that the 3D mapping made by the probe
8 is the entire purpose. I'd like to direct the Board's attention to Patent
9 Owner's Demonstrative Slide 16, which shows that figure Patent Owner
10 prepared, showing the penetrations of the probes, both beneath and to the
11 side of the fat cover. So, that's how the 3D map is created with those
12 penetrations at different angles.

13 Johnson does not consider this its entire purpose, or its primary
14 purpose, or its intended purpose. Instead, if you look at Johnson,
15 particularly column 4, lines 46 through 47, Johnson describes that, "The
16 number of laterally aligned probes can vary to increase or decrease
17 resolution of the map. The probes can also be longitudinally aligned or in a
18 matrix of probes can be utilized."

19 What it's saying is, probes can be arranged in such a way
20 they're actually arranged to only penetrate from one direction, which would
21 be a 2D map, or the map's resolution can be decreased significantly because
22 it's not the key feature. What matters is, trimming that fat and knowing the
23 thickness, and that can be done with an imaging device.

24 This point is further underscored. Patent Owner argued that
25 these probes are so important, and it is the true purpose of Johnson because

1 you can have a single blade controlled in that single probe track. However --
2 or excuse me, that multiple blades are following the multiple probe tracks,
3 and that the single-blade arrangement is not possible.

4 But Johnson column 4, lines 63 through 65 discusses that, “The
5 controller can be operable in a way to vary the position of a single-blade
6 element.” So, that argument, itself, also is not true for Johnson’s disclosure.

7 And then, finally, just to return to the point, this is not how
8 Medtronic or the case law works here. Obviousness requires that we need to
9 consider whether these references have their entire purposes destroyed,
10 which Petitioner believes they are not, but even if so, obviousness is still
11 present as even made clear by Medtronic itself.

12 Looking at Petitioner’s Slide 27, Federal Circuit has made clear
13 in the Medichem case that, “The fact that a motivating benefit comes at the
14 expense of another benefit should not nullify its use as basis to modify the
15 disclosure of one reference with the teachings of another,” and said, “the
16 benefits, both lost and gained, should be weighed against one another.”

17 The benefits here are very large, and they are uncontested.
18 “Hygiene and damage to the product are significant drivers of motivation in
19 its industry.” Additionally, Dr. Collins, the Petition, and the remaining
20 papers discuss other benefits. “This is a large, complicated, mechanical
21 array that is expensive to manufacture, costly, and more moving parts are
22 more prone to break down. Its removal would be an extreme benefit to a
23 POSA, and they would be motivated to make this modification for that
24 reason.” That’s all I have, thank you.

25 JUDGE DEFRANCO: Mr. Sheeler, is there any benefit to

1 using probes over cameras?

2 MR. SHEELER: That's not really shown in any of the
3 declarations, Your Honor. There could be such a system with the blades
4 arranged in such a way that the probes penetrating certain parts is more
5 beneficial. However, for the disclosure of the '321 Patent, there is no
6 benefit, and in fact there are multiple drawbacks.

7 JUDGE DEFRANCO: All right, thank you. Mr. Hart, I believe
8 you have 16 minutes left.

9 MR. HART: Very good. More than I expected. Okay. To
10 start off, I want to hone in on the focus of Petitioner's case in its expert's
11 case on Block 246 and not on Block 254. Counsel argued that he did a text
12 search and didn't really see many references to 246 at all. He didn't
13 understand why we'd accused them on focusing on that block. In fact,
14 throughout the record, in Exhibit 1003, Dr. Collins' original declaration,
15 paragraph 104 highlights 246 and not 254. Pages 99 to 100 in that same
16 Exhibit 1003 quotes Block 246 but not 254. Petitioner's reply at page 5
17 highlights Block 246 but not 254. So, it depicts the full figure, but it only
18 highlights 246. Similarly, on page 4 of the reply, there's an express
19 discussion of Block 246, no mention whatsoever of 254, and the same
20 applies to page 9 of the reply. Finally, the supplemental declaration from
21 Dr. Collins, paragraph 20 discusses 246 but not 254. Over and over and
22 over again, the focus from Petitioner and its expert were on Block 246 not
23 254.

24 And to bring it back to why this matters. Number one, it
25 matters because the PTAB rules are clear that you have to set forth the

1 evidence you are relying on, and they have not done that with respect to 254.

2 Secondly, as I covered earlier --

3 JUDGE DEFRANCO: Let me ask, Mr. Hart --

4 MR. HART: Yes, Your Honor.

5 JUDGE DEFRANCO: -- you agree that they do rely on Block
6 258, correct?

7 MR. HART: They have a large cite, in the Petition only -- oh,
8 I'm sorry, 258.

9 JUDGE DEFRANCO: 258.

10 MR. HART: 258 is a separate step that comes in later in the
11 process, and that's where they are pointing to 258 as alleged evidence of
12 looking at overall height, length, and width of the pork side. So, 258 does
13 not touch on the fat/lean separation lines, the edge line, or end edge lines, or
14 the distance between any such lines. So, it's an end and separate part of the
15 overall process that they have cited. What they haven't cited --

16

17 JUDGE DEFRANCO: So, it's your position that they rely on
18 Block 246 and 258 but not the intervening Block 254?

19 MR. HART: The most important point is, they have not relied
20 on 254, they have not relied on 256. So, those are the new citations that we
21 see in there, Slide 5, that focus on the end camera analysis that nobody from
22 Petitioner, not its expert, not its attorneys have ever discussed. And there's
23 been no opportunity to push back on what those steps are actually doing in
24 Young's process. That's the most important point. And as we saw from
25 their Slide 5 where they attempt to annotate Figure 10C from Young,

1 suggesting that Young creates a line that follows all the way around the fat
2 cover, that is just not what Young is describing with respect to process step
3 254's in edge line.

4 JUDGE DEFRANCO: Do they rely on Block 248?

5 MR. HART: 248? Yes --

6 JUDGE DEFRANCO: Yeah, that would be column 23, line --

7 MR. HART: So, I believe -- yes, I believe there are citations.

8 That is the pattern matchings, so that is -- once you've identified the lines in
9 the -- for example, 246 and then, kind of pattern matching to create data
10 points along those lines. We are not challenging their reliance on 248,
11 which comes right after 246, and it still is based on the data that comes from
12 that top-view camera. But again, the main point is, everything they've relied
13 on comes from the top-view camera not the end-view camera. We've had
14 no opportunity to discuss and to criticize any theory based on those end
15 views.

16 The next point I wanted to get to is to correct the record. As
17 opposing counsel pointed out, I did clearly state that Norrie's blade was
18 straight. It is arced, and I missed a note from a teammate saying, it's arced,
19 it's arced, so, my apologies. The main point still does apply, that Norrie is a
20 single-axis system that moves only up or down. It attacks the problem of
21 removing a fat cover in a fundamentally different way. And that closes
22 the --

23 JUDGE FLAX: Let me ask you a question about this. In this
24 whole -- I'm looking at Young right now. In the section you all were just
25 talking about, columns 22, 23, 24, and it describes collecting an array of data

1 and dimensions of the cut. Tell me that I'm wrong at any point along this,
2 but I get the impression that Petitioner's real point is that Norrie is saying,
3 this one extra measurement is useful that may not be explicitly discussed in
4 Young, right? So, Young gives you all these data points for the entire cut, or
5 where's the transition point between fat and lean, or where's the edge, or
6 where's the bone. It has a lot of data. I understand their point to be, this is
7 just one more data point that the butchering machine would find useful and
8 thus would be incorporated into the process. Why is that wrong?

9 MR. HART: It is wrong on this record because there is no
10 explanation for how it would be useful to Young's system. Judge DeFranco
11 asked counsel directly, how would Young be modified based on Norrie's
12 teaching? And I heard no answer. I heard that Young's good enough, and if
13 you don't like Young maybe you would like Young and Norrie better. And
14 that's exactly what we've obtained from Petitioner and its expert throughout
15 this case.

16 JUDGE FLAX: Well, they did say that Young says more data
17 is good. They said that several times. I'm not sure where it exactly says
18 that, but they made that point, and this seems to be one more data point,
19 right? It's not even -- I mean, you know, it's not a technical leap because
20 you've already got the edge, you've already got the inside border, I mean,
21 it's really -- it's not a complicated process of determining that distance. So,
22 why is that one more thing not -- that's their point, like more is good, here is
23 more, this says it's good, why not just throw it into the process?

24 MR. HART: Yeah. So, more is good, why, right? Why is this
25 more beneficial? That's what's missing on this record. So, we don't

1 dispute -- there's a difference between a motivation to combine and an
2 expectation of success. Under the law of obviousness, it is not sufficient to
3 solely prove expectation of success. We're not debating that a POSITA
4 could have added a data point to Young, that once Young has all of these
5 processes, all these cameras, takes all these data points and does this
6 complex cut line, we're not debating that a POSITA could have taken
7 something even simpler and incorporated it in there somehow. But there's
8 no explanation in this record of how or why -- what is the benefit of adding
9 this one last measurement from a system, a simplistic system that Young
10 expressly points to in disparagement? How does it change Young's system?
11 That's what we don't have.

12 If I could point you to PX-12, I asked Dr. Collins, Petitioner's
13 expert, I said, I'd like to explore what changes in Young's system are made
14 pursuant to this proposed modification of incorporating Young's software or
15 algorithm? And I'd like to ask you a hypothetical. Pork Side A is processed
16 in an unmodified Young system, Pork Side B is processed by Young's
17 system implementing Norrie's software as you suggested. So, this is
18 Ground 2. What is changing here.

19 I said, assuming -- he said -- there was a hypothetical answer.
20 He said, well, maybe a user might ask to cut off more fat than there is to cut,
21 and having a concrete number from Norrie's system would flag an error.
22 Now, there's no explanation in the papers of this. There is no suggestion in
23 the record, no background evidence suggesting that this ever would happen,
24 or that this is possible. But I said, assuming this hypothetical justification,
25 this rationale that you have not described in your papers is not in play, can

1 you think of any scenarios in which the cut between Pork Side A and Pork
2 Side B differ? He said, I haven't given it much thought. So, he had one
3 hypothetical error code generation that he came up with on the fly in his
4 deposition, and aside from that had not given it much thought as to how
5 Young's system unmodified and Young's system modified pursuant to
6 Norrie would change. I asked him again, how about the process of
7 determining cut lines? How are the process of determining the cut lines
8 differ between Pork Side A and Pork Side B? I don't believe there's a
9 fundamental difference.

10 This is the heart of the problem with Ground 2. We have done
11 our best from the initiation of this proceeding to figure out what they are
12 proposing as a changed Young's system. How does this one measurement
13 from Norrie's simplistic system get incorporated into Young's
14 fundamentally different process in a beneficial way. What changes and how
15 does it benefit Young's process? And we've been stymied at every question.
16 There is simply nothing in this record that identifies a concrete benefit to
17 modifying Young's system pursuant to Norrie. The cameras don't help.
18 Young's cameras do everything Norrie's cameras do. The process doesn't
19 change. I asked over and over how does the process change? There's
20 simply nothing there, and that is insufficient under the law, where there is no
21 benefit -- go ahead.

22 JUDGE FLAX: And the claimed invention and as you're
23 discussing it now, and as described in the Patent's spec, is it a technical --
24 does it have technical advantages over what Young does or is it just different
25 than what Young does? And if there are advantages, what are they?

1 MR. HART: Yeah, I think it's fair to say, it's different. It is
2 fundamentally different. Now, we did, in our proffer explain that there are
3 benefits to basing the cut lines on a smaller subset. It's a similar system, it
4 doesn't require all this complexity, all these Servos, all these cameras
5 necessarily that a system like Young does. But again, if we're focused on
6 the claims, what do the claims require, which is really what the analysis is
7 all about here, it is that Young is different. Young attacks the removal of fat
8 cover in a fundamentally different way that does not depend on fat thickness.
9 It does not measure fat thickness, and it doesn't need to measure fat
10 thickness because it is coming from the problem from a different angle. It
11 attacks the problem differently than our claims and differently than Norrie
12 and the other references that are of record here. So, I think, maybe the best
13 way to describe it, is how you put it, it is different.

14 JUDGE DEFRANCO: Mr. Hart?

15 MR. HART: Yes, Your Honor.

16 JUDGE DEFRANCO: You mentioned the Petitioner never
17 cited to that -- what is it, Block 254?

18 MR. HART: Yes, Your Honor.

19 JUDGE DEFRANCO: I'm just looking at page 13 of the
20 Petition, and it cites to Figure 13, which includes Block 254, and it also cites
21 to the whole process that's described in columns 22, line 53 through -- 24
22 through 38. Let me repeat that. So, the Petition, at page 31, cites to Fig. 13,
23 which includes Block 254, and they also cite to column 22, line 53 to
24 column 24, line 38. That encompasses that whole process.

25 MR. HART: This is -- so, this is Figure 13, unannotated, no

1 direction to any particular portion of 240. And, yes, that is a multi-column
2 citation. It is the only thing in the entire record that captures Block 254.
3 The reason I say that they have relied on 246, and focused on 246, and not
4 254, is every subsequent opportunity where they elaborate on their theory,
5 explained their theory, cite evidence in support of their theory, which
6 depends critically on the fat/lean separation line and the edge line, it is
7 always to Block 246.

8 There is no -- there are multiple, over and over Petition, original
9 expert declaration, replies, supplemental expert declaration, over and over
10 citations and explanations to Block 246, not a single reference to 254 in the
11 record. They simply didn't discuss it. They didn't analyze it. They didn't
12 distinguish the lines that are generated in 254 from those in 246, and
13 accordingly did not give us an opportunity to explain why 254 doesn't help
14 their case.

15 I'm telling you today, we have all talked about 246 because that
16 is the focus of their case. That is the only specific processing block in
17 Young that generates fat/lean separation lines and edge lines. And those two
18 lines, as we heard from counsel, are the key to their case. That is all they
19 found in Young that can theoretically support indicating fat thickness. And
20 we've attacked 246. We've explained why 246 doesn't work. And today,
21 for the very first time, they have included the slide that spends more time on
22 254 than 246, and that's (CROSSTALK) --

23 JUDGE DEFRANCO: My understanding though, was that they
24 were relying on this whole multi-camera imaging system and is making
25 determinations of height, width, thickness of various parts of whatever the

1 meat carcass is, and then collecting all those data points together to make
2 determinations.

3 MR. HART: But they have to specifically identify their theory.
4 And if we go through their theory, every single point in their process, where
5 they are identifying specific teachings in Young that they intend to rely on, it
6 points to 246. If I go to the next page in their Petition, page 32, “After the
7 data is collected, Controller 172 performs an image analysis, including
8 generation of fat/lean separation line, which will be distinguished between
9 the loin and fat.” Slide 23, 11 to 24, that is 246.

10 The next paragraph cite 23, 11 to 24, that is Block 246. If we
11 go to their reply, you know, we challenged in our Patent Owner response the
12 specificity of their Petition and of their original expert declaration. If we go
13 to their reply, over, and over, and over, page 4, using these images, Block
14 246 of Young’s image processing system determines the fat/lean separation
15 line and the edge line. Page 5, they annotate 246. Page 5, they generate this
16 image, depicting fat sitting on top of the platen and leaning on top of the fat,
17 and claim that that comes from Step 246.

18 If we go to page 9, process imagine Routine 240 includes the
19 steps Block 246, which determines fat/lean separation and edge lines. The
20 same focus on 246 that we’re seeing in the papers from Petitioner is
21 reflected in their expert declaration. Nobody, not Dr. Collins, not the
22 attorneys for Provisur, ever talked about 254. They never diverged from this
23 focus on Block 246 and the top-view image processing. This was their case.
24 They got far more specific than just generally citing Figure 13, and it is that
25 specificity that we have to work with.

1

2 JUDGE DEFRANCO: Yeah, I understand your position.

3 MR. HART: Thank you.

4 JUDGE DEFRANCO: Would you like to wrap it up, Mr. Hart?

5 JUDGE SILVERMAN: If I may? This is Judge Silverman, I
6 just want to jump in for a second.

7 JUDGE DEFRANCO: Yeah, of course.

8 JUDGE SILVERMAN: If I can refer you to Young in
9 column -- oh, my gosh, my screen just flipped out. It's -- I think it's in
10 column 23. I apologize, I lost my image of Young. But in brief, when the
11 discussion there of process 240 turns to Block 254, it harkens back to Block
12 246. So, I mean, isn't it correct that the discussion of 254 is 246 from
13 another perspective?

14 MR. HART: It is referencing back that prior discussion to say,
15 like in this 246 block, we are also calculating multiple lines. These are
16 different lines using different cameras and different data, and they represent
17 different things, because they are viewing different portions of the pork loin.
18 And this is really -- and I tried to hit this earlier, this is really important. The
19 thing that Petitioner is relying on most prominently today is a fat/lean
20 separation line and an edge line that it claims wraps all the way around the
21 loin. They have depicted in their Slide 5, two lines that they contend Young
22 generates that absolutely wrap around the entire fat cover. And from that
23 they say, look, it's simple. A POSITA would understand that if you had
24 these two lines defining the outer edges of the fat cover, that POSITA would
25 conclude that Young is teaching determining the thickness of the fat. That is

1 not what is described in Young.

2 And the really important point here is that in column 23, starting at
3 line 55 through to line 59, where it's describing the end edge line that is
4 arrived at in Block 254, nobody has described that. Nobody has discussed
5 that. Nobody has analyzed that in this case. And what they've depicted in
6 slide 5 fundamentally diverges from what is described in this portion of
7 Young. Young says the end edge line will be distinguished by the interface
8 between the fat and the platen. That is not the entire fat cover. That is not
9 what they have depicted as that end edge line in Slide 5. That's why this
10 matters. We have not had an opportunity to pick apart Young's teachings
11 with respect to that end edge line or Block 254 at all because they have not
12 relied on it. And what they've presented the Board today fundamentally
13 diverges from what Young actually says. That's why it's so prejudicial, and
14 why it's so important that this Board not allow them to introduce an entirely
15 new reliance on this entirely different processing block from Young.

16 JUDGE DEFRANCO: That processing is all a part of the same
17 embodiment, correct?

18 MR. HART: This all falls within Routine 240.

19 JUDGE DEFRANCO: Right.

20 MR. HART: So, in that respect, it is all part of -- I would argue
21 the same embodiment. I think you're exactly right.

22 JUDGE DEFRANCO: Okay. Anything else, Mr. Hart?

23 MR. HART: I don't have anything else unless there are any
24 remaining questions from Your Honors.

25 JUDGE DEFRANCO: I think we're good.

1 MR. HART: All right. Thank you very much for your time.

2 JUDGE DEFRANCO: Okay. Thank you to both parties for your
3 presentation today. They were definitely helpful and informative, and we'll
4 take it under advisement. So, with that, we're adjourned. And if the parties
5 would like to stay on the record just -- I mean, we'll go off the record, but
6 the parties stay on the line for the court reporter, who might have some
7 questions.

8 (Whereupon, the above-entitled matter went off the record at 3:20
9 p.m.)

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