UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - - - - - - - - - - - -x

NEURENT MEDICAL INC. and :

NEURENT MEDICAL LTD., :

Petitioners, : IPR2024-00277

v. : Patent 11,241,271 B2

AERIN MEDICAL INC., :

Patent Owner.

- - - - - - - - - - - - - - -x

Deposition of Gregory Thomas Martin, Ph.D.

Boston, Massachusetts

September 24, 2024

9:03 a.m.

Job No.: 553700

Pages: 1 - 305

Reported By: Alan H. Brock, RDR, CRR

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - - - - - - - - - - - -x

NEURENT MEDICAL INC. and :

NEURENT MEDICAL LTD., :

Petitioners, : IPR2024-00278

v. : Patent 11,033,318 B2

AERIN MEDICAL INC., :

Patent Owner.

- - - - - - - - - - - - - - -x

Deposition of Gregory Thomas Martin, Ph.D.

Boston, Massachusetts

September 24, 2024

9:03 a.m.

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Pages: 1 - 305

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Neurent Medical Inc. & Neurent Medical Ltd. v. Aerin Medical Inc.
IPR2024-00277

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

- - - - - - - - - - - - - - -x

NEURENT MEDICAL INC. and :

NEURENT MEDICAL LTD., :

Petitioners, : IPR2024-00282

v. : Patent 11,766,286 B2

AERIN MEDICAL INC., :

Patent Owner.

- - - - - - - - - - - - - - -x

Deposition of Gregory Thomas Martin, Ph.D.

Boston, Massachusetts

September 24, 2024

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IPR2024-00277

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NEURENT MEDICAL INC. and	:	
NEURENT MEDICAL LTD.,	:	
Petitioners,	:	IPR2024-00669
v.	:	Patent 11,679,077 B2
The Foundry, LLC,	:	
Patent Owner.		

- - - - - - - - - - - - - - -x

Deposition of Gregory Thomas Martin, Ph.D.

Boston, Massachusetts

September 24, 2024

9:03 a.m.

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E X H I B I T S

(Attached to transcript.)

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September 24, 2024 9:03 a.m.

P R O C E E D I N G S

GREGORY THOMAS MARTIN,

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

MR. GILFORD: Let's go ahead and do appearances. I'm Ben Gilford, of Greenberg Traurig LLP, appearing on behalf of patent owners Aerin Medical Inc. and The Foundry LLC, and I believe with me on Zoom is Heath Briggs and Elana Araj -- Alan, that name is E-l-a-n-a A-r-a-j -- also both from Greenberg Traurig.

MR. NEMTZOW: And I am Alexander Nemtzow, from the law firm Wilmer Cutler Pickering Hale and Dorr, on behalf of petitioners Neurent Medical Inc. and Neurent Medical Ltd. And with me here are Alexis Cohen and Sarah Murphy.

MR. GILFORD: So just a couple of things, counsel, to clarify before we get started, because I know we're dealing with four IPRs here. So the first: I wanted to confirm that Dr. Martin is here to testify

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regarding declarations he submitted in four IPR proceedings, so that's going to be IPR2024-00277, IPR2024-00278, IPR2024-00282, and IPR2024-00669. It's our understanding the transcript of Dr. Martin's deposition will be submitted in all four of those proceedings.

It's our understanding the parties have agreed that if necessary Dr. Martin's deposition will continue on tomorrow, which is September 25th, 2024. It's our understanding the parties have agreed that counsel for the parties may attend Dr. Martin's deposition remotely or in person for both. And the parties have agreed that Dr. Martin's cross-examination on his three declarations in the 277, 278, and 282 IPRs will be handled by a single questioner but that Dr. Martin's cross-examination on his declaration in the 669 IPR may be handled by a different questioner if desired, but I'm not sure if we're going to be doing that.

Do you have any issue with my characterization of the parties' agreements?

MR. NEMTZOW: We reserve the right to

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object, for example, to specific testimony that's not relevant to particular proceedings, but we do not object to the submission of the transcript in its entirety in all four proceedings.

In terms of the questioning, yeah, it's all right if a second questioner comes in just for the separate proceeding.

EXAMINATION

BY MR. GILFORD:

Q. Dr. Martin, can you please state your full name for the record.

A. Gregory Thomas Martin.

Q. Is there any reason why the testimony you offer today would not be truthful?

A. No.

Q. The court reporter, as you know, is taking down every word we say, so it's important that we don't talk over each other. I'll ask a question. Please let me finish, and then I'll let you answer and I'll try my best not to jump on your answer and let you give a whole answer.

Because the court reporter is taking down,

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you know, everything we say, it's important that you give verbal responses, so head nods, shrugs, stuff like that, is not sufficient.

If you don't understand the question, please ask for clarification. If you answer, I'll assume that you're answering the question that was posed.

And if you need a break, just ask for it. The only request I have is if I have a question pending, you go ahead and answer it, then we'll take a break. Sound good?

A. Yes.

Q. Have you been deposed before?

A. Yes.

Q. Approximately how many times have you been deposed before?

A. Maybe three or four.

Q. Have you testified at a trial or hearing before?

A. Yes.

Q. Approximately how many times have you testified at a trial or hearing before?

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A. Twice.
Q. And do you recall whether those two times were -- were they trials or hearings or one of each? Do you recall?
A. Well, one was divorce court. The other was patent court, Federal patent court.
Q. Like a U.S. District Court?
A. Yes.
Q. Do you recall which U.S. District Court?
A. Northern California.
Q. You said that was -- was that a trial that you were testifying at or was it a hearing?
A. That was a trial.
Q. And do you recall when that trial was?
A. October 2011.
Q. And you said that was a patent case?
A. Yes.
Q. Do you recall who the parties were in that case?
A. Conceptus versus Hologic.
Q. And I'm assuming you were testifying on behalf of Hologic?

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A. Correct.
Q. Do you recall whether you were testifying as an expert witness or a fact witness?
A. Fact witness.
Q. Do you recall whether Hologic was the plaintiff or the defendant in that case?
A. Hologic was the defendant.
Q. So they were being sued for patent infringement by Conceptus; is that correct?
A. Correct.
Q. And can you just give me a very high-level overview of kind of the subject matter of your testimony in that case?
A. I don't recall it in its entirety. It was quite a number of years ago. As a fact-based witness, mostly I was attesting to things that had been -- were part of discovery and just attesting to that they were certain reports or they were certain emails.
Q. Like authenticating documents?
A. Yes, exactly. Thank you.
Q. So just to be very clear, for that case, no, you didn't provide any testimony as an expert witness;

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correct?

A. That is correct.

Q. Have you ever been a witness against Aerin Medical Inc. before?

A. No.

Q. Have you ever been a witness against The Foundry LLC before?

A. No.

Q. Have you ever had any interaction with Aerin Medical Inc. before these IPRs?

A. No.

Q. Had you heard of Aerin Medical Inc. before these IPRs?

A. No.

Q. Have you ever had any interaction with The Foundry LLC before these IPRs?

A. No.

Q. Had you heard of The Foundry LLC before these IPRs?

A. Yes.

Q. Do you recall approximately when you first heard of The Foundry LLC?

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A. I don't recall. More than ten years ago.
Q. And do you recall kind of the context of -- I guess what was the context of how you first heard about them?
MR. NEMTZOW: Objection, form.
A. I don't even recall.
Q. So I believe you said you thought it was maybe about ten years ago that you had first heard of The Foundry LLC.
A. Yes.
Q. Between ten years ago and, you know, when these IPRs were initiated -- strike that.
I just want to ask this again. So you have never had any interaction with The Foundry LLC before; correct?
A. Correct.
Q. Outside of your work on these IPRs, have you ever done any work for Neurent Medical Inc. or Neurent Medical Limited?
A. No.
Q. Have you ever collaborated with or received funding from Neurent Medical Inc. or Neurent Medical

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Limited?

A. No.

Q. Have you ever previously provided testimony or opinions on behalf of Neurent Medical Inc. or Neurent Medical Limited?

A. No.

Q. Have you ever previously provided testimony or opinions on behalf of an entity owned or controlled by Neurent Medical Inc. or Neurent Medical Limited?

MR. NEMTZOW: Objection, form.

A. Well, let me just say, I don't know what all entities they control. But to my best knowledge, no.

Q. Other than these IPR proceedings, have you ever been an expert witness in a patent case?

A. Yes.

Q. Approximately how many times have you been an expert witness in a patent case?

A. Maybe three. Three or four.

Q. So to your best recollection, you know, going as far back in time as you can possibly remember, what was the first patent case that you provided expert testimony in?

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A. In a couple -- in the first case I just provided a report, and that would have been in the '90s, with Sherwood, I believe, Medical. That was the first time.

Q. And you said you provided a report on behalf of Sherwood Medical sometime in the '90s. Is that correct?

A. Yes.

Q. Do you recall whether that was a U.S. District Court case?

A. I don't recall. I believe it was.

Q. Okay. And do you recall whether Sherwood Medical was the plaintiff or the defendant in that case?

A. They were the plaintiff.

Q. And were you providing expert testimony in that case as a technical expert?

A. I believe so.

Q. Do you recall how many patents were at issue in that case?

A. No, I do not.

Q. Again at a very high level -- I don't need

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you to get into specifics. But at a very high level, what was the general substance of your report in that case?

A. Sherwood Medical at the time made a tympanic membrane temperature measurement device. That device had plastic slip covers that covered the hardware. And in our tests we tested the impact of different cover designs on the accuracy of the temperature measurement.

Q. Do you recall whether you provided infringement opinions in that report?

A. I did not.

Q. So if I understand you correctly, the general substance of your report in that case had to do with testing of these, I think you said, slip covers?

A. Correct.

Q. Do you -- again, if you don't know, you don't know. But do you recall generally how your report was used in the case?

MR. NEMTZOW: Objection, privilege. I'll just caution the witness not to reveal the content of any communications with attorneys.

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A. I don't recall.
Q. So again, going forward in time from that case -- sorry, let me back up a little bit.
So I believe you said Sherwood Medical was the plaintiff in that case; right?
A. Yes.
Q. Do you recall who the defendant was?
A. I do not.
Q. Sorry. So going forward in time from that case, what was the next case you provided expert testimony in as a patent expert?
MR. NEMTZOW: Objection, form.
A. I believe that was -- after I left the employment of Hologic, I was later hired back as an expert in their case against Minerva Surgical.
Q. Was that an IPR?
A. It was first a District Court case, and that was then put on hold during an IPR process.
Q. So I guess -- I think you had said -- oh, okay.
So the other Hologic case we were talking about was against --

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A. Conceptus, when I was an employee.
Q. So this is a different case you were talking about.
A. Correct.
Q. In the Hologic versus Minerva case, do you recall -- let's talk about the District Court part of it. Do you recall who the plaintiff was in the District Court part of it?
A. It was Hologic.
Q. Got it. You said there was an IPR proceeding as well?
A. Correct.
Q. I'm assuming in that part of the case, that IPR aspect of the case, that Minerva was the petitioner; correct?
A. Correct.
Q. Let's talk a little bit about the District Court part of it.
So in the District Court part of that case, the Hologic versus Minerva case, did you provide an expert report in that case?
A. Yes.

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Q. And did you provide any testimony at hearing or trial in that case?
A. No.
Q. So is the extent of your involvement in the District Court part of the Hologic versus Minerva case providing an expert report?
A. Correct.
MR. NEMTZOW: Objection, form.
Q. Do you recall how many expert reports you submitted in that case?
A. In the District Court case, I don't recall. It was at least one, maybe two.
Q. Do you recall which District Court that case was in?
A. I think it was Northern California.
Q. And do you recall approximately when that case was filed?
A. I don't recall exactly. I mean, it's public knowledge. You can look it up.
Q. Do you recall whether that case started while you were still working at Hologic?
A. It did not. It started after, after I left

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Hologic.

Q. So I know you said you recall providing at least one report in that case; correct?

A. At least one for the District Court.

Q. Sorry, still talking about the District Court case.

A. Yes.

Q. To the extent you can recall, at a very high level, what was the general subject matter of the report that you recall submitting in that District Court case?

A. It involved the infringement on Hologic patents covering an aspect of endometrial ablation treatment and a safety check that was incorporated into our product, that then Minerva Surgical duplicated for their product.

Q. And did the case involve one patent or more than one patent?

A. I don't recall.

Q. But just to kind of summarize: So in general, the report you recall submitting in the District Court case had to do with infringement

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topics?

A. Yes.

Q. And you also submitted a declaration in the Minerva versus Hologic IPR proceeding; right?

A. Correct.

Q. Do you recall how many declarations you submitted in that proceeding?

A. I think one, but I'm not 100 percent sure.

Q. I think it was one, also.

A. Okay.

Q. And you were also deposed in that case; right?

A. In the IPR? I don't think so.

Q. Do you recall being deposed for the District Court case?

A. Yes.

No, I'm sorry, not for Hologic, no. I don't think I was deposed for either.

Q. Okay. I think you were deposed in the IPR, but at least for the District Court case -- let's just focus on that. So do you recall being deposed in the District Court case that we've been talking about?

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MR. NEMTZOW: Objection, form, foundation.

A. I do not.

Q. Now, talking about the declaration you submitted in the IPR for this Minerva versus Hologic IPR: Again at a very high level, do you recall what the subject matter of that declaration was?

A. Well, it involved -- it involved the same technology -- right? -- that we were talking about, the safety check. But beyond that, I don't recall the particulars of the report.

Q. So again going forward, you know, in time from the time period of this Hologic versus Minerva case: What was the next patent case that you offered expert testimony in?

A. I think the only other one -- the only other cases didn't involve deposition or testifying. I think the only other cases involved a report.

Q. Okay. So that's fine. So again, going forward in time from this Hologic versus Minerva case, what was the next case that you provided an expert report in?

MR. NEMTZOW: Objection, form.

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A. I believe it was -- I don't even remember the name of -- I'm sorry, that was a product liability case.

Q. Let me reask the question, just because we're talking just about patent stuff.

A. Sure, sure.

Q. Going forward in time from this Hologic versus Minerva case, what was the next patent case that you provided a report or testimony or anything like that in?

MR. NEMTZOW: Objection, form.

A. I think that was it. I think that was the last one I did prior to this.

Q. Okay. So it sounds like, just to kind of summarize, that we had the Sherwood Medical case, where you provided, I believe you said, some opinions about testing a slip device or slip cover; and you had the Hologic versus Minerva proceedings, where you provided reports. Does that summarize the extent of your testimony for patent cases, that you recall?

MR. NEMTZOW: Objection, form.

A. As an expert witness, yes.

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Q. I might have asked you this, but for the Sherwood Medical case, do you recall being deposed in that one?

A. I was not deposed for that one.

Q. Did you testify at trial or at hearing in that case?

A. No, I did not.

Q. So now let's talk about nonpatent cases. I think you mentioned product liability or something like that.

A. Yes.

Q. So again for nonpatent cases, have you ever served as an expert witness in a nonpatent case?

A. Yes.

Q. Approximately how many times have you served as an expert witness in a nonpatent case?

A. I believe two.

Q. Was one of those cases the Conceptus versus Hologic case?

A. No. That was a patent case.

Q. All right. So let's talk about the first of those cases going back as far in time as you can

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remember. What case was the first case you provided expert witness testimony in in a nonpatent case?

A. It was a product liability case with a Hologic product. It was after I had left Hologic as an employee. For the plaintiffs.

I was defending a physician, part of the team defending a physician, who was being sued by a plaintiff patient. It would have been in 2017. Off the top of my head, I don't recall the physician's name. I don't recall the plaintiff's name, either.

Q. So I believe you said in that case you were defending a physician who -- strike that.

So did that case involve a Hologic product?

A. Yes.

Q. Which Hologic product did that case involve?

A. NovaSure.

Q. And did you provide an expert report in that case?

A. Yes.

Q. Do you recall how many expert reports you provided in that case?

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A. I think two.
Q. Were you deposed in that case?
A. Yes.
Q. How many times were you deposed in that case?
A. I believe at least one.
Q. And I believe you said that case was from approximately 2017; is that right?
A. Yes.
Q. Did you testify at trial or at hearing in that case?
A. No.
Q. So I believe you said that you recall submitting two reports in that case; is that right?
A. Possibly two. I don't recall exactly. Yes.
Q. Again at a very high level, what was the general subject matter of the reports you can recall submitting in that case?
A. So this was a case where a patient was injured after having received a NovaSure endometrial ablation, and the substance of my report was to first analyze if the physician followed the device's instructions for use and potentially -- and identify

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potential causes for patient injury.

Q. And to be clear, the NovaSure product is an endometrial ablation product; right?

A. Correct.

Q. So again going forward in time from this product liability case we were just talking about, what was the next case -- the next nonpatent case that you provided expert witness testimony in?

A. There was one other case where I just filed a report. It was -- I don't even remember now. It was an endoscope sterilization product. So it was a device that sterilizes reusable endoscopes in the hospital. And the defendants were a group of hospitals that had similar equipment, and the plaintiff was a patient.

Q. And were you representing the plaintiff or the defendants in that case?

MR. NEMTZOW: Objection, form.

A. I represented -- I worked with the defendants.

Q. Did you submit any expert reports in that case?

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A. Yes, I submitted one.
Q. And were you deposed in that case?
A. No.
Q. Did you testify at trial or at hearing in that case?
A. No.
Q. So for the report that you submitted in that case, at a high level, what was the subject matter of that report?
A. This was a case where the plaintiff thought the people using the device were not properly trained, because at first blush the record showed that they were trained after the device -- after the sterilization device was used with the endoscope in their procedure.

And what I was able to find was that the clock and the calendar on the sterilization device were mis-set, and so it appeared that the training records -- the training occurred after the sterilization.
Q. Was this a medical-malpractice case?
A. Yeah, I believe so, yes.

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Q. And, you know, we've been talking about several cases that you provided expert witness testimony in. Are there any other cases that we haven't talked about where you provided expert witness testimony or an expert witness report that we haven't talked about?

MR. NEMTZOW: Objection, form.

A. None that I recall.

Q. To your knowledge, have your testimony or opinions ever been excluded?

A. Not to my knowledge.

Q. Did you do anything to prepare for today's deposition?

A. Yes.

Q. Did you speak with anybody to prepare for today's deposition?

A. Yes.

Q. Who did you speak with?

A. Prior to today I spoke with Alex, Alexis, Sarah, and Josh.

Q. Is Josh --

A. Stern. Josh Stern.

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Q. So Alex, Alexis, and Sarah are all in this room; correct?
A. Correct.
Q. Is Josh Stern an attorney for Neurent?
A. He's an attorney working at WilmerHale.
Q. Did you speak with anybody other than Alex, Alexis, Sarah and Josh to prepare for today's deposition?
A. No.
Q. Did you speak with all four of those individuals at the same time?
A. On one occasion.
Q. I guess let's back up, then.
When did you speak with Alex, Alexis, Sarah and Josh to prepare for today's deposition?
MR. NEMTZOW: Objection, form.
A. All four, yesterday; and then only three the day before.
Q. So yesterday was September 23rd; correct?
A. Correct.
Q. And you said you spoke with three of those individuals on September 22nd; is that right?

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A. Correct.
Q. So let's talk about the -- let's talk about September 22nd. So I believe you said you spoke with three people on September 22nd. Is that right?
A. Correct.
Q. Do you recall which individuals you spoke with on September 22nd?
A. So that's Sunday; right? The 22nd is Sunday? So Alex, Alexis, and Sarah.
Q. And approximately how long did you speak with Alex, Alexis, and Sarah on September 22nd?
A. About seven or eight hours.
Q. Were you speaking with Alex, Alexis, and Sarah in person?
A. Yes.
Q. Where were you guys meeting?
A. In this building.
Q. You also said you spoke with Alex, Alexis, Sarah, and Josh yesterday, September 23rd; right?
MR. NEMTZOW: Objection, form.
A. Correct, yes.
Q. Approximately how long did you speak with

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Alex, Alexis, Sarah, and Josh yesterday?

MR. NEMTZOW: Objection, form.

A. Let's see. With Alex, Alexis, Sarah, approximately six hours, with an additional hour or so including Josh.

Q. Okay, I understand. So you weren't speaking with all four of them at the same time.

A. For the entire time, yes.

Q. So approximately in -- let me back up.

So yesterday, September 23rd, is it fair to say you spoke with Neurent's attorneys for approximately seven hours?

A. Yes, seven or eight.

Q. Did you review any documents in preparation for today's deposition?

MR. NEMTZOW: Objection, privilege. I'll just caution the witness not to share the contents of any communications with attorneys.

A. Yes.

Q. What kind of documents did you review to prepare for today's deposition?

MR. NEMTZOW: Again, same objection. I'll

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caution the witness not to share the contents of any communications with attorneys or any documents provided by attorneys.

A. I reviewed my written opinions and some of the prior art and patents.

Q. Do you recall which prior art you reviewed in preparation for today's deposition?

A. Yes. Let's see here. Some of it's listed here.

Well, certainly the prior art, the Edwards patent, '535; Baker; Edwards '886; Makower -- probably a couple others, too.

'286 patent. Stern, of course. Patel, the Patel patent. Maybe one more.

Oh, yeah, the translation for Fang. And I think there was one more, prior art.

Liang was the other prior art I reviewed.

I think that....

Q. Do you recall reviewing the '318 patent in preparation for today's deposition?

A. Yes.

Q. Do you recall reviewing the '286 patent in

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preparation for today's deposition?

A. Yes.

Q. Do you recall reviewing the '271 patent in preparation for today's deposition?

A. Yes.

Q. And do you recall reviewing the '077 patent in preparation for today's deposition?

A. Yes.

Q. Did you review anything -- let me back up.

In preparing for today's deposition did you review anything that's not listed in the materials considered sections of your declarations?

MR. NEMTZOW: Objection, form and privilege. I'll just caution the witness not to reveal the contents of any communications with attorneys or any documents provided by attorneys.

A. I don't think so.

Q. Have you spoken to anyone about today's deposition other than Neurent's attorneys?

A. No.

Q. And, you know, thank you for bringing this to my attention. I notice you have a few things in front

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of you; is that right?

A. Yes.

Q. You don't need to go through everything. But is the stuff in front of you, are all those materials from these IPRs?

MR. NEMTZOW: Objection, form.

A. Yes. So it includes my declaration, background, and a list of references, and a summary of the grounds.

Q. When you say a summary of the grounds, is that the summary that was attached to your declaration, or is that a different summary?

MR. NEMTZOW: Objection, form.

A. I don't know. Let me see.

Q. I guess how about this: Can I see what's been placed in front of you for today's deposition?

A. Sure.

MR. NEMTZOW: Objection.

Just for the record, I'll represent that these are the declarations and associated appendices in the four IPRs that are the subject of this deposition that were submitted by Dr. Martin.

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Q. And Dr. Martin, are these clean copies, to your knowledge, or are there any notes in these?
A. I believe them to be clean copies. I didn't -- I didn't make any notes.
Q. Have you spoken to anyone about these IPR proceedings other than Neurent's attorneys?
A. No.
Q. Have you spoken to anyone about the subject patents other than Neurent's attorneys?
A. No.
Q. Did you speak with anybody at Neurent about today's deposition?
A. No.
Q. Have you ever spoken with anyone at Neurent?
A. No.
Q. Did you speak with anybody at Aerin Medical Inc. about today's deposition?
A. No.
Q. Have you ever spoken with anyone at Aerin Medical Inc.?
A. No.
Q. Did you speak with anybody at The Foundry LLC

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about today's deposition?

A. No.

Q. Have you ever spoken with anybody at The Foundry LLC?

A. No.

Q. Are you familiar with an individual named John Delgaudio? For the court reporter, the last name is D-e-l-g-a-u-d-i-o.

A. Yes.

Q. And how are you familiar with Dr. Delgaudio?

A. I met Dr. Delgaudio through this proceeding. He's another expert witness.

Q. Did you know Dr. Delgaudio before these IPRs?

A. No.

Q. And you've previously spoken with Dr. Delgaudio; correct?

A. Correct.

Q. How many times have you spoken with Dr. Delgaudio?

A. I believe once.

Q. And you spoke with Dr. Delgaudio on January 10th, 2024; right?

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A. I don't recall the exact date, but that sounds about right.

Q. And other than that conversation with Dr. Delgaudio on or about January 10th, 2024, have you ever spoken with Dr. Delgaudio?

A. No, I don't think so.

Q. Now focusing on that conversation that you had with Dr. Delgaudio on or about January 10th, 2024: Do you recall whether you spoke with Dr. Delgaudio in person?

A. I did not speak with him in person.

Q. Did you speak with him on Zoom?

A. I think it was, yes, Zoom.

Q. Or some other platform?

A. Some other, right.

Q. Did anybody else participate in that conversation?

A. I don't think so.

Q. So it was just the two of you on that -- on that -- sorry, it was just the two of you on that conversation?

A. I think so.

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MR. NEMTZOW: Objection.

A. I think so, but I don't remember exactly.

Q. Do you recall how long you spoke with Dr. Delgaudio on or about January 10th, 2024?

A. It may have -- I don't recall. It -- I don't recall.

Q. Do you recall whether it was more than an hour?

A. It was not more than an hour.

Q. Do you recall whether it was more than half an hour?

A. I don't recall. I don't know.

Q. Why did you speak with Dr. Delgaudio on or about January 10th, 2024?

A. It was to see if he had questions about my declaration.

Q. And did Dr. Delgaudio have any questions about your declaration?

A. Just a couple. I don't recall what -- what they were.

Q. Do you remember anything about what Dr. Delgaudio asked you about your declaration?

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A. No, I don't.
Q. Did you ask Dr. Delgaudio anything -- strike that.
On this conversation you had with Dr. Delgaudio on or about January 10th, 2024, did you ask Dr. Delgaudio anything?
MR. NEMTZOW: Objection, form.
A. I don't recall, but I don't think so.
Q. Did you rely on your conversation with Dr. Delgaudio in formulating any of your opinions in these IPR proceedings?
MR. NEMTZOW: Objection, form.
A. No, I did not.
Q. To your knowledge, do you know whether Dr. Delgaudio relied on your conversation with him in formulating any of his opinions in these IPR proceedings?
MR. NEMTZOW: Objection, form.
A. I don't know the answer to that.
Q. Let's go ahead and mark -- well, we don't need to mark these, but I'm going to give you all four of your declarations in these proceedings. I guess

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for the sake of today's deposition, there will be some things that I might ask you to like annotate in the declarations, so to the extent we do that, can you use the copies I give you to do that? And obviously, if you want to refer to the ones you have just for reference, I'm fine with that.

A. Okay.

MR. NEMTZOW: Objection, form.

Q. So I'm handing you what was previously marked as Neurent Exhibit 1002 in IPR2024-00278. And I'll represent to you that this is the declaration you submitted in IPR2024-00278. This declaration relates to U.S. Patent No. 11,033,318; correct?

A. Correct.

Q. And if I refer to that patent as the '318 or the '318 patent during today's deposition, you'll understanding what I'm referring to; right?

A. Yes.

Q. And I'm next going to hand you what I will represent is your declaration in IPR2024-00277. And this declaration relates to U.S. Patent No. 11,241,271; correct?

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A. Correct.

Q. And if I refer to that patent as the '271 or the two seven one patent during today's deposition, you'll understand what I'm referring to; right?

A. Yes.

Q. I'm now going to hand you what has been previously marked as Neurent Exhibit 1007, and I'll represent to you that this is your declaration in case IPR2024-00281. This declaration relates to U.S. Patent No. 11,679,077, correct?

A. Correct.

Q. And if I refer to that patent as the '077 or -- yeah, if I refer to that patent as the '077 patent during today's deposition, you'll understand what I'm referring to; correct?

A. Yes, correct.

Q. And lastly, I'm going to hand you what was previously marked as Neurent Exhibit 1002, and I'll represent to you that this is your declaration in case IPR2024-00282. This declaration relates to U.S. Patent No. 11,766,286; correct?

A. Correct.

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Q. And if I refer to that patent as the '286 or two eighty-six patent during today's deposition, you'll understand what I'm referring to; right?

A. Yes.

Q. Have any of your opinions changed since you drafted these four declarations?

A. No.

Q. Are there any errors in these declarations that you'd like to correct?

A. Yes.

Q. What errors would you like to correct in these declarations?

A. Each, with the exception of -- with the exception of the opinion of the '318 declaration, all these other opinions have a typo, where the word "fiction" should really be "friction."

Q. Any other errors you'd like to correct?

A. No.

Q. So you said that error or that typo appears in every one of your declarations except the '318 declaration?

A. Correct.

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Q. I guess if you'd just pull up the, let's say the '271 declaration.

A. Yes.

Q. Can you give me a sense of where in the '271 declaration that typo exists?

A. So Paragraph 29, second sentence, "Specifically, as an alternating voltage is applied to tissue, small ions in the tissue start to move, which induces current flow and creates fiction that generates heat in the tissue." That "fiction" should be "friction."

Q. Got it. Does that typo appear anywhere else in the '271 declaration?

A. No.

Q. And in the '286 and '077 declarations, does that typo appear in a similar paragraph?

A. Correct.

Q. You have a bachelor of science degree in mechanical engineering, a master of science in mechanical engineering, and a doctor of philosophy degree in mechanical engineering, all from MIT; correct?

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A. Correct.
Q. Do you have any other degrees, other than the ones I've just mentioned?
A. No.
Q. Let's go ahead -- could you pull up your '318 patent declaration.
A. Yes.
Q. Can you flip to your CV? I think it's on like Page 171.
A. Yes.
Q. Let me know when you're there.
A. I am there.
Q. You're currently the principal at Tremont Consulting, LLC. That's T-r-e-m-o-n-t, Tremont. Is that correct?
A. Correct.
Q. And have you worked on any nasal medical devices at Tremont Consulting, LLC?
MR. NEMTZOW: Objection, form.
A. No.
Q. And you were a lecturer at Boston University from 2013 to 2017 and from 2019 to 2020; correct?

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A. Correct.
Q. Have you ever given a lecture on the nose?
MR. NEMTZOW: Objection, form.
A. No.
Q. Have you ever given a lecture on nasal medical devices?
MR. NEMTZOW: Objection, form.
A. Not per se.
Q. What do you mean by "not per se"?
A. In the program that I ran at the master's level, our students worked on various projects. I believe in one year one of those groups of students worked on a project that was related to the nose.
Q. Got it. And do you recall approximately what year that project took place?
A. I don't -- 2016, 2017 maybe. I don't recall exactly.
Q. Other than that project you just mentioned, have you ever given a lecture on nasal medical devices?
MR. NEMTZOW: Objection, form.
A. No.

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Q. You worked at a company called Opsonix, Inc. That's O-p-s-o-n-i-x, Opsonix Inc., from 2017 to 2018; right?

A. Yes.

Q. And did you work on any nasal medical devices at Opsonix?

A. No.

MR. NEMTZOW: Objection, form.

Q. And you worked at Hologic Inc. That's H-o-l-o-g-i-c. You worked at Hologic Inc. from 2007 to 2011; correct?

A. Correct.

Q. And you were responsible for research and development in the surgical products division for all released and new products; correct?

A. Correct.

Q. Did Hologic have any other product divisions?

A. Yes.

Q. What other -- I guess what were the other product divisions at Hologic?

A. There were three other divisions. There was a diagnostics division, there was a bone densitometry

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division, and there was a mammography division.

Q. Did you work only in the surgical products division while at Hologic?

A. Correct.

MR. NEMTZOW: Objection, form.

A. Correct, yes.

Q. Did you work on any nasal medical devices at Hologic?

MR. NEMTZOW: Objection, form.

A. No.

Q. Did you work on any medical devices while at Hologic?

A. Yes.

Q. What kind of devices did you work on while at Hologic?

A. I worked on an endometrial ablation device, a device that ablates in the fallopian tubes, a plasma surgical ablation device, a radiation source device, a breast brachytherapy device, a brain tumor brachytherapy device, a uterine sound device, a urethral ablation device. I think that's about it.

Q. Would you say -- I guess approximately how

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many different products would you say you worked on while at Hologic?

MR. NEMTZOW: Objection, form.

A. I -- well, are you talking about devices or products?

Q. Is there a difference?

A. Yes.

Q. What's the difference?

A. A product is something that is anticipated to be commercially released. A device could be anything, including prototype devices that haven't yet reached commercialization.

Q. Okay. I guess approximately how many different products did you work on while at Hologic?

A. So if we just confine ourselves to FDA-approved released products, that would be three, four, five; approximately five.

Q. Okay. And I guess approximately how many different devices did you work on at Hologic?

MR. NEMTZOW: Objection, form.

A. Including devices that hadn't been released to the market or received FDA approval, maybe a total

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of ten.

Q. So looking at your CV, under the Hologic section.

A. Yes.

Q. If you look at about three bullet points down, do you see you wrote, "Expanded the research and product development pipeline to include organic innovation"? Do you see that?

A. Yes.

Q. What do you mean by that?

A. Well, inorganic innovation is when a large company, like Hologic, buys a smaller company and acquires their technology and their products. Organic innovation typically refers to when we generate the concepts from within the company, develop them ourselves.

Q. And if you look in that next section below, where it says "responsibilities," and look about six bullet points down, do you see where you wrote, "Formulated and implemented R&D and product development strategy"?

A. Yes.

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Q. What does that mean?

A. Well, "strategy" is a very broad word; right? But in this case what I'm referring to is, you know -- the business would define an overall business strategy, and I would have to develop a product development strategy that met that, for time, budget, product mix, product requirements.

Q. So when you say "develop a product development strategy," what does that mean?

MR. NEMTZOW: Objection, form.

A. You could think of it as a plan; right? A plan to develop products according to a budget, according to a certain time, to meet certain business requirements and clinical requirements.

Q. So is product development strategy the same thing as developing the product itself?

MR. NEMTZOW: Objection, form.

A. No. The strategy is the first part, is the planning phase.

Q. Okay. I know you mentioned a few -- I think there was a few ablation devices that you mentioned you worked oh at Hologic.

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A. Yes.
Q. Do you recall saying something along those lines?
A. Yes.
Q. Could you just run down -- sorry.
Can you give me what those ablation devices were, again?
A. Sure.
MR. NEMTZOW: Objection, form.
A. So one device was a helium plasma coagulator. This would be used during surgery to treat endometriosis. The other device, this was ultimately a released product, was called Adiana, and it ablated the fallopian tubes to help occlude them for permanent female contraception. And the other ablation device was called NovaSure. This was a released product approved by the FDA for endometrial ablation to treat menorrhagia.
Q. You mentioned there was a helium plasma coagulator. You mentioned Adiana. And you mentioned NovaSure. Other than those three, were there any other ablation devices you worked on while at Hologic?

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MR. NEMTZOW: Objection, form.

A. No, that was it.

Q. The helium plasma coagulator, was that a released product?

A. It was approved in the UK when we acquired it. So we acquired the technology from a company in the UK, where it was approved, and we spent a couple years developing it here for the U.S. market, and then we shut the project down.

Q. So if I understand you correctly, for this helium plasma coagulator you mentioned, you acquired that technology from a company in the United Kingdom; is that right?

A. Correct.

MR. NEMTZOW: Objection, form.

Q. I guess what was the extent of your involvement in working on this helium plasma coagulator device?

A. Well, I hired the team that did the day-to-day operation of the product development, oversaw their work, and formulated the strategy to meet the business needs.

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Q. Did you have any other involvement with this helium plasma coagulator device?

MR. NEMTZOW: Objection, form.

A. Just overall technical and project management oversight.

Q. You mentioned also the NovaSure product is a product you worked on while at Hologic; correct?

A. Correct.

Q. It's my understanding the NovaSure product was first developed in 2002, approximately; right?

A. I think that may have been the date of approval. I think the development would have started a bit earlier, yes.

Q. In any case, the development of the NovaSure product started years before you began working at Hologic; correct?

MR. NEMTZOW: Objection, form.

A. Yes, the original product, yes.

Q. And I guess what was the extent of your involvement with the NovaSure product?

MR. NEMTZOW: Objection, form.

A. I don't know about "involvement." What do

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you mean by "involvement"?

Q. I think I had originally asked you if you were -- if you worked on any ablation devices while at Hologic, so obviously "worked on" is a pretty broad word. So when you say you worked on the NovaSure product, what was the extent of your involvement?

A. Okay. So for NovaSure, basically, you know, hired the team to support the product from an engineering perspective, and then oversaw their development, oversaw the technology and the projects they're working on; in addition, hired another team to work on the next-generation NovaSure that we then developed at Hologic.

Q. Was that the extent of your involvement with NovaSure?

A. Yes, but also -- I mean, it was a bit more broad than that. Again, making sure the product development aligned with the strategies of the business certainly for the current generation, the generation of the product that we acquired from Novacept. That product needed to be supported, and we transferred the manufacturing from California to Costa

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Rica. So the engineers that I hired worked on that transition and supported any updates to that product. Other engineers I hired to work on the product line developed a new version of NovaSure, that was then later released.

Q. So I think you said that Hologic acquired the NovaSure technology from a company called Novacept. Is that right?

A. Well, let me clarify. Cytyc acquired Novacept, and then Hologic acquired Cytyc.

Q. And Cytyc is spelled C-y-t-y-c; correct?

A. Correct.

Q. So again, if my understanding is correct, Cytyc acquired the NovaSure technology from Novacept and then Hologic acquired Cytyc.

A. Correct.

Q. So since -- I guess, you know, if Hologic acquired the NovaSure technology, what generally was -- strike that.

I think you said something about while working on the NovaSure product, that engineers were working on the next generation of the product; is that

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right?

A. Correct.

MR. NEMTZOW: Objection, form.

Q. What did you mean by that?

A. Well, we developed -- so after we acquired the product, Cytyc and/or Hologic, we wanted to develop improvements to that product. So we developed a next-generation product, what we then called Gen. 2.

Q. And how did Gen. 2 differ from presumably Gen. 1?

A. It had a -- it was a difference in its electrode array. It had a thinner sheath. We added atraumatic tips to it. We changed the vacuum valve, and overall made additional changes to make the manufacturing more reliable.

Q. When you say that you changed the electrode array, what do you mean by that?

MR. NEMTZOW: Objection, form.

A. So NovaSure has two -- has four electrodes, and we call that the electrode array. They were bipolar electrodes. And so we had to modify the electrode array to work with the thinner sheath that

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we produced.

Q. Were you modifying the arrangement of the electrodes?

A. Not per se, no.

Q. You said NovaSure had four electrodes; is that right?

A. Correct.

Q. What kind of electrodes were they?

MR. NEMTZOW: Objection, form.

A. The electrodes were fabricated from gold, bonded to thread, that was then knitted into an electrode.

Q. What do you mean by "knitted into an electrode"?

A. We had knitting machines that would actually knit the shape of an electrode.

Q. I guess when you say the shape of an electrode, what does that mean?

A. So when the NovaSure device is deployed, it looks like, if you will, almost like a fan. You can think of it as a fan. And like a Spanish fan -- right? -- it could be folded up and then retracted

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into a sheath, and that allows it to be atraumatically inserted through the cervix into the uterus, where the fan can essentially be deployed. And that fan you can imagine is fabric, is essentially knitted fabric. The fabric has goldplating on it.

And then the device was designed in such a way it would draw a vacuum on the inside of the uterus. The uterine walls would then collapse onto the electrodes to make contact. And then the electrodes would be energized. That's how the ablation occurred.

Q. Were the electrodes -- I guess I'm still having trouble visualizing what the electrodes would look like, because I feel like I've seen a million different types of electrodes. Were the electrodes kind of like -- were they straight lines, or were they dots or something else?

MR. NEMTZOW: Objection, form, foundation.

A. So the way -- you can imagine they were wired in such a way that effectively they were four electrodes total, two on one side of the fan, two on the other side of the fan. And the sort of

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macroscopic shape of the electrodes was -- I don't know how you would describe it. It was sort of like, you know, it had a right angle at the top and then sort of a curve on the side. Like imagine the shape of the electrode was effectively a triangle but with a curved hypotenuse. And it was designed in that way to conform to the shape of the inside of the uterus.

Q. Okay. Interesting. Going back to the helium plasma coagulator device you were talking about: What kind of ablative energy did that device use?

MR. NEMTZOW: Objection, form.

A. So it's essentially a radiofrequency energy, and the way this plasma worked is, instead of running it down a wire to an electrode with the electrode in contact with the tissue, the electricity, the RF energy, effectively created a plasma stream of helium. So we could take an electrode tube, we would pump helium down it, and then we would apply a voltage at a certain frequency, where you could -- when you got close to tissue, the plasma would jump electrically from the helium to the tissue and cause ablation that way.

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Q. And that device, the helium plasma coagulator device, was that device used or intended to be used with the endometrium?

A. No. It was intended to be used to treat endometriosis, which is a clinical condition where the endometrium is found inside the peritoneal cavity, instead of being found inside the uterus.

Q. The peritoneal cavity is where?

A. So where your intestines -- the cavity where your intestines are held.

Q. I'm assuming that there's not supposed to be endometrial tissue in the peritoneal cavity?

A. Correct, yes.

Q. You'd also mentioned the Adiana device; correct?

A. Correct.

Q. And that was another released product that you worked on at Hologic?

A. Correct.

Q. Was that device intended -- I believe you said that device was intended to be used in the fallopian tubes; is that right?

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MR. NEMTZOW: Objection, form.
A. Correct.
Q. And what kind of ablative energy did the Adiana device use?
MR. NEMTZOW: Objection, form.
A. So Adiana used a radiofrequency energy, in two pairs of bipolar electrodes to ablate the fallopian tubes.
Q. And did Hologic acquire the Adiana technology from another company?
MR. NEMTZOW: Objection, form, foundation.
A. Yes, we acquired the technology originally from Adiana, was the name of the company.
Q. Do you recall when Hologic acquired the Adiana technology?
A. I believe it was February of 2007.
Q. Sorry, one more time with the helium plasma coagulator device. Do you recall approximately when Hologic acquired that technology?
A. It was about the same time, February, March, 2007.
Q. And do you recall when Hologic acquired the

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NovaSure technology?

A. Well, Hologic -- I'm sorry, I misspoke.

The helium plasma technology and Adiana were acquired by Cytyc. So Cytyc acquired Novacept, Adiana, and the helium plasma technology all before Hologic then acquired Cytyc. Hologic acquired Cytyc in October of 2007.

Q. Okay, I understand. So other than the helium plasma coagulator device, the Adiana product, and the NovaSure product, did you work on any other products or devices -- any other ablative technology products or devices at Hologic?

MR. NEMTZOW: Objection, form.

A. There was one other device that we had in development, yes.

Q. What was the device you had in development?

A. It was a device to ablate the urethra.

Q. And when did Hologic begin developing that device?

MR. NEMTZOW: Objection, form, foundation.

A. That would have been approximately, I believe, at the beginning -- at the end of 2010.

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Q. And that device to ablate the urethra you mentioned, did Hologic acquire that technology from somewhere else?

A. It was actually -- we did a co-development project with a startup company. So we didn't actually acquire the technology during the time that I was there, but we funded its development.

Q. Other than funding the development of this device to ablate the urethra, did Hologic have any other involvement with the development of that device?

MR. NEMTZOW: Objection, form.

A. Yes. We -- well, we identified the startup company. We identified the team. We provided the device specifications that they should develop to to them. And we oversaw the technical development.

Q. Did you personally oversee the technical development?

A. Yes.

Q. And what did that involve?

A. Periodic meetings with the company, reviewing progress reports, reviewing data, understanding the designs, trying to figure out how best to, you know,

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improve the design and make the device manufacturable.

Q. And other than the stuff you've mentioned in the past minute or so, did Hologic have any other involvement with the development of this device to ablate the urethra?

MR. NEMTZOW: Objection, form, foundation.

A. I think that about summarizes it.

Q. So I guess just one more time: Other than the helium plasma coagulator device, the Adiana project, the NovaSure product, and the device to ablate the urethra, were you -- did you work on any other ablative products while at Hologic?

MR. NEMTZOW: Objection, form.

A. No, that's it.

MR. NEMTZOW: We've been going for a little over an hour. Would now make sense for a break?

MR. GILFORD: This would be a good time.

(Recess taken.)

Q. Dr. Martin, you worked at -- please correct my pronunciation if I get this right. You worked at Cytyc Corporation in 2007; right?

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A. Cytyc, yes.
Q. Do you recall which month in 2007 you began working at Cytyc?
A. Yes, February.
Q. And Cytyc was acquired by Hologic sometime in 2007; right?
A. I believe it closed in October -- end of October 2007, the deal.
Q. Is it your understanding that beginning in October 2007 you became an employee of Hologic?
A. Yes.
Q. So prior to the acquisition by Hologic, did you work on any medical devices at Cytyc?
A. Yes.
Q. Did you work on any devices -- did you work on any ablative devices at Cytyc prior to the acquisition by Hologic?
MR. NEMTZOW: Objection, form.
A. Yes.
Q. Were any of those devices different than the ones you were discussing earlier, while you were employed by Hologic?

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A. No.

MR. NEMTZOW: Objection, form.

Q. You worked at a company called Hemedex, H-e-m-e-d-e-x, Hemedex, Inc., from 2000 to 2007; right?

A. Yes.

Q. Did you work on any nasal medical devices at Hemedex?

MR. NEMTZOW: Objection, form.

A. No.

Q. And you worked at a company called Thermal Technologies, Inc. from 1998 to 2000; right?

A. Yes.

Q. Did you work on any nasal medical devices at Thermal Technologies?

MR. NEMTZOW: Objection, form.

A. No.

Q. You were at MIT from '95 to 1998; correct?

A. Correct.

Q. Did you work on any nasal medical devices at MIT?

MR. NEMTZOW: Objection, form.

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A. No.
Q. You're not a medical doctor; correct?
A. Correct.
Q. You never went to medical school; right?
A. Correct.
Q. You don't have any medical training; correct?
MR. NEMTZOW: Objection, form.
A. What do you mean by "medical training"?
Q. I guess formal medical training.
MR. NEMTZOW: Objection, form.
A. Correct.
Q. You don't have any medical training regarding the nose; correct?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. You don't have any medical training regarding treating the nose; correct?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. You don't have any medical training regarding treating the nose with a medical device; correct?
MR. NEMTZOW: Objection, form.

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A. Correct.
Q. You've never provided medical care to a patient; right?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. You've never examined a patient's nose; correct?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. You've never treated -- sorry, you've never treated a patient's nose; correct?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. Have you taken any courses on nasal physiology?
A. No.
Q. Have you ever studied nasal physiology?
MR. NEMTZOW: Objection, form.
A. Just rudimentary.
Q. What do you mean by that?
A. Well, to help my students at Boston University with the design of their device, I had to

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familiarize myself with some aspects of nasal anatomy.

Q. And I think we talked about this, but are you referring to the project that you were helping students with?

A. Yes.

Q. And again, what time period was that in?

A. That was 2016, 2017.

Q. Other than that experience, have you ever studied nasal physiology?

MR. NEMTZOW: Objection, form.

A. No.

Q. Have you ever taken any courses on nasal diseases or disorders?

MR. NEMTZOW: Objection, form.

A. No.

Q. Have you ever studied nasal diseases or disorders?

MR. NEMTZOW: Objection, form.

A. No.

Q. Have you taken any courses on nasal medical treatments?

MR. NEMTZOW: Objection, form.

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A. No.
Q. Have you ever studied nasal medical treatments?
MR. NEMTZOW: Objection, form.
A. No.
Q. Is it fair to say that you've never used a medical device that delivers energy to tissue in a clinical setting?
MR. NEMTZOW: Objection, form.
A. That is correct.
Q. Is it fair to say that you've never used a medical device that delivers energy to a patient's nose in a clinical setting?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. And is it fair to say that you've never used a medical device that delivers radiofrequency energy to a patient's nose in a clinical setting?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. Is it fair to say that you've never tested a medical device that delivers energy to tissue?

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MR. NEMTZOW: Objection, form.
A. No.
Q. I guess let me ask it this way: Have you ever tested a medical device that delivers energy to tissue?
A. Yes.
MR. NEMTZOW: Objection, form.
Q. When you say that you have tested a medical device that delivers energy to tissue, what are you referring to?
A. Well, I've worked on probably dozens of different ablation devices that have been used throughout the body in various tissues. All those devices that I've worked on I have tested in tissue.
Q. Did you personally test them in tissue?
A. Yes.
Q. I guess let me ask it this way: Have you ever done clinical testing or trials on a medical device that delivers energy to tissue?
MR. NEMTZOW: Objection, form.
A. What do you mean by "done clinical trials"?
Q. Were you personally involved in clinical

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testing or trials on a medical device that delivers energy to tissue?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Okay. And just so that we're on the same page, what is your understanding of the term "clinical testing or trials"?

MR. NEMTZOW: Objection, form.

A. My understanding is a clinical trial -- well, testing -- let's set that aside. Testing could be in the laboratory, it could be in an animal model, or it could be in a human. Right?

So for every ablation device that I have been involved with I've tested it in the laboratory. Many of them I have tested them in animal models. And some of them I've tested in human clinical studies. And by "tested," I was never holding the device, I was never applying it. But in some cases I was involved in writing the protocols and analyzing the data.

Q. So I guess, you know, going back to when I asked you if you've tested a medical device that delivers energy to tissue: Other than writing the

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protocols and analyzing the data, did you have any other involvement in testing a medical device that delivers energy to tissue?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. So I guess, what involvement did you have in testing a medical device that delivers energy to tissue other than writing the protocols and analyzing the data?

A. In the case of many of the animal studies, I was present at the animal studies, and I did actuate the devices. In the case of the human studies, many of them I was present during the study but I did not -- not being a medical doctor, I was not actuating the device.

Q. So other than being present during the tests, in some cases actuating the device, writing the protocols, and analyzing the data, to what extent have you been involved in testing medical devices that deliver energy to tissue?

MR. NEMTZOW: Objection, form.

A. Again, let me qualify: In the case of the

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animal testing in tissue, you know, I was -- you know, in many of those cases I was actuating the devices. In the clinical cases, obviously I was not.

But that about sums up, I would say, my experience.

Q. Is it fair to say you've never tested a medical device that delivers energy to a patient's nose?

MR. NEMTZOW: Objection, form.

A. Correct.

Q. And is it fair to say you've never tested a medical device that delivers radiofrequency energy to a patient's nose?

MR. NEMTZOW: Objection, form.

A. Correct.

Q. If you wouldn't mind picking back up the '318 declaration and flipping to Page 2. And I'm looking right at the top of the page, first sentence of Paragraph 5. Do you see where you wrote here, "I have over two decades of experience designing and developing medical devices, with a focus on energy-based medical devices"? Do you see that?

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A. Yes.

Q. What do you mean by "energy-based medical devices"?

A. So by that I mean devices that give off some form of energy to treat tissue. And I should maybe qualify: Two decades is probably closer to three and a half by now.

But let's just say more than two. That's fine.

Q. And when you say "devices that give off some form of energy to treat tissue," are you referring specifically to ablative devices, or are you being more general?

A. More general.

MR. NEMTZOW: Objection, form.

A. I'm being more general.

Q. Near the bottom of Paragraph 5 you mention developing tissue ablation medical devices. Do you see that? Like at the second-to-last sentence on the bottom of Paragraph 5.

MR. NEMTZOW: Objection, form.

A. Yes.

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Q. Now, I know we mentioned several ablative devices and products that you worked on at Hologic. Other than those devices that we've previously discussed, what tissue ablation medical devices have you developed?

MR. NEMTZOW: Objection, form.

A. I worked on the development of a cryogenic catheter to ablate cardiac tissue, as a consultant for a company called CryoCath.

During my master's thesis at MIT I worked on a device to ablate the prostate to treat benign prostatic hyperplasia. That device used microwave energy.

As part of my dissertation at MIT I worked on a high-power focused ultrasound device to ablate tumor tissue to treat cancer.

Recently I worked on a device to ablate parts of the ovary to treat polycystic ovarian syndrome.

As part of my bachelor's thesis, I worked on laser ablation of tissue.

Q. Anything else that you can recall?

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A. I think that about summarizes it.

Q. I'm going to take those one at a time, and if I -- at the end of the conversation I miss something, just let me know.

Let's start with the cryogenic catheter device that you worked on. You said you worked on that device as part of CryoCath?

A. I was for a brief period of time, for a couple of years, I was an independent consultant to a company called CryoCath, that was later acquired by Medtronic. I worked with them before they were acquired by Medtronic. They were originally a Boston-based company. I worked with the founders while they were in Boston and then later, when they moved the company to Montreal, to help them with the design, development, and testing of their product.

Q. So if I understood you correctly, you were working on this cryogenic catheter device as an independent consultant to a company called CryoCath; is that right?

MR. NEMTZOW: Objection, form.

A. Correct.

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Q. And in approximately what time frame were you working on this cryogenic catheter device?

A. I believe it was it was '96, '97.

Q. And you said that device was used to ablate cardiac tissue?

A. Correct.

Q. And what kind of ablative energy did that device use?

A. It used cold, cryogenic. It would freeze the tissue to create an ablation process.

Q. This might be a dumb question, but how did it freeze the tissue?

MR. NEMTZOW: Objection, form.

A. You can think of it as a catheter that would get navigated to the inside of the chambers of the heart. That catheter had a little goldplated customer tip, and Freon would be pumped through -- well, a Freon-like substance would be pumped through under high pressure, sprayed onto that tip, and would cool the tip down to about, oh, about minus 40 Celsius. And so when in contact with the tissue, that would create what's called a cryoablation process in the

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tissue.

Q. So I guess in your line of work, when you use cold to ablate tissue, do you -- it sounds like you consider the use of cold as an ablative energy?

MR. NEMTZOW: Objection, form.

A. That's a terminology that was developed before, you know -- before I got involved in the field.

Q. I'm not trying to nitpick here -- or pick nits, sorry. But isn't using cold kind of like removing energy from the body, as opposed to applying energy to the body?

A. Yes.

MR. NEMTZOW: Objection, form.

A. I think that's a fair way to think about it, yes.

Q. But it's still considered ablation?

A. So, yes, by the field, yes. There is a slight problem with the term "ablation"; right? To someone who is a strict engineer, doesn't know anything about the body, doesn't know anything about biomedical engineering, ablation is the process of

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removing material. So if you have snow on the top of your car and you drive down the road, and the snow is blowing off the top of your car like a few flakes at a time, that to a traditional engineer is called, is ablation. The snow is being ablated.

That term was later applied in various forms in the field of medicine to mean you're killing cells. You're killing cells and you're doing other things, disrupting -- in general, disrupting the tissue.

And then people have since applied that to both cryogenic energy, where you're correct, you're removing energy, and also heat, where you're placing energy in the tissue.

Q. So I guess when you use the term "ablation" or "ablative energy" or something like that, what do you mean when you use it?

MR. NEMTZOW: Objection, form.

A. I mean -- I use the word in the way it has been applied clinically, going probably 50 years back -- right? -- where you are killing cells and disrupting tissue.

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Q. What's the difference between killing cells and disrupting tissue?

MR. NEMTZOW: Objection, form.

A. So there are tissues in your body -- right? -- that consist of cells and other structures, if you will -- collagen, for instance. Collagen exists outside the cell in many cases. If you heat it to ablate it, you can simultaneously kill the cell but also disrupt the collagen. Collagen has a protein, has a certain shape, form. Heat will denature that protein, meaning its shape will unravel. And so therefore collagen, which provides a structure, a lot of structure in your tissue, will no longer be able to provide that structure.

Q. So I guess when you say disrupting tissue, are you referring to something different than killing cells?

A. Yes, something in addition to killing cells.

Q. Okay, I think I understand.

Turning back to the cryogenic catheter we've been talking about: I guess what was the extent of your involvement in working on that device?

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MR. NEMTZOW: Objection, form.

A. I helped them with some of their early designs. I helped them design laboratory systems to test those devices. I helped them design an animal model to test the systems. And I did several animal experiments with them.

Q. When you say you helped them with some of their early designs, what do you mean by that?

A. Let's see, this is a long time ago. But just general -- so part of my background is in thermodynamics and heat transfer. The founders of the company did not have that background. So most of my consulting was helping them understand the thermal physics of the designs and how they would impact their ability to treat tissue.

Q. Let's talk a little bit about the -- there was some device you mentioned about prostatic hyperplasia?

MR. NEMTZOW: Objection, form.

A. Benign prostatic hyperplasia.

Q. You said you worked on that device as part of your master's work at MIT?

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A. Correct.
Q. And I believe you said that device used microwave energy; is that right?
A. Correct.
Q. Is benign prosthetic hyperplasia, is that just like an enlarged prostate?
A. Yes.
MR. NEMTZOW: Objection to form.
A. From a benign process, not a malignant process. You can also have an enlarged prostate from malignancy.
Q. So I guess the device you were working on, was it intended specifically to treat the prostate?
A. Yes.
MR. NEMTZOW: Objection, form.
Q. And what was the extent of your involvement in working on this device we've been talking about?
MR. NEMTZOW: Objection, form.
A. So the device was developed by an Israeli company, which I now forget the name because it was over 35 years ago. But we did a series of laboratory tests on the device to characterize the microwave

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field and then the thermal field. And then we did a series of studies in an animal model.

Q. Did you have any other involvement in working on that device?

MR. NEMTZOW: Objection, form.

A. No, that was it.

Q. And approximately what time frame were you working on this device?

A. I think it started in '89 -- '89, '90. And then we published the results of the analysis. I believe they were published in IEEE Transactions on Biomedical Engineering in '91.

Q. Was the device you were working on ever released as a product?

A. It was, yes.

Q. Do you happen to know when the product was released?

A. That I don't know. It would have been in the early '90s.

Q. Do you happen to know which company was responsible for releasing the device?

A. No, I don't.

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Q. Sorry to go back to it, but the cryogenic catheter device you were working on, was that product ever released as -- or was that device ever released as a product?

A. Yes.

Q. Do you recall when that product was released?

A. I don't recall. The product was released, may have been the early 2000s. And the company was subsequently bought by Medtronic, which continued to market the product.

Q. Was the cryogenic catheter product originally released by CryoCath?

A. Yes.

Q. So let's move ahead to the -- I think there was something you mentioned about your MIT dissertation. There was like a high-power ultrasound device.

A. Yes.

Q. I guess, what tissue was that high-power ultrasound device intended to treat?

A. I should qualify and say that there were several high-power ultrasound devices that I was

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involved in in various stages. All of them were designed to treat tumors in various tissues. So we had one device that was designed to treat large abdominal tumors. We had another ultrasound -- and this was a collaboration that MIT had with what at the time -- well, with Dana Farber Cancer Institute and what was called the Joint Center for Radiation Therapy.

And so over the years we had developed multiple devices using high-power ultrasound energy primarily to treat tumors. So we had a device to treat tumors in the female breast, a device to treat tumors in the prostate, abdominal tumors. Yes, that about sums it up.

Q. Were any of these high-power ultrasound devices intended to treat tumors in the nose?

MR. NEMTZOW: Objection, form.

A. No.

Q. I'm assuming -- correct me if I'm wrong -- all these high-power ultrasound devices used ultrasound energy as the ablative energy; is that right?

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A. Correct.
Q. In approximately what time frame were you working on these high-power ultrasound devices?
A. That -- my involvement probably started in '89 and continued throughout my graduate studies into my time at MIT as a staff scientist. So it probably would have ended around '99.
Q. And were any of these high-power ultrasound devices ever released as a product?
MR. NEMTZOW: Objection, form.
A. No.
Q. I guess moving ahead -- I'm not sure if it's ahead or back. But you mentioned something about your bachelor's thesis dealing with laser ablation. Is that right?
A. Yes.
Q. In approximately what time frame was your bachelor's thesis?
A. 1988.
Q. You said '88 or '98?
A. '88.
Q. I guess at a high level, what was the laser

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ablation device you were working on for your bachelor's thesis?

MR. NEMTZOW: Objection, form.

A. So the thesis work itself was primarily a little bit theoretical in nature. It was a simulation that would compute the temperature distribution in tissue being heated by a laser.

Q. And did you ever work on a physical product as part of your -- or physical device or a product as part of your bachelor's thesis?

MR. NEMTZOW: Objection, form.

A. Yes. And then some of that work also carried over into my master's work.

Q. Okay, let's start with the theoretical stuff you were talking about. For that work, were you focusing on any particular area of the body or any particular tissue?

MR. NEMTZOW: Objection, form.

A. No, the model and the simulation was general for any tissue type -- any tissue that receives blood flow.

Q. And going ahead to, you said there was

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some -- I think you said there was some work you did on a laser ablation device on like an actual device or product; right?

A. Yes.

Q. Was this a -- was it a released product that you were working on or a device that was still under development?

MR. NEMTZOW: Objection, form.

A. It was a device that we were developing.

Q. Okay, when you say "that we were developing," who is "we" that you're referring to?

A. So some of this work was being done in conjunction with what at the time was called the Wellman laser lab at the Massachusetts General Hospital. So at that time they had the lasers that we used to run experiments. And then I was able to take the simulations that I did as part of my bachelor's thesis, in my master's thesis I was able to collect data and then compare it to the simulation.

Q. So the laser ablation device that you were working on, was it intended only to treat exterior portions of the body?

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MR. NEMTZOW: Objection, form.

A. Not necessarily. It was intended to treat any tissue that had blood flow. And with laser ablation, for body cavities, you could use fiber optics to access body cavities.

Q. And this might be a dumb question, but I'm assuming the ablative energy that this laser ablation device used was laser energy?

A. Light.

Q. Right?

A. Light, yeah.

Q. And then I know you said something -- there was like something recent that you worked on where you were ablating parts of the ovary?

A. Yes.

Q. I guess give me an idea of what that work was?

A. This was for a recent client as part of my work at Tremont Consulting, and it was experimental and theoretical analysis of the temperature distributions from radiofrequency ablation and the ablation volumes.

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Q. And when you say "recent," like what time frame are we talking about?
A. This engagement started probably a year and a half ago, and it ended -- it would have ended back in March.
Q. And what kind of ablative energy did this device use?
MR. NEMTZOW: Objection, form.
A. Radiofrequency energy.
Q. And was the device you were working on ever released as a product?
MR. NEMTZOW: Objection, form.
A. I believe it's currently in clinical trials in the United States.
Q. Do you know which company is working on the clinical trials of the product?
A. Yes.
Q. Which company?
A. May Health, two words, M-a-y H-e-a-l-t-h.
Q. And again, this device you were working on was intended to ablate the ovaries; is that right?
A. Correct.

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Q. Is there any other devices we haven't talked about, any other tissue ablation medical devices we haven't talked about, where you were involved in the development of the product?

MR. NEMTZOW: Objection, form.

A. I think that about covers it.

Q. Have you ever personally designed a tissue ablation medical device?

MR. NEMTZOW: Objection, form.

A. What do you mean by "personally"?

Q. Were you ever personally involved in the design of a tissue ablation medical device?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. Which devices would those be?

A. Well, as I covered, the CryoCath catheter, the second and third generation of NovaSure, the laser ablation devices that I mentioned.

Q. Anything else?

A. Some of the ultrasound devices that I mentioned.

Q. Anything else?

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A. I think we've covered it, yeah.
Q. So starting with the CryoCath device: Did you design that device yourself?
MR. NEMTZOW: Objection, form.
A. Well, I'm not quite sure what you mean "design yourself." You mean as the only person working on the design?
Q. Or as part of a team.
A. As part of a team, yes.
Q. How many people were on that team?
A. Over the years, dozens.
Q. And were you part of the team -- strike that.
Were you part of the team that worked on the initial design of that CryoCath product?
MR. NEMTZOW: Objection, form, foundation.
A. Yes.
Q. About how many years would you say you spent designing the CryoCath product?
A. I probably worked with that team for about two years.
Q. And you said you were involved with the design of the second and third generations of the

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NovaSure product; is that right?

A. Yes.

Q. Again, were you working as part of a team on the design of those products?

A. Yes.

Q. And how many people were on that team?

A. For the second generation, well, maybe 40.

Q. And how about for the third generation?

A. Third generation? Well, third generation wasn't released until after I -- it was developed while I was at Hologic, but it wasn't released until after I left. So I can't really say -- I don't know how many people continued to work on it after I left Hologic. But, say, like same order of magnitude: 30, 40, I would venture.

Q. And you mentioned you were part of -- you were involved with the design of the laser ablation devices; right?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. Were you part of a team that designed those laser ablation devices?

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MR. NEMTZOW: Objection, form.

A. Yes.

Q. And how many people were on that team?

A. Those devices were never commercially available. They remained prototypes. So it was me and my thesis adviser.

Q. And you were also involved with the design of an ultrasound device; is that right?

A. Correct, yes.

Q. And were you part of a team that was involved with the design of that ultrasound device?

A. Yes.

Q. And how many people were on that team?

A. I would guess maybe in total, maybe 15, maybe 20.

Q. Would you mind picking back up the '318 declaration. I'm looking at Page 3, Paragraph 6, the last sentence. Let me know when you're there.

A. I am here.

Q. Do you see towards the end of this paragraph you mention U.S. Patent No. 8,814,796?

A. Yes.

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Q. Why did you mention this patent in your declaration?

A. Do you have a copy of this, this patent?

Q. Yes.

A. I just want to check something.

MR. GILFORD: Let's go ahead and mark that. So let's go ahead and mark this Martin Exhibit 1.

(Exhibit 1 marked for identification.)

Q. I'll represent to you that this is U.S. Patent 8,814,796. You've seen this patent before; right?

A. Yes, yes.

Q. So going back to my question before: The question was, why did you mention this patent in your declaration?

A. Well, you know, I've worked with a lot of ablation devices that work in a lot of different tissues, and, you know, prosecuting a patent can be a costly proposition; right? And not everyone invests in it. But this was one of the few ablation devices that I worked on which actually resulted in a patent.

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Q. Okay. Interesting. Now, you're listed as one of the inventors on this patent; right?
A. Yes.
Q. And you see this patent is assigned to Hologic?
A. Correct.
Q. Did you assign this patent to Hologic?
A. Yes.
Q. Why did you assign this patent to Hologic?
A. My employment agreement required me to assign all inventions made at Hologic to Hologic.
Q. Was the subject matter of this patent derived from your work at Hologic?
A. Yes.
MR. NEMTZOW: Objection, form.
A. Yes.
Q. Did you receive any compensation for assigning this patent to Hologic?
MR. NEMTZOW: Objection, form.
A. Yes. Yes, I think I did.
Q. Do you recall what that compensation was?
A. I don't. I think it was more than the

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customary dollar, and maybe less than a thousand dollars.

Q. You left Hologic sometime in 2011; is that right?

A. Correct.

Q. Do you recall what month you left Hologic?

A. November.

Q. So looking back at the listing of inventors up in the top left.

A. Yes.

Q. Do you see there's three other individuals listed as inventors on this patent?

A. Yes.

Q. Do you know who these other three individuals are?

A. Yes.

Q. Did you work with these individuals?

A. I worked with the first two, William Churchill and Daniel Beaudet.

Q. Beaudet is B-e-a-u-d-e-t.

A. Correct.

Q. Did you work with Mr. Rioux, R-i-o-u-x?

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A. No, he joined the company after I left.
Q. Did you supervise any of these three individuals?
A. I supervised William Churchill and Daniel Beaudet indirectly.
Q. What do you mean by supervised them indirectly?
A. They reported to people who -- they reported to someone who reported to me or they reported to someone who reported to someone who reported to me.
Q. Do you have any understanding of why you're the first-named inventor on this patent?
MR. NEMTZOW: Objection, form.
A. No.
Q. This patent was filed on January 10th, 2012. Do you see that?
A. Yes.
Q. So it's fair to say this patent was filed after you had left Hologic; correct?
A. Correct.
Q. Do you happen to know why this patent was filed in 2012?

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MR. NEMTZOW: Objection, form.
A. No.
Q. Do you have an understanding whether this patent was intended to cover a product?
MR. NEMTZOW: Objection, form.
A. I believe it was.
Q. What product do you believe this patent was intended to cover?
MR. NEMTZOW: Objection, form.
A. I believe it was intended to cover NovaSure.
Q. Do you happen to know which generation of NovaSure this patent was intended to cover?
A. That I don't know the answer to.
Q. Go ahead and turn to Page 3 of this document, and I'm looking at figure 2.
A. Yes.
Q. Do you see the plus and minus signs at the top of this figure?
A. I do.
Q. Do you know what the plus and minus signs are intended to represent?
A. I believe they're intended to represent the

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polarity of the electrical energy.

Q. What do you mean by "the polarity of the electrical energy"?

A. Well, in the simplest form: In direct current, where you have a battery, you have a plus terminal and you have a minus terminal, in the simplest form. Radiofrequency energy -- right? -- you're basically alternating current, so your plus and your minus are changing directions.

So I think this is just a simplification of that concept, that the electrical charge is opposite each other at a given point in time.

Q. Got it. And do you see the plus and minus signs are above lines?

A. Yes.

Q. They kind of generally run vertically. Do you see that?

A. Yes.

Q. Are those lines intended to represent electrodes?

MR. NEMTZOW: Objection, form.

A. I don't know. I'd have to relook at this

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patent.

Q. I guess if you look, for example, at column 6, and I'm looking at about line 34.

A. Yes.

Q. Do you see it says "electrodes 44"?

A. Yes.

Q. Now if you go back to figure 2, do you see there's a couple of referenced numerals that say 44?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. So having seen that, is it your understanding that these vertical lines that are next to the plus and minus signs are intended to represent electrodes?

MR. NEMTZOW: Objection, form.

A. Well, it says 44 is an electrode array. "The energy source supplies energy to the electrode array 44."

Q. I guess it says both; right? In column 6 is says electrodes 44 and electrode array 44?

MR. NEMTZOW: Objection, form.

A. Okay.

Q. Not superimportant, but I guess going back to

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my original question, look at figure 2 of this patent: Is it your understanding that the generally vertical lines next to the plus and minus signs are intended to represent electrodes?

MR. NEMTZOW: Objection, form.

A. That looks like what it says, yes.

Q. Now, did the NovaSure product have an electrode arrangement similar to what's depicted in figure 2 of this patent?

MR. NEMTZOW: Objection, form.

A. The products that we released had a different configuration than this.

Q. How did the products that were released differ in their electrode configuration compared to what's shown in figure 2?

A. Well, this figure 2 implies that the electrodes are lines, and the thickness of each line, it's not quite clear what it would be, just looking at this figure.

The actual NovaSure products, the original, Gen. 2, and Gen. 3, the electrode arrays were basically areas, not lines.

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Q. I think we had talked about that before.
A. Yes. And that's how the released product, as far as I know, remains today.
Q. How good's your drawing?
MR. NEMTZOW: Objection, form, relevance.
Q. If I give you a pen, can you draw like a simplified diagram of what the NovaSure electrode arrangement looks like kind of like next to this figure on the exhibit I gave you?
MR. NEMTZOW: Objection, form, relevance.
A. Yes.
Q. Would you mind doing that.
A. It looks something like that.
Q. And then on the other side it would be the same?
A. Yes.
MR. NEMTZOW: Objection, form, relevance.
A. And the polarity, like the polarity is -- so everyone can see, it's positive, negative, and then directly on the other side it's positive and negative.
So the other side has the same configuration, has a similar configuration, but the

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polarity is opposite.

Q. Would you mind just putting your initials next to that drawing, and then I'll take my pen back.

MR. NEMTZOW: Objection, form, relevance.

Q. You can hold on to that. I guess looking at figure 2 first, and then we'll talk about your drawing of what the NovaSure product looks like. So starting with figure 2: Do you have any understanding of why the electrodes in this drawing are arranged the way they are?

MR. NEMTZOW: Objection, form.

A. No.

Q. And then talking about the actual configuration in the NovaSure product, do you have an understanding of why the electrodes are arranged that way in the NovaSure product?

A. Yes.

MR. NEMTZOW: Objection, form, relevance.

A. Yes.

Q. Why are the electrodes in the NovaSure product arranged the way they are?

MR. NEMTZOW: Objection, form, relevance.

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A. The original inventors did a lot of experimental trial and error using pig livers that they sourced from a butcher to identify experimentally electrode configurations that gave them a uniform depth of ablation throughout the uterus.

Q. What do you mean by "uniform depth of ablation"?

A. They were trying to control the depth of ablation --

So in endometrial ablation, to successfully treat menorrhagia, you have to ablate not just the endometrium, but you have to ablate into the myometrium. And so they specifically designed this to ablate approximately four to five millimeters into the myometrium.

Q. So when you say "depth of ablation," you're talking about how far into the tissue the ablative energy goes?

MR. NEMTZOW: Objection, form.

A. The energy goes much further; right? But ablation happens when the temperature reaches a certain level for a certain amount of time. So you

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can imagine -- what they were trying to do is get the ablative front to achieve a certain depth, to cause cellular destruction and tissue disruption.

Q. And then sorry if you explained this already, but when you say uniform depth of ablation, what do you mean specifically by the term "uniform"?

A. In general they would -- well, I should qualify.

There were -- the original inventors of the NovaSure were trying to control the depth of ablation. It wasn't necessarily uniform throughout the entire uterus.

So, for instance, at the points here, which is close -- when this gets properly deployed, it's close to the fallopian tubes. There the uterine wall is thinner. So they didn't want to have a thick -- a deeper ablation front there for fear of involving organs that are outside the uterus -- namely, the bowel.

So, again, these electrodes were all designed to, if you will, create an ablation depth of a certain specification to maximize effectiveness and

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safety.

Q. And is it fair to say that the electrode configuration in the NovaSure product was designed specifically for treating the uterus?

MR. NEMTZOW: Objection, form, relevance, foundation.

A. Yes.

MR. GILFORD: I think I'm coming up on a good spot for a break. Let me just double-check a couple things.

Q. Again talking about the actual NovaSure product: Did you have any input in the electrode arrangement in that product?

MR. NEMTZOW: Objection, form, relevance.

A. In the Generation 2, yes, and the Generation 3, yes.

Q. So let's break that down a little bit. So in both the Generation 2 and Generation 3 products you had input in the electrode arrangement for those products?

MR. NEMTZOW: Objection, form.

A. Well, let me qualify "arrangement" and just

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say: It more relates to the size and the shape rather than -- I mean, we were still -- in the subsequent generations, 1, 2, and 3, we still used this configuration as I drew, but the shape was slightly modified.

Q. Okay. I understand. So generally in 1, 2, and 3, similar arrangement, and you're just modifying the shape and size?

A. Correct.

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Did the shape differ dramatically from Generations 1 to 2 to 3?

MR. NEMTZOW: Objection, form, relevance.

A. I believe -- well, the shape was changed --

When NovaSure was released, it was indicated for uterine cavities of a certain size. And so the company wanted to expand that indication to be able to treat more patients. So that required a change in the size and shape of the electrodes.

Q. Okay. Was the shape in Generations 2 and 3 generally similar to what you drew on the page there?

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A. The shape, generally similar. The surface area would be different.

MR. GILFORD: I'm at a pretty good spot to take a break. Does like five minutes sound good?

THE WITNESS: That sounds good.

(Recess taken.)

Q. Let's go to Page 5 of your '318 declaration. I'm looking at Paragraph 12.

A. Yes.

Q. And in Paragraph 12 you provide the legal standard for anticipation; right?

A. Yes.

Q. Do you see in Paragraph 12 you wrote that "a patent claim is anticipated and therefore unpatentable if each element of that claim is present in a single prior art reference"? Do you see that?

A. Yes.

Q. What do you mean by "is present in a single prior art reference"?

MR. NEMTZOW: Objection, form.

A. Well, this is what I was -- I mean, I'm not a lawyer, and this is what I was informed by counsel.

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Q. So other than what counsel gave you, do you have any understanding of what you meant by "is present in a single prior art reference"?

MR. NEMTZOW: Objection, form.

A. I would just say it is apparent to someone skilled in the art.

Q. And you're not asserting that any of the prior art anticipates any of the claims or patents that you provided opinions on; right?

A. No single element of prior art.

Q. What do you mean by that?

A. The obviousness claims are asserted by the combination of prior art.

Q. Do you understand there's a difference between obviousness and anticipation?

A. I have been informed by counsel, yes, of the difference.

Q. And again, you're not asserting that any of the prior art anticipates any of the claims or patents that you've provided opinions on; right?

A. Correct.

Q. If you go to Page 7, and I'm looking at

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Paragraph 18, right at the bottom.

A. Yes.

Q. Do you see where you write, "I also understand that in considering obviousness, it is important not to determine obviousness using the benefit of hindsight," and it goes on. Do you see that?

A. Yes.

Q. What is your practice for ensuring that hindsight bias is not used in your analysis?

MR. NEMTZOW: Objection, form.

A. I think it's just common sense.

Q. What do you mean by that?

A. You just have to -- I mean, you just have to use judgment -- right? -- as a person skilled in the art, being able to evaluate the prior art and understand, you know, how obvious it is or not.

Q. Is it your understanding that obviousness is supposed to be evaluated from the perspective of a person of ordinary skill in the art at the time of the alleged invention of the claims?

MR. NEMTZOW: Objection, form.

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A. Yes.
Q. And at least for the '318 patent, is it your understanding that the alleged invention of the claims was back in 2011?
MR. NEMTZOW: Objection, form, foundation.
A. I don't recall the exact priority date of the '318 patent. Do you have a copy?
Q. Of the '318? You can also look at Paragraph 25 of your '318 declaration.
A. Yes.
Q. So it's your understanding that the alleged invention of the '318 patent claims is on June 14th, 2011; right?
A. Yes.
MR. NEMTZOW: Objection, form, foundation.
A. Yes.
Q. And in analyzing the '318 patent, did you apply June 14th, 2011 as the alleged date of invention of the claims?
A. Yes.
Q. So going back to what we were talking about in Paragraph 18, of trying to prevent hindsight bias:

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Do you have any --

I guess what was your practice of making sure that you're evaluating the claims from the perspective of one of skill in the art in 2011 as opposed to today?

A. Fair enough, yes.

MR. NEMTZOW: Objection, form.

A. Well, I think from what we just recently discussed you'll see that most of my experience using ablation devices happened before 2011.

Q. So I guess in evaluating the prior art, were you specifically relying on your experience with ablation devices that took place before 2011?

A. Yes.

Q. Okay. If you go to Page 10 of your '318 declaration, and I'm looking at Paragraph 27. This paragraph provides your definition of a person of ordinary skill in the art for the '318 patent; right?

A. Yes.

Q. And your definition of a person of ordinary skill in the art is the same for the '217, '286, and '077 patents. Is that true?

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A. I'd have to look and reconfirm.
Q. Sure.
A. I mean, the descriptions are similar.
Q. Any differences in the definitions -- are there any differences in the definitions between those four declarations that you're aware of?
A. No, they appear to be similar.
Q. If I refer to a person of ordinary skill in the art as a POSITA, you'll know what I'm talking about; right?
A. Yes.
Q. Now, looking again at Paragraph 27 of the '318 declaration: Do you see where you state that relevant times include 2011 to 2019?
A. Yes.
Q. And again, you understand that the claimed priority date for the '318 patent is June 14th, 2011; right?
A. Yes.
Q. And I think you agreed earlier that it is your understanding that prior art must be analyzed from the perspective of a POSITA at the time of the

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alleged invention; right?

A. Yes.

Q. So why do you believe that the time period after June 14th, 2011 is relevant here?

MR. NEMTZOW: Objection, form.

A. I don't know, did I say that?

Q. You say "at relevant times (2011-2019)." Do you see that?

A. Uh-huh.

Q. So going back to my question. It was, why do you believe that the time period after June 14th, 2011 is relevant here?

A. I don't know.

Q. I guess in analyzing the '318 patent did you assume that the time period after June 14th, 2011 was relevant?

A. No, I don't think I did.

Q. Going back to Paragraph 27 of your '318 patent declaration: Do you see that you state that a POSITA would have had "at least three years of experience in the clinical use, design, development, and/or testing of medical devices, including medical

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devices that deliver energy to tissue"? Do you see that?

A. Yes.

Q. In your opinion, why do you think that a doctor of medicine degree or a bachelor of science in engineering on its own would be insufficient to qualify somebody as a POSITA?

MR. NEMTZOW: Objection, form.

A. Well, I think a POSITA would have to have some practical experience, not just theoretical, academic knowledge.

Q. I guess why do you think that it's important for a POSITA to have some practical knowledge and not just theoretical or academic knowledge?

A. Well, it's a person of ordinary skill in the art, and someone who has academic knowledge I would say can still be skilled, but I don't think it's ordinary.

Q. So again, in Paragraph 27, you say that a POSITA could have a doctor of medicine or a bachelor of science degree in engineering. I guess, why is your definition of a POSITA split between those two

things? Aren't they very different degrees?

MR. NEMTZOW: Objection, form.

A. Yes, they are different degrees.

Q. So why do you think either of those degrees would qualify somebody as a person of ordinary skill in the art?

MR. NEMTZOW: Objection, form.

A. Well, I think for this invention they would both have to have a fundamental understanding -- or for this field, they would have to have a fundamental understanding of the devices, how they operate, how they're intended to operate.

Q. And do you think somebody who's a doctor of medicine would have a fundamental understanding of how the device of the '318 patent would operate?

MR. NEMTZOW: Objection, form.

A. Well, I think -- it's a minimum qualification -- right? -- along with some years' experience.

Q. I guess why does -- let's just say somebody had the practical experience but no formal education. Why would that not qualify them as a person of

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ordinary skill in the art?

MR. NEMTZOW: Objection, form, relevance.

A. Without the formal education, you wouldn't get the practical experience. If you don't have an M.D., no one is going to let you practice clinical medicine.

Q. Do you think a practice of clinical medicine is a necessary qualification for a person of ordinary skill in the art in this field?

MR. NEMTZOW: Objection, form.

A. No, you could have a bachelor -- as I said, you could have a bachelor of science in engineering, or a related discipline, as well.

Q. Do you believe that any engineering degree is sufficient for the purposes of defining a POSITA here?

A. Well, I think -- I think, for instance, let's say, a degree in civil engineering; right? I think if you have a degree in civil engineering but then you went into medical device development after three years of practical experience, then, yes, you might qualify.

Q. What about if you had a computer science degree?

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A. That could work.

Q. When you say "or a related discipline" in Paragraph 27, what do you mean by that?

A. Well, I would say sometimes engineering isn't so strictly defined. There are some institutions that don't confer degrees in engineering but you've effectively studied one aspect of engineering, so for a long time Harvard. Harvard now has an engineering program, but for many years they didn't. You studied engineering in their applied mathematics -- effectively studied engineering within an applied mathematics program, as one possibility.

Q. And when you write in Paragraph 27 the phrase "clinical use," what do you mean by that?

A. Treating patients.

Q. And going further down in Paragraph 27, where you write "medical devices that deliver energy to tissue," what do you mean by that?

A. Well, exactly what it says: any medical device that transfers energy from the device to tissue.

Q. Is it any -- I guess in defining a POSITA

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here, are you saying that three years of experience with any medical device that delivers any energy to any tissue is sufficient?

A. Yes.

Q. Why do you say that?

A. Well, I think that experience helps give you a fundamental understanding of the thermodynamics of tissue.

Q. Well, I guess let's talk a little bit about the '318, '286, and '271 patents. Now, the claims of those patents are specific to a medical device that's used in the nose; is that right?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. And those three patents, the claims of those three patents are specific to medical devices that deliver radiofrequency energy to the nose; right?

MR. NEMTZOW: Objection, form.

A. Wait, which patents are you talking about now?

Q. The '318, '286, and '271.

A. Yes.

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Q. And again going back to what you said about how you believe the three years or more of experience with any medical device that delivers energy -- any energy to any tissue, that you think that would be sufficient for defining a POSITA: Why do you think experience with medical devices that deliver some other energy than radiofrequency energy and deliver energy to some other tissue other than the nose, why do you think that would be relevant to the '318, '286, and '271 patents?

MR. NEMTZOW: Objection, form.

A. So you've really got two questions there. Let's break it down.

What's the relevance for RF energy? So there it's a case of, when you have RF energy, it's just a matter of understanding, you know, where's the power go, how is it converted into a thermal energy, temperature, and what's its impact on the tissue. And I think that's relevant for each of the energy modalities.

And the second part of your question was regarding -- oh, the nose.

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Q. Yeah, any tissue other than the nose and why is that relevant.

A. To an engineer, tissue is tissue; right? It has electrical properties. It has thermal properties. It maybe has blood flow, and geometry and anatomy. And it's those things, more than whether it's the nose or uterus or an ovary -- it's those factors that determine how the energy gets converted into temperature and how that subsequently causes ablation.

Q. Do different tissues have different electrical properties?

A. Yes.

Q. Does the uterus have different electrical properties than the nose?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Do different tissues have different thermal properties?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. And does the uterus have different thermal properties than the nose?

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MR. NEMTZOW: Objection, form.
A. Yes.
Q. I guess at a high level, what types of energy can medical devices deliver to tissue?
MR. NEMTZOW: Objection, form.
Q. I'll give you an example. Obviously there's radiofrequency energy; right?
MR. NEMTZOW: Objection, form.
A. Yes.
Q. So besides radiofrequency energy, at a high level what types of energy can medical devices deliver to tissue?
MR. NEMTZOW: Objection, form.
A. So are you trying to deliver energy to cause heat -- a temperature rise, to then cause ablation, or are we just talking energy in general?
Q. Well, I guess let's start specifically how you used "deliver energy to tissue" in your definition of a POSITA. So when you say "deliver energy to tissue" in your definition of a POSITA, are you talking about delivering energy to cause a temperature rise to then cause ablation, or are you just talking

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energy in general?

A. I'm talking energy in general, as it says.

Q. Gotcha. So in your definition of a POSITA here in Paragraph 27 of the '318 patent, when you say "deliver energy to tissue," you're talking about differing energy in general; correct?

A. In general, yes.

Q. So going back to my question: I had said -- the question was what types of energy can medical devices deliver to tissue. I gave you radiofrequency as one example.

So to clarify the question, it was: What general types of energy can medical devices deliver to tissue?

MR. NEMTZOW: Objection, form.

A. So laser will deliver light. Ultrasound will deliver ultrasound energy. Radiofrequency delivers radiofrequency energy. Magnetic conduction, like an MRI, delivers MRI energy. If you want to expand it even further, a radiotherapy device is delivering radiotherapy energy.

Q. What about thermal energy?

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A. So actually, yes, that's a good example, where you're conducting, where you have, let's say, a balloon that you heat up the fluid inside and you press it against the surface.

Q. What about electrical energy?

A. So electrical energy, yes, if you're considering beyond radiofrequency -- radiofrequency is one form of electrical energy. You could have, let's say, instead of alternating current, you could have direct current energy, yes.

Q. What about mechanical energy?

A. Mechanical energy would be another good example.

Q. And all those types of energies we've discussed, in your opinion, those would -- those would be -- those would fall within the gamut of types of energies that could be delivered to tissue that would satisfy your definition of a POSITA?

A. Yes.

Q. Why do you think a medical device -- let me back up a little bit.

Let me ask you: What general types of

tissue can medical devices deliver energy to?

A. I think just about every tissue.

Q. So I guess in the scope of your definition of a POSITA, would a medical device that delivers energy to the prostate fall within the scope of your definition?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. And would a medical device that delivers energy to the uterus fall within the scope of that definition?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. I guess in general, within the scope of your definition of a POSITA, would a medical device that delivers energy to any tissue of the body fall within the scope of that definition?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Is it fair to say that an ultrasound machine is a medical device that delivers energy to tissue?

MR. NEMTZOW: Objection, form.

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A. Yes.

Q. Why would experience with ultrasound machines be relevant to the four patents that you provided opinions on?

MR. NEMTZOW: Objection, form.

A. Well, let's distinguish between, let's say, diagnostic ultrasound and the high-power ultrasound that I've worked on in the past.

Q. Sure. Let's talk about the diagnostic one you would find in an ob/gyn clinic.

A. Sure. In that case you have to understand what the distribution of energy is in the tissue and what its impact on tissue is.

For instance, in the case of diagnostic ultrasound, the FDA puts limits on how intense that ultrasound energy can be, because they don't want to heat the tissue up. So you have to understand the potential thermal impacts of diagnostic ultrasound.

In the case of high-power ultrasound, you want to heat up the tissue. So you still have to have that same understanding, how it's going to be deposited in the tissue, where it's going to be

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deposited, what are the sound properties -- right? -- of the tissue, because it's the vibration of the tissue that then ultimately through friction gets converted into heat. That's one modality.

Q. So when you're designing a medical device that delivers radiofrequency energy to tissue, do you need to be familiar with the sound properties of the tissue?

MR. NEMTZOW: Objection, form.

A. You have to be cognizant of the properties of tissue, of how the energy is converted from the form that you're placing it in to how it gets to thermal energy. So it's analogous to ultrasound.

In any of these energy modalities, you have to know how the energy -- each one, you have to know how the energy's converted from the energy you're delivering to how it gets converted to thermal energy.

Q. Do different types of energy get converted to thermal energy in different ways?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. So is it fair to say that ultrasound energy

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is converted into thermal energy differently than radiofrequency energy is converted into thermal energy?

MR. NEMTZOW: Objection, form.

A. They both involve friction; right? Ultimately you're causing friction in the tissue. In the case of ultrasound energy, it's the friction of the vibration of the tissue. In the case of RF energy, it's the friction of the small molecules -- the sodium and the potassium -- that are oscillating back and forth in the tissue.

Q. But again, my question was: Is it fair to say that ultrasound energy is converted into thermal energy differently than radiofrequency energy is converted into thermal information?

MR. NEMTZOW: Objection, form.

A. So fundamentally they're both friction; right? They both rely on some form of friction.

Q. Is that the case for all of these different energy types we've talked about -- you know, light, sound, radiofrequency, magnetic, electrical, mechanical, et cetera?

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MR. NEMTZOW: Objection, form.

A. Electrical, yes. Mechanical, yes. Light, no.

Q. What about magnetic?

MR. NEMTZOW: Objection, form.

A. Magnetic I'm not sure about.

Q. Are the tissue properties of the nose different than the tissue properties of other parts of the body?

MR. NEMTZOW: Objection, form.

A. Tissue thermal properties, tissue electrical properties, yes.

Q. So just to clarify: The thermal and electrical tissue properties of the nose are different than the thermal and electrical tissue properties of other parts of the body? Is that correct?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Is a heating pad a medical device that delivers energy to tissue?

A. I'm sorry, I need to go back to your previous question and qualify.

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Q. Sure.

A. If we define the nose as such -- obviously the skin on the nose has the same properties as the skin everywhere else; right? And similarly, any bony structures within the nose will have similar electrical and thermal properties to bones elsewhere.

Q. Okay. That's a fair qualifier.

My question is, are the tissue properties of the interior of the nose different than the tissue properties of the uterus?

A. Yes.

Q. Are the tissue properties of the nose different than the tissue properties of the urethra?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Are the tissue properties of the nose different than the tissue properties of the prostate?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Are the tissue properties of the nose different than the tissue properties of the heart?

MR. NEMTZOW: Objection, form.

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A. Yes.
Q. Is a heating pad a medical device that delivers energy to the tissue?
MR. NEMTZOW: Objection, form.
A. It could be.
Q. Why would experience with heating pads be relevant to the four patents you opined on?
MR. NEMTZOW: Objection, form.
A. So a heating pad, you have the same constraints of safety and effectiveness. In the heating pad, you want to heat but you don't want to heat too much. So you have to understand how it works, how the energy is generated, how it's coupled to the tissue, and then where it goes.
Q. It's fair to say that with the heating pad you don't want to ablate tissue; correct?
MR. NEMTZOW: Objection, form.
A. Exactly. And so therefore you have to know what the temperature rise is going to be at that interface. To know that, you have to know the power of your heating pad, and you still have to know the tissue thermal properties.

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Q. Is that why with you think that experience with a heating pad would be relevant to these patents?

A. Yes.

Q. Any other reasons?

A. Well, there's a difference between designing a heating pad and using a heating pad. A heating pad sounds like a simple device. But if it's a medical device, it has to conform -- it has to get FDA clearance some way or another, and so it has to be tested to be safe. The principles involved in doing that are the same principles fundamentally with analyzing any other device that's heating tissue.

Q. Well, you know those -- what are they called -- like cryoguns or the massager things you can use on your back? Do you know what I'm talking about?

A. I don't think I've seen one before.

Q. Anyway, there are these devices that you can use to massage your back, like a massage gun or something like that. Would that be a medical device that delivers energy to tissue?

MR. NEMTZOW: Objection, form, foundation, relevance.

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A. I think for the purpose of this discussion I would define medical device as something that is cleared, approved by the FDA or some other competent authority.

Q. Okay.

A. Or intended to be eventually approved or cleared by the FDA.

Q. So, you know, in the hospital sometimes there's like these -- well, you know, like a blood pressure cuff that you wrap around and it inflates? Is that a medical device that delivers energy to tissue?

MR. NEMTZOW: Objection, form, relevance.

A. It is a medical device.

Q. That delivers energy to tissue? It delivers mechanical energy to tissue when it inflates?

MR. NEMTZOW: Objection, form.

A. Perhaps. I think you could say so, yes.

Q. Why would experience designing a blood pressure cuff be relevant to the four patents you opined on?

MR. NEMTZOW: Objection, form.

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A. Again, you have similar constraints for the development of the device. You have to know how the device interfaces with the tissue, how it's transmitting its energy, how it's not going to harm the tissue.

Q. A blood pressure cuff doesn't heat tissue, does it -- or it's not designed to?

A. Well, if you keep blowing it up, it will eventually.

Q. Okay. Now I'm looking back at Paragraph 27 of your '318 declaration, and I'm looking at the last sentence on Page 10. Do you see where you wrote, "A higher level of education may compensate for less work experience," and it kind of goes on?

A. Yes.

Q. When you say "a higher level of education," what would a higher level of education be than receiving a doctor of medicine?

MR. NEMTZOW: Objection, form.

A. Well, a lot of physicians undergo fellowship training -- postdoctoral training, fellowship training. It doesn't necessarily say a degree.

Q. So I guess what do you mean by "a higher level of education" in this paragraph?

A. Well, in the case of the career track of medicine, many physicians will go from an M.D. degree to what's called a fellowship, where they're still quasi in training, but they have their degree, and they see patients. Another track is they may just go into research and do what's called postdoctoral research. Those are considered training programs. And so I would call them educational.

Q. So when you write "a higher level of education" here in your declaration in Paragraph 27, are you specifically referring to a postdoc or a fellowship?

MR. NEMTZOW: Objection, form.

A. Not specifically. I think there are other ways of educating yourself academically beyond that.

Q. Well, I guess that's what I'm trying to figure out. So what exactly do you mean by "a higher level of education"?

MR. NEMTZOW: Objection, form.

A. Higher level for an M.D. or for a Ph.D. or

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for a bachelor's or -- I'm not quite sure what you're talking about.

Q. I want to know what you meant. So when you said "a higher level of education," were you comparing that to the bachelor of science degree in engineering or the doctor of medicine degree or both?

MR. NEMTZOW: Objection, form.

A. The sentence as written applies to both.

Q. So let's start with the doctor of medicine. When you say "a higher level of education" than the doctor of medicine, what did you mean by that?

MR. NEMTZOW: Objection, form.

A. Could be a fellowship, could be postdoctoral research. It could be some other former of educational enhancement.

Q. And when you said "a higher level of education" in the bachelor of science degree in engineering, what did you mean by that?

A. It could be a master's degree. It could be a doctoral degree. It could be postdoctoral.

Q. Would an additional degree in liberal arts qualify as a higher level of education?

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MR. NEMTZOW: Objection, form.

A. I don't think so, no.

Q. If somebody had a bachelor of science in engineering, several liberal arts degrees, but no work experience, would that qualify them as a POSITA?

MR. NEMTZOW: Objection, form.

A. I think the key word here is "higher," higher than what was previously there. I don't think one would consider a degree in literature to be higher; right? A Ph.D. in literature would be higher than --

Q. Let's take that example. I'll reask it with your example.

So if somebody had a bachelor of science in engineering, a Ph.D. in literature, but no practical work experience, would that qualify them as a POSITA?

MR. NEMTZOW: Objection, form.

A. I don't think so.

Q. Why not?

A. I think the "higher" is relative to where they were before -- higher than --

It's not just level; right? It also

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includes the subject, subject matter.

Q. Okay. So I guess if somebody had a bachelor of science degree in civil engineering and then a Ph.D. in civil engineering but no practical work experience, would that qualify them as a POSITA?

MR. NEMTZOW: Objection, form.

A. Well, it says -- the sentence says "a higher level of education may compensate for less work experience." It doesn't say it compensates for no work experience.

Q. I'll give you one more example. I don't want to belabor the point. Let's say somebody had a bachelor of science degree in civil engineering, a Ph.D. in civil engineering, and one year's worth of work experience on diagnostic ultrasound machines. Would that qualify them as a POSITA?

MR. NEMTZOW: Objection, form.

A. Maybe.

Q. Why do you say maybe?

A. Well, it depends on their experience and what they learned during that one year.

Q. Okay. So in that case the higher level of

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education doesn't really qualify them as a POSITA. It really comes down to their work experience? Is that what you're saying?

MR. NEMTZOW: Objection, form.

A. I think it's a combination. I mean, the sentence as structured doesn't actually propose a formula -- right? -- to really determine that.

Q. How is one supposed to determine who qualifies as a POSITA under what you've proposed?

MR. NEMTZOW: Objection, form.

A. Well, I think we go back to the simple sentence in the beginning; right? Let's just say -- and since it's me who's writing this report, that I'm putting myself in the POSITA; right? I was at one point in time someone with a bachelor of science and three years' experience or a bachelor of science and then some additional education and work experience.

Q. Is it fair to say that you do not have three years of experience in the clinical use, design, development, and/or testing of medical devices that deliver energy to the nose?

MR. NEMTZOW: Objection, form.

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A. To the nose, correct.

MR. GILFORD: How are we doing on time? I think we've been going for less than an hour.

MS. COHEN: We've been going for like a half hour.

MR. NEMTZOW: Maybe we go for another 20 minutes, half an hour, and then break for lunch?

MR. GILFORD: Sounds good to me.

Q. Let's go to Page 11 now of your '318 declaration, and I'm looking at Paragraph 29, the first sentence. Do you see where you wrote, "Radiofrequency ablation utilizes high frequency alternating electrical voltage or current -- generally between 300 kilohertz to 700 kilohertz -- to modify tissue"?

A. Yes.

Q. And just to back up a second: When you write "RF" in your report, you're referring to the term "radiofrequency." Right?

A. Correct.

Q. When you write in your report "to modify tissue," what do you mean by that?

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A. Well, so RF ablation modifies tissue by elevating the temperature. And it's not just the temperature; right? The temperature has to be elevated for a certain amount of time. And that primarily works to denature proteins. So the denaturing of the proteins can directly kill cells, and it can directly modify other molecules that are outside the cell.

Q. What do you mean by "directly modify other molecules that are outside the cell"?

A. So, for instance, you have collagen, that's outside of your cells. So if I heat a zone, I may kill the cells, but I may also -- the collagen that's outside those cells will also become denatured, like the protein inside the cell.

In some tissues that collagen forms a mechanical structure; right? And so the denaturization of that collagen will break down -- the structure of that tissue will be broken down.

Q. When you say "to modify tissue," are you specifically talking about denaturing proteins?

MR. NEMTZOW: Objection, form.

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A. The process of thermal ablation is a bit more complex than that. So depending on what time and temperature you achieve, you may have other effects.

Q. Such as what?

A. There are -- one example are cells that are initially damaged by the heat energy that survive the initial heating but then later go on to die through a process called apoptosis. That's the programmed cell death, where the cell basically says it can't continue on, and it kind of commits like a suicide.

Q. What types of tissue modifications can occur during a radiofrequency ablation?

A. Again, that depends on the time and temperature that you're exposing it to. So, for instance, you know, really high temperature, you can char tissue. You can actually carbonize the tissue. That's at the high end.

At the low end you have in some cases this apoptosis effect that can occur in some cases minutes, hours, even days after the tissue has cooled back to normal.

Q. What are some other examples? You mentioned

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carbonization. You mentioned apoptosis. What are some other examples of types of tissue modifications that can occur during radiofrequency ablation?

A. We have protein denaturization, and that affects a lot of different things -- break down cells, cell membranes, loss of cellular function.

Q. Anything else you can think of?

A. I mean, there's a lot of chemical processes that go on. Cells that are trying to stay alive during a heating cycle will create what are called heat shock proteins, which, you know, are used for a lot of things. But it's basically the cell trying to protect itself.

Q. Have you ever heard of something called electroporation?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. Is electroporation a tissue modification?

MR. NEMTZOW: Objection, form, relevance.

A. I would call it a cellular modification.

Q. Would you call it a tissue modification?

MR. NEMTZOW: Objection, form, relevance.

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A. No.

Q. What do you mean by cellular modification?

A. As I mentioned before, tissue consists of what's inside the cell and what's outside the cell. And what's outside the cell are these other things, like collagens and other molecules.

Electroporation is a specific process that happens to the cell membrane. So if there's no cell membrane, there's no impact from electroporation.

Q. Turning back to Paragraph 29 of your report here. I'm looking at the second-to-last sentence. Do you see where you wrote, "The increase in temperature damages portions of tissue and/or kills tissue cells, creating lesions"? Do you see that?

A. Yes.

Q. What types of tissue damage can occur during radiofrequency ablation?

A. Well, there's, as I mentioned, there's -- basically you can kill cells, and you can disrupt what's outside the cells. I mean, there are other effects you can have. Depending on like if you're boiling -- let's say there's a region where you can

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boil the water off. Now you're removing water content from the tissue.

Q. And what's the difference between damaging tissue and killing tissue cells?

A. Well, kind of as I explained before where the tissue is not just the cell. It includes the macromolecules that are around it. So if you're damaging the tissue, you're damaging both the cells and the molecules that are surrounding it.

Q. Would you mind flipping to the next page of your declaration, and I'm looking at -- in Paragraph 30, kind of near the top of the page.

A. Uh-huh.

Q. Do you see there's a sentence there that says, "Since their introduction decades ago, and long before the '318 patent's claimed priority date, many radiofrequency ablation devices have been used as medical devices, for example, to destroy a blockage, treat tissue, or shrink tissue." Do you see that?

A. Yes.

Q. What is the difference between destroying tissue, treating tissue, and shrinking tissue?

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MR. NEMTZOW: Objection, form, foundation.

A. Well, one of the things we haven't really touched upon yet is what happens to the tissue after your temperature process has completed; right? Because, you know, you're killing cells, you're disrupting tissue. But, you know, assuming the patient survives, there's a biological response, where the body is trying to repair itself.

And so, you know, if -- and so if you do this in an advantageous way, that becomes your sort of "treatment." And specifically what it is depends on where you're applying the energy, how you're applying the energy, and what goal you're trying to achieve.

Q. I guess what's the difference between destroying tissue and treating tissue?

MR. NEMTZOW: Objection, form.

A. Well, I interpret -- well, they're not necessarily diametrically opposed; right? In the case of destroying tissue, where you're killing cells and you're disrupting the macromolecules -- let's call that destroying tissue -- the biological response --

So that can also treat your tissue,

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depending on what you're trying to achieve. The biological response that subsequently happens can also be part of the treatment as well.

Q. Is the biological response the shrinking of the tissue?

A. That could be one. And that's a good example. So the ultrasound device that I mentioned to you before to treat the urethra that I worked on at Hologic, that device was designed to shrink the urethra.

Q. I guess when you say "treat tissue using radiofrequency ablation," what generally do you mean by that?

MR. NEMTZOW: Objection, form.

A. Well, I think it would have to be defined clinically; right? It's what is your clinical objective, and can it be achieved applying a specific RF ablation process.

Q. I guess continuing in Paragraph 30, that we've been talking about: There's several references mentioned here. There's a Baker reference.

A. Uh-huh.

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Q. There's a Goble reference, G-o-b-l-e. There's a Coste reference, C-o-s-t-e; and then a Hovda reference, H-o-v-d-a; and a Hytonen reference; that's H-y-t-o-n-e-n. Do you see all those mentioned in there?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. None of those references that I just mentioned are listed in your asserted invalidity grounds; correct?

MR. NEMTZOW: Objection.

Q. If you need to look, you can flip to Page 25 to 26, if you need to cross-reference.

A. Thank you, I will do that.

MR. NEMTZOW: I'll just object to the form of the question.

A. Yes, I see that.

Q. So I'll ask it one more time, just so the record's clear: Those five references I just mentioned, none of those are listed in your asserted invalidity grounds for the '318 patent; right?

A. That is correct.

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Q. And isn't it true that none of those references are listed in your asserted invalidity grounds for the other three patents you opined on? Right?

A. I'd have to look to refresh my memory.

Q. I'll just represent that to you.

A. Okay, okay.

Q. But anyways, let's focus specifically on the '318 declaration.

A. Okay.

Q. So these five references I mentioned -- Baker, Goble, Coste, Hovda, and Hytonen -- are you applying any of these references in your asserted invalidity grounds?

MR. NEMTZOW: Objection, form.

A. I don't think they --

Baker maybe. I'm not quite sure about the other ones. I'd have to look.

Q. Are you applying Baker in your asserted invalidity grounds?

MR. NEMTZOW: Objection, form.

A. I'd have to look to see. I don't recall

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exactly.

Q. Feel free to look, and take your time.

A. Yeah, I believe that's correct.

Q. Just so the record's clear, the question was: Are you applying Baker in your asserted invalidity grounds?

MR. NEMTZOW: Objection, form.

A. No, I don't think so.

Q. Just to be very, very clear: Your testimony today is you are not applying Baker in your asserted invalidity grounds?

MR. NEMTZOW: Objection, form.

A. Yes, I think that's correct.

Q. Okay, thank you.

Going back to this Paragraph 30 of your '318 declaration: Is there something missing from the references in your asserted invalidity grounds that caused you to cite these references here in your declaration?

MR. NEMTZOW: Objection, form.

A. No, I don't think so.

Q. Go ahead and flip to Page 16 of your '318

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declaration.

A. Okay.

Q. And I'm looking at Paragraph 38.

A. Yes.

Q. And I'm just kind of going from the top, beginning sentence here. Do you see in Paragraph 38 you write that "In a bipolar configuration, current flows from an active electrode through the tissue contacted by the active electrode, to a return electrode located near the active electrode"? Do you see that?

A. Yes.

MR. NEMTZOW: Objection, form.

A. Yes.

Q. So I guess once the current flows from the active electrode to the return electrode, where does the current go next?

MR. NEMTZOW: Objection, form.

A. Well, there would be electrical contacts -- right? -- to each of these electrodes. It would flow from one contact into the electrode, through the tissue, and the circuit would be completed and flow

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out of the electrode into the other contact.

Q. And then where does it go from there?

A. Well, all of these radiofrequency devices have a radiofrequency generator, which is supplying energy, maybe monitoring some aspect of the energy delivery, interfacing with the user.

Q. So I guess for a bipolar electrode, is it fair to say that the current goes -- is output from the generator, flows to the electrode, flows through the tissue to the other electrode, and then returns to the generator?

MR. NEMTZOW: Objection, form.

A. For -- yeah, for one bipolar pair, yes.

Q. I guess, you know, you say here that the return and the active electrodes need to be located near each other. Do you see that?

A. Yes.

Q. So how close do the active and return electrodes need to be for a bipolar configuration?

MR. NEMTZOW: Objection, form.

A. I would say it depends on the clinical application.

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Q. What do you mean by that?

A. Well, in the case of NovaSure, for instance -- right? -- I mean, effectively, those electrodes, you could think of them as being maybe a centimeter apart; right? There are a lot -- in our device, Adiana, that I mentioned, I mean, those electrodes were like a millimeter apart.

So, I mean, it's kind of up to the designer, what they're trying to achieve, as to how far the electrodes should be.

Q. I guess the reason I ask is, you know, my understanding of how a monopolar configuration works is somewhat similar to bipolar. I'll give you my understanding. You can tell me if my understanding's wrong.

My understanding is for a monopolar configuration the current comes out of the radiofrequency generator, goes to the electrode, flows through the tissue to the, I guess you'd call it maybe the reference electrode, and then flows back to the generator.

A. "Ground pad" would be typically the typical

terminology.

Q. And the ground pad, it is an electrode; right?

A. Yes.

Q. So it sounds similar to bipolar, but it seems like the difference between bipolar and monopolar is a matter of distance between the two electrodes?

MR. NEMTZOW: Objection, form.

A. I think that's one way to look at it. But the other important way to look at it is: Typically with bipolar your electrodes are of the same size; right? With monopolar your ground pad is big and your monopolar is smaller. And the reason why you want that is, you don't want to heat up -- like where the ground pad is, you don't want to heat that area up.

Bipolar, even if they're not exactly the same size, your intention is to heat up the area that's close to both of those electrodes.

Q. I guess if you put the ground pad close enough to the active electrode, would those two electrodes essentially become bipolar?

MR. NEMTZOW: Objection, form.

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A. I mean, I don't think anyone in clinical practice would say that, would say, "If I took a ground pad here and I'm electrocauterizing here, all of a sudden I've got a monopolar." A clinician would still consider that to be monopolar.

Q. Why do you say that?

A. Just understanding how the terminology is used and understood, what generally practitioners expect from the operation of their devices.

Q. How close do the active and return electrodes need to be for treating rhinitis?

MR. NEMTZOW: Objection, form.

A. That I don't know.

Q. Do you know what rhinitis is?

A. Yes.

Q. What is your understanding of what rhinitis is?

A. It's a condition where the nose continues to produce mucus.

Q. How close do the active and return electrodes need to be for treating postnasal drip?

MR. NEMTZOW: Objection, form.

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A. That I don't know.
Q. Do you know how close the active and return electrodes need to be for treating chronic cough?
MR. NEMTZOW: Objection, form.
A. That I don't know.
Q. Have you reviewed the prosecution history of the '318 patent?
A. No, I don't think I have.
Q. Are you familiar with what the term "prosecution history" means?
A. Please define it for me so I can answer truthfully.
Q. The proceedings that happened in the Patent Office that led to the applicant getting a patent.
A. No, I didn't review that.
Q. So just so the record's clear: It's your understanding you did not review the prosecution history of the '318 patent?
A. Correct.
MR. NEMTZOW: Objection, form.
Q. Do you know whether you reviewed the prosecution history of the '271 patent?

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MR. NEMTZOW: Objection, form.
A. I did not.
Q. Do you know whether you reviewed the prosecution history of the '286 patent?
MR. NEMTZOW: Objection, form.
A. I did not.
Q. Did you review the prosecution history of the '077 patent?
MR. NEMTZOW: Objection, form.
A. No.
Q. Did you review any prosecution histories in connection with your -- the declarations you provided in these IPR proceedings?
MR. NEMTZOW: Objection, form.
A. No.
Q. I'm going to try to wrap up soon here so we can go to lunch.
A. Fine.
MR. NEMTZOW: It's been 56 minutes or so on the record.
MR. GILFORD: I think I can ask a couple more questions in four minutes.

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THE WITNESS: I'm okay with that.

Q. Would you mind flipping to Page 25 of your declaration.

A. Okay.

Q. I'm looking at Paragraph 53. Do you see where you wrote in the first sentence there, "For the purposes of this declaration, I will give the claim terms their plain and ordinary meaning, including as understood in the field of the '318 patent, and as understood by a person of ordinary skill in the art"? Do you see that?

A. Yes.

Q. Is it fair to say that in analyzing the '318 patent you gave each of the claim terms their plain and ordinary meaning?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. In analyzing the '271, '286, and '077 patents, did you also give each of those claim terms in those patents their plain and ordinary meaning?

MR. NEMTZOW: Objection, form.

A. Yes.

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MR. GILFORD: I'm at a good spot to break.

(Lunch recess taken.)

Q. I'm going to go ahead and give you what has previously been marked as Neurent Exhibit 1010.

MR. NEMTZOW: Can I just ask what proceeding it's marked in?

MR. GILFORD: I want to say the '318, but I can double-check. Possibly it was marked as 1010 in more than one, but I'll just double-check.

Definitely in the '318.

MR. NEMTZOW: And I think it should be in the '286 and the '271, but I can confirm. Just for the record.

Yes.

MR. GILFORD: I think it was in the '077, too.

MR. NEMTZOW: It might be a different number.

MR. GILFORD: It was 1008 in the '077.

MR. NEMTZOW: Okay, great.

Q. You've seen this document before; right?

A. Yes.

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Q. And this is, I believe you call it, the Edwards '535 reference; right?
A. Yes.
Q. Can you go ahead and turn to column 8 of this document. Let me know when you're there.
A. I'm on 8, yes.
Q. And I'm looking at about line 28. Do you see in column 8 at about line 28 there's a sentence that starts "An example" and it goes on? Do you see that? "An example of a suitable surface"?
A. Yes.
Q. Would you mind reading that sentence aloud for me.
A. "An example of a suitable surface for disposition on the membrane is described in application serial number" blah-blah-blah, "thin layer ablation apparatus, filed October 6, 1994, which is incorporated by reference."
Q. And that's Serial No. 08-319373; right?
A. Correct, yes.
Q. Now, in the sentence you just read aloud, the word "electrode" does not appear anywhere in that

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sentence; right?

MR. NEMTZOW: Objection, form.

A. Yes, correct.

Q. Have you reviewed Application Serial No. 08-319373?

A. I'm not sure. Do you have a copy?

Q. I don't have a copy of that application.

A. I'm trying to see who the inventors are. I can't say.

Q. I guess just to double-check, if you go to the materials cited list in your --

A. You mean in the context of my opinion have I reviewed it?

Q. Well, let's start with ever.

A. Ever? I don't know.

Q. And then I guess in the context of your opinions, if you go to Appendix B, for example, of the '318 declaration.

A. Yes.

Q. So that's starting on Page 176.

A. Yes.

Q. Where, if at all, is Application Serial No.

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08-319373 listed in your materials considered?

MR. NEMTZOW: Objection, form.

A. It's not listed here.

Q. I guess to confirm: To your knowledge, have you ever reviewed Application Serial No. 08-319373?

MR. NEMTZOW: Objection, form.

A. Not in the context of my opinion here.

Q. Well, what do you mean by not in the context of your opinion here?

A. I can't -- without additional information, I can't tell you truthfully if I've ever read that or looked at that patent application or not without additional information.

Q. Which information would you need?

A. Inventors, assignee.

Q. Sure. My understanding is that Baker is one of the inventors on that application.

A. Okay.

Q. Does that help you out?

A. I may have looked at it.

Q. Okay. Can you say for sure whether you did or didn't?

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A. I cannot.
Q. Let me ask you this: So if you look at Exhibit -- I'm looking at the materials-considered list.
A. Yes.
Q. And I'm looking at Exhibit 1011. And you mention a Baker patent there.
A. Yes.
Q. Any idea of whether that patent is the same thing as Application Serial No. 08-319373?
MR. NEMTZOW: Objection, form.
A. I don't know.
Q. Well, did you review this Baker patent that you list as Exhibit 1011 in your '318 declaration?
A. Yes.
Q. Do you have any idea whether Application Serial No. 08-319373 is the same thing as this Baker patent listed in your declaration?
MR. NEMTZOW: Objection, form.
A. I don't know.
Q. Let's go ahead and turn back to the Edwards exhibit that we've been looking at, and I'm looking

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again in column 8.

A. Okay, yes.

Q. So column 8. Now I'm going to go look up kind of like lines 5 to 7. I'm looking at the last sentence of that paragraph, at the top of column 8. Do you see where it says, "In one embodiment the expandable member is an expandable porous membrane"?

MR. NEMTZOW: Objection, form.

A. Last sentence, "In one embodiment, the expandable member is an expandable porous membrane." Yes, I see that.

Q. Are you aware that other than the sentence that I had you read aloud, this is the only time the word "membrane" appears in Edwards '535?

MR. NEMTZOW: Objection, form.

A. I was not aware of that.

Q. I will represent to you that to my knowledge the only other time the term "membrane" is mentioned in Edwards '535 other than the sentence I had you read aloud is this sentence here in lines 5 to 7 of column 8.

MR. NEMTZOW: Objection, form, foundation,

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relevance.

Q. So going back to the sentence I had you read aloud: Is it fair to say that in that sentence the term "membrane" is referring to an expandable porous membrane?

MR. NEMTZOW: Objection, form.

A. I don't know. Well, the sentence you had me read, again, is, "In another embodiment a plurality" --

Q. I had you read aloud starting from "an example."

A. Okay, thank you. "An example of a suitable surface for disposition on the membrane is described in this application." Yes. So what's the question again?

Q. So in that sentence is it fair to say, when that sentence refers to the membrane, that it is referring to the expandable porous membrane which is referred to earlier in column 8 at lines 5 to 7?

MR. NEMTZOW: Objection, form.

A. I don't know if that's the case.

Q. Do you have an understanding of what the term

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"the membrane" is referring to in the sentence I had you read aloud?

A. Well, I'd have to look back a little bit through the application.

Q. When you say "the application," do you mean --

A. I'm sorry, this patent.

Do you know where it's defined in the specifications here?

Q. Well, again, you know, I'm representing this to you, but my understanding is the only other time the term "membrane" is mentioned is in column 8, lines 5 to 7.

A. Okay.

Q. So I'll go back to my original question, which was: In this sentence I had you read aloud, that begins with the phrase "an example," it's fair to say that when that sentence mentions the membrane, that it is referring to the expandable porous membrane? Is that fair to say?

MR. NEMTZOW: Objection, form.

A. Well, "membrane" to me sounds generic.

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"Expandable porous membrane" sounds more specific. Right? So I can't attest that they're referring to exactly the same thing in that example.

Q. Okay. Well, I'll just point out, in the sentence I had you read aloud, it says "the membrane." Right?

MR. NEMTZOW: Objection, form.

A. Okay, yes.

Q. And then earlier in column 8 it says "an expandable porous membrane." Correct?

MR. NEMTZOW: Objection, form.

A. Okay, yes.

Q. So isn't it fair to say that where it says "an expandable porous membrane" in column 8, lines 5 to 7, it's providing the antecedent basis for "the membrane" later in column 8? Isn't that fair to say?

MR. NEMTZOW: Objection, form.

A. You know, I don't know if that's the case. I'd have to look through -- I'd have to look through the rest of the specification to determine if that's the case.

I don't know. I don't know if that's the

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case. It may be, it may not be, based on my current understanding.

Q. Fair enough. So in the sentence I had you read aloud, where it says, "An example of a suitable surface" and it goes on: Now, are you aware that the Baker -- this Application Serial No. 08-319373, are you aware that that application refers to a porous exterior surface?

MR. NEMTZOW: Objection, form, foundation.

A. No.

Q. You're not aware that -- so to be clear, you are unaware that Application Serial No. 08-319373 refers to a porous exterior surface? Is that fair to say?

MR. NEMTZOW: Objection, form, foundation.

A. Again, I don't recall this, so I can't attest to what's in there or not.

Q. So it's fair to say that you are unsure What this term "a suitable surface" is referring to in Application Serial No. 08-319373; correct?

MR. NEMTZOW: Objection, form, foundation.

A. Correct.

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Q. And just one more thing about this: So at the end of that sentence I had you read aloud, where it says "is incorporated by reference" -- do you see that? And I'm talking about the sentence that's like lines 28 to 31, just so we're on the same page.

So you do see where it says "is incorporated by reference" there; right?

A. Yes.

Q. So Edwards '535 does not say that this Application Serial No. 08-319373 is incorporated by reference in its entirety; right?

MR. NEMTZOW: Objection, form, foundation.

A. Yes.

Q. It's fair to say that Edwards '535 is only incorporating by reference Application Serial No. 08-319373's description of a surface. Isn't that fair to say?

MR. NEMTZOW: Objection, form, foundation.

A. I don't know.

Q. In your invalidity analysis did you use any teachings from Application Serial No. 08-319373?

MR. NEMTZOW: Objection, form, foundation.

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A. No, I don't think so.
Q. Let's go back to your '318 declaration. I'm going to go to Page 32. And on Page 32 you have an annotated version of figure 5H of the Makower reference; right?
A. Correct, yes.
Q. And for the court reporter, "Makower" is M-a-k-o-w-e-r.
Do you know whether Makower's figure 5H is depicting a device in the nasal passageway?
MR. NEMTZOW: Objection, form.
A. Well, my report says it here; right? It says, "Makower teaches that the strut members 214 may be expanded to contact the nasal cavity tissue."
Q. And just -- could you point me to where you are pointing to?
A. So Page 32, the sentence right before the figure.
Q. Oh, okay. So is it your understanding that figure 5H of Makower is depicting a device that's contacting nasal cavity tissue?
A. Yes.

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Q. Do you know where in the nasal cavity this device in figure 5H of Makower is positioned?

A. I'd have to refer back to the patent to answer that question.

Q. When you say "the patent," what are you referring to?

A. The Makower patent.

Q. Let me go grab that for you. So I'm handing you what was previously marked as Neurent Exhibit 1021. And this is the Makower patent that we're talking about; right?

A. Yes. Yes, it is.

Q. Okay.

MR. NEMTZOW: Just for the record, this is 1021 in the '318 proceeding?

MR. GILFORD: Are you representing that or asking?

MR. NEMTZOW: I'm asking.

I can represent that.

MR. GILFORD: Yeah, it's 1021 in the '318. I'm guessing it's the same in the '271 and '286, and I can't remember if this was in the '077.

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MR. NEMTZOW: I don't know the number in the '077, but it is 1021 in the '271 and the '286.

MR. GILFORD: I think it was --

MR. NEMTZOW: 1005 in the '077.

MR. GILFORD: Yep, okay, got it.

MR. NEMTZOW: Apologies.

MR. GILFORD: No, you're good.

Q. So if we go back to what the question was: The question was, do you know where in the nasal cavity this device in figure 5H of Makower is positioned?

A. So Makower on Page 17, Paragraph 0187, describes figure 5H. If you look at the last sentence of that column, it says, "In operation the device 028 is advanced into a passageway such as a nostril, nasal cavity, meatus, ostium, interior of a sinus, et cetera."

Q. So is it your understanding that the device of Makower figure 5H is contacting the nasal cavity tissue in one of those locations you just mentioned from paragraph 187 of Makower?

MR. NEMTZOW: Objection, form.

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A. At least. I think the "et cetera" that he ends that sentence with leaves it somewhat open.

Q. What do you mean?

A. Well, I would presume it's somewhere within the nasal pharyngeal cavity.

Q. Going back to this annotated figure in the '318 declaration: Do you see that your annotated figure has four green circles, which you've identified as electrodes?

A. Yes.

Q. Is it your understanding that these four electrodes are ring electrodes?

MR. NEMTZOW: Objection, form.

A. No, I don't think so. Just give me one minute to consult the declaration here.

I do not -- well, let me just consult again the figure.

So by "ring electrodes" I do not believe they're rings that circle like through the plane of the tissue. They're not rings like this.

Q. I'm not following you.

A. You asked if those electrodes are ring

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electrodes; right? I don't know if at the microscopic scale they are rings. But the macroscopic scale, in the plane of the drawing, they're not ring electrodes.

Q. Do you know what kind of electrodes those are supposed to be depicting?

MR. NEMTZOW: Objection, form, foundation.

A. Makower doesn't specify, but he does say the electrodes may be bipolar, monopolar, or facilitated by any other suitable form of energy, such as gas plasma arc.

Q. From looking at figure 5H, can you tell what type of electrodes those are?

MR. NEMTZOW: Objection, form.

A. Again, I think the description from Makower is about all we have.

Q. So based off of the figure itself and the description, can you tell what kind of electrodes those are?

MR. NEMTZOW: Objection, form.

A. What do you mean by "kind" of electrode? Shape, size, material?

Q. Well, I'd asked you about ring electrodes

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originally. Are you familiar with the term "ring electrode"?

A. Yes.

Q. What do you understand a ring electrode to be?

MR. NEMTZOW: Objection, form.

A. So ring electrodes are normally encountered in the case -- let's just say a catheter, to simplify it, where the electrode is applied around the circumference of the catheter, kind of perpendicular to the major axis to the catheter.

Q. Okay. That's also what I thought a ring electrode is. So I guess going back to the drawing: Are those four electrodes that you've circled in green, are those ring electrodes?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. I don't think so, because Makower describes an instance where the strut can be collapsed to be inserted. If they were rigid rings, for instance, they wouldn't permit that operation.

Q. Okay. Why do you say that?

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A. Well, if you had a rigid ring -- so Makower has designed this to be collapsed, inserted through the nostril, and then expanded; right? If they were rigid ring electrodes like you would find in an electrophysiology catheter, it couldn't take that shape change.

Q. I'm still not following. Why can't -- what do you mean by that?

A. The way Makower operates this device according to the patent description, patent application, the device goes from one shape to a final shape, and the final shape, as implied by figure H , would be impeded if there were ring electrodes there.

Q. That's the part I'm still struggling to understand, is why would the final shape be impeded if those were ring electrodes?

MR. NEMTZOW: Objection, form.

A. You couldn't expand -- you couldn't expand the device if they were rings; right? The ring would hold its shape.

If I take my ring -- right? -- there's no way I can get this ring up my nose, no matter what

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orientation it's in. If there's such a ring on this expanded device, it's not going to fulfill the described operation of this device.

Q. Okay. Well, let me ask you this: So is 5H depicting the device in its expanded state?

A. Well, I think that's what's implied.

I mean Makower says -- right? -- that the strut members may be fixed configuration, in other cases strut members may be collapsible and expandable.

So if -- so the question is, if this is in fact the collapsed state, it implies that it could also be expanded beyond this state. If that's the case, then ring electrodes still wouldn't work, if it's to be expanded.

Q. Well, going back to my question: So I'm talking specifically about figure 5H. Do you know whether what's depicted in figure 5H is showing the collapsed state or the expanded state of the device that's described?

MR. NEMTZOW: Objection, form.

A. This figure description in the patent application is a little vague on that point. But as a

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designer, you would not design -- you would design the device to be as minimally collapsible as possible. So looking at this, the drawing implies that this is the expanded state.

Q. Okay. And can you tell from the drawing whether the version of the device depicted here is a -- I think you said there was a fixed version or there's a version where it can be collapsible and expandable?

MR. NEMTZOW: Objection, form.

A. That's what Makower describes.

Q. So do you know if figure 5H, is this depicting the fixed version of the device or the version that can be collapsible and expandable?

A. It could be both; right? There could be a version that's expandable like this. There could be a version that's fixed like this.

Q. Is it fair to say you can't tell one way or the other from this figure which version it is?

MR. NEMTZOW: Objection, form.

A. Not to 100 percent. But again, I think the way the drawing is drawn, it implies that this is the

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expanded state of a collapsible device.

Q. Does Makower provide a figure that shows the device of figure 5H in a collapsed state?

MR. NEMTZOW: Objection, form.

A. Not this particular design. But if you look at 5G1 and 5G2, you see how a device that can be collapsed and expanded is depicted from a drawing perspective.

Q. Sure, but the devices depicted in 5G1 and 5G2 are different than the device depicted in 5H; correct?

MR. NEMTZOW: Objection, form.

A. Correct. It is a different device. But if you look at the style of drawing -- and if I had to pick, is 5H an expanded device or is it a collapsed configuration of the device, I would guess it's the expanded version of the device, just like shown in figure 5G, which is the expanded version of figure 5G1.

Q. So just to be very clear, are there any drawings in Makower that show the specific device of figure 5H in the collapsed state?

MR. NEMTZOW: Objection, form.

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A. No, I don't think so.
Q. Is there any, like, written description in Makower that describes what the device of figure 5H looks like in the collapsed state?
MR. NEMTZOW: Objection, form, foundation.
A. No, I don't find that description in Makower.
Q. So going back to the annotated figure you have on Page 32 of the '318 declaration: I'd asked you a little bit earlier whether you have an understanding of what type of electrodes those four electrodes are. Do you have an understanding of what type of electrode those four electrodes are in figure 5H of Makower?
MR. NEMTZOW: Objection, form.
A. Well, the most we know is what Makower says -- right? -- which is the electrodes may be bipolar, monopolar, or facilitated by any other suitable form of energy.
Q. So other than the fact that those electrodes may be bipolar, monopolar, or facilitated by any other suitable form of energy, do you have any understanding of what type of electrodes the electrodes in figure 5H

of Makower are?

MR. NEMTZOW: Objection, form.

A. Well, I think, you know, someone skilled in the art would look at those and say --

So Makower leaves a lot open to interpretation; right? And so I think that's where someone skilled in the art would come in and say, "Okay, if I were to make that device, where would I put the electrodes, how would I place them, what metal would I make them out of, how would I wire them?"

Q. Okay, I mean, that's fair, to use what someone of ordinary skill in the art would know. So even considering that, do you have an understanding of what type of electrodes the four electrodes depicted in figure 5H of Makower are?

MR. NEMTZOW: Objection, form.

A. By "type" are you asking what the material is, what the thickness is, what are the dimensions, what are the surface conditions?

Q. You know, I don't need to know about the thickness. This might be a good question for you to kind of explain what are different types of

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electrodes. Like, we've talked a little bit about a ring electrode. Generally in radiofrequency ablation technology, what are the general types of electrodes that can be used for those purposes?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. Well, a ring electrode is, of course, very common, because they're easy to manufacture. But all other kinds of electrodes are common as well. You can make them out of like little spots that are adhered or melted into the substrate material. Anything that conducts electricity from a materials perspective is a candidate to be an RF electrode.

But for a material selection, someone skilled in the art would select a material type that is inherently biocompatible, so nickel, stainless, nitinol, gold, gold plated on any number of metals.

Q. I guess what you just said kind of -- maybe when I was asking about a ring electrode, maybe that wasn't the right word. You know, obviously the device that's intended to be depicted in figure 5H is supposed to have some kind of three-dimensional

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geometry; right?

A. Yes.

Q. So I guess, you know, when I was saying ring electrodes, what I really meant was some sort of electrode that goes all the way around the circumference of these struts.

So I guess, to your understanding, is what is depicted in figure 5H of Makower, are those electrodes that are supposed to go all the way around the circumference of these struts 214?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. I think if that's what Makower intended, that's what would have been described. You know, the ring electrodes are very common on catheters, because, you know, they're easy to -- well, not easy. But there are methods out there to make them and to apply them. You wouldn't normally put a ring electrode on a device like if, if there are struts. It would be difficult to do. So that's not how I interpret what Makower is describing here.

Q. So I guess what do you think these electrodes

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are supposed to be describing?

A. I think as seen here it's very plain: There are four electrodes, disposed across the struts. I don't think it's any more complicated than that.

Q. Is figure 5H of Makower showing four electrodes that are on the outer surface of the struts?

MR. NEMTZOW: Objection, form.

A. Well, it's a little vague; right? But if they weren't contacting the tissue, it wouldn't generate an RF ablation; right? And so it has to be contacting the tissue, and that would in this drawing most likely be on the outer surface of the strut.

Q. Okay. Andy then are the four electrodes shown here only on the surface of the strut that is, I guess, facing the reader?

MR. NEMTZOW: Objection, form.

A. Well, there's two sides; right? So you've got two electrodes that way, two electrodes this way. You know, we don't know what else is involved. Are there other struts that come out of the plane that also have electrodes?

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Q. I guess just focusing on the two struts that are shown here: Is it your understanding that -- that each of the electrodes that we can see in this figure wrap all the way around the strut?

MR. NEMTZOW: Objection, form.

A. I think it's vague. I think it's not clear. You could. That would be one way to do it. Another way would just be to have it on the outer surface. I think both are possible.

Q. Claim 1 of the '318 patent recites a handle and a shaft; correct?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. And claim 1 of the '286 patent also recites a handle and a shaft; right?

MR. NEMTZOW: Objection, form.

A. I believe so. I don't have it in front of me right now.

Q. What do you understand the term "handle" to mean in the context of the '318 and '286 patents?

A. Well, I mean, a handle can be something that is shaped -- right? -- to conform to your hand that

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you can apply. But a handle could be anything that effectively acts as a handle that you could grab.

Q. Could a catheter be a handle?

A. Possibly; the proximal end.

Q. If it was the part of the catheter that you grabbed, would that make it a handle?

MR. NEMTZOW: Objection, form.

A. Effectively, yeah.

Q. What do you understand the term "shaft" to mean in the context of the '318 and '286 patents?

MR. NEMTZOW: Objection, form.

A. Well, in general, I think "shaft" refers to sort of, you know, an elongated construction of the device.

Q. What do you mean by that?

MR. NEMTZOW: Objection, form.

A. So we're talking about the '318 patent; right?

Q. '318 and '286, yeah.

A. Okay. And we're talking about a specific claim; right? Are we?

Q. Claim 1 recites handle and shaft.

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A. Claim 1.
Q. Of both ends.
A. Okay. So that I addressed on Page 36 of my declaration.
I'm sorry, what was your question again?
Q. The question was: What do you understand the term "shaft" to mean in the context of the '318 and '286 patents?
MR. NEMTZOW: Objection, form.
A. A "shaft" could mean many things. I believe in this context it means something that connects the distal end to the proximal end of the device.
Q. I guess in any case, the handle is the part the user grabs onto; right?
MR. NEMTZOW: Objection, form.
A. I think that's fair to say, yes.
Q. And it's fair to say the shaft is not the part the user grabs onto; right?
MR. NEMTZOW: Objection, form.
A. Well, not necessarily; right? I mean, if you designed a device and you designed it with a handle and, you know -- I mean, the physician's going to grab

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the device wherever they find it to be convenient. So I don't think that's anything that's going to prevent them from grabbing the shaft, or effectively using the shaft as a handle.

Q. So if the physician grabs onto the shaft, would that make the shaft the handle in that case?

MR. NEMTZOW: Objection, form.

A. You might be able to say that.

Q. Let's go to Page 27 of your '318 patent declaration, and I'm looking at the annotated figure you've got towards the bottom.

A. Yes.

Q. This is an annotated version of Edwards '535's device; right?

A. Yes.

Q. Do you know whether Edwards '535's device is movable within the nose?

MR. NEMTZOW: Objection, form.

A. You mean after it's been deployed or before it's been deployed?

Q. Either.

A. So I would have to say yes.

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Q. How would the user move the device within the nose?

A. Well, they would have to manipulate it somehow.

Q. And how would they manipulate it?

MR. NEMTZOW: Objection, form.

A. In the case of Edwards -- I mean, I don't think Edwards goes into that much detail.

Q. Would the user use the catheter 124 to manipulate the device?

MR. NEMTZOW: Objection, form, foundation.

A. Or the device might have a handle that's just not shown here.

Q. Okay. To your knowledge, does Edwards ever describe a handle that's not shown?

MR. NEMTZOW: Objection, form, foundation.

A. So I don't believe Edwards has a handle in any of his drawings shown. But if you look at 124, and if you look at how 124 is terminated, from a drawing perspective, that implies there's more stuff; right? Anyone who draws that in a shaft says "There's something else there. I'm not going to draw the

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detail. That will be explained later."

Q. So it's possible the user could grab onto the catheter 124 to manipulate the device within the nose; right?

MR. NEMTZOW: Objection, form.

A. Could grab there or could grab onto whatever else is implied but not specifically depicted in this figure.

Q. So assuming the user grabs onto the catheter 124, wouldn't that make Edwards's catheter 124 a handle?

MR. NEMTZOW: Objection, form, foundation.

A. You know, I don't know. Again, I think there's a lot of stuff. Like I said, there's stuff that's implied by the way 124 -- the drawing of 124 is terminated. There's more stuff that's down the end there; and Edwards does not specifically describe, I don't believe, that stuff. But a person skilled in the art might presume it's maybe more shaft, maybe a handle, maybe other stuff.

Q. If we assume that the user grabs onto the catheter 124 to manipulate the device, wouldn't that

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make catheter 124 a handle?

MR. NEMTZOW: Objection, form.

A. From an operational perspective, perhaps.

Q. What do you mean, "perhaps"?

A. Well, I think "handle" in this way is a descriptive term; right? It's not a prescriptive term. If I'm using something as a handle, you could call it a handle.

Q. And in your declarations for the '318 and '286 patents, you propose combining Edwards '535's device with Stern's handle; right?

MR. NEMTZOW: Objection, form.

A. Well, let's see, where are we talking about here?

Q. If you turn to like Page 38, for instance. I believe in this paragraph, 79, and probably in others, you do opine about combining Edwards '535's device with Stern's handle; right?

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Well, you know, considering that Edwards '535 already has catheter 124 that can be used as a handle,

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wouldn't it be unnecessary to incorporate Stern's handle into Edwards' '535 device?

MR. NEMTZOW: Objection, form, foundation.

A. Well, from a design perspective -- the question is, if you go back to that figure of Edwards, the 124, you can argue -- I mean, there's something else that Edwards left off of that figure that he didn't go into the detail of and left it up to a person skilled in the art to figure out, based on the needs of the device.

Q. And that unshown stuff could be more catheter 124; right?

MR. NEMTZOW: Objection, form.

A. Could be more stuff and it could be a handle.

Q. Could be, but it doesn't describe that or show that in Edwards; right?

MR. NEMTZOW: Objection, form.

A. And that's where a person skilled in the art would look elsewhere for guidance. Stern provides some of that guidance.

Q. Well, if you assume that Edwards's catheter 124 just continues and there's no handle or there's

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no, I guess, separate thing that you're calling a handle, then in that case the catheter 124 would be the handle; right?

MR. NEMTZOW: Objection, form.

A. I think that's one interpretation of the drawing. Since we don't know, I think it's equally possible there is a handle at the end of it. Most medical devices that are inserted into body cavities have some form of handle. The NovaSure device that I worked on, for instance, had a handle. The Adiana ablation device that I worked on previously had a handle.

Q. So wouldn't it make sense to not just use catheter 124 as the handle?

MR. NEMTZOW: Objection, form.

A. From a design perspective, it comes down to satisfying typical user surgeon preferences. Most surgeons like to have something tactile in their hand to work with. A handle provides something more convenient than a catheter, which may be thinner and more difficult to manipulate.

Q. Where do you discuss surgeon preferences in

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your declaration?

MR. NEMTZOW: Objection, form.

A. That was not covered in my declaration. I was speaking as a person skilled in the art, who's designed medical devices in my career for surgeons.

Q. Let's go to Page 44 of your '318 declaration. And I'm looking at Paragraph 89, the first sentence. Do you see where it says, "As shown in Figure 3C, Edwards '535 shows an expandable member 132 and energy delivery device 134," and then it goes on? Do you see that?

A. Yes.

Q. So if you go back one page, to Page 43, and on Page 43 this is showing an annotated version of figure 3C of Edwards '535; right?

A. Yes.

Q. So where does figure 3C show an energy delivery device 134?

MR. NEMTZOW: Objection, form.

A. I don't see it. I don't see the reference here. It may be in the original application.

It's not in that figure. 134, though, is

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referred to in other figures of Edwards.

Q. Is it your opinion that Edwards '535's expandable member 132 is the claimed treatment element?

MR. NEMTZOW: Objection, form.

A. The expandable member and the energy delivery device comprise the treatment member, yes -- treatment element, I'm sorry.

Q. So are you saying that the expandable member 132 together with the energy delivery device 134 are the claimed treatment element?

A. That's what -- yes, the first sentence of Paragraph 89 of my declaration.

Q. Okay. Now, if you go back to Page 43, and you have some claim language reproduced here. Do you see that the claim says that the treatment element is configured to change from a first configuration to a second configuration?

A. Yes.

Q. Where in your declaration do you opine that the energy delivery device 134 changes from a first configuration to a second configuration?

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MR. NEMTZOW: Objection, form, foundation.

A. So that's first addressed in Paragraph 89 of my declaration.

Q. Can you point me to something a little more specific?

A. So Paragraph 89, if you continue to read the first sentence, it says "the expandable member 132 is expanded (configured to change from a first configuration to a second configuration)."

Q. I do see that. My question was where you opine that energy delivery device 134 is configured to change from a first configuration to a second configuration.

MR. NEMTZOW: Objection, form, foundation.

A. Well, 134 is the energy delivery device. 132 is the expandable member. Right?

So it's the expandable member that's changing shape, and the energy delivery device goes for the ride.

Q. I understand. I guess what I'm trying to get at is: Why in paragraph 89, at the top, why did you define the treatment element as both the expandable

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member 132 and the energy delivery device 134?

MR. NEMTZOW: Objection, form.

Q. I will say, it seems like elsewhere you kind of change it up and define the treatment element as just the expandable member 132.

MR. NEMTZOW: Objection, form, foundation, relevance.

A. Okay, can you identify where that occurred?

Q. Sure. I guess, for example, you know, you were talking about 89. You say, you know, the expandable member 132 is expanded. In 91 you say "therefore causes the expandable member 132 to change from a first configuration to a second configuration."

And then, I think, really when you get to 94, you know, this might be really what we should talk about. So it's fair to say that claim 1 of the '318 patent cites "an array of multiple pairs of bipolar radiofrequency electrodes disposed along the treatment surface of the treatment element." Right?

A. Yes.

Q. And then when you look in 94, Paragraph 94, it says you have "a plurality of bipolar energy

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delivery devices (i.e., an array of multiple pairs of bipolar radiofrequency electrodes), on the surface of expandable member 132," and then in parens "disposed along the treatment surface of the treatment element," closed parens.

A. Right.

Q. So my understanding is you're saying that the -- what is it? -- the energy delivery members 134 are the electrodes?

MR. NEMTZOW: Objection, form, foundation, relevance.

Q. And those are disposed on the surface of expandable member 132.

MR. NEMTZOW: Objection, same objection.

A. And together it's called the treatment element, yes, from 89, from Paragraph 89.

Q. I see that. So I guess where I'm getting a little confused is that the claim says "an array of multiple pairs of bipolar radiofrequency electrodes disposed along the treatment surface of the treatment element." Do you see that?

A. Yes.

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Q. So isn't it true that, according to the claims, the electrodes are different than the treatment element?

MR. NEMTZOW: Objection, form.

A. I don't necessarily read it that same way.

Q. Explain that.

A. Well, there's a treatment surface that's on the treatment element. We've got electrodes along it. I don't see what the issue is.

Q. Well, aren't the electrodes different than the treatment element?

A. Yes.

MR. NEMTZOW: Objection, form.

A. Well, as defined in 89; right? We have the energy delivery device and we have the expandable member; right?

Q. That's what you said in 89, yeah.

A. In this case the energy delivery device -- in Edwards -- I'm not quite sure if Edwards just defines that as electrodes.

But anyway, here's the thing, is: There's the energy delivery device. It's not just electrodes;

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right? If you look at Edwards, Edwards broadly defines it. It could be a laser fiber, microwave, ultrasound.

Q. Can you point me to where you're looking?

A. So Edwards, column 5, about line 36.

Q. I'm with you. And can you point me to what specifically you're looking at?

A. Well, I'm just saying, you called the energy delivery device electrodes, and I'm suggesting that Edwards defines "energy delivery device" as something not just electrodes but other methods of energy transmission. It could be electrodes, but it could be these other things as well.

Q. Right. But I mean, these patents are directed to the radiofrequency electrodes; right?

MR. NEMTZOW: Objection, form.

A. I mean, Edwards here sounds general in that regard; right? He says, "According to this method, the ablative energy may be any form of energy capable of causing ablation of the tissue."

Q. I mean, I'm not trying to trick you, but for the purposes of your analysis of the claims, you're

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not saying that the energy delivery devices are ultrasound components; right?

MR. NEMTZOW: Objection, form.

A. Well, I mean, they could be; right? According to Edwards, it could be.

Q. I'm with you. I'm with you. But again, I'm not trying to trick you, because the patents are directed to radiofrequency; right? So when you're talking about applying Edwards to the claim, you're saying in that instance we're talking about radiofrequency electrodes; right?

A. Yes, yes.

MR. NEMTZOW: Objection, form, foundation, relevance.

A. And my point is that the energy delivery device may consist of more than just specifically the electrodes. That's all. Maybe the wires, maybe the sensors, you know.

Q. I think I'm with you. I think we can wrap up this particular aspect of the conversation if we just go again to Page 46 of the '318 declaration. And again, just the way the claim's written, do you agree

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that the electrodes which are disposed along the treatment surface of the treatment element are different than the treatment element itself?

MR. NEMTZOW: Objection, form.

A. Well, I don't agree, and here's why: because I can say to you that your tires are placed underneath your car. It doesn't mean the tires are not part of the car.

Q. Okay. I mean, let me ask you this: In your analysis did you treat the electrodes as part of the treatment element?

MR. NEMTZOW: Objection, form.

A. I mean, I assumed it to be the case, consistent with what was written in 89. Yes.

Q. So in your analysis you treated the electrodes as the same thing as the treatment element?

MR. NEMTZOW: Objection, form.

A. I treated the energy delivery device -- right? -- as part of the treatment element.

Q. Okay. I understand the position you're taking.

Looking again at this Page 46 of your

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declaration: Do you see that claim 1 of the '318 patent recites "an array of multiple pairs of bipolar radiofrequency electrodes"?

A. Yes.

Q. What do you understand the term "array" to mean in the context of the '318 patent?

MR. NEMTZOW: Objection, form.

A. I don't think "array" is specifically defined in that patent. But I look at it as being any -- an arrangement; right? It's a particular type of arrangement.

Q. What do you mean by "a particular type of arrangement"?

A. They could be, you know, in a line, they could be on a diagonal, they could be in a circle, in any kind of shape that is, you know, describable.

Q. Is a random arrangement an array?

MR. NEMTZOW: Objection, form.

A. I think that's a good example of something that's not an array.

Q. Is any other arrangement that is not randomly an array?

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MR. NEMTZOW: Objection, form.

A. You might be able to say so, yes.

Q. Can a single row of electrodes be considered an array in the context of the '318 patent?

MR. NEMTZOW: Objection, form.

A. I think so, yes.

Q. Let's go flip to Page 48 of the '318 declaration.

MR. NEMTZOW: Would it make sense to do a break in a little bit?

MR. GILFORD: Thanks for asking. Now is fine, if you want.

(Recess taken.)

Q. So Dr. Martin, would you mind turning to Page 48 of the '318 declaration.

A. 48, yes.

Q. I'm looking at the top of the page at the annotated figure.

A. Yes.

Q. This is an annotated version of figure 6 of Edwards '535; right?

A. Yes.

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Q. Did you create this figure?
A. Edwards I believe created it, and it was annotated by some members of the legal team.
Q. So in this figure there are four green rectangles. Do you see that?
A. Yes.
Q. And you labeled those four green rectangles as multiple bipolar electrodes; right?
A. Yes.
Q. You also highlighted a portion of this figure in blue; correct?
A. Yes.
Q. And you labeled that blue portion as the expandable member; right?
A. Yes, correct.
Q. Is it your understanding that the expandable member shown in this figure is configured to expand?
A. Yes.
Q. Does this figure show the expandable member in the expanded state or the unexpanded state?
MR. NEMTZOW: Objection, form.
A. I think it's -- I assumed it was in the

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expanded state.

Q. That it's in the expanded state?

A. Correct.

Q. Okay, interesting. If you look towards the top and bottom of the blue highlighted part, do you see there's two arrows -- like there's arrows on each end, and they're just kind of one on the top and one on the bottom? Do you see that?

A. Yes.

Q. And then there's kind of like a dashed line going around?

A. Yes.

Q. So, again, I don't want to put words into your mouth, but when I looked at this figure, I assumed this was actually the unexpanded state, based off of that. Do you see what I'm talking about?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. I do see the dotted line you're mentioning. Is it labeled?

Q. I don't think so.

A. Okay. I accept that that's an

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interpretation. I don't think it changes my analysis, but....

Q. No, I understand. So, I mean, you know, again, just based off of what I've pointed to you with the dashed line and that kind of stuff --

A. Yeah.

Q. -- having considered that, do you think that this figure shows Edwards '535's device in the expanded state or the unexpanded state?

MR. NEMTZOW: Objection, form.

A. Again, I think it could be either; right? I mean, it could be unexpanded, it could be partially expanded, or it may be, when it goes to the dotted line, it would be expanded -- fully expanded.

Q. Okay. Now, the four electrodes that you highlighted in this figure, those are ring electrodes; right?

A. Yes.

Q. You might have answered this already, but what do you understand a ring electrode to be?

MR. NEMTZOW: Objection, form.

A. So most ring electrodes that I've encountered

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are basically -- they're created from -- if you think -- imagine a metal tube that's just simply serially cut, and those create rings and you can put them on catheters or other devices.

Q. So to your understanding, are ring electrodes expandable?

A. If they're made out of metal, then usually no.

Q. Do you know whether these ring electrodes shown in Edwards '535 are expandable?

A. Edwards isn't completely clear on that point. My assumption is that the rings themselves would not expand.

Q. Do you know whether the ring electrodes depicted in figure 6 of Edwards '535 are inside the expandable member?

MR. NEMTZOW: Objection, form.

A. I mean, it's an interesting question; right? Because we are mentioning the third dimension; right? In this 2D drawing there is an implication that at least in this plane, in the plane of the page, the expandable member encompasses the ring electrodes.

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What we don't know is in the plane perpendicular to the page where they are relative to each other, the ring electrodes versus the expanded member.

Q. So at least in the plane of the page, it appears from this figure that the ring electrodes are inside the expandable member. Is that your understanding?

A. Yes.

MR. NEMTZOW: Objection, form.

A. Yes.

Q. Well, you know, we talked a little bit about whether the figure shows the expandable member as expanded or unexpanded. Let's just assume that it shows the expandable member unexpanded.

A. Okay.

Q. So with that assumption, how would this device work?

MR. NEMTZOW: Objection, form.

A. I think -- what does Edwards say about it? So, I mean, Edwards says, you know, in one embodiment illustrated in figure 6 the energy delivery device includes one or more ring electrodes, as you

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mentioned, disposed on the surface of the expandable member, as illustrated.

Q. Sure, but the way it's depicted, how would those electrodes deliver energy to the tissue?

A. Well, to deliver RF energy, they would have to contact the tissue directly. And so therefore, what I mentioned before is, we don't know what's in the plane of the -- perpendicular to the paper. To actually operate RF energy, they would have to make tissue contact in that plane.

Q. It sounds like you agree, though, that if these electrodes are not contacting the tissue, then this device wouldn't work, in the sense it wouldn't deliver RF energy to tissue; right?

MR. NEMTZOW: Objection, form.

A. Correct. It might deliver RF energy to whatever is inside the expandable member or to the expandable member itself. But the frequencies that are typically used in applying RF energy requires contact with the tissue to transmit that energy.

Q. Okay?

A. So that's why I'm assuming that in the plane

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perpendicular there's some mechanism by way the electrodes can contact the tissue.

Q. You're assuming that, but it's not shown or discussed in Edwards '535; correct?

MR. NEMTZOW: Objection, form.

A. Correct.

Q. Now let's change it up a little bit and assume that this figure 6 shows the expandable member in the unexpanded state and that the expanded state is what's shown with the dashed lines.

A. Okay.

Q. Now, I think you said earlier that, at least the way this figure's drawn, the electrodes are inside the expandable member; right?

MR. NEMTZOW: Objection, form.

A. Yeah, if I take at face value only the two-dimensional drawing here, yes, I think that's what you would conclude.

Q. And then obviously if the expandable member were to expand to where the dashed line is, the electrodes would still be inside the expandable member; right?

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MR. NEMTZOW: Objection, form.

A. Yes, if we only focused on the two-dimensional drawing here.

Q. Okay. And again, if the electrodes are not contacting the tissue, they essentially don't work for the purposes of radiofrequency ablation; correct?

MR. NEMTZOW: Objection, form.

A. If the electrodes don't contact the tissue, they don't deliver radiofrequency energy to the tissue.

Q. Okay, I understand.

Let's change it up even a little bit more. Let's assume that figure 6 shows the expandable member in the unexpanded state, and let's assume that these radiofrequency electrodes are wrapped around the outside of the expandable member. So with that assumption, now, what would happen if then you inflated or expanded the expandable member?

MR. NEMTZOW: Objection, form.

A. Well, I'm sorry, could you repeat the question?

Q. I guess let me break it down a little bit.

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So again, the two assumptions I want you to make are, one, figure 6 shows the expandable member in the unexpanded state; and Assumption 2 I want you to make is that these ring electrodes are around the outside of the expandable member. Are you with me on that?

A. Yes, yes.

Q. So now, if you were to expand the expandable member, you agree that the ring electrodes would not expand; correct?

MR. NEMTZOW: Objection, form.

A. Yes, if the ring electrodes were made of a metal, or anything rigid, correct, they would not expand with the expandable member.

Q. So essentially, there would be, what, lumps in the expandable member where the ring electrodes are?

MR. NEMTZOW: Objection, form.

A. I kind of envision this as, if you expanded it, the ring electrodes would stay at the same circumference. The rest of the member would somehow expand; not quite clear how that would look in the end. But sure.

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Q. Would it ever make sense to make a device like that?

MR. NEMTZOW: Objection, form.

A. I mean, you're speaking hypothetically. I don't know. I mean, the one thing to think about is -- that we don't know is, does expansion in one direction cause it to -- cause the ring electrodes to move in the other dimension; right? And again, that's not really covered in Edwards.

Q. Either way, if you expanded the expandable member and it kind of had lumps in it where the ring electrodes are, those ring electrodes aren't going to be touching the tissue; right?

MR. NEMTZOW: Objection, form.

A. In the case where the device is symmetric, yes, that's true. But if it's not necessarily symmetric, that may not be the case. You might be pushing the ring electrodes sort of one way or the other or up or down. Edwards doesn't necessarily cover that, but it would be possible.

Q. Okay. Would you mind flipping to Page 59 of your '318 declaration.

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A. Okay.
Q. And I'm looking at Paragraph 113, the last sentence. Do you see where you wrote, "For example, I recently worked on designing Adiana and NovaSure, two radiofrequency ablation devices that use pairs of bipolar electrodes"?
A. Correct.
Q. Remind me again when you worked on designing those two devices.
A. So Adiana would have been starting in -- well, both of them would have been starting in 2007.
Q. And ending in approximately when?
A. When I left Hologic, at the end of 2011.
Q. Okay. So is it your understanding that your work in 2011 is recent?
A. I think that's a matter of perspective.
Q. What's your perspective?
A. I mean, you know, I have a career that spans 35 years in ablation devices. So ten years is a little more recent than not.
Q. All right. So I guess to be clear, though, when you say you recently worked on designing Adiana

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and NovaSure, you're referring to your work spanning approximately 2007 to 2011; right?

A. Yes, that's accurate.

Q. In your declaration for the '318 patent you propose combining Edwards '535 with Stern; right?

A. Yes.

Q. Are you proposing to use the schematic of Stern's figure 15 in the Edwards '535 device?

MR. NEMTZOW: Objection, form.

A. Let me look at that. Stern's figure 15. Do you have a copy?

Q. Of Stern? Yeah. So I'm handing you what was previously marked as Neurent Exhibit 1033. And this is the Stern reference; right?

MR. NEMTZOW: For the record, I think this was from the '271, '318, and '286 IPRs, as Exhibit 1033.

A. Your question was regarding which figure?

Q. Figure 15 of Stern. And the question was: Are you proposing to use the schematic of Stern's figure 15 in Edwards' '535 device?

MR. NEMTZOW: Objection, form.

A. I mean, it's one possibility; right? I mean, Stern teaches us a way to control pairs of bipolar electrodes.

Q. Okay. Well, exactly how are you combining Edwards '535 and Stern for the -- let's say for the '318 patent?

MR. NEMTZOW: Objection, form.

A. Well, if you look in Paragraph 125, Edwards doesn't provide details on how -- does not provide details on how to pair and wire bipolar electrodes. So we can look to Stern, figure 15, to see how to do that.

Q. Okay. So I guess that leads me back to my original question: So you're relying on Stern, figure 15, for how to wire Edwards '535's electrodes? Is that accurate?

MR. NEMTZOW: Objection, form, relevance.

A. I mean, it's one possibility -- that combined with, you know, the knowledge of someone skilled in the art.

Q. I guess is there something from figure 15 that you're not using in Edwards '535?

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MR. NEMTZOW: Objection, form, relevance.

A. I mean, I'm not quite sure I understand the question.

Q. I mean, you know, I'm just trying -- for example, you pointed to Paragraph 125, and you've got these schematics that you're pointing to, like the figure 15 schematic, right above it. Do you see that?

A. Yes.

Q. So, I mean, again, I'm not trying to trick you. I'm just trying to understand what exactly the combination of the two references is?

A. Like I said, Edwards doesn't show you how to wire up pairs of bipolar electrodes. Stern does.

Q. Right. And it shows you that in figure 15?

A. That's one way to do it, yes.

Q. What's another way to do it that you're proposing to combine Edwards '535 with?

MR. NEMTZOW: Objection, form, relevance.

A. I mean, Stern has other figures as well you could take from how to wire up. It's not just figure 15, but there are other figures that show you different other configurations -- figure 5, for

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instance. Figure 5's a little more complicated.

Q. Figure 5's a monopolar configuration, isn't it?

MR. NEMTZOW: Objection, form.

A. It depends. You could configure it in other ways as well.

Q. What's depicted in figure 5 of Stern is a monopolar configuration; correct?

MR. NEMTZOW: Objection, form.

A. Well, he describes figure 5 as a schematic representation of power control for a multisegment element shown in figure 4.

So figure 4 is a bipolar -- is a bipolar configuration.

Q. Why do you say that?

A. Well, you have multiple electrodes on an array.

Q. Can you do me a favor and turn to Page 110 of your declaration.

A. Yes.

Q. I'm looking at the top. You say, "As I have shown before, Stern's figure 5 teaches a monopolar

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configuration"?

A. Yes, yes.

Q. So if I understand you correctly, you agree that Stern's figure 5 teaches a monopolar configuration; right?

MR. NEMTZOW: Objection, form.

A. Yes, and it's also applicable to bipolar -- not all the elements. So if you focus on the RF power element, aspects of that are still applicable to bipolar.

Q. Are you proposing to combine Stern's figure 5 and Stern's figure 15?

MR. NEMTZOW: Objection, form.

A. You could. You could combine them in some fashion, especially if you incorporated sensors including temperature control.

Q. I want to be very clear: In your analysis for the '318 patent, did you propose combining Stern's figure 5 and Stern's figure 18 -- sorry, Stern's figure 15?

A. Well, let's see.

So I don't think I expressly suggested a

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wiring diagram that combined them both.

Q. Are you saying you implicitly suggested that? Because you said "expressly suggested." So what do you mean by that?

MR. NEMTZOW: Objection, form.

A. So if you look in Paragraph 175.

Q. Okay.

A. There are aspects of Stern, like Stern discloses a signal generator and an RF generator.

Well, it may all be doable with Stern's figure 15. I mean, that provides some measure of controlling the bipolar electrodes. Figure 15 is leaving a lot off. Some of that is in the figure 5.

Q. What do you mean by "figure 15 is leaving a lot off"?

A. So you look at figure 15, '228. So that's just implying -- the squiggle in the circle implies the voltage source that's giving an RF voltage. There's a lot more that goes into generating an RF signal than what was depicted there. That's a placeholder for the rest of the RF generator that's not in this figure. There are elements of the rest of

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the RF generator that are included in other parts of Stern.

Q. Is figure 15 leaving anything else off?

MR. NEMTZOW: Objection, form.

A. Well, yes.

Q. What?

A. But things that a person skilled in the art would have to fill in.

Q. Such as what?

A. So, for instance, all of these switches; right? Those are effectively relays. What type of relay do you use? Are they relays that are sufficient to carry the current required to deliver the RF energy?

Q. Anything else that --

A. Details like that.

Well, I have to say, I'm not an electrical engineer by training, and so beyond a general description, I cannot design for you a circuit that will generate RF energy.

Q. Okay. Now, again, we were talking about Stern figure 5 and Stern figure 15. I want to be very

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clear: I'm talking about your '318 declaration, and I would like you to point me to where in the '318 patent declaration you propose combining Stern figure 5 with Stern figure 15.

MR. NEMTZOW: Objection, form, foundation.

A. So Paragraph 209.

Q. I'm with you.

A. So "Stern also teaches that the monopolar embodiment of Figure 5 can be combined with the bipolar configuration of Figure 15. While describing Figure 5's 'unipolar power delivery," Stern teaches that 'improved control can be achieved if a bipolar operation is utilized.'"

Q. Just to be clear, this paragraph appears as part of your analysis of claim 13; right?

A. Yes.

Q. Going back to your claim 1 analysis; I think we were on....

Again, we're talking about the combination of Edwards '535 with Stern. So to be clear, in your claim 1 analysis for the '318 patent, you are proposing to combine Edwards '535 with the schematic

shown in figure 15; right?

MR. NEMTZOW: Objection, form.

A. In claim 1, yes.

Q. And in your declaration for -- I guess for the '318 patent you also have a combination of Makower and Stern; right?

A. Let's see.

Q. It's further along.

A. Correct. Yeah, Group 4 and Group 5.

Q. So in your '318 patent declaration for your analysis of claim 1 for the Makower-Stern combination, for that combination you're also proposing to use the schematic of Stern's figure 15 and Makower's device; right?

MR. NEMTZOW: Objection, form, relevance.

A. I believe so.

Q. In your declaration for the '286 patent you propose combining Edwards '535 with Stern and Makower with Stern; right?

MR. NEMTZOW: Objection, form.

A. You're talking about which one?

Q. The '286.

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A. '286. Which paragraph was this?
Q. I wasn't pointing to a particular paragraph. I mean, if you want to look at the grounds to refresh your recollection to answer this question, that's fine. The question was: In your declaration for the '286 patent you're proposing combining Edwards '535 with Stern and Makower with Stern; correct?
MR. NEMTZOW: Objection, form.
A. Makower, Stern, Edwards; Makower, Stern, Edwards and Edwards; Makower, Stern, Edwards, Liang; and then Makower, Stern, Edwards, Liang, and the other Edwards.
Q. So the answer is yes, for the '286 patent you're proposing combining Edwards '535 with Stern and also proposing combining Makower with Stern; correct?
MR. NEMTZOW: Objection, form.
Q. I understand there's other --
A. Not alone.
Q. I understand, yes.
For those combinations, Edwards '535 with Stern and Makower with Stern, for your claim 1 analysis for the '286 patent you're proposing to use

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the schematic of Stern's figure 15 in Edwards '535's and Makower's devices; correct?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. I believe so. Is there a specific paragraph in the declaration, in the '286 declaration, you want to address?

Q. I think it was more general than a specific question. I mean, do you need to be pointed to a specific paragraph to answer that question?

A. If you have it offhand, I think it would expedite the process.

Q. I don't know, Page 68, for example -- and kind of going on, I guess.

MR. NEMTZOW: Objection, form.

Q. But I'll repeat the question: For the combinations of Edwards '535 with Stern and Makower with Stern for the '286 patent claim 1 analysis, you're proposing to use the schematic of Stern's figure 15 in Edwards '535's and Makower's devices; correct?

MR. NEMTZOW: Objection, form, relevance.

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A. Yes, correct.
Q. And then for the '271 patent you propose combining Edwards '535 with Stern; right?
MR. NEMTZOW: Objection, form, relevance.
A. So '271 combines Edwards '535, Kong, and Stern; and Edwards, Liang, and Stern; and Edwards, Liang, Stern, and Edwards.
Q. So, in other words, the '271 patent you're combining Edwards '535 with Stern and potentially other references.
A. Yes.
MR. NEMTZOW: Objection, form.
Q. So for the combination of Edwards '535 with Stern for, you know, your analysis in claim 1 of the '271 patent, you're proposing to use the schematic of Stern's figure 15 and Edwards '535's device; correct?
MR. NEMTZOW: Objection, form, relevance.
A. Yes.
Q. I know we've been jumping around a little bit. Can you go ahead and pick the '318 declaration back up, and I'm looking at Page 95.
A. Okay.

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Q. The first sentence in Paragraph 178. Do you see there it says, "Stern teaches applying RF energy in a range of frequencies including a 460-kilohertz wave across multiple channels"? Do you see that?

A. Yes.

Q. Is it your opinion that Stern discloses the claimed 460-kilohertz sinusoid wave?

A. Well, it says "wave" here in the report. Does it say "sinusoid" in the patent?

Q. To answer your question, on Page 93, it gives the claim language.

A. Okay. In the claim; right? Okay.

Q. So that's what the claim says, is a 460-kilohertz sinusoid wave.

A. Okay.

Q. And my question to you was: Is it your opinion that Stern teaches or discloses the claimed 460-kilohertz sinusoid wave?

MR. NEMTZOW: Objection, form.

A. I mean, according to my declaration, he does. I can go back and review his patent. But, I mean, to someone skilled in the art, 460 kilohertz is probably

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the most common frequency at which RF energy is applied.

Q. I understand your position. So let's just talk about your opinion that Stern discloses or teaches the claimed 460-kilohertz sinusoid wave.

It's fair to say that Stern doesn't disclose exactly 460 kilohertz, does it?

MR. NEMTZOW: Objection, form.

A. Well, I'd have to review the patent to fully answer that.

Q. Maybe to help you out, if you look at Paragraph 178 of your declaration.

A. So "Stern teaches applying RF energy in a range of frequencies including a 460 kilohertz wave across multiple channels."

Q. I don't think -- I don't want to put words in your mouth, but I don't think you're saying in this sentence that Stern teaches the including the claim of 460 kilohertz. I think you say Stern teaches at least 250 megahertz and less than 100 megahertz?

MR. NEMTZOW: Objection, form.

Q. If you want to double-check your own work,

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feel free to pick up Stern. I think I gave you a copy.

A. Fair enough. But I read 460 kilohertz as being between 260 kilohertz and 100 megahertz.

Q. Understood. So the question was: Stern doesn't disclose exactly 460 kilohertz; correct?

MR. NEMTZOW: Objection, form.

Q. In other words, Stern discloses a range but doesn't disclose exactly that number; correct?

MR. NEMTZOW: Objection, form.

A. He includes a range -- Stern includes a range that incorporates 460 kilohertz.

Q. Right. So I think we can agree that Stern discloses a range; right?

A. Yes.

Q. And we can agree that 460 kilohertz is inside of that range; correct?

A. Yes.

Q. But if you look at Stern, you're not going to find that exact number of 460 kilohertz in Stern; right?

MR. NEMTZOW: Objection, form.

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A. Without reading the patent application, I'll take your word for it.

Q. Okay. So again looking at your Paragraph 178 of your '318 declaration: You say that Stern teaches a range of frequencies between 250 kilohertz and 100 megahertz. Right?

A. Yes.

Q. 100 megahertz is 100,000 kilohertz; is that correct?

A. Yes.

Q. So it's fair to say Stern teaches a pretty massive range of frequencies; right?

A. It is a wide range, yes.

Q. Are you aware that the disclosure of a broad range does not teach a specific value within that range?

MR. NEMTZOW: Objection, form.

A. If this is a legal term, I'll accept your statement.

Q. Can you go ahead and flip to Page 97 for me. I'm looking towards the bottom of Paragraph 180. And you write -- it's kind of in the middle of a sentence.

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But you wrote, "I believe Edwards '535 disclosure of megahertz range energy may be a typo." Do you see that?

A. Yes.

Q. What's your basis for that statement?

A. Well, having worked in the field of radiofrequency ablation for several decades, I've never seen a commercial device operate in a megahertz range. And the reason is, it's just more expensive to build the hardware to do so, and the effects on the tissue are -- you don't get as much depth of penetration for a megahertz range RF ablation.

Q. Have you ever spoken with the inventors of the Edwards '535 patent?

A. No.

Q. And as we discussed a few minutes earlier, Stern discloses megahertz range energy, doesn't it?

A. But to a lower level.

Q. What do you mean by that?

A. Well, Edwards discloses -- I'm sorry. Stern disclosed up to -- what was it? -- 10 megahertz; right?

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Q. I think it was 100 megahertz.
A. I'm sorry, 100 megahertz, yes.
Q. Do you want me to reask the question?
A. Yes, please.
Q. So my question was: Stern discloses megahertz range energy; correct?
A. To megahertz, yes, that's correct -- up to the megahertz range, yes.
Q. So isn't it fair to say that Edwards '535's disclosure of megahertz range energy is consistent with Stern's disclosure of megahertz range energy?
MR. NEMTZOW: Objection, form.
A. Let's see. Let me just look at Edwards for a moment.
Yeah, so Edwards says -- so column 5, line 46. "When the energy is RF radiation, the energy preferably has a frequency between 300 megahertz and about 700 megahertz." There is no RF ablation device that I know of that operates at 300 megahertz. Stern discloses up to 100 megahertz. So there's not overlap between the two of them.
So yes, I contend that Edwards has a typo.

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Q. If you go back to Page 46 of the '318 declaration. I'm looking at the claim language you have reproduced here.

Claim 1 of the '318 patent recites the term "multiple pairs of bipolar radiofrequency electrodes." Correct?

A. Yes.

Q. Claim 1 of the '286 patent also recites the same term; correct?

A. Yes.

Q. What do you understand the term "bipolar radiofrequency electrodes" to mean in the context of the '318 and '286 patents?

MR. NEMTZOW: Objection, form.

A. Well, if you look at, on the Paragraph 99, what's reproduced as figure 17, that's a bipolar electrode pair.

Now, multiple would be more than one set of those -- if you had, let's say, multiple figure 17's.

Q. I guess just focusing on the term "bipolar radiofrequency electrodes," what do you understand

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that term to mean in the context of the '318 and '286 patents?

MR. NEMTZOW: Objection, form.

A. I'm sorry, I'm not following -- I'm not following your question. Is there something specifically in the declaration that you have a question about?

Q. No, more generally. Just in a general sense, what do you understand that term to mean in the context of these two patents?

A. "Bipolar," "electrodes," or "pairs"?

Q. Sorry, not pairs. I'll ask it one more time so we're on the same page.

What do you understand the term "bipolar radiofrequency electrodes" to mean in the context of the '318 and '286 patent?

MR. NEMTZOW: Objection, form.

A. Well, a pair of bipolar electrodes are as seen in figure 17 here. Right? It's where you've got two electrodes. They have opposite polarity. Current flows from one to the other -- in the simplest sense.

Q. That's fair. So in the simplest sense, the

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term "bipolar radiofrequency electrodes" means two electrodes that have opposite polarity where current flows from one to the other? Is that fair to say?

MR. NEMTZOW: Objection, form.

A. I'd say that's a description, not necessarily a definition.

Q. Can you provide a definition?

A. No, because I believe there's such a variability seen in the implementation of bipolar electrodes.

Q. Do bipolar electrodes always operate in pairs?

MR. NEMTZOW: Objection, form, relevance.

A. It would be possible to operate a bipolar array --

Well, yes. I mean, there's not necessarily -- you could have a configuration where a set of electrodes are always the anode and then one electrode's always the cathode, or opposite. But you could turn them all on at the same time, and so in this case they're all operating, or you could address them one by one -- kind of like what Stern has in his

figure, where he shows how to switch them all on or off or however combination you desire.

Q. I follow you. I think my question was like a little more simplistic. It was basically: Do you always have to have two or more electrodes to have a bipolar electrode pair, or could you -- let me rephrase it.

Can you have a bipolar radiofrequency electrode if there's just one electrode?

MR. NEMTZOW: Objection, form.

A. I think then that is monopolar. You always need another electrode. To get current to flow -- right? -- in any configuration, you need more than one electrode. And as it's used -- right? -- when -- as I explained before about the difference between bipolar and monopolar, when you have a grounding pad at a distance, that's called monopolar, and when you have electrodes that are of, you know -- in closer proximity of similar size and shape, that's called bipolar.

Q. So for bipolar electrodes, you always have to have essentially two or more electrodes working in

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conjunction with each other?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. Are bipolar electrodes always -- do they always use radiofrequency?

MR. NEMTZOW: Objection, form, and relevance.

Q. I guess the way I'd ask it is: If I said -- if the claim said "bipolar electrodes" instead of "bipolar radiofrequency electrodes," would it mean the same thing or would it mean something else?

MR. NEMTZOW: Objection, form.

A. If you have two electrodes, you could run any frequency through them; right? If you're defining them as bipolar RF electrodes, you're implying that it's one of the frequency ranges, whichever one we agree on, would run through those electrodes.

Q. I guess so you could have bipolar electrodes that don't run on radiofrequency?

A. Sure. You could have a DC, a direct current. I mean, no one does that any more, but you could do it.

Q. So again, now asking about the term "pairs" of bipolar radiofrequency electrodes: What do you understand that term to mean in the context of the '318 and '286 patents?

MR. NEMTZOW: Objection, form.

A. So I would say you'd have to have at least three individual electrodes to do a multiple -- multiple pairs of bipolar electrodes.

Q. Sorry. My question wasn't about the "multiple" part. So if you take "multiple" out and you just have pairs of bipolar radiofrequency electrodes, what does that mean in the context of the '318 and '286 patents?

A. Well, I guess to say "multiple pairs" is redundant. If you say "pairs," it's already plural. So that would mean if you have multiple pairs, that would be four electrodes.

Q. "Multiple pairs" implied there has to be at least four electrodes?

A. You could define it as maybe three, depending on how you operate it.

Q. So in other words to have multiple pairs, it

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sounds like you agree you need at least three electrodes?

MR. NEMTZOW: Objection, form.

A. Yeah.

Q. I get your point about the multiple pairs versus pairs is redundant, so I guess I'll change this up a little bit.

What do you understand the term "pair of bipolar radiofrequency frequency electrodes" to mean?

MR. NEMTZOW: Objection, form.

A. Well, figure 17 -- right -- "bipolar electrode pair." That's what I understand it to mean.

Q. So it sounds like the term "pair of bipolar radiofrequency frequency electrodes" essentially has the same meaning as the term "bipolar radiofrequency electrodes"?

MR. NEMTZOW: Objection, form.

A. Run it by me again.

Q. If I said the term "pair of bipolar radiofrequency electrodes," that would essentially mean the same thing as just the term "bipolar radiofrequency electrodes"?

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MR. NEMTZOW: Objection, form.

A. Well, I don't know. "Pair" implies the connectivity between them; right? If I had two bipolar electrodes but I put them at the same polarity, you know, they're not going to do anything.

Q. Okay, interesting point. So do you agree that a pair of bipolar radiofrequency electrodes has to have opposite polarity?

MR. NEMTZOW: Objection, form.

A. For current to flow, yeah.

Q. Well, if two electrodes have the same polarity, would those two electrodes be a pair of bipolar radiofrequency electrodes?

MR. NEMTZOW: Objection, form.

A. Well, no radiofrequency energy is going to flow between them in that case, if they're so electrified.

Q. And if there's no radiofrequency energy flowing between them, in that case they're not a pair of bipolar radiofrequency electrodes?

MR. NEMTZOW: Objection, form.

A. I mean, there, are they capable of it or you

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just don't have them electrified? If you look at Stern, like depending on how you turn Stern's switches on or off -- right? -- you could make a bipolar electrode pair, the same polarity, opposite polarity, the same high, the same low.

Q. I understand what you're saying. So I guess let's take the example where it's not a matter of capability. So you just have two electrodes that, you know, they both are the same polarity, and you can't switch the polarities. Do you know what I'm saying? So in that case are those two electrodes a pair of bipolar electrodes?

MR. NEMTZOW: Objection, form.

A. I think that sounds more like a philosophical question; right?

Q. It might be.

A. It's like what's the sound of one hand clapping.

Q. I don't mean it to be, but I'm also not the expert. So if it's a dumb question, it's a dumb question.

A. I mean, I would say yes, it is.

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Q. A dumb question or --
A. No, no. No, that is, you know, a bipolar electrode pair.
Q. It would be?
A. Yeah.
Q. Even though they're both the same polarity?
A. That's how they are at the moment. If they're wired to separate circuits, they happen to have the same polarity, I don't know, I think that's more a philosophical question.
Q. We might just chalk that up as a dumb question and move on.
MR. NEMTZOW: Would now be a good time for a break?
MR. GILFORD: Sure. That's fine. Let's break now.
(Recess taken.)
Q. So Dr. Martin, are you aware that claim 1 of the '271 patent recites the term "bipolar electrode pairs"?
A. Claim 1 of the '271 patent. Let's see.
Yes.

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Q. Is it your understanding that the term "bipolar electrode pairs" means the same thing as the term "pairs of bipolar radiofrequency electrodes," which is recited in claim 1 of the '318 patent?

MR. NEMTZOW: Objection, form, relevance.

A. Well, I have to look at that. So '271 versus '318?

Q. Yep. So '271 is "bipolar electrode pairs," and '318 is "pairs of bipolar radiofrequency electrodes."

A. And which claim is it in '318?

Q. Claim 1.

A. Okay, I see them.

So you're asking me if it's the same in the different patents?

Q. No, because obviously they're different terms. I was asking does the term "bipolar electrode pairs" mean the same thing as the term "pairs of bipolar radiofrequency electrodes"?

MR. NEMTZOW: Objection, form, relevance.

A. So you're asking about radiofrequency as a limitation on the claim '318?

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Q. Nope. I'm just asking if those two terms, to your understanding, mean the same thing.

A. The term -- what terms now are we comparing?

Q. "Bipolar electrode pairs" versus "pairs of bipolar radiofrequency electrodes."

MR. NEMTZOW: Objection, form.

A. But they're in different patents; right?

Q. Yes.

A. So I didn't offer an opinion on comparing those two patents.

Q. I understand that you did not compare those two terms. I'm just asking you as part of this deposition whether you understand those two terms to mean the same thing or different things.

MR. NEMTZOW: Objection, form, relevance.

A. I think you could argue -- I don't know what limitation "radiofrequency" would put on. But you could argue that if you don't have "radiofrequency" as a limitation, it would permit direct-current bipolar ablation.

Q. Well, I guess let's break it down a little bit. So is a bipolar electrode pair the same thing as

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pairs of bipolar electrodes?

MR. NEMTZOW: Objection, form, relevance.

A. Well, the way you stated it, a pair of bipolar electrodes --

Q. I took out "radiofrequency."

A. -- is two electrodes; right? At least; right? Two rows of bipolar electrode pairs --

Q. Drop the two rows part. Let's take a step back.

So does the term "bipolar electrode pairs" mean the same thing as the term "pairs of bipolar radiofrequency electrodes"?

MR. NEMTZOW: Objection, form, relevance.

A. I mean, it seems -- other than the "radiofrequency" part; right? Otherwise they seem similar.

Q. So basically, a pair of -- pairs of --

Pairs of bipolar radiofrequency electrodes, the claim requires that those bipolar electrodes are radiofrequency electrodes; correct?

MR. NEMTZOW: Objection, form.

A. I'm sorry, which patent now are we talking

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about?

Q. '318 and '286, the ones that recite pairs of bipolar radiofrequency electrodes.

MR. NEMTZOW: Objection, form, foundation.

A. '318 and '271?

Q. The two patents that recite the term "pairs of bipolar radiofrequency electrodes" are the '318 and the '286.

A. '286.

Q. The '271 recites "bipolar electrode pairs."

A. Okay. That's why I'm confused. So this is '286, this claim.

Q. '286, claim 1, would have "pairs of bipolar radiofrequency electrodes."

MR. NEMTZOW: Objection, form.

A. So we've got '286 has "multiple pairs of bipolar radiofrequency electrodes." '318 has "an array of multiple pairs of bipolar radiofrequency electrodes."

Q. Correct. So the term "pairs of bipolar radiofrequency electrodes" appears both in the '286 and '318 patents; right?

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A. Yes, yes.
Q. So I'm asking you to compare that term, "pairs of bipolar radiofrequency electrodes," to the term "bipolar electrode pairs," which is in the '271 patent.
MR. NEMTZOW: Objection, form, relevance.
A. Now I'm with you.
Q. I know, it's a lot of tricky terms. Do you want me to just reask the question?
A. "Bipolar electrode pairs" are different than "pairs of bipolar radiofrequency electrodes." I don't know if I see the distinction, but....
Q. Just so the record is clear, I'll ask the question one more time and then you can respond.
So the question was: Is it your understanding that the term "bipolar electrode pairs" means the same thing as the term "pairs of bipolar radiofrequency electrodes"?
MR. NEMTZOW: Objection, form, relevance.
A. Yes, I would say those are substantially equivalent.
Q. So going to Page 50 of the '318 declaration.

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I'm looking at Paragraph 101, second-to-last sentence. Do you see where you wrote, "Stern teaches examples in which electrodes can be paired by closing particular subsets of switches"?

A. Yes.

Q. What do you mean by that?

A. So it's the whole idea of making them opposite polarity.

Q. And you do that by closing certain switches?

A. Yes.

Q. So if I understand you correctly, it's your opinion that certain electrodes in Stern's figure 15 can become paired by closing particular switches. Is that accurate?

A. Correct, yes.

Q. So in Stern's figure 15 the electrode pair is formed only when certain switches are closed; is that correct?

MR. NEMTZOW: Objection, form.

A. Well, in my mind, the "pair" implies that they have opposite polarity; right? That current is flowing between them.

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Q. And until you close the switches, that doesn't happen; right?

A. Correct, yeah.

Q. So if the -- if no switches are closed in Stern's figure 15, then there's no pairs in Stern's figure 15; correct?

MR. NEMTZOW: Objection, form.

A. I mean, you might be able to argue that. I mean, I think it depends on the device; right?

Q. Well, let's be specific to what Stern figure 15 shows.

A. Sure, okay.

Q. So in Stern's figure 15, the electrode pairs are only formed when certain switches are closed; right?

MR. NEMTZOW: Objection, form.

A. I mean, again, I think it depends; right? Because, for instance, if I have two electrode pairs that are far apart --

Well, I mean, the question is, are you defining your pair of electrodes mechanically or electrically?

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Q. Are you asking me?

A. Yeah. I mean, you can think of pairs as, like, these electrodes are paired because they're placed close to each other. You can think of these electrodes are paired because they're at opposite polarity and current's flowing through them.

Q. Well, I guess let's use it in the way the '318 patent uses it. So, again, the term in claim 1 of the '318 is "an array of multiple pairs of bipolar radiofrequency electrodes." So again, I'll reask the question I had originally asked: In Stern's figure 15, an electrode pair is formed only when certain switches are closed; right?

MR. NEMTZOW: Objection, form.

A. Well, how does Stern deal with this?

Q. I mean, the way you wrote it in your declaration -- I'll repeat what I'd asked you before. So it says, "Stern teaches examples in which electrodes can be paired by closing particular subsets of switches." Right? That's what you said in Paragraph 101?

A. Yes, correct.

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Q. And I'm assume you took that from somewhere in Stern; right?
A. Right, right, yep.
Yes, okay.
Q. So again, the question was: In Stern's figure 15, an electrode pair is formed only when certain switches are closed; correct?
MR. NEMTZOW: Objection, form.
A. Well, I don't know about the term "only."
I mean, I think what's not clear to me, again, is the way -- does "paired" refer to the electrical connection or the mechanical placement?
Q. Well, again, you know, use "pair" in the same way it's used in the claim. So however the claim's using it is how my question should be interpreted.
MR. NEMTZOW: Objection, form.
A. Well, just looking at the claim, I mean, it looks like it's defining it more based on placement. It doesn't say based on the electrical connections.
Q. Is that how you're interpreting the term "multiple pairs of bipolar radiofrequency electrodes," as having to do with placement as opposed to

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electrical connections?

A. In this case I would say yes, because it doesn't talk about -- well, the claim -- he doesn't talk about how they are wired per se, but it talks about how they're placed, along the treatment surface.

Q. Doesn't the claim kind of talk about how they're wired, like when it gets into the output channels and stuff like that?

MR. NEMTZOW: Objection, form.

Q. The next limitation is "multiple radiofrequency output channels connected with multiple pairs of bipolar radiofrequency electrodes," and it goes on.

A. I don't know. I don't know. I don't know if it matters.

Q. Well, I guess if we go back to Paragraph 101 of your report: If you're using the terminology you are using, and I guess that Stern's using -- so you have the sentence here that says, "Stern teaches examples in which electrodes can be paired by closing particular subsets of switches." Right?

A. Uh-huh.

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Q. And then the next sentence is, "For instance, 'if switch 248 and switch 238 are closed there will be bipolar operation between the electrodes 220 and 222.'" Correct?

A. Correct.

Q. So those two sentences seem to be implying that if switch 248 and switch 238 are open, then electrodes 220 and 222 are not paired. Correct?

MR. NEMTZOW: Objection, form.

A. Well, I think they can be paired by closing the switches. I don't know if that means that they're not paired by opening the switches.

Q. Did you consider whether opening the switches means that those two electrodes are not paired, in your analysis?

MR. NEMTZOW: Objection, form.

A. Well, I mean, I think the important thing is that they can be paired; right?

Q. I understand that they can be paired when you close the switches. Year in agreement on that.

A. I think if they can be paired, they're paired electrodes. Opening the switch doesn't unpair them.

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Q. Why do you say that?

A. Well, because we're talking about -- let's say we have an embodiment where we've actually implemented this; right? And so -- and you give it to a physician to operate. I mean, you're not going to say those electrodes are paired, now they're not paired, now they're paired, now they're not paired. I mean, that's not how --

You would say that they are paired electrodes. You can pair them now. You can energize them now.

Q. Let me ask you this: So all four of these electrodes as shown in figure 15 can be monopolar electrodes; right?

MR. NEMTZOW: Objection, form.

Q. And when I say "four electrodes," I mean 220, 222, 224, 226.

MR. NEMTZOW: Objection, form.

A. We discussed this already, the difference between bipolar and monopolar. So you're saying if you took one of those contacts and then made it something like a grounding pad, then you could operate

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it in monopolar?

Q. Not quite what I'm getting at. So my understanding is, if this figure, figure 15 of Stern, that the reference numeral 230 is pointing to the grounding pad.

A. Yes.

Q. Is that a correct understanding of this figure?

A. Yes.

Q. And then you could make any of those four electrodes -- 220, 222, 224, 226 -- monopolar electrodes, again depending on which switches you close; right?

A. Correct. If you closed switch 232 and one of the other switches, as you mentioned, 248, 246, you would create a monopolar, yes, system.

Q. You have the actual Stern patent in front of you; right?

A. I do, yes.

Q. Would you mind picking that up for me and flipping to figure 15. I just want to talk about the unannotated figure of Stern a little bit. Let me know

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when you're there.

Just so we're on the same page, we're looking at the Stern patent, figure 15, unannotated. Correct?

A. Figure?

Q. Figure 15 of Stern. Correct?

A. Oh, unannotated with our annotations.

Q. We were looking at Page 50 of your declaration, which had annotations. I want to just look at the unannotated version.

So in Stern's figure 15, all of the switches shown there are opened; correct?

A. Correct.

Q. What are the electrode pairs in this figure?

MR. NEMTZOW: Objection, form.

A. By implication -- right? -- a pair would be formed with 220 and 224 and another pair, 222 and 226.

Q. What do you mean, a pair would be formed?

A. Well, I think the drawing implies something; right? The way those electrodes are drawn in proximity, it implies that by default they are a pair.

Q. Okay. So you just said your understanding is

220 and 224 are a pair and then 222 and 226 are a pair?

A. That's how I interpret this figure 15, yes.

Q. So looking back at Page 50 of your declaration for the '318 patent -- do you have that in front of you, Page 50 of the '318 declaration?

A. Yes.

Q. Why did you circle 220 and 222 as a pair?

MR. NEMTZOW: Objection, form.

A. Well, Stern himself states that the switch -- basically says that "an apparatus for both bipolar and monopolar application of RF energy with the choice of either bipolar or monopolar being made to control the switches. Furthermore not only are the modes selectable by controlling the switches but also within bipolar mode, for instance, switches allow for the selective application of RF energy to various combinations of electrodes."

So getting back to the definition before, where I said you could define -- you could possibly define a pair mechanically by where the electrodes are physically placed, and you could also define it

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electrically -- right? -- by what's positive and what's negative.

So I would say to answer your question, you could similarly define a pair mechanically, 220, 224. The drawing implies they're in close proximity. You could probably also define it electrically, 220 -- as implied by 220 and 222.

Q. In your declaration it looks like you were using the electrical definition of "pair." Correct?

MR. NEMTZOW: Objection, form.

A. I would agree with that. I don't think that's the only interpretation, but it's an interpretation.

Q. But the one you applied in your declaration was the electrical version; correct?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. All right. So we had mentioned earlier that all four of these electrodes -- 220, 222, 224, 226 -- could be made -- they could be monopolar electrodes, depending on what switches are closed; correct?

MR. NEMTZOW: Objection, form.

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A. Correct.
Q. And depending on what switches are closed, all four of those electrodes could be the positive; correct?
MR. NEMTZOW: Objection, form.
Q. They could be a positive electrode?
MR. NEMTZOW: Objection, form.
A. Yes.
Q. And depending on what switches are closed, all four of those electrodes could also be a negative electrode; correct?
MR. NEMTZOW: Objection, form.
A. Correct.
Q. So it's fair to say that until certain switches are closed, you don't know whether any of those four electrodes are bipolar or monopolar or positive or negative; correct?
MR. NEMTZOW: Objection, form.
A. Correct, yes.
Q. And using the, I guess what you're calling the electrical definition of "electrode pair," "bipolar electrode pair," isn't it fair to say that

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any two or more of those switches, they're not paired until you close certain switches; right?

MR. NEMTZOW: Objection, form.

A. Well, they have the potential to be paired; right? If you've actually implemented this device -- right? -- in Stern, they could be paired at any time.

Q. They could be paired, but they're not actually paired until you close certain switches; correct?

A. They're not electrically paired, yes.

Q. Okay. So that the record is clear, any two or more of those switches shown in Stern figure 15 are not electrically paired until you close certain switches. Is that fair to say?

MR. NEMTZOW: Objection, form.

A. Sure, yeah.

Q. The answer is yes?

A. Yes.

Q. I'm going to switch gears a little bit to a different declaration. I think we're still pretty good on time for the 5:30 end. Would you mind picking up the '271 declaration.

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A. Okay.
Q. Let's go to Page 29. Let me know when you're there.
A. I'm here.
Q. So claim 1 of the '271 patent recites the term "two rows of bipolar electrode pairs." Correct?
A. Correct.
Q. What do you understand the term "two rows of bipolar electrode pairs" to mean in the context of the '271 patent?
MR. NEMTZOW: Objection, form.
A. I would say it's similar to what is in figure 19; right? If you look on Page 34. I think this would be one example of two rows of electrode pairs.
Q. So I guess speaking a little broader: What generally does the term "two rows of bipolar electrode pairs" mean in the context of this patent?
MR. NEMTZOW: Objection, form.
A. This is '271.
Wait, I don't have a copy of this patent.
Q. Do you want a copy?
A. Yes, please.

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Q. So I'm going to give you what has previously been marked as Neurent Exhibit 1 -- sorry, Neurent Exhibit 1001. So this is just only an exhibit from the '271 IPR.

A. Okay.

Q. And you've seen this document before; right?

A. Yes.

Q. It's the '271 patent; right?

A. Yes, I have.

Q. So the question just one more time was: Generally speaking, what does the term "two rows of bipolar electrode pairs" mean in the context of the '271 patent?

MR. NEMTZOW: Same objection.

A. I mean, I can't give you a complete interpretation of how it's described in the specification right now.

Q. Can you give me a general -- your general understanding of what the term means?

A. I'll give you a description but not a definition; right?

So figure 19 is one description of what I

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consider to be two rows of bipolar pairs.

Q. I think we're going to talk about that a little bit more. But I guess in the general sense, is it your understanding that the term "two rows" is specifying a particular spatial arrangement of the claimed bipolar electrode pairs?

MR. NEMTZOW: Objection, form.

A. Yes, I would say there's some spatial apposition of electrodes, sure.

Q. What do you mean by "some spatial apposition of the electrodes"?

A. Well, exactly what it says. I mean -- so, for instance, figure 19; right? Two rows of electrode pairs. And the electrodes, let's say the bottom of one, the top of the other, well, they're parallel. So let's say they weren't parallel. I would still consider that two rows of electrode pairs, even though the lines aren't --

If you drew a line through the center of one electrode to the next electrode and you drew a line through the bottom electrodes, the center of one to the other one, those lines would be parallel. If

somehow you spaced those electrodes such that those lines are not parallel, I still would consider those two rows of electrode pairs.

Q. Just let me ask you this way: Do you believe that any spatial arrangement of the bipolar electrode pairs could be considered two rows of bipolar electrode pairs?

MR. NEMTZOW: Objection, form.

A. In figure 19?

Q. No, generally.

A. Well, you had given the example before of a random -- a random placement of electrodes; right? That's something that I think it would be difficult to identify rows of electrodes in.

Q. So, I mean, do you think that placing electrode pairs at random would be considered two rows of bipolar electrode pairs?

MR. NEMTZOW: Objection, form.

A. I don't think you would call it two rows, no.

Q. Why not?

A. I think "row" requires some measure of order -- right? -- in the placement of the devices, some,

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let's say, call it regular pattern.

Q. What do you mean by "regular pattern"?

A. Again, I'm not going to offer a definition, but I'll be descriptive: something that has some kind of repeating dimensional aspect, whether it's the spacing between the electrodes, their positioning, their location on the substrate in which they're mounted.

Q. I guess when you say "repeating dimensional aspect," what do you mean by that?

A. I'm trying to find a better way to explain it, maybe.

Well, I would say that there's some form of alignment -- right? -- between the electrodes. I think that would constitute a row.

Q. Are you saying that a row of electrodes is some form of alignment between any two given electrodes?

MR. NEMTZOW: Objection, form, relevance.

A. I would say that's not a bad description.

Q. Okay. If you look at Page 34 of the '271 declaration again.

A. Yes.
Q. I'm sorry, give me one sec.
So Page 34 of the '271 declaration, again, there's three annotated figures on this page; right?
A. Yes.
Q. And let's -- I guess let's look at the two annotated versions of figure 19, starting on the left-side one.
A. Yes.
Q. So you kind of have the row 1 is across the top and then the row 2 is below that; right?
A. Yes.
Q. So in that annotated figure, what are the pairs of electrodes? Is row 1 supposed to be one pair and row 2 supposed to be the other pair?
MR. NEMTZOW: Objection, form.
A. That's certainly one way to interpret it.
Q. I'm asking for your interpretation.
A. As we discussed before, that the electrodes can be electrically paired; right? And so if you threw the switches in figure 15 above, one configuration, you could create rows of paired

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electrodes horizontal. If you threw the switches another way, you could create rows vertical.

Q. I get that. I guess what I'm asking is, in the left-side annotated figure, the annotated figure you have here of figure 19 on Page 34, when you're saying row 1 going horizontally, are you saying that row 1 is a pair and row 2 is also a pair? Do you see what I'm saying?

A. Yes.

Q. And for the annotated figure next to it, where you have the rows going down, so for that version now are you saying that the row 1 is the -- there's a vertical pair that's row 1 and there's another vertical pair that's row 2?

A. I think either way. Like, you have it one way in the left figure and the other way in the right figure.

Q. Totally understand. So I'm just asking, the way you drew it in the annotated figures.

A. Yes.

Q. So for the left-hand-side figure, are you saying row 1, that's one pair, and then row 2 is the

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other pair?

MR. NEMTZOW: Objection, form.

A. So it depends on how you throw the switches; right?

Q. Yes, I get that. Just the way you're demarcating these rows in your annotations, I'm just asking, in the left-hand-side figure for row 1, are you saying that's row 1, those two next to each other are the pair for that version; row 2, the two electrodes next to each other are a pair?

MR. NEMTZOW: Objection, form.

Q. I mean, let me ask it this way: So if you look at Paragraph 74, you say, "Two rows can be seen in either a horizontal configuration (left image of Figure 19) or vertical configuration (right image of Figure 19)." So if we're talking about the horizontal configuration on the left side of Page 34 -- again, I'm not trying to trip you up, but I just want to know: You have this arrow pointing to two electrodes, and you're calling that row 1.

A. Right.

Q. Is that row 1, you're saying that's a pair?

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MR. NEMTZOW: Objection, form.

Q. And you're saying row 2 is also a pair?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. Yeah. Yeah, I think that's right. I think that's right. So row 1 is a paired electrode. Row 2 looks like a paired electrode, yes.

Q. And then for figure 19 you're saying that the vertical row 1, that's a pair.

A. Yes.

Q. And vertical row 2 is a pair.

A. Yes.

MR. NEMTZOW: Objection.

Q. Got it. And I think you say in the end of Paragraph 74 that you think there would still be two rows even if the electrodes in figure 19 were paired diagonally; is that right?

A. Correct, yes.

Q. In the -- not that version, the bound version, but the version I gave you of the '271, if you opened to Page 34, can you just use this pen and draw, I guess using like dashed lines, what it would

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look like to have two rows even if the electrodes of figure 19 were paired diagonally?

A. Sure.

MR. NEMTZOW: Objection, form, relevance.

A. So here are your rows, row 1 and row 2.

Q. Can you just write "row 1" and "row 2" next to whatever you want to call row 1 and row 2?

MR. NEMTZOW: Objection, form, relevance.

Q. And then just your initials somewhere there.

So going back to Page 34 of your '271 declaration: In your annotated versions of figure 19 you highlighted four electrodes; correct?

A. Correct.

Q. And isn't there a fifth electrode directly below the four highlighted ones?

A. In the unannotated version --

Q. Sorry, looking at the annotated versions you have right in front of you.

A. Right.

Q. Isn't there a fifth electrode that you didn't highlight directly below the four that you did highlight?

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A. I just want to confer with the original patent to see.

Q. Understood. Take your time. It may be helpful to look at Stern figure 39.

A. Thank you.

Yes.

Q. Going back to Page 34 of your '271 declaration.

A. I'm sorry, page?

Q. The page you have right in front of you. So again, in that figure 19 there is a fifth electrode directly below the four electrodes that you annotated; correct?

A. Correct.

MR. NEMTZOW: Objection, form.

A. Correct, yes.

Q. Do you know why you ignored that fifth electrode in your declaration for the '271 patent?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. I don't think it was relevant for the analysis.

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Q. Why do you say that?
A. Well, having a fifth electrode doesn't negate the other -- the existence of the other electrodes and their configuration.
Q. Do you believe that there would still be two rows of electrode pairs in figure 19 even if you swapped out one of the highlighted electrodes for the fifth electrode at the bottom?
MR. NEMTZOW: Objection, form, relevance.
A. Possibly -- yes.
Q. Why do you say that?
A. So if you look in the case where we've defined the vertical rows -- right? -- depending on how you set the switches, you still have two rows.
Q. Okay. This might be another helpful one for you to draw it in that same area where you were drawing before. Page 34.
Can you draw for me using this pen a version where you're swapping out one of the four highlighted ones with the one at the bottom and you still have two rows of electrode pairs?
MR. NEMTZOW: Objection, form, relevance.

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A. You have one row, and you have another row -- depending on how you actually pair them.

Q. I assume you could have different versions, but what you drew is one example, is what you're saying?

A. Yeah.

MR. NEMTZOW: Objection to remember.

Q. I'm going to give you a piece of paper. Hold on to that red pen for a second. Here you go.

So go ahead and draw just a big circle on that piece of paper for me.

MR. NEMTZOW: Objection, form, relevance.

Q. And let's go ahead and assume that the big circle represents the surface of a device basically similar to the surface of the device shown in Stern figure 19.

So inside that circle can you draw for me four large dots. Go ahead and place the dots anywhere you want, but just make sure they're not touching the circle or each other.

A. You're saying four large circles or dots?

Q. Just like a big dot.

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A. So a circle that's filled in?
Q. Could I have the pen? So, for example, like that.
A. Okay.
Q. Just a big dot. For those, anywhere you want, totally at random, just not touching each other or the larger circle.
MR. NEMTZOW: And I'll object to the question for form, relevance.
Q. Now go ahead and place a plus sign next to any of the two dots, whichever ones you want.
A. Any two?
Q. Yes, whatever you want.
MR. NEMTZOW: Again, objection to form, relevance.
Q. And place a minus sign next to the other two dots.
So now assume that one of the dots with a plus sign and one of the dots with a minus sign, that that's a bipolar electrode pair and that the other two dots are a second bipolar electrode pair. With that assumption, can you please draw a straight dashed line

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between the electrodes of one of the pairs.

MR. NEMTZOW: Objection, form, foundation, relevance.

A. One question I have is: So these electrodes, positive and negative, are they all on at the same time, or are they off, on, off different times?

Q. When you drew this, what were you assuming? Again, I'm pointing to your annotations on figure -- on Page 34 of the '271 declaration.

A. So in the case -- figure 19 is being controlled by figure 15; right? And so the actual plus/minus configurations are determined by the switch settings.

Q. So assume it's something similar, where you can just make -- you can make the plus and the minus with a similar switching arrangement and they can all be on at the same time or you can do one pair at a time and then go to a different pair or something like that.

MR. NEMTZOW: Objection, form, foundation, relevance.

A. So, now, what was the question? What was the

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next thing you wanted me to do?

Q. So basically draw a straight dashed line between one dot that you labeled plus and one dot that you labeled minus.

A. Okay.

MR. NEMTZOW: Same objection.

Q. And then do the same thing between the other two dots.

MR. NEMTZOW: Same objection.

Q. So now, looking at this drawing that you made, do you believe that this drawing depicts two rows of bipolar electrode pairs?

MR. NEMTZOW: Objection, form, foundation, relevance.

A. Yes.

Q. Can you please label one of the rows as row 1 and the other row as row 2.

MR. NEMTZOW: The same objection.

Q. And can you please put your initials somewhere next to the drawing.

MR. NEMTZOW: Same objection.

MR. GILFORD: And let's have the court

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reporter mark that drawing as Martin Exhibit 2.

(Exhibit 2 marked for identification.)

MR. NEMTZOW: We're going to mark that as Exhibit 2. I'll just note that there was a marking on your deposition timeline it appears that was used in the making of that exhibit. So I think that's part of the exhibit. We can talk about how we can do that.

MR. GILFORD: Absolutely not. That's a ridiculous position to take.

MR. NEMTZOW: You showed your notes to the witness and made --

MR. GILFORD: I showed him what the dot looks like. And we're not making my notes part of the deposition. That's a ridiculous position to take.

MR. NEMTZOW: Shall we take this off the record?

MR. GILFORD: We're off the record.

(Discussion off the record.)

MR. GILFORD: You guys can say what you want.

MR. NEMTZOW: I'll just note for the record that a dot on Mr. Gilford's notes was shown

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during the deposition, in order to create the exhibit which is going to be entered as Exhibit 2. And so we're entering that dot as Exhibit 2, Part 2, into the record without the remainder of Mr. Gilford's notes.

MR. GILFORD: Okay.

(Exhibit 2, modified, marked for identification.)

Q. Let's go ahead and put that exhibit aside.

MR. GILFORD: Let's do another piece of paper here.

Q. You still have that red pen?

A. Yes, I've got it.

Q. So can you go ahead and draw for me a single row of bipolar electrode pairs.

MR. NEMTZOW: And I'll object to the question based on form and relevance.

Q. Do you mind showing me?

So just so we're on the same page, the question was: Can you draw for me a single row of bipolar electrode pairs, plural.

A. So --

Q. A single row --

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A. Of multiple bipolar electrode pairs.
Q. Let me ask you this: If I say "bipolar electrode pairs," that means multiple pairs; right?
A. Sure.
Q. Is that a yes? If I say "bipolar electrode pairs," does that mean multiple pairs?
MR. NEMTZOW: Objection, form.
Q. Was the answer yes?
A. Yeah.
Q. So please draw for me a single row of bipolar electrode pairs.
MR. NEMTZOW: Objection, form, relevance.
A. It's not exhaustive; it's descriptive.
Q. Why do you believe that what you drew depicts a single row of bipolar electrode pairs?
MR. NEMTZOW: Objection, form, relevance.
A. I think it fits that description.
Q. Can you draw a single row of bipolar electrode pairs with three electrodes?
MR. NEMTZOW: Objection, form, relevance.
Q. Can you draw a single row of bipolar electrode pairs with only two electrodes?

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MR. NEMTZOW: Objection, form, relevance.
Q. How does that show a -- how does that show multiple bipolar electrode pairs?
MR. NEMTZOW: Objection, form, relevance.
A. It's just one pair.
Q. So the last thing you drew there on this piece of paper, where it's just a row of two electrodes, that's just one pair; correct?
A. One pair, yeah.
Q. That's not electrode pairs plural; correct?
A. Correct.
Q. Now, the two rows you drew above it, where there's one row with three and one row with four, you believe that those two show rows of bipolar electrode pairs; correct?
A. Correct.
MR. NEMTZOW: Objection, form, relevance.
Q. But the third thing you drew does not; correct?
A. Correct.
Q. I guess go ahead and put your initials somewhere on that. And can you just write row 1, row

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2, row 3," just next to kind of what you drew, just in the order that you drew it.

Just so the record is clear: So you agree that row 1 of what you drew depicts a single row of bipolar electrode pairs; correct?

MR. NEMTZOW: Objection, form, relevance.

A. Correct.

Q. And you agree that row 2 of what you drew shows a single row of bipolar electrode pairs; correct?

MR. NEMTZOW: Same objection.

A. Correct.

Q. And you agree that row 3 of what you drew does not show a single row of bipolar electrode pairs; correct?

MR. NEMTZOW: Same objection.

A. Correct.

MR. GILFORD: Can we go ahead and mark this as Martin Exhibit 3.

(Exhibit 3 marked for identification.)

Q. And let's go back to your '271 declaration. I'm looking at Page 49, Paragraph 95.

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So I'm looking at the second sentence of Paragraph 95. Do you see where you wrote, "For example, arranging electrodes in rows, as opposed to some other arrangement such as placing electrodes at random, would have allowed for simplified spatial resolution of the applied energy"? Do you see that?

A. Yes.

Q. What do you mean by "simplified spatial resolution of the applied energy"?

A. Well, if the electrodes have some regularity to their spacing, the power deposition, therefore the temperature rise and the ablation field, is more predictable.

Q. So I guess when you say "regularity to their spacing," what do you mean by that?

MR. NEMTZOW: Objection, form.

A. Well, I mean, both figures show a regularity. Both figures show electrodes, bipolar electrodes, with a placement that has some measure of regularity.

Q. Would a single row of bipolar electrode pairs allow for a simplified spatial resolution of the applied energy?

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MR. NEMTZOW: Objection to form.

A. As opposed to --

Well, the problem with one pair -- right? -- the random placement of one pair, you still have -- there's still one pair. Right?

Q. I mean, let's look at what you drew in Martin Exhibit 3. So, for example, that row 1, with the four electrodes: You agree -- we agreed previously that that shows a single row of bipolar electrode pairs; right?

A. Correct, yeah.

Q. So taking that example that you drew, would that example allow for simplified spatial resolution of the applied energy?

A. Yes.

MR. NEMTZOW: Objection to form.

Q. What about the next row down, row 2? You agreed previously that that row 2 shows a single row of bipolar electrode pairs; right?

A. Yes.

MR. NEMTZOW: Objection, form, relevance.

Q. And that row 2, would that allow for

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simplified spatial resolution of the applied energy?

MR. NEMTZOW: Objection, form, relevance.

A. Yes.

Q. Would a circle of bipolar electrode pairs allow for simplified spatial resolution of the applied energy?

MR. NEMTZOW: Objection, form, relevance.

A. What do you mean by "a circle"?

Q. If you aligned the electrode pairs in a circle.

MR. NEMTZOW: Objection, form, relevance.

A. Could you draw that?

Q. Yeah, I could. What was that one, Martin 3?

A. Yes.

Q. Would you mind handing me the red pen.

Something like that.

A. Okay, good, I understand now. So what's the question, then?

Q. Would a circle of bipolar electrode pairs allow for simplified spatial resolution of the applied energy?

MR. NEMTZOW: Objection, form, relevance.

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A. Yes, as compared to a random arrangement, yes.

MR. GILFORD: Let's go ahead and mark that piece of paper as Martin Exhibit 4.

(Exhibit 4 marked for identification.)

MR. NEMTZOW: Objection, relevance.

Q. So if I understand you correctly, when you're mentioning in Paragraph 95 of the '271 declaration "simplified spatial resolution of the applied energy," basically what you're comparing is some sort of ordered arrangement compared to a random arrangement. Is that accurate?

MR. NEMTZOW: Objection, form, relevance.

A. I think that's one way to look at it, yes. I mean, you're basically making the applied energy more predictable -- more regular is more predictable.

Q. Okay, I think I understand. Can you go ahead and turn to Page 23 of the '271 declaration. And I'm looking at Paragraph 52. Do you see where you wrote, "I have been asked to offer opinions regarding the following limitations as they relate to the above-referenced grounds"? And then there's some

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limitations and claims after that. Do you see that?

A. Yes.

Q. And you list here limitation 1[a], claim 4, claim 8, claim 9, claim 10. Correct?

A. Correct.

Q. Is it fair to say for the '271 patent IPR you're only providing opinions on limitation 1[a], claim 4, claim 8, claim 9, and claim 10?

MR. NEMTZOW: Objection, form.

A. Correct.

Q. If you flip over to Page 24, and I'm looking at Paragraph 53. Do you see where you wrote in the first sentence of that paragraph, "The technical features and structures described in these limitations were well-known and routinely applied in medical devices in a manner suitable for treating tissue in a nasal cavity"? Do you see that?

A. Yes.

Q. What is your basis for your opinion that the technical features and structures described in these limitations were, quote, "applied in medical devices in a manner suitable for treating tissue in a nasal

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cavity," end quote?

A. I'm sorry, I don't quite understand the question per se.

Q. Well, again, what I read is basically -- it's your opinion that "the technical features and structures described in these limitations were well-known and routinely applied in medical devices in a manner suitable for treating tissue in a nasal cavity." Did I read that correctly?

A. Yes.

Q. So I'm really focused on the part at the end where you said "in a manner suitable for treating tissue in a nasal cavity."

A. Okay.

Q. That's what I'm focusing on.

A. Sure. And some of that's provided by Edwards.

Q. So if I understand Stern correctly, Stern's teaching an endometrial ablation device; right?

MR. NEMTZOW: Objection, form.

A. In part, but Stern does say that everything in the patent is applicable to other tissues, without

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limitation.

Q. Stern doesn't specifically call out the nasal cavity; correct?

MR. NEMTZOW: Objection, form.

A. He calls out tissue.

Q. And not specifically the nasal cavity; correct?

MR. NEMTZOW: Objection, form.

A. Correct.

Q. So again, what is your basis for saying that the technical features and structures described in these limitations were well known and routinely applied in medical devices, quote, "in a manner suitable for treating tissue in a nasal cavity," end quote?

MR. NEMTZOW: Objection, form.

A. Again, it's based on Edwards and Stern.

Q. Okay. Other than pointing to Edwards and Stern, what is your basis for this statement that we've been talking about?

MR. NEMTZOW: Objection, form.

A. Well, as I explained before, as an engineer

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who's developed ablation devices, it matters less where the tissue is located. Thermal properties, electrical properties, they vary all over the body, but every tissue has them. And so it doesn't matter if it's in the nose, the uterus, the brain. The fundamental physical principles of ablation remain the same.

Q. Why do you say it doesn't matter whether it's in the nose or elsewhere? You agree that different tissues have different electrical and physical properties; right?

A. Yes, but anyone that's developed ablation devices -- someone skilled in the art knows how to compensate for that.

Q. Why do you say that?

A. So, for instance, if the electrical conductivity is lower, you can compensate by raising the voltage. If the thermal conductivity is higher, you can compensate by, you know, increasing the power deposition.

Q. Are there certain tissues in the body where you would not use radiofrequency ablative energy?

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MR. NEMTZOW: Objection, form, relevance.

A. Well, it depends on the clinical condition you're treating. But barring that limitation, based on electrical and thermal properties, bone would be one I could think of, based on its electrical properties, where you might not treat with RF energy.

Q. Anything else you can think of?

MR. NEMTZOW: Objection, form, relevance.

A. I think everything else is -- you could use RF energy to achieve a certain goal to get -- have a certain clinical outcome.

Q. We were talking earlier about different types of energy, that it can be used -- sorry, strike that.

We were talking earlier about -- I'm not sure if we did talk about this.

We talked earlier about medical devices and what types of energies they can apply to tissue. Right? Do you recall that conversation?

A. Yes.

MR. NEMTZOW: Objection, form.

Q. So I guess let's narrow that down a little bit to ablative devices. What kind of energy can

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ablative devices, ablative medical devices, apply to tissue?

A. What type of energy could be used to ablate tissue?

Q. Yes. So certainly radiofrequency is one example; right?

A. Sure. I mean, I think broadly speaking, you can look at any energy modality that, when it contacts the tissue, gets converted into heat energy -- so radiofrequency, direct current would do that, light energy, microwave -- you know, the whole electromagnetic spectrum, practically; right?

Q. Ultrasound?

A. Yeah, ultrasound.

Q. Mechanical energy?

A. Mechanical energy, yeah, could work. It's not used often, but sure.

Q. You know, you were talking earlier about the CryoCath device.

A. Yes, cryogenic energy.

Q. Cryogenic energy.

A. Yes. And cryogenic ablation, you know, is a

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form of, as it's mostly applied in tissue, a contacting device, where you're actually -- you're cooling a conductor, and then that's cooling the tissue directly by thermal conduction.

The same is true with devices where you heat up. Like, you might have a hot balloon that gets inserted into tissue.

Q. Would you ever use light energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. You could, and I would guess it's probably been done.

Q. Okay, to your knowledge, has it ever been done?

MR. NEMTZOW: Objection, form, relevance.

A. I'm not aware of specific efforts, but, again, I bet if you looked in the literature it's been done.

Q. Would you ever use electrical energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form.

A. Possibly.

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Q. Are you aware of any instances of people using electrical energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. And by "energy" you mean direct current?

Q. Yes.

A. No, I'm not aware of any.

Q. Would you use microwave energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. You could.

Q. Are you aware of any specific instances of people using microwave energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Same objection.

A. No.

Q. Would you use ultrasound energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. You could.

Q. And again, are you aware of anybody using ultrasound energy to ablate tissue in the nasal

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cavity?

MR. NEMTZOW: Same objection.

A. No.

Q. Could you use mechanical energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. Probably not.

Q. Why do you say that?

A. Well, ablation requires the temperature gets raised to a certain point where you're destroying tissue in cells. If you used actual mechanical energy to do that, you would mechanically have destroyed the tissue in cells long before you ablated them, destroyed them for ablation.

Q. Would you ever use cryogenic energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Objection, form, relevance.

A. Yes, possibly.

Q. Are you aware of anybody who's ever used cryogenic energy to ablate tissue in the nasal cavity?

MR. NEMTZOW: Same objection.

A. No, not particularly.

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Q. So turning back to the opinions you rendered on claim 1 of the '271 patent: Is it your opinion that the entirety of claim 1 of the '271 patent is invalid as obvious?

A. I'm sorry, could you repeat the question?

Q. Is it your opinion that the entirety of claim 1 of the '271 patent is invalid as obvious?

A. I'm sorry, I just want to make sure I'm accurately representing my declaration here.

I believe the challenged claim language was in regards to claim 1a, element a.

Q. So if I understand you correctly, you're not opining on the entirety of claim 1 of the '271 patent?

A. Yes, I believe that's correct.

MR. NEMTZOW: I don't want to interrupt this line of questioning. We've been going for about an hour and 15 minutes.

MR. GILFORD: I'm a couple of minutes away from a really good stopping point.

THE WITNESS: That's fine. I can power through.

Q. And is it your opinion that claims 4, 8, 9,

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and 10 of the '271 patent are invalid as obvious?

MR. NEMTZOW: Objection, form.

A. 4, 8, 9, and 10. That's what you said; yes?

Q. The question was: Is it your opinion that claims 4, 8, 9, and 10 of the '271 patent are invalid as obvious?

A. Well, those claims, 4, 8, 9, and 10, in my '271 declaration I offered an opinion on their limitations, not that they were invalid.

Q. Okay. I understand.

MR. GILFORD: I'm at a good place to stop. Let's go off the record.

(Discussion off the record.)

Q. I think we're going to break for today, Dr. Martin. I believe everybody at the table is in agreement that you're still under cross-examination. We will start again tomorrow at 9:00 a.m.

MR. GILFORD: Counsel, is that accurate?

MR. NEMTZOW: That works for us.

Q. Just before we break: Obviously we had a lot of kind of breaks during today's deposition. There was a lunch break, et cetera. During any of those

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breaks did you discuss the substance of your testimony with anybody?

A. No.

Q. Did you discuss any of your answers to any of the questions I asked with anybody?

A. No.

Q. And did you discuss any answers to potential future questions with anybody during those breaks?

A. No.

Q. So again, we'll adjourn. The understanding is that you're still under cross-examination. Do you understand that, since you're still under cross-examination, that you are not supposed to talk with counsel about your testimony, your anticipated future answers, that kind of stuff?

A. Yes.

MR. GILFORD: Okay. Counsel, anything from you before we break?

MR. NEMTZOW: Nothing further.

MR. GILFORD: We'll be back tomorrow.

(The deposition was suspended at 5:08 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Alan H. Brock, Certified Reporter and Notary Public within and for the Commonwealth of Massachusetts, do hereby certify:

That Gregory Thomas Martin, the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the adverse parties, Neurent Medical Inc. and Neurent Medical Ltd., were represented by counsel at the deposition.

I further certify that the deposition of Gregory Thomas Martin occurred at the offices of Wilmer Cutler Pickering Hale and Dorr on Tuesday, September 24, 2024, commencing at 9:03 a.m. to 5:08 p.m.

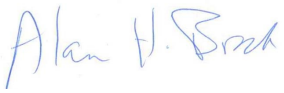
I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to

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any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of September, 2024.

My commission expires:
March 25, 2027.



Alan H. Brock, RDR, CRR

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