UNITED STATES
INTERNATIONAL TRADE COMMISSION

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In the Matter of | Investigation No.

CERTAIN DERMATOLOGICAL TREATMENT | 337-TA-1356

DEVICES AND COMPONENTS THEREOF

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O P E N S E S S I O N

JUDGE MCNAMARA: Thank you.

BY MS. SANABRIA:

Q. I'd like to move on to your opinions regarding validity of the patents. I am now on slide 13.

What grounds do Respondents rely on to assert invalidity of the Family Two patents?

A. There are several grounds. It's argued that claims 5, 13, and 18 of the '812 are obvious over Mehta in view of knowledge of a POSITA, and claim 5 of the '812 is obvious over Mehta in view of knowledge of a POSITA and further in view of Na '848, and for the 536, 11 and 16 are anticipated by Mehta and obvious over Mehta in view of knowledge of a POSITA, and for the '774, claim 14 is obvious over Mehta in view of knowledge of a POSITA.

Q. Do you agree with the Respondents?

A. I do not.

Q. Moving to slide 14, why not?

A. Well, there are multiple reasons. Let's go through some of these reasons.

The first is that the relevant disclosures from Mehta were considered by the Patent Office during prosecution.

Second, Dr. Woloszko relies on multiple embodiments of Mehta without explanation, and we'll go into

detail on some of these in a moment.

Mehta does not disclose some key limitations of the claims of the Family Two patents. In particular, extending needles a desired distance, one of the at least one electrical contacts include a pin that's extendable in the same direction, one embedded LED.

Na '848 does not disclose the claimed embedded LED in the proximal end. Dr. Woloszko's motivations to modify Mehta or combine it with Na '848 are insufficient and unpersuasive.

And, finally, the objective indicia points to non-obviousness -- commercial success, industry praise, and peer recognition.

Q. Did Dr. Woloszko consider any objective indicia of non-obviousness?

A. No.

Q. Moving to slide 15, what are you showing here?

A. This is the front face of the patent 8,608,737, otherwise known as Mehta, and shows two illustrations, 2A and 2D, which is the overall picture of the product and the handpiece.

Q. For the record, Mehta is CX-3023.

Moving to slide 16, you mentioned that the disclosures of Mehta, the relevant disclosures of Mehta for purposes of what we're here today to address, were already

1 considered during the prosecution.
2 What do you mean by that?
3 A. Well, there's another patent by Mehta, which is
4 patent 8,540,705, which I refer to as Mehta '705, and that
5 was considered by the Patent Office during prosecution of
6 the '812 patent.
7 And what's interesting is that Mehta '705
8 includes the same disclosures as Mehta for the purposes of
9 the asserted claim limitations. And Dr. Woloszko agrees
10 with that.
11 Q. How do you know that Dr. Woloszko agrees?
12 A. Well, he agreed with it in his deposition
13 testimony, and you can see that on the left. He was asked
14 if Mehta, Exhibit 18, has the same disclosures that we were
15 discussing in Exhibit 17, and he answered, yes, that's
16 correct.
17 Q. For the record, that's CX-3064C, page 423, lines
18 1-6.
19 Is Exhibit 17 the Mehta that he relies on in this
20 case?
21 A. Yes, that's correct. As it says in the note, 17
22 is Mehta and 18 is Mehta '705.
23 Q. How else do you know that Dr. Woloszko agrees
24 that the disclosures in both Mehtas are the same for
25 purposes of the asserted claim limitations?

A. Because he testified to that in this hearing. He said, and the extract is here, now let's talk about the Mehta reference. You testified about Mehta today, right? He answered yes. You understand that the Mehta reference was considered by the Patent Office, right? The answer, I believe so, yes.

Q. Moving to slide 17, what are you showing here?

A. This is some examples of how Mehta and Mehta '705 are the same. These are figures from Mehta on the left and Mehta '705 on the right. And you can see these include pictures of the handpiece and the general arrangement and the handpiece and the needle -- excuse me -- the cartridge removed. And they are identical in Mehta and '705. There is no difference. They are identical, same figure numbers.

Q. Are the corresponding disclosures for these figures also the same or similar in both Mehtas?

A. Yes, they are the same or similar in both Mehtas.

Q. Moving to slide 18, what are you showing here?

A. More supporting evidence. On the left we see the figures from Mehta, and that's Mehta relied on by Dr. Woloszko, these are figures of what Mehta calls the cartridge, and on the right we see identical figures from Mehta '705, which was before the Patent Office. There is no difference. They are identical.

Q. Are the disclosures corresponding to these

figures the same or similar in both Mehtas?

A. Yes, exactly, they are disclosed as either the same or very similar.

Q. For the record Mehta '705 is CX-1095.

Moving to slide 19, are the portions that Dr. Woloszko relies on for some of the disputed limitations the same in both Mehtas?

A. Yes, they are. And we can see here some examples of that. Dr. Woloszko relies on some text from Mehta to argue that the -- that Mehta talks about a desired distance, and that's the text that he has highlighted in blue on the left and the middle one. This text is identical to Mehta '705, which was before the Patent Office.

Q. What about the portion all the way on the right of slide 19 that is highlighted in green, what are you showing there?

A. In the green is the section that Dr. Woloszko relied on for talking about the LED or LED, and that text is identical in Mehta and Mehta '705. Mehta '705 was in front of the Patent Office.

Q. And for the record, those portions are CX-1095 at 16, 3 through 11, 17, 11 through 18, and 11, 60 through 66.

Moving to slide 20, you mentioned that Dr. Woloszko relies on multiple embodiments without explanation.

Why is that an issue?

A. As I understand it, for anticipation, it's necessary that one single embodiment discloses all limitations of any of the asserted claims. In Mehta, no single embodiment does that. And Dr. Woloszko mixes and combines different embodiments to come up with that argument.

Q. What about for obviousness?

A. Well, for obviousness, Dr. Woloszko did not explain why a POSITA would mix and combine those various embodiments of Mehta. There is no explanation.

Q. Moving to slide 21, what are some of the limitations that are missing in Mehta?

A. There are many. One of the key is the claimed desired distance.

Q. What claims is that relevant to?

A. That's in claims 5 and 13 of the '812 patent, claims 11 and 16 of the '536 patent, and claim 14 of the '774 patent, which all require extending the needles a desired distance.

Q. Moving to slide 22, what do the Family Two patents describe regarding the claimed desired distance?

A. There are lots of places where the Family Two patents disclose the desired distance. Here are some examples.

On the left-hand side, and I've highlighted the text, the motor enables precise needle deployment depth or extension, and, further down, the motor may enable precise needle extension effective depth control, and on the right-hand side we see Figs. 10D and 10E, which shows the needles extending a desired distance.

Q. And for the record, that's columns 11, 54-61, and 14, 3-6 of JX-5.

In the Family Two patents, does that motor receive a signal or some kind of -- is it programmed in some way to extend the needles a desired distance?

A. Yes, indeed. The user predetermines the desired distance, and then the motor is energized with a signal to extend the needle that desired distance.

Q. Moving to slide 23, what else does the Family Two patents disclose regarding the desired distance?

A. What this shows on the left is the flowchart of the way the software works, this is Fig. 12 from the '812 patent, and it shows, in the middle the two boxes are highlighted, that the user selects the depth and the number of shots to be delivered.

And that is described, it says the DTA 900, which is the software, may energize the needle module or the modem module based on operational parameters and deploy the needle assembly to a desired extension to enable a desired depth of

needle penetration within tissue.

Further on it says a user may select the needle deployment depth. And further on, the motors may enable precise needle extension effective depth control. And further on further, the DTA 900 may energize the motor module based on operational parameters and deploy the needle assembly to a desired extension to enable a desired depth of needle penetration within tissue.

Q. And for the record, that's columns 13, 63-66, and 14, 12-34.

Mr. Crosby, does Mehta have the same types of disclosures regarding desired distance and depth control?

A. No, it does not.

Q. Moving to slide 24, what does Mehta disclose?

A. Mehta discloses that the user should select different cartridges with variations of the probe to target different regions of tissue. And as you can see in the highlighted text on the left, the target region of tissue drives the array configuration, and the physician can change the array configuration by attaching different cartridges. This is completely different from what we find in the Family Two patents.

Q. How so?

A. Well, the Family Two patents, the user determines the desired distance by doing something with the user

interface, the software then energizes the motor properly to extend the needles a desired distance. Mehta provides no explanation of how the needles are extended anything other than full distance.

Q. What are you showing on the right of slide 24?

A. What Mehta discloses is the length of the probes, not the distance they extend, can be selected by the user, as it says in the text, in those variations the length of the probes is generally selected so the energy delivery occurs in the target region, not the amount that the needles are extended. It's quite different from the Family Two patents.

Q. For the record, that's CX-3023, 10, 2-7, and 10, 19-25.

Moving to slide 25, what else does Mehta disclose?

A. Mehta discloses a system to assess the penetration depth after needle extension. In other words, with Mehta, the needles are extended the full length, and then the user is given the ability to assess whether or not those needles are in the target region of tissue.

Quite different from the Family Two patents.

And Mehta provides explanation of various different ways this can be done, including ultrasound, impedance measurement, virtual feedback, and a virtual

depiction of the depth, which is done after the needles are inserted.

Q. Moving to slide 26, what else does Mehta disclose?

A. Yes. There is no disclosure of the claimed desired distance, but Mehta does disclose measuring tissue parameters after insertion and allowing the physician to reposition the probes if the target tissue is not reached.

As we can see on the left-hand side, the text in Mehta says, measurement of a tissue parameter by the sensor provides information that can confirm whether the probe is located in the desired target region.

And, if not, as it says further on, the probe can be ultimately repositioned. This is quite different from selecting a desired distance and extending the needles to that desired distance.

Q. Moving to slide 27, does Mehta disclose anything other than full extension of the probes?

A. No. In fact, quite the opposite. What Mehta says is it's important to prevent energy delivery in an unintended location, and the electrode cannot deliver energy to an unintended shallower location when it is not fully extended. This is different from the Family Two patents where the user can select the amount that the needles are extended, the desired distance, and once the needles are

extended to that desired distance, energy can then be delivered. Mehta doesn't allow for that.

Q. And for the record, that's CX-3023, starting at column 16, lines 1-8.

We have gone through a lot of the disclosures in Mehta.

Do any of those disclosures or anything else that you analyzed in Mehta disclose the desired distance as claimed in the Family Two patents?

A. No.

Q. Moving to slide 28, do the portions of Mehta that Dr. Woloszko relies on change your opinion?

A. No.

Q. What are you showing on slide 28?

A. Here is a slide from Dr. Woloszko's presentation, and he argues that the ability for Mehta to depict the desired probe location is equivalent to the desired distance, but that doesn't disclose needles extending a desired distance. It only shows the ability of Mehta to assess if the probes are at the target tissue after they have been extended. It's nothing to do with choosing a desired distance prior to extension.

Q. What else are you showing on this slide?

A. And in Mehta, further advancement, if at all, is made on information measured and provided to the physician

after the probes are inserted.

And the only mechanism Mehta discloses for adjusting the probe placement is selecting a different cartridge. There is nothing about extending the needles anything other than full length and assessing if the needles are in the target tissue.

Q. On slide 29, here you're showing additional portions that Dr. Woloszko relies on with respect to Mehta.

Do you agree with his assertion that these portions of Mehta disclose a desired distance?

A. No, I do not.

Q. Why not?

A. Well, for example, Dr. Woloszko argues that merely using a step-motor or stepping-motor allows the probes to extend a desired distance, but that's not true. What Mehta says is that this is -- a step-motor is one mode, including sliding rotation incremental indexing, which can cause movement of the actuator. It's got nothing to do with desired distance, particularly nothing to do with selecting the desired distance prior to extension. He also argues that the ability to overinsert and then partially retract the electrodes correspond to desired distance, but there is nothing to do with desired distance. There's nothing in the software in Mehta that allows the control of a motor to extend the needles to anything other than full length.

Finally, he argues that the treatment device can include any number of cartridges that carries various probe configurations. Well, sure, but that doesn't allow using extension of the needles to a desired distance. It only allows selecting a different cartridge with different probe lengths, not the amount that those needles are extended.

Q. Does Mehta disclose programming a motor to extend the needles a desired distance?

A. No.

Q. Moving to slide 30, are there any other limitations that Mehta does not disclose?

A. Yes. Mehta -- there's no disclosure of the claimed pin extendable in the same direction as the plurality of needles.

Q. What claim is that relevant to?

A. That's the '812 patent, claim 18.

Q. What does Mehta disclose, if anything, regarding this limitation?

A. Mehta shows that there is a connection portion, which he labels 116, which can be fabricated in multiple ways, which are used to maintain connection with a corresponding contact point trace on a connection board during movement of the electrode. And the illustration that accompanies that, Fig. 4A, says the direction of the needle extension, and I'm showing that with a green arrow, but the

movement of the electrical contacts is at right angles to that, and I show that with a red arrow. It's not extendable in the same direction as the plurality of needles.

Q. Moving to slide 31, what are you showing here?

A. This was the animation from Dr. Woloszko's presentation, and he relies on movement of the printed circuit board, not the direction that the pin extends.

Q. Does the claim say anything about movement of the PCB?

A. No, it does not. The claim says the apparatus of claim 12, wherein one of the at least one electrical contacts includes a pin that is extendable in the same direction as the plurality of needles. There's nothing there about movement of the printed circuit board. As you saw in the previous slide, that extension of the pin is at right angles to the movement of the needles.

Q. Moving to slide 32, are there any other claim limitations that you contend are missing in Mehta?

A. Yes. There is no disclosure of the claimed embedded LED to illuminate the plurality of needles via the needle assembly translucent section.

Q. What claim is that relevant to?

A. That's claim 5 of the '812 patent.

Q. I'm on slide 33. Does Mehta disclose a translucent section in the needle assembly?

A. No, it does not.

Q. What are you showing on slide 33?

A. This is a slide from Dr. Woloszko's presentation, and in that Dr. Woloszko maps Mehta's electrode assembly 102 to the claimed needle assembly of the Family Two patents. He does not describe the electrode assembly 102 or any portion of the removable cartridge as being transparent or translucent.

Q. Does Mehta describe any portion of the electrode assembly or the cartridge as being transparent or translucent?

A. It does not.

Q. Moving to slide 34, does Mehta disclose that any of the components in the system or the apparatus are transparent or translucent?

A. Yes, it does. Mehta discloses that the stabilization plate 214 may have a window or a feature, labeled 216, which may be transparent.

Q. Is that what you're showing here on slide 34?

A. Yes, on the left-hand side of Figs. 2B and 2C, and you can see the stabilization plate is highlighted in yellow in cross-section above and from the top view below. And the feature 216, the window, which may be transparent, is outlined in that pink color.

Q. Moving to slide 35, are the plate 214 or the

feature 216 part of what Dr. Woloszko relies on for the claimed needle assembly?

A. Could you repeat the question? I think there was a double negative there.

Q. Sure. Are the plate 214 or feature 216 part of what Dr. Woloszko relies on for the needle assembly?

A. They are not.

Q. How do we know that?

A. Well, Mehta tells us that. The cartridge and the needle assembly Dr. Woloszko relies on to call the needle assembly is 102 is completely separate from the feature 216 with the stabilization 214, which is attached to the body, not to the cartridge or needle assembly.

Q. For the record are you relying on Figs. 2D and 2B of Mehta for that opinion?

A. Yes.

Q. As well as the corresponding disclosures?

A. Yes.

Q. Moving to slide 36, does Mehta disclose an LED illuminating the plurality of needles via needle assembly translucent section?

A. No.

Q. Where would the LED in Mehta be located, if there is one?

A. Mehta is not clear on that, but Dr. Woloszko

contends that Mehta discloses an LED around feature 216, and we saw that from his deposition.

Q. And for the record, that's CX-3064C, page 415, starting at lines 4-9.

Would that LED illuminate a plurality of needles via any kind of translucent section in Mehta?

A. No, I don't see how it could.

Q. Why not?

A. Well, the electrode assembly 102, which is the needle assembly, according to Dr. Woloszko, is encased within a cartridge 100, which is the green part, and that's within the device body 210. So any LED in the region of element 216 could not get to the needle assembly even if it had a transparent section and thereby illuminate the needles. There is no light path for that to go.

Q. Moving to slide 37, do you agree with Dr. Woloszko's alleged motivations to modify Mehta to arrive at the claims of the Family Two patents?

A. No, I do not.

Q. Why not?

A. I think they are insufficient and unpersuasive. On top of that, these are the slides from Dr. Woloszko's presentation, and he uses exactly the same language to argue motivation to modify Mehta to reach the claims in '812, '536, and '774. But I don't see how you could possibly use

exactly the same motivation to come at a disparate claim limitation like an LED or the desired distance control. It just doesn't make sense.

Q. Were you here when Dr. Woloszko testified about the slides that you have in your slide 37?

A. Yes.

Q. And did he provide any additional explanation during his testimony other than just the words that he had on his slides?

A. None whatsoever.

Q. Moving to slide 38, what other reference did Dr. Woloszko rely on for purposes of his invalidity opinions?

A. He relied on the so-called Na '848 patent.

Q. And what are you showing on slide 38?

A. This shows the face of that patent and three figures from that patent.

Q. And, for the record, Na '848 is CX-1096, and we're showing Figs. 1B, 2C, and 3A on slide 38.

Moving to slide 39, what is Na '848 directed to?

A. Na '848 is directed towards a completely different invention than the Family Two patents. In fact, it's directed towards an acupuncture-type apparatus with either a plate or a roller.

Q. Do you see that in paragraphs 22 and 33 of Na

'848?

A. Yes, that's the description. It says the apparatus 10 may include a user handle coupled to an acupuncture plate. The plate may be elastically coupled to the handle segment by an elastomeric section 210. On the right-hand side we can see the description of the roller. Each apparatus includes curved roller 450 having a plurality of acupuncture pins where the pins may be similar to the pins 351.

Q. Moving to slide 40, does Na '848 disclose extending needles a desired distance?

A. No, it does not. Na '848 talks about the needles may have a length, A, and we see that dimension on the figure, but that's fixed. The needles don't extend at all.

Q. For the record, that's paragraph 26 of Na '848 CX-1096?

A. Yes.

Q. Moving to slide 41, what claims does Dr. Woloszko contend are invalid over Na '848?

A. Dr. Woloszko only relies on Na '848 for the LED limitation of claims 4 and 5 and the needle assembly translucent section limitation of claim 5. And that's the claim -- yes.

Q. I'm on slide 42 now. Do you agree with him?

A. I do not.

Q. Why not?

A. Well, there's no disclosure of an embedded LED in the proximal end of the user holdable device. And that's what the claim requires.

Q. Does Na '848 disclose an LED at all?

A. It does. There are LEDs, and we can see in paragraph 34 of Na '848 the highlighted section, the plate or roller may include a plurality of embedded LEDs, and in paragraph 38 the plate or roller may include a plurality of LEDs, and we have illustrated that on the right. But that's not in the proximal end.

Q. So is any of the LEDs -- strike that.

Are the LEDs in Na '848 in the wrong section of the product?

A. Yes, they are in the wrong part. The LEDs in Na -- excuse me -- in Na '848 are nowhere near the proximal end or the handle. They are in the plate or the roller.

Q. Moving to slide 43, do you agree with Dr. Woloszko's alleged motivations to modify Mehta and combine it with Na '848?

A. No, I do not.

Q. Why not?

A. Well, they are insufficient and unpersuasive, and the suggestion of motivations doesn't make sense.

Q. What are you showing on slide 43?

A. Slide 43 is Dr. Woloszko's presentation from his direct, and this is his claimed motivations for combining Mehta and Na '848.

Q. Did Dr. Woloszko explain how or why a person of ordinary skill in the art would combine Mehta and Na '848 to arrive at claim 5 of the '812?

A. He did not.

Q. Did Dr. Woloszko provide any additional explanation during his testimony for the alleged motivations to combine that he had on his slide 152?

A. He did not.

Q. Moving to slide 44, would a person of ordinary skill in the art, in your opinion, have modified or combined the references that Dr. Woloszko relies on?

A. No. The -- no.

Q. Why not?

A. There's no motivation to modify Mehta to arrive at the desired distance. Mehta discloses already multiple cartridges with different probe configurations, the distance at which the probes extend in Mehta is fixed, and he teaches mechanism, and we went through some of these, like ultrasound and impedance measurement, to assess the needle depth penetration. There's no motivation to change Mehta to extend the needles anything other than the fixed length.

Q. Is it fair to say that Mehta already discloses a

mechanism for reaching the target tissue that is different from the Family Two patents mechanism?

A. That's correct. In Mehta, the target tissue is reached by selecting a cartridge with needles of a particular length to reach the target tissue. The Family Two patents are completely different. The user has a cartridge and selects the desired distance to extend those needles to reach the target tissue. They are apples and oranges.

Q. What else are you showing on slide 44 regarding the lack of motivations to modify or combine Mehta with the references that Dr. Woloszko relies on?

A. There is no motivation to modify Mehta to arrive at the LED and needle assembly translucent limitations, because Mehta already discloses a way to provide the physician an indication of needle placement, and we saw that with the translucent section, and a virtual depiction on the user interface of the depth or location of the probe array, which is done after the needles are inserted.

Na '848 does not teach an LED in the proximal end of the user holdable device, so there is no motivation to modify Mehta.

Q. Moving to slide 45, I'd like to shift gears and ask you a few questions regarding objective indicia of non-obviousness.

What objective indicia are you providing opinions on?

A. Commercial success and industry praise and peer recognition.

MS. SANABRIA: And at this time, Your Honor, we can go on the confidential record.

(Whereupon, the hearing proceeded in confidential session.)

O P E N S E S S I O N

BY MR. AUTERI:

Q. Can we go to slide 25?

In the upper right-hand side of slide 25 you include a quote to column 13, lines 37-45 of JX-0005, the '812 patent; is that correct?

A. Yes.

Q. In this section Mehta discloses the needles can be marked with a certain color that the physician should be able to see during treatment; is that correct?

A. That's not the words they use. The probe can be marked with one or more features that allow the physician to determine --

Q. Sorry. I'm not talking about the part you highlighted. I'm talking about the part in between what you highlighted. So it says, for example, a probe can be marked with a certain color that the physician should be able to see during treatment.

Do you see that?

A. Yes, I do. I'm sorry. I didn't understand which part you were highlighting.

Q. No problem. And then the next sentence says, this ensures that the probe is not driven too far into the tissue; is that correct?

A. Yes.

Q. Do you agree that this means the physician views the advancement of needles into the skin and then stops the advancement when the needles reach the desired depth?

A. No.

Q. Do you agree the physician is what ensures the probe is not driven too far?

A. I don't understand that question. Can you try it again a different way perhaps? Do I agree what?

Q. Let's move to a new question.

Do you agree that in Mehta it's important to be able to see the needles extend into the skin?

A. Do I agree that in Mehta it's important for the physician to see the needles extend to the depth -- is that your question?

Q. Extend into the skin.

A. Okay. Mehta talks about the target treatment area, and he talks about a virtual depiction of the needle extension, and he uses other parameters, such as ultrasound or impedance, to generate the data for that virtual depiction, and then the physician looks at, observes that virtual depiction. As I understand it, that is not the actual depth.

Q. Right, but what we were talking about, we were just looking at marking the actual probe so that they can be seen through the skin.

So my question is, Mehta at least implies it's important to be able to see the needles as they insert into the skin; is that correct?

A. I don't have the whole of Mehta in my mind, so I can't really answer that question. Mehta talks about a window for observing something, but I don't think it specifically says observing the probes as they are inserted, but, as I said, I can't remember the whole of Mehta.

Q. I have another question.

In Mehta's cartridge, Mehta's needle assembly includes needles attached to a motherboard; is that correct?

A. Well, Mehta doesn't talk about a needle assembly, I don't think, but there are -- there are needles attached to a printed circuit board, if I remember correctly.

Q. And do you agree that whether you locate an LED in a handpiece or locate the LED on a printed circuit board would not be inventive?

A. I haven't thought about that question. I know that Mehta does not talk about an LED on the printed circuit board order anywhere in the needle assembly, as it's referred to by Dr. Woloszko.

Q. Can we pull up RX-1280C at page 191, focusing on lines 4-19.

JUDGE MCNAMARA: Could you identify what that is, please, Mr. Auteri?

Q. It is your deposition transcript, Mr. Crosby.

JUDGE MCNAMARA: From what --

MR. AUTERI: Sorry?

JUDGE MCNAMARA: From what date?

MR. AUTERI: This is the first date. September 4th, 2023.

JUDGE MCNAMARA: Thank you.

Q. You were asked, would you consider placing the LED on the handpiece instead of placing it on the tip an inventive difference around the 2010 or prior to 2010 time period?

Ms. Sanabria, objection, form, incomplete hypothetical.

The witness: I haven't thought of that question before. So are you asking for a legal opinion on whether it's an inventive difference?

The examining attorney says, I'm asking you for your opinion as to whether you would consider that to be an invention as of the time period?

Your answer was, what? To locate the LED on the handpiece with a hole or located on a motherboard? I wouldn't see that as being inventive, no.

Was this question given to you and did you give this answer?

A. Yes.

Q. Okay.

MR. AUTERI: I pass the witness.

JUDGE MCNAMARA: Thank you very much, Mr. Auteri.

Mr. Rauh?

MR. RAUH: Yes, Your Honor just a couple of questions.

EXAMINATION BY COUNSEL FOR ITC STAFF

BY MR. RAUH:

Q. I'll try to keep this short.

Mr. Crosby, in the context of the Family Two patents, is the use of a stepper motor alone to extend needles sufficient, in your view, to satisfy the desired distance limitations?

A. No.

Q. Why not?

A. As I think I talked about in my testimony earlier, the stepper motor alone is not enough because you need to be able to control that stepper motor to achieve the desired distance. And the Family Two patents provide abundant information about how that stepper motor, if it is a stepper motor, is used to set the desired distance. There is no disclosure like that in Mehta.

Q. When you say the Family Two patents provide abundant information about how to use the stepper motor to satisfy the desired distance recited in the patent, can you

give an example?

A. Yes. I referred to the flowchart. I can't remember which figure it is, 12 or 13 maybe, where two elements of the flowchart talks about the user setting the desired depth, which correlates with the desired distance. It doesn't refer to a stepper motor particularly in that, if I remember correctly, because the stepper motor is one embodiment of a type of motor that can be used. But it's necessary to have control of the motor, stepper motor, or otherwise to achieve the desired distance.

Q. You're certain of the asserted claims in the Family Two patents also reference a motor control signal?

A. Yes.

Q. And what is that?

A. My recollection is that's actually a construed term in this case. So if I remember correctly, it's the plain and ordinary meaning of a signal sent to a motor to control the motor.

Q. I'm sorry. My question was confusing. I think the claims use the term a particular signal, which is construed as a motor control signal.

A. Okay. Thank you.

Q. My apologies.

MR. RAUH: I'll pass the witness. Thank you.

JUDGE MCNAMARA: All right. Thank you very much,

Mr. Rauh.

Ms. Sanabria, do you have any other questions?

MS. SANABRIA: Judge McNamara, we don't have any other questions.

JUDGE MCNAMARA: Okay. Thank you very much. Mr. Crosby, then you may step down. Thank you very much.

THE WITNESS: Thank you.

JUDGE MCNAMARA: All right. So at this point I think we only have one more witness; is that correct? No, we have two.

MS. SANABRIA: We only have one more witness, Your Honor, Mr. Thomas, Dr. Thomas.

JUDGE MCNAMARA: Right. And I think the Respondents have one more, or are you not calling him again? Are we done?

MR. NESTER: Your Honor, I think we have one more witness. We will not be calling another witness.

JUDGE MCNAMARA: Okay. That's it. Then let's take our lunch break. I will see you -- I know we're running behind. The argument will come when it comes. Again, today is a little elastic. I'll see you back here at 2:15. Thank you, everybody.

(Whereupon, the proceedings recessed at 1:15 p.m.)