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Transcript of Peter Crosby

Date: April 1, 2025
Case: EndyMed Medical Ltd., et al. -v- Serendia, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

ENDYMED MEDICAL LTD. and ENDYMED MEDICAL LTD.,

Petitioner,

v.

SERENDIA, LLC,

Patent Owner.

_____

Case IPR2024-00383; -00384; -00463

U.S. Patent Nos. 9,775,774, 9,320,536, 10,869,812

_____

Deposition of PETER CROSBY

Conducted virtually via Zoom

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Reported by: THERESA A. VORKAPIC,

CSR, RMR, CRR, RPR

Deposition of Peter Crosby, conducted virtually via Zoom, pursuant to notice before Theresa A. Vorkapic, a Certified Shorthand Reporter, Registered Merit Reporter, Certified Realtime Reporter, Registered Professional Reporter and a Notary Public in and for the State of Illinois.

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(Attached to transcript.)

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P R O C E E D I N G S

THE REPORTER: Would you raise your right hand, please.

(The witness was duly sworn.)

PETER CROSBY,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. AUTERI:

Q You're on the West Coast, this is good morning for you, Mr. Crosby.

A Good morning. Mr. Auteri, I can barely hear you. I'm sorry. Can we turn the volume up slightly or can you get closer to your mic?

Q Is that on my part or I guess --

A That's better, thank you.

Q Okay. Good.

How are you doing today?

A How am I what, sorry?

Q How are you doing today?

A Oh, I'm doing fine, thank you.

Q And you understand this deposition is for

inter partes review proceedings for US Patent Numbers 9,775,774, 9,320,536 and 10,789,812?

A Yes, I do.

Q If I refer to the '774 patent, will you understand I'm referring to US Patent No. 9,775,774?

A Yes.

Q And similarly, for the US 9,320,536, can we refer to that as the '536 patent?

A Yes.

Q And then for US Patent 10,789,812, can we refer to that as the '812 patent?

A Yes.

Q And you don't have to. I'm just making sure it's clear.

Is there any reason you cannot testify truthfully today?

A No.

Q Where are you located today?

A I'm in the office of Latham & Watkins in Costa Mesa, Southern California.

Q Is there anyone else there with you

besides Cecilia, Ms. Peniza?

A The only one here is Counselor Peniza.

Q Okay. Other than via Zoom, are you communicating with anyone in the room or remotely or any other way?

A No.

Q And you previously testified regarding invalidity issues for the '774, '536 and '812 patents?

A I didn't hear quite the start of that question.

Q I can start it over.

A Can you repeat it, please?

Q You previously testified regarding invalidity issues for the '774, '536 and '812 patents; is that correct?

A Yes, I was part of the ITC proceedings if that's what you're referring to.

Q Yes. And ITC just for the record is International Trade Commission; is that correct?

A It's my understanding, yes.

Q And you also previously testified in the

International Trade Commission investigation regarding alleged infringement of the '774, '536 and '812 patents?

A Yes.

Q And that was the same International Trade Commission investigation, correct?

A I'm sorry, it seems like you're swallowing your words. That was the thing what?

Q That was the same International Trade Commission investigation that you testified about invalidity in; is that correct?

A Yes.

MR. AUTERI: All right. I'd like to mark the first exhibit. Let's use -- there should be a document that I uploaded called IPR 2024-00383-PublicEX.2147-Crosby POR declaration.

AV TECH ABRAMS: I have that. Give me one moment and I'll put it in the chat.

(A certain document was marked Crosby Deposition Exhibit 1 for identification, as of 04/01/2025.)

MR. AUTERI: We'll wait until that is

available to Mr. Crosby.

AV TECH ABRAMS: I'm dropping it in the chat now.

BY MR. AUTERI:

Q For housekeeping purposes, you should be able to download it.

A I have the document open.

Q So what we have is just marked as Crosby Deposition Exhibit 1 is your declaration in support of the patent owner's response for IPR No. IPR 2024-00383; is that correct?

A Yes, public version redacted.

Q I see. This is the public version.

And this is your declaration that relates to the '774; is that correct?

A Yes, the redacted version.

Q And then in regards to the '774 patent, you provided opinions regarding Claims 13 and 14; is that correct?

A Yes.

Q And you can look at your expert report as needed, but in both Claims 13 and 14 require the

needles to be extendable a desired distance; is that correct?

A Where are you referring to in my report so I can refresh?

Q You can look at Paragraph 95 if that helps. I think that's on Page 50 of the...

A Is it possible to get a hard copy of this? It makes it easier than just scrolling through a screen.

MS. PENIZA: Counselor, we have a hard copy here if it's okay with you for Mr. Crosby to use.

MR. AUTERI: I have no problem if you have hard copies of his declaration, any of the IPR exhibits I pull up, he doesn't have to use the exact ones we uploaded. So whatever is easiest for him.

MS. PENIZA: Thank you, Counselor.

THE WITNESS: Thank you.

BY THE WITNESS:

A This is a slightly different version because it's the confidential version.

BY MR. AUTERI:

Q I think the pages should match up and whatnot. And I'm not planning on -- I think the only difference is there's redactions, but I'm not going to talk about those paragraphs so I think for now it should be fine.

So if you'd look at Page 50, do you see on Paragraph 95, seven lines down, you discuss it more, but take your time and read it.

A Yes, I've read the paragraph.

Q Okay. And so I'll just repeat. And both Claims 13 and 14 of the '774 patent require the needles to be extendable a desired distance; is that correct?

MS. PENIZA: Objection. Form.

(Discussion off the record.)

BY THE WITNESS:

A This is a discussion of the patents. I would like to read the actual claims so I can answer your question.

MR. AUTERI: I'll mark another exhibit then. Just give me one second. Let's mark as

Exhibit 2 the document with the file name IPR 2024-00383-EX.1001-774 patent. Let me know if you have trouble finding that.

AV TECH ABRAMS: I believe I have it. Give me one moment to mark that. All right. Putting it in the chat now.

(A certain document was marked Crosby Deposition Exhibit 2 for identification, as of 04/01/2025.)

BY THE WITNESS:

A Okay, I have it. This is the '774 patent.

BY MR. AUTERI:

Q For housekeeping purposes, this is what we have marked as Crosby Deposition Exhibit 2 is US Patent No. 9,775,774. It is also Exhibit 1001 to IPR No. 2024-00383. That's just for the record.

And so, Mr. Crosby, feel free to look at the claims as needed and let me know if I need to repeat my question.

A Yes, I've read Claims 13 and 14. Would you repeat the question, please?

Q Sure.

So both Claims 13 and 14 require extendable needles to extend a desired distance from the end surface; is that correct?

A Yes, both claims say a plurality -- excuse me. Claim 13 refers to a plurality of the extendable needles to extend a desired distance from the end surface, and Claim 14 has the same wording, yes.

Q So Claims 13 and 14 both depend from independent Claim 11 of the '774 patent; is that correct?

A It depended on Claim 11, yes.

Q So you agree that Claims 13 and 14 of the '774 patent would include all the limitations --

A I'm sorry, sir. I'm having great difficulty understanding you. Could you repeat it a bit more clearly for me?

Q Sure. Sorry about that.

Because Claims 13 and 14 of the '774 patent depend from Claim 11, Claims 13 and 14 would include all the limitations required from

Claim 11; is that correct?

A That's my understanding, yes.

Q And Claim 11 is broader than Claims 13 and 14, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Claim 11 is what it is, and Claim 13 and 14 add additional limitations to Claim 11.

BY MR. AUTERI:

Q Claim 11 is broad enough to cover either extending or extendable needles; is that correct?

A That's what Claim 11 says, yes.

MR. AUTERI: If we can go back to Crosby Deposition Exhibit 1, his declaration for the '774 patent.

BY MR. AUTERI:

Q Mr. Crosby, do you still have your declaration for the '774 patent available?

A I do.

Q Can we go to Page 37 and look at Paragraph 76. Or I guess we could start with 75.

In the ITC case that you are involved in,

the parties agreed to a claim construction for extendable and extending needles; is that correct?

A Yes, that's what it says in Paragraph 75.

Q And then --

A Excuse me just a second. Paragraph 75 says the parties agreed, it doesn't say that it's in the ITC case, but that's my understanding.

Q Okay. That's fine.

In Paragraph 76, you state: "The petitioner's expert opined that under that construction extending needles cover needles that are fixed and non-extendable relative to the surface as depicted, for example, in Figures 2A through 2D of the '774 patent and extendable needles cover needles that are extendable relative to the surface depicted, for example, in Figures 9C through 9B and 10B through 10E of the '774 patent."

And my question is: You state that you agree with that opinion; is that correct?

A That's correct.

Q Can we switch back to Crosby Deposition

Exhibit 2, the '774 patent itself. Let's look at those figures.

A Which figure do you want to look at?

Q So let's start with 2A through 2D. I think let's start with Figure 2B since it has more markings on it. Yeah, let's move to Figure 2B of the '774 patent.

Okay. So Figures 2A through 2D all show a device -- let's just back up.

Figure 2B shows a device labeled 320; is that correct?

MS. PENIZA: Objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A Actually, Figure 2B, what are you saying the label is?

BY MR. AUTERI:

Q Do you see an underlined 320?

A Oh, yes, 320. It's on the side of my screen.

Q Yes, I guess I'm assuming 320 refers to the entire device shown in Figure 2B?

A Understood, yes.
Q And then it has various reference numerals to refer to specific parts of the device, correct?
A Yes.
Q So the device has a handle 330; is that correct?
A Does it -- I'm having real difficulty. Does the device have a handle what?
Q Marked 330, 3-3-0?
A I see a handle, I see 330. I would have to refer to the description to verify that 330 matches the handle.
Q Give me one second, please. If we go to Column 3, the paragraph that starts on Paragraph 38?
A Just a moment. I'm finding it. Column 30?
Q Three. Sorry. Column 3, Line 38.
MS. PENIZA: Kyle, for some reason your audio just comes out really muffled so that's why it's hard to understand sometimes.
AV TECH ABRAMS: Do we want to go off the

record and see if we can...?

MR. AUTERI: Let's go off the record and see if we can make this better.

(A recess was had.)

BY MR. AUTERI:

Q Mr. Crosby, can you hear me better?

A Yes, thank you.

Q Okay. Great. Can we go back off the record because now without my headphones I can't hear Mr. Crosby very well. Sorry.

(Discussion off the record.)

BY MR. AUTERI:

Q Mr. Crosby, can you take a look at Column 3 of the '774 patent, specifically the paragraph beginning on Line 38.

A I see it.

Q Okay. And this refers to the device 320 as an acupuncture apparatus?

A Yes, on about Line 44, 45.

Q And around Line 48, do you see handle 330?

A Yes, I see that.

Q So if we go back to Figure 2B?

A Would it be possible to get a hard copy of this? It's much easier to flip through pages in a hard copy than trying to --

Q If you have one by any chance, I have no problem with you using a hard copy version of this patent.

MS. PENIZA: Counsel, we do have a hard copy of the '774 patent. I'll go ahead and hand that to Mr. Crosby.

MR. AUTERI: Perfect. That should be easier.

BY THE WITNESS:

A I'm sorry. Your question, you're referring to...?

BY MR. AUTERI:

Q Sorry, if we go back to Figure 2B, the part marked 330 of the handle, correct?

A Yes, it's called a handle 330.

Q And then a little bit below there is a reference numeral marked 351. Those are needles, correct?

A Well, in the description they're described

as pins, 351.

Q Are the pins needles?

A They may be.

Q So are you saying Figure 2B doesn't show needles?

A That's not what I said. You asked me if the numeral 351 refers to needles. The numeral 351 refers to pins.

Q Right, and I'm asking are the pins needles?

A They may be.

Q You said that Figures 2A through 2B show needles that are fixed and non-extending relative to the surface.

Can you point me to where the needles are in Figure 2B?

MS. PENIZA: Objection. Mischaracterizes his testimony.

BY THE WITNESS:

A What was your question to which I gave that answer?

BY MR. AUTERI:

Q Okay. Let's go back to your declaration for the '774 patent and go back to Paragraph 76.

You opine -- sorry, are you there?

A Yes.

Q You opined that Figures 2A through 2B -- well, let's back up.

You said, "Petitioner's expert opined that under that construction extending needles cover needles that are fixed and non-extendable relative to the surface as depicted, for example, in Figures 2A through 2B of the '774 patent."

And earlier you stated you would agree with that statement; is that correct?

A That's correct.

Q Okay. So if we go back to Figure 2B of the '774 patent, do you agree that Figure 2B shows extending needles?

A Yes, Figure 2D what is labeled as pins in the patent 351 were covered that definition of the claim construction of extending needles that are fixed and non-extendable relative to a surface.

Q Okay. And the needles 351 are attached to

a surface; is that correct?

A Did you say extend --

THE WITNESS: I beg your pardon.

MS. PENIZA: Objection to form.

BY MR. AUTERI:

Q Needles marked 351 -- sorry. Let's back up.

The needles in Figure 2B are attached to a surface; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I have to look at the --

BY MR. AUTERI:

Q Feel free to look at the description if needed.

A Yes, that's what I was about to say. It appears to be, but I have to look at the description to be sure. Just give me a moment.

You said Column 3 I think thereabouts, right?

BY MR. AUTERI:

Q Column 3 I think is where it starts

talking about the Figure 2A through 2B. So if it helps, we can go back to your expert report, whatever is easiest.

A The needles extend from a surface, yes. It's not clear from the description that they are fixed to that surface if that was your question, but they certainly extend from that surface.

Q They extend from the surface, okay.

Are they attached to the surface?

A It's not clear that they are attached to the surface, but they could be.

Q The needles don't just float in space, though, right?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A No, they don't just float in space.

BY MR. AUTERI:

Q They are attached to something on the device, correct?

A Well, I'm not trying to be picky, but I don't quite sure what you mean by "attached." Are they screwed in or soldered or welded or bolted,

or --

Q Whatever your broadest understanding of "attached" is. Are they attached to a surface?

A They appear to be attached to a surface, yes.

Q Okay. And the needles have a Length A?

A Yes.

Q So Length A is also the distance the needles extend from the surface; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Looking at the figure, it looks like the Dimension A is not the entire length of the needle.

BY MR. AUTERI:

Q Let's look at Column 3.

A Yes.

Q Line 49, if you could read that sentence.

A Yes, the pins 351 may have a Length A.

Q Okay. So A is the length of the pins, correct?

A That's the length of the pin, it's not

necessarily the length that it extends from a surface.

Q So you agree that the length is A and you say the distance it extends from the surface is different from A?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A If you look at the Figure 2B -- and it's small -- but the Dimension A appears to be the distance that a pin extends from a surface which is not the same as the length of the pin.

There is a line -- a horizontal line at the top dimension bar of Figure A and there is a dimension bar at the bottom of the pin. So that's what I'm saying. The Length A is not necessarily the same as the length or the distance that those pins extend from a surface.

BY MR. AUTERI:

Q Okay. But to confirm the length of the needles A doesn't change in these embodiments; is that correct?

A The length of the needles does not change,

yes, that's correct.

Q And do you agree that the distance that the needle extends from the surface, whatever surface that may be, doesn't change?

A It doesn't appear to change. I can't see language in the patent that says there's changes, that's correct.

Q And so the length that the needles extend from the surface would be the desired distance in this figure; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I'm not sure how you make that connection. I don't think it refers to a desired distance with the description of Figure 2A. Can you point me to where it says that?

BY MR. AUTERI:

Q Well, let's go back to Claim 11 of the '774 patent. We talked about earlier Claim 11 covers both extending and extendable needles; is that correct?

A Yes, that's correct.

Q Whether or not they're extending or extendable needles, the needles need to extend a desired distance from the surface; is that correct?

A Yes, the claim says: "A device including a plurality of needles, one of extending or extendable a desired distance from a surface."

Yes.

Q Right. And so I'm just trying to get an idea of what desired distance for extending needles might look like. And so we have discussed earlier that you agree that Figures 2A to 2D of '774 show extending needles; is that correct?

A Well, that's one embodiment of extending needles, yes.

Q One embodiment. And I was trying to use that figure to discuss what the desired distance for extending needles is.

Do you not feel comfortable using Figures 2A through 2D to discuss the desired distance if it's not labeled in the drawings?

A Well, there are other figures that show

fixed needles, and so -- because I don't think the patent description refers to desired distance in the context of extending needles. I'm not comfortable with what you're proposing, no.

Q But, Mr. Crosby, Claim 11 you agree refers to extending needles and those needles need to extend a desired distance in Claim 11; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, it's one of extending or extendable a desired distance.

BY MR. AUTERI:

Q So it would be one of needles extending a desired distance and needles extendable a desired distance. Do you read the claim to cover that?

MS. PENIZA: Object to form.

BY THE WITNESS:

A I haven't thought of it from that perspective before, but reading the claim language it says: "A plurality of needles one of extending or extendable a desired distance from a surface."

BY MR. AUTERI:

Q Right. And it says the needles either need to be extending or extendable a desired distance, so doesn't desired distance apply to both extending and extendable needles?

MS. PENIZA: Objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A I'm not sure that's right. It says the needles are extending or extendable a desired distance from a surface.

BY MR. AUTERI:

Q Right, extending or extendable a desired distance from the surface, either it's extending a desired distance from the surface or extendable a desired distance from the surface. You don't -- you don't read it that way?

A I don't read it that way, no.

Q What makes you certain that the claim doesn't require the extending needles -- sorry.

What makes you certain that the claim doesn't require the extending needles to be

extending a desired distance from the surface?

MS. PENIZA: Objection. Form. Mischaracterizes the document.

BY THE WITNESS:

A Well, the claims at issue in this IPR I think are Claims 13 and 14, and 13 and 14 both refer to a plurality of extendable needles to extend a desired distance from the surface. And so Claim 11 refers to extendable -- let me just read it again.

Claim 11, "... a plurality of needles one of extending or extendable a desired distance from a surface," and "extendable a desired distance from a surface" is the same language that's in Claims 13 and 14.

BY MR. AUTERI:

Q Right, Claims 13 and 14 narrow Claim 11, further narrow Claim 11; is that correct?

A Yes.

Q Claim 11 is broader than Claims 13 and 14, correct?

A Yes, Claim 11 allows extending needles or

extendable needles that extend a desired distance.

Q Right. But it says, "...extending or extendable a desired distance," so doesn't it need to be extending a desired distance or extendable a desired distance?

A Well, I'm trying to remember if there's any language in the description of '774 and I just can't remember, maybe you can point to it, where it uses the term desired distance in the context of fixed extending needles.

Q But you understand in the context of English, desired distance could just as easily modify both extending or extendable needles, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's a possibility. That's how I read it. I read it as: "...a plurality of needles one of extending or extendable a desired distance from a surface."

BY MR. AUTERI:

Q Right. So extending or extendable a

desired distance, it either means extending -- let me just strike that.

Let's go back to your declaration for the '774 patent and look at Paragraph 75.

MR. AUTERI: Can we go off the record for a second?

MS. PENIZA: Sure.

(Discussion off the record.)

MR. AUTERI: Are we back on the record?

THE REPORTER: We're back on.

MR. AUTERI: Sorry for that interruption.

BY MR. AUTERI:

Q Can we go back to Paragraph 75 of your declaration for the '774 patent? Sorry.

AV TECH ABRAMS: I don't think we have...

MR. AUTERI: This is Crosby Deposition Exhibit 1.

AV TECH ABRAMS: No, no, I don't think Mr. Crosby is at the computer there.

MR. AUTERI: I'm sorry. Sorry about that.

THE REPORTER: I'll take us off again.

MR. AUTERI: Yeah, let's go off. Sorry, I

should have asked Mr. Crosby if he needed a break.

(A recess was had.)

MR. AUTERI: Sorry for that interruption for 20 minutes.

BY MR. AUTERI:

Q If we go back to Page 37 of your declaration for the '774 patent, and we look at Paragraph 75, we see the agreed construction requires the extending needle to be extending a desired distance from the surface; is that correct?

A Yes. I read that in the claim construction.

Q Right. So independent Claim 1 requires extending needles to extend a desired distance, correct?

A Let me read Claim 1.

Q Claim 11. Sorry.

A Claim 11, okay.

Q Yeah, sorry about that, Claim 11.

MS. PENIZA: Objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A I'll read the text again. Claim 11 requires "...a plurality of needles one of extending or extendable a desired distance from a surface."

BY MR. AUTERI:

Q And the parties agreed to a construction that requires that even extending needles need to extend to the desired distance; is that correct?

MS. PENIZA: Objection. Mischaracterizes the document.

BY THE WITNESS:

A The construction says: "...needles extending a desired distance from the surface covers non-extendable needles having a fixed length."

BY MR. AUTERI:

Q Correct. So extending needles in Claim 11 desired distance applies to both extending and extendable needles, correct?

A Under the agreed claim's construction, I think that's correct, yes.

Q And so if you...

So for extending needles, do you agree that the distance the needles extend from the surface would be fixed relative to the surface?

A That's what the agreed claim's construction says. It says: "...needles extending a desired distance from the surface covers non-extendable needles having a fixed length."

Q Right. You agree that how far the needles -- how far extending needles extend from the surface is the same before, during and after treatment?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I'm trying to understand that question. If the needles are fixed length, then they're fixed length at all times.

BY MR. AUTERI:

Q Fixed length. Do you agree that the needles are also in a fixed position relative to the surface?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A Well, the only position that's talked about is the one dimension which is length. If you're asking if the needles have a fixed length, then that's what the claim's construction says. It doesn't say fixed position.
BY MR. AUTERI:
Q Right. Well, so the claim construction requires the needles to be fixed relative to -- fixed and non-extendable relative to the surface, correct? We can go back to your declaration for the '774 and look at Paragraph 76 if that helps.
A Extending needles covers needles that are fixed and non-extendable relative to the surface as depicted in Figures 2A to 2B.
Q Right. So if they're fixed and non-extendable relative to the surface, that means extending needles -- the distance that extending needles extend relative to the surface doesn't change; is that correct?
A I think that's what fixed length means,

fixed and non-extendable relative to the surface, yes.

Q Perfect.

So extending needles would not cover needles that extend and retract relative to the surface; is that correct?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A I think the claim's construction refers to needles that have a fixed length. It doesn't talk about extend and retract. Extendable needles covers needles which are not fixed.

BY MR. AUTERI:

Q Look at Paragraph 76 of your declaration. You agree that extending needles cover needles that are fixed and non-extendable relative to the surface, correct?

A Yes.

Q Right. And if they are fixed and non-extendable relative to the surface, then the distance they extend relative to the surface doesn't change; is that correct?

A That's what the claim's construction says, that the needles have a fixed length.

Q Well, it's not just that they're a fixed length, that they are in a fixed position relative to the surface; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A And Paragraph 76 says: "...extending needles cover needles that are fixed and non-extendable relative to the surface."

So they are fixed in position relative to the surface.

BY MR. AUTERI:

Q Correct. Yes. So either the extending needles and the surface move together or neither moves; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I don't think the claim's construction have anything about a surface moving.

BY MR. AUTERI:

Q If the needles are stationary relative to

the surface, that means the needles and the surface either they move together or they don't move at all; is that correct?

A If they move, Figure 2A doesn't show it moving.

Q Correct. But Figure 2 is called a acupuncture device, correct?

A Yes, but -- yes.

Q And the operator grabs the acupuncture device and merely takes the whole device needles included and stabs the patient; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's a colorful way to describe it, yes.

BY MR. AUTERI:

Q And so the handle, the surface and the needles either all move together or none of them move; is that correct?

MS. PENIZA: Same objection.

BY THE WITNESS:

A I'm now getting confused with your earlier question so maybe you can just rephrase the

question again.
BY MR. AUTERI:
Q Sure.
For extending needles, the extending needles and the surface they extend from either move together or don't move at all; is that correct?
MS. PENIZA: Same objection.
BY THE WITNESS:
A The needles are fixed relative to the surface, so if the surface moves then the needles move with the surface.
BY MR. AUTERI:
Q Correct. So the needles can't move without the surface moving; is that correct?
MS. PENIZA: Same objection.
BY THE WITNESS:
A Under that claims construction of extending needles, yes.
BY MR. AUTERI:
Q And if that's the case, it wouldn't make sense for extending needles to be extended and

retracted using a motor or a mechanism; is that correct?

MS. PENIZA: Objection. Incomplete hypothetical.

BY THE WITNESS:

A I really -- I'm not sure what you're referring to. Is this in the context of the '774 patent or is this a hypothetical device?

BY MR. AUTERI:

Q This is trying to understand the scope of extending needles for the '774 patent. So what I'm really trying to understand is if they're extending needles, that means the needles can't extend or retract relative to the surface, correct?

A What the claim's construction says and my opinion says is that extending needles cover needles that are fixed and non-extendable relative to the surface.

Q So they can't be extendable relative to the surface, correct?

A That's what it says, they are

non-extendable relative to the surface.

Q So does that also mean you cannot use a motor to extend the needles relative to the surface?

MS. PENIZA: Same objection.

BY THE WITNESS:

A If they're non-extendable it doesn't matter which thing you can't use to not extend them.

BY MR. AUTERI:

Q That's what I was wondering.

MR. AUTERI: Let's mark a new exhibit. This will be the document with the file name IPR 2024-00383-Ex.1004-Mehta.

AV TECH ABRAMS: I have that. One moment, please.

(A certain document was marked Crosby Deposition Exhibit 3 for identification, as of 04/01/2025.)

MR. AUTERI: Give it a second for it to show up so that Mr. Crosby can download it.

AV TECH ABRAMS: You should see it in the

chat now.

MR. AUTERI: Perfect. So for housekeeping what we are marking as Crosby Deposition Exhibit 3 is US Patent No. 8,608,737. This also has a marking that it's Exhibit 1004 to IPR No. IPR 2024-00383.

BY MR. AUTERI:

Q Mr. Crosby, if I refer to this patent as Mehta, you'll understand that I'm referring to this patent, right?

A Yes.

Q And to avoid using multiple of the same exhibit, would you accept my representation that this same patent is also Exhibit 1004 for IPR 2024-00384 that is for the '536 patent?

A Yes, I accept that representation.

Q And then will you accept my representation that this same patent is marked as Exhibit 1006 for IPR 2024-00463, which is the '812 patent cited?

A I accept that representation.

Q And if you have a paper copy of Mehta

regardless of which IPR it's an exhibit from, feel free to use that if you prefer paper copies.

THE WITNESS: Do we have a copy, Counsel?

MS. PENIZA: We have a copy. There you go.

THE WITNESS: Thank you.

MR. AUTERI: I guess before we start, I think we had talked about maybe a break in 20 minutes. Is this a good time before we launch into the next one or do you want to go for another couple of questions first?

THE WITNESS: I would suggest we do it now because I suspect this will take several questions.

MR. AUTERI: I think that's a good idea. So what do you think, 10 minutes, 20 minutes? What's your preference?

THE WITNESS: Ten should be fine.

MR. AUTERI: Ten? Okay. Let's do a ten-minute break. I probably should have gone off the record.

(A recess was had.)

BY MR. AUTERI:

Q So, Mr. Crosby, we were just looking at or we were just starting to look at what we marked as Crosby Deposition Exhibit 3 which is the Mehta reference. And you are familiar with this patent, correct?

A Yes, I've read it several times. I haven't memorized it, but I'm familiar with it.

Q Understood. I won't make this into a memory test.

You agree Mehta discloses electrodes, correct?

A Mehta discloses electrodes as one of a set of types of probes, yes.

Q And that includes electrodes such as needle electrodes; is that correct?

A Can you tell me where you're referring to in Mehta?

Q Let's see. What I'm looking at is your declaration. Can we go back to your declaration for the '774 patent what we have marked as Crosby Deposition Exhibit 1. If we look at Paragraph 86,

I think what's on Page 44. You had just explained that Mehta discloses probes and one of the types of probes is electrodes; is that correct?

A Yes.

Q And in the sentence it says in Paragraph 86: "To confirm the probes reach the target tissue, Mehta discloses several ways of assessing penetration depth after the needles have been extended into the skin."

Are you inferring that the probes are the needles?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A It's the other way around. Needles are one type of probe, and I think my declaration makes that quite clear.

BY MR. AUTERI:

Q So you agree Mehta -- and if you had probes that are needles, would you agree that those are electrodes that are insertable into tissue?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Again, one subset of needles is needle electrodes that are insertable into tissue.

BY MR. AUTERI:

Q Does Mehta disclose needle electrodes is I guess the --

A Where are you referring to in Mehta?

Q We're looking at Paragraph 86 of your declaration. You say, "To confirm, the probes reach the target tissue, Mehta discloses several ways of assessing penetration depth after the needles have been extended into the skin. For example, Mehta explains ultrasound imaging can be used for imaging purposes to assess the penetration depth of the electrodes or to identify in which layer the electrodes are located."

If the electrodes have a penetration depth, do you agree that Mehta's electrodes are configured to be insertable into tissue?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A Mehta's electrodes are capable of being

inserted into tissue, is that what you said?
BY MR. AUTERI:
Q Are they configured to be insertable into tissue?
A Configured. Yes, under some embodiments of Mehta.
Q Do you agree Mehta's needle -- sorry. Let's back up. Sorry.
Do you agree that Mehta discloses needles that are extendable and retractable?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A Mehta discloses a mechanism for having needles or probes which can be extended a fixed distance and then retracted that same distance.
BY MR. AUTERI:
Q Do you agree that Mehta's needles extend and retract relative to a surface?
A They extend and retract relative to a surface, is that what you're saying?
Q Yes.
A Yes, I think that's correct.

Q And do you agree that Mehta discloses an end surface configured to be placed on or near dermatological tissue to be treated?

A Which surface are you referring to or which part of Mehta are you referring to?

Q Well, I'm just asking generally do you agree that Mehta has an end surface configured to be placed on or near dermatological tissue to be treated?

A Mehta discloses a surface configured to be replaced -- to be placed on or near dermatological tissue. That's what he refers to as an end surface.

Q Right, but is that surface towards the end or an end of the device?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Not really.

BY MR. AUTERI:

Q Mehta in the '774 patent uses the words "proximal" and "distal" in reverse; is that correct?

A I'm sorry. I didn't understand.
Q Maybe I'm a little bit more annoyed.
To back up, Mehta uses a device to treat patients, correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A I think that's what it says in the preamble, yes.
BY MR. AUTERI:
Q Right. And the device you place a tissue engaging surface on the tissue; is that correct?
A Which surface are you referring to in Mehta? Because my recollection is there are several surfaces.
Q We'll come back to the end surface part and discuss it a little bit more. I guess it doesn't really matter.
So do you agree that Mehta discloses a motor to extend or retract its needles relative to a surface?
A My recollection of Mehta, I have to look at the description again, is that a motor is one

method of -- one embodiment of an actuator. I think Mehta refers to an actuator which may be a motor.

Q And so in embodiments that use a motor, Mehta's needles are extended and retracted relative to the surface using that motor; is that correct?

A Well, no. Because you're using the term "surface" again and it's important to understand which surface you're referring to.

Q Well, let's back up.

You agree Mehta discloses electrodes that extend relative -- extend and retract relative to a surface, right?

A Mehta discloses electrodes that extend and retract a fixed distance relative to -- well, extend and retract a fixed distance, yes.

Q But that extend, my question is relative to a surface. So do you agree Mehta's electrodes extend and retract relative to a surface?

A Again, which surface are you referring to? I'm not sure that's correct.

Q The claim says "a surface," right? So pick a surface, is there any surface that Mehta's needles extend and retract relative to?

A Hold on. Are you talking about the Mehta claims or the '774 claim?

Q Talking about Mehta.

A Okay.

Q We're talking in terms of claim limitations, but I'm asking does Mehta -- let's -- do you not agree that Mehta's needles extend and retract relative to a surface?

A Again, there are multiple surfaces. I'm trying to get clarity on your question.

Q Let's look at the '774 patent. We can look at Claim 11.

If you look at Claim 11, there's a limitation that says: "A device including a plurality of needles one of extending or extending -- extendable a desired distance from a surface."

Do you read that claim no other requirements for what defines the surface or

presence; is that correct, it's just a surface?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A That's the claim of the '774 patent. I'm trying to understand you're referring to Mehta, but this is the '774 patent.

BY MR. AUTERI:

Q So the '774 patent just requires the needles to be one of extending or extendable a desired distance from a surface; correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, the claims talk about a desired distance.

BY MR. AUTERI:

Q Right. That's fine.

Claim 11 requires a device including a plurality of needles one of extending or extendable a desired distance from a surface; is that correct?

A That's what Claim 11 says, yes.

Q Claim 11 puts no further requirements on

what that surface is, correct?

A I think you read the language of the claim correctly, yes.

Q Right. So it's any surface, correct?

A That's correct, it says a surface.

Q Okay. And so if we back to Mehta, do you agree that Mehta's electrodes extend and retract relative to a surface?

A If you look, for example, at Figure 4A of Mehta, it shows a group of needles that extend and retract from a surface which I think is labeled 120.

Q 120, right. And so you would say that Mehta's needles extend or retract relative to surface 120, would you agree to that?

A In that embodiment, yes.

Q And you would agree Mehta discloses a motor to extend and retract the needles, correct?

A My recollection is Mehta discloses an actuator one type of which can be a motor.

Q That means Mehta discloses a motor to extend or retract the needles, correct? It may

disclose more but it discloses that, correct?

A It does disclose a motor as a possibility to extend or retract the needles.

Q Right. And so the motor extends and retracts the needles relative to the surface we just looked at, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A The needles extend and retract from a surface. I'm not sure what you mean by "relative to."

BY MR. AUTERI:

Q Positions can be relative, correct?

A Sorry, say that again. You got a bit garbled up.

Q So are you saying you're not sure what extend and retract relative to a surface means?

A I'm trying to understand your question.

Q The position of Mehta's electrodes can change relative to the surface; is that -- relative to the -- strike that.

The position of Mehta's electrodes can

change relative to the position of the surface; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Kind of. As I pointed out in this embodiment in Figure 4A, the needles 108 extend and retract and they extend through the surface 120. So the tips of the needles change in position relative to that surface 120.

BY MR. AUTERI:

Q Right. So Mehta's needles don't have a fixed position relative to that surface; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A They don't have a fixed length relative to that surface. They certainly have fixed location in that surface.

BY MR. AUTERI:

Q Earlier we discussed how extending needles cannot cover needles that extend and retract relative to a surface, is that a correct summary

of our discussion earlier?

A I think you were referring to the claim's construction of extending? Is that what you're referring to?

Q Right. I guess we can go back to your declaration for the '774 patent. I would say Page 37, Paragraph 76 and/or 75 may help. I can re-ask the question if you want to just take a look at those.

A Please repeat your question.

Q Sure.

Earlier we discussed how -- earlier we discussed how extending needles cover needles that are fixed and non-extendable relative to a surface, correct?

A That's correct, yes.

Q And you agree that Mehta's needles are extendable relative to a surface; is that correct?

MS. PENIZA: Objection. Form, mischaracterizes testimony.

BY THE WITNESS:

A The needles in this embodiment are pointed

out in Figure 4B are extendable relative to a surface. Whatever that number was I can't remember.

BY MR. AUTERI:

Q So do you agree that Mehta discloses extendable needles?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Mehta discloses extendable needles that can be extendable at a fixed distance, yes.

BY MR. AUTERI:

Q And you would not say that Mehta's needles were extending needles under the agreed construction; is that correct?

A Is that a double negative? I would not say what?

Q Under the parties' agreed construction for extending needles, Mehta's needles are not extended needles; is that correct?

A They're not extending needles under that construction, that's correct.

Q Could we go to Page 41 of your declaration

for the '774 patent and look at Paragraph 82. And in Paragraph 82 --

A Can I read it?

Q Sorry, sorry, sorry. Take your time.

A Okay, I've read it.

Q So starting with the first sentence you state: "The petitioner's and the expert's assertion that a desired distance just means a desired distance as opposed to an undesired distance. I disagree."

So just to confirm you disagree with petitioner's and its expert's construction of desired distance; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I disagree with the expert's assertion, yes.

BY MR. AUTERI:

Q If you go about six sentences down, do you see the sentence that says: "Petitioner appears to contend the selection of any cartridge with any length is sufficient to meet the desired distance

limitation of the claims"?

A I see that, yes.

Q And the next sentence says: "But that would render the desired distance limitations meaningless and would require looking into what the user was thinking, i.e., his or her state of mind when selecting a particular cartridge configuration."

Is that correct?

A Yes.

Q And you state you see nothing in the intrinsic record -- sorry. Strike that.

You say you have seen nothing in the intrinsic evidence to support such a construction for the desired distance limitations; is that correct?

A That's what it says, yes.

Q And you state that, instead, the '774 patent focuses on the user's objective action of selecting the depth, which is then used to program the distance to which the needle extends; is that correct?

A Yes, that's what's written here, yes.
Q And earlier we discussed that the limitations at issue for the '774 patent were -- sorry, strike that.
Earlier we discussed that Claims 13 and 14 were at issue for the '774 patent; is that correct?
A That's my understanding, yes, 13 and 14.
Q If you need to look at your declaration, I'm not going to hold you to a memory contest.
A Thank you.
Q So your opinion in Paragraph 82 is it correct to say at least applies to dependent Claims 13 and 14 of the '774 patent?
A Let me read this in complete context.
Q Sure. If you need to look back a couple of paragraphs, or whatever you need.
A This is under section labeled 2A, "Causing or to cause a plurality of extendable needles to extend a desired distance from the end surface."
So there's multiple paragraphs in here preceding Paragraph 82. So I think you need to

read Paragraph 82 in complete context of this section.

Q I guess you've been able to take a look or let me know if you need more time but in the context of the section if you look back more this at least applies to Claims 13 and 14; is that correct, of the '774 patent?

A This term is applicable to Claims 13 and 14 of the '774. That's why this section is about this claim construction.

Q I just want to confirm because the paragraph itself -- I think it's clear to the reader in context but I just wanted your confirmation that this is at least discussing those ones, and that's because Claims 13 and 14 require extendable needles to a desired distance from an end surface; is that correct? You can look at the patent. We can strike my question.

Both Claims 12 and 13 require extendable needles to extend a desired distance from an end surface, correct?

A You said --

MS. PENIZA: Sorry. Go ahead. You said 12 and 13.

MR. AUTERI: Sorry. Thank you for the correction.

BY MR. AUTERI:

Q 13 and 14 -- to back up, the only real difference between 13 and 14 is one requires a mechanism and the other requires a motor; is that correct?

A I'm going back to your earlier question. Both 13 and 14 require extendable needles to extend a desired distance from the end surface. That was your previous question.

Q Yes. If you want to confirm that that's correct?

A What's your new question?

Q And are the only real differences between 13 and 14 is whether you use a mechanism or a motor to extend the needles to that desired distance; is that a correct read?

A Claim 13 calls out a mechanism, and Claim 14 calls out a motor coupled to the plurality of

extendable needles.

Q And if we go back to independent Claim 11 from which these indirectly depend, independent Claim 11 also includes a desired distance limitation, correct?

A The first limitation, yes, a plurality of needles one of extending or extendable a desired distance from a surface, yes.

Q All right. And if we go back to your declaration for the '774 patent, I think we were on Page 41. Looking at Paragraph 81, yeah, there's -- let me count the lines, sorry.

The last sentence of that paragraph says: "Instead, the '774 patent focuses on the user's objective action of selecting the depth which is then" --

A You said Paragraph 81. Are you referring to --

Q Sorry, I meant 82. So let's go to Page 41.

A Okay.

Q I apologize. And then Paragraph 82,

specifically the last sentence if you could just take a quick look. That last sentence at 82 -- Paragraph 82 you say: "Instead, the '774 patent focuses on the user's objective action of selecting the depth which is then used to program that distance to which the needles extend."

Is that correct?

A Yes, that's what it says here.

Q By the '774 patent you're referring to the '774 patent specification?

A Remember, this paragraph is in the whole context of the claim's construction of desired distance. And if you read the seven pages prior to this, it talks about how the user determines that desired distance. And so from the perspective that the '774 patent requires the user to determine that desired distance, that is what I was talking about here.

You have to read the claim in the context of the whole description and the illustrations. It doesn't stand on its own like that.

Q Do you agree that the claim is the single

best source for claim construction?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Are you asking me a legal opinion here?

BY MR. AUTERI:

Q Right. Does the -- the claim's language trumps the specification when in doubt; is that correct?

MS. PENIZA: Same objection.

BY THE WITNESS:

A Again, are you asking for a legal opinion?

BY MR. AUTERI:

Q Well, let's back up.

Paragraph 82 you say: "Instead, the '774 patent focuses on the user's objective action of selecting the depth which is then used to program that distance to which the needles extend."

Let's look at Claims 13 and 14 and any claims that you depend on, can you point out to me where the claims focus on the user's objective action of selecting a depth?

A Well, I think you have to read that in the

context of the whole seven pages of this section which is about how to construct or construe the term "extend a desired distance."

So we can go through all of this if you'd like. Your question is taken out of context.

Q I guess then let's step back and I'll ask a slightly different question.

Is there any reason that your statement about requiring -- let's step back.

So you say: "Instead, the '774 patent focuses on the user's objective action of selecting the depth which is then used to program that distance to which the needles extend."

Does your opinion there also apply to independent Claim 11 of the '774 patent?

A The whole thing about the '774 patent and the way this works is for extendable needles from a surface, the user decides how much he wants those needles to extend or the depth of penetration, the user decides that and sets up the device to extend the needles the desired distance to achieve that depth that the user has

determined.

That's what the claims refer to. That's how the description works.

Q Are you sure that you're not referring to the patent specification discussing such user selection?

A I don't think the end of that Paragraph 82 is specific to the specification of the claim. It's the whole patent, isn't it?

Q Well, that's not what I was asking. So I guess, correct me if I'm wrong here, when you say "...the '774 patent focuses on the user's objective action" and the rest of your sentence, you're referring to the claim specification and whatever else; is that a better understanding of your statement?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A It says: "...the '774 patent focuses on the user's objective action..." So the claim's construction as I understand it has to be read in the context of the description.

BY MR. AUTERI:

Q Let's step back.

You understand that the claim's description can be a lot broader than what's actually required of the claims, correct?

A Yes, I do understand that.

Q And you understand that the claims actually dictate infringement and invalidity, correct?

A I do understand that, yes.

Q You understand that even if let's say the specification is a single example, a single embodiment, no other embodiments is still not enough to limit the claims to that one embodiment; do you understand that?

MS. PENIZA: Objection to the extent it calls for a legal conclusion.

BY THE WITNESS:

A Yeah, I'm not sure I even understand the question.

BY MR. AUTERI:

Q Do you know that you are only supposed to

use the specification to confirm what the claims say -- let's back up. I don't want to give you a hard time here. So let's -- I just want to confirm either yes or no or I'm not sure, your statement about the patent focusing on the user's objective action of selecting the depth which is then used to program the distance from which the needles extend, does that also apply to independent Claim 11 of the '774 patent?

MS. PENIZA: Objection.

You can answer.

BY THE WITNESS:

A Well, this whole section again is on claim's construction of what that term means. The plurality of extended needles to extend a desired distance from the end surface. This whole section is about what that term means. And the claim's construction depend -- is informed by what's in the description as you mentioned.

BY MR. AUTERI:

Q I guess maybe I'm not making my question clear enough.

Claim 11 -- independent Claim 11 includes extendable needles to a desired surface -- distance, correct?

MS. PENIZA: Objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A "...a plurality of needles one of extending or extendable a desired distance from a surface," that's what Claim 11 says, yes.

BY MR. AUTERI:

Q Right. So like Claims 12 and 13 -- or sorry, sorry.

Like Claims 13 and 14, Claim 11 covers needles extendable at a desired distance; is that correct?

A That's correct.

Q Okay. And then for Claims 13 and 14, though, for needles that are extendable a desired distance, you say the '774 patent focuses on the user's objective action of selecting the depth which is then used to program that distance to which the needles extend; is that correct?

A Yes, that's correct.

Q And then so my question is --

A This whole Paragraph 82 needs to be read in context of this whole section, and this Paragraph 82 is in -- as it says in the first sentence, in response to petitioner's and its expert's assertion that the desired distance just means the desired distance as opposed to an undesired distance.

So the last sentence that you seem to be focusing on needs to be read in the context of this paragraph and in the context of the whole section which is the claim's construction particularly referring to the term "desired distance."

Q Correct. And Claim 11 includes the particular term "desired distance," so I'm asking you does your opinion about the objective action of selecting the depth which is used to program that distance, does that apply to the desired distance that extendable needles extend in Claim 11?

A Let me review the rest of what this --
Q Yeah, go for it. Take your time. I'm not trying to trick you or anything.
A As I say in Paragraph 73, "...in my opinion, the plain and ordinary meaning of desired distance is how far the extendable needles extend from the device's end surface using a motor/mechanism based on" -- there is a typo there -- "on a user programming that distance."
That's what I say. That's my opinion.
Q Right.
A That's not changed.
Q So is it your opinion for Claim 11 needles extending a desired distance from the surface, does it require the same objective action of selecting the depth which is then used to program the distance that needles extend that you claim that Claims 13 and 14 require?
MS. PENIZA: Object to form.
BY THE WITNESS:
A I think I cover that question in the next Paragraph 74 if I can just read it again, please.

BY MR. AUTERI:

Q Yeah, go ahead. Go for it.

A Yes, if I can refer you to Paragraph 77 -- the end of Paragraph 77 on Page 38: "In my opinion, a person of skill in the art reading the claims language would understand that the 'desired distance' the extendable needles extend is selected by a user to enable the needles to penetrate the dermatological tissue (using a mechanism or motor) under control of software in the system."

And that is for 13 and 14 which depend from 11.

Q Right. And Claim 11 also requires a selected desired distance that the extendable needles extend.

MS. PENIZA: Objection. Mischaracterizes.

BY MR. AUTERI:

Q Correct?

A Claim 11 contains the term "desired distance," yes.

Q Right. And extendable needles, correct?

A That's one of the options of Claim 11, yes.

Q The big difference between 13 and 14 is Claim 11 doesn't require motor or mechanism to extend the extendable needles, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Claims -- well, it's more than that. Claims 13 and 14 require extendable needles, and 13 requires a mechanism -- if I could just read the claim instead of doing it from memory.

BY MR. AUTERI:

Q Yeah.

A "13 further includes a mechanism for causing a plurality of extendable needles to extend a desired distance."

And 14: "Further including a motor coupled to the plurality of extendable needles that may be directed to cause the plurality of the extendable needles to extend a desired distance from the end surface."

Q Right. So you can see the desired

distance the extendable needles extend is in Claims 11, 13 and 14, correct?

A Yes, that term appears in those three claims.

Q And your construction of the desired distance that the extendable needles extend in Claims 13 and 14, I'm asking does that also apply to the desired distance that the extendable needles extend to in Claim 11 that they depend from?

MS. PENIZA: Objection to the extent it mischaracterizes the claims, and form.

BY THE WITNESS:

A I think I've already answered that. In Paragraph 73 of my report, "...the plain and ordinary meaning of 'desired distance' is how it far the extendable needles extend from the device's end surface using a motor/mechanism based on a user programming this distance."

So the term "desired distance" appears in Claims 11, 13 and 14 and the same meaning should apply.

BY MR. AUTERI:

Q Okay. So the same meaning -- the desired distance in 13 and 14 should have the same meaning as in Claim 11 is what you're saying?

A Yes.

Q Okay.

A That term.

Q Correct.

So then if that's true, then you would believe for Claim 11 you would -- go back to Paragraph 82 of your declaration for the '774 patent, that last sentence talking about the objective action of selecting the depth which is then used to program the distance to which the needles extend, is it correct to say that that statement applies to independent Claim 11 also?

A Well, as I previously read out, the desired distance is based on a user programming this distance.

So to the extent that that last sentence of Paragraph 82 is referring to a desired distance, which is where it starts, then, yes, it

depends on the user's objective action.

Q And then I think you might have already confirmed this, but Claim 11 of the '774 patent has a limitation that says: "The desired distance selected to enable the plurality of needles to penetrate the dermatological tissue."

Is that correct?

A The desired distance selected to enable the plurality of needles to penetrate the dermatological tissues, yes.

Q It doesn't say whose -- just looking at the claim language alone, the claim doesn't specify who selects the desired distance; is that correct?

A Well, this whole Section 2 starting on Paragraph 73 is the claim's construction of desired distance.

So my opinion is the term "desired distance" -- and I'll read it again -- is "based on a user programming this distance."

So if that's the claim's construction, that's my opinion what the claim's construction

is, then, yes, it is based on a user programming this distance.

Q That's your conclusion. I'm trying to go through the rationale. And so, you know, it's the claims and specification and prosecution history that helps you inform what the scope of the claims is, correct?

A I've considered all those things, yes.

Q So I want to start with the claims and then we can move to the spec, but my question is a yes-or-no question.

Do you agree that independent Claim 11 of the '774 patent, just looking at the claim language, doesn't say who must select the desired distance?

A Claim 11 doesn't specify who selects the desired distance. That's correct.

Q Claim 11 doesn't -- sorry.

A But the claim's construction I proposed in my opinion as valid does talk about who.

Q Right, but it's not based off the claim language, correct?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A My understanding is the claim's construction is how to interpret that claim language.
BY MR. AUTERI:
Q Right. I'm just starting with the claim and then we'll talk about the specification. I understand that you rely extensively on the specification for the user selection requirement.
What I'm asking is: What in the claims, if anything, are you looking at for a user selection and a user programming requirement?
A Well, the claim language talks about a desired distance which begs the question how is that distance decided, who desires that distance, what is used to translate the desired distance into a action.
So inanimate objects don't desire anything. People desire things. So it implies that there's a person involved because it says the word "desired." Then the question is how do we

interpret that term "desired distance." That's why and how we're going through this claim's construction. If it's desired, who desires it?

Q Well, a manufacturer desires it a distance.

(Reporter clarification.)

BY MR. AUTERI:

Q I'm saying a manufacturer -- let's back up.

The operator is not the only human that's involved in this, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, I'm not quite sure what you're asserting here. Are you trying to answer the question who determines the desired distance?

BY MR. AUTERI:

Q You're assuming --

A In your claim's construction it is the manufacturer?

Q Sorry. What I'm asking is you're hanging your hat on the word "desired" and because desired

is in the claim you believe that requires user selection; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Because the term "desired" is in the claim, it implies to me that there is a person involved somewhere.

BY MR. AUTERI:

Q And for extending needles we discuss how those are also covered by Claim 11 of the '774 patent; is that correct?

A Yes, Claim 11 says: "...a plurality of needles one of extending or extendable a desired distance from a surface."

Q Right. And we talked about extending needles the distance they extend from the surface is not adjustable; is that correct?

A It's fixed.

Q It's fixed, correct.

So then would you agree that a user selects the desired distance for extending needles by selecting a device having needles with a length

sufficient to reach that desired distance?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A My opinions aren't with regard to a desired distance for an extending needle. My opinions are limited to Claims 13 and 14. I haven't thought about the question of desired distance for extending needles. I've thought about the term desired distance for extendable needles as in Claims 13 and 14.

BY MR. AUTERI:

Q So you haven't checked if your construction for desired distance would be inconsistent with one that you would apply -- sorry, let's back up.

You haven't checked if the construction you applied for a desired distance in dependent Claims 13 and 14 of the '774 is used consistently with the way that it could be construed for independent Claim 11 of the '774 patent?

MS. PENIZA: Objection. Form.

By THE WITNESS:

A No, I think it's entirely consistent.
BY MR. AUTERI:
Q Okay. Okay.
A You -- you --
Q If you think it's consistent then I'm going to ask my question and that's: How does one select the desired distance for extending needles?
A Are you asking me to speculate on different ways that could happen?
Q Well, you said that because the claims are desired, that means the desired distance is selected by the user, right?
MS. PENIZA: Objection. Mischaracterizes testimony.
BY THE WITNESS:
A You asked me something slightly different. I think you're asking me how do I know from Claims 11, 13 and 14 that there is a user involved. Isn't that -- wasn't that your question?
BY MR. AUTERI:
Q No, no, no, no. I asked --
A I misunderstood.

Q Sorry. I asked -- back up.

The claim only -- Claim 11 only applies to the desired distance is selected to enable a plurality of needles to penetrate the dermatological tissue; is that correct?

MS. PENIZA: Objection. Mischaracterizes the claims.

BY THE WITNESS:

A The desired distance selected to enable the plurality of needles to penetrate dermatological tissue, that's what it says, yes.

BY MR. AUTERI:

Q Right. And that's written in the passive voice so there's no subject to who actually does the selection; is that correct?

A Yes, I understand what you're saying in the grammar, yes --

Q Right. And so --

A -- but yes.

Q Yeah. It will probably become more apparent as we go on.

And you said the reason why you assume

it's a user selection is because the claims recite the word "desire" and you assume that that has to be a human; is that correct?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A I think your question was how do I know there's a user involved, and that's what we had the conversation about the term "desired." Now I think you're talking about something different which is the word "selected" so I'm getting a bit confused by your question.

BY MR. AUTERI:

Q Exactly, so maybe we could start back over and I guess my question is: What, if anything, in the claims requires the selection to have been done by a user as opposed to a manufacturer of the device?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I wasn't comparing a user or manufacturer. I think what I said is that it implies to me that

there's a human involved.
BY MR. AUTERI:
Q Right. And I was asking for what's your support for requiring the selection to be by a user, right? The user is a specific type of human; is that correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A One would hope so, yes.
BY MR. AUTERI:
Q Right. And there's other humans like the manufacturer that could select the desired distance.
Do you agree?
A No. Because as I say in Paragraph 73, in my opinion, desired distance is how far the extendable needles extend from the device's end surface using a motor or mechanism based on a user programming this distance.
Q And we also talked about Claim 11 requiring the extending needles needing to extend to that desired distance; is that correct?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A Claim 11 recites a device including a plurality of needles one of extending or extendable a desired distance, yes.
BY MR. AUTERI:
Q Right. And we talked -- we went through this whole thing, we went through your declaration, it took a lot of time, but we discussed that under the agreed construction the extending needles must extend a desired distance; is that correct?
MS. PENIZA: Objection. Mischaracterizes testimony.
BY THE WITNESS:
A Are you telling me that's the agreed construction?
BY MR. AUTERI:
Q Look back at your declaration for the '774 patent. You can look at Paragraph 75, yeah.
A Yes.
Q Do you see the part that says "needles

extending a desired distance" and it explains what it covers?

A Yes, it does.

Q Right. So the extending needles extend a desired distance, do you agree with that?

A Yes.

Q Okay. And you said the desired distance must be selected by the user; is that correct?

A That's what I said in the context of Paragraph 73, yes.

Q And we talked about how extending needles the distance they extend cannot be adjusted because they are fixed in a relative spot; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A They are not extending, that's correct. Non-extendable, fixed.

BY MR. AUTERI:

Q Right. So a user couldn't select the desired distance for extending needle; is that correct?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A I'm not sure that is correct. I haven't thought of it in those terms, but I'm not sure that's correct.
BY MR. AUTERI:
Q Right. So the only way I can imagine a user selecting the desired distance for extending needles is by choosing a device that has extending needles with a length that matches the desired distance they want to reach.
Do you agree that that is one way a user can select the distance that extending needles extends?
MS. PENIZA: Objection. Form. Mischaracterizes testimony.
BY THE WITNESS:
A I guess that's one way. It's possible there could be a way, but I don't know that -- we haven't talked about it in those perspective -- from that perspective before.
BY MR. AUTERI:

Q Right. So you haven't analyzed whether your user selection requirement makes sense when the desired distance -- for the desired distance that's in independent Claim 11; is that correct?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A Well, this whole section is about Claims 13 and 14. If there had been a dependent claim, for example, that talked about extending needles, then that would have been a subject for a discussion on what the desired distance means for them.

BY MR. AUTERI:

Q Claims 13 and 14 depend from independent Claim 11, correct?

A Yes.

Q Claim 11 is what introduces desired distance, correct?

A Yes.

Q The desired distance in Claim 13 and 14 is the desired distance from independent Claim 11,

correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A 13 says: A plurality of the extendable needles to extend a desired distance from the end surface as does 14.

It seems to me that you're asserting that that is the same desired distance in Claim 11? Is that what you're saying?

BY MR. AUTERI:

Q Are you saying that the desired distance in Claim 11 is a different desired distance in Claims 13 and 14?

A No. What I'm saying is that my report refers to the term "desired distance" in Claims 13 and 14.

Q Right. But the desired distance in Claims 13 and 14 is from Claim 11, right? And so what I'm asking you is: Did you make sure that your construction for desired distance in Claim 13 and 14 would still make sense if you applied it to Claim 11 where the desired distance originally

came from?

MS. PENIZA: Objection. Form, and mischaracterizes the claims.

BY THE WITNESS:

A Again, I can refer you to my report. This is talking about Claim 13 and 14. And as I say in Paragraph 74, the language of dependent Claims 12, 13 and 14 is narrower as those claims require extendable needles. So the term "desired distance" for Claims 13 and 14 refer to a desired distance for extendable needles, and that's what the opinion is about. The term "desired distance" for Claims 13 and 14 which refer to extendable needles.

BY MR. AUTERI:

Q Right. And so my question was: You didn't check whether your construction for desired distance in 13 and 14 makes sense when applied to Claim 11? That's a yes, no, maybe.

MS. PENIZA: Objection.

BY THE WITNESS:

A My assignment was to look at the claim's

construction as it applied to the claims that are in dispute in this IPR which are Claims 13 and 14.
BY MR. AUTERI:
Q Okay. So you didn't look at independent Claim 11 for which Claims 13 and 14 depend?
A Well, of course I looked at independent Claims 11 to help me understand what 13 and 14 are about, but, as I said, I looked at the term "desired distance" in the context of Claims 13 and 14.
Q Right. Because you focused on desired distance in the context of Claims 13 and 14, you didn't check if your claim construction for desired distance would be consistent with how you would apply it if you were looking at Claim 11; is that correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A I don't know how to say it any different way.
My assignment was to look at Claims 13 and 14. The claim's construction has to do with the

term in Claims 13 and 14, and this is on Page 35, "...causing the plurality of the extendable needles to extend a desired distance from the end surface."

So I looked at the claim's construction what does that mean in the context of Claims 13 and 14. Of course I noticed that the term "desired distance" appears in Claim 11, but my assignment was to look at the claim's construction as it applies specifically to those two narrower claims which depend on Claim 11.

BY MR. AUTERI:

Q Right. And the narrowing is that Claims 13 and 14 require extending -- extendable needles and either a motor or mechanism to drive them; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's -- it's my -- well, I can read the claims, but that's what they say, yes.

BY MR. AUTERI:

Q Claims 13 and 14 don't actually put

further limitations on the desired distance; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I don't think that's right actually because it uses the desired distance in the context of extendable needles.

BY MR. AUTERI:

Q And Claim 11 also uses desired distance in the context of extendable needles, though, correct?

A It uses the term "desired distance" in the context of extending or extendable needles.

Q Correct. So Claim 11 is broader than Claims 13 and 14, correct?

A I've said in my report that Claims 13 and 14 are narrower as these claims require extendable needles.

Q So you don't think there's any reason to construe desired distance in Claims 13 and 14 consistently with how you construe it in Claim 11; is that correct?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A What I said is my assignment was to look at the claim's construction and the claims, Claims 13 and 14. I looked at Claims 13 and 14 as depending on Claim 11, but my report is talking about the claim's construction as it applies to Claims 13 and 14.

BY MR. AUTERI:

Q Let's go back to talk about Claim 11 which covers either extending or extendable needles.

We talked about a selection requirement in the claim. We talked about that you believe it's a user selection requirement. My next question is: Do you believe Claim 11 requires the extending -- sorry, let's back up.

My question is: For Claim 11 of the '774 patent, do you believe that the requirement of needles extendable a desired distance from the surface requires user programming?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A It seems to me you're asking me to do a complete analysis of Claim 11 on the fly.

My assignment was to look at Claims 13 and 14 and to look at the claim's construction of 13 and 14 which refer to a plurality of the extendable needles to extend a desired distance from the end surface, and that's what I did.

I looked at Claims 13 and 14 obviously depending from Claim 11, but my analysis is relative to Claims 13 and 14. You're asking me to do another complete analysis on Claim 11. I haven't done that.

BY MR. AUTERI:

Q Well, in Claim 11, it includes extendable needles a desired distance from a surface, correct?

A Claim 11 says that, yeah.

Q Okay. The big difference with Claims 13 and 14 than the extendable needles in Claim 11 is that 13 and 14 require a motor or mechanism to extend the needles; is that correct?

MS. PENIZA: Objection. Mischaracterizes the claims.

BY THE WITNESS:

A Claims 13 and 14, I can read them again. 13 is: A mechanism for causing the plurality of the extendable needles to extend a desired distance from the end surface.

And 14: Further including a motor coupled to the plurality of extendable needles that may be directed to cause the plurality of the extendable needles to extend a desired distance on the end surface.

BY MR. AUTERI:

Q So just to confirm, if I ask you about the claim scope of Claim 11 of the '774 patent, you would say that that's outside the scope of what your analysis was for this IPR?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A My analysis -- my assignment was to look at Claims 13 and 14, and this Section 2 starting at Page 35 is discussing the term presented for

construction in this IPR which is causing or to cause a plurality of the extendable needles to extend a desired distance from the end surface. That is the term in Claims 13 and 14. That's what my assignment was and that's what I've done and I stand by my opinions.

MR. AUTERI: Let's take a little break. Let's go off the record for a second.

(A recess was had.)

BY MR. AUTERI:

Q Mr. Crosby, we were just talking about Claim 11 of the '774 patent. I believe you were discussing how your opinion was focused on Claims 13 and 14.

So I want to confirm to the best of your ability looking at Claim 11 are you able to tell me whether or not Claim 11 requires that the desired distance is selected by a user?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A My assignment was to look at the claims construction in the context of Claims 13 and 14

which is the plurality of the extendable needles to extend a desired distance from the end surface. The claims construction for extending needles might be slightly different. I don't know. I haven't analyzed it from that perspective.

My claims construction applied to extendable needles. I haven't done a claims construction analysis for extending needles.

BY MR. AUTERI:

Q All right. So Claim 11 covers the situation of an extendable needle, correct?

A That's what I just said, yes.

Q And you said you've analyzed that situation, correct?

A That's correct.

Q Okay. So for Claim 11 for the extendable needles, does that require user program?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Again, my analysis was for Claims 13 and 14 in the context of extendable needles, so I'm trying to understand your question with regards to

Claim 11.
BY MR. AUTERI:
Q Right, you said you analyzed desired distance in terms of extendable needles, and I'm saying -- and you agree Claim 11 is broad enough that it covers a desired distance for extendable needle. And so what I'm asking is -- and to back up a little bit, you said that for Claims 13 and 14 the desired distance requires user programming, correct?
MS. PENIZA: Objection. Form, and mischaracterizes testimony.
BY THE WITNESS:
A Yes.
BY MR. AUTERI:
Q So Claims 13 and 14 have extendable needles at a desired distance and you say those require user programming?
A I said in my opinion the plain and ordinary meaning of desired distance is how far the extendable needles extend from the device's end surface using a motor or mechanism based on a

user programming this distance.

Q So is it your opinion that the claims is don't require a motor, then it doesn't require a user to program the desired distance?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Which claim are you talking about?

BY MR. AUTERI:

Q I'm trying to understand. Claim 11 requires extendable needles a desired distance; Claims 13 and 14 require extendable needles at a desired distance. And you've opined on what extendable needles at a desired distance means in Claims 13 and 14, and I'm asking whether those opinions hold up for Claim 11 and specifically the user programming one.

Can you tell me whether the desired distance for extendable needles in Claim 11 requires user programming, yes, no, or you would need more time to analyze it?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A My opinion is that the plain and ordinary meaning of desired distance is based on a user programming this distance, as I've previously stated and listed in Paragraph 73 of my opinion.

To the extent that that applies to Claim 11, extendable a desired distance from a surface in that construction would apply to that part of Claim 11.

BY MR. AUTERI:

Q Okay. And then you would say that construction desired distance wouldn't apply to the extending needles extending a desired distance in Claim 11; is that correct?

A I don't really know. As I said, I haven't analyzed Claim 11 for the claims construction. I will be happy to do it if you like, I'll be back in a couple of weeks.

Q Who is paying for it?

A You are.

Q And so you don't know whether -- you would need to do more analysis of whether Claim 11 requires the user -- let's back up a second.

Sorry. Strike that question.

And have you analyzed whether -- well, let's back up.

So you had previously mentioned that you did not believe Claims 13 Or 14 -- actually, let me just find it in your declaration and I can just direct you to it. That would probably be easier.

Let's go back to your declaration for the '774 patent. We'll look at the Page 41 which has Paragraph 82.

A I have it.

Q Around midway through the paragraph do you see where it says: "Petitioner appears to contend that selection of any cartridge with any needle length is sufficient to meet the desired distance limitation of the claims but that would render the desired distance limitations meaningless and would require looking into what the user was thinking, i.e., his or her state of mind when selecting a particular cartridge configuration."

And my question is: When you go back to Claim 11 of the '774 patent that we discussed how

Claim 11 covers both extending or extendable needles, correct?

A That's correct, yes.

Q And there is a requirement in Claim 11 that the desired distance is selected?

A Selected, yes.

Q And we discussed how extending needles the distance they extend is not adjustable, correct?

A For extending needles the distance they extend is fixed.

Q Right. So there would be one default desired distance for a given extending needle; is that a correct way of looking at it?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yeah. I'm trying to understand the question. Could you repeat the question or perhaps phrase it differently?

BY MR. AUTERI:

Q So if have you a given extending -- let's say you have one set of extending needles, right, those needles extend to a certain step fixed

distance; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Extending needles extend to a fixed distance, yes.

BY MR. AUTERI:

Q Right. And that distance can't be adjusted or selected -- sorry, that distance can't be adjusted by the user; is that correct?

A It's fixed.

Q It's fixed.

So if the user selects the desired distance for extending needles, they have to select the needles with sufficient length to reach the desired distance; is that correct?

MS. PENIZA: Objection. Form, incomplete hypothetical, calls for a legal conclusion.

BY THE WITNESS:

A It seems like you're asking me to do claims construction for Claim 11. I have not -- for extending needles. I haven't done that. I'm not prepared to do that on the fly today.

BY MR. AUTERI:

Q Well, I would ask you another question and if you don't know or you need more information, we can drop it there, but would a user -- and if you need -- if you need to analyze the claim more and can't give an answer on the fly, you can tell me that.

But if we look at Claim 11, if the user selects the desired distance for an extending needle, would that cover a user selecting a device with needles having a fixed length that matches the desired distance they wanted to reach?

MS. PENIZA: Objection. Form, incomplete hypothetical, calls for a legal conclusion.

BY THE WITNESS:

A I suppose it could. I haven't analyzed it and I would need some time to think that through.

BY MR. AUTERI:

Q And if it did, would you agree that the user selecting needles of a particular length sufficient to reach the desired distance is an objective act?

MS. PENIZA: Objection. Form, incomplete hypothetical, calls for a legal conclusion.

BY THE WITNESS:

A It seems to me you're building hypothetical on top of hypothetical on top of hypothetical and it's starting to get -- I'm not really comfortable answering that question without thinking about it some more.

BY MR. AUTERI:

Q Let's go back. So in Paragraph 82 of your declaration for the '774 patent, that's on Page 41 of your declaration, you say around midway through the paragraph: "Petitioner appears to contend that selection of any cartridge with any needle length is sufficient to meet the desired distance limitation," and you say that would essentially require looking into his mind when selecting a particular cartridge configuration so I want to understand that a little bit more.

Is it your opinion that a user can only select the desired distance -- let's back up. Strike that question.

So you disagree with petitioners and their expert's assertion that a desired distance just means a desired distance as opposed to an undesired distance, correct?

A That's what I say.

Q And you agree that the claims don't cover extending the needles to an undesired distance?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Frankly it's a nonsense statement. There is one desired distance. It's a desired distance. There is an infinite number of undesired distances, so the idea that the desired distance means a desired distance as opposed to an, singular, undesired distance doesn't make any sense in the context of the device described in the patent. It's just nonsense.

BY MR. AUTERI:

Q So would it make sense to extend the needles to one of the undesired distances under the claim limitations?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I don't understand that question.

BY MR. AUTERI:

Q You say it's nonsensical but what I'm asking is: The claims cover extending the needles to a desired distance, correct?

A Yes. My answer to your question was the assertion that a desired distance as opposed to an undesired distance. That is what I think doesn't make any sense at all.

Q So, then, the claims don't cover extending the needles to an undesired distance; is that correct?

A The claims don't cover flying, either. We can talk about an infinite number of things the claims don't cover. My opinion is related to what the claims do cover.

BY MR. AUTERI:

Q Well, the claims require you to extend it to a desired distance, that distance can't be an undesired distance at the same time, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Are you asking if a distance can be simultaneously a desired and an undesired distance?

BY MR. AUTERI:

Q No. I'm implying it's not and that's why I'm asking why -- let's back up.

The claims require the needles to extend to a desired distance, correct?

A Which claims are you referring to now, 13 and 14?

Q Yes, let's say 13 and 14.

A Okay. A mechanism for causing the plurality of the extendable needles to extend a desired distance from the end surface, yes.

Q Right. So if I extended needles to an undesired distance, I wouldn't meet the claim limitation, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's not what the claim says. The claim doesn't talk about what it doesn't cover. The

claim talks about what it does cover.
BY MR. AUTERI:
Q Well, you agree that a needle cannot be simultaneously extended to a desired distance and somehow that same distance is undesired for that same user, correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A That's correct.
BY MR. AUTERI:
Q Right. And the claim requires you to extend the needles to a desired distance, correct?
A That's what it says, yes.
Q If you extend the needles to an undesired distance, that means you didn't extend them to the desired distance, correct?
MS. PENIZA: Objection. Form.
THE WITNESS: You say "if you extend the needles." Who is "you"?
BY MR. AUTERI:
Q The user. Let's say the user extends the needles to an undesired distance, that means they

didn't extend the needles to the device; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, the user doesn't extend anything. The apparatus does in response to the user selecting a desired distance.

BY MR. AUTERI:

Q Same question. If the needles are extended to an undesired distance, that means the needles weren't extended to the desired distance; is that correct?

A Well, I guess if there's a fault in the machine and the user selects a desired distance and for some reason the needles aren't extended to that distance, they could be extended to an undesirable distance or a fault in the machine if that's what you're getting to.

Q So does Claims 13 and 14 cover extended needles to an undesired distance?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Claims 13 and 14 don't mention an undesired distance. They mention a desired distance.

BY MR. AUTERI:

Q Right. And you cannot have needles extend simultaneously to a desired distance and also call that an undesired distance, correct?

MS. PENIZA: Same objection.

BY THE WITNESS:

A As I say, the desired distance is based on user programming this distance. So that's what the desired distance is. The apparatus extends the needles using a motor or mechanism based on a user programming the distance.

BY MR. AUTERI:

Q Right. And if the device extends the needles to a distance that's different than the desired distance, the claim would not be met, correct?

MS. PENIZA: Objection. Form, calls for a legal conclusion.

BY THE WITNESS:

A Are you talking about -- I'm not quite sure what you mean. From an engineering perspective, it --

BY MR. AUTERI:

Q Sorry. I didn't mean to cut you off.

A Are you talking about something which is 1 micron different from the desired distance or 1 millimeter different or half an inch different? I don't -- the term "undesired distance" doesn't make sense, I don't know what you mean by that.

Q Well, then if you don't know what an undesired distance is, doesn't that also mean you don't know what the desired distance is, whether it's -- how precise it needs to be?

A Not at all. Not at all.

BY MR. AUTERI:

Q So you couldn't answer whether a distance would be undesired unless you know whether it needs to be 1 micron different or a millimeter different or a half-inch different; is that correct?

MS. PENIZA: Objection. Mischaracterizes

testimony.
BY THE WITNESS:
A That's not what I said. That is not what my report says. The user programs -- excuse me.
A desired distance is how far the extendable needles extend from the device's end surface using a motor or mechanism based on a user programming this distance. I don't talk about undesired distance.
BY MR. AUTERI:
Q Right. I'm asking -- sorry.
I'm asking if the needles don't extend to the desired distance, they wouldn't be covered by Claims 13 and 14, correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A Well, that's not what actually what my claims construction said. The desired distance is how far the extendable needles extend --
BY MR. AUTERI:
Q Sorry.
A Sorry, you're stopping me.

Q I didn't mean to cut you off. My bad.
MS. PENIZA: Counsel, you've interrupted the witness a couple of times --
MR. AUTERI: I'm sorry.
MS. PENIZA: -- in the middle of his answer so I just want to make sure that he's given an opportunity to answer.
MR. AUTERI: Yes, I apologize.
MS. PENIZA: Do you want to restate your question?
MR. AUTERI: Sure.
BY MR. AUTERI:
Q So the claims recite that the extendable -- sorry.
Claims 13 and 14 recite extendable needles to extend a desired distance from the end surface, you agree?
A That's what Claims 13 and 14 say, yes.
Q Right. So instead of extending the needles to the desired distance, if the user extended the needles to an undesired distance, it wouldn't be covered by Claims 14 and 13, do you

agree with that?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, the user does not extend the needles. The user programs the desired distance.

BY MR. AUTERI:

Q Okay. Let's forget the user for a second. If the device extends -- the extendable needle to a distance that's not the desired distance, you would agree Claims 13 and 14 are not met; is that correct?

MS. PENIZA: Objection. Form, calls for a legal conclusion.

BY THE WITNESS:

A I haven't thought of it from that perspective, but my Paragraph 82 that you keep referring to is in response to petitioner's assertion that a desired distance just means a desired distance as opposed to an undesired distance.

It seems you're now asking me to do some more interpretation of the claim in the context of

language which is not in the claim which is undesired distance.

All I'm saying in my Paragraph 82 is that I disagree with petitioner and its expert that the term "desired distance" simply means the opposite of an undesired distance.

BY MR. AUTERI:

Q So let's switch gears and talk about the ITC case where you were an expert for that involving these same patents.

MR. AUTERI: I'd like to mark another exhibit. I think this is going to be Crosby Deposition Exhibit 4.

(A certain document was marked Crosby Deposition Exhibit 4 for identification, as of 04/01/2025.)

MR. AUTERI: It should be a document with a file name ITC Complaint.

AV TECH ABRAMS: One moment. I'll have that up or in the chat I mean. Exhibit 4 in the chat.

BY THE WITNESS:

A I have it.
BY MR. AUTERI:
Q So for housekeeping purposes, this is what is marked as Crosby Deposition Exhibit 4 is a public complaint for ITC investigation and that involved the asserted patents in these IPRs.
Let's move to PDF Page 21. I apologize. I would suspect you don't have this one printed in advance.
MS. PENIZA: We don't so we'll have to go by the electronic version.
MR. AUTERI: I'll give you some time to flip to it. Maybe we could use the -- if it's easier, Mr. Abrams, maybe you could put up --
THE WITNESS: I have Page 21.
BY MR. AUTERI:
Q You have, okay.
So there is a listing of patents and asserted claims towards the middle of the complaint, correct?
A I see that.
Q It says Claims 1, 6, 7, 8, 9, 10, 11, 12,

13, 14 and 15 of the '774 patent were asserted?

A I see that, yes.

Q For the '812, Claims 1, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 were asserted?

A I see that.

Q And for the '536 patent, it was Claims 1, 2, 4, 5, 8, 9, 11, 12, 13, 16 and 17; is that correct?

A I see that.

Q And do you recall that one of accused products was the PiXel8 RF?

A I recall there are multiple accused products. I think I remember that in PiXel RF, this is a couple of years ago as we see. So, yes, I think I remember the PiXel RF.

Q To make it easier for you, if we go to PDF Page 23, it should have the exact names of the two accused products PiXel accused products. Do you see that it was the PiXel8 RF and the PiXel8 Pro that were accused?

A I see that.

Q And then the company listed as the

manufacturer is Rohrer?

A I see that.

MR. AUTERI: I'd like to mark another exhibit. This should be Crosby Deposition Exhibit 5.

(A certain document was marked Crosby Deposition Exhibit 5 for identification, as of 04/01/2025.)

MR. AUTERI: And I am going to make that the document with the title name PiXel8-RF Microneedling for Skin Tightening. Mr. Abrams, let me know if you have trouble finding that one.

AV TECH ABRAMS: I have it. Let me mark it and put it in the chat.

All right. Here it comes.

BY MR. AUTERI:

Q Mr. Crosby, let me know when you've been able to open it.

A Just give me one moment, please.

Q For housekeeping I just want to go on the record this is a printout from Rohrer's website, rohreraesthetics.com.

Let me know when you're ready to go through it.

A I have it here, yes.

Q Okay. Have you seen Rohrer's website before?

A I recall seeing Rohrer's website at the time I was involved in the ITC hearing. I don't know what date this is. I believe this was from the 26th of March. That's last week, so I don't know if this is the same as what I saw two years ago.

Q Okay. Fair enough. This was printed March 26, 2025, so it's a fairly recent screen capture.

My question is: If you look down at the bottom of this first page, you see a picture of a handheld device with blue and silver. Do you see that?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yes, I see at the top of the page a blue handheld device next to a console with some it

looks like silver at the end, yes.
BY MR. AUTERI:
Q Right. And towards the bottom of that page do you see another one there and it says: "Dialed in-depth control" underneath?
A I see "dialed-in depth control," yes.
Q Does this look like one of the PiXel8 products you had analyzed in the ITC?
A I believe so, yes.
Q And do you see under 4 MHz Microneedling, do you see three bolded sentences down: "The only handpiece on the market with dialed-in depth control," and then it says, "from 0.1 millimeter to 4.0 millimeters for face, neck and body treatments"?
A I see that, yes.
Q You're aware that the Rohrer device has a dial on the handpiece for controlling the depth the needles extend; is that correct?
MS. PENIZA: Objection. Form.
BY THE WITNESS:
A Oh, boy. I recollect something like that.

It's a while since I've looked at it, so if you could show me some specs on that that would certainly help.

BY MR. AUTERI:

Q Yes, I think I can give you a little more information.

MR. AUTERI: Let's pull up -- I'd like to mark another exhibit. This will be what we will have as Crosby Deposition Exhibit 6. And it will be -- I want to mark the document with the title name Public Version-Rx-1306-Appendix 6 to Mr. Crosby's Opening Expert Report-Redactions Applied.

(A certain document was marked Crosby Deposition Exhibit 6 for identification, as of 04/01/2025.)

AV TECH ABRAMS: What is the file name for that?

MR. AUTERI: It was one I just uploaded not that long ago. Public Version-Rx 1306.

AV TECH ABRAMS: I need to just get that if it was just uploaded. I apologize.

MR. AUTERI: It was one of the last few uploads I did.

AV TECH ABRAMS: I thought I had everything. I apologize.

MR. AUTERI: No apologies. This was kind of a last-minute thing.

And I guess while we're at it, can we make -- do you see a Public Version RX 1280-Redactions Applied? If so, can we make that Crosby Deposition Exhibit 6.

AV TECH ABRAMS: Currently I have an IPR 2024-, and I only have a couple of things that say public but I don't have one that starts with the word "public" at all. That's why I'm thrown.

MR. AUTERI: Maybe I can just send it to you in a private chat.

AV TECH ABRAMS: If you want to private chat to me that's fine. It might be a little bit quicker than me having to go pull the portal back up.

MR. AUTERI: Let's do that. Let's actually make -- let's make Public Version RX 1280

Redactions Applied, let's make that one Crosby Deposition Exhibit 6.

And then let's make Public Version RX 1306-Appendix 6 to Mr. Crosby's Opening Expert Report-Redactions Applied Crosby Deposition Exhibit 7.

(A certain document was marked Crosby Deposition Exhibit 7 for identification, as of 04/01/2025.)

AV TECH ABRAMS: Thank you. I'm downloading these now. So RX 1280 will be 6 and the other one will be 7?

MR. AUTERI: Yes, please.

AV TECH ABRAMS: Marking those now.

MR. AUTERI: I don't know when was the last time we took a break, but feel free to let me know if you need one.

THE WITNESS: I'm fine for the moment. Thank you.

MR. AUTERI: Great. And same for the court reporter.

THE WITNESS: We're three hours behind.

So we might break at the top of the hour for lunch.

MR. AUTERI: Whatever works. Whatever you need. Top of the hour that would be 3 o'clock for me. I don't want to deprive you.

AV TECH ABRAMS: All right. Those should be uploading now. Apologies for the delay, everyone.

MR. AUTERI: No problem.

BY MR. AUTERI:

Q Let me know when you've been able to download them. Let's start with Crosby Deposition Exhibit 6. If you could open that one, Mr. Crosby.

MS. PENIZA: Counsel, I just want to make sure before we get into this I see that this is a portion of the ITC deposition transcript that I understand was marked as confidential, so if --

MR. AUTERI: Maybe we should go off the record or do you want to do it on the record? I don't know if you saw the ITC decision this morning about the designation.

MS. PENIZA: I did. I just want to make sure that this -- I haven't had a chance to take a look at this particular redacted version and I want to make sure that it complies with the order.

MR. AUTERI: Understood. Do you want to go off the record for a little bit and take a look at it first before I proceed? I could tell you what we added. I think there was only one extra redaction that the ITC required Figure 6. Other than that --

MS. PENIZA: That's right, yeah. My understanding was with respect to Figure 6 so I just want to make sure that's consistent with the --

MR. AUTERI: Yes, I can take a pause to make sure I believe it's Paragraph 48 there should be a redaction there.

MS. PENIZA: Okay.

MR. AUTERI: On Page 16.

MS. PENIZA: I just wanted to make sure.

MR. AUTERI: No, no. I understand. I wanted to make sure I wasn't rushing ahead before

you were straight.

MS. PENIZA: Okay.

BY MR. AUTERI:

Q So if we go to the -- well, I guess for housekeeping purposes what is marked as Crosby Exhibit 6 is the deposition transcript of Mr. Peter Crosby from September 4th, 2023 for the ITC Investigation No. 337-TA-1356, and the document that we marked as Crosby Deposition Exhibit 7 is Deposition Exhibit 26 from Mr. Crosby's deposition in the ITC case and also happens to be Appendix 6 to his -- one of his expert reports.

So now I'll start asking you questions. Mr. Crosby, if we look at what's been marked as Deposition Exhibit 6, this is your transcript from the ITC we discussed before; is that correct?

A It appears to be, yes. I haven't read all of it, but it appears to be.

Q I should say redacted and chopped down version of your transcript; is that correct?

And in regard to what is PDF Page 3, it

should have a 76 at the top right. Do you see that page?

A Yes.

Q It's mostly redacted, but if you look at what's marked 302 in the bottom left, do you see that in that deposition there was an Exhibit 26 that was marked for identification? Do you see that?

A I see that, yes.

Q And do you see there was a representation to you that this is a copy of Exhibit 6 to your expert report -- or sorry, Appendix 6, I guess we both made that mistake. Let me just re-ask the question.

In the deposition you represented that Exhibit 26 to this ITC deposition was Appendix 6 to your opening expert report; is that correct?

A I see that, yes.

Q Okay. So let's switch to Crosby Deposition Exhibit 7, which we had just marked. Look at the second page. Do you see where it says Appendix 6?

A Yes, I see that.

Q And then under that is a blue sticker that says Crosby 26?

A I see that, yes.

Q And it's an exhibit sticker, correct?

A I see that.

Q And I will represent to you this is a redacted version of Appendix 6 to your opening expert report from the ITC case that involved the these asserted facts. And so we see at the top of page -- PDF Page 3, do you see where it says: "The accused PiXel8 and PiXel8 Pro products practice each and every limitation of the asserted claims"?

A I see that, yes.

Q So feel free to look through more of this page, but you asserted that the PiXel8 products infringe Claim 1 of the '536 patent; is that correct?

A That's what it says, yes.

Q If we go to Paragraph 48, it should be maybe PDF Page 7 I want to say. It's appendix

Page 16, but...

A I see Paragraph 48, it's on PDF Page 7, yes.

Q So in that paragraph it says: Furthermore, see Figure 6 below which illustrates the mechanism for adjusting the desired distance of needle extension, gives the cite.

The next one is going to be end of the handpiece platform can be rotated relative to the body of the handpiece, a scale on the proximal end is lined up with an arrow on the body of the handpiece. The adjustment range is from 0.0 millimeters to 0.4 millimeters.

Is that correct?

A No, it's 0.0 to 4.0.

Q Sorry. 0.0 to 4.0.

Okay. Can we switch back to Deposition Exhibit 5. The Rohrer website?

A I have it, yes.

Q And if we look back down towards the bottom of the first page we see the dialed-in depth control under the picture of the Rohrer

device, correct?

A Yes, it's kind of hard to see but I see it.

Q And then to the right, the third bolded sentence says: "The only handpiece on the market with dialed-in depth control from 0.1 millimeter to 4.0 millimeters for face, neck and body treatments."

Do you see that?

A I see that marketing claim, yes.

Q To confirm, we were just looking at Appendix 6 to your expert report in the ITC in which you discussed the mechanism for adjusting the desired distance of needle extension that has an adjustment range from 0.0 millimeters to 4.0 millimeters.

Is the mechanism for adjusting the desired distance that you discussed in Paragraph 48 of your appendix the same as the dial shown on this handpiece on the Rohrer website, the printout that you're looking at?

A It's at least similar to. The numbers are

different. I don't know if Rohrer had made a change to their design, but the basic concept looks the same, yes.

Q Okay. If we go back to Crosby Deposition Exhibit 7, your appendix from your ITC expert report on infringement for Rohrer, can you go to Paragraph 49?

A I'm just reading it.

Q Sure thing.

A I've read it.

Q About five lines down do you see the sentence that says: "The way that the accused PiXel products do so" -- sorry. Let's start at the beginning. Sorry.

So it says, "To the extent that the Rohrer respondents contend that the limitation is not literally present, the Accused PiXel Products it is not under the doctrine of equivalents. Both this claim limitation and the accused PiXel products perform substantially the same function in causing the polarity of needles to extend a desired distance from the deployable

needle assembly and surface."

The next sentence says: "The way that the Accused PiXel Products do so is also substantially the same. Like the subject claim limitation, the Accused PiXel Products include solenoids to linearly move the plurality of needles to extend from the end service and the desired distance that the needles extend is predetermined by the mechanical adjustment on the handpiece."

My question is to confirm in the Rohrer devices that you accused of infringing Claim 1 of the '536 patent, you're saying the desired distance that the needles extend is predetermined by a mechanical adjustment on the handpiece; is that correct?

A Well, hold on a second. We haven't talked about the '536 patent yet today so I can't recall, I don't remember the exact language.

Q We'll pull up that -- we can circle back if you want to look at the claim language. Let's mark --

MR. AUTERI: Mr. Abrams, it would be the

filed named IPR 2024-00384-EX.1001-536 patent.

Do you have that one?

AV TECH ABRAMS: I do. One moment, please. I'll mark it.

MR. AUTERI: I think that's going to be Crosby Deposition Exhibit 8.

AV TECH ABRAMS: Correct.

(A certain document was marked Crosby Deposition Exhibit 8 for identification, as of 04/01/2025.)

MR. AUTERI: We'll upload it. In the meantime for housekeeping, the document we have just labeled as Crosby Deposition Exhibit 8 is US Patent No. 9,320,536 to the inventor Jongju Na, and it also happens to be Exhibit 1001 to IPR No. 2024-00384.

AV TECH ABRAMS: All right. Going in the chat now.

BY MR. AUTERI:

Q Declaration for the '536 if you need to -- but I guess right now my question is limited to Claim 1, but if you want to see your expert report

let me know, we can mark that. We haven't done that yet for '536.

THE WITNESS: Do you have a hard copy of the '536 that I can refer to?

MS. PENIZA: I have a hard copy of the '536.

THE WITNESS: Thank you.

MR. AUTERI: Perfect.

BY MR. AUTERI:

Q Let's look at the claims. Claim 1 is what we were talking about. Take your time and read through it, but let me know you're ready to go back to my question about the appendix.

A I've read Claim 1.

Q If we go back to what was marked as Crosby Deposition Exhibit 7, the appendix to your ITC report, we were looking at Paragraph 49. And in Paragraph 49 the second sentence says: "Both this claim limitation and the Accused PiXel Products perform substantially the same function of causing the plurality of needles to extend a desired distance from the deployable needle assembly and

surface."

And you say: "The way the Accused PiXel Products do so is also substantially the same. Like the subject claim limitation, the Accused PiXel Products include a solenoid to linearly move the plurality of needles to extend from the end surface and the desired distance that the needles extend is predetermined by the mechanical adjustment on the handpiece."

My question is: Does Claim 1 cover where the desired distance that the needles extend is predetermined by a mechanical adjustment?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I think I have to look at my declaration on the '536 to refresh my memory on that. That's a very open question that I haven't considered --

BY MR. AUTERI:

Q You opined in your report that the Rohrer device infringes Claim 1 of the '536, correct?

A That's what it says, yes.

Q Right. And then when you get to

Paragraph 49, you say that the Rohrer devices need the desired distance and you point to the fact that the desired distance that the needles extend is predetermined by a mechanical adjustment on the handpiece. The handpiece you're referring to is the Rohrer handpiece, correct?

A Yes, in the PiXel8 products, yes.

Q Right. And you say that infringes Claim 5, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Which claim?

BY MR. AUTERI:

Q Sorry. Claim 1 of the '536 patent. I'm sorry.

A Yes. I said that about 18 months ago in my deposition, but I can't remember the context of that. So if you're asking me do I stand by that today, yes. Is that your question?

Q Yes. Do you agree with that statement in Paragraph 49 that the Accused PiXel Products perform the desired distance limitation because

the desired distance that the needles extend is predetermined by a mechanical adjustment on the handpiece?

A I think I said to the extent -- well, this paragraph is taking it a bit out of context, but the desired distance that the needles extend in the PiXel8 products is predetermined by the mechanical adjustment in the handpiece, yes.

Q Right. And your opinion is that the Rohrer devices infringe Claim 1 of the '536 patent, correct?

A Let me scroll up and just see what's ahead of this.

Q Sure. Take your time and look through the document. It's heavily redacted.

A Yes. That makes it difficult to remember.

Q Yeah. Sorry.

A Right. So this whole section starting on PDF Page 3 refers to '536 patent Claim 1, and then it talks about 1.1 which is the preamble and then on Page 4 it talks about 1.6 and 1C, and then I say on the next page, which is PDF Page 5: "I

understand that the parties dispute the construction of terms," which I have a table there, and my opinion was that the Accused PiXel Products practice this limitation regardless of the construction and that's the limitation 1C.

Q Limitation 1C includes the desired distance?

A 1C listed on Page 13, which is PDF Page 4, is: "Energizing a motor coupled to a plurality of extendable needles to cause a plurality of the extendable needles to extend a desired distance from the needle assembly and surface."

That's limitation -- Element 1C.

Q And you say the Rohrer devices meet that limitation clause, right?

A Meet that limitation 1C, yes. So that's what I talked about in that Paragraph 49.

Q I think it might be PDF Page 8, I'm not sure but it has 24 on the bottom. Does it say 24 at the bottom?

A Yes.

Q And this page talks about -- if we could

back up, but this is now moving on to talking about limitations of Claim 11. Actually, let's back up. Sorry.

Let's move back to -- right. So if we're looking at this page that has 24 at the bottom, do you understand that this is the section of your report starting to talk about limitations from Claim 11 of the '536 patent?

A That's what appears to be. It's hard to tell without seeing the rest of the context. You know, you take paragraphs -- heavily redacted paragraphs one at a time and ask me if I remember the whole document. It's difficult to remember that.

Q And then if we look down we see a 5.5 and then it has a limitation 11B next to it.

Do you see that?

A Yes, I see that.

Q And so that limitation 11B is: "A motor coupled to a plurality of extendable needles that causes the plurality of extendable needles to extend a desired distance from the needle assembly

end surface when the motor is energized with a particular signal and..." is that correct?

A That's what it says, 5.5, yes.

Q And in Paragraph 77 under that you say: "It is my opinion that the Accused PiXel Products practice this limitation."

Is that correct?

A Yes.

Q So if we go to Paragraph 81 on the next page, it says: "To the extent that Rohrer respondents contend this limitation is not" -- sorry.

A Let me read it, please.

Q Yes, yes, sir.

A I've read 81, yes.

Q So 81 says -- the second sentence: "Both this claim limitation and the Accused PiXel Products perform substantially the same function of causing the plurality of needles to extend a desired distance from the end surface after receiving a signal. The way that the Accused PiXel Products do so is also substantially the

same. Like the subject claim limitation, the Accused PiXel Products includes solenoids to linearly move the plurality of needles to extend the desired distance from the end surface in response to a signal and the desired distance that the needles extend is predetermined by the mechanical adjustment on the handpiece."

Do you still agree with that statement?

A Well, yes, I do and you have to read in context. The explanation for part of this is in Paragraph 82. If I remember correctly, the disagreement here was whether or not a solenoid is a motor, and so this whole section had to do with whether or not moving the needles with the solenoid is the same as moving the needles with a motor.

That's my recollection. Again, it was 18 months ago.

Q Right. But just to confirm, I think you already did, you stand by your opinion in Paragraph 81 and 82, correct?

A I do.

Q Now let's go two pages forward. It should have a 27 at the bottom. Do you see where it starts to talk about the '774 patent Claim 11?

A Yes.

Q So we looked at Claim 11 already, stop me if you want to switch back and look at the claims, you can, but my first couple of questions are simple.

In Paragraph 94 you opine that the Accused PiXel Products -- sorry. Sorry.

So the section we're looking at now is discussed in Claim 11 of the '774 patent, correct?

A Yes.

Q If we look at the next page, there is a limitation 11A and that says: "The device including a plurality of needles one of extended or extendable a desired distance from a surface. The desired distance selected to enable the plurality of needles to penetrate dermatological tissue."

Underneath that you see Paragraph 98, you state: "It is my opinion that the Accused PiXel

Products practice this limitation."

Correct?

A Yes.

Q And if we go -- so then you still stand -- I want to confirm, do you still stand your opinion that the PiXel products practice the desired distance limitation of Claim 11 of the '774 patent?

A Yes, I do. And it says in Paragraph 99: "The parties agree the term 'needles' one of extending or extendable means needles that are either extended or can be extended from the device surface."

My recollection is the parties had not agreed on a claims construction on the term "desired distance," and one of the focus of this at the time was the claims construction of the term "extending or extendable."

So in the context of the understanding at the time at the beginning of the ITC proceedings, the disagreement had to do with -- or the conversation had to do with the meaning of the

terms "extending" or "extendable." I don't believe the parties ever agreed at that time on a claim construction for desired distance.

Q If we can go to the page with 33 at the bottom, it should have Paragraph 118 at the top. Do you see that page?

A Yes, I see that.

Q All right. And so underneath that you see '774 Patent Claim 13?

A Yes.

Q And then it says: "The apparatus for treating dermatological tissue of Claim 12 further including a mechanism for causing the plurality of extendable needles to extend a desired distance from the end surface."

And then after that you say: "It is my opinion that the Accused PiXel Products practice this limitation."

Do you still stand by that opinion?

MS. PENIZA: Objection. Form. Counsel, I'm sorry. I'm not following where you are.

MR. AUTERI: So it's not PDF Page 33, it's

the Page 33 at the bottom. It should have a Paragraph 118 at the top of the page.

MS. PENIZA: Okay. Okay. I'm there.

MR. AUTERI: Unfortunately I'm not sure what the PDF page is.

BY MR. AUTERI:

Q So do you see there should be a heading 10, '774 Patent Claim 13, do you see that, Mr. Crosby?

A Yes, I do.

Q And under that is bolded 10.1 and it includes a quote: "The apparatus for treating dermatological tissue of Claim 12 further including a mechanism for causing the plurality of the extendable needles to extend a desired distance from the end surface."

Do you see that?

A Yes, I do.

Q And then the paragraph after that, which is Paragraph 119, it says: "It is my opinion that the Accused PiXel Products practice this limitation."

Do you still stand by that opinion?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yes, I do. And as you can see from this page it reinforces what I said before: At the beginning of the whole ITC proceedings there was a disagreement amongst the parties -- and there are three parties here -- on various claims construction and various meanings. So as the ITC proceedings continued and people had more conversations and the ALJ weighed in and there were depositions taken and people appeared at the hearing, the claims construction and the meaning of the terms crystallized by the time we got to the ITC hearing.

And that really is what I am opining on in my declarations in support of this IPR, where we got to by the time of the ITC hearing.

BY MR. AUTERI:

Q Can we go to the page that has 36 at the bottom. It should have a heading '774 Patent Claim 14.

Do you see that?

A That's PDF Page 16? Yes, I see that.

Q And so underneath that -- so that is discussed in Claim 14.

Do you see in Paragraph 129 you say: "It is my opinion that the Accused PiXel Products practice this limitation"?

A Yes, I do, and to continue on in that paragraph I see the discussion for the '774 patent Claim 13 above, and as discussed, the solenoid is a type of electric motor because at the time of this -- that this was prepared, my recollection is that there was a disagreement between the parties about how to interpret a solenoid as being a type of motor or mechanism.

Q Right.

And then so in Paragraph 130, the second sentence says: "Both this claim limitation and the Accused PiXel Products perform substantially the same function of causing the plurality of needles to extend the desired distance from the deployable needle assembly end surface."

Then it says: "The way that the Accused PiXel Products do so is also substantially the same as a potential claim limitation the Accused PiXel Products include solenoids to linearly move the plurality of needles to extend the desired distance from the end surface, and the desired distance that the needles extend is predetermined by a mechanical adjustment on the handpiece."

Do you -- and then it says: "Further, both the claim limitation and the Accused PiXel Products achieve the same result: extending the plurality of needles a desired distance from the end surface."

Do you stand by that opinion?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yes, I do. I would remind you at the start of that Paragraph 130 is -- excuse me -- "To the extent that the Rohrer respondents contend that this limitation is not literally present in the accused products, it is made under the doctrine of equivalents."

And, again, back to what I was saying before, by the time we'd reached the ITC hearing, the accused Rohrer product wasn't even part of the proceedings. I think it had been withdrawn at that time."

BY MR. AUTERI:

Q If we go to the next page -- sorry. At the bottom of that page, we were on the one that has 36 at the bottom, do you see where it says: "'812 Patent, Claim 1"?

A Which page are you looking at? Sorry.

Q It has 36 at the bottom. I think it's the same page we were just on.

A Oh, I see. '812 Patent, Claim 1.

Q But I realize we haven't marked the '812 patent so would you like me to do that and you can take a look at the claims before I move on or...?

A I think it would be helpful to mark that and I also think we have a paper copy here for convenience.

MR. AUTERI: Let's do that for the record. Let's make the document with the file name IPR

2024-00463-EX.1000-812 Patent make that Crosby Deposition Exhibit 9.

(A certain document was marked Crosby Deposition Exhibit 9 for identification, as of 04/01/2025.)

MR. AUTERI: For housekeeping that is US Patent No. 10,869,812 to Dr. Jongju Na.

AV TECH ABRAMS: All right. One moment, and I'll have that marked in the chat.

BY THE WITNESS:

A I have it.

BY MR. AUTERI:

Q Okay. And then we are about to discuss Claim 1 of the '812 patent so why don't you take some time and look at that before I ask the question.

MS. PENIZA: Counsel, would this be a good time for a break?

MR. AUTERI: Sure thing. Do you want to do the full lunch break, Mr. Crosby?

MS. PENIZA: I'm trying to see if lunch is here yet. I can check and let you know and we can

go from there.

MR. AUTERI: Up to you guys. Do you want to go off the record for a second to check whether you want to take -- let's go off the record for just a second.

(A lunch recess was had from 1:45 p.m. to 2:22 p.m. CST.)

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

PETER CROSBY,

called as a witness herein, having been previously duly sworn and having testified, was examined and testified further as follows:

EXAMINATION (Resumed)

BY MR. AUTERI:

Q We were looking at what has been marked Crosby Deposition Exhibit 7, the Appendix 6 to your infringement expert report in the ITC case. I think we were on PDF Page 16. It should have the number 36 at the bottom.

Is that the correct page for you?

A Yes. Section 12.

Q Right. So we were just starting on Section 12-A, '812 Patent, Claim 1. And if we move to the next page of the PDF, do you see it says 50 at the bottom?

A Yes.

Q And do you see Paragraph 181, the second sentence says: "The penetration depth of the needles is ejected via a mechanism on the

handpiece as shown in Figure 6 above."

Do you agree that the penetration depth of the needles is adjusted via a mechanism on the handpiece?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A My recollection is yes. It's a while since I've looked at this device, but that's my recollection. And that's what it shows on the web page you showed before.

BY MR. AUTERI:

Q And just to be clear on this, can a user of the PiXel8 product dial up a needle depth on the front panel on the touchscreen display that we see on Figure 11?

MS. PENIZA: Same objection.

BY THE WITNESS:

A The touchscreen display has a suggested depth.

BY MR. AUTERI:

Q Right. But you're not able to actually change the depth that the needles are extended to

through the touchscreen; is that correct?

MS. PENIZA: Same objection. Calls for a legal conclusion.

BY THE WITNESS:

A It's a while since I've examined this product, but I think that's correct.

BY MR. AUTERI:

Q Okay. And if we go to the next page, does it have 53 at the bottom?

A Yes.

Q And then do you see I guess it's Section 17 entitled '812 Patent, Claim 13?

A Yes.

Q And then underneath that it has a limitation 17.1, it says: "The apparatus of Claim 12 further including a motor coupled to the needle assembly to extend the plurality of needles a desired distance from the releasably couplable deployable needle assembly end surface when the motor is energized with a particular signal."

Is that what it says?

A Yeah. I haven't read the patent yet,

but --

Q Would you like to look at that before I ask my next question? Should we --

A I was just having a look at the claim. Why are some of these claim numbers in the exhibit highlighted?

Q I believe -- so I can only speculate. This is your report, but I believe you had subsections for each limitation so you bolded the limitations because you adjust each limitation one by one. So each limitation had its own section hence '812, Claim 13 is a dependent claim, so I assume the highlighting of that is just that.

A I'm sorry. That's not what I'm saying. If you look at Crosby Exhibit 9, the numbers of some of the claims are highlighted.

Q Sorry. Where exactly are you referring to?

A Look at Crosby Exhibit 9, go to Page 31 of the PDF.

Q Oh, of the patent?

A Yes, of the patent.

Q That I'm not sure. You'd have to ask the prior petitioners who made these exhibits. We inherited this case from Jeisys so we're kind of set in stone with the exhibits but that was the way it showed up on that website. I'm sorry. I can't explain why certain ones are highlighted and not. I'm not quite sure if that was a mistake or what.

(Reporter clarification.)

BY THE WITNESS:

A What was your question again? I'm sorry I distracted you.

BY MR. AUTERI:

Q We were looking at the page that has 53 at the bottom, we just looked at the limitation required by 13 of the '812 patent, my question was going to be in Paragraph 195 you stated it is your opinion that the accused PiXel products practice this limitation literally or under the doctrine of equivalents.

Do you still stand by your statement that the PiXel products would practice the limitation

of Claim 13 of the '812 patent?

MS. PENIZA: Object to form.

BY THE WITNESS:

A Well, it was certainly my opinion at the time, but as we talked about before, things have evolved. There have been multiple elements of claim construction that have been discussed and agreed, and I've been deposed and others have been deposed, and there was a hearing.

So whether or not the PiXel product practices this limitation under the current understanding of the claims and the claims construction in my report, I can't say without further analysis.

BY MR. AUTERI:

Q Okay. But you will agree that at least at one point in time you opined that the PiXel products practice Claim 13 of the '812 patent?

A At one point in time, that's correct.

Q So we looked at how the Rohrer device had a solenoid for extending the needles, correct -- sorry, in the Rohrer device, we looked at how the

Rohrer device used a solenoid to extend the needles; is that correct?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A I recollect we discussed the solenoid. Do you want to point me to the part of the exhibit --

BY MR. AUTERI:

Q Sure. We can back up if I'm skipping a step. So we -- so you agree that in the appendix we just looked at, you had opined that Rohrer's PiXel8 has a solenoid, correct?

A Where are you looking, please? Can you point me to --

Q We can look at Paragraph 121. I don't know the PDF page, but it has a Page 34 at the bottom.

A Okay. Let me find it.

Q And you might need to look at the page before it for context, but 121 is the paragraph I'm looking at.

A Yes.

Q I guess if we step back, let's look at 120 and then you could look at 121, that would probably give you more context before I ask the question.

A This is under Section 10, '774 Patent, Claim 13, this starts with Page 33.

Q Right. And then on 34, the last sentence: "Under respondent's proposed construction, the accused PiXel products practice limitation literally because the products include a solenoid which uses either a motor or its equivalent to cause the polarity of extending needles to extend its entire distance from the handset."

My question is just: Do you agree that the PiXel products had a solenoid for extending the extendable needles?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's my understanding, yes, they had a solenoid.

BY MR. AUTERI:

Q Right. And generally a solenoid is some

sort of electromagnet; is that a correct way of describing it?

MS. PENIZA: Same objection.

BY THE WITNESS:

A No.

BY MR. AUTERI:

Q Maybe I can pose a better question.

Solenoids utilize electromagnetism, is that a fair way of posing it?

MS. PENIZA: Same objection.

BY THE WITNESS:

A The electrical engineering definition of a solenoid is a coil of wire, and it could be used for multiple purposes.

BY MR. AUTERI:

Q Okay. And a coil of wire when you run an electric current through becomes a magnet, is that how physics works?

A Well, it generates a magnetic field, yes.

Q Okay. So it generates a magnetic field and these solenoids typically have a thing called a plunger inside of it; is that correct?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A I don't know where you're getting that term from. A solenoid -- an electric motor is a device that turns electromagnetic energy into mechanical energy. That's the literal definition of electric motor.
BY MR. AUTERI:
Q Right. And it does this by using magnetism to cause a plunger to extend out when electric current is applied through the coil; isn't that what a solenoid is?
MS. PENIZA: Same objection.
BY THE WITNESS:
A That's one way a solenoid can work, sure.
BY MR. AUTERI:
Q Okay. And is that how the Rohrer device's solenoid worked? Did it use a plunger?
MS. PENIZA: Object to form.
BY THE WITNESS:
A I'm trying to recollect actually because I haven't seen the drawings of the Rohrer device for

a while and I didn't disassemble it, so I don't -- I can't really answer that question without knowing what the term "plunger" actually means. There are different ways that term could be considered.

BY MR. AUTERI:

Q Maybe if we go to -- it might be in your expert report, it might not.

If we go to actually Crosby Deposition Exhibit 6 which is your deposition transcript from the ITC, if we go to PDF Page 3 and there should be a box at Page 336 at the bottom right. Are you able to see that?

A PDF Page 3 has got a box at the bottom left. It starts with 302. Is that what you're referring to?

Q PDF Page 5. Sorry. Do you see a box at the bottom right that's 336?

A Yes. I see that.

Q So Line 1 starting on Page 336 I pose the question:

"Okay. Let's switch over to talking about

the PiXel8 product. Does the plunger of the solenoid of the PiXel8 product move different distances based on a signal supplied to the plunger?"

There was an objection to form, and then the question was cut off on Line 8, and then it says:

"Let me restate. Let me start over again.

"Does the plunger of the solenoid of the PiXel8 product move different distances based on the signal supplied to the solenoid?

"Answer: Distances from where?

"Question: Are there more than two conditions that the plunger, plunger of the PiXel8 product resides in?"

Another objection.

And you state: "I think that's a better -- that's a better question. The plunger of the solenoid is either in or out in one of two positions."

My question is: At least when you were deposed, you believed that the PiXel8 solenoid had

a plunger; is that correct?
A Yes.
MS. PENIZA: Object to form.
BY MR. AUTERI:
Q And you agree that you testified that the plunger of the solenoid is either in or out, it's in one of two positions; is that correct?
MS. PENIZA: Same objection.
BY THE WITNESS:
A That's correct.
BY MR. AUTERI:
Q To switch gears, I want to look at the Mehta patent that we were just looking at which is Crosby Deposition Exhibit 3. Again, feel free to use your paper copy.
A Yes, I have it.
Q If we go to Column 8, let me know when you're able to get there, specifically I'm looking at the paragraph starting in Line 66 which is, like, the end of Column 8. It's quite far down.
A Line 56 of Column 8?
Q Sorry, 66 of Column 8. Do you see where

it says "thermal energy"?

A Oh, yes, I see that.

Q So Mehta discloses Column 8, Line 66, Mehta starts discussing: "Thermal energy is not the only method for treating collagen in the dermal layer to affect skin laxity and wrinkles."

It goes on to Column 9 to say: "Mechanical disruption or cooling of the tissue can have a desirable therapeutic effect."

By "mechanical disruption," would that include needles vibrating inside the skin?

MS. PENIZA: Objection. Form, and mischaracterizes the document.

BY THE WITNESS:

A I don't know what they meant in this and I don't -- I haven't thought about whether or not mechanical vibration in the skin would meet that description. I don't -- I don't really know. What is mechanical vibration?

BY MR. AUTERI:

Q Well, I was trying to ask you that. If you don't think it's clear to you, let's look at

the next sentence. So Column 9, Line 1 it says: "As such, the device's methods described here are not limited to -- I'm going to butcher this word -- percutaneous delivery of thermal energy but also included the percutaneous delivery of mechanical energy or even reducing temperature tissues beneath the epidermis, e.g., hypothermia effect on tissue."

So do you agree that Mehta is not limited to only delivering thermal energy to the skin?

MS. PENIZA: Objection. Form, incomplete hypothetical, calls for a legal conclusion.

BY THE WITNESS:

A You're pointing me to a description and you're asking me if Mehta is limited to a part of the description, but earlier I think you told me you start with the claims. So you're asking me if -- are you asking me if the claims are limited to just thermal energy? I haven't analyzed that question?

BY MR. AUTERI:

Q No, Mehta is not an asserted patent so we

don't need to look at the claims. We're looking at the disclosure of Mehta, what it discloses. So I'm asking -- all right.

Do you recall opining that -- let me maybe back up. This may help you understand the question better. I guess my question is simple.

Do you agree that Column 9, Line 1 through 5 of Mehta disclose that it's advantageous to not only deliver thermal energy but to also deliver mechanical energy to the skin?

MS. PENIZA: Objection. Mischaracterizes the document.

BY THE WITNESS:

A That is what the words say in that sentence, but there is one sentence out of hundreds and I'd have to read the whole disclosure to be able to answer your question in the context of the whole disclosure.

BY MR. AUTERI:

Q Well, my question is just in the context of this sentence and I think you agree at least this sentence as far as this goes says it's

beneficial to use both percutaneous delivery of thermal energy and percutaneous delivery of mechanical energy. Do you agree with that?

MS. PENIZA: Where are you because I'm a little bit lost?

BY MR. AUTERI:

Q Column 9 of Mehta, Lines 2 through 5. We can go back. If we look at Column 8, right, we were looking at -- so the start of this paragraph is Column 8, Line 66, right? It says: "Thermal energy is not the only method for treating collagen in the dermal layer to affect skin laxity and wrinkles."

The next sentence says: "Mechanical disruption, cooling of tissue can also have a desirable therapeutic effect. As such, the devices and methods described herein are not limited to percutaneous delivery of thermal energy but also include the percutaneous delivery of mechanical energy or even reducing temperatures of tissue beneath the epidermis, e.g., hypothermia effect on tissue."

So do you agree that the devices and methods described in Mehta are not limited to only percutaneous delivery of thermal energy but also include percutaneous delivery of mechanical energy?

A The following paragraph also says the treatment methods and devices can also include the use of additives, medicines, bioactive substances or other substance --

Q Sorry. Can you answer my question? Your counsel will have time to ask other questions, but my question -- that was not my question.

MR. AUTERI: Can we have the court reporter read back the question?

MS. PENIZA: That's fine, but this is the nth time that you have interrupted Mr. Crosby when he was trying to answer questions and he was trying to answer your question.

MR. AUTERI: Then I apologize.

MS. PENIZA: I would really appreciate if you could let him have his question and if you don't think he's answering it, you're free to say

that, but you interrupted him mid sentence.

MR. AUTERI: Understood. I apologize.

THE REPORTER: Did you want me to read it back or is he going to continue?

BY MR. AUTERI:

Q Mr. Crosby, what do you prefer?

A I'd like you to ask your question again.

MR. AUTERI: We'll let the court reporter read it back.

(The record was read by the reporter.)

BY THE WITNESS:

A And in my answer I was referring to the following paragraph which talks about the use of other ways of treating collagen -- or laxity in the skin which includes the use of additives, medicine, bioactive substance and other substances.

So Mehta here is giving a kind of laundry list of many different ways that as they said in 9 -- Column 8, Line 66, "many different ways of treating collagen in the dermal layer to affect skin laxity and wrinkles."

So there are many ways. There it describes many ways.

BY MR. AUTERI:

Q Okay. But my question was more simple and it's just: Does Mehta describe that its devices and methods are not limited to percutaneous delivery of thermo energy but also include percutaneous delivery of mechanical energy?

A That's what the words are in this Column 9, 3 to 5.

MR. AUTERI: I'd like to mark another exhibit. It should be the one titled IPR 2024-00463-EX1007-Na. I think we're going to make this Crosby Deposition Exhibit 10.

(A certain document was marked Crosby Deposition Exhibit 10 for identification, as of 04/01/2025.)

AV TECH ABRAMS: I have it. One moment. I'll have that marked and in the folder.

MR. AUTERI: Sure.

And for housekeeping, what is marked as Crosby Exhibit 10 is International Patent

Application Publication No. WO 2010/016848 to inventor Jongju Na and Merle Richman.

BY THE WITNESS:

A I have that.

BY MR. AUTERI:

Q Can I refer to this publication as the Na '848?

A Yes. I'm just having a look at it. I recognize this, yes.

Q And would you take my representation that this is -- to back up, this is Exhibit 1007 to IPR 2024-00463. Would you take my representation that this is the same patent that is Exhibit 1005 for IPR 2024-0384?

A I'll take your representation, yes.

Q Just so we don't use two of the same document.

MS. PENIZA: Counsel, I have a hard copy of Na 848. Is it okay if I give it to the witness?

MR. AUTERI: Yes, that is perfectly fine.

BY MR. AUTERI:

Q I think the first part if you want to look at something first is Paragraph 30 if you want to read around there before I ask a question.

A I've read Paragraph 30.

Q Paragraph 30 talks about acupuncture pins or needles, 351; is that correct?

A It refers to figure -- yes, an acupuncture plate 350 and at least one you electrically coupled pin 351.

Q Right. And then the last sentence says: "...may include a plurality of acupuncture pins or needles 351."

Is that correct?

A Yes, "The acupuncture Section 353 may include a plurality of acupuncture pins or needles 351."

Q And the pins 351 are electrically coupled to a wire 331; is that correct?

A Paragraph 30 continues, "...where at least one pin 351 is electrically coupled to the wire 351."

Q And then it says: "In a bipolar

configuration a second wire 332 may be coupled to at least one other pin 351."

Do you see that?

A I see that, yes.

Q So when it refers to a bipolar configuration, does that mean that the two pins act as electrodes?

MS. PENIZA: Objection. Form. Call for a legal conclusion.

BY THE WITNESS:

A Are you asking me what the generally acceptable understanding of bipolar configuration is?

BY MR. AUTERI:

Q Yeah, I guess let's start back if you have a simple explanation of what they mean by "bipolar" here, that would help.

A What's it mean --

MS. PENIZA: Go ahead. Sorry, Peter.

Same objections.

BY MR. AUTERI:

Q So they refer to these -- a bipolar

configuration and you use two different wires to couple the pins to the energy source; is that -- is that correct?

MS. PENIZA: Objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A In a bipolar configuration a second wire may be coupled to at least one other pin 351.

So a bipolar configuration the way I read this could be two pins or one pin and 20 pins or 20 pins and one pin.

BY MR. AUTERI:

Q But there is a bipolar pair at the very least, correct?

A Well, not necessarily. It could be -- when you say "bipolar pair," you mean a pair of pins? What I'm saying a bipolar configuration could consist of a plurality of pins to the one pole and one pole to another or a different number to each pole. It's not just -- it doesn't just cover a pair of pins.

Q Right, but the last sentence in

Paragraph 30 says: "In a bipolar configuration a second wire could be coupled to at least one other pin, 351."

The next sentence -- sorry -- "Figure 2E is a simplified bottom view of the plate 350 showing the pins or needles 359, 357, where the pins may be electrically coupled to a first wire, 331 and a second wire 332 that form a dipole pair, bipolar pins."

Is the dipole pair referring to two electrodes?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Well, it may because it seems you're asking two different questions. One is a bipolar configuration and the second part of this Paragraph 30 that you referred to, the pins may be electrically coupled to a first wire and a second wire to form dipole pair, bipolar pins.

So I'm not sure I understand your question. That's what the words say. What's your question?

BY MR. AUTERI:

Q So Na '848 discloses would you say -- I guess let's back up.

It says, "dipole pair (bipolar pins)." Is that a synonym or two different things?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A You're asking me in the context of how Na describes it in this -- I'd have to read the rest of the description to be able to answer that question. You've ask me about one sentence in one paragraph of a fairly complicated patent.

BY MR. AUTERI:

Q Okay. Fair enough. But I guess my question is more generally: When you hear about bipolar pins forming a dipole pair and each pin is coupled to a different wire, do you think it's fair to describe what is being discussed here as bipolar electrodes?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Not necessarily. It talks about a bipolar

configuration and the wires form a dipole pair which means there's -- the way to think of it is there are two electrodes or sets of electrodes, current is delivered through one and returned through the other. So the number of pins in each dipole can differ or could be just two.

A bipolar pair is two pins, but a bipolar electrode may not be two pins, it may be one pin with two electrodes on it.

So I don't understand exactly -- maybe it's because I'm an electrical engineer. I'm trying to be precise on the engineering.

Q It's exactly because I am not being precise enough.

So I guess you basically kind of answered my question. Whether it's the exact number of electrodes, you know, it could vary a lot and I understand that now. It's not necessarily always a pair. But here I think you confirmed that when you discussed using two different wires and using a bipolar configuration, there is going to be some amount of current traveling from one electrode to

at least another; is that safe?

A That's a reasonable summary of a longer explanation I gave.

Q Right, or a worst explanation than the one you gave.

With Na, these pins go into the -- is that correct?

Let me just back up. They're referred to as needles or pins, right, acupuncture pins or needles, 351?

A Yes, that's what it refers to.

Q And acupuncture pins or needles in Na are inserted into the skin, correct?

A I missed the last part of your question. Na what?

Q So Na discloses that these acupuncture pins or needles are inserted into the tissue to be treated; is that correct?

A Yes, I think so.

Q Let me see if I can find you a better --

A Because this Paragraph 30 talks about electrical connection, not how they're used, so

this Paragraph 30 doesn't say that they're actually inserted into the skin I think.

Q Do you know what acupuncture is?

A Yes.

Q Okay. So an acupuncture pin safe to assume is inserted into the skin, correct?

A In most cases, yes.

Q And when you refer to an acupuncture pin as a needle, also pretty safe to assume that these are being inserted into skin?

A I don't feel really safe assuming anything.

Q Understood.

A I'd rather you let me read the language here.

Q You're an engineer for a reason. You don't...

One second. Let me see if I can find you a better disclosure.

Let's back up. Do you agree that the Na '848 patent is for treating skin?

A Paragraph 3 says: "The present

invention -- it may be desirable to treat dermatological tissue, dermatological tissue. The present invention provides such treatment."

So, yes, it is for treating dermatological tissue, skin.

Q Right. And it uses acupuncture needles or pins to treat the skin; is that correct?

A In the context of this description, I think that's fair, yes.

Q Go to Paragraph 28. Look at the second sentence?

A Can I read the whole paragraph? Sorry.

Q You can read the whole paragraph, that is fine.

A It's hard to understand in one sentence without context.

Okay. I've read Paragraph 28.

Q Okay. So it discusses -- you agree that Paragraph 28 discusses inserting the pins into the dermis?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A Partway through it says: "Electrically coupled pins in contact with the dermis." It doesn't say inserted into the skin in that paragraph.

BY MR. AUTERI:

Q The outer layer of the skin is the epidermis, right? In general obviously.

A You're asking me as an anatomist?

Q I guess maybe that's outside your -- I'm asking the wrong expert. I just assume you know a lot about the devices. I thought you might have known the layers of skin.

But would you take my representation that the epidermis is the outer layer of skin and the dermis is below that?

A Sure. I'll take that.

Q And if you'll accept my representation as true, for needles to have contact the dermis, it would have had to already pierce through the epidermis to do so.

A Well, I'm trying to think that through. That's a hypothetical situation I suppose, yes. A

really good question talked about whether needles are inserted into the skin. The literal language of this Paragraph 28 says that the electrically coupled pins are in contact with the dermis to form an electrical pathway.

Q Right. This is one of the prior art pieces that's been cited by petitioners. And, you know, as part of your review to argue this reference is to teach certain limitations, you didn't encounter whether Na '848 discloses to insert the pins into the skin?

MS. PENIZA: Objection to form.

BY THE WITNESS:

A Which part of my report are you referring to where I say that?

Counselor, you're suddenly very dark.

BY MR. AUTERI:

Q It might be the settings, unfortunately you will let me see if I can -- my camera is not adjusting fast enough.

MR. AUTERI: So let's mark your expert report for the '812 patent. I think it will help

you. So the next available -- it should be 11. Let's take the document titled IPR 2024-00463-PUBLICEX.2147-CROSBY POR-declaration and make that Crosby Deposition Exhibit 11.

(A certain document was marked Crosby Deposition Exhibit 11 for identification, as of 04/01/2025.)

AV TECH ABRAMS: All right. One moment, please. I'll have that up shortly.

BY MR. AUTERI:

Q Were you able to open it?

A Yes, I have it.

Q Please go to I believe it's PDF Page 71, it should be the one with the Page 70 at the bottom.

MS. PENIZA: Counsel, we also have a hard copy of the older version, if he can refer to that?

MR. AUTERI: That is perfectly fine, the paragraph numbers and everything will match up so that works out perfect.

And I guess for housekeeping what we're

marking as Crosby Deposition Exhibit 11 it's going to be the Declaration of Mr. Crosby in Support of the Patent Owners' Response, the public version that's redacted for IPR number 2024-00463.

BY MR. AUTERI:

Q And when you get a chance, please go to Page 70 of your expert report. Actually maybe it makes more sense why don't you start from Page 69 and I want to talk about Paragraph 126 and that's starts.

So why don't you take some time and read Paragraph 126 and let me know.

A I've read 126, yes.

Q Do you agree at the time you wrote this report you understood Na '848 as disclosing that the needles are inserted into the skin?

A As I say in the middle of that paragraph on Page 70, "Na '848 is an acupuncture device used to 'create the plurality of micro wounds or holes in dermatological layers of skin.'"

Q And then the last sentence of 126, "The Na '848 device there is no need to confront the

location of needles once they penetrate tissue because no electrical energy will be delivered to the other needles."

So you say the needles penetrate the tissue; is that correct?

A You read the last sentence of that paragraph correct, yes.

Q Right. So then going back to Na '848, it discusses the needles or pins can form -- can be formed in a bipolar configuration, correct?

MS. PENIZA: Objection, form. Mischaracterizes the document.

BY THE WITNESS:

A Is this in reference to Paragraph 126 of my report or is this --

BY MR. AUTERI:

Q So we have to back up a lot. I was just trying to set up if you agree whether Na '848's needles or pins get inserted into the skin. And just for context you weren't sure about that answer so I went to your report to see if that would remind you if the needles are inserted into

the skin. That was not my ultimate question. I just was trying to take a step back.

So to confirm, do you now understand that Na '848 is an acupuncture device that operates by inserting needles or pins into the skin?

A Yes. That's my general understanding of Na '848.

Q Okay. So that was the only reason I went back to your report there is because it's not as clear I guess from the sections we were looking at in Na '848.

So going back to Na '848, you had stated that if you are using a bipolar configuration there's going to be some electric current that travels from one pin to at least another; is that correct?

MS. PENIZA: Objection.
Form (inaudible) --
BY THE WITNESS:

A There is electrical current that travels from at least one pin to at least another.
BY MR. AUTERI:

Q And if the pins are inserted into the skin, then the current would travel through the skin between the needles; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Most likely. It depends on exactly where in the skin, but most likely.

MR. AUTERI: Why don't we take a five-, ten-minute break and go off the record for a second.

THE WITNESS: Sure.

(A recess was had.)

MR. AUTERI: I'd like to mark a new exhibit. It should be Crosby Deposition Exhibit 12 which should be the document IPR 2024-00463-EX.1010/Livneh.

And, Counsel, if you have a paper copy of Livneh, Mr. Crosby can certainly use that. He doesn't have to look at the screen. But for housekeeping purposes what is marked as Crosby Exhibit 12 is International Publication No. WO 2008/005477 to Steve Livneh.

(A certain document was marked Crosby Deposition Exhibit 12 for identification, as of 04/01/2025.)

MS. PENIZA: We do have a paper copy so I just handed it to Mr. Crosby.

MR. AUTERI: I'm not going to start with that but we're going to switch to Livneh at some point, so he's ready.

BY MR. AUTERI:

Q I'm going to go back to what's marked as Crosby Exhibit 11. It was your declaration in support of the patent owner's response for the '812 patent, that's IPR 2024-00463, so your declaration for that one.

A I have that.

Q If we go to Page 84, do you see Paragraph 149? If so, please take your time and read that and then I'll ask my question.

A I have it. Let me read it for context.

Q Yes.

A Okay. I've reviewed 149.

Q And do you see where it says -- it's the

last sentence on Page 84, it spills over to Page 85. Do you see where it says: For example, the coil 92 of Livneh not only compressed and depressed allowing electrodes to move between and first and second position based on engagement of mechanism 74, citing Exhibit 1010 Paragraph 49, it also has flexibility in the longitudinal direction to allow mechanism 74 to push on the coil as it deploys and retracts. Therefore, coil 92 is designed to have at least three degrees of freedom of movement.

If we look back at Page 81 of your declaration, you have an annotated Figure 3 from Livneh; is that correct?

A Page 81 is an annotated Figure 3 of Livneh which was annotated to refer to the idea of a detachable needle assembly I think that's what it's referring to.

Q The annotated figure you can see mechanism 74, correct?

A I refer to the Livneh patent itself. It's a larger illustration.

Q We have what is Crosby Exhibit 12 and you have a paper copy in front of you, feel free to look at the figure and any descriptions you need to understand, but so we're on the same page, I'll open up Figure 1.

A I see it. It's just because it's bigger.

Q It always helps to look at these as I get older.

So we were just talking about -- so in your expert report, if you can look at them side by side, but we had on Page 84 that last sentence that spills over to 85, you talk about: For example the coil 92 of Livneh cannot only compress and decompress to allow the electrodes to move between and first and second position based on engagement mechanism 74 -- it cites Paragraph 49 -- but also has flexibility in the longitudinal direction to allow the mechanism 74 to push on the coil as it deploys and retracts.

So my question is: When you referred to the longitudinal direction, are you referring to moving left and right in the viewpoint of

Figure 3?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yes. Mechanism 74 slides inside the handle and pushes on the pins or the cones of pins, and the action of sliding engages the angled bit 84 on those pins. So those pins necessarily move longitudinally left or right as you point out as well as vertically in and out.

BY MR. AUTERI:

Q But if we look at Figure 9 which shows a viewpoint perpendicular to the one we're looking at -- or let's look back up, do you see that Figure 9 shows the mechanism 74?

A Figure 9 shows a cross section of the mechanism 74, yes, in the opposite plane as shown in Figure 2.

Q Right. And it shows the springs 92 are parallel to the mechanism 74 in the longitudinal direction, I guess?

MS. PENIZA: Objection to form and to the extent it mischaracterizes the document.

BY THE WITNESS:

A I'm confused by your question.

BY MR. AUTERI:

Q So if we go back to Figure 3, right, it's not clear that the springs are actually to one side or the other of the mechanism; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A When you say "one side or the other," one side of what?

BY MR. AUTERI:

Q The mechanism 74.

A The springs aren't part of mechanism 74.

Q Maybe I might be mistaken, but I thought you said that the mechanism 74 as it moves in the longitudinal direction moves the springs 92 in the longitudinal direction?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A I don't think that's what I said. If I

did, I misspoke.

The angle number 84 referring to Figure 3 on the element 74 is what pushes down on the electrodes or combs of electrodes so forcing the longitudinal direction of 74 translated into force in the vertical direction to push the pins down. But in order to do that it is providing force in the longitudinal direction of each of those pins, therefore -- sorry, not pins but the combs that hold the electrodes. So the mere act of trying to push those electrodes down, single electrodes or combs is from the application of force in the longitudinal direction which is translated to force in the perpendicular direction. Therefore, the springs have to be able to accommodate some movement in all directions or they won't work.

BY MR. AUTERI:

Q So to back up, the tapered -- the angled part of mechanism 74 is labeled 84; is that correct?

A Well, let's read what the description says. Can you refer me to where --

Q Let me look at the... Maybe Paragraph 45?

A That's what I am reading, too, yes. And that's what I was referring to.

If you look at Livneh Figure 3, the angled Section 84 referred to in Paragraph 45, the mechanism 74 includes a proximal end 80 and a distal end 82. The distal end 82 is tapered to provide an angled surface 84. That's what I was referring to. Or operatively engaged in the electrodes 32 as the mechanism is moved from the first position to the second position. As 74 is moved, it pushes on the electrodes with an angled Section 84 and so the horizontal movement in the terms you were using before left to right in that figure is translated into vertical movement up and down in that figure of the needles.

In order to do that, the needles or the mechanism for the needles have to withstand horizontal force, and the only way to withstand the horizontal force by remaining connected -- and also remaining connected is if those springs are able to deflect in all directions.

I think that's what I say in my record.

Q If we go back to Figure 9 of Livneh which shows a cross sectional view that is perpendicular view that you looked at in Figure 3?

A Yeah.

Q Do you agree that the mechanism 74 does not directly push on the springs 92 in the longitudinal direction?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A No. That's not what it says.

BY MR. AUTERI:

Q I guess is the -- if we're looking at Figure 9, is the longitudinal direction now into and out of the page?

A That is correct. This is a cross section of Figure 3, one embodiment.

Q And when you look at the cross section, the springs 92 are parallel and on the sides of the mechanism, correct?

MS. PENIZA: Objection. Form, and to the extent it mischaracterizes the document.

BY THE WITNESS:

A Parallel to what?

BY MR. AUTERI:

Q The mechanism. So the mechanism runs longitudinally, right, and it moves longitudinally and then there's a set of springs on its side that are parallel to the channel for the mechanism; is that correct?

A No. It's pretty clear they are at right angles. If you look at Figure 8, the springs are at right angles to the movement of the mechanism 74.

Q I mean, so if we look back at Figure 3, we see there is a plurality of springs, right?

A Yes.

Q And in Figure 3, it looks like the device is going to bulldoze down those springs; is that correct?

A Bulldoze down, is that what you said?

Q It looks like it's going to push on the springs?

MS. PENIZA: Objection. Form,

mischaracterizes the document.

Sorry. Go ahead.

BY MR. AUTERI:

Q So in your expert report you said the mechanism 74 pushes on the coils. But we just discussed the mechanism actually pushes on the electrodes; is that correct?

A I see what you're saying, yes. The mechanism -- I see what you're saying. The mechanism pushes on the electrode carrier as shown in Figure 68.

Q Right. And when you look at it in another angle in Figure 9, we realize that these springs aren't even on the same track as the mechanism that's moving; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Yes, that is correct.

BY MR. AUTERI:

Q Right. So when we look at this angle, we know for certain the mechanism does not push on the springs; is that correct?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A The mechanism 74 does not push on the springs; that's correct.
BY MR. AUTERI:
Q So it definitely doesn't push the springs in a longitudinal direction, correct?
MS. PENIZA: Objection. Form, mischaracterizes the document.
BY THE WITNESS:
A Could you repeat your question again?
BY MR. AUTERI:
Q So the mechanism 74 doesn't push the springs in the longitudinal direction, correct?
A Well, it doesn't directly push on the springs, no.
Q And you agree -- sorry.
A It pushes on the electrode carrier which causes the coils to deflect in the longitudinal direction as well as the vertical direction.
Q What makes you think that they deflect in the longitudinal direction?

A If you look as I've talked about in Figure 3, the mechanism for causing the translation of force from the longitudinal direction to a vertical direction is that angled surface 84.

In order for that to work the mechanism has to allow translation of horizontal force in your frame of reference to vertical force, and the only way to do that is if the electrode carriers can withstand that force and they will deflect in the longitudinal direction as they translate that force which causes the spring to have to be able to deflect in the same direction and maintain contact.

Q Doesn't Livneh just disclose that the springs expand and contract in the vertical direction, isn't that the only direction that is used in Livneh?

MS. PENIZA: Objection. Form, mischaracterizes his testimony.

BY THE WITNESS:

A They do expand and contract in the

vertical direction, but what I'm saying is they have to also be able to move in the lateral direction, the horizontal direction as we call it, otherwise as those electrode carriers move in a way even if it's just slightly to translate force from horizontal to vertical, then those springs would not maintain contact.

BY MR. AUTERI:

Q Let's look at Figure 4 and compare it to Figure 3 in Livneh. We see Figure 3 is the needles retracted and Figure 4 is the needles expanded.

Do you agree that the electrodes do not move longitudinally?

A No. This is a picture of the retracted position and the extended position. I don't see any picture of what happens in the intervening period.

So in Figure 4 the electrodes are all extended, and the mechanism 74 is completely at one end, and in Figure 3 the electrodes are all retracted and the mechanism is completely at the

other end.

In the intervening period during extension of element 74, each of those electrode carriers have to be able -- has to be able to withstand force in the horizontal direction so it's translated into movement in the vertical direction.

Q The mechanism has a angled surface 84, correct?

A That's how it's described, yes.

Q That angled surface meets the top of the electrodes, correct?

MS. PENIZA: Objection. Form, mischaracterizes document.

BY THE WITNESS:

A The hang angled surface meets the top of the electrode carrier.

BY MR. AUTERI:

Q The electrode carrier, right? And that tapered surface is what translates the mechanism's longitudinal movement to the electrode carrier's vertical movement, is it not?

MS. PENIZA: Objection. Form.
BY THE WITNESS:
A That's what I said, it's the force applied from the angled surface in the horizontal direction that is translated into force in the vertical direction that causes the electrode carrier to move in the vertical direction.
BY MR. AUTERI:
Q Right. So it causes the electrode to move in the vertical direction, not the longitudinal direction, correct?
A Well, it can't be only the longitudinal direction unless this is a completely rigid system. It has to be able to have some deflection in the horizontal direction, or the mechanism just won't work, it will resist that movement.
Q But the mechanism 74 has a tapered surface 84 which allows the translation of longitudinal movement into vertical movement, correct, as -- strike that question.
If we look at Figure 3, as the mechanism 74 moves left, the tapered surface pushes down on

the top the of the electrode carriers one by one; is that correct?

A Yes.

Q And then the electrode carriers are connected to the springs, correct?

A That's how it appears, yes.

Q And so the --

A I'd have to check the description, but I think that's correct.

Q So the mechanism as it moves left pushes the electrodes carriers down which causes the springs to expand in the vertical; is that correct?

A Well, yes, but it's incomplete because the electrode carrier moves down, but in order to move down it has to be able to withstand that force in the horizontal direction. That means the electrode carrier is constrained, but it will move a certain amount in the horizontal direction in the process of translating that horizontal force into vertical movement. And that's why the springs or the coils have to be able to

accommodate that movement in both directions.

Q So are you imagining that the springs -- strike that.

If we look at Figure 3 and we compare it to Figure 4, the before and after snapshot all we see the difference is the vertical height change for the electrode carriers; is that correct?

MS. PENIZA: Objection to form and mischaracterizes the document.

You can answer.

BY THE WITNESS:

A You're comparing Figure 3 to Figure 4, is that what you said?

BY MR. AUTERI:

Q Right. If we look at the snapshot of before and after, the before and after is -- strike that.

So if we look at Figure 3, it shows the needles in a completely retracted position whereas Figure 4 shows it in a completely extended position, correct?

A That's what it appears to depict, yes.

Q The only difference we see in the electrode carriers between Figure 3 and Figure 4 is the change in the vertical direction; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A That's correct but incomplete. It's a bit like saying I've gone on a journey in a car, the wheels are stationary when I start and the wheels are stationary when I stop, but they're turning in the middle.

And what I'm saying is in the process of moving from retracted in Figure 3 to extended in Figure 4, each of those electrode carriers has to move. That movement in the vertical direction is from translation of force in the horizontal direction from element 74 into each of those combs.

In that process for each of those they have to be able to either be constrained so much in the vertical direction that they can't move, which is impossible, or be constrained enough that

they do move in which case they will move slightly horizontally. If they move slightly horizontally, then the springs or coils have to be able to deflect in that direction to accommodate that movement otherwise it wouldn't work.

BY MR. AUTERI:

Q If needles are being inserted into the skin, they're probably not moving horizontally, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I probably don't quite understand the question. We're talking about the mechanism here?

BY MR. AUTERI:

Q Right. And the mechanism drives needles into the skin and typically when you drive needles into the skin you go straight in, you don't move -- let's back up.

Mehta's needles are designed to go into the skin, correct?

A Yes, that's correct.

Q So you place the device on the skin's

surface and as the mechanism 74 starts moving to left, the needles start getting inserted into the skin, correct?

A Well, yes, but I think you're missing the point I was trying to make before, whether it's attached to the skin or not or whether it's in air, the movement of element 74 translates horizontal force into vertical movement of the pins. That translation of horizontal force in the vertical movement will cause some deflection of the needle carriers in the horizontal direction, otherwise it won't work.

Q Just backing up, if needles are being inserted into the skin, right, in a vertical direction, once they start piercing the skin, you are imagining that they move left and right in a longitudinal direction and what, tear the skin up? What is this that you're imagining?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A That's not what I said. And to start

with, skin is flexible, so skin could accommodate movement of a small amount of those electrodes as they are being inserted into the skin.

BY MR. AUTERI:

Q So are you talking about a micro movement?

A I don't know how much the movement is. I haven't done the engineering calculations on this. I don't have the dimensions or the tolerances or any of those. What I'm saying is --

Q So it's --

A What I'm saying is that movement of element 74 directs force onto the electrode or pin carriers for our tapered surface 84 and that direction of force in the horizontal direction would cause those electrode carriers to move somewhat in the horizontal direction as well as in the vertical direction.

Q Going back to my original question, if you look at Figure 3 and compare it to Figure 4, these are the snapshots of when the needles are fully retracted and fully extended, correct?

A Figure 3 says the retracted position and

Figure 4 says the extended position, yes.

Q Right. And if we just look at those snapshots in time -- and this question is limited to just those two snapshots in time -- the only difference we see in the electrode carrier's position is a change in the vertical direction; is that correct?

MS. PENIZA: Object to form.

BY THE WITNESS:

A If you look only at these two snapshots, the deflection of the -- well, to start with, Figure 4 doesn't even show the springs so it's hard to answer your question without being able to see them.

BY MR. AUTERI:

Q I was talking about the electrode carriers.

So do you agree that in the snapshot of time that we see in Figure 3 and Figure 4, that the difference in the position of the electrode carriers, the only difference is their position vertically; is that correct?

A Figure 3 shows the electrode carriers extended and Figure -- excuse me -- Figure 3 shows the electrode carriers not extended, and Figure 4 shows the electrode carriers extended. It also shows the element 74 completely deployed in the horizontal position, and there's more than one difference.

Q Right. And so the result of in Figure 4 that we see when the mechanism 74 moves all the way to the left in the longitudinal direction is that all the electrodes that we saw in Figure 3 simply move down in the vertical direction; is that correct?

MS. PENIZA: Object to form.

BY THE WITNESS:

A No. You asked me about the difference in -- the position is different but that doesn't -- that is not the same as saying they simply move down in the vertical direction.

The difference between Figure 3 and Figure 4 is the vertical movement. During the process of generating that vertical movement, they

can also move in the horizontal direction. That's why I said you can't look just at the start and the end of any journey.

BY MR. AUTERI:

Q I'm just asking about the start and the end, and I just want a confirmation which is pretty simple, do you not agree that when you look at Figure 3 and Figure 4, the only difference between the electrode carriers is that their positions are farther down vertically?

MS. PENIZA: Objection. Form and to the extent it mischaracterizes the document. It speaks for itself.

BY THE WITNESS:

A I agree that the difference in the electrode carriers is extended or not extended between Figure 3 and Figure 4. It's the position. Not the movement.

BY MR. AUTERI:

Q Not the movement, just the position.

My second question is: Your belief that Livneh's coils need to be pushed in the

longitudinal direction is not based on anything actually written in Livneh or shown in the figures of Livneh, correct?

MS. PENIZA: Objection. Form, mischaracterizes the testimony.

BY THE WITNESS:

A What I say in my report is in my opinion coil 92 is designed to have at least three degrees of freedom of movement.

BY MR. AUTERI:

Q Right, but that's not something Livneh actually disclosed, right?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A A person of skill in the art, an engineer would understand that in order to cause these electrode carriers to extend in the vertical direction, you have to apply force from the protected surface 84 in the horizontal direction, and that means that there needs to be some movement in the vertical direction so that the pin carriers can translate that force into horizontal

movement.
BY MR. AUTERI:
Q Let's move to look at your declaration again.
A Which one?
Q It's Deposition Exhibit 11 so it's the one for the '812 patent, the IPR 2024-00463, it would be also Exhibit 2147 to the 463 IPR.
Actually, we could come back to that if you need a -- if you have it. If you'd like to take a break to look at it or we can look at that, but I guess I have a more basic question.
You agree Livneh's needles are designed to be inserted into skin, correct?
MS. PENIZA: Object to form.
BY THE WITNESS:
A Where are you looking in my report?
BY MR. AUTERI:
Q I'm just talking generally, if you're not comfortable with Livneh, but I assume you know as much of what Livneh discloses concerning the electrode. Let's back up.

Would you like to look at your report or are you not sure that Livneh inserts needles into the skin? Sorry. Let's just back up. I'm not sure I quite understand, but let's just step farther back so I can make this simpler.

A My report includes a discussion on Livneh starting on Page 47. Is that what you're referring to?

Q I was going to start with Livneh, but if your report helps you with the background of it, let me see if there's anything about inserting needles into skin in the report.

Okay. If we look at Livneh Paragraph 54?

A 54?

Q Yes, this should help. I'll let you read this and then I'll circle back. The key point I'm looking at is about midway through the paragraph.

A I've read Paragraph 54, yes.

Q Okay. And so stepping back, Livneh teaches electrodes that pierce the skin, correct?

A Yes, in the middle of that paragraph the electrodes 32 pierce the skin during this

movement.

Q Right. And these electrodes are essentially needles, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A They may be needles. It's not clear. They might be in a rectangular cross section pieces of metal. It's not clear. They could be needles.

BY MR. AUTERI:

Q For a given needle housing in Livneh, when you treat a patient, all the needles in the housing are inserted into the skin, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A It doesn't actually say that. It says: "The electrode positioning mechanism is pushed towards the cavity 40. The mechanism engages the electrodes moving them from the first position to the second position."

It doesn't say -- excuse me. I beg your pardon.

At the end: "A proximity sensor senses when the mechanism 74 is fully extended and thus all electrodes are in the second position."

Is that what you're referring to?

BY MR. AUTERI:

Q Yes. I guess more or less if you look at Figure 4, which is the needles fully extended, correct? All the needles -- sorry. Let's back up.

If you look at Figure 4 it shows all of the electrodes 32 extended, correct?

A That is correct.

Q Right. And they're all extended the same distance, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A It's hard to tell. If all those electrodes or combs are identical, then yes, that would all be the same distance.

(Reporter clarification.)

BY MR. AUTERI:

Q So if you're treating a patient with a

device shown in Figure 4 and the needles are fully extended, presumably all the needles would have been inserted into the skin, correct?

MS. PENIZA: Objection. Form. Incomplete hypothetical.

BY THE WITNESS:

A It depends where it is. If it's on a curved piece of your skin like your scalp, maybe not.

BY MR. AUTERI:

Q Okay. But you admit that that would be a -- not the typical use of this device, is that correct, using it on curved surfaces?

MS. PENIZA: Objection. Form.

BY MR. AUTERI:

Q Let's back up. You admit at least in some situations all of the needles would be deployed into the skin using Livneh's device?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A They could be. Depends on where it is.

BY MR. AUTERI:

Q Well, if you extend all of the needles you typically do that because you want them all to go into the skin, correct?

MS. PENIZA: Same objection.

BY THE WITNESS:

A You're inferring an intent. This doesn't talk about intent. It talks about what it actually does. So between the first position and the second position, all the needles are extended. Whether or not they are all extended on inserted into the skin depends on the dimensions of the device and where on the skin it's placed.

Q But there is a good chance that most of the needles that get extended go into the skin, right?

MS. PENIZA: Same objection.

BY THE WITNESS:

A I don't think it depends on chance. But I will agree with you that under typical situations I would expect most electrodes to be extended into the skin.

BY MR. AUTERI:

Q Right, and if you were treating someone with some sort of blood disease like AIDS and you extended the needles -- the needle electrodes into the skin, all the electrodes that enter the skin would presumably be contaminated, correct?

MS. PENIZA: Objection. Form, incomplete hypothetical.

BY THE WITNESS:

A If you're trying to get me to imagine a situation where you're treating someone with HIV?

BY MR. AUTERI:

Q Or any sort of blood-related disease -- let's back up.

Since the '80s it's been pretty well known not to reuse needles, correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I didn't actually hear the question. Something about reusing needles?

BY MR. AUTERI:

Q Right. It's typically frowned upon since at least the '80s, right, there's been a movement

to avoid reusing a needle to avoid contamination; is that not something you're familiar with?

MS. PENIZA: Same objections.

BY THE WITNESS:

A Well, it's certainly true in the context of hypodermic needles particularly with drugs.

BY MR. AUTERI:

Q Right. And generally if you were to contaminate a needle while -- let's back up.

If the device in Livneh was used to treat someone with let's just say AIDS, right, would there be a risk of the needles being contaminated being used on such a patient?

MS. PENIZA: Objection. Form, incomplete hypothetical.

BY THE WITNESS:

A I think you're asking me to imagine or speculate about the risk of contamination between uses of an instrument with needles between patients.

I mean, you use this system on a patient, you move it to a different location on the same

patient, you move it to a different location on the same patient. You go transfer biological tissue between each of those uses, but if you then use it on another patient, there's a risk of cross contamination between patients; is that what you're asking me to imagine?

BY MR. AUTERI:

Q That is. I apologize that I didn't realize that there could be a scenario where you were using it on the same person. So it is a situation where you're worried about cross contamination.

A So what was the question again?

Q So my question is: If you use the device on a first patient and you extend all or most of the needles into the skin of the first patient, there could be concerns on a risk of cross contamination with the second patient by reusing those same needles; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A There could be, yes.

BY MR. AUTERI:

Q But typically if one of Livneh's needles was contaminated, they probably all are, is that safe to assume?

MS. PENIZA: Same objection.

BY THE WITNESS:

A Well, you're asking me to speculate about a clinical situation. Not necessarily. It depends whether or not the needles are in contact with the blood supply, for example.

BY MR. AUTERI:

Q So are you saying you could imagine a scenario where -- let's back up, just think for a second.

So are you saying that it's only if the needles are exposed to blood there is a risk of cross contamination?

MS. PENIZA: Objection. Mischaracterizes testimony.

BY THE WITNESS:

A Well, the example you gave was HIV which is a blood-borne disease, so if you don't contact

the blood there is not a risk of contamination with HIV.

BY MR. AUTERI:

Q And is there any other sort of concerns about cross contamination other than just blood?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A There may be. I'm not a dermatologist. I don't offer an opinion on what the dermatologist would be concerned about, but I can imagine there would be concern about cross contamination from skin bacteria or other things. But I'm not an expert on that. It's hard for me to give an opinion.

BY MR. AUTERI:

Q So if a person had skin bacteria and you used Livneh's device and all the needles are inserted into that person's skin, presumably all the needles would be contaminated; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A Possibly. It depends on where the bacteria are.

BY MR. AUTERI:

Q And if you wanted to replace those needles it wouldn't make sense to replace them individually in such a situation; is that correct?

MS. PENIZA: Objection. Form.

BY THE WITNESS:

A I don't know. I think Livneh actually gives an example where the needles might be replaced individually or might be replaced as sets of combs or might be replaced as a complete pair. If you look at Livneh Figure 15, it's a way of replacing needles individually.

BY MR. AUTERI:

Q Okay. But if all of them are contaminated, wouldn't it be quicker to replace the needle cartridge than to change out individual electrodes?

MS. PENIZA: Same objection.

BY THE WITNESS:

A I don't know. You're asking me to make a

design decision on this. I'm just looking at Livneh's invention, I don't think he talks about quicker to change out one or more. I don't know.

BY MR. AUTERI:

Q Let's turn to the '536 patent. That should be what was marked as Crosby Exhibit 8. So the '536 patent I think you might have a physical copy, Mr. Crosby.

A I do have a copy, yes.

Q So I guess look at Claims 7 and 17 and take your time and just read those.

A Yes. I see Claims 7 and 17.

Q So 7 requires the method of Claim 1 wherein a first deflectable electric contact is coupled to a first plurality of the plurality of extendable needles, and a second deflectable electrical contact is coupled to a second different plurality of the plurality of extendable needles.

My question is: Do you agree that Claim 17 is -- requires almost exactly the same thing?

MS. PENIZA: Objection. Form, and the

document speaks for itself.
BY THE WITNESS:
A Almost exactly, I don't know --
BY MR. AUTERI:
Q It might be a word or two different. I guess the point is if I refer to Claim 7 rather than counting back between 7 and 17, all I want to talk about is the deflectable contact, is that fair if I focus on 7? Or would you like to do it one at a time? We can do 7 and 17.
A If 7 -- Claim 7 is a method patent and Claim 17 is an apparatus patent. If you're asking me if they are the same after the first comma, I think -- I think they are.
Q Yes. I guess it was more that would you agree if we talk about one we don't really need to talk about both if we're just talking about the part from the "wherein" on?
A Let's start that way and let's see where we go.
Q Okay. I think that's fair. If need be we'll circle back.

MR. AUTERI: I'd like to mark what I think might be my last exhibit, and it should be 13. So Crosby Exhibit 13 I want to make the document entitled IPR 2024-00384-Petition.

AV TECH ABRAMS: I got it.

(A certain document was marked Crosby Deposition Exhibit 13 for identification, as of 04/01/2025.)

BY MR. AUTERI:

Q So for housekeeping purposes, this is the petition for inter partes review IPR 2024-00384 that is the IPR for the '536 patent.

And my question is if you go to the table of contents, you should have a lower case Roman Numeral ii at the bottom.

A I have it.

Q And so do you see Ground II, it says: "Claims 1 through 9 and 11 through 19 are obvious over Mehta in view the knowledge of a POSA"?

A I see that.

Q And if you look down under that there is a subsection dependent Claims 7 and 17 that starts

at Page 56?

A I see that.

Q So if we go to Page 56 of that petition, let me know when you get there.

A I have that.

Q So you understand that petitioner has asserted that Mehta in view of the knowledge of a person of ordinary skill renders Claims 7 and 17 of the '536 patent obvious?

A I see that in the second paragraph on Page 56.

Q Okay. So if we could switch back to your declaration for the 387 IPR, that is the declaration for the '536 patent?

A Yes, I have that.

MS. PENIZA: I don't think that's been updated yet, Kyle.

MR. AUTERI: I don't know if we marked that yet. So let's -- sorry, Counsel, I think you just pointed that out.

Sorry, if I lied a little bit. There's one more exhibit. Let's mark what is the file

name IPR2024-00384-Public Ex. 2147 - Crosby Dec ISO POR that's going to be Crosby Deposition Exhibit 14.

(A certain document was marked Crosby Deposition Exhibit 14 for identification, as of 04/01/2025.)

MR. AUTERI: For housekeeping purposes, it's going to be the declaration of Mr. Crosby in support of patent owner's response. It's the public version that's redacted. It's for IPR 2024-00384.

Counsel, if you have a paper copy whether it's the public or private version of Mr. Crosby's declaration for the '536, you're more than welcome to use that rather than the PDF.

MS. PENIZA: Yes. We have one.

BY MR. AUTERI:

Q And so if we go to Page 62 of your -- hold on. Let's see if that's the right PDF page.

A Page 62?

Q Let me just double check. It might be PDF Page 63, but -- yeah, 52.

A Oh, 52. I beg your pardon.
Q Sorry, Page 62, do you see Ground II at the top?
A I do see that.
Q So on the top of Page 62, it says: "Ground II, Claims 1 through 8 and 11 through 18 of the '536 patent are not obvious in view of Mehta in the knowledge of a POSITA."
Is that correct?
A That's correct, yes.
Q And so the first subsection you have under that is: "Mehta does not teach or suggest the desired distance limitation of the claims"?
A I see that, yes.
Q If you scroll down, you can take your time, it's not until Page 65 that we see a new section start; is that correct?
A Yes, No. 2, "Mehta does not teach or suggest the embedded LED."
Q Yes. And that relates to Claims 4 and 14, correct?
A That's what it says, yes.

Q If we keep scrolling through until Page 69, the next subsection we see starts right before Paragraph 127, do you see that?

A I see that.

Q And that's: "Mehta does not teach or suggest the translucent section of Claims 5 and 15."

Is that correct?

A I see that, yes.

Q If we scroll down through Page 72, we see that your section on Ground II ends around 72; is that correct?

A That is correct.

Q So there is no section in your declaration that deals with Claims 7 and 17 -- let's strike that question.

There's no section within your declaration that addresses petitioner's arguments that claims -- strike that question. Let me give you another question. Sorry.

In your declaration, you did not provide any specific arguments that are unique to Claims 7

and 17 of the '536 patent; is that correct?

MS. PENIZA: Objection to form. Mischaracterizes.

BY THE WITNESS:

A No, that's not correct.

BY MR. AUTERI:

Q Let me see if I can phrase this better.

Would you agree that you do not have a specific section that addresses Claims 7 and 17 for Ground II in your declaration? Is that correct?

MS. PENIZA: Objection. Mischaracterizes the document.

BY THE WITNESS:

A There is not a specific section under Ground II regarding Claims 7 and 17.

BY MR. AUTERI:

Q And Claims 7 and 17 depend -- well, let's look at the -- I'm trying to -- let's go to the '536 patent which would be Crosby Exhibit 8, and let's look back at 7 and 17, and you agree that Claims 7 and 17 depend from independent Claims 1

and 11 respectively?

A Yes, they do.

Q And would you agree that in your declaration for the '536 patent, you may have addressed -- you address Claim 1 of the '536 patent; is that correct?

MS. PENIZA: Objection. Form, the document speaks for itself.

BY THE WITNESS:

A I'm not sure what --

BY MR. AUTERI:

Q Yeah, let's go back to your report. I think that will be easier. So let's switch back to what we marked as Crosby Exhibit 14. That's your declaration for the '536 patent. And if we go back up to Page 62 we see your responses to Ground II starts.

A Yes, I do see Page 62.

Q Right, and in Paragraph 414 we see you're discussing Claims 1 and 11?

A Yes.

Q And earlier we saw Claims 7 and 17 depend

directly from independent Claims 1 and 11 respectively?

A Yes, that's what they're doing.

Q And I just want to confirm that the only arguments regarding Ground II for Claims 7 and 17 that you present in your declaration are the same arguments you have for Claims 1 and 11; is that correct?

A Well, I do talk about Claims 7 and 17 under the Roman Numeral IX.D. so I do discuss Claims 7 and 17 in some detail on those pages starting on Page 76.

Q 76, okay.

But sorry, 76 is a different ground, that's Ground IV, right, and that has Claim 7 and 17 are not obvious in view of Mehta and Livneh.

My question was in terms of Ground II whether Claims 7 and 17 are obvious in view of Mehta and in view of a person of ordinary skill, my question is: You didn't provide any specific arguments for Claims 7 and 17 for Ground II; is that correct?

MS. PENIZA: Objection.
BY THE WITNESS:
A Let me just read this again if I may.
BY MR. AUTERI:
Q Take your time.
A There's no specific discussion on Grounds [sic] 7 and 17 under the discussion regarding Ground II.
Q And so we saw Claims 7 and 17 depend directly from independent Claims 1 and 11, so my question for you is: Your only arguments for Claims 7 and 17 are the ones from independent Claims 1 and 11?
MS. PENIZA: Objection to form. Mischaracterizes the document.
BY THE WITNESS:
A Under Ground II, I have argued that Claims 1 to 8 and 11 to 18 are not obvious in view of Mehta and the knowledge of a person of skill in the art. I don't refer to Claims 7 and 17 specifically, and as you say, they are dependent on Claims 1 and 11.

There is a separate discussion on Claims 7 and 17 starting on Page 76.

Q That was the one for Ground IV, correct?

A That is correct.

Q And then if we move to Ground VI, if we go to Page 86 of your declaration for the '536, do you see there is a Ground VI at the top?

A Yes, I see that.

Q So then your only arguments for Ground VI are the same arguments -- let me just scratch that question.

Your only argument for Ground VI is a POSITA would not have been motivated to combine Mehta-Lee and his or her knowledge to arrive at the claims of the '536 patent?

A And I refer --

MS. PENIZA: Objection to form. Mischaracterizes the document.

Go ahead.

BY THE WITNESS:

A And I refer to previous sections of the document when I say that. For the same reason

that I explained about in my opinion a POSITA would not have been motivated to combine Mehta-Lee and his/her knowledge to arrive at the claims of the '536.

BY MR. AUTERI:

Q Is it correct to say the entire rebuttal for Ground VI is Paragraph 152?

MS. PENIZA: Objection. Form. And objection to the extent it mischaracterizes the document.

BY THE WITNESS:

A I don't think I actually heard the question.

BY MR. AUTERI:

Q Let's strike it. I think you already answered the other question I had. Let me just think for one second.

MR. AUTERI: Could we take a five-minute break. I want to check my notes and see if we're done or not. Do you mind if we go off the record?

MS. PENIZA: Sure.

THE WITNESS: Sure.

(A recess was had.)

MR. AUTERI: Let's go back on the record.

Mr. Crosby, I am done with my questioning. I will pass you to Counsel.

MS. PENIZA: Thank you, Counsel.

EXAMINATION

BY MS. PENIZA:

Q Mr. Crosby, I want to touch on a few things that counsel for Endymed asked you about and I want to go kind of one by one and I'll start at the end which was on Exhibit 14, your declaration presenting your opinions regarding the '536 patent. I think have you that in front of you, but is there anything that you'd like to correct in Exhibit 14?

A Yes, there is one typo that we need to correct in Exhibit 14. I don't remember which page it's on, but it's missing a word "not."

Q If I can be of help I'll point you to Page 73 through 74, Paragraph 132?

MR. AUTERI: Did you say 132?

MS. PENIZA: Right.

BY THE WITNESS:

A I can't remember where it was. Paragraph 132?

BY MS. PENIZA:

Q Yeah, in Paragraph 132 in Page 74.

A Ah, yes. On the fourth line: As shown in Figures 1C and 2F, those sections are not part of any kind of needle assembly that is mechanically separable.

So it's missing the word "not."

Q And just for content, what were you referring to in this paragraph of your declaration at '536?

A This part of the declaration has to do with the translucent section. To go earlier in that paragraph: "With respect to the translucent section limitation of the needle assembly, the claims require that the deployable needle assembly mechanically separably from the proximal end and including a plurality of needles extendable from the deployable needle assembly end surface. Petitioner relies on the portions of Na '848

disclosing the pin section 250, 353 may be translucent. But as shown in Figures 1C and 2F, those sections are not out of any kind of needle assembly that is mechanically separable from the user holdable device proximal end."

And that's referring to the Mehta patent.

Q So let me back up.

So in your opinion does the Na '848 patent disclose a needle assembly that is mechanically separable from the usable -- holdable device proximal end?

A No, it does not.

Q Switching gears a bit, Counsel asked you some questions regarding the Livneh reference. Do you recall that?

A I do recall many questions.

Q And you have it in front of you, but just for the record the Livneh reference is Crosby Exhibit 12 and I know that he focused on at least part of them were in your declaration Crosby Exhibit 11 at Paragraph 149. So I'll give you a moment to put that in front of you.

A I have the patent. And I'm sorry, I missed which part of my --

Q So this is your declaration for the '812 patent?

A Yes.

Q Exhibit 11, Page 84, Paragraph 149.

A I see that, yes.

Q So you recall being asked some questions regarding the degrees of freedom of coil 92 in Livneh in connection with your opinions regarding that reference, right?

A Yes.

Q And you also recall being asked questions regarding the movement of mechanism 74 and its relation with the coils 92?

A Yes, I remember a lot of discussion on that mechanism.

Q Is it your opinion that as mechanism 74 moves from the first position to the second position, it pushes whether directly or indirectly on coils 92?

A Yes, it does.

Q How does it do that, Mr. Crosby?

A Well, if we refer to Figure 3 and 4 in Livneh, as mechanism 74 is advanced, the type of surface 84 pushes down on the electrode holders or combs as they're referred to and that provides a translation of the horizontal force into vertical movement and that causes those electrode carriers to move in both the vertical and the horizontal direction, and therefore the springs or coils shown in Figure 3 have to be able to accommodate that movement.

Q If you go to Figure 9 of Livneh?

A Yes, I have Figure 9.

Q Can you recall -- I'll give you a moment to get there.

A Yes.

Q Do you recall being asked several questions about what Figure 9 of Livneh shows?

(Reporter clarification.)

BY MS. PENIZA:

Q Do you recall being asked questions about what Figure 9 of Livneh shows?

A Yes, I do.
Q What does Figure 9 of Livneh show?
A Figure 9 shows a cross section of the apparatus in Figure 3 or 4 in the situation where the needles or combs are extended.
Q So in Figure 9 when the mechanism 74 is it fair to say -- strike that.
Is it fair to say that in Figure 9 mechanism 74 it's in the second position?
A It could be. This could be a cross section in the middle where it's partway between the first and second, but this would be a cross section when the mechanism is in the second position at the place of this cross section.
Q Sure.
A Yes.
Q And so in your view, you were asked questions about whether Figure 9 shows mechanism 74 pushing on coils 92.
Do you recall that?
A Yes, I do.
Q Okay. Does Figure 9 show mechanism 74

pushing on coils 92?

A It shows mechanism 74 pushing on the carrier for the pins to which the coil 92 is attached, so it doesn't show it pushing directly on coils 92.

Q In your opinion in general, consistent with the declaration that you provided for the '812 patent IPR and the '536 patent IPR and all of the IPRs that you've been asked questions about today, is it fair to say that mechanism 74 directly or indirectly pushes on coils 92 in Livneh?

A Yes, it does. In multiple directions.

Q Switching gears a bit, do you recall being asked questions about the bipolar pins in the '848?

A I do.

Q I will point you to Exhibit 11 which is your declaration for the '812 patent, Paragraph 126. I'll give you a moment to read it.

MR. AUTERI: Can I ask which patent was this declaration for?

MS. PENIZA: Exhibit 11, I believe was for the '812.

MR. AUTERI: Yes, thank you.

MS. PENIZA: Sure.

BY THE WITNESS:

A Yes, I've read 126.

BY MR. AUTERI:

Q What are you providing in Paragraph 126, Mr. Crosby?

A Well, there are a couple of elements of 126. One is Mehta is directed to and focused on applying energy to the tissue, and Mehta discloses several ways to confirm the location of the probes after insertion to ensure energy is not delivered to the unintended location, and then I talk about some of the ways in which Mehta discloses that.

On the other hand, Na '848 is an acupuncture-type device, as we discussed, to create a plurality of micro wounds or holes in dermatological layers of skin. It does not disclose delivering electrical energy to the skin but rather only discloses vibrating the needles.

Thus, in the Na '848 device there is no need to configure the location of the needles once they penetrate the tissue because no electrical energy will be delivered via the needles.

Q In your opinion would a person of ordinary skill in the art combine Mehta and Na '848 to arrive at the claims of the '812 patent at issue in this IPR?

A In my opinion, no.

Q You were asked some questions about the signals in Na '848 that are used to vibrate the pins.

Do you recall that?

A I do recall that.

Q Does Na '848 disclose any mechanism to confirm the location of needles once they are inserted into skin?

A No, it does not.

Q Looking at Na '848, what is the purpose of the signals that are generated and sent to the needles? And I'll direct you to Paragraph 29 of Exhibit 10 if that helps.

A Paragraph 29 says: "When active the pins 351, 352 may form at least one dipole pier. The signal generator or module 370 may generate a vary -- it says vary I think it means -- variety of signals such as shown as Figures 5A through to 6 to vibrate one or more dipole pier or bipolar piers."

Q Even assuming that current is or some current is passed via the pins to the skin when the signals are provided to the pins to vibrate them, would that change your opinion that a person of ordinary skill in the art would not combine Mehta and Na '848 to arrive at the claims at issue in the IPRs here?

A It would not change my opinion.

Q You were also asked certain questions about desired distance and undesired distance. Do you recall that?

A I do.

Q In the context of the claims of the IPRs at issue here, what does a user select with respect to the distance that the needles extend?

A Let me go back to make sure I understand the question.

You're asking about the claims construction of select a desired distance?

Q In that context, yes.

A Okay. Can I refer to how I discuss this in one of my reports?

Q Sure.

A Does it matter which one?

Q No.

A Let's go to '774 for the moment.

What I say in Paragraph 73 is: "In my opinion, the plain and ordinary meaning of desired distance is how far the extendable needle extends from the device's end surface using a motor or mechanism based on a user programming this distance."

So a user has to select the desired distance and then somehow interact with the device so that that desired distance is programmed and then delivered.

Q Does the user select an undesired distance

in the context of the claims of the patents at issue here?

A No.

Q You were also asked a lot of questions about your opinions at the ITC in the context of infringement. Do you recall that?

A I do.

Q Do you recall that the questions that you were asked were specific to your opinions on infringement of the Rohrer device at the ITC?

A I do remember that.

Q When you provided your opinions on the Rohrer device at the ITC, had the respondents proposed the term "desired distance" for construction?

A My recollection is that the term "desired distance" was not submitted for claims construction at that time either by respondents or petitioner, no.

But as the ITC proceeded, there were various claims that were construed. The parties exchanged definitions of claims construction. By

the time we got to the ITC hearing, after I was deposed and Dr. Woloszko was deposed and various others were deposed and the ALJ had ruled on certain claims construction, there was general agreement on what desired distance means, and I think Dr. Woloszko and I agree on what desired distance means.

Q At the ITC hearing was the Rohrer device at issue?

A My recollection is the Rohrer device had been withdrawn from the ITC hearing by that time.

Q Are the opinions that you provided at the ITC hearing with respect to the claimed desired distance for the '774, '536 and '812 patents consistent with your opinions in these IPRs?

A They are completely consistent with the opinions in these IPRs.

Q You were asked some specific questions regarding Exhibit 7 to this deposition and I'll give you a moment to pull that up, but that is the portion of your infringement report at the ITC.

A Yes, have it up. Which one are you

referring to?

Q You were asked a number of questions about your opinions in this report and you testified that you stood by some of those opinions. What did you mean by that?

A Well, they were the opinions I had at the time based on the claims construction at the time and the issues that had been disputed and agreed by the parties, and based on what we knew at the time that was my opinions.

Q Sitting here today, what does "desired distance" mean in the context of the '774, '536 and '812 patents?

A The desired distance is how far the extendable needles extend from the device's end surface using a motor or mechanism based on a user programming this distance.

Q If you had a device where the user selects the distance that the needles extend by using some kind of mechanical adjustment but that selection is not used in programming a motor or some other mechanism to extend the needles, would that meet

the desired distance limitations of the claims that are at issue in this IPR?

A It may not.

Q Have you analyzed the Rohrer device in the context of this IPR with your understanding of what "desired distance" means today?

A No, I have not.

MS. PENIZA: No further questions.

MR. AUTERI: I have no redirect or whatever you would call it. So I think we can go off the record.

(Deposition concluded at 4:51 p.m. CST.)

CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Theresa A. Vorkapic, Certified Reporter and Notary Public within and for the State of Illinois do hereby certify:

That PETER CROSBY, the witness whose deposition is hereinbefore set forth,

Was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the adverse party, patent owner, was represented by counsel at the deposition.

I further certify that the deposition of PETER CROSBY, occurred virtually on Tuesday, April 1, 2025, commencing at 10:10 a.m. to 4:51 p.m. CST.

I further certify the inspection, reading and signing of said deposition was waived on the record by agreement of all parties.

I further certify that I am not related to any of the parties to this action by blood

or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of April, 2025.



Theresa A. Vorkapic
My commission expires November 6, 2027.
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