

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.

Petitioner,

v.

MASIMO CORPORATION,

Patent Owner

IPR2024-00290

Patent 8,190,223

DEPOSITION OF DR. R. JAMES DUCKWORTH

April 25, 2025

11:00 a.m.

Reported by: Eileen Mulvenna, CSR/RMR/CRR

DIGITAL EVIDENCE GROUP

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1 REMOTE DEPOSITION of DR. R. JAMES
2 DUCKWORTH, Declarant for Patent Owner in the
3 above-titled action, held on Friday, April 25, 2025,
4 commencing at approximately 11:00 a.m., before
5 Eileen Mulvenna, CSR/RMR/CRR, Certified Shorthand
6 Reporter, Registered Merit Reporter, Certified
7 Realtime Reporter, and Notary Public of the State of
8 New York.

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1 APPEARANCES:

2

3 ON BEHALF OF THE PETITIONER:

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1 A P P E A R A N C E S (Continued):

2

3 ON BEHALF OF PATENT OWNER:

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10

11

12 ALSO PRESENT:

13 Gretchen DeVries, Ph.D., Fish & Richardson

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1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3

DR. R. JAMES DUCKWORTH

4 MR. AMON 6

5 MR. KIANG 141

6 MR. AMON 142

7

8 E X H I B I T S

9 PAGE

10

11 Exhibit 1001 No Bates Numbers, '223 22

12 Patent

13 Exhibit 1005 No Bates Numbers Naghavi 110

14 Reference

15 Exhibit 2046 No Bates Numbers, 9

16 Declaration of R. James

17 Duckworth, Ph.D.

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1 REGINALD JAMES DUCKWORTH, PH.D.,
2 having been duly sworn by Eileen Mulvenna,
3 a Notary Public of the State of New York,
4 was examined and testified as follows:

5 EXAMINATION

6 BY MR. AMON:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Could you please state your full name
10 for the record?

11 A. Reginald James Duckworth.

12 Q. And is it Mr. or Dr.?

13 A. Dr.

14 Q. Dr. Duckworth, would you please state
15 a business address for the record, please?

16 A. 905 Riverview Place, Saint Marys,
17 Georgia.

18 Q. Dr. Duckworth, I know for a fact that
19 you have been deposed before. Can you estimate how
20 many times you've been deposed before?

21 A. Approximately eight to ten times.

22 Q. And do you recall when was the last

1 time you were deposed?

2 A. I don't. Earlier this year, I think.

3 Q. So within the last four months; is
4 that fair?

5 A. Yes. I think so, yes.

6 Q. So as you may have experienced before,
7 I'm going to go over some of the ground rules, just
8 so we have a common understanding of how today is
9 going to proceed.

10 Is that okay with you?

11 A. That's good.

12 Q. Okay. You understand that you've
13 given an oath here today?

14 A. Yes.

15 Q. And that only requires you to tell the
16 truth; yes?

17 A. Yes.

18 Q. The whole truth; correct?

19 A. Correct.

20 Q. And nothing but the truth; correct?

21 A. Correct.

22 Q. And you'll do that; yes?

1 A. Yes.

2 Q. If you don't understand a question
3 that I ask at any point, would you please ask me to
4 clarify?

5 A. Yes.

6 Q. If at any point during the day you
7 need to take a break, will you please let me know?

8 A. Yes.

9 Q. I'll plan to take a break about every
10 hour or so, but if you need one at another time,
11 just let me know and we can do that. The only thing
12 that I ask is that we agree that if a question is
13 pending, you answer that question before we take a
14 break.

15 Can you agree to that?

16 A. Yes.

17 Q. Is there any reason you can't provide
18 your best, most accurate testimony here today?

19 A. Nope.

20 Q. Any medical condition or medication
21 that would impair your ability at any time to
22 testify fully and completely?

1 A. Nope.

2 Q. If that changes at any point today,
3 will you please let me know?

4 A. Yes.

5 Q. So, Dr. Duckworth, I have loaded into
6 the chat for you to download what has been
7 previously marked as Exhibit 2046.

8 (Exhibit 2046, No Bates Numbers,
9 Declaration of R. James Duckworth, Ph.D.,
10 received and marked.)

11 BY MR. AMON:

12 Q. If you could open that, and let me
13 know when you've done that, please.

14 A. I actually have a clean copy of my
15 declaration, 2046, and some other documents that
16 counsel has provided me.

17 Q. Okay.

18 A. So I have a paper -- excuse me, I have
19 a paper copy in front of me of that.

20 Q. Okay. That's perfectly fine. Could
21 you tell me -- could you list off for me what
22 exhibits you have with you in paper copy?

1 A. I have 2046. I have 2042. I have
2 1005. I have 1001. I have 1006. I have
3 petitioner's reply to patent owner's response. And
4 I have 1022. And I have patent owner Masimo
5 Corporation's sur-reply.

6 Q. So let me make sure that I got the
7 list complete. As I have it, you have Exhibit 2046;
8 correct?

9 A. Correct.

10 Q. Exhibit 2042; correct?

11 A. Correct.

12 Q. Exhibit 1005; correct?

13 A. Correct.

14 Q. Exhibit 1001; correct?

15 A. Correct.

16 Q. Exhibit 1006; correct?

17 A. Correct.

18 Q. Exhibit 1022; yes?

19 A. Just one second.

20 1022, correct.

21 Q. You have petitioner's reply; correct?

22 A. Correct.

1 Q. And then you have Masimo's sur-reply;
2 yes?

3 A. Yes.

4 Q. And that's the entirety of documents
5 that you have with you in whatever binder form you
6 have?

7 A. Yes.

8 Q. Have you made any annotations or taken
9 any notes on any of the documents?

10 A. No.

11 Q. Do you have any other notes with you
12 in the deposition here today?

13 A. No.

14 Q. Do you have any windows with chats
15 open besides the Zoom window?

16 A. No.

17 Q. Do you have your e-mail inbox open?

18 A. No.

19 Q. Nonetheless, for the court reporter, I
20 need to make sure that I've uploaded the exhibits.
21 So I will do those in -- I will upload those in the
22 chat so that they're part of the record, number one.

1 Number two, that way the court
2 reporter can refer to them.

3 And then, number three, I'm uploading
4 OCR versions. So if that makes it easier for you to
5 do a search of some kind, you can do that, as well.

6 A. Okay.

7 Q. Okay. First of all, Dr. Duckworth,
8 with respect to Exhibit 2046, which has been
9 previously marked and is now part of the deposition,
10 do you have any corrections to that declaration, as
11 you sit here right now?

12 A. Yes, I do. Let me find those.

13 So the end of paragraph 21, there's an
14 Id., 11. That should be Id., 12.

15 Q. So just so we're on the same page and
16 make sure I understand completely, paragraph 21, on
17 page 9, the very last line of that paragraph reads,
18 Id., paragraph sign, 11.

19 And you're saying that that should be
20 12; correct?

21 A. That's correct.

22 Q. Okay. Any others?

1 A. Yes. The next one is on the next
2 page, paragraph 24, at the bottom of page 10, it
3 says, "See, e.g., id." That should say EX1022,
4 paragraphs 11 to 12.

5 Q. And that is at the end of the sentence
6 that reads, Instead, Dr. Cockburn hypothesizes
7 scenarios in which an icon or health object might be
8 removed from the display when a physical condition
9 changes or when an icon or health object, quote,
10 becomes no longer relevant, period, close quote;
11 correct?

12 A. Yes. And after that it says, "e.g.,
13 id." Instead of "id.," it should say, EX1022,
14 paragraphs 11 to 12.

15 Q. Okay. Any other corrections to your
16 declaration?

17 A. Yes, there's one more. End of
18 paragraph 25, it's -- at the end of there, there's
19 another, Id. 11. That should just be Id.

20 Q. Okay. So we're removing the 11 from
21 that --

22 A. That's correct, yes.

1 Q. Sorry, one thing that's important,
2 Dr. Duckworth, is that we try not to speak over one
3 another. So if you'll extend me the courtesy of
4 letting me finish my questions, I'll extend you the
5 same courtesy in responding.

6 Can we agree on that?

7 A. That sounds good.

8 Q. Okay. So we just finished with the
9 correction to paragraph 25. Any other corrections
10 to your declaration at this time?

11 A. No, that's correct.

12 Q. Dr. Duckworth, let me first ask you to
13 turn to the first page of Exhibit 2046, your
14 supplemental declaration. And in paragraph 2, you
15 write, I am being compensated for my work in this
16 matter at my standard hourly rate for expert
17 consulting services.

18 Did I read that first sentence
19 correctly?

20 A. I believe so, yes.

21 Q. What is your standard hourly rate for
22 expert consulting services?

1 A. \$450 per hour.

2 Q. And do you charge that \$450 per hour
3 regardless of the types of activities that you're
4 doing in expert consulting services?

5 A. Yes, I do.

6 Q. So if you're drafting a declaration or
7 sitting for a deposition, it's the same rate;
8 correct?

9 A. That's correct.

10 Q. And is that \$450 per hour the same
11 amount that you charge regardless of whether you're
12 providing expert consulting services in an IPR or
13 district court litigation?

14 A. Yes, that is correct.

15 Q. Do you provide any kind of volume
16 discount on your rate for repeat customers?

17 A. Nope.

18 Q. Dr. Duckworth, as I understand it,
19 you've also been retained to work on some district
20 court litigation for Masimo; correct?

21 A. I did some work briefly last year, if
22 I remember correctly, but I've not been involved

1 since then.

2 Q. Are your billings related to all the
3 matters that you're working on for Masimo up to date
4 except for preparation for this deposition and
5 sitting for the deposition today?

6 MR. KIANG: I'll object to the form,
7 relevance.

8 BY MR. AMON:

9 Q. You can go ahead and answer,
10 Dr. Duckworth.

11 A. If I understand your question
12 correctly, if they're up to date, I bill every
13 month. So I've not billed for any work done in
14 April so far.

15 Q. But you've billed for all work done
16 prior to April of 2025; is that correct?

17 A. That is correct.

18 Q. And can you estimate since you started
19 working -- let me take a step back.

20 Can you estimate from the time of --
21 January of 2024 to the present, how much you billed
22 to Masimo on all the matters you've worked total?

1 MR. KIANG: Objection to relevance as
2 to matters that's beyond this IPR.

3 BY MR. AMON:

4 Q. That's fine. You can answer,
5 Dr. Duckworth.

6 A. So you're asking me for -- can you
7 repeat the question, please?

8 Q. Sure, of course.

9 MR. AMON: And, Mr. Kiang, I would
10 appreciate it if you limited your objections
11 to objection, form, per the rules.

12 BY MR. AMON:

13 Q. Dr. Duckworth, my question very simply
14 is: Can you estimate from January 2024 to --
15 through March of 2025, how much you've billed total
16 for all matters that you have worked for Masimo on?

17 A. I don't have that information at hand.
18 I would estimate somewhere in the range of 100 to
19 200,000.

20 Q. And that's 100 to \$200,000; correct?

21 A. That is correct.

22 Q. And can you narrow that? Is it more

1 likely to be in the 100 to 150 or the 150 to 200?

2 A. No, I can't --

3 MR. KIANG: Objection, relevance.

4 THE WITNESS: I'm sorry, I tripped you
5 there.

6 No, I can't.

7 MR. AMON: And, again, Mr. Kiang, I
8 would appreciate it if you could limit your
9 objections to objection, form.

10 MR. KIANG: I disagree, Counsel. Form
11 does not cover a relevance objection.

12 MR. AMON: If you could point me to a
13 rule that states that, I would appreciate it.

14 MR. KIANG: You can take a look at the
15 back of the Consolidated Trial Practice
16 Guide.

17 BY MR. AMON:

18 Q. If I could ask you to turn in your
19 declaration, 2046, to paragraph 10. And let me know
20 when you're there.

21 A. I am at paragraph 10.

22 Q. Okay. And at the top of page 5, the

1 first full sentence that starts on that page reads,
2 As I stated previously, the term "replaced," as
3 generally used in the English language, means "to
4 take the place of."

5 Did I read that correctly, sir?

6 A. I believe so. As I stated previously,
7 the term "replaced," as generally used in the
8 English language, means "to take the place of." And
9 then refers to Exhibit 2042, paragraph 65.

10 Q. That is consistent with how "replaced"
11 is used in the '223 patent that is the subject of
12 this IPR; correct?

13 MR. KIANG: Objection to form.

14 THE WITNESS: So if I refer back to
15 2042, I describe in paragraph 65, The term
16 "replaced," as generally used in the English
17 language, means "to take the place of."

18 And then in paragraph 66, I say, The
19 '222 patent [sic] used the terms "replace"
20 and "replaced," consistent with the above
21 understanding.

22

1 BY MR. AMON:

2 Q. So I just want to make sure that --
3 because I believe a moment ago you said the
4 '222 patent. I believe you meant the '223 patent;
5 correct?

6 A. I must have misspoke then, because I
7 did mean the '223 patent.

8 So I was reading the start of
9 paragraph 66 in Exhibit 2042. And the sentence
10 reads, The '22 -- excuse me.

11 The '223 patent used the terms
12 "replace" and "replaced," consistent with the above
13 understanding.

14 Q. And so, therefore, your understanding,
15 '223 patent does, in fact, use the English language
16 definition of "replaced," "to take the place of";
17 correct?

18 A. I believe I answered that by reading
19 part of paragraph 65, The term "replace," as
20 generally used in the English language means to take
21 the place of.

22 Then there's more sentences in

1 paragraph 65. And then in 66, I say, The '223
2 patent used the terms "replace" and "replaced,"
3 consistent with the above understanding.

4 Q. Correct. And so I just want to make
5 sure that my understanding is correct, that the '223
6 patent is using the term "replace" and "replaced"
7 consistent with the definition of "to take the place
8 of"; correct?

9 A. I believe I've answered that with my
10 previous answers.

11 Q. And the answer, therefore, would be
12 yes; correct?

13 A. Well, I'll repeat what I said before.
14 Paragraph 65 states, The term
15 "replace," as generally used in the English
16 language, means "to take the place of."

17 And then in paragraph 66, I state, The
18 '223 patent used the terms "replace" and "replaced,"
19 consistent with the above understanding.

20 Q. Now I'm going to upload into the
21 chart, Dr. Duckworth, what has been previously
22 marked as Apple Exhibit 1001.

1 (Exhibit 1001, No Bates Numbers, '223
2 Patent, received and marked.)

3 BY MR. AMON:

4 Q. Let me know when you have that open.

5 A. I have the paper copy of that in front
6 of me. And I've also downloaded it from the chat.

7 Q. And just for identification, can you
8 please tell us what is Exhibit 1001?

9 A. It's the U.S. patent 8,190,223.

10 Q. And do you understand that -- well,
11 let me take a step back.

12 Is it okay if I refer to Exhibit 1001
13 as the '223 patent?

14 A. Yes, that is okay.

15 Q. And you'll understand if I refer to
16 the '223 patent that I'm referring to Exhibit 1001?

17 A. Yes.

18 Q. And do you understand that the '223
19 patent is the subject of the currently pending IPR
20 that you're being deposed on right now?

21 A. Yes, this IPR is concerning the
22 '223 patent.

1 Q. And it's challenging the validity of
2 the '223 patent, specifically certain claims in the
3 '223 patent; correct?

4 A. Can you point me to something where
5 you're stating that?

6 Q. Well, do you understand that -- well,
7 you understand that we are in the context of an IPR,
8 or inter partes review?

9 A. Correct.

10 Q. And do you understand what an inter
11 partes review is, Dr. Duckworth?

12 A. Yes.

13 Q. What is your understanding of what an
14 inter partes review is?

15 A. Well, as I state in the introduction
16 to my declaration, I'm making this declaration
17 request of Masimo in the matter of inter partes
18 review of this patent, '223.

19 Q. And you understand that in the inter
20 parties review, Apple is challenging the
21 patentability of certain claims of the '223 patent?

22 A. Yes, I do.

1 Q. Now, I'd like to ask you to turn to
2 the claims of the '223 patent, which are -- and
3 specifically, I want to make sure we're talking
4 about the re-exam claims that are at the end of the
5 document, the last two pages.

6 And let me know when you're there.

7 A. I am there.

8 Q. Dr. Duckworth, can you please let me
9 know where Claim 1 includes the phrase
10 "space-limited display"?

11 A. So I believe that Claim 1 does not use
12 the words that you just used.

13 Q. Does Claim 1 anywhere use the term
14 "small display"?

15 A. I don't believe the words in Claim 1
16 use the words "small display."

17 Q. Does the -- does Claim 1 anywhere use
18 "tiny display"?

19 A. I don't think the words in Claim 1 use
20 the words "tiny display."

21 Q. Does Claim 1 anywhere use the term or
22 phrase "miniature display"?

1 A. I believe the words in Claim 1 do not
2 use the words "miniature display."

3 Q. Does Claim 1 anywhere use the term
4 "compact display"?

5 A. Counselor, it may be easier for me to
6 actually read out the words in Claim 1 as opposed to
7 keep saying what it doesn't include. Would you like
8 me to read the claim so we agree what it does
9 include?

10 Q. No, I'd actually like you to answer my
11 question, Dr. Duckworth, which is: Does Claim 1
12 anywhere use the phrase "compact display"?

13 A. I believe that the words in Claim 1 do
14 not use the words "compact display."

15 Q. And, finally, does Claim 1 anywhere
16 use the phrase or term "mini display"?

17 A. I'm sorry, could you repeat the
18 question? I didn't quite hear the words there.

19 Q. Sure, of course.

20 Does Claim 1 anywhere use the term or
21 phrase "mini display"?

22 A. I do not see the words "mini display"

1 used in Claim 1.

2 Q. Okay. Let me ask -- let me see if I
3 can shortcut this, Dr. Duckworth.

4 If I were to ask you the same set of
5 questions regarding whether Claim 13 has any of the
6 phrases that we just went over, would your answers
7 be the same?

8 MR. KIANG: Objection to form.

9 THE WITNESS: So I don't remember all
10 of the words you used. Maybe to be clear,
11 why don't we go through them one by one.
12 Again, I'd rather not say something that was
13 incorrect. And if you don't want me to read
14 out the description of 13, we should do the
15 negative, and you can ask me the list of
16 terms again.

17 BY MR. AMON:

18 Q. That's completely fair, Dr. Duckworth.
19 And I appreciate that.

20 So Claim 13 now, does that anywhere
21 include the phrase "space-limited display"?

22 A. I don't believe Claim 13 includes the

1 words "space-limited display."

2 Q. Does Claim 13 include the term "small
3 display"?

4 A. I don't believe Claim 13 uses the
5 words "small display."

6 Q. Does Claim 13 use the words "tiny
7 display"?

8 A. I don't believe Claim 13 uses the
9 words "tiny display."

10 Q. Does Claim 13 use the words "miniature
11 display"?

12 A. I don't believe Claim 13 uses the
13 words "miniature display."

14 Q. Does Claim 13 use the word "compact
15 display"?

16 A. I don't believe Claim 13 uses the
17 words "compact display."

18 Q. Does Claim 13 use the words "mini
19 display"?

20 A. I don't believe Claim 13 uses the
21 words "mini display."

22 Q. If you could look at now Claim 15,

1 read it to yourself, and let me know when you've
2 done that, please.

3 (Document review.)

4 THE WITNESS: Counselor, can I ask you
5 a question? I thought today was going to be
6 a deposition on my second declaration. A lot
7 of the things you're asking me seem like they
8 were covered in my first declaration and also
9 my first deposition. So I'm a little bit
10 confused about the nature of these questions.

11 BY MR. AMON:

12 Q. Well, this is absolutely about your
13 second declaration, which also incorporates by
14 reference in certain portions your first
15 declaration. And so this is a thorough deposition
16 that I need to cover all angles of your declaration,
17 Dr. Duckworth.

18 A. Okay. So can you -- you asked me, I
19 think, to read Claim 15.

20 Q. Correct. And let me know when you've
21 done that and read it to yourself, please.

22 (Document review.)

1 THE WITNESS: Okay. I've read

2 Claim 15.

3 BY MR. AMON:

4 Q. Does Claim 15 anywhere use the phrase
5 "space-limited display"?

6 A. I do not see the term "space-limited
7 display" in Claim 15.

8 Q. Does Claim 15 anywhere use the term
9 "small display."

10 A. I do not see the term "small display"
11 used in Claim 15.

12 Q. Does the -- does Claim 15 anywhere use
13 the term "tiny display"?

14 A. I do not see the term "tiny display"
15 used in Claim 15.

16 Q. Does Claim 15 use the term "miniature
17 display"?

18 A. I do not see the term "miniature
19 display" used in Claim 15.

20 Q. Does Claim 15 use "compact display"?

21 A. I do not see Claim 15 as using the
22 term "compact display."

1 Q. Does Claim 15 use the term "mini
2 display"?

3 A. I do not see Claim 15 as using the
4 term "mini display."

5 Q. Now, if you could read Claim 18 to
6 yourself, and let me know when you've done that,
7 please.

8 (Document review.)

9 THE WITNESS: I have read Claim 18.

10 BY MR. AMON:

11 Q. Does Claim 18 anywhere use the phrase
12 "space-limited display"?

13 A. I do not see the term "space-limited
14 display" used in Claim 18.

15 Q. Does Claim 18 anywhere use the phrase
16 "small display"?

17 A. I do not see the term "small display"
18 used in Claim 18.

19 Q. Does the -- does Claim 18 use the
20 phrase "tiny display"?

21 A. I do not see Claim 18 using the phrase
22 "tiny display."

1 MR. KIANG: Counsel, we're losing your
2 video feed.

3 MR. AMON: Oh, that's strange.
4 Can you-all still hear me, though?

5 MR. KIANG: We can hear you.

6 MR. AMON: Okay.

7 THE WITNESS: I can hear you.

8 MR. AMON: Okay. I'm not sure what's
9 going on then.

10 MR. KIANG: It looks a little bit like
11 a '90s war movie.

12 MR. AMON: Just let me turn it off and
13 then back on.

14 There we go. Did that fix it?

15 THE REPORTER: Yes.

16 MR. KIANG: That looks better.

17 THE WITNESS: Yes.

18 MR. AMON: Okay. Fantastic.

19 BY MR. AMON:

20 Q. So I will ask the same quest- --
21 sorry, let me pick up where I left.

22 Does Claim 18 anywhere use the term

1 "miniature display"?

2 A. I do not see the term "miniature
3 display" used in Claim 18.

4 Q. Does Claim 18 anywhere use the term
5 "compact display"?

6 A. I do not see the term "compact
7 display" used in Claim 18.

8 Q. Does Claim 18 anywhere use the term
9 "mini display"?

10 A. I do not see the term "mini display"
11 in Claim 18.

12 Q. Dr. Duckworth, let me try to shortcut
13 this in a little bit different way. I just uploaded
14 a new version of Exhibit 1001, because I realized
15 that the previous one I had provided to you was not
16 OCR. The one that I just put in the chat is OCR.
17 So you're welcome to upload or open that version,
18 and that should be word searchable.

19 Let me ask the following question.

20 Does the '223 patent anywhere in the
21 claims or the specification use the phrase
22 "space-limited display"? And you're welcome to do a

1 word search using the OCR version.

2 MR. KIANG: I'm going to object to
3 that question on the basis that we're not
4 certain that the document was OCR'd
5 accurately. And so I guess it's a foundation
6 objection.

7 MR. AMON: That's a speaking
8 objection. Again, please, form.

9 BY MR. AMON:

10 Q. And that's fine, you're welcome to
11 read the entirety of the specification,
12 Dr. Duckworth, if you'd like. But I'm telling you,
13 if you prefer, you can do a word search in the OCR
14 and see if the '223 patent anywhere uses the phrase
15 "space-limited display."

16 MR. KIANG: Objection to form,
17 foundation, and quality of the OCR.

18 THE WITNESS: I'm going to read my
19 clean copy of the patent, then, to look for
20 those terms. Can you remind me the terms
21 again, Counselor?

22

1 BY MR. AMON:

2 Q. Sure. The first one we're looking for
3 is "space-limited display," specifically.

4 (Document review.)

5 THE WITNESS: And, Counselor, just to
6 be clear, you're asking me for me to find
7 that exact term, right, "space-limited
8 display"?

9 BY MR. AMON:

10 Q. Correct.

11 A. Okay.

12 (Document review.)

13 MR. KIANG: Counsel, we lost your
14 video again.

15 MR. AMON: Yes, I see that.

16 And there it's back.

17 (Document review.)

18 THE WITNESS: Counselor, I have
19 finished reading. Before I answer, I'd like
20 to request a break before you jump into
21 another question. But your question, I
22 believe, was: Does the '223 patent have the

1 phrase "space-limited display"; is that
2 correct? "Space-limited display"?

3 BY MR. AMON:

4 Q. That is correct.

5 A. So I did not see those -- that exact
6 wording, but I saw very similar phrasing. For
7 example, in Column 15, it says, "the display 706 has
8 insufficient space or display real estate to display
9 the many parameters."

10 And I also found very similar wording,
11 I think, in paragraph 10. Let me try to find that
12 again.

13 Yeah, so in Column 10, again, it has
14 very similar phrasing there. "In an embodiment, the
15 display 206 has insufficient space or display real
16 estate to display the many parameters capable of
17 being measured by the monitor."

18 Q. But I just want to make sure the
19 record is clear, you did not see anywhere in the
20 '223 patent the phrase "space-limited display";
21 correct?

22 A. I did not see those three words

1 together like that, no.

2 Q. Okay. You requested a break. So I'm
3 a man of my word. I'm happy to take a break for --
4 how long would you like to take?

5 A. Well, it's noontime on the East Coast
6 here. So I'm requesting an hour for my lunch.

7 Q. Sure, that's fine. We can do that.
8 So it is now 12:08 Eastern Time. We'll be back at
9 1:08 on the record.

10 A. Sounds good. Thank you.

11 THE REPORTER: We're off the record.

12 (Luncheon recess from the record.)

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1 A F T E R N O O N S E S S I O N

2 (1:08 p.m.)

3 REGINALD JAMES DUCKWORTH, PH.D.,

4 having been previously sworn, resumed the

5 stand and testified further as follows:

6 EXAMINATION (Cont'd.)

7 BY MR. AMON:

8 BY MR. AMON:

9 Q. Dr. Duckworth, welcome back. You
10 understand you're still under oath; correct?

11 A. Yes.

12 Q. During the lunch hour break, did you
13 have any conversations with counsel from Masimo?

14 A. No.

15 Q. Let's go and pick up back where we
16 were. If I could ask you to turn to Exhibit 1001,
17 which is the '223 patent, back to the claims
18 themselves.

19 And I'm now going to ask you to look
20 at Claim 21, and let me know when you've done that,
21 please. And read it to yourself, and let me know
22 when you're done.

1 (Document review.)

2 MR. KIANG: Counsel, could you please
3 direct us to a particular page or column
4 number?

5 MR. AMON: Sure.

6 MR. KIANG: I'm just asking because
7 there's a re-exam. So there's two sets of
8 claims here.

9 MR. AMON: Right. But we're looking
10 at -- there is no reexamination of Claim 21.
11 So Claim 21 should be located at Column 21,
12 starting at around line 35.

13 THE WITNESS: I've read Claim 21.

14 BY MR. AMON:

15 Q. Does Claim 21 use the phrase
16 "space-limited display"?

17 A. I do not see the phrase "space-limited
18 display" in Claim 21.

19 Q. Does Claim 21 use the phrase "small
20 display"?

21 A. I don't see the term "small display"
22 in Claim 21.

1 Q. Does Claim 21 use "tiny display"?

2 A. I do not see the term "tiny display"
3 in Claim 21.

4 Q. Does Claim 21 use the term "miniature
5 display"?

6 A. I do not see the term "miniature
7 display" in Claim 21.

8 Q. Does Claim 21 use the term "compact
9 display"?

10 A. I do not see the term "compact
11 display" in Claim 21.

12 Q. And does Claim 21 use the term "mini
13 display"?

14 A. I do not see the -- I just want to be
15 clear, Counselor. Are you -- can you spell out that
16 word that you're using there?

17 Q. Sure. Sure. Mini, as in a mini,
18 M-I-N-I.

19 A. Oh, okay. Thank you. Okay.

20 In Claim 21, I do not see the term
21 "mini display."

22 Q. And just so the record is clear, my

1 previous questions asking about mini display was the
2 same term I was asking about.

3 Is that -- do you understand that,
4 Dr. Duckworth?

5 A. At the time I thought you were asking
6 about "many," M-A-N-Y, "display."

7 Q. Okay. Do you want to go back and
8 revisit Claims 1, 13, 15, and 18 to see if any of
9 those claims use the phrase "mini," M-I-N-I,
10 display?

11 A. I do not see the term "mini" in --
12 "mini display" in Claim 1.

13 What are the other ones, please?

14 Q. Sure.

15 Do you see it in Claim 13?

16 A. I do not see the term "mini display"
17 in Claim 13.

18 Q. Do you see it in Claim 15?

19 A. I do not see the term "mini display"
20 in Claim 15.

21 Q. Do you see the term "mini display" in
22 Claim 18?

1 A. I do not see the term "mini display"
2 in Claim 18.

3 Q. So I think that would bring us up to
4 the current state. If I could ask you to now turn
5 to Claim 27, which is in the re-exam portion of the
6 patent. And that is going to be at re-exam
7 Column 2, starting at around line 49.

8 Let me know when you're there, and
9 please read Claim 27 to yourself.

10 (Document review.)

11 THE WITNESS: I have read Claim 27.

12 BY MR. AMON:

13 Q. Does Claim 27 use the phrase
14 "space-limited display"?

15 A. I did not see the phrase
16 "space-limited display" in Claim 27.

17 Q. Does Claim 27 use the term "small
18 display"?

19 A. I did not see the term "small display"
20 in Claim 27.

21 Q. Does Claim 27 use the term "tiny
22 display"?

1 A. I did not see the term "tiny display"
2 used in Claim 27.

3 Q. Does Claim 27 use the term "miniature
4 display"?

5 A. In Claim 27, I do not see the term
6 "miniature display."

7 Q. Does Claim 27 use the term "compact
8 display"?

9 A. In Claim 27, I do not see the term
10 "compact display."

11 Q. And does Claim 27 use the term "mini,"
12 M-I-N-I, "display"?

13 A. I do not see the term "mini display"
14 in Claim 27.

15 Q. Dr. Duckworth, the good news is we
16 only have one more claim to go on this line of
17 questioning.

18 If you could please read Claim 28 in
19 the re-exam portion to yourself, and let me know
20 when you've done that. And just for the record,
21 Claim 28 starts at Column 3, line 3.

22 (Document review.)

1 THE WITNESS: I have read Claim 28.

2 BY MR. AMON:

3 Q. Does Claim 28 use the phrase
4 "space-limited display"?

5 A. I do not see the phrase "space-limited
6 display" in Claim 28.

7 Q. Does Claim 28 use the term "small
8 display"?

9 A. I do not see the term "small display"
10 used in Claim 28.

11 Q. Does Claim 28 use the term "tiny
12 display"?

13 A. I do not see the term "tiny display"
14 used in Claim 28.

15 Q. Does Claim 28 use the term "miniature
16 display"?

17 A. I do not see the term "miniature
18 display" used in Claim 28.

19 Q. Does Claim 28 use the term "compact
20 display"?

21 A. I do not see the term "compact
22 display" used in Claim 28.

1 Q. And does Claim 28 use the term "mini,"
2 M-I-N-I, "display"?

3 A. I do not see the term "mini display"
4 in Claim 28.

5 Q. Now, before the break, Dr. Duckworth,
6 you made reference to two sections in the
7 specification at Column 10 and Column 15,
8 respectively, where there was discussion of Item 706
9 and the fact that display 706 was not capable of
10 displaying the many parameters.

11 Do you recall that?

12 MR. KIANG: Objection to form.

13 THE WITNESS: Let me go back to
14 Column 10.

15 So in Column 10, what I pointed out
16 was I believe, when you were asking about a
17 "space-limited display" term, I was pointing
18 out that there's a very similar description
19 in Column 10, where it reads, "In an
20 embodiment, display 206 has insufficient
21 space or display real estate to display the
22 many parameters capable of being measured by

1 the monitor 200."

2 So that's what I was referring to in
3 Column 10. And then there was another
4 location, if you'd like me to find that.

5 BY MR. AMON:

6 Q. No, I believe you said that they were
7 very similar. The other one is at Column 15;
8 correct?

9 MR. KIANG: Objection to form.

10 BY MR. AMON:

11 Q. And I'll help you, Dr. Duckworth.
12 I'll point you to Column 15, line 50, starting at
13 line 50.

14 A. Thank you. So line 50 starts, "In an
15 embodiment, the display 706 has insufficient space
16 or display real estate to display the many
17 parameters capable of being measured by the monitor
18 700."

19 Q. So you'll agree with me that the
20 disclosure at Column 10, lines 6 through 9, and the
21 disclosure at Column 15, lines 50 through 52, are
22 identical except for the reference to the specific

1 items 206 and 200 at Column 10, and 706 and 700 at
2 Column 15; correct?

3 MR. KIANG: Objection to form.

4 (Document review.)

5 THE WITNESS: So I read those two
6 sections, and I believe the difference is
7 referring to display 206 and display 706, and
8 referring to monitor 200 and monitor 700.

9 BY MR. AMON:

10 Q. But other than those differences you
11 just pointed out, the sentences are identical;
12 correct?

13 MR. KIANG: Objection to form.

14 (Document review.)

15 THE WITNESS: They do look identical
16 apart from those numbers.

17 BY MR. AMON:

18 Q. And, Dr. Duckworth, I want to focus a
19 little bit on the term or phrase "many parameters
20 capable of being measured by the monitor" in both of
21 those sentences.

22 In your opinion, would a person of

1 ordinary skill in the art consider "many parameters"
2 to be more than one?

3 MR. KIANG: Objection, scope.

4 MR. AMON: Again, please limit your
5 objections to objection, form, Mr. Kiang?

6 MR. KIANG: I'm not going to do that,
7 Counsel.

8 BY MR. AMON:

9 Q. Do you need me to repeat the question,
10 Dr. Duckworth?

11 A. Yes, why don't you repeat the
12 question.

13 Q. Sure.

14 I want to focus on the phrase "many
15 parameters capable of being measured by the monitor"
16 that appears both at Column 10 and Column 15.

17 And in your opinion, would a person of
18 ordinary skill in the art at the relevant time
19 understand that "many parameters" refers to more
20 than one parameter?

21 MR. KIANG: Objection, scope.

22 (Document review.)

1 THE WITNESS: So the first sentence in
2 that paragraph in Column 10 says, "The
3 monitor 200 also comprises a multi-mode
4 display 206 capable of displaying, for
5 example, measurements of SpO2 and HbCO."

6 So I believe that when the next
7 sentence talks about the many parameters, it
8 is talking about more than one parameter.

9 BY MR. AMON:

10 Q. Dr. Duckworth, you've reviewed the
11 '223 patent; correct?

12 A. Yes.

13 Q. Okay. And, in fact, you spent about
14 35, 40 minutes rereading the entire patent during
15 this deposition; correct?

16 A. To search for the specific three words
17 you asked me to, yes.

18 Q. Okay. That's fine.

19 I just want to make sure that it's --
20 the '223 patent is fresh in your mind; correct?

21 A. I've got it in front of me, and I have
22 recently read it, as you pointed out.

1 Q. Dr. Duckworth, do any of the
2 embodiments disclosed in the '223 patent have less
3 than two display areas?

4 MR. KIANG: Objection, form, scope.

5 BY MR. AMON:

6 Q. You can go ahead, Dr. Duckworth.

7 A. Can you repeat the question? I didn't
8 understand what you were asking there.

9 Q. Sure.

10 Do any of the disclosed embodiments in
11 the '223 patent have less than two display areas?

12 MR. KIANG: Objection, form, scope.

13 THE WITNESS: What do you mean by
14 "display area"? Can you be specific about
15 what you mean by that?

16 BY MR. AMON:

17 Q. Sure. Let's -- maybe if we read the
18 actual embodiments, that will be helpful.

19 So let's first look at Column 4,
20 line 9 through 11.

21 (Document review.)

22

1 BY MR. AMON:

2 Q. And Column 4, line 9 through 11, the
3 specification reads, Figure 2 illustrates a top
4 elevation view of an exemplary handheld noninvasive
5 multi-parameter patient monitor capable of
6 displaying at least HbCO, such as, for example, the
7 patient monitor of Figure 1.

8 Did I read that section correctly,
9 Dr. Duckworth?

10 A. I believe so.

11 Q. And now if we look at Figure 2, and
12 you're welcome to look at Figure 2, you would agree
13 with me that Figure 2 has one display 206; correct?

14 A. Let me find the description of 206.
15 (Document review.)

16 THE WITNESS: So I see a description
17 in Column 10. It says, "For example, when
18 the multi-mode display 206." So I believe
19 you were asking me about 206. So the -- it
20 refers to 206 as the multi-mode display.

21 BY MR. AMON:

22 Q. So we agree that Figure 2 includes

1 multi-mode display 206; correct?

2 A. Where was I? Let me see. Let me find
3 this again.

4 (Document review.)

5 THE WITNESS: Yes, sorry about the
6 delay there. So it says, "For example, when
7 the multi-mode display 206." So yes, it
8 refers to 206 as the multi-mode display.

9 BY MR. AMON:

10 Q. And Figure 2 also includes a pulse
11 display 216; correct? And I will point you to
12 Column 11, line 12.

13 (Document review.)

14 MR. KIANG: Objection to scope.

15 THE WITNESS: So in Column 11, it
16 talks about Figure 2 also shows the monitor
17 200, including a pulse display 216.

18 BY MR. AMON:

19 Q. So can we agree, Dr. Duckworth, that
20 Figure 2 includes a display 206 and a separate
21 display 216?

22 MR. KIANG: Objection to scope.

1 THE WITNESS: To be specific, the
2 description refers to the -- the multi-mode
3 display 206 and then a pulse display 216.

4 BY MR. AMON:

5 Q. And those are, at least according to
6 the specification, two separate displays; correct?

7 MR. KIANG: Objection to scope.

8 THE WITNESS: I think Figure 2, when
9 it describes Figure 2, it also shows the
10 monitor 200, including a pulse display 216 --

11 (The reporter seeks clarification.)

12 THE WITNESS: Yeah, just confirming
13 that Figure 2 also shows a monitor 200,
14 including a pulse display 216.

15 BY MR. AMON:

16 Q. Dr. Duckworth, let me ask you a
17 question. Previously -- or, excuse me, in your
18 declaration, Exhibit 2046, at paragraph 14, you used
19 the phrase, "space-limited displays" in that first
20 full sentence at paragraph 14.

21 Do you see that?

22 A. I'm reading part of paragraph 14.

1 "Apple's argument is wrong because the
2 '223 Patent describes multiple embodiments, some of
3 which are claimed in the challenged claims
4 (space-limited displays that require
5 replacing/changing to display measured values of
6 parameters)."

7 Q. So looking back now at the '223
8 patent, and we read previously that Figure 2's
9 description at Column 4 reads, Figure 2 illustrates
10 a top elevation view of an exemplary handheld
11 noninvasive multi-parameter patient monitor capable
12 of displaying at least HbCO, such as, for example,
13 the patient monitor of Figure 1.

14 Do you remember that, Dr. Duckworth?

15 A. I believe you just read part of
16 Column 4 there, describing Figure 2.

17 Q. In your opinion, is the handheld
18 monitoring device of Figure 2 a space-limited
19 display or -- let me strike that. That was a poor
20 question.

21 In your opinion, is the handheld
22 device or does the handheld device of Figure 2

1 include a space-limited display, as you've described
2 at paragraph 14 of Exhibit 2046?

3 MR. KIANG: Objection to form and
4 scope.

5 (Document review.)

6 THE WITNESS: I'll refer you to
7 paragraph 67 of my first declaration. Let
8 me -- or maybe paragraph 68. So the '223
9 patent also explains the purpose of the
10 invention is to enable more parameters to be
11 displayed than the available physical display
12 real estate permits, Exhibit 1001 abstract.

13 And then the '223 patent accomplishes
14 this goal by removing one measured value of a
15 parameter from the display of the patient
16 monitor and displaying the measured value of
17 a different parameter in its place,
18 Exhibit 1001, 520 to 25.

19 ("For example a patient monitor may be
20 displaying a first parameter, such as
21 plethysmographic, and upon determining
22 measurements indicating that HBMet is

1 trending towards an alarm condition, the
2 monitor may automatically switch from
3 displaying the first parameter to the
4 alarming parameter"); see also id. at 10:6 to
5 12 (explaining that in a display with
6 "insufficient space," the display "cycles
7 through two or more measured parameters in an
8 area common to both parameters").

9 So that paragraph and the preceding
10 one in 67, talks about Figures 3, 4, and 5,
11 which I describe in my first declaration
12 showing how that display 206 is being used
13 and modified.

14 BY MR. AMON:

15 Q. Right. But I don't think that answers
16 my question, Dr. Duckworth.

17 My question, and just so we're clear,
18 was: Would a person of ordinary skill in the art
19 understand that the handheld monitoring device in
20 Figure 2 includes a space-limited display?

21 A. I believe I've answered that by the
22 description I've got in 67 and 68, talking about

1 enabling more parameters to be displayed than the
2 available physical display real estate permits.

3 And, likewise, at the end of that
4 paragraph, explained that in a display with
5 insufficient space, the display cycles through two
6 or more measured parameters in an area common to
7 both parameters.

8 So, again, I'm showing how 206 is
9 showing the two parameters being displayed,
10 basically essentially to enable more parameters to
11 be displayed than the available physical display
12 real estate permits.

13 Q. But in your discussion of Figures 3,
14 4, and 5 at paragraph 67 and 68 of your original
15 declaration, Exhibit 2042, you nowhere reference
16 Exhibit 2; correct?

17 MR. KIANG: Objection to form.

18 THE WITNESS: Well, in 67, I refer to,
19 for example, Figure 3 of the '223 patent
20 illustrates an exemplary display of the
21 patient monitor. And when we look at the
22 description of Figure 3 on Column 4 of the

1 patent, it says, Figure 3 illustrates an
2 exemplary display of the patient monitor of
3 Figure 2.

4 So when I'm referring to Figures 3, 4,
5 and 5, they're referring back to the patient
6 monitor of Figure 2.

7 BY MR. AMON:

8 Q. And I appreciate that, Dr. Duckworth.
9 That's helpful. So I think we can agree that the
10 handheld monitoring twice in Figure 2 would comport
11 with what you consider to be a --

12 A. I'd just point out your video is --
13 yeah, okay, I can --

14 Q. Let me start my question over again
15 then.

16 A. Yep.

17 Q. I think we can agree, Dr. Duckworth,
18 that the handheld monitoring device of Figure 2
19 would comport with your description as a
20 space-limited -- or including a space-limited
21 display; fair?

22 A. I'd prefer to leave it with the

1 descriptions that I gave you in 67 and 68,
2 describing that display 206.

3 Q. And that display 206, would you
4 characterize that as a space-limited display?

5 A. Yes, I say it's to enable more
6 parameters to be displayed than the available
7 physical display real estate permits, which is the
8 description from the patent.

9 Q. And that would be a space-limited
10 display; correct?

11 A. Yes, I would classify that as a
12 space-limited display.

13 Q. If we go to Figure 3.

14 Figure 3, likewise, discloses a first
15 display 206 and a second display 216; correct?

16 A. Did you read part of the patent there?
17 I'm just finding a reference to Figure 3.

18 Q. Well, let me -- let's first -- let's
19 set the baseline.

20 If you could look at Figure 3, and let
21 me know when you have it in front of you,
22 Dr. Duckworth.

1 A. Yes, I do.

2 Q. You see that there is an item labeled
3 206; correct?

4 A. I see an item labeled 206, yes.

5 Q. And we just saw that the specification
6 at Column 10, lines 6 through 9 describe 206 as the
7 display 206; correct?

8 A. Not just the display 206. In fact, in
9 Column 14, line 20, it says, Figure 3 illustrates an
10 exemplary display of the patient monitor 200. As
11 shown in Figure 3, the display includes the
12 multi-mode display 206, the pulse rate display 216.

13 Q. Oh, perfect. Thank you. I appreciate
14 that.

15 So you'll agree with me that under the
16 disclosure in the specification, Figure 3, in fact,
17 does include two separate displays, display 206 and
18 then the pulse rate display 216; correct?

19 A. It refers to both the display --
20 multi-mode display 206 and the pulse rate display
21 216, yes.

22 Q. And those are identified as two

1 separate displays; correct?

2 MR. KIANG: Objection to form.

3 THE WITNESS: The specification refers
4 to them as the display includes the
5 multi-mode display 206 and the pulse rate
6 display 216.

7 BY MR. AMON:

8 Q. And if we look at Figure 4.

9 Figure 4 includes the multi-mode
10 display 206 and the pulse -- the pulse rate display
11 216, as well; correct?

12 A. Figure 4 shows 206 and 216.

13 Q. And you'll agree with me that those
14 are the same 206 and 216 that we just referenced in
15 Figure 3?

16 A. Yes, 206 and 216. So just let me,
17 again, further down in Column 14, As shown in
18 Figure 4, the multi-mode display 206 is displaying a
19 percentage value of SpO2, and the pulse rate display
20 216 is displaying a pulse rate in beats per minute.

21 Q. If we now move on to Figure 5.

22 Figure 5, likewise, discloses a

1 display 206 and also a display 216; correct?

2 A. So, again, later in Column 14, it
3 says, As shown in Figure 5, the multi-mode display
4 206 is displaying a percentage value of SpO2, and
5 the pulse rate display 216 is displaying an
6 appropriate message indicating the HbCO measurement.

7 Q. Now, in Figure 6, Figure 6, likewise,
8 discloses a multi-mode display 206 and a pulse rate
9 display 216; correct?

10 And I'll help you out, Dr. Duckworth.
11 Column 15 starting at line 3, at the very end of
12 line 3.

13 (Document review.)

14 THE WITNESS: I'm not sure how that's
15 helping me out. I thought we were referring
16 to Figure 6.

17 BY MR. AMON:

18 Q. Oh, I apologize. You're absolutely
19 correct. That is in reference to Figure 5. I
20 apologize.

21 Regardless, if we look at Figure 6,
22 Figure 6 does include identification of display 206

1 and also display 216; correct?

2 A. I don't see a description specific to
3 Figure 6, but I see that Figure 6 has identified 206
4 and 216 in the figure.

5 Q. And do you have any reason to believe
6 that a person of ordinary skill in the art seeing
7 Figure 6 would think that the 206 of Figure 6 is
8 different than the 206 of Figures 2, 3, 4, and 5?

9 A. The description of Figure 6 in
10 Column 4 illustrates the display of Figure 3. So I
11 would agree that the 206 and 216 are referring to
12 the same -- where's the description -- one being
13 the -- just one second.

14 (Document review.)

15 THE WITNESS: So it refers to the
16 multi-mode display and the pulse display 216.

17 BY MR. AMON:

18 Q. And just so that the record is clear,
19 Dr. Duckworth, in Figure 6, 206 would be referring
20 to the multi-mode display; correct?

21 A. Yes, I believe that's so -- yes,
22 multi-mode display 206, yes.

1 Q. And in Figure 6, 216 would be
2 referring to the pulse rate display; correct?

3 A. Pulse display 216.

4 Q. Now, when we look at Figure 7,
5 Figure 7 now changes some parameters. And let's
6 first orient ourselves.

7 If we look at Column 4, starting at
8 around line 26, the specification discloses that
9 Figure 7 illustrates a top elevation view of an
10 exemplary handheld noninvasive multi-parameter
11 patient monitor capable of displaying at least HbCo
12 and HbMet, such as, for example, the patient monitor
13 of Figure 1.

14 Did I read that description correctly,
15 Dr. Duckworth?

16 A. Let me just find that. Referring to
17 Figure 7.

18 So Figure 7 illustrates a top
19 elevation view of an exemplary handheld noninvasive
20 multi-parameter patient monitor capable of
21 displaying at least HbCO and HbMet, such as, for
22 example, the patient monitor of Figure 1.

1 Q. So, again, did I read that section of
2 the specification correctly, Dr. Duckworth?

3 A. I can't remember the exact words you
4 used, but I just read out what that description is
5 of Figure 7.

6 Q. You think that in any way I
7 mischaracterized what the specification reads with
8 respect to Figure 7, Dr. Duckworth?

9 A. No, I don't believe so.

10 Q. And, again, in your opinion, does
11 Figure 7 include a space-limited display? And let
12 me reask the question, because I think it was a poor
13 question. Start over.

14 Does the handheld monitor of Figure 7
15 include a space-limited display?

16 MR. KIANG: Objection to form.

17 (Document review.)

18 THE WITNESS: So Figure 7 is described
19 in Column 15, and in Figure -- sorry, in
20 Column 15, around line 50, it says, "In an
21 embodiment, the display 706 has insufficient
22 space or display real estate to display the

1 many parameters capable of being measured by
2 the monitor 700."

3 And the sentence above that refers to
4 the multi-mode display 706.

5 BY MR. AMON:

6 Q. So I appreciate you reading the
7 specification, Dr. Duckworth, but I'm not sure that
8 answers my question. I'll repeat it.

9 In your opinion, does Figure 7 -- does
10 the handheld monitor of Figure 7 include a
11 space-limited display?

12 MR. KIANG: Objection to form.

13 THE WITNESS: Being very specific
14 here, indicating the description makes it
15 clear that the display, again Column 15
16 describing Figure 7, "In an embodiment, the
17 display 706 has insufficient space or display
18 real estate to display the many parameters
19 capable of being measured by the monitor
20 700."

21 So it makes it clear that the display
22 706 is space limited, it has insufficient

1 space for display real estate.

2 BY MR. AMON:

3 Q. And Figure 7 also includes the display
4 206; correct?

5 MR. KIANG: Objection to form.

6 THE WITNESS: In Figure 7, I see the
7 display 206, which is what we were discussing
8 earlier.

9 BY MR. AMON:

10 Q. And it also includes a display 706;
11 correct?

12 A. Figure 7 shows the multi-mode display
13 706 and --

14 (Document review.)

15 THE WITNESS: So Figure 7 shows the
16 multi-mode display 206 and the multi-mode
17 display 706.

18 BY MR. AMON:

19 Q. So Figure 7 includes two multi-mode
20 displays; correct?

21 A. Well, specifically, it includes the
22 multi-mode display 206 and the multi-mode display

1 706.

2 In Column 16, it says, Figure 8
3 illustrates exemplary display of the patient monitor
4 700 of Figure 7. As shown in Figure 8, the display
5 includes the multi-mode displays 206, 706.

6 Q. And, in fact, if you look back at
7 earlier in Column 16 of the specification, starting
8 with line 1, Figure 7 also illustrates the monitor
9 700 comprising user input keys 718, including an
10 HbCO/HbMet button 220. In an embodiment, activation
11 of the HbCO/HbMet button 720 toggles the measured
12 value displayed in the multi-mode display 706. For
13 example, activation of the HbCO/HbMet button 720
14 toggles the multi-mode display 206 from displaying
15 measured values of SpO2 and BPM, to HbCO and HbMet
16 for about ten seconds.

17 Did I read that portion of the
18 specification correctly, Dr. Duckworth?

19 A. I believe so.

20 Q. So that is talking about toggling
21 between multi-mode display 206 and multi-mode
22 display 706; correct?

1 A. Well, just being a bit more specific,
2 reading the language there, "For example, activation
3 of the HbCO/HbMet button 720 toggles the multi-model
4 display 206 from displaying measuring values of SpO2
5 and BPM, to HbCO and HbMet for about ten seconds."

6 Q. So that one button is actually
7 toggling both the display 206 and the display 706;
8 correct?

9 A. Can you ask your question again,
10 please?

11 Q. Sure.

12 So the activation button 720 is
13 toggling, according to the specification, both the
14 display 206 and the display 706; correct?

15 A. The second sentence in Column 16 says,
16 "In an embodiment, activation of the HbCO/HbMet
17 button 720 toggles the measured value displayed in
18 the multi-mode display 706."

19 Q. And then the next sentence reads, "For
20 example, activation of the HbCO/HbMet button 720
21 toggles the multi-mode display 206 from displaying
22 measured values of SpO2 and BPM, to HbCO and HbMet

1 for about ten seconds"; correct?

2 A. I see that it says that.

3 Q. And so, therefore, it's toggling both
4 the display 206 and the display 706; correct?

5 A. I believe you were using the term
6 "simultaneously", is that correct, in your question?

7 Q. No, I didn't use the word
8 "simultaneously," but according to the disclosure --
9 so let's take a look at Figure 8 or Figure 7,
10 whichever you prefer. But Figure 8 is a blowup, and
11 it may be a little bit easier since you described
12 Figure 8 is actually the display of Figure 7.

13 Do you see that 206 has percent HbCO
14 and percent SpO2 at the bottom of the box?

15 A. Yes, I do.

16 Q. And then you see that 706 has percent
17 HbMet and BPM at the bottom of the box?

18 A. Yes, I do.

19 Q. Okay. So if we go back to Column 16,
20 and read the third sentence of Column 16, "For
21 example, activation of HbCO/HbMet button 720 toggles
22 the multi-mode display 206 from displaying measured

1 values of SpO2 and BPM" -- so you'll agree with me
2 that if we look back at Figure 8, SpO2 is in 206 and
3 BPM is in 706; correct?

4 A. 206 shows SpO2, and 706 shows BPM.

5 Q. So from displaying the measured values
6 of SpO2 and BPM, to HbCO and HbMet for about
7 ten seconds.

8 So the description is disclosing
9 toggling both the values in display 206 and the
10 values in 706; correct?

11 A. That sentence only refers to
12 multi-mode display 206, though. It doesn't refer to
13 706 there.

14 Q. But you will agree that it also does
15 refer to displaying measured values of SpO2 and BPM
16 to HbCO and HbMet for about ten seconds; yes?

17 A. That's what it reads there, yes.

18 Q. And based on the disclosure of
19 Figure 7 and Figure 8, a person of skill in the art
20 would understand that it is toggling both display
21 206 and 706, based on the description in the
22 specification; fair, Dr. Duckworth?

1 A. Let me just read this some more.

2 MR. KIANG: Objection to scope.

3 (Document review.)

4 THE WITNESS: There's some discrepancy
5 there, because it refers to the multi-mode
6 display 206. And it says from displaying
7 measured values of SpO2 and BPM. Well, 206
8 can't display BPM. It can only display SpO2
9 and HbCO.

10 And just before you ask me another
11 question, can I -- I don't want you jumping
12 in. Can I request another break? We've been
13 going about an hour.

14 BY MR. AMON:

15 Q. We've been going less than an hour,
16 but I am a man of my word, but I'd like to get an
17 answer to my question, which you did not answer,
18 Dr. Duckworth, which is: A person of skill in the
19 art reading the disclosure -- and I'll be more
20 inclusive, the disclosure at Column 16, line 1
21 through line 8, they would understand that the
22 button 720 is toggling both the display 206 and the

1 display 706; correct?

2 MR. KIANG: Objection to scope.

3 (Document review.)

4 THE WITNESS: I would understand that
5 the POSITA would understand that the
6 multi-mode display 206 cannot be displaying
7 SpO2 and BPM.

8 BY MR. AMON:

9 Q. Right. But that doesn't answer my
10 question, Dr. Duckworth.

11 My question is: A person of skill in
12 the art, reading the disclosure at Column 16, line 1
13 through 8, would understand that the button 720
14 causes toggling of both multi-mode display 206 and
15 multi-mode display 706; correct?

16 MR. KIANG: Objection to scope.

17 (Document review.)

18 THE WITNESS: I would just state that
19 a POSITA would understand that the activation
20 of button 720 toggles the measured value in
21 multi-mode display 706 and toggles the
22 multi-mode display 206.

1 MR. AMON: Okay. We can take our
2 break now.

3 THE WITNESS: Okay. Thank you.

4 MR. AMON: Off the record.

5 THE REPORTER: We're off the record.

6 (Recess from the record.)

7 THE REPORTER: We're back on the
8 record.

9 BY MR. AMON:

10 Q. Dr. Duckworth, you understand you're
11 still under oath; correct?

12 A. Yes.

13 Q. Okay. Picking up where we left off,
14 Figure 8.

15 Figure 8 also includes at least two
16 displays, display 206 and display 706; correct?

17 A. We were just looking at Figure 8, and
18 Figure 8 shows 206 and 706.

19 Q. And, in fact, the specification at
20 Column 16, line -- start at line 39, reads, In an
21 embodiment, the multi-mode display 706 is similar to
22 the multi-mode display 206, comprising a plurality

1 of seven segment displays 302 capable of displaying
2 alpha-numeric information, and capable of alerting
3 its display -- or excuse me, altering its display
4 characteristics or aspects in a wide variety of
5 configurations discussed with reference to the
6 display 206.

7 Did I read that correctly?

8 A. Remind me of the lines you were
9 reading there.

10 Q. Sure. Column 16, starting at line 39,
11 the specification discloses, In an embodiment, the
12 multi-mode display 706 is similar to multi-mode
13 display 206, comprising a plurality of seven segment
14 displays 302 capable of displaying alpha-numeric
15 information, and capable of altering its display
16 characteristics or aspects in a wide variety of
17 configurations discussed with reference to the
18 display 206.

19 Did I read that correctly?

20 A. Yes, you did.

21 Q. And so we can agree that Figure 8 also
22 discloses two multi-mode displays; correct?

1 A. Yes, later on it says, As shown in
2 Figure 8, the display includes the multi-mode
3 displays 206, 706.

4 Q. Figure 9. Turn to Figure 9.
5 Figure 9 also includes two displays,
6 206 as one and 706 as the other; correct?

7 A. Figure 9 does show 206 and 706.

8 Q. And, likewise, Figure 10 shows two
9 displays, 206 for one and 706 for the other;
10 correct?

11 A. Yes, I see that Figure 10 shows 206
12 and 706.

13 Q. So all of the disclosures related to
14 Figures 2 through 10 show, at a minimum, two
15 displays; correct?

16 MR. KIANG: Objection to form, scope.

17 THE WITNESS: I draw that the -- when
18 you're using the term "two displays," I draw
19 the -- as go through each of the figures and
20 say that Figure 2 shows 206 and 216.

21 Figure 3 shows 206 and 216. Figure 4 shows
22 206 and 216. Figure 5 shows 206 and 216.

1 Figure 6 shows 206 and 216. Figure 7 shows
2 206 and 706. Figure 8 shows 206 and 706.
3 Figure 9 shows 206 and 706. And Figure 10
4 shows 206 and 706.

5 BY MR. AMON:

6 Q. Dr. Duckworth, so if we can take them
7 as a group, can we agree that Figures 2 through 6
8 are referring to the same embodiment?

9 MR. KIANG: Objection, form, scope.

10 (Document review.)

11 THE WITNESS: Counselor, I think we're
12 being too general if we try and say that all
13 those figures are showing one embodiment.
14 Because when we look at the descriptions,
15 there's -- you know, each one is slightly
16 different.

17 For example, when describing Figure 4,
18 As disclosed in the foregoing embodiment, the
19 multi-mode display 206 is red, indicating
20 blood oxygen measurements, while the pulse
21 rate display 216 is green, indicating normal
22 values with patient's pulse.

1 And then, you know, there's variations
2 on -- in the other figures, too.

3 BY MR. AMON:

4 Q. Let me ask you to turn to Column 4,
5 Dr. Duckworth. Let me know when you're there.

6 A. I am at Column 4.

7 Q. And do you see -- if you could read to
8 yourself, and let me know when you've done it,
9 starting at line 9 through line 25.

10 (Document review.)

11 THE WITNESS: Yes, I've read those
12 lines.

13 BY MR. AMON:

14 Q. Okay. And you'll agree with me that
15 the description of Figure 3 reads, Figure 3
16 illustrates an exemplary display of the patient
17 monitoring -- monitor of Figure 2; correct?

18 A. That's what that reads.

19 Q. And then for Figures 4, 5, and 6, it's
20 always illustrating the display of Figure 3 in
21 different orientations; correct?

22 MR. KIANG: Objection to form.

1 THE WITNESS: What do you mean by
2 "orientations"?

3 BY MR. AMON:

4 Q. Let me be very clear, Dr. Duckworth.
5 Figure 4, the disclosure reads,
6 Figure 4 illustrates the display of Figure 3;
7 correct?

8 A. That's what it says.

9 Q. Figure 5 reads, Figure 5 illustrates
10 the display of Figure 3; correct?

11 A. That's what it says.

12 Q. And for Figure 6, Figure 6 illustrates
13 a display of Figure 3; correct?

14 A. That's what it says.

15 Q. Okay. And so we can agree that
16 Figures 4, 5 and, 6 are all showing the display of
17 Figure 3?

18 A. That's -- one second.

19 (Document review.)

20 THE WITNESS: Yes, each of them refers
21 to dis- -- showing -- illustrates the display
22 of Figure 3.

1 BY MR. AMON:

2 Q. And we know that Figure 3 is an
3 exemplary display of the monitor in Figure 2;
4 correct?

5 A. That's -- it says, Figure 3
6 illustrates an exemplary display of the patient
7 monitor of Figure 2.

8 Q. And we know that each of Figures 2, 3,
9 4, 5, and 6 have both displays 206 and 216; correct?

10 A. You're referring to Figures 3, 4, 5,
11 and 6?

12 Q. I'm actually referring to Figures 2,
13 3, 4, 5, and 6.

14 A. Yes, Figures 2, 3, 4, 5, and 6 all
15 show 206 and 216.

16 Q. And we know that in each of Figures 2,
17 3, 4, 5, and 6, 206 is the display that -- displays
18 percent HbCO and percent SpO2; correct?

19 A. In those examples, 206 shows SpO2 and
20 HbCO, yes.

21 Q. And in each of those examples,
22 Figures 2, 3, 4, 5, and 6, display 216 shows pulse

1 rate in beats per minutes, BPM; correct?

2 A. They don't just show BPM. For
3 example, Figure 5 has got the characters C and O
4 there.

5 Q. You'll agree with me that for
6 Figures 2, 3, 4, 5, and 6, as labeled in the figures
7 of the patent, Box 216 always is capable of at least
8 displaying pulse rate and BPM; correct?

9 MR. KIANG: Objection to form.

10 (Document review.)

11 THE WITNESS: Can you repeat your
12 question? It was something along the lines
13 of "at least displaying." So can you repeat
14 the question, please?

15 BY MR. AMON:

16 Q. Happy to do it, Dr. Duckworth.
17 You'll agree with me that for
18 Figures 2, 3, 4, 5, and 6, as labeled in the figures
19 and described in the specification, display 216 is
20 capable of displaying at least pulse rate in beats
21 per minute, BPM; correct?

22 A. I'm concerned about your use of the

1 term "at least," because it sounds like it could
2 display beats per minutes and something else.
3 Whereas, you know, that's not true. So I'm trying
4 to find a description in the specification that
5 makes it clear.

6 Q. Wait a minute, Dr. Duckworth. You
7 said a moment ago that in Figure 5, 216 disclosed --
8 had CO in the box; correct?

9 A. I did say that Figure 5 shows CO in
10 the box, yes.

11 Q. And you'll agree with me that in
12 Figure 5, 216 also has the label BPM in the bottom
13 right-hand corner of that figure; correct?

14 A. The figure shows the legend BPM
15 beneath the 216 display.

16 Q. And you'll agree with me that 216 in
17 Figure 5 is described at Column 14, line 64, as the
18 pulse rate display 216; yes?

19 A. So let me read that part.

20 As shown in Figure 5, the multi-mode
21 display 206 is displaying a percentage value of
22 HbCO, and the pulse rate display 216 is displaying

1 an appropriate message indicating the HbCO
2 measurement, such as, for example, "CO."

3 Q. Do you understand that an HbCO
4 measurement is an indication of pulse rate?

5 A. A pulse rate is in beats per minutes.

6 Q. So by describing 216 as the pulse rate
7 display, we can agree that Figure 5 will display at
8 least pulse rate and BPM, among other things,
9 possibly; correct?

10 MR. KIANG: Objection to form.

11 THE WITNESS: And I'd rather go with
12 the specification how it describes Figure 5,
13 where it says, and the pulse rate display --
14 pulse rate display 216 is displaying an
15 appropriate message indicating the HbCO
16 measurement, such as, for example, "CO."

17 BY MR. AMON:

18 Q. So, in your opinion, Dr. Duckworth,
19 would a person of ordinary skill in the art, reading
20 the disclosure of the '223 patent that we just
21 looked at Column 14, understand that 216 is not
22 capable of displaying pulse rate in beats per minute

1 in Figure 5?

2 A. In Figure 5, it's displaying the
3 appropriate message indicating the HbCO measurement,
4 such as, for example, CO. It is not displaying a
5 pulse rate at that particular time.

6 Q. I understand it's not displaying it at
7 that particular time. That wasn't my question,
8 Dr. Duckworth.

9 My question is: Would a person of
10 ordinary skill in the art, reading the description
11 of 216 in Figure 5, titling it a pulse rate display,
12 understand that 216 is capable of displaying pulse
13 rate in BPM?

14 MR. KIANG: Objection to form.

15 THE WITNESS: Earlier, like, for
16 example, in Figure 4, it talks about the
17 pulse rate display 216 is displaying a pulse
18 rate in beats per minute. That's what it's
19 displaying in Figure 4. It's not displaying
20 that in Figure 5.

21 BY MR. AMON:

22 Q. I understand it's not displaying it in

1 Figure 5, but a person of skill in the art would
2 understand that the display 216 in Figure 5 is still
3 capable of displaying pulse rate in beats per
4 minute; fair?

5 MR. KIANG: Objection to form.

6 BY MR. AMON:

7 Q. And if you don't know, you don't know.

8 A. So the specification makes it very
9 clear that in Figure 4, the multi-mode -- sorry.
10 Where are we?

11 Q. Figure 5.

12 A. I'm sorry?

13 Q. We were in Figure 5, just to make
14 sure. You said Figure 4.

15 A. Yeah.

16 Q. I just wanted to make sure we're --
17 okay.

18 A. Yeah, no, I meant to refer to
19 Figure 4.

20 Q. Okay.

21 A. Because Figure 4 makes it very clear
22 that pulse rate display 216 is displaying a pulse

1 rate in beats per minute. Then in Figure 5, it
2 makes it very clear the pulse rate display 216 is
3 displaying an appropriate message.

4 Q. No, no, and I appreciate that those --
5 that display 216 is changed for Figure 5. That's
6 not my question.

7 A person of skill in the art would
8 understand that display 216, even in Figure 5, is
9 capable of displaying pulse rate in beats per
10 minute; correct?

11 MR. KIANG: Objection to form.

12 THE WITNESS: I think the
13 specification makes it is very clear that
14 pulse rate display 216 can display a pulse
15 rate in beats per minute.

16 BY MR. AMON:

17 Q. And that would be true in Figure 5, as
18 well; correct?

19 A. Well, no, because Figure 5 is now
20 showing something very different.

21 Q. So I just want to make sure I
22 understand your testimony, which is display 216 in

1 Figure 5 is incapable of displaying pulse rate in
2 beats per minute; correct?

3 MR. KIANG: Objection, misstates
4 testimony.

5 THE WITNESS: That is not what I said.
6 I made it very clear that pulse rate display
7 216 can display pulse rate in beats per
8 minute, as shown in Figure 4. And in
9 Figure 5, it is not showing a pulse rate in
10 beats per minute. It is showing a message.

11 BY MR. AMON:

12 Q. And that's a message related to the
13 HbCO metric; correct?

14 A. That's what it describes in Column 14.
15 And the pulse rate display 216 is displaying an
16 appropriate message indicating the HbCO measurement.

17 Q. Now, let me ask you to turn to your
18 supplemental declaration, which is Exhibit, one
19 second, 2046. And, specifically, I'm going to ask
20 you to turn to paragraph 14.

21 Let me know when you're there.

22 A. I am at 14.

1 Q. Yes. Are you there?

2 A. I said I was there. Yeah, I thought I
3 said that.

4 Q. Okay. Pardon me. Sorry, I didn't
5 hear you. My mistake.

6 At paragraph 14, you write that,
7 Figures 11B and 11C are unclaimed embodiments with
8 large screens; correct?

9 A. That's what I state there, yes.

10 Q. And you analyzed Figures 11B and 11C
11 of the '223 patent; correct?

12 A. Correct.

13 Q. And you studied their relevant
14 disclosures in the specification, as well; correct?

15 A. I describe that in 14, the bottom of
16 the page, The '223 Patent describes those and other
17 surrounding figures as "display screens of the
18 patient monitor of Figure 11A."

19 Then I continue, The specification
20 does not describe Figures 11B and 11C as showing a
21 sequence of events and never describe Figures 11B or
22 11C as illustrating the displayed values are

1 "replaced" or "changed." And --

2 Q. Sorry, go ahead. I didn't mean to cut
3 you off.

4 A. Yep, continuing in paragraph 15, The
5 specification later describes that, in some
6 embodiments, "the monitor 1000 may advantageously
7 employ enlargement or reorganization of parameter
8 data based on, for example, the severity of the
9 measurement."

10 And I continue, "Enlargement,"
11 "reorganization," and rearrangement of data is not
12 replacement. Thus, Figures 11B and 11C do not show
13 replacement within the meaning of the claims.

14 Q. Dr. Duckworth, you understand that
15 Figures 11A through 11H are all related to the same
16 example embodiment in the '223 patent; correct?

17 A. Can you ask the question again? I
18 want to make sure I've got the figures you were
19 referring to correct.

20 Q. You understand that Figures 11A
21 through 11H in the '223 patent are all related to
22 the same example embodiment; correct?

1 A. Let me see the description of the
2 drawings.

3 (Document review.)

4 THE WITNESS: Yes, because 11B to 11H
5 illustrate display screens on the patient
6 monitor of Figure 11A.

7 BY MR. AMON:

8 Q. And so a person of ordinary skill,
9 reading the specification, would understand that
10 Figures 11A through 11H are all related to the same
11 embodiment; fair?

12 MR. KIANG: Objection to form.

13 THE WITNESS: Well, when you say the
14 "same embodiment," just so we're clear,
15 again, the description, Figure 11A
16 illustrates a perspective view of an
17 exemplary noninvasive multi-parameter patient
18 monitor, such as, for example, the patient
19 monitor in Figure 1.

20 And then Figures 11B to 11H
21 illustrates display screens of the patient
22 monitor of Figure 11A.

1 BY MR. AMON:

2 Q. Let me ask you to turn to Column 17,
3 line 16. Let me know when you're there.

4 A. I am there.

5 Q. And I don't know if it's easier for
6 you, Dr. Duckworth, but if you have it on paper like
7 I do, it might be easier to take out the Figure 11A
8 so you can refer to it and not have to flip back and
9 forth, which is what I'm doing.

10 But you see that at line 16, it
11 starts -- is where the description of Figure 11A
12 starts in the specification of the '223?

13 A. So I see that line 16 starts with the
14 description of Figure 11A. Was that your question?

15 Q. Yes. I just want make sure we're on
16 the same page, just trying to orient you.

17 And the specification discusses the
18 embodiments of Figures 11A through 11H, starting at
19 line -- it's Column 7 -- 17, line 16, through about
20 Column 19, line 39; correct?

21 A. I'm not quite sure what you're saying
22 that those paragraphs are describing. I want to be

1 clear about what you're saying.

2 Q. That is the description in the
3 specification of Figures 11A through 11H; yes?

4 A. So Column 17, line 16, as we said,
5 starts with Figure 11A.

6 (Document review.)

7 THE WITNESS: Where did you say the
8 description ended?

9 BY MR. AMON:

10 Q. I said Column 19, about line 39.

11 A. I see that that last paragraph there
12 you referred to, yeah, discusses the monitor 1000,
13 and ends with talking about, In an embodiment, a
14 location of the display of an alarming value is
15 changed to be displayed in a larger display area,
16 such as 1102, so as to be readily noticeable and its
17 display values readily ascertainable.

18 Q. Yes. And you'll agree that that's all
19 in reference to Figures 11A through 11H; correct?

20 (Document review.)

21 THE WITNESS: Yes.

22

1 BY MR. AMON:

2 Q. Let's start by orienting ourselves as
3 to the different parts of Figure 11A through 11H.
4 And, specifically, if you look at Figure 11A, 1000
5 refers to the disclosed monitor, the entire device.

6 Is that fair, Dr. Duckworth?

7 A. I'm just trying to find the reference
8 to 1000.

9 Q. And to be fair, the only place that I
10 could find it -- let me help you out -- was in
11 Column 19, starting at line 24.

12 A. Column 19.

13 (Document review.)

14 THE WITNESS: Yes, I agree. It seems
15 to refer in Column 19 to the monitor 1000.

16 BY MR. AMON:

17 Q. And if we look at Figure 11A, the 1000
18 is really pointing to the entire device; is that
19 fair?

20 A. When I look at Figure 11A, yes.

21 Q. Okay. I can help you out by pointing
22 you now to Column 17, line 20 through 22, for my

1 next question. Let me know when you're there.

2 A. I am at Column 17, yep.

3 Q. And in Figure 11A, 1101 is the
4 display; correct?

5 A. So as shown in Figures 11A to 11B, an
6 embodiment of the monitor 1100 includes a display
7 1101.

8 Q. Right. So 1101 is the display of the
9 device 1000; correct?

10 A. Yes, I think there's a bit of
11 confusion there. It refers to the monitor 1100 in
12 that same paragraph. So it says that, an embodiment
13 of the monitor 1100 includes a display 1101. I
14 agree that in Figure 11A, we see the 1101 has been
15 pointed out there.

16 Q. And the 1101 in Figure 11A is the
17 display of the monitor 1000; correct?

18 A. Well, again to be accurate, in
19 Column 17, it says, an embodiment of the monitor
20 1100 includes a display 1101.

21 Q. Correct. But if you look at
22 Figure 11A, there is no 1100 identified in

1 Figure 11A; correct? There's only monitor 1000
2 identified; correct?

3 A. I agree with that.

4 Q. And so can we agree that a person of
5 ordinary skill in the art, reviewing this, would
6 understand that 1101 is the display of monitor 1000?

7 A. Yes, I think that is fair to say.

8 Q. And if we move a little bit further
9 down in Column 17, starting at around line 33 -- let
10 me know when you're there.

11 A. I am at 33.

12 Q. Okay. Now, in -- again, with
13 reference to Figure 11 and 11A, specifically, 1102
14 is the location of the SpO2 value, measured value;
15 correct?

16 A. Let me see. It says, In an
17 embodiment, the display includes a measured value of
18 SpO2 1102. So I see it says that.

19 Q. Yeah, and so you would agree that a
20 person of ordinary skill in the art, reading the
21 specification, would understand that 1102 in
22 Figure 11A is where SpO2 is displayed; correct?

1 A. When you say where it is displayed,
2 it's pointing out 1102 is showing in Figure 11A the
3 SpO2 value.

4 Q. And then a measured value of pulse
5 rate 1104 in BPM. So 1104 represents the pulse rate
6 in beats per minute in Figure 11A; correct?

7 A. I see it says, yes, a measured value
8 of pulse rate 1104 in BPM.

9 Q. And then I'm going to point you to
10 Column 17, line 34 to 35. And that -- let me know
11 when you're there.

12 A. I believe that's where we were.

13 Q. Okay. The next portion of the
14 sentence reads, A plethysmograph 1106. So in
15 Figure 11A, the plethysmograph is at 1106; correct?

16 A. The display 1101 includes the
17 plethysmograph 1106.

18 Q. And then the display 1101 at 1108
19 includes the measured value of HbCO; correct?

20 A. So I see. It says, In an embodiment,
21 the display that includes a measured value of HbCO
22 1108.

1 Q. And the specification further
2 discloses that a measured value of HbMet is at 1110;
3 correct?

4 A. When you say "at 1110," it just refers
5 to a measured value of HbMet 1110. So it's saying
6 that the value of HbMet is the 1110 value.

7 Q. In the display 1101; correct?

8 A. In the display 1101.

9 Q. And then 112 is the measured value of
10 perfusion quality; correct?

11 A. It says, a measured value of a
12 perfusion quality 1112.

13 Q. And that's where the perfusion quality
14 is displayed in 1101; correct?

15 A. When you say and that's where it's
16 displayed, what the figure is showing is 1101 is
17 displaying a perfusion quality 1112.

18 Q. And 1101 is also displaying the Hbt
19 value 1114; correct?

20 A. 1101 also -- the display includes a
21 measured value of Hbt 1114.

22 Q. Now, I just want to make sure the

1 record's very clear on this. 1102 represents
2 where -- represents the SpO2 value in 1101; correct?

3 A. It would --

4 MR. KIANG: Objection to form.

5 THE WITNESS: Sorry, Daniel.

6 MR. KIANG: I said objection to form.

7 THE WITNESS: It describes it as the
8 display includes a measured value of SpO2
9 1102.

10 BY MR. AMON:

11 Q. Okay. Now, I want to go to Column 19,
12 starting at line 24. And let me know when you're
13 there.

14 A. I am at line 24, yes.

15 Q. Now, here we're still talking about
16 embodiments 11A through 11H; correct? We
17 established that before.

18 A. We're talking about the monitor, yeah,
19 1000.

20 Q. Yep.

21 And you agree that the specification
22 discloses that the monitor 1000 may

1 advantageously -- may advantageously employ --
2 employ -- let me -- sorry, let me -- my notes are a
3 little bit off. So give me one second.

4 Starting at line 24, Column 19, the
5 specification discloses, "the monitor 1000 may
6 advantageously employ enlargement or reorganization
7 of parameter data based on, for example, the
8 severity of the measurement."

9 Did I read that first sentence
10 correctly?

11 A. Yes. And that's exactly the statement
12 I have in my paragraph 15 of my second declaration,
13 where I say, The specification later describes that
14 in some embodiments, the monitor 1000 may
15 advantageously employ enlargement or reorganization
16 of parameter data based on, for example, the
17 severity of the measurement.

18 And I call out that particular part of
19 the specification there. And I continue with,
20 "enlargement," "reorganization," and rearrangement
21 of data is not replacement. Thus, Figures 11B and
22 11C do not show replacement within the meaning of

1 the claims.

2 Q. Now, continuing with my questions.

3 The next sentence in that same
4 paragraph, Column 19, reads, For example, the
5 monitor 1000 may display values for HbCO in a small
6 portion of the screen or in the background, and when
7 HbCO begins to approach abnormal levels, the small
8 portion may advantageously grow as severity
9 increases, even in some embodiments to dominate the
10 display.

11 Did I read that next sentence
12 correctly, Dr. Duckworth?

13 A. Yes, I believe so. Let me just -- For
14 example, the monitor 1000 may display values for
15 HbCO in a small portion of the screen or in the
16 background, and when HbCO begins to approach
17 abnormal levels, the small portion may
18 advantageously grow -- I agree that's a typo.

19 Q. Yes.

20 A. -- as severity increases, even in some
21 embodiments to dominate the display.

22 Yes, you did read that correctly.

1 Q. I'd like to skip to the last sentence
2 of the same paragraph.

3 You'll agree that what we just read
4 was talking about the HbCO measurement; correct?

5 A. That was -- that sentence was about
6 HbCO, yes.

7 Q. And the last sentence of the same
8 paragraph at Column 19, reads, "In an embodiment, a
9 location of the display of an alarming value is
10 changed to be displayed in a larger display area,
11 such as 1102, so as to be readily noticeable and its
12 display values readily ascertainable."

13 Did I read that last sentence
14 correctly?

15 A. Yes, I believe so.

16 Q. And in that particular description of
17 the specification, a person of ordinary skill in the
18 art would understand that HbCO is taking the place
19 of SpO2 at 1102; correct?

20 MR. KIANG: Objection to form.

21 THE WITNESS: Could you repeat your
22 question, Counselor, please?

1 BY MR. AMON:

2 Q. Sure.

3 In that particular description at
4 Column 19, a person of ordinary skill in the art,
5 reading the specification, would understand that
6 HbCO is taking the place of SpO2 at 1102; correct?

7 MR. KIANG: Same objection.

8 THE WITNESS: I disagree with how
9 you're characterizing that. All it states is
10 that the alarming value is changed to be
11 displayed in a larger display area, such as
12 1102. It shows, you know, 1102 as being
13 larger numbers there. It doesn't mean that
14 it's replacing anything. The values, you
15 know, could be elsewhere.

16 BY MR. AMON:

17 Q. Let me make sure I understood --
18 understand this correctly, Dr. Duckworth.

19 We previously established that 1102 is
20 what was describing SpO2; correct?

21 A. 1102 is described as a measured value
22 of SpO2.

1 Q. Okay. And HbCO was -- is what's
2 described -- sorry, let me start that question
3 again.

4 1108 is what is described as HbCO;
5 correct?

6 A. 1108 is HbCO, yes.

7 Q. And so in this example at Column 19, a
8 person of ordinary skill in the art would understand
9 that as the HbCO value increases, it is changing
10 from 1108 to be displayed at 1102; correct?

11 A. So reading that last sentence, it
12 says, In an embodiment, a location of the display of
13 an alarming value is changed to be displayed in a
14 larger display area, such as 1102.

15 So the SpO2 value that's in 1102 could
16 be changed to be a larger value if it was starting
17 to be considered an alarming value. In that last
18 sentence, it's just talking in general terms, the
19 display of an alarming value is not saying that HbCO
20 is suddenly moving from where it was being displayed
21 before.

22 Q. So the example at Column 19, lines 24

1 through 39, is talking about the increasing value of
2 HbCO; correct?

3 A. Yes. It says, For example, the
4 monitor 1000 may display values for HbCO in a small
5 portion of the screen.

6 Q. And the small portion may
7 advantageously grow -- we can agree it should read
8 "grow"; correct?

9 A. Yes, uh-huh.

10 Q. -- as severity increases, even in some
11 embodiments to dominate the display; correct?

12 A. Yes.

13 Q. And then in the last sentence of that
14 section where it's using HbCO as the alarming
15 measurement, it says, "In an embodiment, a location
16 of the display of an alarming value is changed to be
17 displayed in a larger display area, such as 1102, so
18 as to be readily noticeable and its display values
19 readily ascertainable."

20 In that example, a person of ordinary
21 skill in the art would understand that HbCO 1108 is
22 being changed to be displayed at 1102; correct?

1 A. No, I disagree.

2 Q. Okay.

3 MR. KIANG: I'll also object to that
4 last question on foundation and misstates the
5 document.

6 BY MR. AMON:

7 Q. Let's switch gears a little bit. And
8 now I want to point you in your declaration,
9 Dr. Duckworth, to your paragraphs 16 through 19.

10 Let me know when you're -- and sorry,
11 just to be clear, it's your paragraphs 16 through 19
12 of Exhibit 2046.

13 A. Okay. Just one second. I'm just
14 rearranging the '223.

15 (Document review.)

16 THE WITNESS: I'm at paragraph 16.

17 We've been going again nearly an hour.

18 Would you mind if I take another break?

19 BY MR. AMON:

20 Q. We have not been going for an hour.
21 But, yeah, sure, I'm happy to take a break now.

22 A. Yeah, I don't think the requirement

1 was to be going exactly an hour. I thought about an
2 hour was appropriate. Is that okay?

3 Q. That's totally fine, Dr. Duckworth.

4 A. Okay. Thank you.

5 Q. I have no problem taking a break.

6 So ten minutes, again?

7 A. Yes, please. Yes, thank you.

8 Q. Sure. Thank you.

9 THE REPORTER: We're off the record.

10 (Recess from the record.)

11 BY MR. AMON:

12 Q. Dr. Duckworth, you understand that
13 you're still under oath?

14 A. Yes.

15 Q. And did you speak with Masimo's
16 counsel at the break?

17 A. Nope.

18 Q. Let's -- as I said before, I'd like to
19 direct you to Exhibit 2046, and specifically
20 paragraphs 16 through 19 of Exhibit 2046, which is
21 your supplemental declaration.

22 Let me know when you're there.

1 A. I am at paragraph 16.

2 Q. Okay. And if you could read
3 paragraphs 16 through 19 to yourself, and let me
4 know when you've done that, please.

5 (Document review.)

6 THE WITNESS: I have read those
7 paragraphs.

8 BY MR. AMON:

9 Q. Okay. And I just want to make sure
10 that I understand the opinions you're expressing in
11 those paragraphs. Let's start by kind of setting a
12 floor of common understanding, hopefully.

13 As I understand your disclosure of
14 those paragraphs, you are differentiating Claims 27
15 and 28 from the other challenged claims because
16 Claims 27 and 28 do not include the "common display
17 area" limitation; is that correct?

18 A. So my -- my description is that if we
19 look at the summary in paragraph 19, moving two
20 displayed objects around on a display would not
21 satisfy Claims 27 or 28 at least because the claims
22 recited a display that show a first measured value

1 or a second measured value and, two, the
2 replacement/change occurs on the "display," and not
3 merely a "common display area."

4 Q. Okay. And back at paragraph 16 -- let
5 me know when you're there.

6 A. I am there.

7 Q. Okay. And if you look on page -- it's
8 on the first page where -- so page 7 of your
9 supplemental declaration, paragraph 16, probably
10 about two thirds of the way down in that first
11 portion on page 7.

12 You write, As discussed in my prior
13 declaration, I disagree that the term "common
14 display area" changes the correct construction of
15 "replace/replacing" because "common display area"
16 does not appear in all challenged claims.

17 And, specifically, you point out that
18 Claims 27 and to 28 do not include "common display
19 area"; correct?

20 A. So, yes, I say, Rather, the "common
21 display area" appears only in independent Claims 1,
22 13, 15, and 18.

1 Q. Now, if -- and please feel free to
2 refer to Exhibit 1001, which is the actual claim
3 language itself, if that's beneficial to you.

4 But would you agree that Claim 27
5 requires displaying either the first measured value
6 or the second measured value, but not both?

7 A. In paragraph 17, I believe I make that
8 clear.

9 Claim 27 emphasizes that the claim
10 term "replaced" refers to displaying one value or
11 the other.

12 And then I go on to recite part of
13 Claim 27, and emphasize its displaying one or the
14 other measured value.

15 And, in fact, in paragraph 18, that's
16 what I state, The display of Claim 27 displays
17 either the first measured value or the second
18 measured value but not both.

19 Q. And so is it fair that, in your
20 opinion, a person of ordinary skill in the art would
21 understand that Claim 27 precludes the display of a
22 first measured value and a second measured value at

1 the same time?

2 A. I think that's what I'm stating in the
3 first sentence of paragraph 18.

4 "Thus, the display of Claim 27
5 displays either the first measured value or the
6 second measured value but not both."

7 Q. And, therefore, in your opinion,
8 Claim 27 precludes the display of both
9 simultaneously.

10 And when I say "both," I mean both the
11 first and second measured values; fair?

12 A. Again, I think my sentence is very
13 clear. It displays either the first measured value
14 or the second measured value but not both.

15 Q. And is the same true of Claim 28?

16 A. Later in that same paragraph, I say
17 Claim 28 is similar, so yes.

18 Q. And so, again, just to make sure the
19 record's absolutely clear, in your opinion, Claim 28
20 precludes the display of the first measured value
21 and the second measured value at the same time;
22 correct?

1 A. Like the first sentence of
2 paragraph 18, the display of Claim 27 displays
3 either the first measured value or the second
4 measured value but not both, and the same would be
5 true for Claim 28.

6 Q. Dr. Duckworth, I'm loading into the
7 chat for you to download, and I believe you have a
8 copy of it, Exhibit 1005, which is the Naghavi prior
9 art reference.

10 Let me know when you have that, and
11 when you're able to open it.

12 (Exhibit 1005, No Bates Numbers
13 Naghavi Reference, received and marked.)

14 THE WITNESS: I have my paper copy of
15 Naghavi.

16 BY MR. AMON:

17 Q. All right. And you have an electronic
18 copy, which is OCR for your benefit, as well?

19 A. I see that there, thank you.

20 Q. Yep.

21 Now, you analyzed the Naghavi
22 reference as part of your work in this IPR; correct?

1 A. That is correct.

2 Q. And you understand that Naghavi's
3 disclosed system includes medical device 20;
4 correct?

5 And if it helps you, I can point you
6 to paragraph 70 -- 0077 of Naghavi.

7 A. I'm at paragraph 70 of Naghavi.

8 Q. Sorry, I may have misspoken. I meant
9 77.

10 A. I'm at paragraph 77.

11 Q. And you'll agree with me that
12 Naghavi's disclosure includes medical device 20;
13 correct?

14 A. Paragraph 77 says, referring now to
15 Figure 8, mentions medical device 20.

16 Q. And if you read that disclosure at
17 paragraph 77, medical device 20 can include an ECG,
18 an EEG, a blood pressure monitor, and a
19 plethysmograph -- plethysmography device, among
20 other things; correct?

21 A. So I believe you're referring to parts
22 of 77, As used herein, medical device 20 may

1 compromise [sic] monitor device. And then it lists
2 a variety of other meters and devices.

3 Q. And included in those meters and
4 devices is an ECG; correct?

5 A. I see an ECG, yes.

6 Q. And do you know what an ECG is?

7 A. Yes.

8 Q. And what is it?

9 A. Electrocardiograph for detecting heart
10 rate.

11 Q. It also lists an EEG; correct?

12 A. Yes.

13 Q. And do you have an understanding of
14 what an EEG is?

15 A. I forget that term.

16 Q. It's okay. That one is less common
17 than the ECG. So not a problem.

18 It also lists a blood pressure
19 monitor; correct?

20 A. Yes.

21 Q. And then at the end of that page 19, I
22 believe it's misspelled, but it also lists a

1 plethysmography device; correct?

2 A. Yes.

3 Q. Just so the record's clear, I looked
4 it up, I did not find such a thing as a
5 plathysmography device. So I believe Naghavi
6 intended to refer to a plethysmography device.

7 Would you agree with that?

8 A. That sounds reasonable.

9 Q. And then if I could ask you to turn to
10 paragraph 80 in Naghavi. Let me know when you're
11 there.

12 A. I'm there.

13 Q. Okay. And at paragraph 80, Naghavi
14 discloses that, medical device 20 is used for the
15 acquisition of physiologic data, including --
16 example, e.g., ECG, heart and respiratory rate,
17 blood pressure, and PO2 from patient 1 (Figure 1),
18 and transferring data to personal healthcare
19 management system 10 for managing patient 1.

20 Did I read that first sentence
21 correctly?

22 A. I believe so.

1 Q. Okay. And so a person of ordinary
2 skill in the art in 2005, reading Naghavi, would
3 understand that Naghavi's system is capable of
4 obtaining physiological data for all of these
5 measurements simultaneously; correct?

6 A. Can you repeat the question, please?

7 Q. Sure.

8 So a person of ordinary skill in the
9 art in 2005, reading Naghavi, would understand that
10 Naghavi's disclosure that medical device 20 can
11 acquire ECG, heart and respiratory rate, blood
12 pressure, and PO2 from patient 1 means that
13 Naghavi's disclosed system can collect data for all
14 of those measurements simultaneously; correct?

15 A. I don't read that as we get all of
16 that information simultaneously. He's giving
17 examples there, e.g., of physiological data.

18 Q. Correct. But it doesn't use the word
19 "or"; does it? It says "and."

20 It lists a series of data that are all
21 collected, and it uses the word "and"; correct?

22 A. No, I would still say that the -- it's

1 just an example, and it doesn't mean that every one
2 of those measurements would be obtainable
3 simultaneously.

4 Q. So I just want to make sure the record
5 is clear.

6 It is your opinion that a person of
7 ordinary skill, reading Naghavi, would not
8 understand that the medical device 20, disclosed in
9 Naghavi, would be capable of collecting ECG, heart
10 and respiratory rate, blood pressure, and PO2
11 simultaneously.

12 Naghavi's system is not capable of
13 doing that; correct?

14 A. I'm not saying it's not capable. You
15 asked me whether it meant that it was getting all
16 that data simultaneously. So I'm not saying it's
17 not capable or it is capable. I was objecting to
18 how you were characterizing that statement.

19 Q. I appreciate the clarification,
20 Dr. Duckworth. Let me ask it differently.

21 Would a person of ordinary skill in
22 the art in 2005, reading Naghavi, understand that

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1 Naghavi's system is capable of collecting ECG, heart
2 and respiratory rate, blood pressure, and PO2
3 measurements simultaneously?

4 A. Again, you're using the term
5 "simultaneously," which is not in paragraph 80.

6 Q. Okay. And so it's your opinion that a
7 person of skill in the art would have no
8 understanding one way or the other as to whether
9 Naghavi's system could measure all of those -- could
10 take all those measures simultaneously?

11 (Document review.)

12 THE WITNESS: If we look at
13 paragraph 81, it says, medical device 20 may
14 be a commercially available or proprietary
15 device which in a preferred embodiment
16 comprises an ECG system for acquiring heart
17 signals.

18 That's what leads me to believe that
19 in paragraph 80, Naghavi is listing examples
20 of devices for the acquisition of
21 physiological data, but I'm not reading that
22 as it means that his medical device 20 will

1 have all those devices measured
2 simultaneously, as you were characterizing.

3 BY MR. AMON:

4 Q. If we go back to paragraph 77, you
5 will agree that it reads, As used herein, medical
6 device 20 may comprise -- you understand
7 "comprising" is an inclusive term; correct?

8 A. Where are you reading? Paragraph 77?

9 Q. Yes.

10 A. As used herein --

11 Q. Second full sentence.

12 (Document review.)

13 THE WITNESS: May comprise -- yes.

14 (Document review.)

15 THE WITNESS: Yes. Yeah, I'm seeing a
16 list of devices there, yes.

17 BY MR. AMON:

18 Q. Right. And so you would agree that
19 the medical device 20 in paragraph 80 may include
20 all of the measuring devices listed in paragraph 77,
21 which is the same medical device 20; correct?

22 (Document review.)

1 THE WITNESS: Yes, I see a long list
2 of devices that medical device 20 may
3 comprise of.

4 BY MR. AMON:

5 Q. Right. And a person of skill in the
6 art, reading the disclosure of Naghavi, including
7 paragraph 77 and paragraph 80, would understand that
8 Naghavi's disclosed system is capable of acquiring
9 physiological data, including ECG, heart and
10 respiratory rate, blood pressure, and PO2, among
11 other things, simultaneously; correct?

12 MR. KIANG: Objection, asked and
13 answered.

14 THE WITNESS: Again, you keep adding
15 the word "simultaneously" from there, and
16 that's not what 80 says. It just says,
17 acquisition of physiological data. It may be
18 that it can obtain blood pressure, but it may
19 obtain then an EKG at some other points.

20 So I'm objecting to your use of the
21 term "simultaneously," which is not in the
22 description.

1 BY MR. AMON:

2 Q. And I appreciate that, Dr. Duckworth.

3 Would you agree with me that a person
4 of ordinary skill in the art, reading the disclosure
5 of Naghavi in 2005, would understand that its
6 disclosure is broad enough to encompass medical
7 device 20 that is capable of measuring ECG, heart
8 and respiratory rate, blood pressure, and PO2, both
9 serially and simultaneously?

10 MR. KIANG: Objection to form, asked
11 and answered.

12 THE WITNESS: I will just stick with
13 the words that are in the description there,
14 where it gives, use for acquiring
15 physiological data. And then, for example it
16 provides that list.

17 BY MR. AMON:

18 Q. And you have no opinion as to whether
19 a person of skill in the art would understand the
20 disclosure in Naghavi, including paragraph 77 and
21 paragraph 80, as providing that Naghavi's system is
22 capable of acquiring ECG, heart and respiratory

1 rate, blood pressure, and PO2, both serially and
2 simultaneously; correct?

3 MR. KIANG: Same objections.

4 THE WITNESS: I'm going to refer back
5 to my previous answer, where Naghavi just
6 states it's used for acquisition of
7 physiological data, and then gives a for
8 example and then this ECG, et cetera.

9 BY MR. AMON:

10 Q. Right. And so you have no opinion --
11 you're offering no opinion as to whether a person of
12 skill in the art, reading Naghavi, would understand
13 it to disclose both a system that takes ECG, heart
14 and respiratory rate, blood pressure, and PO2,
15 serially and/or simultaneously.

16 You have no opinion on that; correct?

17 A. That's -- that's not correct. You're
18 adding the words "simultaneously" in there, and
19 Naghavi does not state that the data can be obtained
20 simultaneously from those listed devices. So that's
21 why I am saying that his -- my previous answer, that
22 Naghavi just states what he states there.

1 Q. What does Naghavi preclude
2 simultaneously, taking ECG, heart and respiratory
3 rate, blood pressure, and PO2 simultaneously?

4 MR. KIANG: Objection to form.

5 THE WITNESS: I don't read it as
6 precluding. The way you were asking the
7 question, you were adding in the requirement
8 that Naghavi was getting all that data
9 simultaneously. And what I'm stating is that
10 Naghavi does not state that.

11 BY MR. AMON:

12 Q. So let me be very clear,
13 Dr. Duckworth, because I think we're perhaps
14 misunderstanding one another.

15 My question is about a person of
16 ordinary skill in the art reading the disclosure in
17 Naghavi in its totality.

18 Do you understand that?

19 A. Now we're not just looking at
20 paragraph 80; is that correct?

21 Q. No, we're looking at paragraph 77,
22 we're looking at paragraph 80, we're looking at the

1 totality of the disclosure.

2 A. Okay.

3 Q. And with that framework in mind, would
4 a person of ordinary skill in the art, reading
5 Naghavi, understand that its disclosed systems are
6 capable of taking ECG, heart and respiratory rate,
7 blood pressure, and PO2, both serially and
8 simultaneously?

9 MR. KIANG: Objection to scope.

10 Objection to form.

11 THE WITNESS: I believe a POSITA could
12 read paragraph 80, acquiring one or more of
13 those data elements, ECG, heart and
14 respiratory rate, et cetera, could be taken
15 simultaneously or they could be taken
16 serially, but Naghavi does not state how
17 those are taken and he provides just an
18 example of physiological data there.

19 BY MR. AMON:

20 Q. Let me switch gears a little bit,
21 Dr. Duckworth.

22 Where does Naghavi require that all

1 currently measured parameters are displayed
2 simultaneously?

3 MR. KIANG: Objection to scope.

4 THE WITNESS: Are you reading from a
5 particular place in my declaration?

6 BY MR. AMON:

7 Q. I'm happy to help you in that regard,
8 Dr. Duckworth. Let's look at paragraph 23 of your
9 supplemental declaration, Exhibit 2046.

10 A. I'm at paragraph 23, yes.

11 Q. And you see that in the middle of that
12 paragraph, you write, "as I explained in my prior
13 declaration, Naghavi displays all currently measured
14 parameters."

15 You wrote that in your declaration
16 Exhibit 2042; correct?

17 A. I'm referring back to 2042 now for
18 those paragraphs. Let me look.

19 MR. KIANG: Objection to scope. The
20 question should have been asked during the
21 previous deposition.

22 MR. AMON: Mr. Kiang, he wrote this in

1 his current declaration. So it's within the
2 scope. But thanks for that.

3 (Document review.)

4 THE WITNESS: So, for example, in
5 paragraph 114 of my previous declaration, I
6 state that, Instead of removing a parameter,
7 Naghavi uses a larger display, such as a
8 computer monitor with enough display space to
9 simultaneously display all parameters
10 currently marked by the system. And then I
11 refer to 1005, the abstract. Let me find
12 that.

13 Yes, I'm referring to the abstract
14 when it talks about the display table of
15 categorized parameter values for multiple
16 patients simultaneously. Also, paragraphs 11
17 and 58.

18 So you're asking me about paragraph 23
19 of my supplemental declaration. So that's
20 what I was referring to.

21 BY MR. AMON:

22 Q. Okay. Is it your opinion that Naghavi

1 only discloses a large display, such as a computer
2 monitor?

3 A. I'm sorry. You're asking me about --

4 Q. Naghavi.

5 A. -- Naghavi; right?

6 Q. And you wrote in paragraph 114 of your
7 declaration --

8 A. Right.

9 Q. -- 2042, which you then subsequently
10 reference in your supplemental declaration, 2046.

11 And there you wrote, Naghavi uses a
12 large display, such as a computer monitor.

13 And so my question to you is whether
14 Naghavi is limited to the -- Naghavi's disclosure is
15 limited to the use of "a large display, such as in a
16 computer"?

17 A. So that's what I state in my first
18 declaration, Instead of removing a parameter,
19 Naghavi uses a larger display, such as a computer
20 monitor. And then I refer to sections in Naghavi.

21 Q. And so my question is: In your
22 opinion, is Naghavi limited to the use of "a large

1 display," for example, in a computer -- used for the
2 computer?

3 MR. KIANG: Objection to scope.

4 THE WITNESS: I continue in my first
5 declaration by showing in paragraph 115, As
6 illustrated below, Apple's obviousness
7 combination relies on the computer monitor
8 disclosed by Naghavi.

9 And there I have copied petitioner's
10 18, Apple's annotations of Naghavi Figure 1.

11 BY MR. AMON:

12 Q. Let me ask you a different question,
13 Dr. Duckworth.

14 Would a person of skill in the art,
15 reading Naghavi, understand that its disclosure
16 could be applied to "a handheld device"?

17 And I will help you out. If you want
18 to look at paragraph 86 of Naghavi.

19 (Document review.)

20 THE WITNESS: So, again, I'll remind
21 us that in paragraph 115, I show, As
22 illustrated below, Apple's obviousness

1 combination relies on the computer monitor
2 disclosed by Naghavi.

3 And like I say, I then show Apple's
4 figure there. Now you're asking me in
5 paragraph 86, right, about where it says, In
6 a preferred embodiment, computer 11 is made
7 of one of several configurations.

8 Is that what you're asking me?

9 BY MR. AMON:

10 Q. Yes, I am. Answer my question just so
11 the record is clear.

12 Would a person of ordinary skill in
13 the art, reading Naghavi in 2005, understand that
14 Naghavi's disclosure includes its embodiment "in a
15 handheld device"?

16 MR. KIANG: Objection to form.

17 Objection to scope.

18 THE WITNESS: All I can state is that
19 specifically in paragraph 86, it says, In a
20 preferred embodiment, computer 11 is made in
21 one of several configurations, including a
22 desktop, a laptop computer, or a handheld

1 device.

2 BY MR. AMON:

3 Q. Right. And so a person of skill in
4 the art would understand that one possible
5 embodiment of Naghavi's system is a handheld device;
6 correct?

7 A. In one embodiment, then it --
8 according to paragraph 86, computer 11 could be a
9 handheld device.

10 Q. And you would agree with me that a
11 handheld device in 2005 would have a space-limited
12 display; correct?

13 MR. KIANG: Objection, foundation.

14 THE WITNESS: What do you mean by "a
15 space-limited display"?

16 BY MR. AMON:

17 Q. Well, Dr. Duckworth, that's your term.
18 "Space-limited display" was used in your
19 declaration.

20 As you understand that term and as
21 used in your declaration, you would agree with me
22 that a POSITA in 2005 would understand that a

1 handheld device has a space-limited display;

2 correct?

3 MR. KIANG: Objection, misstates
4 testimony.

5 THE WITNESS: The examples of
6 space-limited displays are what we spent a
7 lot of time talking about earlier today,
8 which were the seven segment displays of the
9 '223 patent, when we're looking at the
10 Figures 2 through -- through 10. They are
11 very different to a handheld device -- excuse
12 me. They are very different to a handheld
13 device.

14 BY MR. AMON:

15 Q. You would agree with me that Figures 2
16 and 7 in the '223 patent are described as a handheld
17 monitor; correct?

18 A. Can you point me to those paragraphs?

19 Q. Absolutely.

20 If we go to the '223 patent, Column 4.

21 A. Yes.

22 Q. The description of Figure 2 reads,

1 Figure 2 illustrates a top elevation view of an
2 exemplary handheld noninvasive multi-parameter
3 patient monitor.

4 Did I read that correctly?

5 A. Figure 2 illustrates a top elevation
6 view of an exemplary handheld noninvasive
7 multi-parameter patient monitor.

8 Q. And that's what you previously
9 described as having a space-limited display;
10 correct?

11 A. We were looking at the displays of the
12 206 and 216, which were limited in what parameter
13 they could display, yes.

14 Q. And then Figure 7, likewise or
15 similarly reads, Figure 7 illustrates a top
16 elevation view of an exemplary handheld noninvasive
17 multi-parameter patient monitor, et cetera.

18 Did I read that portion correctly?

19 A. Yeah.

20 Q. And, again, you opined previously that
21 the displays of the handheld device of Figure 7 are
22 space-limited displays; correct?

1 A. In that particular description, yes.

2 Q. And so a person of skill in the art in
3 2005, reading Naghavi and its disclosure of "a
4 handheld device," would understand that the handheld
5 device will have a space-limited display; correct?

6 (Document review.)

7 THE WITNESS: Can you ask your
8 question again, please?

9 BY MR. AMON:

10 Q. Sure.

11 A person of ordinary skill in the art
12 in 2005, reading Naghavi and its disclosure of "a
13 handheld device," would understand that the handheld
14 device will have a space-limited display; correct?

15 A. Not in the term how I was using that
16 when I was describing the '223 patent. A handheld
17 device could be like a PTA, for example, it could
18 have a graphical screen, as opposed to the seven
19 segment displays that we're looking at in the '223
20 patent.

21 Q. A person with skill in the art in
22 2005, reading Naghavi, would understand that a

1 handheld device could have a space-limited display;
2 correct?

3 A. I disagree with that. Because when
4 it's talking about its computer 11 and the display
5 of the computer, it may -- it may have a smaller
6 display than the desktop monitor, but it doesn't
7 mean it's space limited in the way that I'm
8 describing the claims for the '223 patent.

9 Q. Okay. So you're using "space limited"
10 one way for the '223 patent and using "space
11 limited" a different way in interpreting Naghavi;
12 correct?

13 MR. KIANG: Objection, misstates
14 testimony.

15 THE WITNESS: I have used the term
16 "space limited" for Naghavi.

17 BY MR. AMON:

18 Q. Right. But based on the explanation
19 you just gave, you're using "space-limited display"
20 one way in interpreting the claims of the '223, and
21 applying a different understanding of what a
22 handheld device and its display would be with

1 respect to Naghavi; correct?

2 MR. KIANG: Objection, misstates
3 testimony.

4 THE WITNESS: I'll --
5 (Document review.)

6 THE WITNESS: I've only used the
7 phrase "space limited" to refer to the '223
8 patent.

9 BY MR. AMON:

10 Q. And let me ask differently.

11 A person of skill in the art would
12 understand the term "handheld" in the '223 to have
13 the same meaning as "handheld" in Naghavi's
14 disclosure; fair?

15 A. Only insofar as a "handheld" means
16 something you can hold in your hand.

17 Q. And both Naghavi and the '223 disclose
18 instruments that are capable of taking physiological
19 measurements; correct?

20 A. The '223 patent describes that, and
21 Naghavi describes that, yes.

22 Q. And both describe handheld devices

1 that are capable of taking physiological metrics;
2 correct?

3 A. Yes, but -- yes.

4 Q. I'm going to circle back, because I'm
5 not sure that I ever got an answer to my original
6 question, which is where we started, Dr. Duckworth.

7 Where does Naghavi require that all
8 currently measured parameters are displayed
9 simultaneously?

10 MR. KIANG: Objection to scope, asked
11 and answered.

12 THE WITNESS: I referred to my
13 paragraphs 114 to 116 in my first declaration
14 to answer that question.

15 BY MR. AMON:

16 Q. And at paragraphs 114 to 116, you were
17 only discussing Naghavi's disclosure of "a computer
18 with a large monitor"; correct?

19 A. I didn't use the word "only."

20 I said, "Instead of removing a
21 parameter, Naghavi uses a large display, such as a
22 computer monitor, with enough display space to

1 simultaneously display all parameters currently
2 monitored by the system."

3 And then, "As illustrated below,
4 Apple's obviousness combination relies on the
5 computer monitor disclosed by Naghavi."

6 Q. In paragraphs 114 to 116, nowhere do
7 you discuss Naghavi's disclosure of the "handheld
8 device"; correct?

9 A. I do not mention a handheld device,
10 no.

11 MR. AMON: Dr. Duckworth, we've been
12 going for about an hour, and since I know you
13 like to take a break about every hour, why
14 don't we do that now.

15 Is ten minutes okay?

16 THE WITNESS: Sounds good, thank you.

17 MR. AMON: Thank you.

18 THE REPORTER: We're off the record.

19 (Recess from the record.)

20 THE REPORTER: We're back on the
21 record.

22

1 BY MR. AMON:

2 Q. Dr. Duckworth, let me ask you a couple
3 of questions.

4 What did you do to prepare for this
5 deposition today?

6 A. I read my declaration and supporting
7 documents and reviewed with counsel.

8 Q. When did you review -- when did you
9 meet with counsel?

10 A. Over the last few days by Zoom.

11 Q. And do you have an estimate of how
12 many hours in total you met with counsel to prepare
13 for this deposition?

14 A. A few. Less than ten. I don't have
15 an exact count.

16 Q. Less than ten. Would it be more than
17 five?

18 A. I would like to pin it down to a
19 number. I want to be accurate. So I feel
20 comfortable just saying less than ten.

21 Q. You plan on billing for your prep
22 time; correct?

1 A. I bill for all time I spend on these
2 IPRs.

3 Q. Okay. So, presumably, you've written
4 down someplace how long you spent prepping for this
5 deposition; correct?

6 A. I don't break it out with --

7 MR. KIANG: Actually, hold on. Hold
8 on. We're getting into a bit more than I
9 think is allowed. So I'm going to object to
10 that as privileged, and I will instruct the
11 witness not to answer that question.

12 MR. AMON: Okay.

13 BY MR. AMON:

14 Q. Okay. Are you going to follow
15 counsel's advice?

16 A. Yes, I will not answer that question.

17 Q. Because you have no better estimate
18 than you spent less than ten hours preparing for
19 this deposition; correct?

20 A. No, I didn't think that was your
21 question. I thought you asked how much time I spent
22 with counsel preparing for this deposition.

1 Q. And that's -- you're absolutely right,
2 Dr. Duckworth. And I appreciate the clarification.
3 So let me break it down then a little further.

4 Your estimate -- you have no better
5 estimate than you spent ten hours in consultation
6 with counsel preparing for this deposition; correct?

7 A. And I think I classified it as I spent
8 less than ten hours with counsel preparing for this
9 deposition.

10 Q. Okay. And you can't narrow it as to
11 whether it was five to ten or one to five; correct?

12 A. I would say maybe closer to five than
13 ten.

14 Q. What days did you meet with counsel?

15 A. I don't recall the exact dates. I
16 know that I met with them yesterday.

17 Q. And you also met with them at some
18 point before yesterday?

19 A. Yes.

20 Q. And separate and apart from the time
21 you spent with counsel preparing, can you estimate
22 how much time you spent reviewing your declarations,

1 the documents, et cetera, in preparing for this
2 deposition?

3 A. It would be in the range 10 to 20,
4 probably.

5 Q. So total preparation time for this
6 deposition, somewhere in the range of 15 to
7 25 hours; is that fair?

8 A. Yes, that's fair. Yes, proximate,
9 yeah.

10 Q. Dr. Duckworth, let me ask you about
11 your process for drafting your declaration.

12 Do you draft the first -- in the first
13 instance, your draft declaration?

14 MR. KIANG: I would caution the
15 witness not to reveal privileged
16 communications with counsel.

17 But please go ahead and answer.

18 THE WITNESS: So please ask me the
19 question again, Counselor.

20 BY MR. AMON:

21 Q. Sure.

22 In the first instance for your

1 declaration, did you sit at the computer and write,
2 type in, the first draft of your declaration?

3 A. I'm concerned by answering that I'll
4 divulge confidential information.

5 Q. That's not going to the substance.
6 I'm not asking you about the substance. I'm just
7 asking you about your process, your procedure.

8 And my question is very simply: For
9 the first draft of your declarations, did you sit at
10 the computer and draft it yourself for the first
11 draft?

12 A. No, I did not.

13 MR. AMON: Dr. Duckworth, I really
14 appreciate your time today. At this point, I
15 have no further questions. I may, depending
16 on what Mr. Kiang asks you on redirect.

17 Thank you so much.

18 THE WITNESS: Thank you, Counselor.

19 MR. KIANG: All right. We'll take a
20 15-minute break.

21 THE REPORTER: We're off the record.

22 (Recess from the record.)

1 EXAMINATION

2 BY MR. KIANG

3 BY MR. KIANG:

4 Q. Good afternoon, Dr. Duckworth.

5 A. Good afternoon.

6 Q. Could you please describe, without
7 revealing the contents of any communications with
8 counsel, how you prepared your declaration, which is
9 Exhibit 2046?

10 A. A little bit difficult to describe
11 without discussing, you know, conversations with
12 counsel. But in general terms, I had an initial
13 meeting with counsel where they asked me to -- in
14 fact, as I -- as I write in 2046, paragraph 6, "I
15 provide this declaration to address the arguments in
16 Apple's Reply and in Dr. Cockburn's second
17 declaration."

18 So counsel asked me to look at those
19 three arguments and provide my opinions on those,
20 and that is what I've done in this declaration that
21 we've been going through today.

22 Q. And this declaration, which is

1 Exhibit 2046, reflects your independent opinions;
2 correct?

3 A. Yes, of course.

4 MR. KIANG: No further questions.

5 EXAMINATION

6 BY MR. AMON

7 BY MR. AMON:

8 Q. Dr. Duckworth, just one very quick
9 question. And, again, I don't want to know the
10 substance of any communications that you had with
11 counsel, but can you tell me the method by which you
12 communicated your opinions to counsel for them to
13 draft your declaration?

14 A. The method consisted of Zoom calls and
15 e-mail correspondence.

16 Q. So you provided e-mails to them with
17 your opinions; is that correct?

18 A. A combination of e-mails and
19 conference calls, yes.

20 MR. AMON: Okay. No further
21 questions. Thank you very much for your
22 time.

1 THE WITNESS: Thank you.

2 THE REPORTER: We're off the record.

3 (The examination concluded. The time
4 is 4:45 p.m.

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF WESTCHESTER)

4 I, EILEEN MULVENNA, CSR/RMR/CRR/RDR, a
5 Certified Court Reporter, Registered Merit Reporter,
6 Certified Realtime Reporter, Registered Diplomat
7 Reporter, and Notary Public in and for the State of
8 New York, do hereby certify:

9 That I reported the taking of the
10 deposition of the witness, DR. R. JAMES DUCKWORTH,
11 commencing on the 25th day of April, 2025 at the
hour of 11:00 a.m.

12 That prior to being examined, the witness
was duly sworn by me to testify to the truth, the
13 whole truth, and nothing but the truth.

That I thereafter transcribed my said
14 shorthand notes into typewriting and that the
typewritten transcript of said deposition is a
15 complete, true and accurate transcription of my
said shorthand notes taken down at said time, and
16 that a request has been made to review the
transcript.

17 I further certify that I am not a relative
or employee of an attorney or counsel of any of the
18 parties, nor a relative or employee of any attorney
or counsel involved in said action, nor a person
19 financially interested in the action.

IN WITNESS WHEREOF, I have hereunto
20 set my signature this 26th day of April, 2025.

21



22

EILEEN MULVENNA, CSR/RMR/CRR

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1 Dr. R. James Duckworth, c/o
2 KNOBBE, MARTENS, OLSON & BEAR, LLP
3 2040 Main Street
4 Irvine, California 92614
5

Case: Apple, Inc. v. Masimo Corp.

6 Date of deposition: April 25, 2025

Deponent: Dr. R. James Duckworth

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9 Witness Name: Dr. R. James Duckworth

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