

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BOWMAR ARCHERY LLC Petitioner,

v.

VETERAN'S INNOVATIVE PRODUCTS, LLC Patent Owner.

Patent No. 8,043,177

Filing Date: July 7, 2008

Issue Date: October 25, 2011

Title: ARROWHEAD HAVING COLLAPSIBLE AND OUTWARDLY

BIASED BLADES

Inter Partes Review No.: IPR2024-00401

REMOTE ZOOM VIDEO CONFERENCE

DEPOSITION OF WAYNE A. WILLKOMM

November 19, 2024

9:00 a.m. to 5:23 p.m. (CST)

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REPORTED BY JOHN T. SCHINDHELM, RPR, RMR, CRR
APPEARING REMOTELY FROM WAUKESHA COUNTY, WISCONSIN

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ALSO PRESENT:

Robert Morison, MLV Technician

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DOCUMENTS/INFORMATION REQUESTED

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Q. Did you write your declaration from 142 1
 scratch?
 Q. How did Mr. McKinnie help in drafting 142 14
 the declaration?
 Q. There were revisions to your 186 12
 declaration that were provided by
 Mr. McKinnie; correct?

TRANSCRIPT & EXHIBIT DISPOSITION

Original transcript delivered to Attorney Shull
 with original exhibits attached.

Exhibit copies attached to all ordered
 transcripts.

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PROCEEDINGS

(Commencing at 9:04 a.m.)

WAYNE A. WILLKOMM, called as a witness
 herein by the Petitioner, having been first duly
 sworn on oath, was examined and testified as
 follows:

EXAMINATION

BY MR. SHULL:

Q. Good morning. Can you please state your name and
 spell it for the record?
 A. Wayne A. Willkomm.
 Q. Can you spell that for us, please?
 A. First name, W-a-y-n-e, middle initial A, last
 name Willkomm is spelled W-i-l-l-k-o-m-m.
 Q. Mr. Willkomm, where do you currently reside?
 A. 8271 Duncan, D-u-n-c-a-n, Road, Glen Haven, two
 words, G-l-e-n, H-a-v-e-n, W-I for Wisconsin,
 53810.
 Q. And are you located there today for the
 deposition? Are you located there for today's
 deposition?
 A. Yes.
 Q. Mr. Willkomm, have you ever been deposed before?
 A. Yes.
 Q. In what circumstances have you been deposed?

1 A. For a federal lawsuit in the Northern Illinois
2 District Court, case Neal vs. Honeywell in the
3 1990s.

4 In addition, I have been deposed for a
5 circuit court lawsuit of which I was a principal
6 in Grant County, Wisconsin.

7 Q. Okay. Let me ask you real quick, do you have
8 anybody in the room with you today?

9 A. No.

10 Q. I'm going to ask you some questions about this
11 particular matter and I'm going to give you some
12 instructions before I do that.

13 Similar to those previous depositions
14 where you were deposed, if you don't hear a
15 question, say so and I'll repeat it. If you do
16 not understand a question, say so and I'll
17 rephrase it if necessary. If you answer the
18 question, I will assume that you've heard it and
19 understood it and given me your best answer.

20 Do you understand the instructions that
21 I've just given you?

22 A. Yes.

23 Q. Mr. Willkomm, how did you prepare for today's
24 deposition?

25 A. I reviewed pertinent documents that were sent to

1 Q. Sure.

2 A. It is a summary of patents that had been referred
3 to --

4 MR. MC KINNIE: Wait. One second. I
5 meant to object but I was on mute.

6 You don't need to disclose any
7 attorney-client privileged information. And
8 also, if you don't have --

9 Jason, just as far as notes and things
10 like that --

11 MR. SHULL: Let's go off the record
12 real quick. Yeah, let's go off the record.

13 (Discussion held off the record.)

14 BY MR. SHULL:

15 Q. So, Mr. Willkomm, the notes that you're referring
16 to, those are notes that were provided to you by
17 counsel, and I don't want to know about those
18 notes. My question is, do you have any notes
19 with you that you're using to testify today?

20 A. (No response.)

21 Q. Did you hear my question?

22 A. Yes, I heard the question.

23 Q. Do you have any --

24 A. The answer would be yes, with your approval.

25 Q. Okay. Maybe I need to understand what you're

1 me, with I believe your approval, by Jason
2 McKinnie.

3 Q. Can you identify the documents that you reviewed
4 in preparing for your deposition?

5 A. Yes.

6 Q. What documents are they?

7 A. There are a packet of three. I will summarize
8 the three if you will allow me to do so.

9 Q. Sure, go ahead.

10 A. The first packet is a declaration of Wayne
11 Willkomm, Ex. 2008.

12 The second packet is a group of
13 patents. The front one or first one is the
14 Flanagan '177 Patent.

15 There are others underlying it. Do you
16 want me to detail each one of those?

17 Q. No, that's not necessary.

18 A. Okay. The third packet is Patent Owner's
19 Response with a corrected table of contents.

20 Q. Do you have any personal notes with you today
21 during the deposition?

22 A. I have some in the room, but not close to me.

23 Q. What do those notes pertain to?

24 A. I will reach and get one, with your permission,
25 sir.

1 referring to specifically. So you do have notes
2 with you that you're using to aid in testifying
3 today. What notes are those?

4 A. I'm sorry. Pardon me. Documentation rather than
5 notes, sir.

6 Q. Understood. Okay. So you don't have any
7 handwritten notes that you're using to testify
8 today with. Okay.

9 Who did you speak with in preparing for
10 today's deposition?

11 A. Please say again, sir.

12 Q. Yeah. Who did you speak with in preparing for
13 today's deposition?

14 A. Jason McKinnie.

15 Q. Anybody else other than Mr. McKinnie?

16 A. No.

17 Q. Okay. So you consider yourself to be an expert
18 with respect to broadheads.

19 A. Yes.

20 Q. And your declaration states that you have
21 experience using broadheads.

22 A. Yes.

23 Q. And your declaration states that you have
24 experience developing broadheads.

25 A. Yes.

- 1 Q. In Appendix A of your declaration you included a
2 photograph of two broadheads that you apparently
3 developed; is that right?
4 A. Yes.
5 Q. And those broadheads were used to hunt live game?
6 A. No.
7 Q. Were they used to hunt anything?
8 A. No.
9 Q. Is that because they were prototypes?
10 A. Yes.
11 Q. Okay. Your declaration indicates that you're an
12 experienced hunter. What type of live game have
13 you hunted over your decades of experience?
14 A. White-tail deer.
15 Q. Other than --
16 A. Rabbits. Squirrels. Wild turkeys. Black bear.
17 Q. Are there --
18 A. Coyotes.
19 Q. Can you say that last one again? I'm sorry, I
20 interrupted you.
21 A. Coyotes.
22 Q. Have you ever hunted birds?
23 A. Yes.
24 Q. Other than the animals that you identified, are
25 there any other live game that you've hunted over

- 1 the span of your career?
2 A. As to birds, I have bow hunted and gun hunted
3 pheasants.
4 Q. Okay, and what other animals are included in the
5 live game that you've hunted?
6 A. Sir, I scouted as a part of hunting for mule deer
7 in California.
8 Q. In your experience the term "live game" is not
9 limited to any particular type of animal; right?
10 A. I did not include fish, but they are live
11 animals.
12 Q. So the term "live game" does not include fish in
13 your opinion.
14 A. I just did not include them in the answer to you,
15 sir.
16 Q. Gotcha.
17 A. Many people consider them animals. And I have
18 hunted carp, sheepshead during bowfishing.
19 Q. Do you consider fish to be live game?
20 A. Yes.
21 Q. So you live in Wisconsin. Does the State of
22 Wisconsin have any restrictions on what type of
23 live game can be hunted with bow and arrow?
24 A. Yes.
25 Q. What restrictions are those?

- 1 A. There is a population of elk; there is a
2 population of bears; there is a population of
3 mountain lions. There are bears in parts of the
4 state where they have restrictions to not allow
5 hunting of them, as well as restrictions on all
6 the other game I just mentioned.
7 Q. So your declaration indicates that you've been
8 involved in the engineering, design and
9 development of archery projectiles for all of
10 your 59-year professional career and 65-year of
11 your personal life; correct?
12 A. Yes.
13 Q. And your declaration also indicates you've
14 completed training courses in the use of AutoCAD
15 and training courses in the use of Pro/ENGINEER
16 and PRODAS.
17 A. Yes.
18 Q. Do you consider yourself to be proficient in
19 reading and understanding engineering drawings?
20 A. Yes.
21 Q. Do you consider yourself to be proficient in
22 reading and understanding figures and patents?
23 A. Yes.
24 Q. With respect to archery projectiles, do you
25 consider yourself an expert in being able to

- 1 understand and interpret how projectiles function
2 just by reviewing the drawings?
3 A. In most cases.
4 Q. And is that because sometimes a picture is worth
5 a thousand words?
6 A. Yes.
7 Q. And sometimes figures can convey complex ideas
8 more effectively than words.
9 A. Yes.
10 Q. All right.
11 A. And sometimes less effectively.
12 Q. Let's refer to your declaration. And
13 particularly, I want to go to Section IV of your
14 declaration entitled, Applicable Legal
15 Principles.
16 A. May I refer to the document or pick the document
17 up?
18 Q. You may. Absolutely. Let's use the document you
19 have in front of you for ease of use.
20 A. That is my declaration and you wish me to go to
21 Section IV; is that correct?
22 Q. That's correct. It's entitled, Applicable Legal
23 Principles.
24 A. Could you say what page that is on, sir?
25 Q. Ah, sure. I'll pull that up for you. Page 7.

1 A. I have page 7 in front of me.
 2 Q. Okay. So Section IV of your declaration is
 3 entitled, Applicable Legal Principles. My
 4 question is, why did you include this section in
 5 your declaration?
 6 MR. MC KINNIE: Objection, just so
 7 that -- Mr. Willkomm, you don't have need to
 8 disclose any attorney-client privileged
 9 communications with me.
 10 BY MR. SHULL:
 11 Q. You can answer the question.
 12 A. I am not a lawyer.
 13 Q. Okay. Do you know why you included this section
 14 in your declaration?
 15 A. Yes.
 16 Q. And why did you include this section in your
 17 declaration?
 18 A. My general knowledge of an IPR proceeding.
 19 Q. Who told you about the legal principles that you
 20 included in this section?
 21 A. Jason McKinnie.
 22 Q. And you're referring to the patent owner's
 23 attorney, Jason McKinnie?
 24 A. Yes.
 25 Q. So Mr. McKinnie told you what legal principles to

1 include in your declaration?
 2 MR. MC KINNIE: Objection. Again, you
 3 don't need to disclose any attorney-client
 4 privileged information.
 5 BY MR. SHULL:
 6 Q. I mean, does your declaration state that you
 7 received the legal principles from patent owner's
 8 counsel? Doesn't it say that?
 9 A. I'm looking to answer your question, sir.
 10 (Witness peruses document.)
 11 BY MR. SHULL:
 12 Q. Well, let me ask you this. Do you know where the
 13 legal principles that you included in Section IV
 14 of your declaration came from?
 15 A. Yes.
 16 Q. And where do they come from?
 17 A. Jason McKinnie.
 18 Q. Okay. So does Section IV contain all the legal
 19 principles that you applied in rendering your
 20 opinions in this matter?
 21 A. Please repeat.
 22 Q. Does Section IV contain all of the legal
 23 principles that you applied in rendering your
 24 opinions in this matter?
 25 A. No.

1 Q. Okay. So let me ask you this. Were there legal
 2 principles that you were told about that you did
 3 not include in Section IV of your declaration?
 4 A. Yes.
 5 Q. Okay. So did you apply any of the legal
 6 principles that you did not include in your
 7 declaration in forming your opinions in this
 8 case?
 9 A. Would you please repeat that question, sir?
 10 Q. Are there any legal principles that you did not
 11 identify in your declaration that you used in
 12 forming your opinions in this case?
 13 A. I had general knowledge from prior depositions
 14 that were most likely consistent but may have
 15 been not exactly the same because I was deposed
 16 in federal court and in circuit court, not in an
 17 activity like this.
 18 Q. So you've never been deposed in an IPR.
 19 A. That is correct.
 20 Q. Okay. So the legal principles you're referring
 21 to don't relate to an IPR; correct?
 22 A. I cannot say.
 23 Q. Okay. In the first paragraph of Section IV you
 24 state that "... in an Inter Partes Review
 25 proceeding, claims are to be given their broadest

1 reasonable interpretation ... in accordance with
 2 the ordinary and customary meaning of such claim
 3 as understood by one of ordinary skill in the art
 4 and the prosecuting history pertaining to the
 5 patent."
 6 Did I read that correctly?
 7 A. It goes on two different pages so I -- it's
 8 taking me a little while, Jason.
 9 Q. Sure.
 10 A. I believe you said that correctly.
 11 Q. Okay. Is that the standard you applied in
 12 construing the claims of the patent at issue in
 13 this matter?
 14 A. Yes.
 15 Q. And the patent at issue in this matter has been
 16 referred to as the '177 Patent; correct?
 17 A. Yes.
 18 Q. So for purposes of today's deposition, and for
 19 purpose of brevity, I'm just going to refer to
 20 that patent as the Flanagan Patent or just
 21 Flanagan. Is that fair?
 22 A. Yes.
 23 Q. Okay. Do you have Exhibit 1012 in front of you
 24 which we referred to as the Liechty Patent?
 25 L-i-e-c-h-t-y?

1 MR. MC KINNIE: Jason, what number did
2 you say on that?

3 MR. SHULL: I think it's 1012.

4 THE WITNESS: I had a Liechty '224 on
5 the end.

6 BY MR. SHULL:

7 Q. For purpose of helping you find it, it's U.S.
8 Patent No. 6,287,224, and we'll refer to that as
9 the Liechty Patent. Do you have that in front of
10 you?

11 A. Yes. I have the '224 Patent in front of me here,
12 yes.

13 Q. Okay, good. Let's refer to Figure 5 in Liechty.
14 And I'm just going to ask you some questions
15 about Figure 5 because you've rendered some
16 opinions regarding this patent in your
17 declaration and I want to ask some questions
18 today to make sure we understand your expert
19 opinions.

20 So looking at Figure 5 first --

21 Well, let me digress, I'm sorry. So
22 you have the patent in front of you. Let's start
23 out with some basic questions about how the
24 broadhead in Liechty works.

25 Please turn to column 8 at about

1 Did you see where I read that?

2 A. Yes.

3 Q. Did I read that correctly?

4 A. I think you read that correctly, yes.

5 Q. Okay. When describing Figure 5, Liechty is
6 stating that Figure 5 is showing the blades in a
7 fully open position; correct?

8 A. Yes.

9 Q. And it states that the annular spring continually
10 urges the blades forward.

11 A. Yes.

12 Q. Okay. So now we can turn to Figure 5 of Liechty.
13 So go to the figures. And go to Figure 5. I'm
14 going to ask you some just basic questions
15 regarding the components that are shown in
16 Figure 5. Let me know when you're there.

17 A. Yes.

18 Q. Okay. Figure 5 shows a broadhead.

19 A. Yes.

20 Q. And that broadhead has a ferrule body?

21 A. Yes.

22 Q. What's your understanding of the term "ferrule"?

23 A. I believe I included it in a definition in my
24 declaration.

25 Q. You didn't, so that's why I asked. It's not in

1 line 53 in Liechty's specification. Let me know
2 when you're there.

3 A. What is the page number, sir?

4 Q. Column 8, line number 53. There's no page
5 numbers in patents, there's just columns and
6 lines. The columns are at the top of the pages.
7 Column 8, line 53.

8 A. I am actually at -- on the bottom it says line --
9 or page 16, but it is -- the top says '224 B1
10 Patent. And did you want the first column did
11 you say, Jason?

12 Q. No. I want you to go to column 8, line 53.

13 MR. SHULL: Let's go off the record.

14 (Discussion held off the record.)

15 BY MR. SHULL:

16 Q. Okay. So, Mr. Willkomm, are you at column 8 at
17 about line 53 in Liechty?

18 A. Yes.

19 Q. Okay. So there's a description of Figure 5 which
20 states:

21 "Figure 5 is a full-length longitudinal
22 cross-section of a blade-opening arrowhead as
23 illustrated in Figure 2, showing the blades in
24 the fully open position with an annular spring
25 continually urging the blades forward."

1 your declaration, so that's why I asked. What is
2 your understanding of the term "ferrule"?

3 A. The ferrule is usually the center portion of a
4 broadhead which attaches to the main arrow shaft
5 in some way or other. In Figure 5 that you
6 referred to, it is a cross-section with the lines
7 running from the top left to the lower right.

8 Q. So in Figure 5 of Liechty the rearward end of the
9 ferrule attaches to an arrow shaft.

10 A. That is correct.

11 Q. And the arrow shaft is not shown in Figure 5, but
12 we know that the rearward end attaches to the
13 arrow shaft; right?

14 A. That's right. The actual arrow shaft is not
15 shown; only the threads, yes, sir.

16 Q. And the forward end of the ferrule is at the tip
17 of the ferrule.

18 A. Yes.

19 Q. And the forward end or tip of the ferrule, that's
20 the portion of the broadhead that enters the
21 animal or the target first.

22 A. No.

23 Q. What enters the animal first, the blades, tip of
24 the blades?

25 A. The tip. The tip.

1 Q. The tip, yeah. The forward end of the -- or the
2 tip; right? That's the portion of the broadhead
3 that enters the animal first.
4 A. The tip, not the ferrule. Please note --
5 Q. The tip of the ferrule.
6 A. Yes.
7 Q. Sure. The tip of the ferrule is the portion of
8 the broadhead that enters the animal first;
9 correct?
10 A. Portion of the ferrule. The tip is a separate
11 component. It's shown there as Figure No. 32.
12 That is the first portion of the broadhead that
13 enters the animal. The tip.
14 Q. I agree.
15 A. The ferrule -- yes, okay.
16 Q. Okay. There are two blade members shown in
17 Figure 5 of Liechty; correct?
18 A. Yes.
19 Q. Okay. So -- and each of the blade members of the
20 Liechty broadhead has two ends.
21 A. Yes. In the two-dimensional figure.
22 Q. Yes. And in Figure 5 the blades have a first end
23 that are pivotally connected to the ferrule body
24 by a hinge pin.
25 A. The blades have an end which is connected to the

1 ferrule by the pivot point.
2 Q. Yup. And the pivot point, that's connected --
3 the pivot point is where the blades are connected
4 to the ferrule body by a hinge pin; correct?
5 A. Yes.
6 Q. And the blades have a second end -- we'll call
7 that the free end, right? -- that's able to
8 rotate freely, which is not connected to the
9 ferrule body?
10 A. That is correct.
11 Q. And in Figure 5, that second end is spaced a
12 distance away from the ferrule body.
13 A. Yes.
14 Q. In Figure 5, how far away from the ferrule body
15 are the second ends of the blade members? Can
16 you measure that?
17 A. It can be estimated.
18 Q. Okay. If you had a measuring tape you could
19 measure it; correct?
20 A. There's not a scale on this figure, sir.
21 Q. I know, but if you had a measuring tape and you
22 put it up against the patent, you'd be able to
23 measure that distance; correct?
24 A. Approximately.
25 Q. Sure.

1 A. By assuming the shaft, which is not there, is
2 normally about 21/32nds, using that as a
3 approximate reference, I could estimate then the
4 distance, sir.
5 Q. Sure. Figure 5 shows a biasing member annular
6 spring 80.
7 A. Yes. Appears to be a cross-section of a coil
8 spring.
9 Q. Correct. Let's turn to paragraph 114 of your
10 declaration. You can put that patent down right
11 now. We'll come back to it. But let's quickly
12 look at paragraph 114 of your declaration.
13 A. I have paragraph 114 in front of me.
14 Q. Okay. So in paragraph 114 you're describing your
15 understanding of how the broadhead in Liechty
16 operates.
17 And I want to go to approximately seven
18 lines down in paragraph 114. It starts, "When
19 the wings 64 of the blades 50" Do you see
20 that? About seven lines down?
21 A. Yes.
22 Q. Okay. So paragraph 114 of your declaration
23 states:
24 "When the wings 64 of the blades 50
25 contact an animal, the blades 50 are compressed

1 rearward against the springs 80. Exhibit 1012 at
2 12:2-11. The wings 64, having a forward angle,
3 rotationally drive each blade 50 rearward toward
4 the open or extended position along the hinge pin
5 70."
6 Did I read that correctly?
7 A. Yes. I think so.
8 Q. Okay. So now we're going to switch to AgileLaw.
9 So pull up AgileLaw on your screen. I'm going to
10 show you Exhibit 1022, which has been premarked.
11 (Deposition Exhibit 1022 marked and
12 introduced.)
13 BY MR. SHULL:
14 Q. When you pull up AgileLaw you should be able to
15 see Exhibit 1022. And you can blow it up to see
16 the figures. Let me know when you can see
17 Exhibit 1022.
18 A. I can see it.
19 Q. Okay.
20 A. It's very small.
21 Q. You can blow it up. And if the --
22 A. I'm trying to.
23 MLV TECHNICIAN: Yeah, there should be
24 a plus or a minus button towards the top, above
25 the document.

1 BY MR. SHULL:

2 Q. So Exhibit 1022 contains figures depicting the
3 blades in Liechty progressing from the fully
4 closed position to the fully open position. And
5 we've labeled Figures A, B, C, D and E.

6 A. I am in the process of blowing it up. There are
7 a menu -- okay -- that allows me to blow it up.
8 Okay.

9 MR. MC KINNIE: I'm going to object to
10 this exhibit being introduced as not being part
11 of the record prior to today. And Mr. Willkomm
12 has not had an opportunity to review it as it
13 was not part of Dr. Kuhn's declaration or part
14 of the petitioner's IPR petition.

15 MR. SHULL: I'm cross-examining
16 Mr. Willkomm based on his expert opinions. He
17 could be asked questions regarding the operation
18 of a Liechty broadhead because he's rendered
19 opinions on the Liechty broadhead, and I'm
20 asking him questions about the operation of
21 Liechty broadhead as depicted in this figure.

22 BY MR. SHULL:

23 Q. So, Mr. Willkomm, can you see the figures in
24 Exhibit 1022?

25 A. Yes.

1 Q. So in your opinion do these figures accurately
2 depict what the broadhead in Liechty looks like
3 as the blades move or progress from a fully
4 closed position to the fully open position?

5 A. (No response.)

6 Q. Do you need me to repeat the question?

7 A. On my screen I can only see -- when I blow it up
8 I can only see the open and -- the forward and
9 rearward positions, not any of the in-between
10 ones.

11 Q. Okay. Well, let's go off the record because
12 you're having a problem with AgileLaw.

13 (Discussion held off the record.)

14 BY MR. SHULL:

15 Q. So, Mr. Willkomm, in your opinion do these
16 figures in Exhibit 1022 accurately depict what
17 the broadhead in Liechty looks like as the blades
18 move or progress from a fully closed position to
19 the fully open position?

20 A. I have to blow up the E so I can see it better
21 because there is a --

22 Q. Okay. I thought -- at the break I thought you
23 had done that.

24 A. But not examine the detail of which you're
25 asking. In looking at Figure 5 in detail, the

1 blades appear to have fully compressed the coil
2 spring.

3 Q. Sure. Do you understand my question, sir? My
4 question was in your opinion --

5 A. Please repeat it.

6 Q. In your opinion do these figures accurately
7 depict what the broadhead in Liechty looks like
8 as the blades progress from a fully closed
9 position, which is shown in Figure A, to a fully
10 open position, which is shown in Figure E?

11 A. Yes.

12 Q. Okay. So during --

13 A. At locations.

14 Q. Yeah. So during the use of a Liechty broadhead,
15 the force from contacting the animal drives the
16 blades rearward against the spring tension, and
17 the blades rotationally move rearward toward the
18 fully open position along the hinge pin 70;
19 correct?

20 A. Yes.

21 Q. And the force from hitting the animal is going to
22 push the blades rearward against the spring
23 tension until the blades reach the position shown
24 in Figure E.

25 A. Not necessarily. It depends upon the quarry, the

1 angle of impact, and the material that the
2 broadhead blades impact.

3 Q. Okay. So --

4 A. Do you need an example?

5 Q. No. So at some point during the use of the
6 broadheads, the blades could move forward from
7 the full open position back to the fully closed
8 position.

9 Well, let me ask you this.

10 A. If --

11 Q. During the use of the broadhead, if the blades
12 get to the fully open position as shown in
13 Figure E in this exhibit, at some point during
14 the use of the broadhead they're going to go back
15 to the fully closed position; correct?

16 A. It depends upon the passage in penetration of the
17 broadhead to know that. Can I give you an
18 example?

19 Q. No, you can't. So let me ask you this. So when
20 the broadhead is in the position shown in
21 Figure E in Exhibit 1022, is it always going to
22 stay in that position?

23 A. No, not necessarily. But it could.

24 Q. What about when you -- what about when the
25 broadhead exits the animal? Is the broadhead

going to stay in the position shown in Figure E?

A. No.

Q. What's gonna happen to the blades when the broadhead exits the animal?

A. If and when the broadhead exits a given quarry, it depends upon the medium that the quarry was in as to determining where the resistance through the medium versus the load from the coils.

In the case of a white-tail deer, for example, it should be in air and would allow the blades to go forward.

If it's through a fish, for example, in a medium of water, it will not go to the fully closed. There's too much resistance from the water medium to allow that.

Q. Okay. Well, let's talk about hunting deer. So if the broadhead is in position E, in Exhibit 1022, and then the broadhead exits the animal, the blades are gonna move to the fully closed position; correct?

A. Forward, yes.

Q. And the spring causes the blades to move forward in that circumstance; correct?

A. The springs are acting upon the blades, yes. In that direction.

Q. Yes. Let's take a look at Exhibit 10 --

Well, let me ask you this. So under what other circumstances --

So we identified the circumstance where the broadhead is in position 5 and it exits the deer, the blades are gonna move back to the fully closed position.

Under what other circumstances in your experience would the broadhead, if it's in position as shown in Figure E, is it then gonna move back to the fully closed position?

A. If it comes to a stop within the animal where the load is such -- is so low on the blades, the spring will cause those blades to go into a closed position.

Q. So let's take a look at Exhibit 1023. It's been premarked.

(Deposition Exhibit 1023 marked and introduced.)

BY MR. SHULL:

Q. If you can bring up Exhibit 1023 on AgileLaw, please do so.

MR. MC KINNIE: I'm going to object to 1023 on the same grounds that it had not been previously produced or utilized in the petition.

BY MR. SHULL:

Q. So Exhibit 1023 -- similar to Exhibit 1023, it contains five figures. In this -- this exhibit depicts the blades in Liechty progressing from the fully open position back to the fully closed position. We have labeled those Figures A, B, C, D and E.

A. Help me here. Again, I need to refer to the correct document and look at it?

Q. No. You need to go to the exhibit that we have on AgileLaw. We've pulled up a new exhibit. Exhibit 1023.

A. Okay. I only see Exhibit 1022 right now.

Q. Yeah. So you can click on Exhibit 1023.

A. Okay, I don't see it. It's not showing up in my --

MR. MC KINNIE: Look on the left side of your screen.

THE WITNESS: Okay, I will go to the left side.

MR. MC KINNIE: A yellow 1022 and then a yellow 1023.

THE WITNESS: I can't see it, but there's some indicators at the top I can click and I'll try to.

MR. SHULL: Yeah, let's go off the record.

THE WITNESS: Okay. Now I clicked on the left and I can now see 1023. Yes, sir, I can now see that.

BY MR. SHULL:

Q. Okay. So figures in Exhibit 1023 are labeled A, B, C, D and E.

A. Uh-huh.

Q. Similar to the previous exhibit, but now we're just going from the open position back to the closed.

My question is, in your opinion do the figures accurately depict what the broadhead looks like as the blades move or progress from the fully open position, which is shown in Figure E, back to a fully closed position, which is shown in Figure A?

A. (No response.)

Q. Do you need me to repeat the question?

A. Yes.

Q. In your opinion do the figures accurately depict what the broadhead looks like as the blades move or progress from the fully open position, which is shown in Figure E, back to the fully closed

- 1 position, which is shown in Figure A?
- 2 A. No.
- 3 Q. Why does that not accurately depict what the
- 4 blades would look like as the blades progress
- 5 from a fully open position back to a fully closed
- 6 position?
- 7 A. Looking closely at the figures, the open position
- 8 is correct. It's fully open. Look carefully at
- 9 the closed position. The very forward portion of
- 10 the tips in the drawing show there's a gap
- 11 between the ferrule and the blades.
- 12 Q. Okay.
- 13 A. So it's not quite fully closed.
- 14 Q. Okay. So you're perceiving a gap in Figure A
- 15 between the blades and the ferrule?
- 16 A. That is correct.
- 17 Q. Okay. Aside from that gap that you're perceiving
- 18 in Figure A, do the figures otherwise depict what
- 19 the broadhead looks like as the blades move or
- 20 progress from the fully open position back to the
- 21 fully closed position?
- 22 A. Yes.
- 23 Q. So during use of the broadhead, the continual
- 24 urging force produced by the annular spring
- 25 drives the blades in a forward direction back to

- 1 the fully closed position.
- 2 A. (Witness peruses document.)
- 3 Q. This is a question that's not referring to the
- 4 figures, sir. I'm asking you based on your
- 5 experience and knowledge of the understanding of
- 6 the operation of a Liechty broadhead.
- 7 My question is, based on your
- 8 experience as an expert in this case, during use
- 9 of the broadhead, the continuing urging force
- 10 produced by the annular spring of the blades will
- 11 move forward to the fully closed position.
- 12 Correct?
- 13 A. Toward the fully closed position.
- 14 Q. Yeah. So, again, at what point during use of the
- 15 broadheads are the blades in the position shown
- 16 in Figure E? Under what circumstances will the
- 17 blades appear like they are shown in Figure E?
- 18 A. That's the fully open position.
- 19 Q. Yeah.
- 20 A. That is when the medium through which the blades
- 21 are passing, whether it's the air, water, or a
- 22 quarry and the various layers of a quarry, are
- 23 such that the force to open is more than the
- 24 resisting coil force and so that causes the
- 25 blades to go to the fully open position.

- 1 Q. And then, after the broadhead is in the fully
- 2 open position, when do the blades start moving
- 3 back forward, in your experience?
- 4 A. When the resistance of the medium through which
- 5 it's traveling is less than the spring force,
- 6 then the blades will then move forward toward the
- 7 closed position.
- 8 Q. Could that occur while the broadhead is moving in
- 9 an animal?
- 10 A. Yes.
- 11 Q. Could that occur when the broadhead exits an
- 12 animal if you're hunting deer?
- 13 A. Yes.
- 14 Q. And, again, the blades are moving forward from
- 15 the force of the annular spring; correct?
- 16 A. Overcoming the resisting force, yes. If they do.
- 17 Q. Okay. So let me ask you this.
- 18 In your experience as an expert, will
- 19 the blades of the Liechty broadhead move forward
- 20 as depicted in the figures of Exhibit 1023 after
- 21 the broadhead comes to a stop in the animal?
- 22 A. No, not against, for example, ribs either going
- 23 in or going out.
- 24 Q. What if it stops in the stomach of the deer?
- 25 A. In the stomach, it depends upon which part of the

- 1 abdominal section you're referring to. Any one
- 2 of the four stomachs and also the large and small
- 3 intestines all have different coefficients of
- 4 resistance.
- 5 So answering your question is a yes and
- 6 no. There are situations where it will. For
- 7 example, if it does not have in the abdominal
- 8 section hitting where there is not a resisting
- 9 force that's enough to keep the spring fully
- 10 compressed, it will decompress and push those
- 11 blades somewhat forward.
- 12 In the abdominal cavity, only at the
- 13 very top where there is a gap and air on the
- 14 inside of the abdominal cavity would -- and it
- 15 would stop right at that point, that would allow
- 16 some movement forward.
- 17 Q. How much movement forward?
- 18 A. Of the blades.
- 19 Q. How much movement forward?
- 20 A. It depends on where it stops in the animal. If
- 21 it stops where let's say the tip, for example, is
- 22 touching the far side, then the blades would only
- 23 go so far forward until they touch the inside of
- 24 the rib cage.
- 25 If it hit on the inside of the

1 intestines, depending on the resistance of the
 2 walls of the large or small intestines, or the
 3 stomachs themselves can offer enough resistance
 4 so they would not allow the blades to go fully
 5 forward.
 6 Q. But the blades will move somewhat forward;
 7 correct?
 8 A. Yes.
 9 Q. And then, when the broadhead altogether exits the
 10 animal, the blades will move to the fully closed
 11 position; correct?
 12 A. Yes, they will move toward the fully closed
 13 position if they are structurally intact and have
 14 passed through the animal.
 15 Q. Let's take a look at Exhibit 1024.
 16 (Deposition Exhibit 1024 marked and
 17 introduced.)
 18 BY MR. SHULL:
 19 Q. That's also been premarked and it's going to be
 20 pulled up on AgileLaw. Let me know when you can
 21 see that exhibit.
 22 A. Yes, I have that in front of me now.
 23 Q. Okay. Exhibit 1024 contains Figures C, D, and E.
 24 These are the same figures from the previous
 25 exhibits. We've just added some vertical lines

1 to the figures to illustrate the distances
 2 between the ends of the blades and the ferrule
 3 body as the broadhead progresses from Figures E
 4 to Figure D and then to Figure C. Let's start
 5 with Figure E.
 6 MR. MC KINNIE: I'm just going to
 7 object to the exhibit on the previous same
 8 grounds.
 9 BY MR. SHULL:
 10 Q. So looking at Figure -- let me know if you can
 11 see Figure E in this exhibit.
 12 A. Yes, I can see Figure E.
 13 Q. So there's a distance between the end of the
 14 blades and the ferrule body. We have a red
 15 double arrow showing that distance and we've
 16 labeled that with a number 1 in the first
 17 instance. Do you see that?
 18 A. Yes.
 19 Q. Okay. Now look at Figure D. Figure D, there's a
 20 distance between the end of the blades and the
 21 ferrule body in Figure D. We have a green double
 22 arrow showing that distance. We labeled that
 23 with a number 2, a second distance. Do you see
 24 that?
 25 A. Yes.

1 Q. Okay. So my question is, the second distance,
 2 which is in green in Figure D, is greater than
 3 the first distance, which is red in Figure E;
 4 correct?
 5 A. That is correct.
 6 Q. Now let's compare Figures E and D. The second
 7 distance, which is in green, is larger than the
 8 first distance, which is in red; correct?
 9 A. Yes.
 10 Q. So the second distance is greater than the first
 11 distance; correct?
 12 A. Yes.
 13 Q. So now look at Figure C. In Figure C there's a
 14 distance between the end of the blades and the
 15 ferrule body. We have a blue double arrow
 16 showing that distance. We've labeled that with a
 17 number 3, a third distance. Do you see that?
 18 A. Yes.
 19 Q. And a third distance, which is in blue in
 20 Figure C, is greater than the second distance,
 21 which is in green in Figure D; correct?
 22 A. Appears to be slightly greater, yes.
 23 Q. So when comparing Figure C and D, the third
 24 distance, which is in blue, is greater than the
 25 second distance, which is in green; correct?

1 A. Yes.
 2 Q. So the third distance is greater than the second
 3 distance.
 4 A. Yes.
 5 Q. So the distance in Figure C is greater than the
 6 distance in Figure E.
 7 A. Appears to be slightly so.
 8 Q. Let's turn back to Figure 5 of Liechty. So you
 9 can grab the Liechty Patent.
 10 A. You're saying the Liechty Patent? Is that
 11 correct, sir?
 12 Q. Yeah. Actually, you know what? Hold on. Let's
 13 go off the record for a second.
 14 (Discussion held off the record.)
 15 BY MR. SHULL:
 16 Q. Yeah, go back to Figure 5 of Liechty. Pull up
 17 the Liechty Patent. Let me know when you have
 18 that in front of you.
 19 A. I have it. Figure 5 in front of me.
 20 Q. So as we discussed, after the broadhead is in the
 21 position shown in Figure 5, which is the fully
 22 open position, the blades are going to move in
 23 the forward direction as a result of the spring
 24 pushing the blades forward at some point during
 25 use of the broadhead.

1 A. If the resisting force opposing it is less than
 2 the spring force pushing on it.
 3 Q. Yeah. And I think we've already established in
 4 Figure 5 the first end of each blade is pivotally
 5 connected to the ferrule body; right?
 6 A. One end is, yes.
 7 Q. And the second ends are not connected and they're
 8 free to move forward under the force of the
 9 annular spring.
 10 A. If they overcome any resisting force, yes.
 11 Q. Yeah. Okay. So now let's look at Exhibit 1025.
 12 We can pull that up on AgileLaw. It's been
 13 premarked.
 14 (Deposition Exhibit 1025 marked and
 15 introduced.)
 16 BY MR. SHULL:
 17 Q. Let me know when you have Exhibit 1025 in front
 18 of you.
 19 A. I'm at 1025. Yes, I am.
 20 MR. MC KINNIE: Same objection to the
 21 previous exhibits.
 22 BY MR. SHULL:
 23 Q. So Exhibit 1025 contains Figures D and E. These
 24 are the same figures from the previous exhibits
 25 we have been looking at. And we've added some

1 red and blue circles to identify the first and
 2 second ends of the blade members.
 3 The first ends, which are pivotally
 4 connected to the ferrule body, are circled red.
 5 The second ends, which are not connected and are
 6 free to move under the force of the annular
 7 spring, are circled blue. Do you see that?
 8 A. Yes, I see that.
 9 Q. So in Figure E, the first end of the blade, which
 10 is circled red, is forward of the second end of
 11 each blade, which is circled blue.
 12 A. Relative to the forward end as depicted in the
 13 diagram. Or figure.
 14 Q. Yeah. Correct.
 15 A. Yes.
 16 Q. And the first end of the blade circled red is
 17 forward to the second end of the blade circled
 18 blue.
 19 A. Yes.
 20 Q. So the first ends of the blades are forward to
 21 the second ends of the blades in this figure.
 22 A. If you define the ends as the ones circled in
 23 blue?
 24 Q. Yes.
 25 A. Please rephrase the question.

1 Q. Sure. So the first ends of the blades, which are
 2 circled red, are forward of the second ends of
 3 the blades, which are circled blue; correct?
 4 A. Yes.
 5 Q. In Figure D, the first end of each blade, which
 6 is circled red, is forward of the second end of
 7 the blades, which is circled blue; correct?
 8 A. Yes. The ends circled in red are forward of the
 9 ends circled in blue. Yes.
 10 Q. Okay. Let's turn to paragraph 74 of your
 11 declaration.
 12 And before we do that, I want to remind
 13 you, Mr. Willkomm, if at any point in time you
 14 need to take a break, just let me know. This
 15 isn't a marathon. We can certainly take bio
 16 breaks, drink breaks, whatever works for you.
 17 A. Okay. Let's take a break right now then.
 18 MR. SHULL: Okay. Let's take a
 19 10-minute break. Is that okay?
 20 THE WITNESS: Fine, yes.
 21 MR. SHULL: Okay.
 22 (Recess taken at 10:13 a.m., until
 23 10:21 a.m.)
 24 BY MR. SHULL:
 25 Q. Let's go to paragraph 74 of your declaration?

1 A. Yes.
 2 Q. Okay. Let me know when you're there.
 3 A. I am there.
 4 Q. Okay. So, and I'm going to go to actually the
 5 portion of paragraph 74 which is actually on
 6 page 39. It's the second sentence under the
 7 first -- in the second full paragraph. It
 8 starts, "If or when the broadhead passes through
 9" Do you see that?
 10 A. Yes.
 11 Q. Okay. So at paragraph 74 of your declaration you
 12 state:
 13 "If or when the broadhead passes
 14 through the entire quarry, then there are no more
 15 forces against the outer portion of the barbs
 16 thus allowing them to expand. While it is
 17 possible the barbs will open some if the arrow
 18 remains embedded in the flesh, depending on the
 19 density of the flesh, it will not be biased to
 20 the open position unless it has exited the
 21 quarry. The biasing of the inner barbs are
 22 dependent on two elements: One, the spring, and
 23 two, the movable position of the shaft."
 24 Did I read that correctly?
 25 A. Yes.

1 Q. So when the broadhead disclosed in Lint exits the
 2 animal, the outer barbs will rotate forward;
 3 correct?
 4 A. Please repeat the question, sir.
 5 Q. Sure. When the broadhead disclosed in Lint exit
 6 the animal, the outer barbs will rotate forward.
 7 A. Yes.
 8 Q. And stated differently, when the broadhead passes
 9 through the entire animal, then there are no more
 10 forces against the outer portion of the barbs,
 11 thus allowing them to expand forward; correct?
 12 A. Yes. If there are -- is not a resisting force
 13 that will prevent that.
 14 Q. Right. How far will those outer barbs rotate
 15 forward?
 16 A. As far as their remaining structural integrity
 17 having passed through the animal will allow them
 18 to.
 19 Q. If the broadhead gets embedded in an animal,
 20 depending on the density of the flesh of the
 21 animal, the outer barbs will expand at least some
 22 amount; correct?
 23 MR. MC KINNIE: Objection, form.
 24 BY MR. SHULL:
 25 Q. I'll repeat that question. Did you hear my

1 question, sir? I can repeat it.
 2 A. Please repeat it, sir.
 3 Q. Yeah, let me -- let me say it a little bit
 4 different.
 5 So when the broadhead of Lint gets
 6 embedded in an animal, depending on the density
 7 of the flesh of the animal, the outer barbs will
 8 expand at least some amount.
 9 A. All the inner layers from the -- whether it's
 10 hair, skin, flesh, bone, that is true. But there
 11 will be different amounts because of all those
 12 different layers having different resistances.
 13 Q. So depending on the different resistances, the
 14 barbs could expand slightly differently.
 15 A. Very small amount or a larger amount, but not
 16 fully if they're -- because there'll be too much
 17 resistance in most cases.
 18 Q. Under what circumstances will the barbs expand
 19 forward when the broadhead is embedded in an
 20 animal?
 21 A. I related one in terms of using the example of a
 22 white-tail deer, and most other mammal quarry, if
 23 they're shot in the abdominal cavity there is a
 24 small gap of air in the very top that would not
 25 offer resistance.

1 If the blades -- both -- if a blade,
 2 either of the blades, are in that void area or
 3 air -- dead-air area, they will go as far forward
 4 as they can given their remaining structural
 5 integrity, having passed through the portion of
 6 the animal to get to that point.
 7 Q. So if the broadhead passes completely through the
 8 animal, the barbs will expand completely forward;
 9 correct?
 10 A. They will expand to the extent forward that they
 11 can, given their retained structural integrity
 12 and function in the medium on the off side.
 13 For example, if it's fish, they will
 14 still have the resistance through the water on
 15 the back side, which may keep them, along with
 16 the change in structural integrity, from fully
 17 expanding. But they will expand toward that
 18 direction as best they can.
 19 Q. Well, that would depend on the spring tension;
 20 correct? If the spring tension was set at a
 21 certain rate --
 22 A. That is correct. That is --
 23 Q. -- fully expand.
 24 A. That is correct, sir.
 25 Q. Okay. And it's the spring of the Lint broadhead

1 that causes the outer barbs to move forward or
 2 extend; correct?
 3 A. Yes.
 4 Q. Does the arrow shaft of the Lint broadhead move
 5 the outer barbs forward?
 6 A. We're talking Lint now; is that correct?
 7 Q. Correct.
 8 A. Is that --
 9 Q. Because we were talking about paragraph 74 of
 10 your declaration which you were describing Lint.
 11 And so my question is, did the arrow shaft move
 12 the outer barbs forward in the Lint broadhead?
 13 A. Let's see. I wanna make sure that I'm looking at
 14 the correct diagram of Lint. Is that correct?
 15 Q. Yes. You can look at Figure 2 --
 16 A. And Figure 1, yes. Now, please repeat your
 17 question, sir.
 18 Q. Sure. Does the arrow shaft in the Lint broadhead
 19 move the outer barbs forward?
 20 A. Depending upon the residual momentum of the arrow
 21 shaft, it could.
 22 Q. Are you reading from the Lint Patent?
 23 A. I'm looking at Figure 2 in my declaration of --
 24 in my declaration. On page 38, I'm looking at
 25 Figure 2.

1 Q. Is there anything in the Lint Patent that you
2 know of that indicates or states that the arrow
3 shaft moves the outer barbs forward?
4 A. I will have to look at the Lint Patent and --
5 Q. Well, when's the last time --
6 A. -- to answer --
7 Q. Let me ask you this. When's the last time you
8 reviewed the Lint Patent?
9 A. I think days ago.
10 Q. Okay. When you were reviewing the Lint Patent,
11 and obviously before that when you were preparing
12 your opinions in this case, did you see anything
13 in the Lint Patent that stated that the arrow
14 shaft moves the outer barbs forward?
15 A. Possibly.
16 Q. Sitting here today, you can't remember anything.
17 A. Well, I'm saying it's been days ago. And without
18 looking at Lint directly now, it is possible.
19 Q. Okay, but you've rendered an expert opinion --
20 A. But I can't say for absolutely sure, sir.
21 Q. Okay. If I represent to you that there's nothing
22 in the Lint Patent that states that the arrow
23 shaft moves the outer barbs forward, would that
24 surprise you?
25 A. (No response.)

1 Q. Do you understand my question, sir?
2 A. Yes, I understand the question. I am incubating
3 on it right now to give you an answer, sir.
4 MR. SHULL: Well, let's go off the
5 record while you incubate on my question.
6 (Discussion held off the record.)
7 BY MR. SHULL:
8 Q. Okay. You can go ahead and answer my question.
9 A. Your question -- am I surprised.
10 Q. I thought you were ready to answer.
11 A. I'm reading Lint's statement. It says:
12 "When the shaft is in the back position
13 as shown in Figures 1 and 2, the spring biases
14 the inner barbs against the shaft causing the
15 outer barbs to be in the open or extended
16 position."
17 So, in effect, the spring is biasing,
18 but so is the shaft. It depends on where the
19 shaft is screwed onto the ferrule.
20 Q. Let me ask you this. The arrow shaft being
21 screwed into the broadhead; correct?
22 A. Yes. At various locations.
23 Q. Yeah.
24 A. At various positions.
25 Q. Yes. And that defines how far the outer barbs

1 will be able to rotate forward; correct?
2 A. That is correct.
3 Q. And movement of the arrow shaft to the position
4 shown in Figure 2 in Lint permits the spring to
5 move the outer barb to an extended position;
6 correct?
7 A. Yes.
8 Q. In Lint, the top of the arrow shaft contacts the
9 inner barb portion of each barb to limit outward
10 travel of the barb; correct?
11 A. Please repeat.
12 Q. Sure. The top of the arrow shaft contacts the
13 inner barb portion of each barb to limit outward
14 travel of the barb; correct?
15 A. Repeat once more. And I want to make sure I
16 understand exactly what your question is.
17 Q. Sure. The top of the arrow shaft that contacts
18 the inner barb portion to limit outward travel of
19 the outer barb portion; correct?
20 A. Yes.
21 Q. And the top of the arrow shaft defines the
22 maximum distance the outer barb can travel
23 forward.
24 A. If it is screwed into place as in Figure 2, that
25 is correct. If it's totally unscrewed, then the

1 spring tension determines that.
2 Q. Yeah, let me ask you this. So if it's totally
3 unscrewed, what is pushing the blades forward in
4 Figure 2?
5 MR. MC KINNIE: Objection, form.
6 BY MR. SHULL:
7 Q. Let me ask it this way. If you unscrew the arrow
8 shaft from the broadhead, what is biasing the
9 outer barbs to the forward position?
10 A. Spring tension. The spring.
11 Q. Okay. When the top of the arrow shaft is screwed
12 all the way into the broadhead, that will cause
13 the outer barbs to completely close; correct?
14 A. Yes, as in Figure 1. Or, on the way, Figure 1 it
15 shows it's somewhat compressed.
16 Q. Sure.
17 A. Yes.
18 Q. In Figure 2, how does the top of the arrow shaft
19 aid in moving the outer barbs forward toward an
20 open position?
21 A. The top of the arrow shaft on the inside forms
22 the wall, or face if you will, of where the
23 spring contacts.
24 Q. My question was, how does the top of the arrow
25 shaft aid in moving the outer barbs forward

- 1 toward an open position?
- 2 A. I just answered your question, sir.
- 3 Q. No. Does the arrow shaft move the blades
- 4 forward?
- 5 A. No. You said the -- I'm sorry. Did you say the
- 6 tip of the broadhead or the tip of the arrow
- 7 shaft? Pardon me, I misunderstood your question.
- 8 Q. Sure. How does the top of the arrow shaft aid in
- 9 moving the outer barbs forward toward an open
- 10 position?
- 11 A. If it is screwed sufficiently away from the
- 12 broadhead, the spring tension -- if it's screwed
- 13 in far enough, not out -- if it's screwed in far
- 14 enough, it will -- the tip of the arrow shaft
- 15 will compress the spring through the barbs
- 16 themselves causing the barbs to a closed position.
- 17 Q. I agree with that. My question is, how does the
- 18 top of the arrow shaft aid in moving the outer
- 19 barbs forward toward an extended position?
- 20 A. As the arrow shaft is screwed into place, that
- 21 decreases the distance of the arrow shaft head to
- 22 the portion of the cavity where the spring is
- 23 located, thus compressing the springs and
- 24 allowing the barbs then to go closer into the
- 25 closed position.

- 1 Q. Do you have an understanding of the term
- 2 "biasing"?
- 3 A. I think so.
- 4 Q. What is your understanding of that term?
- 5 A. Biasing causes some object to do something in one
- 6 direction or another.
- 7 Q. Does the top of the arrow shaft bias the outer
- 8 barbs in an extended position?
- 9 A. As it is screwed in, as shown in Figure 2, if
- 10 it's screwed in closer to reduce that distance
- 11 between the inside of the tip of the arrow and
- 12 the arrow shaft tip, it will bias -- it will
- 13 compress the spring and bias the barbs to a
- 14 closed position. Toward a closed position.
- 15 Q. Okay. I want you to listen to my question that I
- 16 asked because you're answering a different
- 17 question I think.
- 18 My question is, does the top of the
- 19 arrow shaft bias the outer barbs in an extended
- 20 position?
- 21 A. Are you talking about the extended position in
- 22 Figure 2?
- 23 Q. Correct.
- 24 A. From the figure in Figure 2 you cannot tell.
- 25 That's a static figure. And you cannot tell from

- 1 the figure where there's any load at all from the
- 2 tip of the arrow shaft onto the -- they are in
- 3 contact, but you can't tell what the load is, if
- 4 there is any.
- 5 Q. The top of the arrow shaft defines how far the
- 6 outer barbs can open; correct?
- 7 A. It can, but if it's screwed entirely off the --
- 8 or the broadhead is screwed entirely off the
- 9 arrow shaft, the arrow shaft is not involved at
- 10 all.
- 11 Q. When the arrow shaft is screwed into the
- 12 broadhead, as shown in Figure 2, it defines how
- 13 far the outer barbs can open; correct?
- 14 MR. MC KINNIE: Objection, asked and
- 15 answered.
- 16 BY MR. SHULL:
- 17 Q. You can answer the question, sir.
- 18 A. I'm looking at the configuration to try to answer
- 19 your question.
- 20 The position in the figure you --
- 21 Does the arrow shaft define the extent
- 22 of the extended position? In the figure, yes.
- 23 Yes. Because the portions that are contacting
- 24 the arrow shaft are horizontal. So any movement
- 25 forward will decrease the blades, and any

- 1 movement to the contrary, that will allow those
- 2 blades to open farther.
- 3 It doesn't appear that there's any
- 4 restraint other than the spring tension, as to
- 5 what the spring tension alone would allow then.
- 6 Q. Okay. Let's look at column 2 of Lint. Turn to
- 7 column 2, please.
- 8 A. I have column 2 of 704.
- 9 Q. Yeah. Column 2 of the Lint Patent at lines 59
- 10 through 64. Let me know when you're there.
- 11 A. I'm there.
- 12 Q. Okay. Column 2, lines 59 through 64, of Lint,
- 13 states:
- 14 "In the operation of the arrowhead 10,
- 15 when the shaft 17 is retracted away from the
- 16 inner barb portions 22 of the barbs 19, the
- 17 spring 24 acts to hold the barbs 19 in the open
- 18 position of Figure 2. Under these circumstances,
- 19 the arrowhead is in condition for hunting live
- 20 game"
- 21 A. Please stop. I'm afraid I don't have the
- 22 right -- I said 704, column 2, which is page 11.
- 23 That is apparently not the correct one.
- 24 Q. All right. Let's go off the record and make sure
- 25 you have the right exhibit in front of you.

(Discussion held off the record.)

BY MR. SHULL:

Q. Okay. So Lint at column 2, lines 59 through 64, states:

"In the operation of the arrowhead 10, when the shaft 17 is retracted away from the inner barb portions 22 of the barbs 19, the spring 24 acts to hold the barbs 19 in the open position of the Figure 2. Under these circumstances, the arrowhead is in condition for hunting live game"

Did I read that correctly?

A. Yes, you have read that correctly.

Q. And do you agree with that?

A. Yes, it is in condition to hunt live game.

Q. In Figure 2, other than the spring, is there anything preventing the outer barbs from going back to the retracted position?

A. I'm now looking at Figure 2. Please repeat the question.

Q. In Figure 2, other than the spring, is there anything preventing the outer barbs from going back to the retracted position?

A. Only whatever resisting force is on the back side of the blades.

Q. Wheel. Spring wheel.

A. Wheel. Oh, wheel.

Q. Do you know how a spring wheel works?

A. It depends upon the design.

Q. Tell us one design in which you know how the -- how a spring wheel works.

A. One example would be a wheel that has a spring touching it and causing it to move in one direction or another, or not to move.

Q. What's your understanding of the term "compression spring"?

A. That is a spring whose normal function allows compression of the spring.

Q. So in your declaration you rendered some opinions about a prior art patent that we referred to as the Vandewater. Do you remember the Vandewater Patent?

A. Yes, I think that I have a copy of that.

Q. So you're familiar with the embodiments described in Vandewater?

A. Somewhat.

Q. You are familiar with the embodiments described in Vandewater?

A. Somewhat, yes. I have the patent in front of me.

Q. Okay. So let's pull up the patent.

Q. When reading Lint in forming your opinions in this case, did you notice any disclosure in Lint indicating what the barbs are made of?

A. (No response.)

Q. I'm assuming you're reading through the Lint Patent?

A. Yes, that is what I'm doing.

Q. And my question is, in preparing your opinions in this case, do you remember any disclosure in Lint indicating what the barbs are made of?

A. No.

Q. Okay.

A. That's why I'm looking at it.

Q. Yeah. When you were reading Lint in forming your opinions in this case, did you see any material identified for making the barbs? Is that the same answer?

A. Yes.

Q. Okay. So let me ask you this. What is your understanding of the term "spring wheel"?

A. Please repeat that question, sir.

Q. What is your understanding of the term "spring wheel"?

A. I heard the first part of the word "spring," what's the last part?

A. Yes.

Q. Okay. Let's take a look at Figures 2 and 3.

A. Yes.

Q. Okay. Figures 2 and 3 show a ferrule body 14; correct?

A. Please repeat.

Q. Figures 2 and 3 show a ferrule body 14.

A. Slowly repeat those last words in your question, sir, please.

Q. Sure. Figures 2 and 3 in Vandewater show a ferrule body labeled number 14.

A. Figure 1 shows a body numbered 14.

Q. Okay. Well, there's a ferrule body --

A. Figure 2 and Figure 3 do not.

Q. Okay. So is it your opinion that Figures 2 and 3 don't show a ferrule body?

A. No. They don't show a ferrule body identified as 14.

Q. Okay. Well, let me ask it a little bit different. Figures 2 and 3 show a ferrule body; correct?

A. Yes.

Q. And there's a blade member, it's pivotally mounted to that ferrule body at an axis point.

A. Yes.

- 1 Q. And the ferrule body contains a threaded portion
2 for receiving a retaining mechanism; correct?
3 A. Yes, it appears so. In Figure 2.
4 Q. Yeah. And the retaining mechanism includes an
5 engaging element such as a ball bearing 34 that
6 is urged toward a notch 24 by a biasing element
7 36.
8 A. Yes.
9 Q. And the biasing element 36 is disposed within the
10 ferrule body.
11 A. Yes. It biases the ball bearing.
12 Q. And --
13 A. Indirectly. Item 36. And then item 34, the ball
14 bearing.
15 Q. And the biasing element may be a compression
16 spring.
17 A. Yes.
18 Q. And the blade member has a notch 24 on its rear
19 edge.
20 A. Yes.
21 Q. And the blade member is held in the center
22 position due to the ball bearing being urged in
23 the notch by the biasing element.
24 A. Yes. Yes.
25 Q. And the ball bearing 34 is urged toward the notch

- 1 Q. And stated differently, the side of the blade
2 where the greater force is applied will move
3 rearward.
4 A. Please repeat your question.
5 Q. Sure. Stated differently, the side of the blade
6 where the greater forces applied will move
7 rearward.
8 A. If it is from the forward direction.
9 Q. Yes. And when that happens the distance between
10 the end of the blade moving rearward in the
11 ferrule body will decrease.
12 A. Yes.
13 Q. The end of the blade will be closer to the
14 ferrule body; correct?
15 A. Yes. The outer end of the blade.
16 Q. Yeah.
17 A. On that side.
18 Q. Sure. Now, the specification of Vandewater
19 discloses that the ferrule body shown in
20 Figures 2 and 3 can be used with the blade shown
21 in Figures 7 through 10; correct?
22 A. I believe so.
23 Q. And let's go to column 6, lines 54 to 57 of
24 Vandewater. Let me know when you're there.
25 Column 6, lines 54 to 57.

- 1 24 by the biasing element.
2 A. Uh-huh. Uh-huh.
3 Q. Do you need me to repeat the question?
4 A. Yes.
5 Q. The ball bearing 34 is urged toward the notch 24
6 by the biasing element 36.
7 A. Yes.
8 Q. And when the blade is set or positioned in its
9 initial or centered position, the ball bearing 34
10 is urged into the notch 24 to substantially
11 retain the blade in the initial or center
12 position; correct?
13 A. To retain the blade in that position, yes.
14 Q. And when a force is applied to one side of the
15 blade that is greater than the force applied to
16 the other side of the blade, and when such force
17 is sufficient to overcome the force exerted by
18 the biasing element 36, the ball bearing 34 will
19 be urged downward by pivotal movement of the
20 blade 12 and out of notch 24.
21 A. Yes.
22 Q. And when that happens the blade will pivot in a
23 direction away from the side in which the greater
24 force is applied.
25 A. Yes.

- 1 A. Please repeat the column and line number, sir?
2 Q. Column 6, starting at line 54.
3 A. Okay.
4 Q. Okay. Are you there?
5 A. Yes. I think it says "Body 214"?
6 Q. Correct. So at column 6, lines 54 to 57, the
7 specification of Vandewater states:
8 "Body 214 may include a pointed portion
9 226, a passageway or threaded bore 228, and an
10 externally threaded portion 232, similar to body
11 14, but may further include a wider slot 215 to
12 accommodate at least two overlapping blades
13 (Figure 12)."
14 Did I read that correctly?
15 A. I think so.
16 Q. So the specification states that -- states to
17 widen the slot in the ferrule body 14 to
18 accommodate the two overlapping blades.
19 A. Uh-huh.
20 Q. And the two overlapping blades are shown in
21 Figure 7 through 11.
22 A. Uh-huh. Yes.
23 Q. And the specification also states that the
24 embodiments of Figures 7 through 11 can also
25 contain a biasing element; correct?

1 A. Biasing element not for the blades, but for the
 2 items like a ball bearing and the retention
 3 items. Biasing the retention items, not the
 4 blades.
 5 Q. Sure. Well, let's take a look at Vandewater at
 6 column 7, lines 55 through 62. Let me know when
 7 you're there.
 8 A. Please repeat the column and the line number?
 9 Q. Column 7, starting at line 55.
 10 A. Okay. It says optionally.
 11 Q. Yeah. So starting at column 7, lines 55 through
 12 62, Vandewater states:
 13 "Optionally, a retaining mechanism, not
 14 shown in Figures 7 through 12, may also be
 15 utilized with arrowhead 210, such as a biasing
 16 element with a ball bearing or a spring wheel in
 17 accordance with the retaining mechanisms
 18 disclosed herein."
 19 A. That's correct.
 20 Q. "If a retaining mechanism --"
 21 A. Go ahead. Pardon me. I'm sorry, sir. Go ahead.
 22 Q. Yeah, no worries. Let me repeat that so we have
 23 a clean Q and A.
 24 So at column 7, lines 55 through 62 of
 25 Vandewater, the specification states:

1 "Optionally, a retaining mechanism, not
 2 shown in Figures 7 through 12, may be utilized
 3 with arrowhead 210, such as a biasing element
 4 with a ball bearing or a spring wheel in
 5 accordance with retaining mechanisms disclosed
 6 herein. If a retaining mechanism is employed,
 7 first blade 212 and second blade 213 may each
 8 comprise a notched portion of a rear edge, not
 9 shown, to create a rear edge substantially
 10 similar to those described above when in the
 11 deployed position."
 12 Did I read that correctly?
 13 A. Uh-huh. I think so.
 14 Q. So the specification states that the biasing
 15 element with a ball bearing or a spring wheel can
 16 be used in accordance with the early embodiments;
 17 correct?
 18 A. To bias the retaining mechanism. That is
 19 correct. Not the blades.
 20 Q. Well, actually what the specification states,
 21 what I just read, is that the biasing element --
 22 well, let me withdraw that question.
 23 The specification states that if a
 24 biasing element is used, then the first blades
 25 212 and second blades 213 will have notched

1 portions; correct?
 2 A. Yes.
 3 Q. And as we discussed from early embodiments, the
 4 purpose of a notched portion is to accommodate
 5 the ball bearing or a wheel that's urged by the
 6 biasing element.
 7 A. For the retention of the ball bearing in that
 8 notch, that is correct.
 9 Q. Yes. Yeah. Let's take a look at Exhibit 1026
 10 that's been premarked.
 11 (Deposition Exhibit 1026 marked and
 12 introduced.)
 13 BY MR. SHULL:
 14 Q. It's going to show up on AgileLaw.
 15 A. Okay.
 16 Q. Exhibit 1026 contains figures depicting a
 17 broadhead. Let me know when you can see them.
 18 A. Yes, I can see them. Yes, there are a number of
 19 them.
 20 Q. They don't have specific numbers, it's just
 21 various figures of a broadhead. Looking at these
 22 figures, do you know generally how this broadhead
 23 would work in your expert opinion or expert
 24 experience?
 25 A. Yes.

1 MR. MC KINNIE: I'm going to object to
 2 Exhibit 1026 as being new and not previously
 3 introduced as part of the petition.
 4 Mr. Willkomm, you may answer.
 5 BY MR. SHULL:
 6 Q. Okay. So let's look at the figures. And based
 7 on your expert experience, the blade numbers 212
 8 and 213 have opening levers 224 and 225. That's
 9 shown in the top right figure; correct?
 10 A. Yes.
 11 Q. And the opening levers 224 and 225 convert the
 12 force of impact with an object such as an animal
 13 into pivotal motion of the blade members toward
 14 an open position; correct?
 15 A. Yes.
 16 Q. And once the blades pivot toward an open
 17 position, the interlocking tabs 222 of each blade
 18 member would engage to lock the blades together;
 19 correct?
 20 A. Looking at the figure in the lower left of the
 21 four, it shows that condition.
 22 Q. And the retaining mechanism 20 urges the ball
 23 bearing or wheel 34 against the notch 24 of the
 24 blades by a biasing element 36.
 25 A. Correct. They bias the ball -- that item 20,

1 which pushes against the ball bearing which
 2 causes it to retain the positions that the blades
 3 are in, showing in that lower left figure of the
 4 four.
 5 Q. Sure. And the biasing element could be a
 6 compression spring.
 7 A. Yes.
 8 Q. And I think we asked and I got an answer from
 9 this, but I'll ask it anyway.
 10 So the biasing element 36 is disposed
 11 within the ferrule body 14, and the biasing
 12 element 36 pushes the ball bearing or wheel 34
 13 into the notch 24 of the blades; correct?
 14 A. Yes.
 15 Q. And the blades will be held in the centered
 16 position during flight because the biasing
 17 element is pushing the ball bearing or wheel 34
 18 into the notch 24.
 19 A. You mentioned in flight.
 20 Q. Yeah.
 21 A. Through the air, most likely the resistance will
 22 not overcome the spring compression and the ball
 23 bearing will be pressed forward into that
 24 position. In that medium of air pressing against
 25 the front edges of the 213 and 212 blades. Yes.

1 Q. Okay. I'll ask the question and I'll take out
 2 the word "in flight." So the blades will be held
 3 in the center position because the biasing
 4 element is pushing the ball bearing or wheel 34
 5 into the notch 24; correct?
 6 A. More than the resisting force or any force
 7 applied on the outside of one or the other of
 8 those blades, that is correct.
 9 Q. And the ball bearing or wheel 34 holds the blades
 10 in place until the force acts on one of the
 11 blades.
 12 A. Enough to overcome the spring compression.
 13 Q. Yeah. So --
 14 A. Then it will move.
 15 Q. Yeah. And to that point, if a force greater than
 16 the spring tension acts on one of the blades,
 17 then the force will cause the notch to disengage
 18 from the ball bearing or the wheel; correct?
 19 A. Yes.
 20 Q. And when the notch disengages from the ball
 21 bearing or the wheel, the blade on which the
 22 force is applied will pivot rearward, allowing
 23 the blade to slide along the bone and clear it.
 24 A. It will not be retained any further, that is
 25 correct. It can.

1 Q. The blades will remain in a pivoted position
 2 until the other blade encounters a greater
 3 resistance than the first blade.
 4 A. Yes. I believe that is correct.
 5 Q. And when the second blade encounters a greater
 6 resistance, then the blades will pivot back the
 7 other way.
 8 A. Yes.
 9 Q. Okay. So let's turn to the Flanagan Patent.
 10 Pull up the Flanagan Patent for me.
 11 A. I have the Flanagan Patent in front of me.
 12 Q. Okay. Let's go to claim 1 of the Flanagan
 13 patent. Let me know when you're there.
 14 A. Can you say the column and the page to help me to
 15 get there, sir?
 16 Q. No, I'm sorry, I said go to claim 1 at the end of
 17 the patent. Claim 1.
 18 A. Okay.
 19 Q. And let me ask you this.
 20 A. Okay. I'm on -- just to make sure you are on the
 21 same page.
 22 Q. Sure.
 23 A. I'm on column 5 of page 8, and the first claim is
 24 at about line 20. Is that what you're referring
 25 to, sir?

1 Q. Yeah. Claim 1. But before I ask you about the
 2 specifics of claim 1, let me ask you this. What
 3 is your understanding of the purpose of claims at
 4 the end of patents?
 5 A. Those are statements of a patent applicant of
 6 something that the patent examiner has to examine
 7 to decide whether the claim is valid or not.
 8 Q. Would you agree that the words of the claim
 9 define the invention?
 10 A. They can.
 11 Q. That was a qualified answer. Why did you say
 12 they can? Is there instances where the words of
 13 a claim do not define the invention?
 14 A. We're only looking at one patent. We're not
 15 looking at all the patents ever in existence,
 16 sir.
 17 Q. Yeah, I'm not asking you about all the patents.
 18 A. I can't speak to all patents.
 19 Q. I'm asking you what your understanding is the
 20 role of claims in patents, just generally. Why
 21 do --
 22 A. I've already --
 23 Q. -- why do patents have claims?
 24 A. I've already answered that question. The patent
 25 applicant makes a claim for which he seeks a

1 patent.
 2 Q. Okay.
 3 A. And -- the patent office assigns a patent
 4 examiner to examine that claim to determine if
 5 it's a valid claim or not.
 6 Q. And it's --
 7 A. That's the words of the claim.
 8 Q. It's the words of the claim that define the
 9 invention; correct?
 10 A. It can be, such as this patent we're looking at.
 11 Q. Okay. So claim 1 recites that the blade members
 12 have a retracted position and an extended
 13 position; correct?
 14 A. (No response.)
 15 Q. And specifically, claim 1 states:
 16 "... a retracted position wherein the
 17 second end is spaced from the ferrule body at a
 18 first distance" Correct?
 19 A. Please repeat that. I'm down at the line that
 20 you are stating, and I want to make sure I have
 21 it correctly.
 22 Q. Yeah. Claim 1 states: "... a retracted position
 23 wherein the second end is spaced from the ferrule
 24 body at a first distance"
 25 Correct?

1 A. I see on line, let's see, 28, it says,
 2 "... wherein the second end is spaced from the
 3 ferrule body at a first distance"
 4 Q. Yeah. Claim 1 states: "... a retracted position
 5 wherein the second end is spaced from the ferrule
 6 body at a first distance" Correct?
 7 A. Uh-huh.
 8 Q. Claim 1 defines retracted position as a first
 9 distance between the ferrule body and the second
 10 end of the blade member.
 11 A. Uh-huh. Yes, I think that's correct.
 12 Q. And claim 1 further states:
 13 "... and an extended position wherein
 14 the second end is spaced from the ferrule body by
 15 a distance which is the greater than the first
 16 distance."
 17 A. Yes, that's lines 30 and 31.
 18 Q. So claim 1 defines extended position as the
 19 second end being spaced from the ferrule body by
 20 a distance which is greater than the first
 21 distance; correct?
 22 A. Yes.
 23 Q. And the specification uses the same language when
 24 describing the retracted and extended positions;
 25 correct?

1 A. Yes.
 2 Q. So, focusing on the language of claim 1, there's
 3 nothing in the language of claim 1 that dictates
 4 when the blades must be in the retracted
 5 position.
 6 A. (No response.)
 7 Q. Do you need me to repeat that question?
 8 A. I'm reading to try to answer it. You've asked is
 9 there anything in there that describes the --
 10 causes the retracted position.
 11 (Witness peruses document.)
 12 A. I'm reviewing lines 64 through 65 and looking at
 13 the figures.
 14 BY MR. SHULL:
 15 Q. I'm asking you about the language in the claims.
 16 So let's focus on claim 1.
 17 A. Oh.
 18 Q. Okay?
 19 A. That's claim 5. Okay. Claim 1. Only claim 1?
 20 Q. Yeah.
 21 A. Only claim 1? Okay. I will look at that.
 22 Q. Have you reviewed claim 1?
 23 A. I will again, but repeat your question relative
 24 only to claim 1 now. Go ahead.
 25 Q. There's nothing --

1 A. Ask your question.
 2 Q. There's nothing in the language of claim 1 that
 3 dictates when the blades must be in the retracted
 4 position.
 5 A. (No response.)
 6 MR. SHULL: Actually, I think we've
 7 been going for almost an hour, so maybe we take
 8 a break. Go off the record and we can come back
 9 in 10 minutes.
 10 (Recess taken at 11:23 a.m., until
 11 11:32 a.m.)
 12 BY MR. SHULL:
 13 Q. So I'll repeat my question. There's nothing in
 14 the language of claim 1 that dictates when the
 15 blades must be in the retracted position;
 16 correct?
 17 A. On -- let's see.
 18 Q. Are you still reviewing claim 1?
 19 A. Yes. I'm re-reviewing a statement that I thought
 20 showed up.
 21 Q. Yeah, and you were reviewing claim 1 during the
 22 break as well?
 23 A. I'm on claim 1, column 11, on Patent '704.
 24 (Witness peruses document.)
 25 BY MR. SHULL:

1 Q. Do you want me to read claim 1 into the record?
 2 Would that help? And then you can listen for
 3 language in claim 1 that dictates when the blades
 4 must be in a retracted position? I'm just trying
 5 to help you.
 6 A. Thank you. One definition you may want to
 7 amplify on is in column 12, line 13, saying:
 8 "The respective deployed positions and undeployed
 9 positions."
 10 Q. Are you reading from the Flanagan Patent?
 11 A. Not the Flanagan.
 12 Q. Okay. My question is directed toward Flanagan.
 13 A. Okay. You're leaving the last --
 14 MR. SHULL: All right, let's go off the
 15 record.
 16 (Discussion held off the record.)
 17 BY MR. SHULL:
 18 Q. Okay. So off the record you were reading through
 19 claim 1 of the Flanagan Patent. And my question
 20 is, there's nothing in the language of claim 1
 21 that dictates when the blades must be in the
 22 retracted position; correct?
 23 A. No, you're not correct. When we were off the
 24 record I was looking and we were at the Lint
 25 Patent. And I looked at that. I did not look at

1 the Flanagan Patent. I will now do so if you
 2 want me to.
 3 Q. Okay. Let's go off the record. Because this is
 4 a complete waste of time at this point. You're
 5 having problems with the exhibits, we need to get
 6 you with the right exhibit, so let's go off the
 7 record.
 8 (Discussion held off the record.)
 9 BY MR. SHULL:
 10 Q. So you've now had an opportunity to review
 11 claims 1 and 11; correct?
 12 A. Yes. Of the Flanagan patent, yes.
 13 Q. So let's focus on claim 1 first. And my question
 14 is, there's nothing in the language of claim 1
 15 that dictates when the blades must be in the
 16 retracted position; correct?
 17 A. Nothing specifically in the words, only in the
 18 figures.
 19 Q. So in the claims, there's no limitation requiring
 20 when the blades must be in the retracted
 21 position; correct?
 22 MR. MC KINNIE: Objection, asked and
 23 answered.
 24 THE WITNESS: No.
 25 BY MR. SHULL:

1 Q. And there's nothing in the language of claim 1
 2 that dictates when the blades must be in the
 3 extended position; correct?
 4 A. It specifically states in line 35: "The second
 5 end is spaced from the ferrule body at a first
 6 distance and an extended position."
 7 Q. Right. But there's nothing in the language of
 8 claim 1 that dictates when the blades must be in
 9 the extended position.
 10 A. It states: "... wherein the second end is spaced
 11 from the ferrule body by a distance which is
 12 greater than the first distance."
 13 Q. Right. So my question is, there's nothing in
 14 claim 1 that dictates when the blade members must
 15 move from a --
 16 Let me ask it differently. That's a
 17 different question.
 18 So you're just reading the claim
 19 language there; correct?
 20 A. Yes, I'm reading the claim language. You asked
 21 me to.
 22 Q. Yeah.
 23 A. You said -- specifically asked, is there anything
 24 in the claim words.
 25 Q. Yes.

1 A. So I'm trying to comply with your request, sir.
 2 Q. Sure. There's nothing in the claim language in
 3 claim 1 that dictates when the blade members must
 4 move from a retracted position to an extended
 5 position.
 6 A. There's no timing element noted. Just that it
 7 has to be when the positions are in certain ways.
 8 Q. And likewise, there's no timing element in
 9 claim 1 that dictates when the blades must move
 10 from an extended position to a retracted
 11 position.
 12 A. You're asking of a timing element, sir?
 13 Q. Well, your answer said there is no timing element
 14 in claim 1.
 15 A. Yes, that is correct. There is no timing element
 16 that I observed. Only definition of the
 17 position -- different positions.
 18 Q. Staying on claim 1, there's no limitation in
 19 claim 1 requiring what causes the blades to move
 20 from a retracted position to an extended
 21 position.
 22 A. Yes. Line 38: "... at least one biasing member
 23 biasing the first and second blade members
 24 towards the extended position"
 25 Q. So in your opinion the language that you just

1 read from claim 1 means that the biasing element
2 causes the blades to move from a retracted
3 position to an extended position?

4 A. They can, by not only the claim words, but also
5 observing the figure and general knowledge, sir.

6 Q. Okay. So let me ask this again because you
7 didn't answer definitively.

8 So in your opinion the language that
9 you just read from claim 1 means that the biasing
10 element causes the blades to move from a
11 retracted position to an extended position.

12 A. That is correct.

13 Q. So let's turn to claim 11 of Flanagan. I'm going
14 to ask you the same series of questions. So,
15 like claim 1, claim 11 recites that the blade
16 members have a retracted position and an extended
17 position; correct?

18 A. Yes.

19 Q. And claim 1 states: "... a retracted position
20 wherein the rearward end is spaced from the
21 forward --"

22 I'm sorry, let me rephrase that.

23 Claim 11 states: "... a retracted
24 position wherein the rearward end is spaced from
25 the ferrule body at a first distance"

1 Q. And the specification uses the same language when
2 describing the retracted and extended positions;
3 correct?

4 A. Yes.

5 Q. And like claim 1, there's nothing in the language
6 of claim 11 that dictates when the blades must be
7 in the retracted position; correct?

8 A. No.

9 Q. Was that a "no" to my answer or a "yes" to my
10 question?

11 A. Please repeat.

12 Q. Yeah, let me ask you the question again because I
13 think your answer could be interpreted in a
14 couple of different ways.

15 A. Yes.

16 Q. So like claim 1, there's nothing in the language
17 of the claim 11 that dictates when the blades
18 must be in the retracted position.

19 A. No.

20 Q. But we would agree there's no timing element that
21 dictates when the blades must be in the retracted
22 position in claim 11; correct?

23 A. Yes.

24 Q. And there's no timing element in claim 11
25 requiring the blades be in the extended position;

1 Correct?

2 A. Yes, that's lines 23 through 24, I believe. 22
3 through 24, yes.

4 Q. And the phrase "retracted position" in claim 11
5 is defined by the distance between the ferrule
6 body and the rearward end of the blade member;
7 correct?

8 A. Repeat that, please.

9 Q. The phrase "retracted position" in claim 11 is
10 defined by the distance between the ferrule body
11 and the rearward end of the blade member;
12 correct?

13 A. Yes.

14 Q. Claim 11 also states: "... a retracted position
15 wherein the rearward end is spaced from the
16 ferrule body at a first distance and an extended
17 position wherein the rearward end is spaced from
18 the ferrule body by a distance which is greater
19 than the first distance" Correct?

20 A. Yes.

21 Q. And claim 1 defines "extended position" as the
22 rearward end being spaced from the ferrule body
23 by a distance which is greater than the first
24 distance; correct?

25 A. Yes.

1 correct?

2 A. Yes.

3 Q. There's no limitation in claim 11 requiring what
4 causes the blades to move from a retracted
5 position to an extended position.

6 A. No.

7 Q. What language in claim 11, in your opinion, is a
8 limitation that causes the blades to move from a
9 retracted position to an extended position?

10 A. You're asking the question, sir, in the specific
11 paragraphs of claim 11; is that correct, sir?

12 Q. Yes. Yes.

13 A. So relative to the paragraphs in claim 11, would
14 you repeat that again to make sure I answer you
15 correctly?

16 Q. What language in claim 11, in your opinion, is
17 the limitation that causes the blades to move
18 from a retracted position to an extended
19 position?

20 A. No.

21 Q. I'm sorry, maybe I didn't hear your answer.

22 A. The answer is no.

23 Q. So let me ask the question again so we have a
24 clear question and answer for the record.

25 What language in claim 11 in your

1 opinion is the limitation that causes the blade
2 to move from a retracted position to an extended
3 position?
4 A. I see no words relative to the limitation in the
5 paragraphs of claim 11.
6 Q. So there's nothing --
7 Yeah, this is a complete new question
8 for you. Based on your review of claims 1 and
9 11, there's nothing in the language of those
10 claims that limit the type of animal that can be
11 hunted with the broadhead; correct?
12 A. No, there's no mention of animal.
13 Q. So there's no limitation in claims 1 and 11
14 restricting the type of animal that the broadhead
15 can be used to hunt.
16 A. That is correct.
17 Q. And claims 1 and 11 are not limited to just
18 hunting either, right? They can be used for
19 target practice.
20 A. I believe that is a statement made right at the
21 outset of the deposition earlier.
22 Q. So is that a yes or a no to my question?
23 A. I'm looking for it right now to ascertain. You
24 had mentioned as to also for target practice.
25 Q. I'm looking at -- I want you to look at the

1 language of claims 1 and 11.
2 A. Okay. Oh, looking only at claims 1 and 11?
3 Okay.
4 Q. Right.
5 A. Yes.
6 Q. And my question is that the claims 1 and 11 are
7 not just limited to hunting, they can be used for
8 target practice as well; correct?
9 A. There's no statement of use of any kind in
10 claim 1 or claim 11 that I see. It's a
11 discussion of the broadhead and various positions
12 of the broadhead components.
13 Q. And claims 1 and 11 are broadly worded such that
14 the claims are not limited to blade members that
15 move independently from each other; correct?
16 A. Please repeat that question, sir.
17 Q. Sure. Claims 1 and 11 are broadly worded such
18 that the claims are not limited to blade members
19 that move independently from each other.
20 A. I would not use the adverb "broadly," but I would
21 agree not limited. There's no statement of
22 limitations in claims 11 -- 1 and 11, sir.
23 Q. In reviewing the Flanagan Patent in performing or
24 preparing your opinions in this case, did you see
25 any disclosure in the patent that describes the

1 material characteristics of the blade members?
2 A. Only by inference and function.
3 Q. So does that mean that there is no express
4 disclosure in Flanagan describing the material
5 characteristics of the blade members?
6 A. And the retaining element as well, both.
7 Q. Did you see anything in the Flanagan Patent that
8 expressly states that the blade members must
9 retain structural integrity to hold a sharp edge
10 while not deforming inelastically during any
11 function?
12 A. Are you saying specifically in the wording?
13 Q. Yes.
14 A. Of the entire patent; is that correct?
15 Q. Correct. I'm not asking you to review the
16 patent. I'm asking you, in performing your
17 opinions in this case, do you remember seeing
18 anything in Flanagan that expressly states that
19 the blade member must retain structural integrity
20 to hold a sharp edge while not deforming
21 inelastically during functioning?
22 A. Yes.
23 Q. Where is that language in the Flanagan Patent?
24 A. If you look on column 1. And the descriptions in
25 -- through 20 and 21 of broadhead designs. And

1 then go down to the summary of the invention, it
2 talks further. You have to have structural
3 integrity to be able to penetrate and assure
4 clean penetration of the bone.
5 Q. Does that language appear in any of the claims?
6 A. Do you want me to review all the claims again,
7 sir?
8 Q. Claims 1 and 11 that you just reviewed. Does
9 that language appear in claims 1 and 11 of
10 Flanagan?
11 A. No, sir.
12 Q. So throughout your declaration you render
13 opinions about claim 1 and whether claim 1 covers
14 the prior art. And as we talked about, claim 1
15 has certain claim language.
16 So look at claim 1 again, of Flanagan,
17 and I want to talk about the phrase at the end of
18 claim 1. So let me know when you're there.
19 So do you have claim 1 up?
20 A. I'm trying to get there, sir.
21 Q. We're still talking about Flanagan.
22 A. Yes. I'm only talking about -- or I'm only
23 looking at Flanagan now, sir.
24 Okay. Back to claim 1 at Flanagan.
25 Yes, sir.

- 1 Q. Okay. At the end of claim 1 it states: "... the
2 biasing member being the only element operable to
3 hold the blade member in an extended position."
4 Do you see that?
- 5 A. I see those words, yes, sir.
- 6 Q. I want to explore your understanding of that
7 claim phrase. So in your opinion what does the
8 phrase "the biasing member being the only element
9 operable to hold the blade member in the extended
10 position" mean?
- 11 A. That means that one biasing member. The only
12 element operable to not only biasing, but to hold
13 them in the extended position.
- 14 Q. Does that phrase mean that the biasing member
15 must hold the blade member in a static position?
- 16 A. No, it does not.
- 17 Q. Okay. Well, what does the phrase "operable to
18 hold the blade member in the extended position"
19 mean to you in your expert opinion?
- 20 A. It says it's capable of operable and holding it
21 in that position. And it's the only one.
- 22 Q. Okay. Well, let's drill down on that. So what
23 does "operable to hold" mean in your expert
24 opinion?
- 25 A. That means capable of exerting a force which will

- 1 hold the member in or toward the extended
2 position depending on what the force from the
3 opposite direction is.
- 4 Q. Okay. So in your opinion the phrase "the biasing
5 member being the only element operable to hold
6 the blade member in the extended position" means
7 that the biasing member is the only element that
8 exerts force on the blade member in the extended
9 position; correct?
- 10 A. It's operable to hold the blade members, yes.
- 11 Q. Okay. And so your opinion is that the blade --
12 I'm sorry. Let me ask that again. A word salad
13 here.
- 14 So in your opinion the phrase "the
15 biasing member being the only element operable to
16 hold the blade member in the extended position"
17 means that the biasing member is the only element
18 operable to exert a force on the blade member in
19 the extended position; correct?
- 20 A. Yes.
- 21 Q. In your own words.
- 22 A. Yes. In my own words I followed the prior
23 statement, "at least one biasing member biasing
24 the first and second blade members towards the
25 extended positions," and that the biasing member

- 1 being the only element operable to hold them in
2 that extended position, sir.
- 3 Q. Yeah.
- 4 A. Context is very important in that sentence.
- 5 Q. Sure. And my previous question was, what does
6 "operable to hold" mean? And your answer was
7 that means to exert a force. Correct?
- 8 A. That is correct. That is correct.
- 9 Q. So you've reviewed the figures of Flanagan;
10 correct?
- 11 A. Say again, please?
- 12 Q. You've reviewed the figures in Flanagan in
13 preparing your opinions in this case?
- 14 A. There are eight figures that I have reviewed,
15 sir.
- 16 Q. Sure. And so there's a total of eight --
- 17 A. There are four embodiments. There are four
18 embodiments, eight figures.
- 19 Q. Okay. And based on your experience with archery
20 projectiles, do you believe you understand the
21 figures in Flanagan?
- 22 A. Yes, I do.
- 23 Q. Okay, let's turn to Figures 1 and 2 of Flanagan.
24 Let me know when you're there.
- 25 A. Yes, sir, I'm there.

- 1 Q. Generally, what's being shown in Figures 1 and 2?
- 2 A. The overall broadhead itself. Components
3 including the tip, the blade members, the biasing
4 elements which are coil springs in Figure 1, the
5 ferrule body which is shown also there.
- 6 In Figure 2 it shows that in the
7 retracted or compressed retaining, and it also
8 shows a retaining element, item 50. And it also
9 shows the slots in the -- both blade members.
10 And in the Figure 2 the retaining element is not
11 in view and the blades are in the extended
12 position, sir.
- 13 Q. So Figure 1 show the blade members in a retracted
14 position.
- 15 A. Not quite fully retracted.
- 16 Q. So you disagree with that statement?
- 17 A. Please state it again.
- 18 Q. Figure 1 shows the blade members in a retracted
19 position.
- 20 A. Yes.
- 21 Q. Figure 2 shows --
- 22 A. Just not necessarily fully.
- 23 Q. Figure 2 shows the blade members in an extended
24 position.
- 25 A. Yes, but not necessarily fully extended.

- 1 Q. All right. So in your opinion there could be a
2 retracted position where there's a partially
3 retracted position and a fully retracted
4 position; correct?
5 A. From practicality, sir, yes.
6 Q. And you also believe in your opinion that the
7 blade members can have a fully extended position
8 and a partially extended position; correct?
9 A. Yes.
10 Q. What's the function of tab 28 and abutting
11 surface 30 in Figures 1 and 2?
12 A. 28 and 30?
13 Q. Correct.
14 A. Form travel limiters, yes. You can call those
15 travel limiters.
16 Q. Sure.
17 A. But if you'll notice -- if you notice, they are
18 not close to the tip in Figure 1 because it's
19 mostly retracted. But in Figure 2 it's not quite
20 touching the tips. Please note that there's a
21 gap between the tip and 38 -- at 30 and 28.
22 Q. Let's turn to column 3, lines 13 to 17 of
23 Flanagan. Let's go to column 3, lines 13 to 17.
24 Let me know when you're there.
25 A. Column 3. 13 to 17 starts out, it says,

- 1 "extended positions," and then a new sentence, "A
2 tab 28"?
3 Q. Yes. So that Flanagan Patent, it states:
4 "A tab 28 extends outwardly from the
5 front end 22 of each blade member 20 and contacts
6 an abutting surface 30 on the ferrule to limit
7 outward travel of the blade member 20 and define
8 the extended position of the blade member 20."
9 Did I read that correctly?
10 A. Yes.
11 Q. So the tab 28 and abutting surface 30 limit the
12 outward travel of the blade members; correct?
13 A. When they are in contact with the tip, yes. I
14 just pointed out that they are not in that
15 figure.
16 Q. And tab 28 and abutting surface 30 define the
17 extended position of the blade members; correct?
18 A. At the limit, yes. In contact. Uh-huh.
19 Q. Does tab 28 and abutting surface 30 serve any
20 other function?
21 A. From a practicality, yes.
22 Q. What function do they serve?
23 A. They allow the retaining element to be put on
24 into the slot on the back end of the blade by
25 being compressed slightly.

- 1 That allows the retaining element to be
2 put in place in the back end. If they were in
3 contact, the retaining element would not be able
4 to be placed and have a force that would allow it
5 to stay in place during launch, flight, and
6 initial impact to the quarry, sir.
7 Q. Let's switch back to Figures 1 and 2 real quick.
8 I'm going to ask you, what is the function of
9 arms 42 in Figures 1 and 2?
10 A. Arms 41 and 42. Let's see. I only see arms 42,
11 sir, in Figure 1.
12 Q. Sure.
13 A. And I don't see a 41 in either Figure 1 or
14 Figure 2, sir.
15 Q. Yeah, that wasn't my question. I said, what is
16 the function of arms 42 in Figures 1 and 2?
17 A. Okay. Okay.
18 Q. Sure.
19 A. They are purposely designed to be in contact with
20 the biasing element, the coil spring, on each
21 blade.
22 Q. Do the arms 42 extend into the bores 18 and
23 compress the springs 40?
24 A. Please say again, sir?
25 Q. Sure. Do the arms 42 extend into the bores 18

- 1 and compress the springs 40?
2 A. Yes. They do.
3 Q. And the springs 40 expand thereby pushing the
4 arms 42 and blade members 20 outwardly as the
5 blade members move to the extended position.
6 A. If they can, yes. As shown in Figure 2 when the
7 retaining element is no longer there.
8 Q. Yeah.
9 A. And there's not sufficient force to keep the
10 blades in their retracted position.
11 Q. In Figure 2, what is holding the blade members in
12 an extended position?
13 A. Please repeat slowly, sir.
14 Q. In Figure 2, what is holding the blade members in
15 an extended position?
16 A. The coil springs.
17 Q. Is the spring the only element holding the blade
18 members in an extended position?
19 A. Can't say. There could be a load. If somebody's
20 trying to pull it out the back way there could be
21 a load on the underside of the blades. That also
22 would cause them to be in the extended position,
23 sir.
24 Q. In Figure 2, do the tabs 28, in conjunction with
25 abutting surface 30, aid in holding the blade

1 members in an extended position?
 2 A. Tabs 28 and 30? Please repeat that question
 3 relative to them.
 4 Q. Figure 2. In Figure 2, do the tab 28, in
 5 conjunction with abutting surface 30, aid in
 6 holding the blade members in an extended
 7 position?
 8 A. They don't do anything, sir. They're travel
 9 limiters, sir.
 10 Q. In Figure 2, do the arms 42 aid in holding the
 11 blade members in an extended position?
 12 A. Yes, they can if the force applied by the biasing
 13 element, the spring, exerts enough pressure to
 14 overcome any pressure opposite from the outside
 15 of the blade, sir.
 16 Q. So in your opinion is the embodiment of Figures 1
 17 and 2 covered by claim 1 of the Flanagan Patent?
 18 A. Please repeat carefully, sir.
 19 Q. Sure. In your opinion is the embodiment in
 20 Figures 1 and 2 covered by claim 1 of the
 21 Flanagan Patent?
 22 MR. MC KINNIE: Objection, outside the
 23 scope of his declaration and cross-exam.
 24 Mr. Willkomm, you can answer.
 25 THE WITNESS: I'm trying diligently to

1 review and answer your question, sir. You're
 2 asking me does claim 1 -- I wanna make sure I
 3 have that correct from you, sir.
 4 BY MR. SHULL:
 5 Q. Sure. In your opinion is the embodiment in
 6 Figures 1 and 2 covered by claim 1 of the
 7 Flanagan Patent?
 8 A. Yes. I think so.
 9 Q. And you believe that even though the arms 47
 10 expand into the bores 18 and compress the springs
 11 40; correct?
 12 A. Would you please repeat that again, sir, kindly?
 13 Q. You believe claim 1 covers the embodiment in
 14 Figures 1 and 2 even though arms 42 extend into
 15 bores 18 and compress springs 40.
 16 A. Yes.
 17 Q. And you believe claim 1 in Flanagan covers the
 18 embodiment in Figures 1 and 2 even though the
 19 springs 40 expand thereby pushing the arms 42 and
 20 blade members 20 outwardly as the blade members
 21 move to the extended position; correct?
 22 A. Yes.
 23 Q. So you think claim 1 of Flanagan covers
 24 embodiments in Figures 1 and 2, even though
 25 there's an element between the compressing spring

1 and the blade members; correct?
 2 A. There's no element in-between.
 3 Q. Well --
 4 A. There's no element in-between, sir. Please look
 5 at the figures carefully. It is -- that arm that
 6 sticks down there is an integral part of the
 7 blade. It is not a separate element, sir. In
 8 both Figures 1 and 2.
 9 Q. So your position is that the arm 42 is a part of
 10 the blade member?
 11 A. Yes. Integral part.
 12 Q. And in your opinion Figures 1 and 2 meet all the
 13 limitations of claim 1, even though the tab 28
 14 and abutting surface 30 define the extended
 15 position of the blade members; correct?
 16 A. Please repeat slowly. I think I can answer that,
 17 but please repeat it slowly, sir, kindly.
 18 Q. Sure. In your opinion Figures 1 and 2 meet all
 19 the limitations of claim 1, even though the
 20 tab 28 and abutting surface 30 define the
 21 extended position of the blade members.
 22 A. It's a little hard to get the last part of the
 23 phrase. You said even though tabs 20 and 38 do
 24 what?
 25 Q. Yeah, I'll repeat the question. In your opinion,

1 Figures 1 and 2 meet all the limitations of
 2 claim 1 even though the tab 28 and abutting
 3 surface 30 define the extended position of the
 4 blade members; correct?
 5 A. Yes.
 6 Q. Let's turn to Figures 3 and 4.
 7 A. Yes.
 8 Q. So Figure 3 shows the blade members in a
 9 retracted position.
 10 A. Yes.
 11 Q. Figure 4 shows the blade members in an extended
 12 position.
 13 A. Yes. Both not fully.
 14 Q. In Figure 3, what is holding the blade members in
 15 an extended position?
 16 A. Please repeat your question, sir.
 17 Q. In Figure -- let me pull the figure out, make
 18 sure I got the right figure.
 19 In Figure 4, what is holding the blade
 20 members in an extended position?
 21 A. Let's see. There's no -- oh, items 68 are in
 22 direct contact with the blade members.
 23 Q. Is the spring the only element holding the blade
 24 members in an extended position?
 25 A. No, that's -- well, there's one on each side that

1 are holding, and they are directly -- or they are
2 biased by other components inside the broadhead
3 assembly itself.

4 Q. Items --

5 A. So that was 66 and 62, specifically.

6 Q. So what's the purpose of sliding element 66 and
7 articulating arm 68 in Figures 3 and 4?

8 A. 66 is a item whose base is in direct contact with
9 the spring, which is I think identified as number
10 62, and it is connected to the elements 68 on its
11 front-facing side. And it appears that there are
12 very small pins holding in place in -- both
13 figures you can see. It's very quite small,
14 though. They are.

15 Q. So the articulating arms 68 interconnect the
16 sliding element 66 with the blade members so as
17 to bias them from the retracted position shown in
18 Figure 3 to the extended position shown in
19 Figure 4.

20 A. Yes.

21 Q. Do the sliding element 66 and articulating arm 68
22 aid in holding the blade members in an extended
23 position?

24 A. Yes. They will bias toward that direction, yes.
25 To the extended position.

1 BY MR. SHULL:

2 Q. Let me ask the question again. What load in your
3 opinion would be applied to the tab such that the
4 tab, in conjunction with the abutting surface,
5 would aid in holding the blade member in an
6 extended position?

7 A. The load which was from acting on the blades,
8 either through the arms or through a medium on
9 the underside of the blades, would tend to cause
10 the travel limiter, the tab, to butt up against
11 the surface. And those loads would then hold at
12 that point until there were sufficient loads in
13 another direction, if they occurred.

14 Q. In your opinion, is the embodiment shown in
15 Figures 3 and 4 covered by claim 1 of the
16 Flanagan Patent?

17 A. Yes.

18 Q. So you believe that the embodiment shown in
19 Figures 3 and 4 is covered by claim 1 of the
20 Flanagan Patent, even though there's articulating
21 arm 68 and the -- I'm sorry, let me rephrase
22 that.

23 In your opinion, the embodiment shown
24 in Figures 3 and 4 are covered by claim 1 of the
25 Flanagan Patent, even though the sliding element

1 Q. So the sliding element --

2 A. Whether they hold or not depends upon the force
3 in the opposing direction acting upon the blades.

4 Q. Sure. The sliding element 66 and articulating
5 arm 68 bias the blades in an extended position.

6 A. Toward the extended position, that is correct.

7 Q. And in Figure 4, is the tab in conjunction with
8 the abutting surface aid in holding the blade
9 member in an extended position?

10 A. The tab does not bias. It's a travel limiter.

11 Q. My question was, in Figure 4, does the tab in
12 conjunction with the abutting surface aid in
13 holding the blade member in an extended position?

14 A. Not necessarily.

15 Q. Why not?

16 A. The figure does not show what load, if anything,
17 is on the tab.

18 Q. What load are you referring to? What load could
19 be applied to the tab in which the tab, in
20 conjunction with the abutting surface --

21 A. The tab --

22 Q. -- would aid in holding the blade member in an
23 extended position --

24 A. The tab --
25 (Reporter clarification.)

1 66 and articulating arms 68 are between the
2 spring and the blade; correct?

3 A. Yes, but they do not bias the blades. Only
4 item 68 bias the blades.

5 Q. So if --

6 A. They only bias the item 68, they do not bias the
7 blades.

8 Q. So in your opinion claim 1 of Flanagan does not
9 cover the embodiment shown in Figures 3 and 4;
10 correct?

11 A. No, that's not correct. It does.

12 Q. Well, let me ask you this. Let's go back to the
13 claim language in claim 1, where it requires the
14 biasing member being the only element operable to
15 hold the blade member in the extended position.
16 Do you remember that claim language?

17 A. Uh-huh, yes. It is the only element. 68's the
18 only element. The other items, the spring,
19 et cetera, they bias the biasing element. They
20 do not bias the blades themselves.

21 Q. Okay. So you believe that the requirement of the
22 biasing member, being the only element operable
23 to hold the blade member in the extended
24 position, is met by the embodiment in Figures 3
25 and 4, even though there are these articulating

1 arms and sliding elements between the spring and
 2 the blade; correct?
 3 A. Yes. Yes.
 4 Q. Let's take a look at Figures 5 and 6. Figure 5
 5 shows the blade members in a retracted position.
 6 A. Yes.
 7 Q. And Figure 6 shows --
 8 A. Not fully retracted, however. Please note. Not
 9 fully retracted.
 10 Q. And Figure 6 shows the blade member is in an
 11 extended position.
 12 A. Almost fully extended. Not fully extended.
 13 Q. In Figure 6 what is holding the blade members in
 14 an extended position?
 15 A. There is a actuating plug. One term I could
 16 call. Let's see if there's a -- ah, identified
 17 as item 76. And it has a spring biasing it
 18 toward the blades, and the plug itself is the
 19 biasing element that biases the blades toward the
 20 extended position.
 21 Q. So in your opinion would the embodiment shown in
 22 Figures 5 and 6 be the only -- let me rephrase
 23 that.
 24 So in your opinion would the embodiment
 25 shown in Figures 5 and 6 be covered by claim 1 of

1 the Flanagan?
 2 A. Would be covered, yes.
 3 Q. So in your opinion the embodiment shown in
 4 Figures 5 and 6 would be covered by claim 1 of
 5 Flanagan, even though there is this sliding
 6 element or plug between the spring and the
 7 blades; correct?
 8 A. That is correct. The spring biases the plug; it
 9 doesn't bias the blades. The plug is the only
 10 element that biases the blades, sir.
 11 Q. So in your opinion the plug is the only element
 12 that biases the blades; correct?
 13 A. Yes.
 14 Q. So --
 15 A. The only one that directly bias the blades.
 16 Q. So if the plug is the only element that biases
 17 the blades, how can the claim requirement, the
 18 biasing member being the only element operable to
 19 hold the blade member in the extended position,
 20 be met?
 21 A. It can. That plug can bias it and be operable so
 22 it can hold it toward and to the fully extended
 23 position, or close to it.
 24 Q. Let me ask you this because it seems like you got
 25 an inconsistency going on here. You just told me

1 that the plug biases the blade in an extended
 2 position; correct?
 3 A. That is correct.
 4 Q. Okay.
 5 A. Toward the extended position.
 6 Q. Sure. And the claim requires that the biasing
 7 member being the only element operable to hold
 8 the blade member in the extended position;
 9 correct?
 10 A. It is the only element that directly contacts the
 11 blade, so it's the only one that's operable that
 12 can bias.
 13 Q. Okay. When you say it's the only element, what
 14 element are you referring to?
 15 A. Item 76 --
 16 Q. Okay.
 17 A. -- has direct contact with the blades, as you can
 18 see, in both Figures 5 and Figure 6.
 19 Q. So is it your opinion that item 78 in Figure 3 is
 20 a biasing member?
 21 A. 78 is an integral part of the blade. Please note
 22 it's an integral part of the blade. It's a
 23 portion of the blade that happens to contact
 24 directly the plug.
 25 Q. Okay. Well, let's take a look at column 4, lines

1 40 to 48, of the Flanagan Patent.
 2 A. Okay. Line 4, column -- okay. Or line 48; is
 3 that correct, sir?
 4 Q. Uh-huh.
 5 A. I think it starts, it says, "Figure 5 to the
 6 extended position," and then it goes on to start
 7 another question. Okay.
 8 Q. Let me ask you this. And let's go back to --
 9 let's go back to figure --
 10 Before we get there, I do want to ask
 11 you this about Figure 5. What's the function of
 12 element 76?
 13 A. It is an element that urges the blade, not
 14 biasing it, urges the blade members.
 15 Q. So you think biasing and urging is different?
 16 A. Not necessarily the same, sir.
 17 Q. Okay. What would the differences between urging
 18 and biasing be in your expert opinion?
 19 A. A simple example, you can urge me to answer any
 20 question.
 21 Q. Well, you're the expert.
 22 A. I will be biased by my knowledge. That's the
 23 difference between urging and biasing, sir.
 24 Q. In the context of mechanical engineering in the
 25 context of the Flanagan Patent, what is the

1 difference between urging and biasing?
 2 A. Just as I said here, sir. As an experienced
 3 person.
 4 Q. Okay. So Figure 5 of Flanagan calls out element
 5 76; correct?
 6 A. Yes. It delineates item 76, yes, sir.
 7 Q. So that's a sliding element 76; correct?
 8 A. Yes, it is. It appears to be.
 9 Q. And that's located between the spring and the
 10 blades; correct?
 11 A. That is correct.
 12 Q. That's a separate element. Apart from the blade;
 13 correct?
 14 A. Yes.
 15 Q. So let's go to column 4, lines 40 to 48 of
 16 Flanagan, where it describes the sliding element
 17 76. Are you there?
 18 A. At 48 again, yes, sir.
 19 Q. Okay. So at column 4, lines 40 to 48, the
 20 Flanagan Patent states:
 21 "The biasing member is illustrated as a
 22 coil spring which engages a sliding element 76
 23 also disposed in the bore. The sliding element
 24 76 engages inwardly extending tab 78 on the blade
 25 members. These tabs extend inwardly from the

1 pivotal connection between the blade members and
 2 the ferrule. By pushing rearwardly on the tab
 3 78, the sliding element 76 urges the blade
 4 members outwardly from the retractable position
 5 shown in Figure 5 to the extended position shown
 6 in Figure 6."
 7 Correct?
 8 A. Yes, that's -- I read the same thing.
 9 Q. Okay. So the specification states that:
 10 "The sliding element 76 urges the blade
 11 members outwardly from the retractable position
 12 shown in Figure 5 to the extended position shown
 13 in Figure 6."
 14 Correct?
 15 A. Was that a question, sir?
 16 Q. It was. My question is, so the specification
 17 states that the sliding element urges the blade
 18 members outwardly from the retractable position
 19 shown in Figure 5 to the extended position shown
 20 in Figure 6.
 21 A. Yes.
 22 Q. And you testified that the sliding element is a
 23 element that's separate from the spring and
 24 separate from the blade; correct?
 25 A. It biases it. It is the biasing element, yes.

1 Q. So you believe that the --
 2 A. Which is in direct contact, yes.
 3 Q. You believe that sliding element 76 is a biasing
 4 element; correct?
 5 A. Yes.
 6 Q. And you also believe that the spring is a biasing
 7 member; correct?
 8 A. Biasing member it says, yes. Right there.
 9 Q. Okay.
 10 A. Please read. The biasing member, not biasing
 11 element.
 12 Q. Gotcha. So given the fact that Figure 5 and 6
 13 disclose a sliding element 76 in-between the
 14 spring and the blade, can you explain to me how
 15 it's your opinion that the language that requires
 16 the biasing member being the only element
 17 operable to hold the blade member in the extended
 18 position is met by the embodiment in Figures 5
 19 and 6?
 20 A. It is the only member that's in contact --
 21 element that is in contact with the blades.
 22 Other than the pivot points. Other the pivots
 23 and the pivots. But it's not in contact with the
 24 spring at all whatsoever.
 25 Q. So your opinion is that the sliding element is in

1 contact with the springs or the blade is not in
 2 contact with the spring?
 3 A. The sliding element that you talk about, the
 4 sliding element is the plug. Item 76. It's in
 5 contact with both the blades on the one end and
 6 the spring on the other end.
 7 MR. MC KINNIE: We've been going for a
 8 while, I think it might be time for a break.
 9 MR. SHULL: Yeah, if you want we can
 10 certainly take a break. Probably we could break
 11 for lunch. I don't know how long a break you
 12 guys need.
 13 MR. MC KINNIE: How long do you think
 14 you have?
 15 MR. SHULL: It's up to Wayne.
 16 THE WITNESS: I'm here at the house.
 17 I'll eat something for lunch here shortly and
 18 probably will be able to be back after lunch
 19 before you gentlemen. So I'm open to your
 20 suggestions, gentlemen, as to what length of
 21 time you need for lunch. I think I will be able
 22 to accommodate you all, sir. Gentlemen.
 23 MR. SHULL: So how about 30 minutes,
 24 would that be okay?
 25 MR. MC KINNIE: That's fine with me.

1 MR. SHULL: We can shoot for 30 and if
2 30 minutes come and we still need a little bit
3 of time that's fine, too.

4 MR. MC KINNIE: Okay.

5 THE WITNESS: That will be
6 approximately something like quarter after
7 1 p.m. my central time; is that correct?

8 MR. MC KINNIE: Yes.

9 THE WITNESS: Okay. Yes.

10 MR. SHULL: All right. Sounds good.
11 We'll be back in 30.

12 (Recess taken at 12:46 p.m., until
13 1:23 p.m.)

14 BY MR. SHULL:

15 Q. Did you communicate with anyone during the break
16 about your previous testimony?

17 A. No.

18 Q. Did you communicate with anyone during the break
19 about your upcoming testimony?

20 A. Yes.

21 Q. Okay. Who did you speak with during the break?

22 A. I think Robert. What had happened, sir, was that
23 I lost visual communication and I didn't want to
24 jeopardize, based on your prior comments, the
25 connection with you. So I asked what I needed to

1 "The biasing member is illustrated as a
2 coil spring which engages a sliding element 76
3 also disposed in the bore. The sliding element
4 76 engages inwardly extending tabs 78 on the
5 blade members."

6 So the patent expressly states that the
7 biasing member is the coil spring; correct?

8 A. It states, "The biasing member is illustrated as
9 a coil spring."

10 Q. Yeah. And --

11 A. It says that specifically.

12 Q. Yeah, sure. And the sliding element 76 is a
13 separate component from the coil spring.

14 A. That is correct.

15 Q. And the Flanagan Patent does not refer to the
16 sliding element 76 as a biasing member; correct?

17 A. It makes a statement, "The sliding element 76
18 engages inwardly extending tabs on the blade
19 members." Specifically says that.

20 Q. Sure. My question is, the Flanagan Patent does
21 not refer to the sliding element as a biasing
22 member.

23 A. You're asking about the specific words?

24 Q. Correct.

25 A. Biasing element?

1 do to get back -- it turns out to get back on
2 Zoom, which I did, sir.

3 Q. Okay. And Robert was the only individual you
4 spoke with during the break?

5 A. Was it Robert and Jason momentarily? Or was it
6 just Robert? I'm not sure.

7 THE WITNESS: Help me, Robert.

8 MR. MC KINNIE: Just to be clear, you
9 didn't talk to anybody about any substance of
10 your upcoming testimony; right?

11 THE WITNESS: No, sir.

12 MR. MC KINNIE: Okay.

13 MLV TECHNICIAN: No, I was present for
14 the conversation and it was about the dealing
15 with Zoom and Agile.

16 MR. SHULL: Yeah, yeah. Fair enough.
17 Okay.

18 BY MR. SHULL:

19 Q. Let's turn back to the Flanagan Patent. And
20 specifically in column 4, starting at line 40.
21 Kinda where we left off. Let me know when you're
22 there.

23 A. Column 4, line 40. Correct?

24 Q. Yeah, okay. So at column 4, line 40, Flanagan
25 states:

1 Q. I'll ask the question again. I'll ask the
2 question again just to be clear. The Flanagan
3 Patent does not refer to the sliding element 76
4 as a biasing member.

5 A. You're referring to sliding element 76; is that
6 correct, sir?

7 Q. Correct.

8 A. Yes, it does not. I believe.

9 Q. The sliding element 76 is a separate component
10 located between the coil spring and the blades;
11 correct?

12 A. Yes.

13 Q. In Figures 5 and 6, the spring -- well, let me
14 ask you this. In Figures 5 and 6 is the spring
15 the only element operable to hold the blade
16 member in the extended position?

17 A. I have them in front of me. Please repeat, sir,
18 if you will, kindly.

19 Q. Sure. In Figures 5 and 6 is the spring the only
20 element operable to hold the blade member in the
21 extended position?

22 A. Say that again slowly because I want to make sure
23 I answer it exactly.

24 Q. Sure. In Figures 5 and 6 is the spring the only
25 element operable to hold the blade members in the

1 extended position?

2 A. No. The plug does that. Item 76, the plug does
3 that. The spring does not do that. The spring
4 biases the plug, its movement and position. The
5 plug biases the blades, sir.

6 Q. Okay. So in your opinion a broadhead like the
7 embodiments in Figure 5 and 6 that contains a
8 separate component between the spring and the
9 blades would not meet the limitation requiring
10 the biasing member being the only element
11 operable to hold the blade member in the extended
12 position; correct?

13 A. Can you simplify that a little bit, sir?

14 Q. Well, so -- yeah. So Figures 5 and 6 show a
15 broadhead where there's a component separate from
16 the spring and the blades that's located between
17 the spring and the blades; correct?

18 A. Yes.

19 Q. And in your opinion a broadhead like that would
20 not meet the claim limitation requiring the
21 biasing member being the only element operable to
22 hold the blade member in the extended position;
23 correct?

24 A. Oh, no. No. No.

25 Q. Well, okay. Let me ask you this. Because I want

1 operable" referring to a component of the
2 broadhead?

3 A. In my opinion, yes.

4 Q. Okay. So where claim 1 of the Flanagan Patent
5 requires the biasing member being the only
6 element operable to hold the blade member in the
7 extended position, the term "element" is
8 referring to a component of the broadhead;
9 correct?

10 A. Yes.

11 Q. And that's consistent with the specification of
12 Flanagan; right?

13 A. Uh-huh.

14 Q. Was that a yes?

15 A. Yes.

16 Q. Okay. Sorry, I didn't hear you.

17 A. That's okay, sir.

18 Q. We talked earlier about the legal principles that
19 you applied when forming your opinions in this
20 case, and those legal opinions are set forth in
21 Section 4 of your declaration; correct?

22 A. Yes.

23 Q. Have you ever heard of the legal principle that a
24 prior art reference sometimes, but not always,
25 meets all the claim limitations and nonetheless

1 to be clear on your opinions because words matter
2 and opinions matter.

3 So in your opinion a broadhead, like
4 the embodiments in Figures 5 and 6 that contains
5 a separate component between the spring and the
6 blades, could meet the claim limitation requiring
7 the biasing member being the only element
8 operable to hold the blade member in the extended
9 position. Is that your opinion?

10 A. Yes. Yes. It could be, yes. Yes.

11 Q. So you believe that the sliding element in 5 and
12 6 is a biasing element, even though the patent
13 does not call it a biasing member, and it
14 describes and depicts the sliding element as a
15 separate component between the springs and the
16 blades; right?

17 A. Yes.

18 Q. Okay. So to be clear, in your opinion the
19 embodiments shown in Figures 5 and 6 of Flanagan
20 meet all the limitations of claim 1 even though
21 there's a sliding element 76 located between the
22 spring and the blades.

23 A. Yes.

24 Q. Okay. I want to focus on the word "element" in
25 that claim phrase. Is the phrase "element

1 anticipates the claims?

2 A. I think so.

3 Q. And did you -- you have heard of that principle.

4 A. I think so. There was -- your words are
5 approximately something that I seem to have seen
6 somewhere in the -- this whole documentation,
7 sir.

8 Q. Okay. Well, you have Section 4 in front of you
9 of your declaration; right?

10 A. I think so. I think I said that.

11 Q. Let's pull it up.

12 A. Okay. Pardon me, Jason, I have to flip through
13 to see.

14 Q. Yeah, no worry. It starts on page 7 and it goes
15 through page 10.

16 A. Okay. Yes, applicable legal principles. I'm
17 going through that now.

18 It seems to me you referred to
19 basically the contents of one of these paragraph
20 numbers, sir. If you'll repeat your words I'll
21 try to figure out exactly which one it is, sir.

22 Q. Sure. Well, I looked through your Section 4 and
23 I didn't see this legal principle in there, so
24 I'm asking you whether you heard of this legal
25 principle. That's why I asked the question.

1 I can represent to you that this legal
 2 principle is not in your declaration. So I'm
 3 asking you if you ever heard of it.
 4 A. Yeah, and if it's not in there -- because I'm
 5 relating to the ones that are in here when I am
 6 thinking about trying to answer your question.
 7 If you affirm to me for sure it is not
 8 in there, then the answer is no, sir. Yes.
 9 Q. Okay. So, just to be clear, you've never heard
 10 of the legal principle that a prior art
 11 reference, that sometimes but not always meets
 12 all of the claim limitations, nonetheless
 13 anticipates the claim?
 14 A. Yes, I think I have not heard that exactly
 15 before.
 16 Q. And since you've never heard of that legal
 17 principle, you didn't apply it in forming your
 18 opinions in this case; correct?
 19 A. In forming my opinions, the very end of your -- I
 20 would -- forming my opinion, I would not
 21 necessarily anticipate that those claims that are
 22 not stated in any patent would be obvious to be
 23 -- obvious to a person of ordinary skill in the
 24 art in the circa 2000-2008 timeframe, sir, of
 25 broadhead design.

1 Q. Yeah, I have no idea what that answer just meant.
 2 But I'll ask the question again and maybe I can
 3 get a better answer.
 4 So since you've never heard of the
 5 legal principle, you didn't apply it in forming
 6 your opinions on whether any of the claims cover
 7 the prior art in this matter; correct?
 8 A. Yes, I did not.
 9 Q. Okay. Let's turn back to the Flanagan Patent and
 10 specifically the figures. We've been talking
 11 about the figures. I want to go back to the
 12 figures.
 13 A. Okay. What figure would you like me to look at?
 14 Q. We can start with Figure 1 and go through
 15 Figure 1 through 8. But let's start with
 16 Figure 1.
 17 A. Okay.
 18 Q. Well, why don't we do this. We reviewed
 19 Figures 1 through 8 already. Why don't you take
 20 just a couple of minutes and review Figures 1
 21 through 8 and then I'll march through some of my
 22 questions, and if we need to go back to a
 23 specific figure we can do that.
 24 A. Okay. Okay.
 25 Q. Okay. So all of the blade members in Flanagan

1 are extending backward from a point having an
 2 angle of less than 90 degrees from the ferrule
 3 body; correct?
 4 A. Yes.
 5 Q. And the blade member shown in the figures of
 6 Flanagan are all barbed; correct?
 7 A. Are all?
 8 Q. Barbed.
 9 A. I don't think so.
 10 Q. Can you identify any figure --
 11 A. Flanagan talks about blade members, not barbs.
 12 Q. I said barbed. All the blade members shown in
 13 the figures of Flanagan are barbed, b-a-r-b-e-d.
 14 A. No, they're not barbed. They're blades. They're
 15 not barbed.
 16 Q. Well, let me ask you this. The broadheads shown
 17 in Figures 1 through 8 of Flanagan are all barbed
 18 broadheads; correct?
 19 A. No.
 20 Q. Okay. Turn to paragraph 35 of your declaration.
 21 And this is your definition of a barbed broadhead
 22 in paragraph 35 of your declaration.
 23 Let me know when you're there. That
 24 would be on page 17.
 25 A. Page 17?

1 Q. Correct.
 2 A. Page 17. I was going to page 35. I'm sorry.
 3 I'm back at page 17.
 4 Q. Okay. In paragraph 35, approximately about nine
 5 lines down, you talk about the Idaho
 6 Administrative Code.
 7 A. Yes.
 8 Q. And you state in paragraph 35 that:
 9 "The Idaho Administrative Code bans the
 10 use of 'arrows or bolts having barbed broadheads'
 11 on 'big game animals' and defines a barbed
 12 broadhead as 'a broadhead which has any portion
 13 of the rear edge of the broadhead forming an
 14 angle less than 90 degrees with the shaft or
 15 ferrule.'"
 16 Do you see that?
 17 A. Yes, that's their definition.
 18 Q. Okay. Well, that's your definition. You put it
 19 in your declaration; correct?
 20 A. That's their definition; I put it in my
 21 declaration.
 22 Q. So do you disagree with the Idaho Administrative
 23 Code? You cited it.
 24 A. I don't disagree with the code doing the banning.
 25 Q. Okay.

- 1 A. As to their specific definition --
 2 Q. Okay --
 3 A. That is theirs to make the definition, not me.
 4 Q. Sure. And you go on to say that:
 5 "Barbed broadheads have been disfavored
 6 in the hunting of big game for decades as any
 7 bowhunter knows, including Dr. Kuhn."
 8 Do you see that?
 9 A. Yes.
 10 Q. Okay. So what is your definition of a barbed
 11 broadhead?
 12 A. That is a broadhead which has barbs that by
 13 design are designed as a -- with an oblate or a
 14 -- a perimeter -- circular or oblate which is
 15 intended by design to function at less than 90
 16 degrees and pass through entirely a fish
 17 quarry -- that's what the barbs are for, not big
 18 game -- and allow it to have structural integrity
 19 to meet the intent of the barb that is passing
 20 through the entire animal -- basically, fish --
 21 so that the barb then will have the strength to
 22 be retained against the back side of the fish
 23 quarry so that the barbed broadhead arrow and
 24 fish can be pulled in on the tethered string to
 25 the shooter.

- 1 Q. Where is that definition contained in your
 2 declaration?
 3 A. Specific words, not; general words, yes. In my
 4 opinion.
 5 Q. Where does it appear?
 6 A. Page 17. It says, "Furthermore, the use of
 7 barbs --"
 8 Their use of barbs in hunting.
 9 Specifically state that.
 10 Q. Read into the record where you believe you
 11 included your definition of barbed broadhead.
 12 A. It is in the statement: "Furthermore, the use of
 13 barbs in hunting"
 14 That's my definition of barbs. Not
 15 Idaho or any other state. That's my statement of
 16 barbs, and it's my definition of barbs that's
 17 intended and implied in there, sir.
 18 Q. Well, it's not expressly stated in your
 19 declaration and that's your testimony in this
 20 case. So you're now changing your testimony?
 21 A. No, I am not changing it. I am giving you
 22 definition of my testimony, sir.
 23 MR. MC KINNIE: Objection to form to
 24 that previous question.
 25 BY MR. SHULL:

- 1 Q. Okay. So in paragraph 35 of your declaration,
 2 I'll read it into the record, you state that "the
 3 use of barbs in hunting larger quarry such as
 4 deer and elk, is strongly disfavored as it is not
 5 humane. Many states have banned barbed
 6 broadheads from use on big game but still permit
 7 their use on fish."
 8 And then you go on to cite the Idaho
 9 Administrative Code. And then you state that:
 10 "The Idaho Administrative Code bans the
 11 use of 'arrows or bolts having barbed broadheads'
 12 on 'big game animals' and defines a barbed
 13 broadhead as 'a broadhead which has any portion
 14 of the rear edge of a broadhead forming an angle
 15 less than 90 degrees with the shaft or ferrule.'"
 16 Did I read that correctly?
 17 A. Yes. Their definition. Exactly.
 18 Q. Okay. So under the definition that you
 19 identified and cited that's provided by the Idaho
 20 Administrative Code, which is: A barbed
 21 broadhead is "a broadhead which has any portion
 22 of the rear edge of the broadhead forming an
 23 angle less than 90 degrees with the shaft of the
 24 ferrule."
 25 That's the definition that I want you

- 1 to apply in my next series of questions. Do you
 2 understand that?
 3 A. Yes, I understand that.
 4 Q. Okay.
 5 A. But that's not my opinion. You're saying take
 6 the position of the Idaho Game and Fish
 7 definition. Is that correct, sir?
 8 Q. That's correct, which you put in paragraph 35 of
 9 your declaration.
 10 So with that definition in your mind
 11 that you put in your paragraph 35 of your
 12 declaration, all of the broadheads shown in
 13 Figures 1 through 8 of Flanagan meet the
 14 definition of barbed broadheads; correct?
 15 A. According to the Idaho definition?
 16 Q. Yup.
 17 A. Yes.
 18 Q. Are you aware of any other states that define
 19 barbed broadheads in the same way that the State
 20 of Idaho does?
 21 A. Not to my knowledge.
 22 Q. Okay. Well, you say many states, and then you go
 23 on to provide the State of Idaho as an example.
 24 So what other states are you referring to --
 25 A. I think the one that was referred to in here is

1 North Dakota, in terms of banning barbs. There
2 is --

3 In my experience, okay, I do not
4 believe Wisconsin specifically bans barbs, but I
5 believe there are other states like Minnesota
6 that do.

7 Q. Okay. And so --

8 A. And possibly Florida that do. But I don't have
9 those references at hand to be able to say
10 specifically to you, Jason H.

11 Q. Sure. In forming your opinions, did you survey
12 any other states other than the State of Idaho to
13 ascertain how they defined the term "barbed
14 broadheads"?

15 A. No. I looked at my own collection of fishing
16 arrows that have barbs on them. And I have a
17 number of them. And none of them -- none of them
18 are just limited to that Idaho definition.

19 Q. Sure. Who gave you --

20 A. They meet it, though. They do meet it.

21 Q. Who gave you the definition -- or who gave you
22 the Idaho Administrative Code that defines barbed
23 broadheads?

24 A. I believe that was provided to me -- it's not in
25 my declaration. It's a part of my declaration.

1 I believe it came from Jason McKinnie.

2 Q. Okay. Did you do any of your own searching of
3 any other state codes to determine how barbed
4 broadheads are defined?

5 A. No. I just looked at my half a dozen or so fish
6 arrows that I have on hand that I've used in
7 several states.

8 Q. Okay. So the answer is you didn't look to any
9 other states to determine how barbed broadheads
10 are defined; correct?

11 A. That is correct.

12 Q. So would you be surprised if other states defined
13 barbed broadheads like the State of Idaho has?

14 A. No.

15 Q. So under the Idaho definition of barbed
16 broadheads, all of the broadheads in Figures 1
17 through 8 of Flanagan are barbed broadheads;
18 correct?

19 A. They meet the requirements.

20 Q. Yeah.

21 A. They are not necessarily. They aren't barbed
22 broadheads. They meet the requirement of the
23 definition of the State of Idaho, sir.

24 Q. That's right. So in the State of Idaho, all of
25 the broadheads in Flanagan are barbed and are

1 illegal; correct? For hunting deer.

2 A. I can't say. I'm not sure how they would
3 interpret it versus someone having such a
4 broadhead on their person.

5 Q. So in your experience as an expert you don't know
6 the answer to that question?

7 A. I can tell you that what I said before. There
8 was broadheads in Flanagan, Figures 1 through 8,
9 meet the requirement definition of a barb by
10 having their angles at a certain angle. Okay?

11 But that doesn't mean they're barbs.

12 And I don't believe that the State of Idaho would
13 consider that that's the only requirement that
14 they would require differentiating between a
15 barbed broadhead and an acceptable-to-them
16 broadhead, sir.

17 Q. You understand why I'm asking these questions,
18 because you testified in your declaration, which
19 is considered direct testimony in this matter,
20 and you identified the Idaho Administrative Code
21 as the definition of barbed broadheads. You
22 didn't provide any other reference to identify
23 what the definition of a barbed broadhead is.

24 So I'm asking these questions and now
25 you're changing your testimony and I'm wondering

1 why that's the case.

2 A. No, I am not changing my testimony.

3 MR. MC KINNIE: Object to form.

4 BY MR. SHULL:

5 Q. Did you include a definition of barb in your
6 declaration?

7 A. A general definition of barb. I mentioned it in
8 two lines that we just talked about, Jason H.

9 Q. What's your definition of barb?

10 A. My specific definition of a barb I've already
11 stated once, I'll state it again.

12 Q. Maybe you can find it in your testimony which is
13 contained in your declaration. What is your
14 definition of arm?

15 And if you want to turn to paragraph 77
16 of your declaration, that's where you contain
17 your definition of barb. And I'll read it to you
18 if that makes it easier.

19 A. Hold off before you do. I want to access the
20 page so I can track it right with you, sir.
21 Please.

22 You said page 77; is that correct?

23 Q. Yes. In paragraph 77 of your declaration you
24 state that the plain and ordinary meaning of the
25 term "barb" is a projection extending backward

1 from a point, having an angle of less than 90
 2 degrees from the body.
 3 A. Uh-huh.
 4 Q. Do you disagree with that?
 5 A. No.
 6 Q. Okay.
 7 A. It's a sharp projection extending backward,
 8 that's from the point of an arrow or a fish hook,
 9 and preventing easy extraction.
 10 Q. Let's take a look at Figures 1 and 2 in Flanagan.
 11 Actually -- yeah, okay. Take a look at Figures 1
 12 and 2 in Flanagan.
 13 A. 1 and 2, okay. I'm looking at 1 and 2 now.
 14 Q. So the blade members are labeled 20 in the
 15 figures; correct?
 16 A. 20.
 17 Q. And the blade members --
 18 A. That is correct.
 19 Q. The blade members 20 extend backwards from a
 20 point having an angle of less than 90 degrees
 21 from the ferrule body; correct?
 22 A. Uh-huh. Yes.
 23 Q. And that is the same for all the figures in
 24 Flanagan; correct?
 25 A. Uh-huh.

1 Q. Is that a yes?
 2 A. That is true, as far as it's projecting back.
 3 Q. So all the blade members 20 disclosed in Flanagan
 4 would meet your definition of the term "barb";
 5 correct?
 6 A. Absolutely not. Please look at it. It says a
 7 sharp projection. None of those blades have a
 8 sharp projection to the rear, sir. They are all
 9 flat. Every one of them.
 10 Q. Let's take a look at --
 11 A. Every one of them.
 12 Q. Okay. Well, let's -- you're now contradicting
 13 your direct testimony, so let's go back to
 14 paragraph 77 of your declaration. Go back to
 15 paragraph 77 of your declaration. This is your
 16 direct testimony. And if you're changing your
 17 testimony, we'd like to know that.
 18 A. Page 77. Page 77.
 19 Q. The first sentence in paragraph 77 --
 20 A. The first sentence? Go ahead?
 21 Q. In paragraph 77, you state --
 22 A. Paragraph 77. Paragraph 77, not page 77. I'm
 23 sorry. Paragraph 77. I'm at paragraph 77, sir.
 24 Q. In paragraph 77, which is your direct testimony
 25 in this case, you state:

1 "A person of ordinary skill in the art
 2 would understand the barb of Lint to have a plain
 3 and ordinary meaning which is a projection
 4 extending backward from a point, having an angle
 5 of less than 90 degrees from the body, to prevent
 6 easy extraction."
 7 And you cite to Exhibit 2011, which is
 8 a dictionary definition. Right?
 9 A. Yes. Except --
 10 Q. So that's your definition --
 11 A. The statement made in the attachment is a sharp
 12 projection.
 13 Q. Okay. So you're adding the word --
 14 A. A person of ordinary means -- ordinary
 15 understanding would understand it is a sharp
 16 projection. It wouldn't have to have that
 17 adjective on the front of that statement. And
 18 it's shown right back in that attachment.
 19 Q. What are you referring to as a sharp projection?
 20 The point or the edge? What is the sharp
 21 projection that you're referring to in your
 22 definition of the term "barb"?
 23 A. Look on page -- let's see, is it page 77 again?
 24 Q. You're adding in the word "sharp projection,"
 25 which does not appear --

1 A. I'm not adding it in. I'm defining it
 2 specifically because it's in that attachment in
 3 the appendix under barb definition. Under 2A it
 4 says, "a sharp projection extending backward."
 5 So it's not the point, it's extending backward.
 6 It's on the back side of the barb.
 7 Figure 1 through 8 have a sharp
 8 projection on that rear edge. It's flat on every
 9 one of them.
 10 Q. So now your testimony is that a barb has to have
 11 a rear projection that's sharp; correct?
 12 A. Yes. Yes. It's right in that attachment. Yes.
 13 Q. Okay. So you're relying on a dictionary
 14 definition of the term "barb"?
 15 A. In that case, yes, I've quoted it.
 16 Q. Okay. Did you in forming your --
 17 A. But also from a practical point of view, obvious
 18 from a POSITA, looking at every barb that I have
 19 in my connection and had ever seen it has a sharp
 20 point on that rear edge, not a flat like a blade
 21 does, sir.
 22 Q. Okay. So in determining your definition of barb,
 23 what did you do? Did you just look at the barb
 24 heads or the broadheads that you have in your
 25 collection?

1 A. Yes, plus my memory.
 2 Q. Did you do any prior art searching?
 3 A. Over the years I've shot many, many fish, sir.
 4 Q. Sure. Did you do any prior art searches -- let
 5 me ask you this. Did you do any prior art
 6 searches to determine what the term "barb" means
 7 in the industry?
 8 A. No. I relied on my memory, my knowledge, and the
 9 existence of all the fishing arrows I have on
 10 hand which I have used for years in several
 11 states.
 12 Q. What's your definition of the term "animal"?
 13 A. In the context that we're talking about? Are we
 14 talking about animals that are quarry or animals
 15 that just exist anywhere, like amoeba,
 16 historically or --
 17 Please define your question a little
 18 bit more clearly, sir, if you would, Jason H.
 19 Q. You used the word "animal" in context of your
 20 declaration with respect to hunting. And I'm --
 21 A. Yes, hunting animals. Okay, yes. Fine.
 22 Q. Hey, let's not talk over each other. It makes
 23 for a very bad record.
 24 A. My apologies, sir.
 25 Q. Wait till I stop my question and then you can

1 answer.
 2 So in the context of hunting animals,
 3 what does animals include? Does it include deer,
 4 elk, bobcat, birds? Anything else other than
 5 what I just mentioned?
 6 A. Yes. Coyotes, groundhogs. Other -- rough fish
 7 that are legal to hunt as quarry in various
 8 states, include bobcats, bear, elk, muleys.
 9 Let's see, there are others, but that's quite a
 10 few.
 11 But I consider the definition for
 12 animals -- hunting animals, those to be taken
 13 legally in whatever state has the regulations
 14 that apply where you are located, sir.
 15 Q. In the State of Idaho that actually bans barbed
 16 broadheads under the definition you provided in
 17 paragraph 35, what animals could be used to hunt
 18 with the Flanagan broadheads?
 19 A. In Idaho?
 20 Q. Correct.
 21 A. I believe the regulations -- I can't say for
 22 sure. I'm not -- I haven't hunted in Idaho. I
 23 haven't directly had contact with the Idaho
 24 proper authorities to answer that question, so I
 25 can't answer it. I can give you an opinion, but

1 that's just an opinion, that's not -- that's not
 2 direct information from Idaho personnel
 3 themselves.
 4 Q. So you concluded the definition -- or, I'm sorry,
 5 you cited the Idaho Administrative Code in
 6 paragraph 35 of your declaration and elsewhere
 7 which is considered your direct testimony. Why
 8 did you include the Idaho Administrative Code if
 9 you've got no experience dealing with an
 10 Administrative Code in Idaho and elsewhere?
 11 A. I believe Idaho regulations are one of the states
 12 that have regulations that specifically call that
 13 out.
 14 Q. Who wrote your declaration?
 15 A. I did.
 16 Q. You wrote it from scratch?
 17 MR. MC KINNIE: Objection.
 18 Mr. Willkomm, you don't need to disclose any
 19 attorney-client privileged information. Drafts
 20 of the declaration are all protected under work
 21 product privilege. I'm instructing you to not
 22 answer that question.
 23 BY MR. SHULL:
 24 Q. You can answer the question. Did you write your
 25 declaration from scratch? 'Cause it's your

1 direct testimony in this case.
 2 MR. MC KINNIE: Mr. Willkomm, you can
 3 answer the question to the extent that you wrote
 4 your declaration. But to the extent that
 5 there's any revealing of any work product or any
 6 attorney-client privilege information, you
 7 cannot disclose that. So to the extent you can
 8 answer your question without violating or
 9 breaching the attorney-client or work product
 10 privilege, you can answer the question.
 11 BY MR. SHULL:
 12 Q. You can answer the question if you can, sir.
 13 A. If I understand you gentlemen correctly, I cannot
 14 answer that question.
 15 Q. Are you refusing to answer the question at the
 16 advice of your counsel?
 17 A. Yes.
 18 Q. Okay. So you're taking your counsel's --
 19 A. Jason H. --
 20 Q. Just to be clear, you're refusing to answer the
 21 question based on your instruction from counsel
 22 to not answer the question based on
 23 attorney-client privilege.
 24 A. Yes.
 25 Q. And the question, to be clear -- because this is

1 going to be certified -- the question is: Did
 2 you write your declaration from scratch? You're
 3 refusing to answer that question; correct?
 4 A. Yes.
 5 Q. Okay. Did anybody else besides Mr. McKinnie help
 6 with the drafting of the declaration?
 7 MR. MC KINNIE: Again, object to the
 8 extent that it calls for any attorney-client
 9 privileged information.
 10 But you can answer the question to the
 11 extent that it does not violate that.
 12 THE WITNESS: My answer is no.
 13 BY MR. SHULL:
 14 Q. Okay. How did Mr. McKinnie help in drafting the
 15 declaration?
 16 MR. MC KINNIE: Objection. I'm going
 17 to instruct my client to not answer under
 18 attorney-client and work product privileges. Or
 19 not my client, the expert witness. My
 20 apologies.
 21 BY MR. SHULL:
 22 Q. How much time did you spend drafting your
 23 declaration?
 24 A. Several hours.
 25 Q. Did you keep time? Did you keep any time notes?

1 Did you bill the client?
 2 A. No.
 3 Q. Let me ask you this. Do you have any evidence
 4 demonstrating how much time you spent in drafting
 5 your declaration?
 6 MR. MC KINNIE: Objection. It's going
 7 beyond the scope of the material in there. And
 8 relevance.
 9 BY MR. SHULL:
 10 Q. You can answer the question.
 11 A. Not specifically defined or recorded, sir.
 12 Q. So earlier you testified that you didn't know
 13 what type of animals would be banned in the State
 14 of Idaho from using barbed broadheads; correct?
 15 A. Yes, I do not know exactly. Yes. I do not know
 16 all the animals that exist in Idaho.
 17 Q. So do you know any animals that are banned from
 18 using barbed broadheads for hunting?
 19 A. Only as defined in that regulation, sir.
 20 Q. And how does -- what animals are banned using
 21 barbed broadheads in Idaho based on that
 22 regulation?
 23 A. You're asking about Idaho. Is that correct,
 24 Jason H.?
 25 The reason why I ask is I just come

1 across a North Dakota regulations, and they
 2 specifically talk about white-tail and mule deer.
 3 Q. Does the North Dakota regulations provide a
 4 definition of barbed broadheads?
 5 A. (No audible response.)
 6 MR. SHULL: Why don't we go off the
 7 record while you look for that definition.
 8 (Discussion held off the record.)
 9 THE WITNESS: Under the North Dakota
 10 regulations it talks, under the paragraph Deer
 11 Bow Season, it says specifically it is illegal
 12 to hunt big game with barbed arrows. So it's
 13 the definition of big game in North Dakota.
 14 BY MR. SHULL:
 15 Q. And it's your opinion -- is your opinion that the
 16 Figures 1 through 8 are not barbed arrows?
 17 A. Again, I'm not North Dakota authority personnel
 18 who would interpret that statement. I can't say.
 19 They specifically show pictorials, sir, that
 20 would make -- I can't say. I can't say. It
 21 could be either way.
 22 Q. Why did you cite the North Dakota regulation?
 23 For what purpose did you cite it?
 24 A. They had a definition of barbed in there, sir.
 25 And I said it's illegal to use a barbed

1 broadhead, sir.
 2 Q. Where do they define the term "barbed"?
 3 A. They say barb refers to an arrowhead with any
 4 fixed portion of the rear or trailing edge of the
 5 arrowhead forming an angle less than 90 degrees
 6 with the shaft.
 7 Q. Under that definition --
 8 A. But they go on to say -- please allow me to
 9 finish, sir. They say broadheads with mechanical
 10 or retractable blades would be legal. So it
 11 would be legal. It would be legal to use those
 12 Figures 1 through 8 in the State of North Dakota,
 13 by that final statement.
 14 Q. Can you repeat that statement again? Because I'm
 15 looking at the portion of the North Dakota
 16 regulation you're reading from.
 17 A. Broadheads with mechanical or retracting blades
 18 are legal, sir.
 19 Q. And what line number are you -- or what line are
 20 you reading from? You're under the paragraph
 21 entitled, Deer Bow Season; correct?
 22 A. I'll say -- one, two, three, four, five, six,
 23 seven, eight, nine, ten -- eight -- nine.
 24 Starting at the end of nine. It says the word
 25 "broadheads," and then in 10 it says, "with

1 mechanical or retractable blades are legal," sir.
 2 Do you see that now, Jason?
 3 Q. No. Read the exact sentence into the record,
 4 please.
 5 A. "Broadheads with mechanical or retractable blades
 6 are legal."
 7 Q. Yeah, I'm not seeing where you're reading from.
 8 So you're gonna have to maybe specifically
 9 identify --
 10 MR. MC KINNIE: Jason, I believe he's
 11 reading off of Exhibit 2013.
 12 BY MR. SHULL:
 13 Q. Oh, so you're reading from the Idaho
 14 Administrative Code. Correct?
 15 MR. MC KINNIE: No, it's the North
 16 Dakota.
 17 THE WITNESS: It's the North Dakota
 18 one.
 19 BY MR. SHULL:
 20 Q. Okay. So let's do 016; right?
 21 A. Ex. 2013 I have.
 22 MR. MC KINNIE: That was the old one.
 23 BY MR. SHULL:
 24 Q. Okay. So you're reading off the old one and then
 25 you submitted a new one. Which are you relying

1 on, the old one or the new one, in your
 2 testimony?
 3 A. That's the one that I have the copies of right
 4 here in front of me, sir.
 5 Q. Okay. Well, let's pull up 2013 on AgileLaw so we
 6 can all look at the same thing. So pull that up.
 7 (Deposition Exhibit 2013 marked and
 8 introduced.)
 9 BY MR. SHULL:
 10 Q. So what page are you reading from?
 11 A. I'm reading on -- it is page 11 of Ex. 2013.
 12 That's what I have on the lower right-hand
 13 corner, sir.
 14 Oh, I'm sorry, it's page 10, not
 15 page 11. It's page 10. Page 11 is the opposite
 16 side.
 17 Q. And you have it highlighted. It says, "It is
 18 illegal to hunt big game with barbed arrows
 19 (barbed refers to an arrowhead with any fixed
 20 portion of the rear or trailing edge of the
 21 arrowhead forming an angle less than 90 degrees
 22 with the shaft)." Correct?
 23 A. Yeah. The next sentence is specifically the one
 24 I've quoted to you.
 25 Q. So I want to stick with the definition of barbed

1 arrows that's in the North Dakota statute, which
 2 is: "Barbed refers to an arrowhead with any
 3 fixed portion of the rear or trailing edge --"
 4 A. Fixed portion. Fixed portion, sir.
 5 Q. Okay. Let me finish my statement.
 6 A. Very important. Please, sir, look at the --
 7 Q. I'm reading from the regulation. Stop
 8 interrupting me.
 9 A. Look at the -- look at the --
 10 Q. Okay, I'm out.
 11 MR. MC KINNIE: Wait, Wayne. Please
 12 let Jason finish his question.
 13 MR. SHULL: Go off the record.
 14 THE WITNESS: I'm sorry. I'm sorry.
 15 Let's go off the record.
 16 (Discussion held off the record.)
 17 BY MR. SHULL:
 18 Q. So in Exhibit 2013, which is the White-Tailed and
 19 Mule Deer Hunting Guide, North Dakota Game and
 20 Fish, it states:
 21 "It is illegal to hunt big game with
 22 barbed arrows (barbed refers to an arrowhead with
 23 any fixed portion of the rear or trailing edge of
 24 the arrowhead forming an angle less than 90
 25 degrees with the shaft)."

1 Did I read that correctly?
 2 A. Yes, I believe so.
 3 Q. Okay. So the State of North Dakota is defining
 4 barbed as an arrowhead with any fixed portion of
 5 the rear or trailing edge of the arrowhead
 6 forming an angle of less than 90 degrees with the
 7 shaft; correct?
 8 A. Yes.
 9 Q. Okay. When I asked you earlier if you had done
 10 any prior art searches to ascertain the term --
 11 what the term "barbed" means, you said you had
 12 not. Correct?
 13 A. I believe you said in the context of preparing
 14 for my declaration, I think. But go ahead, sir.
 15 Q. Yeah. Let me ask you this. In forming your
 16 opinions in this case to determine whether --
 17 what is the definition of the term "barbed," did
 18 you do any prior art searching or look at any
 19 prior art?
 20 A. Could you clarify, please, and say is that prior
 21 art within patents or just in general, sir?
 22 Q. In general. So let me ask you this.
 23 In forming your opinions in this case
 24 to determine what the term "barbed" means, did
 25 you do any searching of the prior art?

1 A. In general.
 2 Q. Correct.
 3 A. Yes, I think.
 4 Q. When did you do that prior art searching?
 5 A. I have a number of books including bowfishing
 6 books that have photos, et cetera of barbed
 7 arrows, besides the ones I physically have in my
 8 possession. And that's the prior art that I
 9 referred to, sir, saying yes.
 10 Q. Okay. Sure. So did you identify all of the
 11 materials that you relied on in forming your
 12 opinions in Section 2 of your declaration?
 13 A. And the question is did I identify? Is that -- I
 14 want to make sure I'm answering you correctly,
 15 sir.
 16 Q. That was my question, yes.
 17 A. Yes.
 18 Q. Other than what is listed in Section 2 of your
 19 declaration, did you consider any other prior art
 20 patents when forming your opinions?
 21 A. Yes.
 22 Q. But you didn't identify them in your declaration?
 23 A. You asked me if I reviewed those.
 24 Q. No, I asked you if you considered any prior art
 25 patents when forming your opinion.

1 A. I reviewed and considered numerous patents that
 2 had been identified in the patent documentation
 3 that has been provided to me.
 4 Q. Okay. And to the extent you relied on any
 5 patents or prior art in forming your opinions,
 6 you identified those in your declaration;
 7 correct?
 8 A. Huh? Uh-huh.
 9 Q. Is that a yes?
 10 A. Yes.
 11 Q. Okay.
 12 A. Yes.
 13 Q. Let's pull up Exhibit 1027 which was premarked.
 14 (Deposition Exhibit 1027 marked and
 15 introduced.)
 16 BY MR. SHULL:
 17 Q. We'll pull it up on AgileLaw. Let me know when
 18 you can see it. This is United States Patent
 19 5,570,530.
 20 A. '530.
 21 Q. Can you see it?
 22 A. Let's see.
 23 Q. Let me know when it's up.
 24 A. I'm looking for it.
 25 Q. It's 1027.

1 A. I'm looking for it. '24, '25, '23 -- '22. Oh,
 2 there it is. It just popped up. Okay. I'll go
 3 back to it. Yes, I have '27 in front of me, sir.
 4 Q. Okay. So this is United States Patent 5,570,530.
 5 And you can see from the title that the patent is
 6 entitled, Bowfishing Arrowhead. Do you see that?
 7 A. Yes.
 8 MR. MC KINNIE: I'm going to object to
 9 this being not previously disclosed as part of
 10 the petition.
 11 BY MR. SHULL:
 12 Q. Yeah. Did you consider this prior art patent
 13 when forming your opinions in this case?
 14 A. No.
 15 Q. Okay. You can see from the abstract, which is on
 16 the front face of the patent, that this prior art
 17 patent refers to a bowfishing arrowhead as having
 18 blade members. Do you see that?
 19 A. Yes.
 20 Q. And so if you want to look through the figures, I
 21 will represent to you that the blade members are
 22 labeled 27 and 28.
 23 A. I'm trying to bring them up now, sir. Yes, okay.
 24 Q. And while you're --
 25 A. 27 and 28. Yes, sir. Okay.

1 Q. While you're looking at those figures, my
 2 question is: Do you see any cutting edge or flat
 3 sharp part on the blades 27 or 28?
 4 A. I'm going to go back and forth between this
 5 information, sir.
 6 Q. Looking at the figures, do you see any cutting
 7 edge or sharp part of the blades on the elements
 8 labeled 27 and 28?
 9 A. I'm trying to get back to that portion of the --
 10 okay. Now, it's a difficulty with moving the
 11 information around.
 12 On Figures -- on Ex. 1027, there's no
 13 figures identified here, but you identify the
 14 components of 27 and 28; is that correct, sir?
 15 Q. The figures are in the beginning of the patent.
 16 And I'm asking you about the blades labeled 27
 17 and 28 in the figures.
 18 A. Yes. Okay. There are two figures there, but I
 19 can't tell whether there are sharp ends or the--
 20 it doesn't give the detail --
 21 Q. Okay. So when your --
 22 A. -- to allow an assessment.
 23 Q. In your opinion are the blades labeled 27 and 28
 24 in the figures blades or barbs? This is on a
 25 bowfishing arrowhead.

1 A. They would not meet the requirements of being at
 2 90 degrees or farther aft. They're pointed
 3 forward toward the tip.
 4 Q. What figure are you referring to?
 5 A. Either one of those figures, sir. Oh, the first
 6 figure. The lower figure.
 7 Q. Okay. Just to be clear, do you see any cutting
 8 edge or flat sharp part on the elements that are
 9 labeled 27 and 28 in the figures?
 10 A. Can't see for sure. Cannot see for sure.
 11 Q. Okay. So in your opinion are the elements
 12 labeled 27 and 28 blades or barbs?
 13 A. I cannot say.
 14 Q. Okay. Let's take a look at--
 15 A. Not -- not -- I'm sorry.
 16 Q. And let's take a look at Exhibit 1028. That's
 17 also been premarked.
 18 (Deposition Exhibit 1028 marked and
 19 introduced.)
 20 BY MR. SHULL:
 21 Q. So pull that exhibit up.
 22 A. Okay.
 23 Q. This is another prior art patent. It's U.S.
 24 Patent No. 4,819,360. Let me know when you can
 25 see it.

1 MR. MC KINNIE: Same objection as not
 2 previously part of Petitioner's petition.
 3 BY MR. SHULL:
 4 Q. Is it up on your screen yet?
 5 A. Yes, it is. It's Patent '360. Yes, I see it
 6 now, sir.
 7 Q. So the patent is entitled, Bowfishing Arrowhead.
 8 Did you consider this prior art patent when
 9 forming your opinions in this case?
 10 A. Nope. Haven't ever seen it before.
 11 Q. Okay. So scroll down to column 1, lines 9
 12 through 10. And you can see that the prior art
 13 patent refers to the bowfishing arrowhead as
 14 having blades. Do you see that?
 15 A. I'm trying to get down to the -- okay, I'm now on
 16 the background. What page and column are you
 17 asking about, sir?
 18 Q. Column 1, lines 9 through 10.
 19 A. Column 1, lines 9 through 10. Okay. Yes, I see
 20 that.
 21 Q. Okay. So this prior art patent refers to the
 22 bowfishing arrowhead as having blades. And in
 23 the figures the blades are labeled 30 and 32.
 24 A. Uh-huh.
 25 Q. And I want you to look at the figures of the

1 patent, and I want you to tell me whether you see
 2 any cutting edge or flat sharp part on the
 3 blades.
 4 A. I can't say for sure based on the figures and the
 5 diagram of items 30 and 32. Can't say. They're
 6 at right angles.
 7 Q. In your opinion are the elements labeled 30 and
 8 32 blades or barbs?
 9 A. It's defined as blades in the patent, I believe,
 10 sir. You just -- we pointed that out or we
 11 looked at that section. They define them as
 12 blades.
 13 Q. I'm asking, in your opinion are the elements
 14 labeled 30 and 32 blades or barbs?
 15 MR. MC KINNIE: Objection to form.
 16 THE WITNESS: I've blown it up to see
 17 the side view, sir, and I'm looking at the side
 18 view of 32 and 30. It looks like they have
 19 characteristics of both, to me, sir.
 20 BY MR. SHULL:
 21 Q. So in your opinion the elements labeled 30 and 32
 22 would be both blades and barbs; correct?
 23 A. They define them as blades. They have
 24 characteristics of both. I'm having to try to
 25 get back to you because every time I go into that

1 I lose your pictorial.
 2 Q. Well, do you see any --
 3 A. I can see you again now. Okay.
 4 Q. Do you see any cutting edge or flat sharp part on
 5 the blades labeled 30 or 32?
 6 A. I see flats, what appear to be flats on the
 7 sides, but they don't appear to be sharp.
 8 Q. Okay. Let's turn to Exhibit 1029 which has also
 9 been premarked.
 10 (Deposition Exhibit 1029 marked and
 11 introduced.)
 12 BY MR. SHULL:
 13 Q. Let me know when you can pull that one up. It's
 14 United States Patent 7,485,056. This is another
 15 prior art patent entitled, Fish-Holding
 16 Arrowhead. Let me know when you can see it.
 17 A. I'm searching for it. It's 1029 did you say,
 18 sir?
 19 Q. Correct.
 20 A. Yes, I have it now.
 21 MR. MC KINNIE: Objection to the
 22 exhibit not being previously disclosed as part
 23 of the petition.
 24 BY MR. SHULL:
 25 Q. Did you consider this prior art patent when

1 forming your opinions in this case?
 2 A. No.
 3 Q. So you can see from the abstract, which is on the
 4 front face of the patent, that the prior art
 5 patent refers to the fish-holding arrowhead as
 6 having blades. And in the figures the blades are
 7 labeled 40.
 8 I want you to look through the figures
 9 in this patent and tell me if you can see any
 10 cutting edge or flat sharp part on the blades.
 11 A. Under Figure 6 it looks like what are called
 12 blades are flat, but it doesn't appear that
 13 they're sharp on the edge. On the sides, pardon
 14 me. Looking at Figure 6, sir.
 15 Q. So in your opinion are the elements labeled 40
 16 blades or barbs?
 17 A. They don't appear to have a cutting edge. So
 18 they're another cross, it's between a blade and a
 19 barb.
 20 Q. So in your opinion the elements labeled 40 are
 21 both blades and barbs; correct?
 22 A. It has elements of both but maybe neither.
 23 Q. Okay. Let's take a look at Exhibit 1030, which
 24 has also been premarked.
 25 (Deposition Exhibit 1030 marked and

1 point on the ends. Looking at Figure 5, sir.
 2 Q. So in your opinion are the elements labeled 30
 3 blades or barbs?
 4 A. Let's see. I'll go back up the other way now.
 5 (Witness peruses document.)
 6 Q. Are you still looking?
 7 A. Yes. I'm looking through. There's 14 figures
 8 there, sir.
 9 (Witness peruses document.)
 10 A. Okay. Has characteristics of a barb and some
 11 characteristic of blade, but no sharp cutting
 12 edge.
 13 BY MR. SHULL:
 14 Q. So in your opinion the elements--
 15 A. It's not either. Characteristics of both but not
 16 either.
 17 Q. Okay. Have you ever heard of a company called
 18 FeraDyne Outdoors?
 19 A. I had to get you back so we can physically see
 20 each other.
 21 Q. Yeah. The question is, have you ever heard of a
 22 company called FeraDyne Outdoors?
 23 A. FeraDyne Outdoors. Possibly.
 24 Q. Have you ever heard of the brand Muzzy
 25 Bowfishing?

1 introduced.)
 2 BY MR. SHULL:
 3 Q. Let me know when you can pull that one up. This
 4 is a U.S. patent application -- I'm sorry,
 5 publication, U.S. 2023/0366662 A1. It's
 6 entitled, Fishing Head With Retractable Blades
 7 For Bowfishing.
 8 A. I can see it. It's a Hughey, I think, and it's a
 9 '662.
 10 Q. Yeah.
 11 MR. MC KINNIE: Objection as being
 12 newly-submitted evidence.
 13 BY MR. SHULL:
 14 Q. Did you consider this patent publication when
 15 forming your opinions in this case?
 16 A. No.
 17 Q. I want you to look through the figures and tell
 18 me if you see any cutting edge or flat part --
 19 flat sharp part on the elements labeled 30.
 20 A. The elements 30 appear to have, I can't tell --
 21 wait a minute. Is there a -- I'm trying to look
 22 to see if there's more than just the one view.
 23 Okay.
 24 Looks like there's no sharp cutting
 25 edge, but it looks like it has a point or near

1 A. Oh, Muzzy I have heard, yes.
 2 Q. And is the brand Muzzy Bowfishing a reputable
 3 line of bowfishing products?
 4 A. Never have seen them and never have used them.
 5 I'm familiar with the Muzzy broadheads that are
 6 used for white-tails and turkeys.
 7 Q. Okay. So you're not familiar with the company
 8 that sells the brand Muzzy Bowfishing that's
 9 called FeraDyne.
 10 A. Nope.
 11 Q. Okay. Have you ever used any Muzzy Bowfishing
 12 line of products?
 13 A. No.
 14 Q. So you don't know whether Muzzy Bowfishing is a
 15 leading brand with respect to bowfishing
 16 broadheads?
 17 A. No, I do not know.
 18 Q. Let's pull up Exhibit 1031. It's also been
 19 premarked.
 20 (Deposition Exhibit 1031 marked and
 21 introduced.)
 22 MR. SHULL: And we might have to like
 23 rotate this 90 degrees. I don't know if we can
 24 do that from the AgileLaw tech support
 25 perspective or not. Because I think it's going

1 to be a little sideways in orientation.
 2 MLV TECHNICIAN: It is possible.
 3 THE WITNESS: What is the exhibit
 4 number?
 5 BY MR. SHULL:
 6 Q. 1031.
 7 A. I have that showing up on my screen, sir.
 8 Q. How does it look in orientation on your screen?
 9 Is it -- does it need to be flipped?
 10 A. No. No, sir.
 11 Q. Okay. So --
 12 MR. MC KINNIE: Objection on it being
 13 newly-presented evidence.
 14 And, Jason, it is showing up where I
 15 can -- I mean, I don't know exactly what you're
 16 referring to in orientation, but the words are
 17 in the right orientation.
 18 MR. SHULL: Okay, good.
 19 BY MR. SHULL:
 20 Q. So Exhibit 1031 is a copy of Muzzy Bowfishing's
 21 web page where they're selling one of their top
 22 bowfishing broadheads. And this web page refers
 23 to the fish point as containing blades.
 24 Do you see any cutting edge or flat
 25 sharp part on the blades in the photograph in

1 this exhibit?
 2 A. (No response.)
 3 Q. The second page of the exhibit contains a
 4 enlarged view of that photograph, if it helps.
 5 A. Yes, I'm trying to blow that up a little bit,
 6 sir. Yes.
 7 Q. Just go to the second page. It's got a larger
 8 image of that same fish point.
 9 A. Yeah. I don't see a cutting edge on it. But
 10 could you help me, please, sir? I ask for your
 11 help in definition on the previous page.
 12 Q. You can look at the first page or the second page
 13 of the exhibit.
 14 A. The very first page, the highlighted section, it
 15 says the "Lighted Carbon Composite Fish Arrow
 16 With Iron Barb 3-Blade."
 17 Q. And my question is, in the photograph of the fish
 18 point --
 19 A. Yes.
 20 Q. -- do you see any cutting edge or a flat sharp
 21 part on the blades?
 22 A. Nope.
 23 Q. So in your opinion does this fish point have
 24 blades or barbs?
 25 A. It has both.

1 Q. Let's take a look at Exhibit 1032, which has also
 2 been premarked. This is U.S. Patent No.
 3 2,373,216. Let me know when you can pull it up.
 4 (Deposition Exhibit 1032 marked and
 5 introduced.)
 6 A. Okay. It is there. I can see it.
 7 BY MR. SHULL:
 8 Q. Okay. So this is a prior patent entitled,
 9 Arrowhead.
 10 MR. MC KINNIE: Objection again on
 11 newly-submitted evidence not in the petition.
 12 BY MR. SHULL:
 13 Q. I'm going to ask you, did you consider this prior
 14 art patent in forming your opinions in this case?
 15 A. No.
 16 Q. Okay. Those are various embodiments for
 17 arrowheads. And on page 2 of the patent. Look
 18 to page 2. This is an old patent, it doesn't
 19 have column numbers, so you just gotta go to
 20 page 2.
 21 A. Okay.
 22 Q. Go to lines 52 to 54.
 23 A. In column 1 or column 2, sir?
 24 Q. I think it's column 1 on page 2.
 25 A. I'm in column 1. What line number, sir, do you

1 want me to look at?
 2 Q. Take a look at line number 52 to 54.
 3 A. 52 to 54.
 4 Q. And it states that: "The forward edges 23 of the
 5 barbs are sharpened so as to provide a cutting
 6 edge." Do you see that?
 7 A. Yes. Uh-huh.
 8 Q. Why would one of ordinary skill in the art want
 9 to sharpen the forward edges of barbs on
 10 arrowheads?
 11 A. Would you repeat that, sir?
 12 Q. Why would one of ordinary skill in the art want
 13 to sharpen the forward edges of barbs on
 14 arrowheads?
 15 A. One would not. One specifically would not.
 16 Q. So this patent was issued in 1945; correct?
 17 A. I think that's correct.
 18 Q. And according to this patent, in 1945 it was
 19 known to sharpen the forward edges of barbs to
 20 provide a cutting surface.
 21 A. It may have been known to do it, but that is not
 22 a wise thing to do. We've discussed that before.
 23 There are two practical and a technical reason
 24 not to do that.
 25 Someone can state that, as a patent

1 applicant or even a person, a proved patent, but
 2 that doesn't mean that they have the knowledge of
 3 those two practical -- one practical reason and
 4 the other technical reason which we have already
 5 discussed, sir.
 6 Q. How hard is it to sharpen the forward edge of a
 7 barb?
 8 A. Depends on the material.
 9 Q. How much skill is involved with adding a sharp
 10 edge of a barb?
 11 A. Moderate.
 12 Q. How would you do it?
 13 A. Please repeat?
 14 (Brief pause.)
 15 A. Sir, can I speak?
 16 Q. I asked you, how would you do it? How would you
 17 add a sharp edge to a barb?
 18 A. If I were to do it, I would probably hold it in a
 19 vise so that a portion of the barb was exposed,
 20 and then use a file at an angle to file on it.
 21 And depending on how hard or what kind of
 22 material and the hardness of the barb would
 23 determine how long it would take to put an edge
 24 on the barb.
 25 And I'd have to do it first on one side

1 and then on the other side, to put a sharp edge
 2 on it. And that would be a stress riser. And
 3 that would also cut a slot going through.
 4 Q. Have you reviewed any prior art videos published
 5 by Matt Futtere about what is required in order
 6 for a broadhead to achieve cutting of flesh?
 7 A. Please allow me to get you back on the screen,
 8 sir.
 9 Q. Sure.
 10 A. Would you repeat -- Jason H., pardon me, now I
 11 have you back on the screen. Please repeat your
 12 question, sir, slowly.
 13 Q. Sure. Have you reviewed any prior art videos
 14 published by Matt Futtere about what is required
 15 in order for a broadhead to achieve cutting of
 16 flesh?
 17 A. No, I don't think I have reviewed any videos of
 18 Matt Futtere's, at all.
 19 Q. You're aware of a prior art broadhead called the
 20 Adam broadhead; correct?
 21 A. Yes, I am.
 22 Q. Did you consider any advertisements or promotions
 23 for the Adam broadhead when forming your opinions
 24 in this case?
 25 A. Would you restate that carefully? And the reason

1 why I'm asking you, sir, is that it was referred
 2 to -- the Adam 4 was referred to in the other
 3 expert's declaration in a book that he published
 4 and he had mentioned that one of the most
 5 innovative broadheads was the Adam 4. So I want
 6 to make sure I'm answering you correctly, sir.
 7 So go ahead and repeat the question.
 8 Q. Sure. Did you consider any prior art
 9 advertisements or promotions for the Adam
 10 broadhead when forming your opinions in this
 11 case?
 12 A. No.
 13 Q. Have you read the Flanagan Patent from beginning
 14 to end?
 15 A. Yes.
 16 Q. Have you read the prosecution history for the
 17 Flanagan Patent from beginning to end?
 18 A. I think so.
 19 Q. Did you know the word "sharp" doesn't appear
 20 anywhere in the patent?
 21 A. I will take your word for it. Otherwise I'm
 22 going to have to review it word by word, sir. I
 23 will take your word for it, Jason.
 24 Q. Did you know that the word "sharp" doesn't appear
 25 anywhere in the prosecution history?

1 A. Of the '177 Patent? Is that what you're asking?
 2 Q. Correct.
 3 A. No, but I will trust if you tell me one way or
 4 the other.
 5 Q. Sure. So let's go to Figure 1 in the appendix of
 6 your declaration. That's where you have a
 7 photograph of broadheads.
 8 A. And what page again?
 9 Q. It's Appendix A. It's toward the end of your
 10 declaration.
 11 A. Yes, I got you.
 12 Q. And it's that photograph of two broadheads that
 13 you included in Appendix 8. A, I'm sorry.
 14 A. Yes, it's Figure 1?
 15 Q. Yes.
 16 A. Yes. Uh-huh.
 17 Q. This is the photograph of two broadheads that you
 18 say you designed.
 19 A. That is correct.
 20 Q. What materials are those broadheads made of?
 21 A. I'm sorry?
 22 Q. What materials are those broadheads made of?
 23 A. Various steel. I used several stainless steels
 24 as well as 4130 steels, as well as 303 stainless,
 25 and other steels, sir.

- 1 Q. Do those broadheads have blades?
 2 A. No.
 3 Q. Do the broadheads have barbs?
 4 A. No.
 5 Q. So they neither have blades or barbs.
 6 A. No.
 7 Q. Do they have a cutting edge?
 8 A. I'm sorry, please excuse me. You asked the
 9 question they have neither blades nor barbs? Is
 10 that the question you asked?
 11 Q. Yes.
 12 A. The answer is yes, they have neither blades nor
 13 barbs.
 14 Q. Okay. Do they have a cutting edge?
 15 A. Yes.
 16 Q. What's the cutting edge?
 17 A. It's on the external surface in the upper figure.
 18 It has all three -- razor wires is what they are
 19 called. They all have a cutting edge on the
 20 leading surface. The lower example only has one
 21 of the three razor wires on it, sir.
 22 Q. Did they have a flat sharp point?
 23 A. No.
 24 Q. Do the broadheads of Figure 1 cut flesh?
 25 A. Please repeat, Jason?

- 1 Q. Sure. Do the broadheads in Figure 1 cut flesh?
 2 A. Yes.
 3 Q. And how was that achieved?
 4 A. These are cut-on-contact tipped arrows. They
 5 begin cutting as soon as the very tip enters into
 6 flesh or any of the layers, and it continues on
 7 to the cutting edges that are at the very front
 8 edge of those razor wires and continues on
 9 through the -- to the end of the -- to the end on
 10 the upper design, all the way to the end. Do you
 11 see that?
 12 Q. Yes.
 13 A. All the way to the very end until it flattens
 14 out. Of course, then there's no cutting edge
 15 there.
 16 On the bottom portion, a slightly
 17 different razor wire design, it has the same
 18 cutting edge to begin with and then also cuts
 19 through. Has the cutting edge on the razor wire
 20 at the very front of it, all the way to the
 21 extreme end. And there is a cutting edge on the
 22 aft, but that does not -- that does not cut
 23 through flesh.
 24 Q. So does the --
 25 A. I lost somebody here.

- 1 Q. Does the wire that's on those broadheads, is it
 2 safe to touch without cutting your hand?
 3 A. No.
 4 Q. Because I don't see the cutting edge in those
 5 photos, so maybe it's a little hard to see.
 6 A. Uh-huh.
 7 Q. How is the cutting edge formed? Is it filed in
 8 the fashion that you described earlier, taking a
 9 file and created an edge?
 10 A. Yes.
 11 Q. Has those broadheads ever been used to hunt
 12 animals?
 13 A. No.
 14 Q. How do you know they would work to hunt?
 15 A. Prototype testing.
 16 Q. What did you test those broadheads on?
 17 A. Specially designed target created by me based on
 18 my knowledge of lethality and vulnerability.
 19 Q. So they never actually have been used to hunt
 20 animals?
 21 A. No.
 22 Q. Did you try those broadheads on any animals to
 23 assess their lethality?
 24 A. No.
 25 Q. Other than the broadhead shown in Figure 1, did

- 1 you develop any other broadheads?
 2 A. No, I stopped development after prototype
 3 testing.
 4 Q. So the two broadheads shown in Figure 1 are the
 5 only broadheads that you have designed and
 6 developed.
 7 A. No.
 8 Q. Well, I asked you, other than Figure 1, did you
 9 develop any other broadheads?
 10 A. I did not develop any other broadheads, but I
 11 designed them.
 12 Q. And by design, what do you mean by that?
 13 A. Made, created drawings, had parts made from the
 14 drawings, but they never reached the assembly to
 15 the prototype stage and had prototype testing
 16 conducted on them, sir.
 17 Q. Okay. So, just to be clear, other than the
 18 broadheads shown in Figure 1, you did not develop
 19 any other broadheads; correct?
 20 A. Past prototype testing, that's correct.
 21 Q. Do you have any documentation to evidence your
 22 design of any other broadheads?
 23 A. I think so.
 24 Q. You do think so?
 25 A. Uh-huh.

1 Q. Are those documents readily accessible?
 2 A. I'm looking down at my resource material I would
 3 have to review to be able to answer that
 4 question, if I might.

5 Q. Sure.
 6 (Witness peruses documents.)

7 MR. MC KINNIE: Are you asking him to
 8 search his own personal records unrelated to
 9 this declaration?

10 MR. SHULL: I'm asking him if he's got
 11 any design documents that are readily
 12 accessible.

13 MR. MC KINNIE: I object to this just
 14 as a -- searching for documents while on the
 15 record is a -- well, I guess it is what it is.

16 THE WITNESS: May I step across the
 17 room, Jason, to see another resource?

18 MR. SHULL: Yeah, you know -- sure.
 19 And we've been going for a while so let's take a
 20 break. We'll take a 10-minute break.

21 THE WITNESS: Okay.

22 MR. SHULL: A bio break.

23 (Recess taken at 3:13 p.m., until
 24 3:24 p.m.)

25 BY MR. SHULL:

1 timeframe, I used two resources. One was a
 2 company called Spirol, S-p-i-r-o-l. You will
 3 have -- I will show you and read to you letters/
 4 communication back and forth where I procured
 5 components from them.

6 In addition, I had a local metal
 7 fabricator in Bloomington, Wisconsin by the name
 8 of Ernie Struntz and Jim Struntz, and I gave them
 9 direction. And I have the documents and show
 10 even the drawings that I will show to you if you
 11 will allow me to do so, sir.

12 Q. You don't need to show -- thank you for offering
 13 that. You don't need to show them during the
 14 deposition. But as long as they can be copied
 15 and produced in this matter, that's what we'll be
 16 requesting so that we can review them outside of
 17 the deposition.

18 (Document request)

19 BY MR. SHULL:

20 Q. Okay. So, let's see, let me go back where I left
 21 off.

22 So are the broadheads shown in
 23 Figure 1, that we were talking about in your
 24 Appendix A, depicted or described in any patent?

25 A. Please restate the question again. I think I

1 Q. Okay. Before we left off my question was, do you
 2 have any design documents that are readily
 3 accessible?

4 A. Yes.

5 MR. MC KINNIE: I'm going to go ahead
 6 and object to all of this as being outside the
 7 scope of the deposition notice. There was no
 8 request to bring documents or produce any of
 9 these types of information.

10 To the extent you have it, go ahead.

11 MR. SHULL: We'll be requesting the
 12 documents, so we'll be serving those requests
 13 tomorrow. So I want to make sure the witness
 14 confirms that they're readily accessible.

15 BY MR. SHULL:

16 Q. What documents did you?

17 A. I have a series of documents, Jason S., that I
 18 will show to you. And also, I have actual
 19 components from the company that I will just
 20 briefly show you. And then I can read from the
 21 documents and then show them on the screen. And
 22 there are about five or six or seven of those
 23 documents.

24 Just to give you a little background,
 25 when I did the design work in the early 2000

1 understood it, but I wanted to make sure, Jason,
 2 sir.

3 Q. Sure. Are the broadheads shown in Figure 1 in
 4 Appendix A of your declaration depicted or
 5 described in any patent?

6 A. No.

7 Q. Have you ever shared your broadhead designs with
 8 Mr. Matt Futtere?

9 A. Yes.

10 Q. When did you share your broadhead designs with
 11 Mr. Futtere?

12 A. After I stopped my prototype designs I came to an
 13 end because I could not find a suitable material
 14 that performed well in the prototype testing.

15 Unbeknownst to me, when I went to a
 16 local Cabela's store, I found on the -- for sale
 17 there a Adam 4 broadhead, which is essentially
 18 independently identical to my design.

19 So I bought them and I stopped doing
 20 any design of my own work because someone, which
 21 was known I think as Aerodynamic Solutions at
 22 that time, now VIP I think, had already developed
 23 it in front of me.

24 And they had found, as I found out in
 25 communicating with them, a material called --

1 it's a nickel-titanium material called nitinol
2 that I was not aware of, that undergoes a phase
3 change and allows to have a cutting edge and yet
4 flex, like a very small group of alloys will do.

5 So at that point in time I communicated
6 to Matt Futtere, after shooting that buck that's
7 shown in Figure 2 in the appendix, and
8 communicated to him the results of my necropsy
9 analysis and thoughts about his design.

10 I'll stop there.

11 Q. So when you say you shot the broadhead shown in
12 Figure 2 in the appendix, I thought you indicated
13 that you had never shot an animal with the
14 broadhead shown in Figure 2. Did I --

15 A. I did not shoot it with my design; I shot it with
16 a Adam 4 that I bought, sir.

17 Q. Understood. Do you know an approximate year in
18 which you discovered that Mr. Futtere had a
19 similar design as the broadhead in Figure 2 of
20 your Appendix A?

21 A. It was prior to the deer I shot in November of
22 2010. I believe it was somewhere in the 2005, '6
23 or '7 timeframe. Somewhere in there, sir.

24 Q. And the broadhead that you I guess acquired, it
25 was similar to your design, that was a commercial

1 Figure 1 of Appendix A, who did you disclose
2 those designs to?

3 A. My metal fabricator, Spirol, the provider of some
4 of the components.

5 Q. Do you know if the metal fabricator or Spirol,
6 who was a provider of some of the components,
7 disclosed any of your designs to Mr. Futtere?

8 A. No.

9 Q. Have you ever seen any of Mr. Futtere's patent
10 with respect to the Adam broadhead?

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

12 Q. Okay. Let's pull up Exhibit 1033 which has been
13 premarked.

14 A. I'm going to lose you again, Jason, the video.

15 Q. Sure.

16 A. Okay.

17 (Deposition Exhibit 1033 marked and
18 introduced.)

19 MR. SHULL: Pull up 1033. This is
20 Exhibit --

21 THE WITNESS: '33. I see it on my
22 screen now. Yes.

23 BY MR. SHULL:

24 Q. U.S. Patent No. 7,311,622.

25 A. Yes. Yes, I have that upfront on my screen now,

1 -- commercialized product sold by Mr. Futtere's
2 company?

3 A. Yes.

4 Q. Okay. Do you know whether that design was
5 disclosed in any patent that Mr. Futtere filed?

6 A. I did not know, do not know.

7 Q. Okay. So when did you develop the broadhead
8 shown in Figure 1 in Appendix A?

9 A. May I refer to my documents, sir, to make sure I
10 say it accurately to you?

11 Q. Sure. I'm just curious on a year, if you have a
12 year in which you developed that broadhead.

13 A. Okay. My documentation says that I was acquiring
14 components in 2001 from Spirol. And also in
15 February 28th, 2001.

16 But I also have a note/documentation
17 noted August 17th of 2000, when I was having a
18 local fabricator produce parts for me. And no
19 question in my mind I was working on it before
20 2000.

21 Q. Okay. Do you know if Mr. Futtere had access to
22 any of your designs?

23 A. No. We didn't know each other from a bale of
24 hay.

25 Q. When you were designing your broadheads shown in

1 sir.

2 Q. Have you ever seen this patent before?

3 A. No, sir.

4 MR. MC KINNIE: Objection to it being a
5 newly-submitted evidence.

6 BY MR. SHULL:

7 Q. Please look at Figures 10 through 12 in this
8 exhibit.

9 A. Okay. 10 through 12, okay. I'm going down to --
10 I see.

11 Okay. I'm down to 12A, 12B, and I can
12 go back up I think to the previous ones. Let me
13 see if I can get up to there to them, if I can
14 click on them.

15 Figure 10, 9, 11. Yes, I can get to
16 them in order in about three of them at a time,
17 sir.

18 Q. Sure.

19 A. Or four of them.

20 Q. Let's look at Figures 10, 11 and 12.

21 A. Okay.

22 Q. Do you think Figures 10, 11 and 12 show your
23 broadhead design?

24 A. I went too far. 10 -- similar but not exactly,
25 sir. 10 and 11, similar. Quite similar but not

1 the same.
 2 Q. It's similar but not the same. So do you know if
 3 anybody had disclosed your design to Mr. Futtere
 4 given the similarities of your design in Figures
 5 10, 11 and 12 in the '622 patent?
 6 A. No.
 7 Q. So you developed your broadhead in 2000 and 2001;
 8 right?
 9 A. Yes.
 10 Q. Mr. Futtere's patent wasn't filed I believe until
 11 2006.
 12 A. Uh-huh.
 13 Q. So that was five years before Mr. Futtere filed
 14 his patent application.
 15 A. Uh-huh.
 16 Q. Have you received any royalties or payments for
 17 any of your broadhead designs?
 18 A. No.
 19 Q. Have you ever been given anything of value for
 20 your broadhead designs?
 21 A. No.
 22 Q. Have you commercialized any of your broadhead
 23 designs?
 24 A. No.
 25 Q. How were you contacted to serve as an expert in

1 this matter?
 2 A. Would you please repeat that, Jason? And I'll
 3 have to get you back up on the thing here.
 4 Pardon me.
 5 Q. Sure. How were you contacted to serve as an
 6 expert in this matter?
 7 A. I had received a phone call from Matt Futtere.
 8 Q. How did he know to contact you?
 9 A. I'm sorry?
 10 Q. How did he know to contact you?
 11 A. He had my phone number for -- back to the time
 12 when we communicated when I did -- shot that buck
 13 in 2010 and did the necropsy and gave him the
 14 results of my necropsy. We first I think
 15 communicated by email I think, but then by phone
 16 with him directly, sir.
 17 Q. So from the time in which you communicated with
 18 him in I think the 2010 timeframe, have you
 19 communicated with Mr. Futtere up until the point
 20 he contacted you to serve as an expert in this
 21 matter?
 22 A. I believe the answer is yes.
 23 Q. Okay. In what circumstances have you had contact
 24 with Mr. Futtere?
 25 A. I have significant contacts in the world of

1 bowhunting which include Dave Holt, author -- a
 2 former technical editor of Bowhunting Magazine
 3 and who now runs safaris to Africa. And I
 4 mentioned his -- the broadhead design that I had
 5 gotten from Matt Futtere to him.
 6 Additionally, my next-door neighbors
 7 are quite wealthy people, the Kohlers, who are
 8 quite well known in Wisconsin and other places,
 9 and they were interested.
 10 And so I contacted Matt and he provided
 11 and sent to them some of his most recent designs
 12 and that have -- more for the trend of being
 13 reused, and I believe I communicated and made
 14 that happen between those gentlemen, sir.
 15 Q. And with respect to this matter, what did
 16 Mr. Futtere ask you to do?
 17 A. He asked me, in his phone call, to act as my
 18 expert; would I do that.
 19 Q. Did Mr. Futtere review the draft of your
 20 declaration prior to it being finalized?
 21 A. I can't tell you that.
 22 Q. Did Mr. Futtere provide any input to any portion
 23 of your declaration?
 24 A. No.
 25 Q. How do you know if you can't tell me whether he

1 reviewed the draft of your declaration prior to
 2 it being finalized?
 3 A. I don't know if he reviewed, but I know that he
 4 didn't make any comments to me, sir.
 5 Q. Okay. But you don't know if any revisions to
 6 your declaration were provided by Mr. Futtere;
 7 correct?
 8 A. I cannot say.
 9 Q. Is it possible that Mr. Futtere provided
 10 revisions to your declaration prior to it being
 11 finalized?
 12 A. No.
 13 Q. Why are you certain of that if you don't know
 14 whether he reviewed your declaration prior to it
 15 being finalized?
 16 A. Part of the ground rules that I agreed to be an
 17 expert is that my declaration was not to be
 18 modified unless I was contacted by my contact who
 19 was not Matt Futtere but who is present now
 20 talking, Jason McKinnie.
 21 Q. But there were revisions to your declaration that
 22 were provided by Mr. McKinnie; correct?
 23 MR. MC KINNIE: Objections. I'm going
 24 to instruct my client to not answer due to work
 25 product privilege. Or, I'm sorry, instruct the

1 expert to not answer due to work product
 2 privilege.
 3 BY MR. SHULL:
 4 Q. Just to be clear, are you taking your counsel's
 5 instruction not to answer the question?
 6 A. Yes.
 7 Q. And for purpose of certification my question was:
 8 There were revisions to your declaration that
 9 were provided by Mr. McKinnie. And you're
 10 refusing to answer that question under advice of
 11 your counsel; correct?
 12 A. Yes.
 13 Q. Do you know the named inventor of the Flanagan
 14 Patent, Mr. Edward Flanagan?
 15 A. No. Didn't know him from a bale of hay.
 16 Q. You never had any communications with
 17 Mr. Flanagan?
 18 A. No, sir.
 19 Q. Have you ever served as an expert witness before
 20 in a patent matter?
 21 A. Not on a patent issue.
 22 Q. Prior to this case have you ever performed a
 23 patent validity analysis, serve as an expert?
 24 A. No.
 25 Q. Do you have an engineering degree?

1 A. Please ask again?
 2 Q. Do you have an engineering degree?
 3 A. No, I have a degree in applied mathematics.
 4 Q. Do you have any formal engineering training?
 5 A. Yes.
 6 Q. What training, what formal engineering training
 7 have you had?
 8 A. You've mentioned it before. AutoCAD,
 9 Pro/ENGINEER, Strength of Materials. Almost all
 10 of my courses in school were taken at the
 11 engineering school.
 12 Q. Can you identify --
 13 A. Strength of Materials, Statics, Dynamics. Those
 14 to name a few, sir.
 15 Q. Okay. And where did you take those courses?
 16 A. At the University of Wisconsin Platteville as it
 17 was known when I graduated. When I started there
 18 it was known as the Wisconsin State Institute of
 19 Technology and Mining School.
 20 Q. And you took those courses as part of a
 21 mathematical curriculum?
 22 A. As a part.
 23 Q. And when did you take those courses? What year?
 24 A. 1962 to 1966 for those courses.
 25 The AutoCAD and Pro/ENGINEER occurred

1 -- in late 1982 I believe for the AutoCAD.
 2 That's when Auto Works first, in December of
 3 1982, provided that course. And Pro/ENGINEER was
 4 subsequent to that, after 1987, sir.
 5 Q. Are you a named inventor on any patent
 6 applications?
 7 A. Yes. On patent applications.
 8 Q. What subject matter do those patent applications
 9 refer to?
 10 Or, I'm sorry, let me withdraw that
 11 question.
 12 What subject matter did those patent
 13 applications relate to?
 14 A. Pressurized delay fuse, sir.
 15 Q. Do any of those patent applications relate to
 16 broadheads for hunting animals?
 17 A. In my opinion, yes.
 18 Q. Do you have -- did any of those patent
 19 applications issue as patents?
 20 A. No.
 21 Q. When you say that it's your opinion that those
 22 patent applications relate to broadheads for
 23 hunting animals, can you expand upon that, why
 24 you have that opinion?
 25 A. Yes.

1 Q. Please do so.
 2 A. The pressurized delay fuse is a fuse that's
 3 designed to not function on the surface of the
 4 target. Primarily air-to-air aircraft. We're
 5 talking fuselage, wings, tails, et cetera.
 6 Very similar to the designs that delay
 7 the opening of the mechanical broadhead until
 8 it's inside the body of white-tail deer, for
 9 example.
 10 In the case of the pressurized delay
 11 fuse, I designed a device that did not function
 12 immediately. But there was a delay of
 13 approximately 200 milliseconds until the
 14 projectile was fully inside either the tail, the
 15 wing, or the fuselage, causing severe damage,
 16 like the collapse of both lungs in the broadhead
 17 world. So almost a one-to-one correlation, sir.
 18 Q. Were any of the devices that are disclosed in
 19 those patent applications ever used to hunt
 20 animals?
 21 A. Yes, human animals.
 22 Q. Were any of those devices --
 23 A. Can I elaborate, sir?
 24 Q. No.
 25 A. Sir? Okay.

Q. Were any of those devices disclosed in those patent applications used to hunt deer, elk, birds, bobcats, bears, or fish?

A. Camels, yes.

Q. And you're talking about in a wartime application; correct?

A. Yes.

Q. Have you ever personally used the devices disclosed in those patent applications to hunt animals?

A. No.

Q. Do you believe that any of those devices disclosed in the patent applications would be legal to use in hunting applications in the United States?

A. No.

Q. Have you ever been involved with the prosecution of any patent application?

A. Yes.

Q. When have you been involved with the prosecution of a patent application?

A. When I filled out, as I mentioned earlier, a patent application, it was done at a time that I worked with the Honeywell marketing and legal department to have that patent filed. For

political reasons they chose to not let it go forward, sir.

Q. So after you prepared the initial form or patent disclosure, did you have any involvement with the back-and-forth between the owner of the patent application and the patent office?

A. There was no owner of the patent application except me. And I was not allowed through the legal department to let it go forward.

However, I had significant input to the actual design and creation. A contract was given to Honeywell by the air force, and I interfaced with the development of it, though I did not have the patent application in my name. And it was never filed because of political problems of not wanting to alienate our customers.

Q. Other than that --

A. But it was qualified.

Q. Other than that patent application, have you ever -- are you a named inventor on any other application?

A. No. Purposely not.

Q. So just one patent application?

A. Yes. I refuse to make patent applications for my other creations.

Q. Have you ever developed any mechanical broadheads?

A. Those in the figures are both mechanical broadheads, sir.

Q. And they were never commercialized; correct?

A. Please repeat that, sir?

Q. Those broadheads were never commercialized? They were never sold?

A. No.

Q. In Appendix A of your declaration you identified some publications that you authored. Do you have copies of those publications?

A. Yes, I think I do. Uh-huh.

Q. Are they readily accessible?

A. Yes. I believe so.

Q. So we tried to locate them and we could not, so we're going to ask for copies of those publications.

A. Okay.

(Document request)

BY MR. SHULL:

Q. So other than the documents that you talked about that are from the 2000 and 2001 timeframe and the photograph that's included in Appendix A of your declaration, do you have any evidence to

corroborate your claim that you have experience designing and developing broadheads?

A. Yes.

Q. What evidence would that be?

A. Necropsies I documented on, for example, the 2010 buck that I shot. Very specific necropsy data.

Q. And do you still have that?

A. Yes, I do, sir.

Q. And are those readily accessible?

A. Yes, sir.

Q. Okay.

A. Jason H., may I say that that documentation from the 1990 timeframe, I only have the brief part that's right under the photograph itself that I've retained now.

But the 2011 one, which runs five pages, I have that and we can provide the page-by-page detail of that.

Q. Good. We'll be asking for copies of that.

A. I'm sorry?

Q. We'll be asking for copies of that information.

(Document request)

BY MR. SHULL:

Q. When forming your opinions in this case did you ask the patent owner for any information

1 demonstrating commercial success of the claimed
2 broadheads?
3 A. Which patent owner, sir?
4 Q. Mr. Futterer.
5 A. No. I merely commented on the results of my use.
6 Q. And I asked that because you didn't cite to any
7 evidence that the claim broadheads were
8 commercially successful; correct?
9 A. Please repeat, Jason.
10 Q. Yeah, it's a simple question. You didn't cite
11 any evidence in your declaration that the claim
12 broadheads were commercially successful; correct?
13 A. No. I did not.
14 Q. So let's take a quick peek back at your
15 declaration at paragraphs 22 to 24. It's
16 included under a section titled, Bowhunting and
17 Lethality.
18 A. What page again? I have it in front of me.
19 Q. Paragraphs 22 to 24.
20 A. Okay. Yes, I am on paragraph 22?
21 Q. Paragraph 22, 23 and 24. You didn't cite any
22 support for your statements in paragraphs 22 to
23 24; correct?
24 A. Not specifically, but it's included in my
25 appendix, I believe.

1 Q. You didn't cite to anything in those particular
2 paragraphs and I'm asking you why.
3 A. I didn't think it was necessary.
4 Q. So in paragraphs 25, 26, 27, 28 and 29 of your
5 declaration, you include those under a section
6 titled, Broadheads and State-of-the-Art as of
7 2008. And, again, you didn't cite any support
8 for those statements in paragraphs 25 through 29;
9 correct?
10 A. Not specifically.
11 Q. Okay. So earlier we talked about the definition
12 of a barbed -- the definition of barbed. Let me
13 start over. It's getting late in the day, I
14 apologize.
15 A. That's fine.
16 Q. Earlier we talked about the definition of barbed
17 in the North Dakota Game and Fish Guide. Do you
18 remember that?
19 A. Yes.
20 Q. I mean, you can pull it up if you like, but the
21 guide defined barbed as having any fixed portion
22 of the rear or trailing edge of the arrowhead
23 forming an angle of less than 90 degrees. Do you
24 remember that?
25 A. Yes, sir. That's correct.

1 Q. And we also talked about the definition of barbed
2 broadhead in the Idaho ordinance which defined
3 barbed broadhead as a broadhead which has any
4 portion of the rear edge of the broadhead forming
5 an angle less than 90 degrees with the shaft or
6 ferrule.
7 Do you remember that?
8 A. Any fixed portion. Don't forget the adjective
9 "fixed."
10 Q. Well, that's not what the Idaho ordinance says.
11 And we can pull up the Idaho ordinance if you
12 like, but the Idaho ordinance states:
13 "A barbed broadhead has a broadhead
14 which has any portion of the rear edge of the
15 broadhead forming any angle less than 90 degrees
16 with the shaft or ferrule."
17 A. You're talking about the Idaho now?
18 Q. North Dakota and Idaho. We talked about both of
19 them.
20 A. Okay.
21 Q. I had questions about both.
22 A. The one I was -- the one I was referring to,
23 okay, is the one there was some question as to
24 whether you had the same document that I.
25 I'm looking at Ex. 2013 for the North

1 Dakota, and it says, specifically, fixed portion
2 of the trailing edge -- of the rear or trailing
3 edge of the arrowhead, and then it says, in the
4 next statement, "broadheads with mechanical
5 retractable blades are legal."
6 And for some reason or other you
7 couldn't find that in your paperwork.
8 Q. Yeah. We eventually found it. We presented it
9 on the screen. But let's look at the barbed
10 broadhead definition that's contained in the
11 Idaho ordinance.
12 If you want to pull up Exhibit 2012 on
13 AgileLaw. Let's do that. 2012 that's been
14 premarked.
15 (Deposition Exhibit 2012 marked and
16 introduced.)
17 BY MR. SHULL:
18 Q. So let me know when you can see Exhibit 2012
19 which is the Idaho ordinance that you cite in
20 paragraph 35 of your declaration.
21 A. And we're looking at -- what's the exhibit number
22 again, sir, please?
23 Q. Yeah, it's Exhibit 2012.
24 A. Okay. I'll get that up. I don't have it right
25 now.

- 1 Q. And once you have it up, go to page 16.
 2 A. 2012? Okay. And where do you want me to go,
 3 sir?
 4 Q. Page 16.
 5 A. Okay.
 6 Q. So at the very bottom on page 16, under
 7 paragraph E. It's the last paragraph on page 16.
 8 A. Yes. Okay.
 9 Q. It states: "A barbed broadhead is a broadhead
 10 which has any portion of the rear edge of the
 11 broadhead forming an angle less than 90 degrees
 12 with the shaft or ferrule."
 13 A. Yes.
 14 Q. Did I read that correctly?
 15 A. Yes. Yes, I see it.
 16 Q. Okay. So with that definition in mind, I want
 17 you to turn to Figure 2 in the Lint Patent.
 18 A. Yes, sir.
 19 Q. Okay. So in your opinion does Figure 2 of the
 20 Lint Patent disclose a broadhead which has any
 21 portion of the rear edge of the broadhead forming
 22 an angle less than 90 degrees with the shaft or
 23 ferrule?
 24 A. Your question, sir?
 25 Q. In your opinion does Figure 2 of the Lint Patent

- 1 disclose a broadhead which has any portion of the
 2 rear edge of the broadhead forming an angle less
 3 than 90 degrees with the shaft or ferrule?
 4 A. Figure 2, the rear edge of the broadhead in
 5 Figure 2, is at 90 degrees. Do you see that?
 6 The very end of the broadhead. The rear end of
 7 the broadhead, 90 degrees. It's screwed onto the
 8 shaft.
 9 Q. Okay. I'm going to ask the question again.
 10 A. Let's see. Now, with ferrule, that would mean --
 11 That is the ferrule. With the shaft
 12 it's 90 degrees, but it is the ferrule itself.
 13 The rear edge. The ferrule is item number 12 in
 14 Figure 2, I believe. Yes, I think that's
 15 correct.
 16 Q. You're looking at Figure 2 in the Lint Patent;
 17 correct?
 18 A. That's correct.
 19 Q. Okay. So I want to ask my question again. In
 20 your opinion does Figure 2 of the Lint Patent
 21 disclose a broadhead which has any portion of the
 22 rear broadhead forming an angle less than 90
 23 degrees with the shaft or ferrule?
 24 A. It's right exactly at 90 degrees, sir, in
 25 Figure 2.

- 1 Q. Do you believe --
 2 A. Both the shaft and the ferrule itself.
 3 Q. Do you believe -- or is it your opinion -- let me
 4 withdraw that.
 5 Is it your opinion that the broadhead
 6 disclosed in the Lint Patent is a barbed
 7 broadhead?
 8 A. Yes.
 9 Q. Why do you have --
 10 A. Yes.
 11 Q. Why do you have that opinion?
 12 A. I'm sorry, I didn't catch that, Jason. I'm
 13 sorry.
 14 Q. Why do you have that opinion?
 15 A. It says at the top, "Hunting Arrow With
 16 Retractable Barbs." On that same page.
 17 Q. Just because it refers to barbs? Let me ask you
 18 this. In your opinion do you think the Lint
 19 broadhead would meet the definition of the State
 20 of Idaho's definition of a barbed broadhead?
 21 A. No. The Idaho definition under subparagraph C,
 22 it says unlawful with arrows or bolts having
 23 barbed broadheads. Barbed broadhead is --
 24 broadhead, when we talked about this before, any
 25 portion of the rear edge of the broadhead forming

- 1 an angle less than 90 degrees with the shaft
 2 or --
 3 You know, but in that Figure 2 there is
 4 no portion that forms an angle less than 90
 5 degrees, sir.
 6 Q. So let's talk about the North Dakota --
 7 A. Within production tolerances, sir. I'm just
 8 looking at the diagram now. Pardon me, I'm
 9 sorry.
 10 Q. So the answer to my question was no. Now I want
 11 to refer to the definition of barb in the North
 12 Dakota Game and Fish Guide and ask you the same
 13 question.
 14 So the guide defined barbed as having
 15 any fixed portion of the rear or trailing edge of
 16 the arrowhead forming an angle of less than 90
 17 degrees.
 18 In your opinion does the broadhead
 19 disclosed in Lint meet the North Dakota
 20 definition of the term "barbed"?
 21 A. It would be legal in North Dakota.
 22 Q. So is the answer to my question no?
 23 A. I'm sorry, Jason, please rephrase your question
 24 again. It took me a while to find the paragraph.
 25 Q. Sure. In your opinion does the broadhead

disclosed in Lint meet the North Dakota definition of the term "barbed"?

A. Yes.

Q. Your opinion is that the broadhead in Lint would meet the definition of the term "barb" as defined by the North Dakota Game and Fish Guide.

A. The definition -- North Dakota I believe we're talking about here now. We've gone over this.

"It's illegal to hunt with barbed

arrows. Barbed refers to an arrowhead with any fixed portion of the rear or trailing edge of the arrowhead forming an angle less than 90 degrees with the shaft."

That could be either way, sir. It says "rear or trailing edge." Do you see that?

What is the question again, sir? And I'll try to answer it.

Q. In your opinion does the broadhead in Lint meet the definition of the term "barbed" as defined by the North Dakota Game and Fish Guide?

A. Yes.

Q. Why is it your opinion that the Lint broadhead meets the definition of the term "barbed" as defined by the North Dakota Game and Fish Guide? Please explain your opinion.

Dakota Game and Fish Guide.

A. It says: "It is illegal to hunt game with barbed arrows. Barb refers to an arrowhead with any fixed portion of the rear or trailing edge --"

Ah. "-- of the arrowhead forming an angle less than 90 degrees with the shaft."

They were only talking about the fixed portions. My error, sir.

In detail, if you look at what it says, "any fixed portion of the rear or trailing," so any fixed portion of the trailing edge.

Q. Prior to your deposition today did you form an opinion on whether the broadhead in the Lint Patent meets the definition of barb as defined by the North Dakota Game and Fish Guide?

A. What page and paragraph, sir?

Q. I'm asking you a question.

A. Yes.

Q. Okay. Can you hear me?

A. Yes. I'm asking for clarification.

Q. Yeah. Okay. Prior to today's deposition did you form an opinion on whether the broadhead in Lint meets the definition of a barbed broadhead as defined by the North Dakota Game and Fish Guide?

MR. MC KINNIE: Objection. Exceeds the

A. It says specifically "or trailing edge of the arrowhead forming an angle less than 90 degrees." It's the "or" parts that complies. In my opinion.

Q. Sure. Let's pull up the Lint Patent. So that's gonna be -- give it an exhibit number. So that's going to be Exhibit 1002.

Let's pull that up on AgileLaw so we all are looking at the same thing.

(Deposition Exhibit 1002 marked and introduced.)

BY MR. SHULL:

Q. Okay. So we got Lint up there. And can you please explain your analysis on why you believe the broadhead in Lint meets the definition of the North Dakota -- sorry --

A. It says "or trailing edge."

Q. Well, let me --

A. If you look at --

Q. Hold on. Hold on. Let me rephrase the question so it's a clear record.

Now that we have the figures of Lint pulled up and we're all looking at them, please explain why you believe broadhead in Lint meets the definition of barbed as defined by the North

scope of the declaration.

You can still answer, Mr. Willkomm.

BY MR. SHULL:

Q. Are you looking through your declaration? Is that what you're --

A. Yes, I am, sir.

Q. Okay.

Well, why don't we take a break while you do that.

We can go off the record.

(Recess taken at 4:22 p.m., until 4:34 p.m.)

BY MR. SHULL:

Q. So prior to today's deposition did you form any opinion on whether the broadhead in Lint meets the definition of a barbed broadhead as defined by the North Dakota Game and Fish Guide?

A. That's a general question, not a specific question, sir. If you ask me a specific statement in my declaration I will give you a specific answer. If you ask me a general question I can only give you a general answer, sir.

Q. Sitting here today, do you know whether or not you formed an opinion on whether the broadhead in

Lint meets the definition of a barbed broadhead as defined by the North Dakota Game and Fish Guide?

A. Yes.

Q. And what is that opinion?

A. I stated it in my declaration, sir. Read it. I stand by my statements there.

Q. Why don't you find your statement and read it into the record, please.

A. I will start. Page 40. Paragraph 76 of my declaration.

"Independent claims 1 and 11 of the '177 Patent require first and second blade members; not first and second barb members. Ex. 1001 at claims 1 and 11."

Next sentence.

"The '177 Patent uses the plain and ordinary meaning of a blade member and a POSITA would clearly understand a blade member to be as I defined above." As one defined above.

Paragraph 77.

"In contrast, a POSITA would understand the barb of Lint to have its plain and ordinary meaning which is a projection extending backward from a point, having an angle of less than 90

expert conflate barbs with blade members with Petitioner's experts going so far as to say a blade is a synonym of a barb. Ex. 2010 at 80:13-15. Petitioner and Dr. Kuhn improperly states Lint discloses blade members and routinely changes the language and Figures of Lint to disclose 'blade members' even though Lint expressly uses the term 'barb.' See Id. at 81:13-20.

"Ppetitioner changes the express words of Lint claim Lint satisfies claims 1 and 11 in reliance on Dr. Kuhn's declaration. Dr. Kuhn's illogical position rejects the plain and ordinary meaning of blade, plain and ordinary meaning of barb, prior art, statutes, and dictionary definitions. While Dr. Kuhn seemingly agrees a barb may be a projection extending backward from a point having an angle of less than 90 degrees from the body, he claims it can still be a barb without projecting backwards and claims a blade may have a cutting edge but doesn't have to. Id. at 70:10-73:12; 78:19-79:10; 82:2-83:15; 88:15-25."

Furthermore --

Q. Okay. I'm going to stop you right there because

degrees from the body, to prevent easy extraction. Ex. 2007; Ex. 2011. Lint expressly describes the barb element as 'projecting outwardly and rearwardly of the arrowhead body 12 when the barbs 19 are in the open position as illustrated in Figure 2.' Ex. 1002 at 2:46-48. Figure 2 clearly illustrates the plain and ordinary meaning of a barb."

Next. "Id. at Figure 2. The dictionary definition of a barb, as of 2008 and more recent internet dictionary, agree with a POSITA's understanding of the plain and ordinary meaning of barb and its use in Lint. Ex. 2007; Ex. 2011. Finally, the plain and ordinary meaning of barb is confirmed by state laws that ban barbs from use of hunting big game animals. Ex. 2012; Ex 2013. The definition of barb has not changed for decades."

Paragraph 78. "Similarly, the definition of a blade has also not changed in decades. A POSITA would fully understand the term 'blade member' as used in the '177 Patent means having a cutting edge or a flat sharp part."

Paragraph 79. "Ppetitioner and its

you're just repeating your declaration and that's not an answer to my question. The answer to the question that I asked is, do you have an opinion on whether the broadhead in Lint meets the definition of the term "barb" as defined by the North Dakota Game and Fish Guide. You're just reading from your declaration.

I want you to tell me whether you have an opinion on whether the broadhead in Lint meets the definition of the term "barb" as defined by the North Dakota Game and Fish Guide.

Using the definition that is in the North Dakota Game and Fish Guide, explain to me why you believe, or if you believe, the broadhead in Lint meets that definition.

MR. MC KINNIE: Objection, asked and answered.

BY MR. SHULL:

Q. Recite your -- is your answer that you're just going to recite your declaration?

A. More than one question has been asked of me, gentlemen.

Q. Okay.

A. Do I have an opinion? The answer is yes.

Q. Okay.

1 A. My opinion is stated in the declaration and I am
 2 reading from that declaration my opinion.
 3 Q. Yeah.
 4 A. Period.
 5 Q. Fine. Okay. So let's apply the definition from
 6 the North Dakota Game and Fish Guide for the term
 7 "barb." Let's go back and read what that says.
 8 That says, "Barbed means any fixed
 9 portion of the rear or trailing edge of the
 10 arrowhead forming an angle of less than 90
 11 degrees."
 12 Where is the fixed portion of the rear
 13 or trailing edge of the arrowhead in the
 14 broadhead in Lint forming an angle of less than
 15 90 degrees? Pull up the figure in Lint.
 16 A. Figure 2 in Lint?
 17 Q. Specifically, use words to explain why you
 18 believe, without just spouting out from your
 19 declaration, why you believe the broadhead in
 20 Lint discloses a fixed portion of the rear or
 21 trailing edge of the arrowhead forming an angle
 22 of less than 90 degrees.
 23 A. Context. You said Idaho; correct?
 24 Q. No, I said North Dakota.
 25 A. Okay. Repeat your question, please.

1 Q. Use words to explain why you believe the
 2 broadhead disclosed in Lint disclosed a fixed
 3 portion of the rear or trailing edge of the
 4 arrowhead forming an angle of less than 90
 5 degrees.
 6 Where is the fixed portion of the rear
 7 or trailing edge of the arrowhead forming an
 8 angle of less than 90 degrees in the Lint
 9 broadhead?
 10 I want you to show me Figure 2 in Lint
 11 and point to the fixed portion of the rear or
 12 trailing edge of the arrowhead forming an angle
 13 of less than 90 degrees.
 14 A. The fixed portion of the rear edge is where
 15 number 14 is pointing to. That's the rear edge.
 16 Q. And we're looking at what figure in Lint?
 17 A. Please ask again, sir. I didn't quite catch
 18 that.
 19 Q. Are you referring to Figure 2 in Lint?
 20 A. Yes.
 21 Q. Okay. So Figure 2, you're pointing to number
 22 14 --
 23 A. That's correct.
 24 Q. -- which refers to the --
 25 A. That actually shows --

1 Q. -- arrowhead. And Figure 14 is the rear portion
 2 of the arrowhead; correct?
 3 A. Uh-huh. It's that surface. Yes. That's the
 4 rear edge of --
 5 Q. What angle does that rear edge form in relation
 6 to the ferrule body?
 7 A. 90 degrees.
 8 Q. Okay. So that's a 90-degree angle. And that's
 9 the rear edge that you're referring to.
 10 A. Yes. That's the rear edge of the arrowhead.
 11 Q. Okay. So explain to me --
 12 A. That's the fixed portion of the arrowhead.
 13 Q. Sure. So that does not meet the definition of
 14 barbed per the North Dakota Game and Fish Guide.
 15 Because, again, the definition of the word
 16 "barbed" per the North Dakota Game and Fish
 17 Guide, is there's a fixed portion of the rear or
 18 trailing edge of the arrowhead forming an angle
 19 of less than 90 degrees.
 20 You just identified the back portion of
 21 the broadhead forming 90 degrees, so that clearly
 22 doesn't meet the definition of barbed per the
 23 North Dakota Game and Fish Guide. Is there
 24 anything in the --
 25 A. I repeat, sir, barb refers to an arrowhead with

1 any fixed portion of the rear or trailing edge of
 2 the arrowhead forming an angle less than 90
 3 degrees. That is 90 degrees, not less than 90
 4 degrees, sir.
 5 Q. Okay. So if it's 90 degrees, that would not meet
 6 the definition of barbed for the North Dakota
 7 Game and Fish Guide, again, because the term
 8 "barbed" per the North Dakota Game and Fish Guide
 9 is a fixed portion of the rear or trailing edge
 10 of the arrowhead forming an angle of less than 90
 11 degrees. An angle of 90 degrees does not meet
 12 that definition.
 13 A. That is correct.
 14 Q. If you answered that's fine, and the patent
 15 office can assess your answer and we'll go from
 16 there. Can you identify any --
 17 A. Look at the next statement, sir, please.
 18 Q. Let me ask you this.
 19 A. "Broadheads with mechanical or retracting blades
 20 are legal."
 21 Q. Okay. And you would agree that Figure 2 in Lint
 22 discloses a mechanical broadhead.
 23 A. It is a mechanical broadhead.
 24 Q. Okay. So under the State of North Dakota Game
 25 and Fish Guide it would be legal; correct?

1 A. You would have to ask them that question, not me.
 2 Q. So you don't know. You're the expert and you
 3 don't know the answer to the question.
 4 A. I don't work for North Dakota. I have worked
 5 with state departments and gotten different
 6 answers from different people, sir. So that is a
 7 lot of experience talking, sir.
 8 Q. Listen, you're an expert that's rendering
 9 opinions in this case, and if you can't answer a
 10 question just say so. Do you not know the
 11 answer --
 12 MR. MC KINNIE: Object to the form and
 13 the commentary.
 14 MR. SHULL: Okay. So the answer is no.
 15 BY MR. SHULL:
 16 Q. And I want to ask you this. You identified the
 17 rear edge of the broadhead in Lint, identified as
 18 number 14, as the trailing edge. Is there any
 19 other --
 20 A. No. The rear edge --
 21 Q. -- the broadhead in Lint --
 22 A. I identified it as the rear edge, sir.
 23 Q. Okay. You can stop talking over me.
 24 A. If you do the same.
 25 Q. Other than the rear edge identified in number 14

1 in the broadhead in Lint, is there any other
 2 fixed portion of the rear or trailing edge of the
 3 arrowhead that you can identify that forms an
 4 angle of less than 90 degrees in the broadhead?
 5 A. Not fixed.
 6 Q. Okay. So I'm going to ask you one more time.
 7 Given the definition of barbed in the North
 8 Dakota Game and Fish Guide, which is, quote, any
 9 fixed portion of the rear or trailing edge of the
 10 arrowhead forming an angle of less than 90
 11 degrees, does the broadhead in Lint meet that
 12 definition? Yes or no?
 13 MR. MC KINNIE: Objection, asked and
 14 answered.
 15 (Witness peruses document.)
 16 BY MR. SHULL:
 17 Q. What are you referring to? When you're trying to
 18 answer the question what are you looking at right
 19 now?
 20 A. I'm looking at the statement in the definition.
 21 Their definition, they're saying "barbed" and I
 22 think they mean "barbed arrow." Refers to an
 23 arrowhead, okay, with any fixed portion of the
 24 rear or trailing edge.
 25 My answer: I stand by what I put in

1 the declaration.
 2 Q. You didn't answer the question in the declaration
 3 and it's a different question. I want you to
 4 apply the definition per the North Dakota Game
 5 and Fish Guide. If you can't answer the question
 6 just say so. My question is -- stop?
 7 A. I can't answer the question, sir.
 8 Q. Okay. You can't answer the question whether or
 9 not there's anything in the broadhead in Lint
 10 that meets the definition of the North Dakota
 11 Game and Fish Guide when they define the term
 12 "barb" as meaning any fixed portion of the rear
 13 -- rear or trailing edge of the arrowhead forming
 14 an angle of less than 90 degrees; correct?
 15 A. That I can answer.
 16 Q. Okay. I want you -- if you can answer, then I
 17 want you to identify what part in the broadhead
 18 of Lint has a fixed portion of the rear or
 19 trailing edge of the arrowhead forming an angle
 20 of less than 90 degrees.
 21 Just identify in the figure where it
 22 appears. Because you've identified the rear edge
 23 14, but that is a 90-degree angle. I'm asking
 24 you to identify any fixed portion of the rear or
 25 trailing edge of the arrowhead that forms an

1 angle of less than 90 degrees. Just tell me a
 2 number in the figure.
 3 A. 19.
 4 Q. Okay. 19 is the blade number; right?
 5 A. -- number.
 6 Q. Sorry?
 7 A. Look at the top. It says, Hunting Arrowhead With
 8 Retractable Barbs.
 9 Q. 19 is the outer barb number; correct? So is 19
 10 fixed?
 11 A. No.
 12 Q. Okay. So would that meet the definition of the
 13 North Dakota Game and Fish Guide for the term
 14 "barbed" --
 15 A. Only if -- excuse me. I'm sorry. Am I allowed
 16 to speak now, sir?
 17 Q. No. I want you to answer my question. Given
 18 that it's not fixed, would that element meet the
 19 definition of the North Dakota Game and Fish
 20 Guide for the term "barbed"?
 21 A. (No response.)
 22 Q. I see you shuffling papers there. Are there
 23 particular papers you need to answer the
 24 question?
 25 A. Sir, --

1 Q. What papers are you referring to?

2 A. I'm sorry. I'm looking at the wording to try to
3 understand from a semantics point of view does
4 the adjective "fixed portion" apply to the rear
5 edge or the trailing edge or both. That's a
6 question.

7 Q. So what's your answer?

8 A. I don't know. It could be either. That's why I
9 can't answer the question for you.

10 Q. Okay. Fair enough. So, just to be clear, given
11 that the barb member in the broadhead in Lint is
12 not fixed, you can't answer whether the element
13 would meet the definition of the North Dakota
14 Game and Fish Guide for the term "barbed";
15 correct?

16 A. Not for the -- yes, for that definition.

17 Q. Other than preparing the application that you
18 referred to that didn't actually get filed with
19 the patent office, you've never been involved
20 with the prosecution of a patent application;
21 correct?

22 A. No.

23 Q. Have you ever spoken to a patent examiner about
24 the patent prosecution process?

25 A. Patent lawyer.

1 Q. Have you ever had any personal experience with
2 respect to the process an examiner goes through
3 when examining a patent application?

4 A. No.

5 Q. Do you have any personal experience with the
6 standards that patent examiners apply when
7 prosecuting patent applications?

8 A. Yes.

9 Q. And how did you -- what personal experience are
10 you referring to?

11 A. In my declaration, when I was director of
12 engineering at AeroJet, I had to design the APDS
13 projectile. It was a family of ammunition of
14 25-millimeter ammunition. And I had to make a
15 design that did not violate the existing patent
16 that existed for that APDS projectile as owned by
17 the army, procured through Orlican in
18 Switzerland.

19 So I retained a patent lawyer so that I
20 did not violate the patent that existed, sir.

21 Q. I think we're talking about two different things,
22 but I'll ask the question a little bit
23 differently.

24 Do you have any personal experience
25 with applying the standards that examiners apply

1 when prosecuting applications to assess whether
2 or not those applications should be issued as
3 patents?

4 A. No. It should be issued as patents, no, sir.

5 Q. Do you have any personal experience with respect
6 to what examiners actually review during the
7 examination process of a patent application?

8 A. Please repeat, sir.

9 Q. Do you have any personal experience with respect
10 to what examiners actually review during the
11 patent examination process of patent
12 applications?

13 A. Yes.

14 Q. What experience is that?

15 A. Looking at the patent examiner's list of patents
16 that they looked at when they did the
17 examination.

18 Q. That's not personal experience, that's looking at
19 the face of a patent. My question is --

20 A. I looked -- I personally looked at those, sir.

21 Q. Okay. Let me ask that again because you're not
22 answering my question.

23 Do you have any personal experience
24 with respect to what examiners actually review
25 and how they review during the patent examination

1 process?

2 A. No.

3 Q. When you're writing an article what does the word
4 "Id." mean, I-d period?

5 A. I'm sorry? Please --

6 Q. When you're writing publications or articles,
7 what does the word "Id." mean, I-d period? Do
8 you not know?

9 A. I believe it's nomenclature and I'll have to look
10 at it, sir, to answer your question.

11 Q. I'm asking your position as an author.

12 A. Yes, and articles that I've called out in my
13 declaration. I'm specifically looking at those,
14 sir. Is that okay?

15 Q. Okay. Other than your declaration, have you ever
16 used the word "Id." in your publications?

17 A. Probably.

18 Q. Because we're going to ask for all of these
19 documents.

20 My question was, have you ever used the
21 word "Id." in any of your publications?

22 MR. MC KINNIE: Objection to relevance.
23 Goes beyond the scope.

24 BY MR. SHULL:

25 Q. I'll withdraw the question.

1 Let's take another look at Exhibit 1031
 2 if you can pull that up on AgileLaw.
 3 (No response.)
 4 BY MR. SHULL:
 5 Q. Mr. Willkomm.
 6 MR. MC KINNIE: Taking a look at
 7 Exhibit 1031.
 8 BY MR. SHULL:
 9 Q. Take a look at Exhibit 1031. And specifically,
 10 the last page. I think 4. Let me know when it's
 11 up.
 12 A. Okay. Now, what number, sir? I have the menu up
 13 on top. What exhibit number, please?
 14 Q. Exhibit 1031.
 15 A. I am looking at it.
 16 Q. Okay. Go to the last page on Exhibit 1031. On
 17 the last page of Exhibit 1031 shows a number of
 18 ancient broadheads. And I want to ask you, the
 19 broadhead that's shown as B, labeled B, does that
 20 have barbs?
 21 A. I'm trying to get to it, sir. My software here
 22 is holding me up from doing that. I can only get
 23 down to 2 so far, even though it's showing 4 of 4
 24 here. I'll try to work on this side.
 25 It's not popping that up for some

1 reason or other on my -- in my exhibit here. I
 2 can see it in very small size.
 3 Q. You can blow it up. There's that functionality
 4 on AgileLaw.
 5 A. I'm trying to. I can only get 2 to pop up right
 6 now, so I can't even get down to number 4, sir,
 7 I'm sorry. I'm just trying the best I can here,
 8 sir.
 9 Let me see if I can hop out and hop
 10 back in it then. Okay. Okay. Now I'm at number
 11 4, sir, yeah. Okay?
 12 Q. Yeah. So page number 4 in Exhibit 1031 shows a
 13 photograph of a number of ancient broadheads.
 14 A. Uh-huh.
 15 Q. And the one that's labeled B, does that have
 16 barbs?
 17 A. You're referring to the B figure, sir?
 18 Q. Correct.
 19 A. Is that correct, sir?
 20 Q. Yes. Figure B.
 21 A. Okay. I'm getting it blown up so I can see it
 22 closely.
 23 Q. Does the broadhead labeled B in this exhibit on
 24 page 4 contain barbs?
 25 A. No.

1 Q. It does not.
 2 A. It does not.
 3 Q. What's the back projections on that broadhead in
 4 B refer to?
 5 A. Please repeat the question, sir.
 6 Q. Well, let me ask you this. Under the definition
 7 that we just applied for the North Dakota Game
 8 and Fish Guide, would that meet the definition of
 9 the term "barbed"?
 10 A. You're asking under the terms of the North Dakota
 11 definition, sir?
 12 Q. Yes. Let me rephrase my question. Does the
 13 broadhead labeled B in page 4 of this exhibit
 14 have any fixed portion of the rear or trailing
 15 edge of the arrowhead forming an angle of less
 16 than 90 degrees?
 17 A. Yes.
 18 Q. So that would be a barbed broadhead; correct?
 19 A. Under the Idaho definition that we discussed,
 20 yes; not mine.
 21 Q. Would the broadhead that's identified in page 4
 22 of this exhibit labeled B have a projection
 23 extending backward from a point having an angle
 24 of less than 90 degrees from the body?
 25 A. Yes.

1 Q. And it appears that the broadhead in B has a
 2 sharpened edge on it. Would you agree?
 3 A. Yes, it appears.
 4 Q. How long have hunters been adding sharpened edge
 5 to barbed broadheads like that shown in B on this
 6 exhibit?
 7 A. At times.
 8 Q. My question was, how long have hunters been doing
 9 that?
 10 A. (No response)
 11 Q. If you don't know you don't know.
 12 A. I don't know, specifically.
 13 MR. SHULL: Let's take a quick
 14 10-minute break. I'll look at my notes and I
 15 think I'm pretty close to finishing up.
 16 (Recess taken at 5:11 p.m., until
 17 5:18 p.m.)
 18 BY MR. SHULL:
 19 Q. I want to look at Figure 2 of Lint. So pull up
 20 the Lint Patent. Let me know when you have it
 21 up. Are you looking at Figure 2?
 22 A. Yes.
 23 Q. Okay. So the arrow shaft in Lint has an external
 24 thread that mates with an internal thread of the
 25 ferrule body; correct?

1 A. Yes.

2 Q. And unless that arrow shaft is turned, the arrow
3 shaft cannot move in the forward position;
4 correct?

5 A. It doesn't move whatever position it's in.

6 Q. Right. The only way to move it is if you unscrew
7 it or screw it back up.

8 A. Yes.

9 Q. So if the broadhead hits a hard surface the arrow
10 shaft isn't gonna move unless the arrow shaft is
11 rotated; correct?

12 A. Unless you fail the threads by the impact.

13 Q. Sure. But that's gonna be pretty extraordinary;
14 correct?

15 A. Yes.

16 MR. SHULL: Okay. I don't have any
17 further questions.

18 MR. MC KINNIE: I just have a few or
19 maybe only one.

20 EXAMINATION

21 BY MR. MC KINNIE:

22 Q. Mr. Willkomm, are the opinions expressed in your
23 declaration your opinions?

24 A. Yes.

25 Q. Is the analysis regarding the prior art in the

1 STATE OF WISCONSIN)

2 WAUKESHA COUNTY) SS:

3 I, JOHN T. SCHINDHELM, Certified Merit
4 Reporter and Notary Public in and for the State
5 of Wisconsin, hereby certify that the deposition
6 of WAYNE A. WILLKOMM was taken before me
7 remotely via Zoom videoconference, on
8 November 19, 2024 commencing at 9:00 a.m. (CST),
9 and that the foregoing is a true and accurate
10 transcription of my stenographic notes.

11 I further certify that I am not a
12 relative or employee of any of the parties
13 hereto, nor a relative or employee of such
14 attorney or counsel; nor do I have any interest
15 in the outcome or events of the action.

16 WITNESS MY HAND AND SEAL OF OFFICE,
17 this the 21st day of November, 2024.
18
19

20 JOHN T. SCHINDHELM

21 Notary Public in and for the State of Wisconsin
22 My Commission Expires 5/5/2025
23
24
25

1 Flanagan Patent contained in your declaration
2 your analysis?

3 A. Yes.

4 MR. MC KINNIE: I have no further
5 questions.

6 MR. SHULL: Thanks, everybody. I know
7 sitting in a deposition is not always fun, but
8 it's a necessary process sometimes.

9 (Discussion held off the record.)

10 (Reporter inquires as to transcript
11 orders.)

12 MR. SHULL: Yeah, I think we put an
13 order in.

14 MR. MC KINNIE: I think we put a order
15 in on it as well.

16 (Proceedings concluded at 5:23 p.m.)

17 * * *

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