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Transcript of Timothy Markison

Date: March 18, 2025
Case: Under Armour, Inc. -v- Athalonz, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNDER ARMOUR, INC.

Petitioner

vs.

ATHALONZ, LLC

Patent Owner

CASE NO. IPR2024-00636
PATENT NO. 10,674,786

STENOGRAPHIC DEPOSITION OF

TIMOTHY MARKISON

TEMPE, ARIZONA

TUESDAY, MARCH 18, 2025

(Reported Remotely)

REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790 (GA), CSR-12254 (TX),
LCR-991 (TN)

FILE NO. 577082

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March 18, 2025

8:57 a.m.

Stenographic deposition of TIMOTHY MARKISON, held in Tempe, Arizona before Tanya L. Verhoven-Page, Certified Court Reporter (GA), Licensed Court Reporter (TN) and Certified Shorthand Reporter (TX).

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I N D E X

WITNESS: TIMOTHY MARKISON

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TEMPE, ARIZONA; TUESDAY, MARCH 18, 2025
8:57 A.M.

Thereupon --
TIMOTHY MARKISON,
called as a witness, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. BUGG:
Q Mr. Markison, thank you for coming down today. Kind of some housekeeping stuff up front. I know you're an attorney. Have you been deposed before?
A Yes.
Q So I'm sure you're aware of kind of how this will go, so I'll skip the normal introduction stuff. But at any point if you have any questions or you don't understand anything, understand my question, please do ask for clarification. And it is a little odd having a remote reporter, so we'll try to do our best to not talk

8

over each other.
But, obviously, you know, this is your room today. So if you need any breaks or anything, let us know, and we'll take a break.
A Okay.
Q What did you do to prepare for your deposition today?
A Well, I reviewed my declarations, reviewed the claims for the five sets of cases, and then talked with outside counsel.
Q Okay. Did you meet with anybody else besides Mr. Houghton?
A Yes.
Q Who else?
A Jake Zimmerman.
Q Is he an attorney or is he someone else?
A He's an attorney.
Q At the same law firm?
A No. Different law firm.
Q Is he representing -- representative of anything having to do with this litigation or this IPR -- or these IPRs?

9

1 MR. HOUGHTON: Objection. Form.
2 THE WITNESS: I'm sorry. One more
3 time.
4 BY MR. BUGG:
5 Q Yeah, sorry. That was a terrible
6 question.
7 Is he related or does he represent you or
8 Athalonz in this proceeding?
9 **A No.**
10 Q What capacity do you know him?
11 **A Jake is acting as a consultant, a legal**
12 **consultant, for Athalonz.**
13 Q Related to these IPRs?
14 **A More just strategy.**
15 Q About how long do you think you spent
16 preparing for the depositions?
17 **A That's a tough question to say. Our -- I**
18 **don't normally track my hours.**
19 Q You don't track them in any way? You
20 don't have a log? You don't bill them?
21 **A No.**
22 Q If you had to estimate, was it 20 hours,

10

1 more than 20 hours?
2 **A Much more than 20 hours.**
3 Q One hundred hours?
4 **A More than that.**
5 Q And that's just in preparation for the
6 depositions; that's correct?
7 **A Oh, in preparation for the depositions?**
8 Q Right.
9 **A No, I'm sorry. I thought you meant**
10 **preparation of the declarations.**
11 **Preparation for the deposition, probably**
12 **30, 40 hours.**
13 Q And then, speaking of the declaration, I
14 see you brought a stack of documents here.
15 Are those your declarations for the IPRs?
16 **A Yeah, the five declarations. And then I**
17 **brought a copy of the full patent for the '786**
18 **patent, and then the claims for the other four cases.**
19 Q Okay. Is there any markings or notes in
20 any of these documents?
21 **A No.**
22 Q Okay. So we'll use those. I have copies

11

1 of each of those, as well.
2 And at the end, just kind of for
3 housekeeping, I will try to remember, anything that's
4 already been introduced as an exhibit, I'll introduce
5 that exhibit, and there will be a few new exhibits
6 that we'll mark as Markison 1, 2, 3, et cetera. And
7 then at the end, we'll keep those aside, and then I
8 have to ship them into the court reporter.
9 Do you understand?
10 **A Yes.**
11 Q What's your current role at Athalonz?
12 **A I'm CEO.**
13 Q Have you always been the CEO?
14 **A Yes.**
15 Q When was Athalonz founded?
16 **A So we founded the company in 2011 as**
17 **Adbark Athletic Ventures and then changed the name**
18 **in -- sometime in 2013 to Athalonz.**
19 Q Do you get financial compensation
20 annually based on your role at Athalonz?
21 **A No.**
22 Q Are you compensated at all in your role

12

1 at Alabama?
2 **A Cash-wise, no.**
3 Q In any way, compensated in any way?
4 **A No.**
5 Q Does it Athalonz make a profit every
6 year?
7 **A No.**
8 Q Has it ever made a profit?
9 **A No.**
10 Q What's your ownership stake in the
11 company?
12 **A Equity, about 30 percent.**
13 Q Are you the largest shareholder? Scratch
14 that -- strike that.
15 Are you the largest -- do you have the
16 largest ownership stake in Athalonz?
17 **A Yes.**
18 Q Who owns -- so I'm going to refer to the
19 asserted patents or the challenged patents.
20 Do you understand that, throughout the
21 course of this, there's five patents that are being
22 challenged in IPRs? You understand that, right?

13

1 **A Yes.**
2 Q So if I say the asserted patents or the
3 challenged patents, do we have an understanding it's
4 going to be these five patents that the IPRs have
5 been filed on, correct?
6 **A Yes.**
7 Q Who's the owner of the asserted patents?
8 MR. HOUGHTON: Objection. Form.
9 THE WITNESS: The assignee is
10 Athalonz.
11 BY MR. BUGG:
12 Q So you're aware Athalonz sued Under
13 Armour in the Eastern District of Texas, right?
14 **A Yes.**
15 Q Do you have any financial stake in the
16 outcome of that litigation?
17 **A I'm not sure I follow your question.**
18 Q If Under Armour was either found to
19 infringe the asserted patents and there was a damage
20 awarded or there was any settlement between the
21 companies, would you receive a portion of that
22 compensation?

14

1 **A I don't know.**
2 Q Let's just use an example. Say there was
3 a $10 million verdict, we'll say, for infringement,
4 would that $10 million go solely to Athalonz, the
5 company?
6 MR. HOUGHTON: I'm going to
7 instruct you just not to reveal any
8 substance of any attorney-client
9 communications or agreements.
10 THE WITNESS: So let's -- let me
11 rephrase -- rephrase the question.
12 So if Athalonz were to get a
13 thousand dollars out of this, that would
14 go to the business. Some of it may go to
15 the shareholders. That hasn't been
16 determined yet.
17 BY MR. BUGG:
18 Q How would that be determined?
19 **A It's going to be determined by the**
20 **management committee once we know what a specific**
21 **number is.**
22 Q So if Athalonz hasn't been profitable,

15

1 how have you been able to keep the business going for
2 as long as you have?
3 **A Through investors.**
4 Q Have you invested your own money in the
5 company?
6 **A Yes.**
7 Q Have you had multiple rounds afterward --
8 have you had multiple rounds of fund raising since
9 the company started?
10 MR. HOUGHTON: Objection to
11 relevance.
12 THE WITNESS: We've done some seed
13 round and then some convertible debit.
14 BY MR. BUGG:
15 Q I think you said the board would make a
16 determination. If there was any kind of financial
17 compensation from the litigation against Under
18 Armour, if any payments were made to the
19 shareholders, I understand you'd get 30 percent of
20 those payments; is that correct?
21 **A If the management committee decides that**
22 **money is going to the shareholders, then yeah, I**

16

1 **would get 30 percent of it.**
2 Q Do you agree that if the asserted patents
3 here are invalidated, there's no chance for
4 compensation in the District Court case?
5 **A So if the -- I'm -- so if asserted**
6 **patents are held to be invalid as a result of the**
7 **IPR, then you're right. There would be no -- the**
8 **case against Under Armour would cease.**
9 Q Do you think you have any personal
10 interest in seeing these challenged patents be deemed
11 valid?
12 **A Yes.**
13 Q In what way?
14 **A Well, from a personal standpoint, I've**
15 **got 14 years invested into Athalonz. From a**
16 **professional standpoint, I wrote these patents, and**
17 **from a professional standpoint, I believe these**
18 **patents are valid and infringed.**
19 Q Has Athalonz ever attempted to license
20 these challenged patents?
21 MR. HOUGHTON: Objection to
22 relevance.

17

1 THE WITNESS: I'm pausing for just
2 a second here. I -- I don't know if all
3 of these asserted patents were part of a
4 licensing discussion we've had in the
5 past.
6 BY MR. BUGG:
7 Q So I'll ask you a different question.
8 So has Athalonz attempted to license any
9 of its patents in the past?
10 MR. HOUGHTON: Objection to
11 relevance.
12 THE WITNESS: Yes.
13 BY MR. BUGG:
14 Q To who?
15 **A To Under Armour --**
16 MR. HOUGHTON: Objection.
17 THE WITNESS: To Under Armour in
18 2013, 2014, and then to Callaway Golf on
19 two different occasions, 2015, 2016,
20 maybe.
21 BY MR. BUGG:
22 Q Did any company ever take a license to

18

1 these patents?
2 **A No.**
3 MR. HOUGHTON: Objection.
4 BY MR. BUGG:
5 Q Okay. Do you believe the challenged
6 patents provide an advantage over any competitor's
7 products?
8 **A The technology covered by these patents**
9 **definitely provide a competitive advantage.**
10 Q So I'll ask a little different question.
11 Do you think the patents themselves
12 provide Athalonz with any kind of competitive
13 advantage in the marketplace?
14 **A I think patents, in general, provide a**
15 **competitive advantage. Not just to Athalonz, but to**
16 **any company that holds them.**
17 Q Mr. Markison, I'm going to hand you
18 what's been previously marked as Exhibit 1075 in, I
19 think, three of the IPRs, but definitely in the '456
20 patent IPR.
21 Please take a look at this and let me
22 know if you recognize this document.

19

1 **A Yes, yes, I do.**
2 Q What is this document?
3 **A It was one of the references cited in two**
4 **of the IPR petitions.**
5 Q So the inventor here is named Juan. If I
6 refer to this as the Juan reference, you understand
7 that this is the patent we're talking about?
8 **A Yes.**
9 Q Can I have you turn to Column 4 of this
10 document. Starting at Line 46 of Column 4, can you
11 just read to yourself that whole paragraph there that
12 goes from Line 46 through 58 down at the bottom.
13 Do you see that?
14 **A Yes.**
15 Q Go ahead and read that to yourself, and
16 then I'll have a couple of questions about that for
17 you.
18 **A Okay.**
19 Q So you see that's referring to Figure 5,
20 correct?
21 **A Yes.**
22 Q Go ahead and take a look at Figure 5 to

20

1 refresh your memory here. Does that Figure, Figure
2 5, look familiar to you, Mr. Markison?
3 **A Yes.**
4 Q So going back to Column 4. Describing
5 Figure 5, it states, starting at Line 46: And yet
6 another embodiment of the present invention as shown
7 in Figure 5, the golf shoes can be formed such that
8 the inside surface and the outside surface, separated
9 by a central longitudinal axis of the sole or
10 midsole, are different from each other.
11 Do you see that?
12 **A Yes.**
13 Q Do you agree that the Juan reference
14 describes either the sole or the midsole as being
15 made of two different materials?
16 **A No.**
17 Q How so?
18 **A It says: The golf shoes can be formed**
19 **such that the inside surface and outside surface,**
20 **separated by a central longitudinal axis of the sole**
21 **or midsole, are different from each other.**
22 **It's just referring to the surfaces. Not**

21

1 **the materials of the sole or the midsole.**
2 Q So that reference to midsole in Line 49,
3 what is that referring to?
4 **A It's referring to the longitudinal axis**
5 **of the sole or midsole.**
6 Q So if the midsole was made of one
7 material, what would that longitudinal axis be?
8 **A That's what they show in Figure 5.**
9 Q So it looks like that longitudinal
10 axis --
11 **A Like this (indicating).**
12 Q Yeah, right. And he's referring to that
13 separation between the hard surface and the soft
14 surface, correct?
15 **A Yes.**
16 Q And in Column 4, it states that that
17 longitudinal axis can be part of the sole or midsole,
18 correct?
19 **A Yes.**
20 Q Starting on Line 50 in the same Column 4,
21 it states: The inside surface is soft-surfaced and
22 the outside surface is hard-surfaced, both of which

22

1 are made from elastic materials.
2 Do you see that?
3 **A Yes.**
4 Q As a person of skill in the art, what
5 does an elastic material mean to you in this patent?
6 **A I'm not sure if this patent specifically**
7 **defines elastic material.**
8 Q So outside of the context, just generally
9 speaking, what does elastic mean to you?
10 **A It has some give.**
11 Q Have some give, as in it's compressible,
12 that same kind of meaning? Strike that.
13 Does "have some give" mean compressible?
14 **A No, not necessarily.**
15 Q What do you mean by "have some give"?
16 **A It can bend, flex. We are talking about**
17 **a surface here. So there is no appreciable**
18 **thickness. So this material could bend.**
19 Q So you mentioned no appreciable
20 thickness. Is there anywhere in Juan that states
21 that the surface has no appreciable thickness?
22 **A No specific statement.**

23

1 Q So continuing on Line 51 -- sorry -- 52,
2 Column 4, Juan, it says: When a golfer puts his both
3 feet together to take a stance for swing, the spikes
4 fitted on the part of the soft surface are pressed
5 down because they are fixed on a soft surface, but
6 spikes formed on a hard surface remain the same
7 position so that the sole is tilted toward the soft
8 surface.
9 Do you see that?
10 **A Yes.**
11 Q What do you think that's referring to
12 when it says "tilted toward the soft surface"? What
13 does that mean?
14 **A That whole section makes no sense to me.**
15 Q Why is that?
16 **A Because the soft surface has no bearing**
17 **on whether a spike penetrates the ground or not.**
18 Q So what if penetration wasn't referring
19 to penetrating the ground but was referring to
20 compressing the soft material, would that make sense?
21 **A No.**
22 Q Why not?

24

1 **A Well, it says the spikes fitted on the**
2 **part of the soft surface are pressed down. Your**
3 **question would make them press up.**
4 Q So you disagree that this paragraph is
5 referring to compression of the soft material?
6 **A It's referring to a surface which has no**
7 **appreciable thickness. So something without**
8 **appreciable thickness can't compress.**
9 Q So whether or not you understand what
10 they're saying here, does it actually disclose
11 compression and tilting of the shoe when a wearer
12 wears the shoes disclosed in Juan?
13 MR. HOUGHTON: Objection to form.
14 THE WITNESS: I'm sorry. One more
15 time. What was your question?
16 MR. BUGG: Sure. Tanya, can you
17 read that back?
18 THE REPORTER: Yes, one moment.
19 (The last question was read back into the record.)
20 THE WITNESS: No, it doesn't.
21 BY MR. BUGG:
22 Q Okay. So in Line 55, it states: Spikes

25

1 formed on the hard surface remain in the same
2 position, quote, so that the sole is tilted towards
3 the soft surface.
4 Do you see that?
5 **A Yes.**
6 Q So you disagree this statement means the
7 sole is tilted towards the soft surface of the shoe?
8 **A No, I don't disagree with what it says in**
9 **that sentence.**
10 Q So it expressly discloses tilting of the
11 shoe towards the soft surface of the sole, correct?
12 **A That's what it says.**
13 Q Mr. Markison, this is your declaration
14 for the '456 patent. We can use this one or yours.
15 This is Exhibit 2009 for IPR 2024-00640.
16 Do you recognize this document?
17 **A Yes.**
18 Q What is it?
19 **A My declaration for the '456 patent.**
20 Q Earlier, we were talking about how long
21 you had kind of spent on this case and we never
22 actually asked this question.

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1 How long did you draft -- how many hours,
2 about, would you say it took you to draft this
3 declaration for the '456 patent?
4 **A It's hard to say specifically.**
5 Q Maybe an easier question would be, for
6 all five of your declarations, about how many hours
7 would you say you spent drafting them?
8 **A As a pure guess, it was hundreds and**
9 **hundreds of hours.**
10 Q Like 300 hours? More than 300 hours?
11 Less than 300?
12 **A Probably more.**
13 Q Five hundred hours?
14 **A Probably less.**
15 Q So somewhere between three and 500 hours
16 is a guess?
17 **A A guess, yes.**
18 Q I'll have you refer to Paragraph 139 in
19 your declaration. I'll have you read -- just read
20 Paragraph 139 to yourself, please, and let me know
21 when you're done.
22 **A Okay.**

27

1 Q So you understand this -- we were just
2 talking about what the Juan reference taught,
3 correct, and this is referring to the Juan reference
4 here; is that right?
5 **A Yes.**
6 Q And here you suggest that just the
7 paragraph we were just looking at in Juan teaches
8 that the spikes on the inside of the sole of the shoe
9 penetrate the ground, while the ones on the outer
10 side of the sole do not; is that what you state in
11 Paragraph 139?
12 **A I don't say it teaches.**
13 Q Is that your understanding of what Juan
14 discloses?
15 **A Juan discloses that the spikes fitted on**
16 **the part of the soft surface are pressed down because**
17 **they are affixed on the soft surface. Spikes formed**
18 **on the hard surface remain in the same position.**
19 Q And I think you were explaining this
20 before. That doesn't make much sense, right? If a
21 soft surface -- if, in fact, the spikes on the
22 soft -- the spikes -- strike that.

28

1 It doesn't make sense because the spikes
2 on the soft surface, if anything, would penetrate the
3 ground less than on the hard surface, right?
4 **A That's not what I said earlier.**
5 Q What did you say earlier?
6 **A Well, the surface, again, has no**
7 **appreciable thickness. So whether it's on the hard**
8 **side or the soft side, I'm not sure how that affects**
9 **the cleats, spikes penetrating the ground.**
10 Q I'll direct you to Paragraph 143 of the
11 same declaration. Go ahead and read that to
12 yourself.
13 **A Okay.**
14 Q So do you agree that -- so you mean the
15 assumption you're assuming the hard surface and soft
16 surface have an appreciable thickness. The soft side
17 would absorb more of the weight force than the hard
18 side; do you agree with that?
19 **A Well, the whole paragraph states that**
20 **strictly for the sake of argument, I'm making that**
21 **statement, yes.**
22 Q Okay. And you conclude that: This

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1 produces the opposite result of what Juan describes.
2 Right, that's your conclusion?
3 **A For Paragraph 143, yes.**
4 Q So -- strike that. Let me ask you this.
5 What would be the purpose of Juan's
6 design in having a shoe with a soft surface and a
7 hard surface if the soft surface wasn't compressing?
8 **A Well, the -- I'm sorry. I got lost.**
9 **Please repeat the question or have it played back.**
10 Q That's fine. I'll try to rephrase it.
11 So what's the -- in the design that's
12 shown in Figure 5 of Juan, it shows a hard surface
13 and a soft surface, right? What would be the purpose
14 of that design if it didn't impact the
15 compressibility of those two surfaces?
16 **A It shows me that the inventor didn't know**
17 **what he was doing without a -- get spikes to**
18 **penetrate the ground.**
19 Q So your takeaway of this is -- it's in, I
20 believe, in Paragraph 143 -- it's a non-credible
21 piece of prior art? That's your conclusion?
22 **A With respect to the soft surface and hard**

30

1 **surface affecting how spikes penetrate the ground,**
2 **yes, that's my assertion in Paragraph 144.**
3 Q So if the understanding was referring to
4 compression of the spikes into the soft material,
5 would that make sense with what Juan discloses?
6 **A So we're now into a hypothetical question**
7 **of if there's compression?**
8 Q We can call it hypothetical, sure.
9 **A Okay. So from a hypothetical side,**
10 **that's what one paragraph -- I'm sorry -- Paragraph**
11 **143 answers.**
12 Q So we'll call it a hypothetical. I
13 actually think this is clearly what Juan teaches.
14 But in your hypothetical, if the soft
15 surface compresses more than the hard surface, would
16 the shoes tilt in like it's disclosed in Juan?
17 **A So from a hypothetical standpoint, if --**
18 **so in order for that statement, the hypothetical, to**
19 **even make sense, which goes beyond the scope of what**
20 **Juan teaches, there'd have to be some appreciable**
21 **thickness to a surface. And that's why we proposed**
22 **it, for argument sake.**

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1 **But for argument sake, if there were a**
2 **little bit of thickness and the soft side**
3 **compressed -- compressed a little bit more than the**
4 **hard side, then the opposite effect would be produced**
5 **from Juan.**
6 Q What does "the opposite effect" mean?
7 **A So the spikes on hard side would**
8 **penetrate the ground more than the spikes on the soft**
9 **side.**
10 Q Would that result in a tilting of the
11 shoe towards the inside of the shoe?
12 **A It would tilt it towards the outside of**
13 **the shoe.**
14 Q Explain to me how that makes sense --
15 strike that.
16 Let's look back at the Juan reference.
17 This is Exhibit 1005 for the '456 IPR. Please take a
18 look at Claim 1.
19 **A Of?**
20 Q Of Juan.
21 **A Okay.**
22 Q It's actually a Juan claim. So I'll

32

1 point you to where I want you to take a look at.
2 That last Wherein clause, starting on
3 Line 28, can you read that to yourself and let me
4 know when you're done.
5 **A So I'm re-reading it.**
6 Q Yep.
7 **A Okay.**
8 Q Do you agree that Claim 1 states that the
9 sole of the shoe is divided at a center line in a
10 longitudinal direction?
11 **A Well, I agree that that Wherein clause**
12 **says that: The sole of said toe portion and said**
13 **intermediate metatarsal portion, excluding said heel**
14 **portion, is divided at a center line in a**
15 **longitudinal direction.**
16 Q So that part you just read, that also
17 suggests that the heel platform is different than
18 what we'll call the forefoot platform, correct?
19 **A Well, the toe portion and intermediate**
20 **metatarsal portion -- well, for this particular**
21 **Wherein clause, it's just excluding the heel.**
22 **So it's not saying that the heel is**

33

1 **something -- for this particular limitation, the heel**
2 **isn't part of this. It doesn't say that it's**
3 **something different.**
4 Q But it says the heel isn't divided at a
5 center line in a longitudinal direction?
6 **A Right, right, yeah. So for this**
7 **particular clause, it's separating the toe portion**
8 **and intermediate metatarsal portion from the heel**
9 **portion.**
10 Q And look back at Figure 5 of Juan. Does
11 it depict the heel portion in the same way as the
12 hard surface sole portion of the intermediate
13 metatarsal portion and toe portion?
14 **A I'm sorry. One more time with your**
15 **question. I was fumbling with the pages.**
16 Q So in Figure 5, does it depict the heel
17 portion as appearing to be the same material as the
18 hard surface sole portion of the toe portion and
19 intermediate metatarsal portion of the shoe?
20 **A It indicates nothing about material.**
21 Q Does it look the same as the hard surface
22 of the sole in the front of the shoe?

34

1 **A No.**
2 Q Why not?
3 **A Because it's the heel portion and the**
4 **other part of the shoe is the toe and metatarsal**
5 **portions.**
6 Q It doesn't appear to be the same material
7 to you?
8 **A Well, if we're going by color, everything**
9 **outside the shoe would be the same material. The**
10 **spikes would be the same material.**
11 Q So turning back to Claim 1, let's go back
12 to that same Wherein clause, starting on Line 28 of
13 Column 6. Actually starting on Line 33, it says:
14 Wherein the second material on the inside sole
15 surface of the golf shoes facilitates bending inward.
16 The player's legs retain stability at address and
17 swing.
18 What do you understand that to mean?
19 **A Well, you have to read the whole Wherein**
20 **clause. So we've already talked about the**
21 **longitudinal direction forming an outside surface,**
22 **sole surface, of the first metatarsal and an inside**

35

1 **sole surface of a second softer and more elastic**
2 **material.**
3 **But, again, we're still talking surfaces.**
4 **So there's no appreciable thickness to a surface. So**
5 **it's just the second material is a coating they put**
6 **on the softer side, and it's -- let's see. Give me**
7 **one second here -- outside -- well, it just says**
8 **the -- so we have an outside sole surface of a first**
9 **material and an inside sole surface of a second**
10 **material and an elastic material. So I'm not sure**
11 **what they're trying to convey there, just by reading**
12 **these words.**
13 Q So let's kind of break it down.
14 So you do agree that it states that
15 persons -- a person who is wearing the shoe, his or
16 her legs would bend inward; do you agree with that?
17 **A I agree that that's what it says, but I**
18 **do not agree that that's what would happen.**
19 Q So -- so you mentioned in there -- in
20 that Wherein clause of Claim 1, it mentions the
21 inside sole surface is a softer and more elastic
22 material. What does that mean to you?

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1 **A Let's see. The inside surface of a**
2 **softer and more elastic material.**
3 **Well, the more elastic material is -- has**
4 **no reference point, so it's just basically, it's a**
5 **second material.**
6 Q It's more elastic than something,
7 correct?
8 **A Well, yeah, but it doesn't say of what.**
9 Q You don't think it's referring to the
10 harder material in that same Wherein clause?
11 **A It may or may not be.**
12 Q Okay. Do you agree that "softer and more
13 elastic" suggests that that material compresses?
14 **A No, because it's with respect to a**
15 **surface. It's just a coating.**
16 Q So you're hanging your hat on the fact
17 that it's a surface. That's your entire reading of
18 this patent; because it says surface, it can't mean a
19 material of any thickness?
20 MR. HOUGHTON: Objection to form.
21 THE WITNESS: No appreciable
22 thickness. That's what surface means.

37

1 BY MR. BUGG:
2 Q Does it define that anywhere in this
3 patent, in Juan?
4 **A Not -- do you want to go -- do you want**
5 **me to review it and comment or --**
6 Q Read your whole -- to your recollection
7 sitting here today, does Juan define what surface
8 means?
9 **A So what Juan does do is it goes into a**
10 **lot of particular dimensions on the shoe, you know,**
11 **various degrees. They show that through Figures 1**
12 **through -- no, I'm sorry. Yeah, Figure 1, Figure 2,**
13 **3, 4, 6 and 7. They put in a bunch of information in**
14 **there.**
15 **And then they also talk about specific**
16 **degrees throughout this. In my recollection, they**
17 **also talk about specific dimensions.**
18 **So they were very meticulous on defining**
19 **certain parts of it, but when it came to defining a**
20 **surface, they just left it to no meaning other than**
21 **the ordinary meaning of a surface, which is it's a**
22 **surface. It has no appreciable thickness.**

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1 Q So going back to Claim 1, that same
2 Wherein clause, it's the second that -- sorry -- the
3 inside sole surface is made of, quote, a second
4 softer and more elastic material.
5 Do you agree with that?
6 **A That's what it says.**
7 Q Why -- why would they include softer
8 material on the inside of the shoe?
9 MR. HOUGHTON: Objection. Form.
10 THE WITNESS: You're asking me to
11 get inside the head of the inventor?
12 BY MR. BUGG:
13 Q Can you -- is there any way that you
14 could come up with a reason why they would do that?
15 **A Well, again, that's -- as I stated**
16 **earlier, what they describe here is not operational.**
17 **It doesn't do what they intended it to do.**
18 Q Only because your understanding of what
19 press down means -- strike that.
20 Mr. Markison, I'm handing you what's been
21 marked as Exhibit 1007.
22 **A I'm just going to put these over here.**

39

1 **I'm going to use your documents.**
2 Q Sure. This is Exhibit 1007 to the '456
3 IPR petition. Please take a look at this document
4 and let me know if you recognize it.
5 **A Yes.**
6 Q So this is -- the inventor of this
7 patent, the '428 patent, is Norton. So if I refer to
8 this as the Norton reference, you'll understand this
9 is what I'm referring to, correct?
10 **A Yes.**
11 Q I'll have you look at Column 5, Line 60.
12 Starting at Line 60. Actually, starting at Line 56.
13 Go ahead and read that paragraph to yourself and let
14 me know when you're done. That's Column 5, starting
15 at Line 54 --
16 **A Okay.**
17 Q -- to 56.
18 **A Okay.**
19 Q So do you agree that the Norton reference
20 discloses various embodiments of what they're calling
21 a Sole Element?
22 **A That's what this particular paragraph**

40

1 **says.**
2 Q And that the Sole Element is typically
3 used as part of a Sole Assembly; do you see that?
4 **A Yes.**
5 Q To a person of skill in the art, when you
6 think of a sole assembly, what does that mean to you?
7 **A Well, they actually describe that here:**
8 **The Sole Element in accordance with the invention**
9 **typically forms the midsole, or an outsole and insole**
10 **for improving comfort are additionally provided.**
11 **So it -- midsole usually includes it, but**
12 **also -- it may also include an insole for a sole**
13 **assembly.**
14 Q So you'd agree a sole element could be an
15 insole, a midsole or an outsole, based on what you
16 just read?
17 **A Well, what they're saying, that the sole**
18 **element is typically formed as a midsole.**
19 Q So typically. What does typically mean?
20 **A It means majority of the time.**
21 Q So a minority of the time, could the sole
22 element be the outsole?

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A Well, I mean, they distinguish midsole from outsole and insole in that sentence.
Q So, again, I'll ask you: Does it disclose a sole element? That's what this reference discloses, correct?
A That's what they're talking about in this paragraph, yes.
Q Okay. And this paragraph is the detailed description of the invention in Norton, correct?
A The first paragraph of the detailed description.
Q So it discloses various embodiments of a sole element, and then further down it describes that that sole element can be a midsole, typically, or also a outsole or an insole.
Do you agree?
MR. HOUGHTON: Object to form.
THE WITNESS: So it says: A sole element in accordance with the invention is typically used as part of a sole ensemble.
That is: The sole element in

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accordance with the invention is typically formed as a midsole, or an outsole and an insole improve comfort and additional -- are additionally provided.
So, you know, it's -- it's a hard stretch to say that the sole element is also -- could be an insole or an outsole from this paragraph and what the rest of the patent teaches.
BY MR. BUGG:
Q Okay. So they describe a sole element throughout the patent; do you agree?
A Without reviewing the patent in detail, that's my general recollection.
Q Yeah, so let's look at Claim 1. Right? So Claim 1 of Norton says: A method of manufacturing a finished Sole Element.
And then it continues with all of the rest of the limitations. Do you agree?
A Yes. So the beginning of the Preamble is the method of manufacturing a finished sole element for a shoe.

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Q It doesn't say anywhere in Claim 1 that it's limited to a midsole of a shoe, does it?
A It just says sole element, and created from a sole element preform.
Q And the inventor knew how to describe a sole element versus, say, a midsole, right?
MR. HOUGHTON: Object to form.
THE WITNESS: I'm sorry?
BY MR. BUGG:
Q So the inventor of Norton knew how to describe a midsole as compared to a sole element, correct?
A Yeah, I'd have to go through -- the only place I recall him -- this patent talking about outsole and midsole -- or insole, midsole is that paragraph we just talked about. So it just distinguishes that there's two different things, but he doesn't describe what those are, from what I recall.
Q Well, he describes three different things, correct?
A Right. Outsole, midsole, insole.

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Q And that's what he's describing as the sole ensemble, correct?
A That's what that one paragraph says, yes.
Q So in Line 65 of Column 5, it states: It's also possible that a Sole Element, in accordance with the invention, is only used in the heel end or in parts of the forefoot.
Do you see that?
A Yes.
Q So do you agree that that suggests that either the heel or the forefoot could have the sole element disclosed as the invention in this patent?
A I'm sorry. I didn't follow your question.
Q Do you agree that this sentence starting at Column 5, Line 65 suggests that only the forefoot or only the heel could include the inventive concept disclosed in Norton?
A I'll agree that it says a sole element in accordance with the invention is only used -- sorry: It is also possible that a sole element, in accordance with the invention, is only used in the

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1 heel and/or in parts of the forefoot.
2 I agree with that, because that's what it
3 says.
4 Q So if the sole element disclosed in
5 Norton is only used in parts of forefoot, do you
6 agree that the heel could be made of a different
7 material?
8 A Well, that's not what that sentence says.
9 Q Do you agree that it can?
10 A I'm sorry. Repeat your question.
11 Q If the sole element disclosed in Norton
12 is only used in parts of the forefoot, do you agree
13 that the heel can be made of a different material?
14 A Well, it's a sole element in accordance
15 with the invention, so you'd have to look at the
16 inventive concepts that is being disclosed.
17 So they're saying that -- interpreting
18 that sentence says, sole element in accordance with
19 the invention may only be used in the heel or in
20 parts of the forefoot. It doesn't say that a sole
21 element could only be used in the heel or in parts of
22 the forefoot. It's in accordance with the invention.

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1 Q So at the time you drafted the asserted
2 patents, did you understand that a designer could
3 choose from either using the same material in the
4 heel as the forefoot or a different material in the
5 heel and forefoot?
6 A I'm sorry. I had a hard time following
7 that question. Please repeat it.
8 MR. BUGG: Tanya, can you repeat
9 the question, please.
10 THE REPORTER: Yes, one moment.
11 (The last question was read back into the record.)?
12 THE WITNESS: Okay. I'm going to
13 grab my patent back. Because it was a
14 long patent, a long time ago.
15 So in answering that question,
16 based on what I wrote in the patent,
17 there are a lot of design options that a
18 shoe designer has when developing a shoe.
19 And those options depend on what they're
20 trying to accomplish.
21 BY MR. BUGG:
22 Q I don't think that answers the question.

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1 So if you're going to pick -- you know,
2 decide what material you're going to make the heel of
3 the shoe, you can either -- there's really two
4 options. It's either the same material in the heel
5 and the forefoot or different materials in the heel
6 and the forefoot, correct?
7 MR. HOUGHTON: Object to form.
8 THE WITNESS: So it's not that --
9 it's not that simple of a question.
10 BY MR. BUGG:
11 Q Why not?
12 A Well, you know, what's the purpose of the
13 heel? What's the purpose of the rest of the shoe?
14 That affects the shape and materials that are
15 selected.
16 Q I'm just talking only about materials.
17 A So, yes, a heel, in a general -- in a
18 general sense, could be the same or different
19 materials.
20 Q Do you believe you disclose both of those
21 options in the asserted patents?
22 MR. HOUGHTON: Object to form.

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1 THE WITNESS: Yes.
2 BY MR. BUGG:
3 Q I'll have you -- so this is back to your
4 '456 declaration. I'll have you turn to Paragraph
5 193 for me.
6 A You said 193?
7 Q Sorry. 193 and then 194. I'll have you
8 read those to yourself.
9 A Okay.
10 Q Just to kind of set us up here. In
11 Paragraph 193 and 194, you're referring to what
12 Norton discloses, correct?
13 You can -- if you need to flip back, by
14 all means, get yourself acclimated.
15 A So, what I'm talking about in Paragraph
16 193 is the hypothetical what-if scenario based on
17 that paragraph that we read at the beginning of the
18 description. Because it doesn't go into any detailed
19 description of how the sole element, in accordance
20 with the invention, is only used in the heel and/or
21 in parts of the forefoot.
22 So the Paragraph 193 and 194 are

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1 **regarding a hypothetical interpretation, what I call**
2 **a what-if embodiment, because it's certainly not**
3 **disclosed by Norton. Yes, Norton.**
4 Q So, in this what you're talking what-if
5 Embodiment 2, this is suggesting that the heel and
6 the forefoot are made of the same material, but the
7 forefoot has a variable compression design, we'll
8 call it; is that accurate?
9 **A Yes.**
10 THE WITNESS: Can we take a break
11 in a few minutes?
12 MR. BUGG: Yeah, I have probably
13 one or two more questions on Norton, and
14 then we'll take a break.
15 THE WITNESS: Yeah, that will be
16 fine.
17 BY MR. BUGG:
18 Q So in this scenario, do you agree that
19 the forefoot is different in some manner than the
20 heel because of the compression difference?
21 MR. HOUGHTON: Objection. Form.
22 THE WITNESS: Yeah, so, I mean,

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1 what I say in the figure is the
2 cross-section of the heel and the
3 forefoot still include the same material,
4 not different materials, as required by
5 the claim. This embodiment, however, is
6 in keeping with the primary design
7 objective to use a single material for
8 the sole element.
9 BY MR. BUGG:
10 Q So do you believe that the forefoot is
11 different in some way than the heel?
12 **A Yeah, so what I say here is: I use Juan**
13 **preform for an entire midsole. Forefoot includes**
14 **inventive concept. Heel section does not.**
15 MR. BUGG: Okay. We can take a
16 break.
17 (Brief pause.)
18 BY MR. BUGG:
19 Q So, Mr. Markison, I'm handing you what's
20 previously been marked as Exhibit 1006 to the '456
21 IPR. Please take a look at this and let me know if
22 you recognize this document.

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1 **A Yes.**
2 Q So this is -- one of the named inventors
3 of this is Umezawa, is the first named inventor. So
4 if I refer to this reference as Umezawa, will you
5 understand this is what we're referring to, this
6 Exhibit 1006?
7 **A Yes.**
8 Q I'll have you turn to Paragraph 52,
9 please. So Paragraph 52 is kind of long, but go
10 ahead and read it and let me know when you're done.
11 Okay?
12 **A Okay.**
13 Q And you agree this Paragraph 52 is
14 describing what's shown in Figure 4 of Umezawa,
15 right?
16 **A And parts of Figures 3 and 5.**
17 Q Do you agree it describes the midsole of
18 Umezawa as having a thickness, capital T?
19 **A Yeah, the thickness T is measured on a**
20 **cross-sectional surface along lateral Line B, yes.**
21 Q Does Paragraph 52 describe the midsole as
22 varying in thickness anywhere?

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1 **A Let's see. Well, according to the**
2 **diagram and the description, the capital T is the**
3 **thickness of the midsole excluding 18, which are the**
4 **side walls.**
5 Q So looking at Figure 4, those side walls
6 are shown on both the left -- the inside and outside
7 of the midsole, correct?
8 **A Right.**
9 Q And if you look at Figure 2, 18 is also
10 shown as the side wall as kind of wrapping around the
11 entire midsole; do you agree?
12 **A Figure 2, yes.**
13 Q So aside from the side wall, 18, do you
14 agree that the midsole has a thickness T throughout?
15 **A Well, along lateral Line B.**
16 Q So going back to Paragraph 52, the first
17 sentence says: The length designated by both
18 oriented arrow capital T in Figure 4 is the thickness
19 of the Midsole 10.
20 Do you agree with that, the Midsole 10
21 has a thickness T?
22 **A Well, that's what that particular**

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sentence says. Then the next sentence says: The thickness T is measured on a cross-section surface along the lateral Line B.

Q Are you aware whether Umezawa teaches that the midsole, aside from the side wall, has any other thickness besides capital T?

A The midsole is talked about in Figure 1, but I don't recall what it says about its thickness, if it's shown in Figure 1, 10 and the cross-section of the heel.

Q I'll refer you to Paragraph 49 of Umezawa. Go ahead and read Paragraph 49. Let me know when you're done.

Are you done reading Paragraph 49?

A I'm sorry. I'm flipping back and forth between the figure and the paragraph.

Q And just for reference, I'm going to be asking you as what's defined as WB in that, so you have some frame of reference.

A Sorry. I was reading Paragraph 48. Okay. I was reading the paragraph.

Q No worries. In Paragraph 49, it's

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referring to a portion of the insole -- or a measurement, WB, as: The width of the flat top surface of the inner high elastic part.

Do you see that? Do you agree with that?

A Yes, WB is referring to reference to 26, 22, which is, if I remember correctly, yeah, the inner high elastic part.

Q Flip the paragraph. I think you were looking at Figure 4. It's shown where that WB is. Take a look at Figure 4.

A Yes.

Q So is WB in Figure 4 is on the left-hand side, and again, that's showing the distance between -- or defined as: The width of the flat top surface of the inner high elastic part.

Do you see that?

A You're referring to the small T?

Q Sorry. It's WB. It's a lateral -- so I'm not asking about the thickness anymore. I'm talking about the lateral portioning of this.

A Yeah. There's a piece here.

Q Do you see that?

55

A Yeah.

Q And back in Paragraph 49, it provides some measurements for that length, WB. It says it's: Preferably 3 millimeters or more.

And it continues. Do you see that?

A Yeah, or more than 25 millimeters or less.

Q So take a look at Figure 4, WB again. And I'd like you to take a look, reference Figure 4 versus Figure 3.

Do you agree with me, in Figure 3 the High Elastic Part 20 extends closer to the outer edge of the midsole than in Figure 4?

A Well, Figure 3 is referring to Cross-section 33 with respect to Figure 2.

Q That wasn't my question. Do you agree --

A Well, so I'm answering your question. So assuming that these are dimensionally accurate representations, then there's still a WB in Figure 3, but it appears to be less than it is in Figure 4.

Q So can you -- returning to your '456

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declaration, can you turn to Paragraph 91 for me. That's not right. Hold on.

A Sure.

Q Oh, sorry. It's Page 91, not Paragraph 91. Please go to Page 91.

So on Page 91 there's some drawings on there. So take a look at those and I'm going to ask you some questions on those.

A Okay.

Q Do you recognize those drawings?

A Yes.

Q Did you create those?

A I added the annotations.

Q Okay. By "annotations," you're referring to like the superimposed picture of the bones of the foot in Figure 2; is that right?

A Yes, and the red highlighting.

Q And also where the toes appear on the right side in Figure 3; is that right?

A That's actually Figure 4.

Q Figure 4, thank you. Yep.

But you added those; is that correct?

57

1 A **Yes.**
2 Q So if I'm looking at this correctly, that
3 left image, does that depict the big toe falling on
4 the Line 33, Roman numeral 3-3?
5 A **Approximately, yes.**
6 Q And that's -- I think you called it the
7 distal phalange bone; is that correct?
8 A **If that's what I said in the declaration,**
9 **then yes.**
10 Q So Paragraph 216 I believe says: The
11 Inner High Elastic Part 26 supports the distal
12 phalange bone, paren, tip of the big toe.
13 A **Yes.**
14 Q Do you agree that the distal phalange
15 bone in Figure 2 is falling partially on the High
16 Elastic Part No. 20?
17 A **The High Elastic Part is 22.**
18 Q Sorry. The Low Elastic Part 20. Thank
19 you?
20 A **Partially.**
21 Q So again, in that left image in Figure 2,
22 does the proximal phalange bone of the big toe fall

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1 on line Roman numeral 4-4?
2 A **I'm sorry. One more time.**
3 Q In the left figure, does the proximal
4 phalange bone of the big toe fall on line Roman
5 numeral 4-4?
6 A **It does.**
7 Q Is the proximal phalange bone entirely or
8 almost entirely on Low Elastic Part 20 in Figure 2?
9 A **With, respect to the bone, yes, but**
10 **that's just the bone. There's a much bigger**
11 **circumference of the overall toe and ball of foot**
12 **area as you get in -- move from the toes to the ball**
13 **of the foot. That was represented in -- that's why**
14 **it's shown in Figure 4 the way it is.**
15 Q Is the first metatarsal bone of the big
16 toe shown as falling on line Roman numeral 5-5 in
17 modified Figure 2?
18 A **In 5-5, it's on the line.**
19 Q On line Roman numeral 5-5, correct?
20 A **Yes.**
21 Q And do you agree that the first
22 metatarsal of the big toe is shown as falling mostly

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1 on Low Elastic Part 20?
2 MR. HOUGHTON: Object to the form.
3 THE WITNESS: This is just a
4 graphical illustration. It isn't meant
5 to be 100 percent true to dimension.
6 BY MR. BUGG:
7 Q I was just asking for a yes-or-no
8 question -- yes-or-no answer.
9 A **Repeat the question, please.**
10 Q On line Roman numeral 5-5, is the first
11 metatarsal of the big toe shown as falling mostly on
12 Low Elastic Part 20?
13 A **Well, it's about equal.**
14 Q So at least partially on Low Elastic Part
15 20?
16 A **Yeah.**
17 Q So based on your understanding of what
18 Umezawa teaches, which is midsole including a high
19 elastic part and a low elastic part, do you believe
20 it compresses more on the inside of the midsole than
21 the outside portion of the midsole when worn by a
22 person?

60

1 MR. HOUGHTON: Object to form.
2 THE WITNESS: No, it doesn't.
3 BY MR. BUGG:
4 Q You don't believe Umezawa teaches
5 compression anywhere in the patent?
6 A **I didn't say that.**
7 Q So I'll have you turn to Paragraph 38 of
8 Umezawa. Go ahead and read that to yourself, and let
9 me know when you're done.
10 A **Okay.**
11 Q Do you agree that in Paragraph 38 the
12 midsole is described as compressing more on the
13 inside of the forefoot than the outside of the
14 forefoot when worn by a golfer?
15 A **With respect to the Lower Elastic Part**
16 **20, yes.**
17 Q Do you agree that that compression causes
18 the foot of the golfer to incline upward from the
19 inside to the outside of the shoe?
20 A **You have to take that in context with**
21 **Paragraph 39, which says: Even if the body weight of**
22 **a golfer is applied to the Bottom Part 6, the Inner**

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1 **High Elastic Part is not deformed as much. The Inner**
2 **High Elastic Part does not absorb a force transferred**
3 **from the foot to the ground so much. A large part of**
4 **force is transferred from the foot to the ground**
5 **through the Inner Elastic Part. This High Inner**
6 **Elastic Part contributes to the generation of greater**
7 **head speed.**
8 **So what they're teaching is that high**
9 **inner elastic part is a fundamental component of**
10 **working with the compression, in that so that most of**
11 **the energy is transferred through that high inner**
12 **part and not so much in the compression.**
13 Q Okay. I'll ask you again.
14 Does Paragraph 38 describe the foot of
15 the golfer inclining upward from the inside to the
16 outside of the shoe when the shoe is worn?
17 **A Well --**
18 Q It's a yes-or-no question.
19 MR. HOUGHTON: Object to form.
20 THE WITNESS: So does the patent
21 say: The foot of a golfer also inclines
22 upward from the inside to the outside?

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1 Taking that sentence alone, that's what
2 it says.
3 BY MR. BUGG:
4 Q That's based on the compression of -- of
5 Elastic Part 20, correct?
6 **A Yes.**
7 Q I'll have you look at Claim 1 of Umezawa.
8 Please read that to yourself and let me know when
9 you're done.
10 **A Okay.**
11 Q What does Claim 1 teach to a person of
12 skill in the art?
13 **A Well, this is a published patent. So**
14 **this is what the -- was filed, but it's not issued.**
15 The claim reads: A shoe comprising a
16 bottom part wherein downward displacement on an
17 inside of a top surface of the bottom part is larger
18 than downward displacement on the outside of the top
19 surface when body weight of a wearer is applied to
20 the top surface.
21 Q That's what it states. What do you think
22 it means by "downward displacement" in Claim 1?

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1 **A Well, again, referring back to the**
2 **elastic part and looking at Figure 4, the more**
3 **compressible material towards the inner part is going**
4 **to compress more because there's more of it than as**
5 **you move towards the out part of the foot.**
6 **It doesn't negate the Hard Inner Elastic**
7 **Part 26/22.**
8 Q You can set that aside. I'm handing you
9 what's exhibit -- previously been marked Exhibit 1010
10 to the '456 declaration -- or '456 petition. Please
11 let me know if you recognize this document.
12 **A Yes.**
13 Q The first named inventor of this patent
14 is Giese, and so we've been calling this patent Giese
15 reference. Is that familiar to you?
16 **A Yes.**
17 Q So I'll have you flip to Column 1, and
18 under Summary of Invention, starting on Line 54, it
19 states: The shoe bottom of the present invention
20 provides double contouring in the firmest
21 wear-resistent layer and the softer second layer of
22 the bottom.

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1 What do you understand "shoe bottom" to
2 be referencing in the Giese reference?
3 MR. HOUGHTON: Objection.
4 THE WITNESS: Without doing an
5 exhaustive review, my recollection is the
6 outsole; but if I say differently in my
7 declaration, then the declaration holds.
8 BY MR. BUGG:
9 Q Understood. I'll have you turn to Figure
10 1 of Giese. So it's actually Figure 1 through 5. I
11 think it's all disclosing -- describing the same
12 embodiment. Do you agree with that?
13 **A Yes.**
14 Q And Figure 1 through 5 describes,
15 starting on Column 6, Line 60, and then going on. So
16 I'll let you get to that. Flip to Column 6, Line 60.
17 Do you see there it says: Referring to
18 Figure 1, there is shown the Composite Shoe Bottom 1
19 according to the invention, a firm Lower Layer 2 is
20 shaped to be thicker in areas wherein the wearer's
21 foot would need extra support. A soft upper layer is
22 in face-to-face engagement with the upper surface of

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1 the Lower Layer 2.
2 Do you see that?
3 **A Yes.**
4 Q Do you understand that -- the soft layer
5 to be the midsole of the shoe or do you still believe
6 that's part of the outsole of the shoe?
7 **A The layer is -- so, I mean, just looking**
8 **at that paragraph, I'm looking at Figure 1 through 5,**
9 **and again, without referring to my declaration of how**
10 **we actually characterize this, you know, 2 and 3**
11 **could be a midsole collectively. It could be a**
12 **midsole -- actually, the --**
13 **Let me refer to my declaration, because I**
14 **don't want to get this wrong. Sorry that took so**
15 **long. So...**
16 Q If you don't have an answer based on the
17 declaration, I'll point you to another disclosure in
18 Giese that may help, unless you have something else
19 you want to say.
20 **A Yeah, it's just a long declaration.**
21 Q I understand.
22 **A There's a lot of places we talk about**

66

1 **different things.**
2 Q Okay.
3 **A Could we have the question repeated,**
4 **please?**
5 Q Sure. So we were talking about what is
6 disclosed in Figures 1 through 5 of Giese. And my
7 question was whether that refers to the outsole, the
8 midsole, the outsole plus the midsole. Right?
9 So rather than reask the question,
10 I'll -- before I ask you that question again, I'll
11 refer you to Column 1 of Giese, starting on Line 10
12 through Line 21. I'm just going to read it.
13 Again, so Giese discloses these figures
14 are of shoe bottoms, correct? It says:
15 Historically, shoe bottoms have consisted primarily
16 of flat surfaces on both their top and bottom. These
17 bottoms are normally made of a single-density
18 polyurethane, EU or blown polyvinyl chloride, PVC
19 type material.
20 The upper of the shoe would be glued onto
21 the top of the sole or the upper could be directly
22 attached through a molding process which would

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1 capture the upper in the molded sole. The bottom
2 could be the lowermost layer of the sole if the
3 urethane was sufficiently abrasion resistant or,
4 alternatively, a rubber outsole could be cemented
5 onto the unit bottom as is typically done in running
6 shoes.
7 So do you agree that, here in Giese, they
8 disclose the bottom as being either the outsole and
9 the midsole if the material was sufficiently abrasion
10 resistant or they could include an additional
11 outsole, if needed?
12 **A Yeah, the bottom -- yes. The bottom**
13 **could be the midsole or it could have an outsole**
14 **attached to it.**
15 Q And it could be the midsole and serve as
16 the outsole, as well, as one, right?
17 **A Correct.**
18 Q Let's go back and look at Figure 1
19 through 5 again.
20 Do you agree that Figure 5 is a
21 cross-section of that shoe bottom shown at 5-5, that
22 cross-section in Figure 1?

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1 **A Yes.**
2 Q Do you believe that the heel shown in
3 Figure 5 is substantially uniform in height from the
4 inside to the outside edge of the sole?
5 **A Well, at Cross-section 5, that's what**
6 **Figure 5 shows.**
7 Q I'll refer you to Figures 36 through 39.
8 Do you agree that Figure 39 is a
9 cross-section of the heel of the shoe bottom shown at
10 Cross-section 39 to 39 of Figure 35?
11 **A Yes.**
12 Q Do you believe that Figure 39 depicts a
13 heel section that is substantially uniform in height
14 from the inner edge to the outer edge of the sole?
15 **A At that cross-section of 39 and 39 of**
16 **Figure 35.**
17 Q Referring to Figures 38 through 51.
18 So the same question. Do you agree that
19 Figure 51 is showing the cross-section of the shoe
20 bottom at Line 51 and 51 of Figure 48?
21 **A Yes, at Line 51, yeah.**
22 Q Do you agree that the heel shown in

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1 Figure 51 is substantially uniform in height from the
2 inner edge to the outer edge of the sole?
3 **A Along 51, as shown in 50 -- I'm sorry.**
4 **Along Lines 51 and Figure 59 as shown in Figure 50,**
5 **yes.**
6 Q Sorry. Shown in Figure 48, right?
7 **A Oh, I'm sorry, yes.**
8 Q You can put that aside.
9 Mr. Markison, I'm handing you what's
10 previously been marked as 148. Please let me know
11 when you're done.
12 **A Okay.**
13 Q Do you recognize this document?
14 **A Yes.**
15 Q Previously in our briefing I referred to
16 this as Tallarico '911 because it's the '911 patent
17 and there's more than one Tallarico reference. Is
18 that -- if I refer to it as Tallarico '911, you
19 understand I'll be talking about this patent,
20 correct?
21 **A Yes.**
22 Q Take a look at Figures -- or take a look

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1 at Figure 9 of the Tallarico '911 patent.
2 Do you know what Figure 9 is showing?
3 It's described in Column 11, starting at Line 64. Or
4 anywhere else.
5 **A Figure 9 is a perspective plan view of a**
6 **right midsole of the forefoot -- I'm sorry -- of the**
7 **footwear of the present invention, in this example, a**
8 **running shoe midsole.**
9 **Should I keep reading?**
10 Q No, that's good.
11 Do you understand what's being shown in
12 Figure 9, there's a dotted material, 22, and then a
13 white material, 23; do you see that?
14 **A Reference -- yeah, reference numbers 22**
15 **and 23?**
16 Q Yes.
17 **A I see those in Figure 9.**
18 Q So I'll refer of you to Column 18. This
19 describes the sheeted areas, 20, 22, 24 and 26, as:
20 A denser material of a harder durometer than that of
21 the non-shaded areas, 21, 23, 25 and 27.
22 Do you see that?

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1 **A So Column 18, roughly Line 25?**
2 Q Yep.
3 **A Yes, I see that.**
4 Q Looking back at Figure 9, do you agree
5 that that shows the forefoot section of the midsole
6 as being made of two different materials, Material
7 22, which is the shaded, denser material, and
8 Material 23, the non-shaded, less dense material?
9 **A I'm sorry. One more time for the**
10 **question.**
11 Q Do you agree that the forefoot section of
12 the midsole shown in Figure 9 is made of two
13 materials, one material is 22, the denser material of
14 harder durometer, and the non-shaded -- non-shaded
15 material, 23, which represents a less dense material,
16 a softer durometer?
17 **A Yeah, I agree that Figure 9 shows the**
18 **more dense material 22 and the less dense material 23**
19 **in the forefoot Section 19.**
20 Q And do you agree the heel section is also
21 shown to be made of the non-shaded material, 23, the
22 less dense, softer?

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1 **A I don't see that in the figure.**
2 Q Okay. I'll have you look at Figure 13.
3 What is figure 13 showing?
4 **A Figures 12 through 15 -- this is in**
5 **Column 15, starting at Line 23: Figures 12 through**
6 **15 are perspective plane views of cross-sections**
7 **across Line 12-12 through Line 15 of Figures 8**
8 **through 11 respectively.**
9 **So let's see. Fourteen.**
10 Q I'm asking about 13.
11 **A Yeah, Figure 13, but it's referencing 14.**
12 **It appears that 15 -- Figure 13 is**
13 **representing a cross-section of Figure 14. I just**
14 **want to verify that in the spec.**
15 Q So I -- just to clarify. If you look at
16 Figure 9, it shows a 13 cross-section?
17 **A Yes.**
18 Q Do you agree that Figure 13 is that
19 cross-section shown in Figure 9?
20 **A Well, they're -- I mean, it could be.**
21 **You know, they don't specifically say it, but it**
22 **could be.**

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1 Q Well, you just read the part where they
2 described Figure 13 as being a cross-sectional view
3 of Figure 9, no?
4 A No, I was looking for that language, I
5 said. Yeah, they reference -- they say Figures 12
6 through 15 are perspective planes across Lines 12-12
7 to 15-15 in Figures 8 through 11, but when I go -- so
8 when I look here, that's Line 13-13, and yet they're
9 talking --
10 Q Let's walk through it. Right?
11 So in Column 15: Figures 12 through 15
12 are perspective plane views of cross-sections of
13 Lines 12-12 through Lines 15-15 of Figures 8 through
14 11 respectively.
15 Do you agree?
16 A What section were you just reading from?
17 Q Column 15, Line 23.
18 A Yeah, okay. Yes. I read that. I agree
19 that's what it says.
20 Q So then Cross-section 12 is shown in
21 Figure 8; do you agree?
22 A 12-12, I think they're are inferring that

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1 that's supposed --
2 Q I don't think they're inferring. They
3 expressly state that those are cross-sections
4 respectively to those four drawings; do you agree?
5 A Yeah.
6 Q Now flip to Figure 9. Do you agree that
7 Cross-section 13-13 is shown in Figure 13 at
8 Cross-section 13 -- strike that.
9 Do you agree that Figure 13 depicts the
10 cross-section of the midsole depicted in Figure 9 at
11 Cross-section 13-13?
12 A Most likely, yes.
13 Q Figure 13, do you agree the heel of the
14 midsole is made of the same material -- sorry -- is
15 made of Material 23?
16 A Figure -- let's see. It certainly points
17 to 23 at that cross-section.
18 Q Well, it shows that the entire heel
19 section leading up to the midfoot section is all made
20 out of one material; do you agree?
21 A Well, you're inferring an awful lot in
22 this drawing without support from the spec.

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1 Q Is it shown as being one material in
2 Figure 13?
3 A It's shown as a generic block of the rest
4 of the shoe.
5 Q Is the heel portion shown as being
6 non-shaded in Figure 13?
7 A Yes.
8 Q I'll have you turn to Column 1, Line 11
9 of Tallarico '911.
10 A Eleven, you said?
11 Q Column 1, starting Line 11. I'll read
12 it. It you're there, if you follow along.
13 A Go ahead.
14 Q So starting at Line 11, it says: The
15 present invention is intended for any and all foot
16 wearer wherein dual-density or dual-compressibility
17 materials or combinations of different materials may
18 be incorporated into either the midsole, outer sole
19 or inner sole construction of the footwear in order
20 to accommodate the forefoot in its natural position.
21 Do you see that?
22 A Yes.

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1 Q So do you agree that Tallarico explains
2 that the inventive materials can be used in the
3 midsole?
4 A What you just read, yeah, wherein the
5 dual-density may be incorporated in either the
6 midsole. So that's included.
7 Q Does it -- can the dual-density material
8 be included in the outer sole?
9 A Yes.
10 Q Can it be included in the inner sole?
11 A Yeah, it says either the midsole, outsole
12 or inner sole.
13 Q I'll have you look at Claim 1 of
14 Tallarico '911. So go ahead and read Claim 1 to
15 yourself.
16 A Okay.
17 Q Do you agree Claim 1 is describing an
18 article of footwear that has a sole?
19 A Yes.
20 Q It says, Line 2, that: Said sole has a
21 forefoot and a rear foot portion.
22 Do you agree?

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1 A **Yes.**
2 Q Does the rear foot portion include the
3 heel of the shoe?
4 A **I don't think the claim mentions anything**
5 **about the heel of the shoe.**
6 Q Well, I'm asking you.
7 So what does rear foot portion of a
8 shoe -- of a shoe sole, what does that mean to you?
9 A **If you go back to Figure 9 that we were**
10 **looking for, they describe 19 as the forefoot. So**
11 **it's implied that the remaining part is not the**
12 **forefoot, so it could be the rear foot portion.**
13 Q So at the very end of Claim 1, the very
14 last Wherein clause says: Wherein said rear foot
15 portion is of constant thickness across the width
16 thereof.
17 Do you see that?
18 A **Yes.**
19 Q Do you agree they're talking about the
20 rear foot portion of the sole of the shoe?
21 A **Yeah.**
22 Q Is that yes?

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1 A **Yes.**
2 Q Would you agree that that describes the
3 sole of the shoe having a constant thickness from the
4 inside of the sole to the outside of the sole?
5 A **So the rear portion of the sole is the**
6 **constant thickness across the width thereof.**
7 Q So "across the width thereof," you
8 understand that to mean the inside to the outside of
9 the heel of the shoe, correct?
10 A **Yes.**
11 Q You can put this aside.
12 MR. BUGG: So we've been going
13 about an hour if you want to take a
14 break?
15 THE WITNESS: Yeah. Why don't we.
16 I could use a restroom break and coffee.
17 (Brief pause.)
18 BY MR. BUGG:
19 Q So, Mr. Markison, I'm handing you what's
20 previously been marked as Exhibit 1020 to the '456
21 declaration. Let's take a look at that and let me
22 know if you recognize it.

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1 A **Yes.**
2 Q And this is a patent publication, named
3 inventor with the last name Galoss, which we
4 typically refer to as the Galoss reference.
5 Is that all right?
6 A **Yes.**
7 Q How do you -- turn to Paragraph 21 of the
8 Galoss reference and read that to yourself. It's
9 fairly long.
10 A **Okay.**
11 Q So in Paragraph 21, this is describing
12 the sole of the shoe in Galoss, correct?
13 A **With respect to Figure 2, yes. Figure 2.**
14 Q Does it -- does it describe that the Rear
15 Portion 110 of the shoe has an elevation of 114?
16 A **Yeah, the heel -- let's see. Elevation**
17 **of the Heel 114, yes.**
18 Q Okay. And it says "an elevation,"
19 correct?
20 A **Yes.**
21 Q And then it gives specific examples of
22 what that height might be. It lists a half an inch,

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1 an inch, inch and a half, 3-inches, others, as well,
2 correct?
3 A **Yeah, up to 5-inches.**
4 Q Also in Paragraph 21, it says, quote:
5 More specifically, the Rear Portion 110 -- sorry --
6 Rear Portion 110 may be elevated and may taper
7 towards the Front Portion 108.
8 Do you see that?
9 A **That's about five lines, six lines down?**
10 You're talking here (indicating)?
11 Q Sorry. Give me one second. Yeah. So
12 it's starting one, two, three -- four lines into the
13 paragraph -- three lines into --
14 A **So: More specifically, the rear portion**
15 **may have an Elevation 114 which is greater than**
16 **Elevation 112 of the front portion.**
17 **That sentence?**
18 Q Let me find it and then I'll read it to
19 you.
20 A **Okay. Sorry.**
21 Q No, that's fine.
22 A **It was a long, convoluted paragraph.**

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1 Q I hear you. Okay. So starting one, two,
2 three, four -- five lines down, it says, For example.
3 Do you see that?
4 **A Oh, yes.**
5 Q For example, the Rear Portion 110 may be
6 elevated and may taper towards the Front Portion 108.
7 Do you see that?
8 **A Yes.**
9 Q Do you agree that it also suggests that
10 it may not taper towards the Front Portion 108?
11 **A No.**
12 Q So what does "may" mean to you?
13 **A Poor patent drafting.**
14 Q What does the word "may" mean to you?
15 **A It's not a -- it's conditional or**
16 **optional.**
17 Q You can put that aside.
18 I'm going to hand you your '291 patent
19 which we're going to refer to here. So this is
20 Exhibit 1001.
21 **A I might have to go over here to get it.**
22 Q Sure. Exhibit 1001 to the '291 IPR

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1 petition.
2 So I'll have you turn to Column 1,
3 starting at Line 59. Let me read it for you. So are
4 you at Column 1?
5 **A Yes.**
6 Q Starting at Line 59, it says: As is
7 shown, baseball spikes include a sole, a padded
8 insole, an upper shoe portion, and cleats or spikes.
9 Do you see that?
10 **A Yes.**
11 Q Do you agree that the sole is described
12 as separately from the cleats or spikes of the shoe?
13 **A It just listed them as a separate -- as**
14 **an element of the shoe.**
15 Q I'll have you turn to Column 8. So
16 Column 8, at the very bottom here, it's described --
17 it's describing: A detailed description of the
18 invention.
19 Do you see that?
20 **A Uh-huh.**
21 Q So starting in Column 8 and then over
22 into Column 9. Go ahead and read that paragraph that

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1 ends in Column 9, Line 50.
2 **A Okay.**
3 Q Sorry. I might have given the lines
4 wrong based on -- the patents are all different.
5 Give me one second.
6 **A Yeah. Yeah.**
7 Q Let's try this again. So Column 9, Line
8 37. I'll just read in the relevant parts. Are you
9 on Column 9?
10 **A Yes.**
11 Q So it states: The athletic-positioning
12 Insole 12 and/or Sole 10 may be used in any type of
13 shoe. For example, a dress shoe, a casual shoe, a
14 sport-specific shoe, a training shoe and/or a
15 combination thereof. For example, the
16 athletic-positioning Insole 12 and/or Sole 10 may be
17 used in basketball shoes, tennis shoes, golf shoes,
18 ski boots, ice skates, baseball cleats, football
19 cleats, soccer shoes, running shoes, track shoes,
20 cross-fitness shoes, et cetera.
21 For each of these sport-specific shoes,
22 the athletic-positioning Insole 12 and/or Sole 10 are

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1 coupled to a specific bottom and a corresponding
2 upper shoe section to promote a better athletic
3 position for the athlete.
4 Do you see that?
5 **A Yes.**
6 Q And then it continues: The
7 athletic-positioning bottom may comprise one or more
8 of a cleat pattern bottom, baseball spike bottom.
9 And it continues. Correct?
10 **A Yes.**
11 Q So do you due agree that the Sole 10 is
12 described as being, quote, coupled to the specific
13 bottom in Column 9?
14 **A Yes, that's what it says in that**
15 **particular paragraph.**
16 Q And that specific bottom includes either
17 a baseball spike bottom or a cleat pattern, right?
18 **A Yes.**
19 Q Take a look at Figure 63 and 64 of the
20 '291 patent.
21 **A Okay.**
22 Q Do you recall what's disclosed or shown

85

1 in Figure 63 and 64?
2 **A Yes.**
3 Q What's shown in those figures?
4 **A Figure 63 is a front view of a left foot**
5 **that includes an athletic-positioning insole, an**
6 **athletic-positioning sole and a sport-specific Bottom**
7 **190.**
8 Q So the sport-specific Bottom 190 is shown
9 as being separate from the athletic-positioning sole,
10 correct?
11 **A In this particular diagram, but it's**
12 **under the sole assembly.**
13 Q That wasn't my question.
14 I said is it shown as being -- is the
15 sport-specific Bottom 190 shown as being independent
16 from the athletic-positioning sole in Figure 63?
17 **A Well, it's coupled to it.**
18 Q Again, it's a yes-or-no question.
19 So it's coupled to it and separate from;
20 do you agree?
21 **A Yes, it's a different item in the shoe**
22 **than the athletic-positioning sole in Figure 63.**

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1 Q So you can reference the specification.
2 But Figure 63 is an embodiment, if I
3 understand it correctly, where the sport-specific
4 bottom can have -- we've been calling it
5 compensating. It's angled from the inside of the
6 shoe to the outside of the shoe; is that right?
7 **A In this embodiment, yes.**
8 Q So I'll have you turn to Column 20 of the
9 '291 patent, starting at Line 48. Can you read that
10 paragraph that's discussing what's shown in Figures
11 63 and 64 to yourself?
12 **A Column 20, what --**
13 Q Line 48.
14 **A Just that one paragraph?**
15 Q Sure. So is that -- so -- strike that.
16 In paragraph -- in that paragraph,
17 starting on Line 48, it describes: This embodiment
18 may include an athletic-positioning sole and a
19 conventional insole or a conventional sole and an
20 athletic-positioning insole.
21 Do you see that?
22 **A Let me re-read again. Yes.**

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1 Q So you're distinguishing between an
2 athletic-positioning sole and a conventional sole in
3 that paragraph, correct?
4 **A Yes.**
5 Q What is a conventional sole?
6 **A Well, in the context of this particular**
7 **paragraph, it's not having -- not contributing to the**
8 **athletic-positioning shape.**
9 Q So what would that mean as far as the
10 shape of the sole?
11 **A So if we went to Figure 63, which is the**
12 **paragraph I was talking about. So just Figure 63.**
13 **So if, for example, the insole or a**
14 **conventional insole, it would have in Figure 63**
15 **roughly the same thickness under the big toe all the**
16 **way across to the little toe.**
17 Q And same thing for an
18 athletic-positioning sole, that same idea?
19 **A Yes.**
20 Q So I'll have you turn to Figures 122 and
21 123. What's shown in Figures 122 and 123?
22 **A 123, it's the front view of a left foot**

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1 **and -- I'm sorry. 122 and 123?**
2 Q Yeah.
3 **A Okay. Sorry. 122 is the left foot**
4 **inside view. Figure 123 is left foot front view.**
5 Q So in 123, there's an Angle 1. What is
6 that showing?
7 **A It's showing that the spikes are longer**
8 **towards the little toe than at the -- towards the big**
9 **toe.**
10 Q And this is described in Column 35. So
11 starting about Line 7, do you see that paragraph?
12 **A Yes.**
13 Q Go ahead and read that to yourself and
14 let me know when you're done.
15 **A Okay.**
16 Q So if I understand this right, these
17 figures are showing what's called an
18 athletic-positioning spike pattern; is that right?
19 **A Yes.**
20 Q And this is a different embodiment of
21 your invention, correct?
22 **A Yes.**

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1 Q And here it describes that this
2 athletic-positioning spike pattern may be used with a
3 sole having a conventional sole design.
4 Do you see that?
5 **A That's one of the options, yes.**
6 Q And this same -- same meaning,
7 conventional sole design would be a flat sole from
8 the inside to the outside; is that your
9 understanding?
10 **A Yeah, and I go back to 123. And the**
11 **front view shows an athletic-positioning in that gray**
12 **shaded area.**
13 Q So that would be the sole being shown as
14 having an athletic-positioning sole shape in the
15 shaded area; is that correct?
16 **A Well, it's the insole sole assembly and**
17 **an outer sole. So the gray shaded area in this is**
18 **the insole, and foresole is used in this term, or**
19 **with respect to this embodiment.**
20 Q So in this embodiment you're using the
21 length of the spikes to provide the angle inward
22 rather than a change in the sole material; is that

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1 correct?
2 **A Well, that is an embodiment. The one**
3 **shown in Figure 3 has both the angle on the spikes in**
4 **the front view, 123, as well as in the insole sole**
5 **assembly.**
6 Q Understood. Mr. Markison, I'm handing
7 you what's been previously marked as Exhibit 1005 to
8 the '291 IPR petition.
9 Please take a look at this document and
10 let me know if you recognize it.
11 **A Yes.**
12 Q What is this document?
13 **A The Kim reference.**
14 Q So I'll have you turn to Paragraph 14 of
15 the Kim reference. Read Paragraph 14 to yourself and
16 let me know when you're done.
17 **A Okay.**
18 Q So do you agree in Paragraph 14 of Kim
19 that it describes that the spikes are protruding from
20 the lower surface of the outsole of the shoe?
21 **A Yeah, a plurality of spikes protrude from**
22 **the lower surface of the outsole.**

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1 Q So turn to Paragraph 30. Read that, as
2 well.
3 **A Thirty, you said?**
4 Q Yes.
5 **A Okay.**
6 Q So again here, is it describing the
7 spikes as protruding from the lower surface of the
8 outsole? Spikes 11 protrude from Lower Surface 12 of
9 the Outsole 10.
10 Do you see that?
11 **A Yes, it says: The spikes are integrally**
12 **formed with the outsole.**
13 Q But my question is, it explains that they
14 protrude from the lower surface of the outsole,
15 correct?
16 **A With respect to that one sentence, yes.**
17 Q And they're labeled as a separate number,
18 correct? Spikes 11 are separate from Lower Surface
19 12 of the Outsole 10, correct?
20 **A This is referring to Figures 1 and 2.**
21 **Outsole 10 is -- there are different reference**
22 **numbers for the Spikes 11 and Outsole 10.**

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1 Q On Figure 10, you see that Lower Surface
2 No. 12 -- sorry. Are you looking at Figure 2?
3 **A Sorry. Figure 2. Okay.**
4 Q So Figure 2. The Lower Surface 12 of the
5 outsole as shown by No. 12, and there's a line.
6 Do you see that?
7 **A Yes.**
8 Q And you agree that that line represents
9 the lower surface of the Outsole 10, correct?
10 **A At that cross-section, yes.**
11 Q And Spikes 11 are not included -- sorry.
12 The Spikes 11 protrude beneath Line 12;
13 do you agree?
14 **A The question is do the Spikes 11 protrude**
15 **below Line 12 in Figure 2. Yes, at that**
16 **cross-section.**
17 Q So, Mr. Markison, I'm handing you your
18 '291 declaration. I'll have you turn to Paragraph
19 189. Let me know when you're there.
20 **A Okay.**
21 Q So you describe in Paragraph 189 that:
22 The figure below illustrates the primary embodiment

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1 of Kim.
2 Do you see that? Sorry: To Kim on hard
3 ground with annotations corresponding to Claim 1.
4 Do you see that?
5 **A Yes.**
6 Q And it's showing what appears to me the
7 heel section and the forefoot section both having an
8 angle from, I would say, the out -- the outer edge of
9 the shoe to the inner edge of the shoe; is that
10 right?
11 **A Sorry. One more time with your question.**
12 Q So in that figure it appears that what
13 you -- sorry. Let me ask that.
14 Did you draw this figure that's on Page
15 81 of your declaration?
16 **A I did.**
17 Q Is it depicting the heel section and the
18 forefoot section as being -- having a second height
19 that's greater at the outer edge of the shoe than the
20 first height -- sorry -- the first height, not
21 including the spikes, on the inner edge of the shoe?
22 MR. HOUGHTON: Object to form.

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1 BY MR. BUGG:
2 Q Yeah, that was -- let me try that again.
3 So here it appears in the image on Page
4 81 that you drew the outer edge and the inner edge --
5 the outer edge of Kim as sloping downward from the --
6 strike that.
7 In the figure on Page 81 of your
8 declaration, is that depicting the heel section as
9 having a second height that's greater than the first
10 height if you don't include the spikes in the first
11 height?
12 **A I'm not sure I understand your question.**
13 **The figure shows the first -- the first,**
14 **second and third heights all the same, and the shoes**
15 **include the -- the outsole, as well as the spikes.**
16 Q So let me ask it a different way.
17 So where in Kim does it describe a heel
18 section that has a sloped heel if you didn't include
19 the spikes in there?
20 **A So -- do you want specifics?**
21 Q Yeah, sure, if you can.
22 **A Give me a minute to find that then.**

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1 **So Paragraph 38 with respect to Figure 5A**
2 **says that: With reference to Figure 5A, when the**
3 **golfers in a pair of golf shoes of the present**
4 **invention walks on hard ground, such as a paved road,**
5 **since the bottom of the spikes are substantially**
6 **parallel with the ground, the golfer in the golf shoe**
7 **in the present invention can walk stably on hard**
8 **ground --**
9 **Okay. In the convention. Okay. There's**
10 **another paragraph I'm looking for.**
11 **That's part of it.**
12 **It would be a lot easier if we could have**
13 **electronics and just word search real quick.**
14 Q I hear you.
15 **A I'm not quite sure I found the right**
16 **paragraph I was looking for, but could we have the**
17 **question repeated? I'm sorry. It took a long time.**
18 MR. BUGG: Yeah. Do you mind
19 repeating that, Tanya?
20 THE REPORTER: Yes. One second.
21 (The last question was read back
22 into the record.)

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1 THE WITNESS: That's the point of
2 Figures 5A and 5B, is they talk about the
3 whole foot shifting while staying
4 parallel to the ground, in 5A, and then
5 shifting inward in 5B when the spikes on
6 the inside penetrate the ground. But
7 it's the whole foot moving, not just a
8 portion of it.
9 So for the whole foot to move,
10 there has to be the same slope in the
11 heel as it is in the forefoot,
12 corresponding to the spikes of different
13 heights.
14 BY MR. BUGG:
15 Q Where does it describe that the whole
16 foot moves?
17 **A So in Paragraph 28: The golf shoe of the**
18 **present invention comprises of the leather of the**
19 **golf shoe and the outsole attached to the lower**
20 **protection to ground.**
21 **So the outsole supports the whole foot.**
22 **And then when you look at Figures 5A and**

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5B and the fact that the whole leg is rotating, and with respect to 5A -- I'm sorry -- of 5A, with respect to 5B, the whole foot can only roll in if it's also doing it in the heel.

Q So I'll have you look at Paragraph 46. The last line of Paragraph 46: For example, the incline plane may be formed only at the front portion of the outsole or any -- or only at parts of the front and rear portions of the outsole.

Do you see that?

A Yes.

Q Do you agree that that's -- that describes that incline plane may only form on the for front portion of the outsole, correct?

A The incline plane is referred to as 40, referencing the 40 with respect to Figures 3A and 3B. So that's the incline plane.

And, yes, so that particular sentence says: For example, the incline plane may be formed only at the front portion of the outsole or at -- or only at parts of the front and/or rear portions of the outsole.

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And that's what I labeled in my declaration as the what-if embodiment.

Q So in this disclosure, do you agree that if the incline plane is only at the front portion of the outsole, there would be no incline plane at the rear portion of the outsole which includes the heel section?

A All this says is that the incline plane may be formed only at the front portion of the outsole or at parts of the front and/or rear portions of the outsole.

So it still says it could be part of the rear portions. It doesn't say what would happen to the heel if it's not there, yes.

Q So if it's -- if there's no incline plane, what would a person of skill in the art -- if there's no incline plane at the heel of the shoe, what would that teach a person of skill in the art?

A Well, that would be the what-if embodiment I described in my declaration.

Q Which is what? What is the what-if embodiment? Never mind. Strike that.

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Do you agree the heel portion would be flat from the inside of the shoe to the outside of the shoe if there was no incline plane?

A Do I agree that it would be flat from the inside to the outside. Okay. Sorry. I'm playing the question over in my head to make sure I answer it correctly.

So you asked if -- if, hypothetically, there's a conventional heel put on the teaching of Kim, would that be flat from heel -- I'm sorry -- inside edge to outside edge, at least in one spot cross-section of the heel.

And if they put a conventional heel like they have on a dress shoe, then yes, there would be a portion where it would be flat from the inside edge to the outside edge. And again, that's my what-if embodiment in my declaration.

Q Turn to Paragraph 40 of Kim. So Paragraph -- are you there?

A Yeah.

Q Paragraph 40 describes: The above described Outsole 10 of the Shoe 100 is made of a

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synthetic rubber or synthetic resin, such as ABS, polycarbonate, et cetera.

Would you agree that if the Outsole 10 is made of synthetic rubber, the outsole would flex when worn by a golfer?

A There's a wide range of rubber. So there would be some rubbers, no, there wouldn't be any noticeable flexion.

Q So it says, of synthetic rubbers. You mentioned there's different types of rubber, correct?

A Yeah.

Q And are some more flexible than others?

A Yes.

Q Are some types of synthetic rubber flexible?

A Are some types of synthetic rubber flexible? Yes.

Q Take a look at Figure 1 for me.

Do you believe that when a golfer wears a shoe shown in Figure 1, that the front section of the shoe, you know, anywhere to the left of that Line A to A, would touch the ground when worn?

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A **Well, not the way it's drawn in Figure 1.**
Q Is it your position that a shoe disclosed in Figure 1, when worn by a golfer golfing, anything left of Line A to A would never touch the ground.
A **No, that's not what I said. Look, so we need to clarify what that question means.**
Q So when the shoe shown in Figure 1 is worn by a golfer, does the section to the left of line A to A ever touch the ground?
A **It would.**
Q Why is that?
A **Well, when the golfer is walking and they transition from heel to toe, then the weight of the foot will be in the toe and that will push the section in front of A-A to the ground.**
Q Do you believe that the heel section and the toe section would ever touch the ground at the same time?
A **Looking at Figure 1 in a vacuum, the -- where it says 11 and then the beginning of the heel, at least as drawn, if that's a rigid structure, then that point and that point of the heel would not touch**

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the ground simultaneously.
Q So let's not look at Figure 1 in a vacuum. Let's look at it to the eyes of a person of skill in the art.
To the eyes of a person of skill in the art, when the shoe shown in Figure 1 is worn by a golfer, would the heel and the section to the left of cross-section A to A ever touch the ground at the same time?
A **Well, to a person of ordinary skill in the art, they wouldn't have drawn it this way. They would have drawn it so that the -- a good portion of the forefoot would be in contact with the ground at the same time the heel was.**
Q So you agree that the disclosures in Kim, aside from what's shown in Figure 1, would suggest that a person of skill in the art would understand that the toe section of the shoe and the heel section of the shoe would touch the ground at the same time when playing golf?
A **A conventional golf shoe, a person of ordinary skill in the art would understand the heel**

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and at least a portion of the forefoot would touch the ground at the same time.
Q So in Paragraph 1 -- can you turn to Paragraph 20 of your '291 declaration. So -- go ahead. Sorry. I'll let you get to it.
A **Okay.**
Q So read Paragraph 120 and let me know when you're done.
A **Okay.**
Q So Paragraph 120 is describing what I believe is shown in the Figure on Page 53; is that right?
A **Correct.**
Q And this is describing Kim, correct?
A **This is describing a what-if embodiment of Kim.**
Q And it's shown in the figure on Page 53, there's a weight force purple in the front of the shoe.
Do you see that?
A **Yes.**
Q And you're suggesting that the heel

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section of the shoe lifts off the ground in that embodiment; is that right?
A **Yes.**
Q Is it your understanding that all of the weight of the golfer would be on the front of the shoe and none of the weight would be on the heel section of the shoe?
A **No.**
Q So why is there no weight force shown on the heel section of the shoe in that image?
A **The purpose of this illustration -- part of the purpose of this illustration was to show a sufficient weight force in the front part of the shoe to overcome the penetration -- sorry -- penetration resistance of the ground with respect to the cleats and showing the pivot points.**
Q To pivot in the way that you're suggesting, the sole of the shoe must be rigid, correct?
A **It would be fairly rigid, yes.**
Q So if the material of the sole was flexible enough, that pivot wouldn't occur, correct?

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1 **A That's a hypothetical I haven't**
2 **considered. So -- I guess, hypothetically, if**
3 **there's -- you know, it's just all a gel, then -- but**
4 **that would change the whole physics of it. Because**
5 **now you've got different force factors between the**
6 **weight force and the penetration resistance of the**
7 **spikes. So it would be a whole different analysis**
8 **than what I've shown here.**
9 Q Okay. So aside from what you've shown
10 here, if the sole wasn't fairly rigid, the pivot that
11 you suggest would not occur; do you agree?
12 MR. HOUGHTON: Objection to form.
13 THE WITNESS: No. It would still
14 agree. I don't know what the exact
15 rigidity would be, but a conventional
16 shoe made like this would tip like this.
17 BY MR. BUGG:
18 Q When you say "conventional shoe," what do
19 you mean?
20 **A Well, using like an EVA for your midsole**
21 **material, a hard -- a rubber for your outsole, or a**
22 **TPU. If you use those types of materials to make**

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1 **this particular shoe, it would function very much**
2 **like shown in this figure.**
3 Q What if you used a soft, flexible rubber
4 for the outsole and the midsole?
5 **A Well, again, that's a hypothetical I**
6 **hadn't considered. You know, so, if it were a gel,**
7 **again, that would change the entire physics of how**
8 **this works, and I didn't do that analysis.**
9 Q I'm going to show you what's been marked
10 Exhibit 1006 to the '291 declaration. Please take a
11 look at this and let me know if you recognize it.
12 **A Are we done with the Kim reference?**
13 Q Yes, you can put you that to the side.
14 **A Okay. Yes, I'm familiar with this. Was**
15 **this a Dufour reference?**
16 Q I'll have you take a look at Column 4,
17 starting at Line 9.
18 **A Column 4, Line 9?**
19 Q It starts with the word, Spikes 10. Do
20 you see that? Are you there?
21 **A Yeah.**
22 Q So I'll read it. It says: Spikes 10 are

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1 then advantageously fastened to the Sole 2 on the
2 side of the Walking Surface 11 to ensure solid
3 traction with the ground.
4 Do you see that?
5 **A Yes.**
6 Q It continues: The density of the
7 distribution of the Spikes 10 preferably differs
8 depending on whether they're placed in the passive or
9 active grounds.
10 And it continues. Do you agree that the
11 Spikes 10 are described as separately from the sole
12 of the shoe which is described as No. 2?
13 **A This is Figure 1, correct?**
14 Q Figures 1 through 4, I believe.
15 **A Yeah, it shows Spikes 10 and -- well,**
16 **Sole 2 is confusingly labeled in Figure 1, but, yes,**
17 **they show them as a different element of the overall**
18 **shoe.**
19 Q I'll have you turn to Claim 18. Would
20 you take a look at Claim 18 for me.
21 **A Eighteen. Okay.**
22 Q Do you see that in Claim 18 it describes

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1 a golf shoe that includes a sole, with some reference
2 numbers 2, 20, 31, 39, 45 and 55, and claim
3 limitation separately from the Spikes numbered 10, 24
4 and 30, correct?
5 **A Yeah, so the golf shoe of Claim 1 with**
6 **the sole as provided with a certain number of spikes,**
7 **yes.**
8 Q I'll have you take a look at Figure 9.
9 **A Okay.**
10 Q So Figure 9, going to Column 3. Starting
11 in Line 20: Figure 6 to 9 are cross-section views
12 along line Roman numeral 6 to 6 in Figure 1.
13 Do you see that?
14 **A Yes.**
15 Q What does a cross-sectional view mean to
16 you?
17 **A If you had the physical item, you'd make**
18 **a cut along that line so you could see inside the**
19 **shoe.**
20 Q Is there a difference, in your
21 understanding, between a cross-sectional view and
22 perspective view?

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1 A **Say that one more time.**
2 Q Do you have an understanding that there's
3 a difference between a cross-sectional view and a
4 perspective view drawing?
5 A **Yes.**
6 Q What's your understanding of the
7 difference?
8 A **Well, cross-section is, you know, as I**
9 **explained, you're looking at -- you make a cut and**
10 **you look either inward or from one standpoint or**
11 **another with respect to that cut. And a perspective**
12 **view is more of an isometric type of drawing.**
13 Q Do you agree Figure 9 is showing, as you
14 described, a cross-sectional view or a cut of what's
15 shown in Figure 1 at line Roman numeral 6 and 6,
16 correct?
17 A **Yes.**
18 Q Since it's a cross-sectional view, it
19 wouldn't show the height of the heel, it would only
20 show the height at that cross-section, correct?
21 A **No.**
22 Q Why is that?

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1 A **Well, because we do the cross-section,**
2 **you look into the shoe, the way that's drawn. So if**
3 **the heel were in different elevation, say higher than**
4 **where that cut is, you should see that in the**
5 **background. And, you know, Figure 12 illustrates**
6 **that point with respect to Figure 11.**
7 Q Well, let's just focus on Figure 9 of
8 Figure 1 for me, okay?
9 Let's go back to Figure 1. Do you agree
10 that the heel section of the shoe in Figure 1, the
11 heel section of the sole is higher than the toe
12 section of the sole shown at the cross-section 6 to
13 6?
14 A **I don't believe the specification ever**
15 **says that.**
16 Q Just look at Figure 1. Same question.
17 A **From this perspective, I can't tell.**
18 Q So if you draw a line at the heel section
19 of the shoe on the side facing us, on the right-hand
20 side of the drawing, and then draw a line the
21 thickness of the toe section of the shoe, would the
22 line be longer in the heel section than the toe

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1 section in Figure 1?
2 A **It depends on what the angle of the shoe**
3 **is with respect to my view.**
4 Q From this view, would that line be
5 longer?
6 A **Well, at the cross-section 6 to 6, they**
7 **have that dashed line with respect to the bottom of**
8 **the shoe. That looks to be about the same height to**
9 **me.**
10 Q It's really your position that the toe
11 section in Figure 1 is the same height as the heel
12 section? Sitting here today, that's your position,
13 in Figure 1?
14 A **Well, if you're just asking me to**
15 **interpret Figure 1 in a vacuum, then, yes, the way**
16 **it's drawn, and then couple that with what's shown in**
17 **Figure 9 and figures -- in the other --**
18 Q I'm just going to ask the question one
19 more time. Figure 1 -- just stick with Figure 1.
20 A **Oh, but that's taking a drawing out of**
21 **context with what the patent teaches.**
22 Q Stick with Figure 1 for me, please.

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1 In Figure 1, is the heel section shown as
2 being taller than the toe section; yes or no?
3 A **I can't answer that based on this**
4 **drawing.**
5 Q Why? Because the -- because it's a
6 perspective view?
7 A **Well, not only that, but if the Line 6-6**
8 **references the other cross-sections, then they all**
9 **show that it's straight all the way back. So when**
10 **you look at Figure 1 in contrast with Figure 6, 7 and**
11 **9, it shows that, at least from cross-section 6-6 to**
12 **the back of the shoe, it's the same height.**
13 Q That's based on your understanding of
14 what a cross-sectional view is; is that right?
15 A **Yes.**
16 Q So your perspective -- sorry.
17 Your understanding of what a
18 cross-section is, it includes everything past that
19 point looking back on the shoe, correct?
20 A **If it's drawn correctly, yes.**
21 Q That's perspective or -- sorry -- that's
22 a cross-section in your mind?

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1 **A Yes.**
2 MR. HOUGHTON: Is now a good time
3 for a break?
4 MR. BUGG: No. Sure.
5 (Brief pause.)
6 BY MR. BUGG:
7 Q I think when we left we were discussing
8 Figure 1 of the Dufour reference. Does that jog your
9 memory, Mr. Markison?
10 **A Yes.**
11 Q I want you to take a look at the heel
12 section of Figure 1 and the toe section of Figure 1.
13 Can you draw a line showing the height of
14 the heel section in Figure 1 for me, on your -- on
15 your exhibit there?
16 **A Which part of the toe section?**
17 Q I said the heel section, but you can --
18 you can pick, any part of the heel section, you pick
19 the height of it. And I'd like you to draw a line
20 and label that Line A.
21 **A And you want me to label that A?**
22 Q The height of the heel section, so the

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1 thickness of the heel section shown in Figure 1.
2 **A This is such an inaccurate drawing,**
3 **you're asking me to do the impossible.**
4 Q Are you saying you can't do it?
5 **A Not from this figure. I mean, look at**
6 the arc here (indicating). There's no arc here
7 (indicating). I can't tell, you know, if the shoe is
8 tilted this way (indicating) or that way
9 (indicating).
10 You're asking me to do something that's
11 impossible in a vacuum of what this patent features.
12 Q So just sitting here today, you can't
13 draw a line showing the height of the heel section in
14 Figure 1? Is that your position?
15 **A Well -- well, there's a height here**
16 **(indicating).**
17 Q Mark that A.
18 **A (Witness complies.)**
19 Q Now, can you draw the height or the
20 thickness of the toe section of Figure 1? Can you
21 mark that B.
22 **A (Witness complies.)**

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1 Q Sitting here today, can you tell if A is
2 longer than B?
3 **A Maybe a few -- maybe a millimeter or so.**
4 Q Is that yes?
5 **A It's yes quantified based on a millimeter**
6 **or so.**
7 Q So before we took a break for the lunch,
8 we were talking about the definition of cross-section
9 was. Do you remember that?
10 **A Yes.**
11 (Markison Deposition Exhibit No. 1
12 was marked for the record.)
13 BY MR. BUGG:
14 Q I'd like to introduce Markison Exhibit 1.
15 So this is a definition of cross-section taken from
16 the Britannica Dictionary.
17 Do you see that?
18 **A Yes.**
19 Q Do you see No. 1, it defines
20 cross-section as: A view or drawing that shows what
21 the inside of something looks like after a cut has
22 been made across it.

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1 Do you see that?
2 **A Yes.**
3 Q Do you agree with that definition?
4 MR. HOUGHTON: Objection to the
5 exhibit. Lack of foundation, hearsay.
6 THE WITNESS: Yeah, that's
7 basically the same definition I gave.
8 BY MR. BUGG:
9 Q So it says it shows what the inside of
10 something looks like?
11 **A Yes.**
12 Q So you agree with that definition?
13 MR. HOUGHTON: Objection. Form,
14 foundation.
15 THE WITNESS: Yeah. Yes.
16 BY MR. BUGG:
17 Q All right. Take a look at Figure 12 of
18 Dufour. Figure 11 of Dufour.
19 **A Okay.**
20 Q So Figure 11 of Dufour, do you see the
21 heel section of that drawing?
22 **A I see Surface 51, which he calls a**

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1 **plantar -- what does he call that? It's not call a**
2 **heel section. It's called a Plantar Support Zone 61.**
3 Q Where would the heel of the wearer's foot
4 land on that drawing?
5 **A Towards the back end of 61.**
6 Q Can you draw a line for me on the
7 thickness of back end of 61, and label that Line A?
8 **A Yeah, right here (indicating).**
9 Q I'd like you to do it on Figure 11,
10 please.
11 **A Okay. I'm going to call that A, and**
12 that's A (indicating).
13 Q So also in Figure 11, I'd like you to
14 draw a line -- two lines actually. We'll start with
15 the line on the close side of the figure.
16 Do you see where this cross-section 12-12
17 is? Do you see that?
18 **A Yes.**
19 Q Draw a line showing the thickness of the
20 sole of the shoe in Figure 11 at that cross-section.
21 **A Yeah, that's A-A, as well.**
22 Q So can you mark that B and, not A, for

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1 me, please.
2 So sitting here today, looking only at
3 Figure 11 --
4 **A Uh-huh.**
5 Q -- is Figure A bigger than Figure B --
6 Line A larger than Line B?
7 **A So again, you're asking me to take a**
8 **figure out of context to what the patent teaches,**
9 **what the other figures show.**
10 **At Line -- at the cross cut X11, the**
11 **outer edge 65 is at the same height in the Plantar**
12 **Support Zone 61 as it is in the angled Zone 63.**
13 Q My question is different than that.
14 My question is in Figure 11, the two
15 drawings you just drew for Line A and Line B, is Line
16 A longer than Line B?
17 MR. HOUGHTON: Object to the form.
18 THE WITNESS: Line A and Line B is
19 the same.
20 BY MR. BUGG:
21 Q In Figure 11 that you just drew, that's
22 your position?

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1 **A Yes, when interpreting the patent**
2 **properly, yes.**
3 Q I'd like you to draw a line closer to the
4 front of the toe section on Figure 11. How about I
5 do it for you. I'll label that C.
6 Is it your position that C is the same
7 height as A?
8 **A So in a vacuum, Figure 11, without**
9 **context of what the patent is teaching, the way you**
10 **drew Figure -- Line C, it's smaller than Line A, but**
11 **that's not what Figure 12 shows.**
12 Q So back to '291 patent. Can you pull out
13 Exhibit 1001, the '291 patent, your '291 patent.
14 Could you take a look at Figure 63 and 64
15 of your '291 patent?
16 **A So which numbers?**
17 Q Sixty-three and 64.
18 Okay. We discussed these earlier today.
19 **A Yes.**
20 Q Do you agree that these are pictures of
21 the same embodiment of your invention; is that right?
22 **A Yes, Figure 64 is an inside view of a**

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1 **left foot, and Figure 63 is the left foot front view**
2 **of a specific embodiment.**
3 Q So I'll have you turn to Column 4 of the
4 '291 patent describing Figure 63.
5 **A Column what?**
6 Q Column 4. Do you agree that Figure 63
7 illustrates a cross-sectional front view?
8 **A Yes.**
9 Q Do you agree that the heel height that's
10 depicted in 64 that's higher than the toe height is
11 not shown in Figure 63?
12 **A It is not shown.**
13 Q Mr. Markison, I'm handing you what's been
14 previously marked as Exhibit 1007 to the '291 IPR
15 petition. Please take a look at this, let me know if
16 you recognize this document.
17 **A Yes.**
18 Q What is this document?
19 **A The Ruben reference.**
20 Q Take a look at Column 4, Line 24 --
21 sorry. Column 3, Line 24. So starting on Line 24,
22 Ruben states: Projecting downwardly from the bottom

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1 of the Sole 14 are a plurality of Cleats 22.
2 Do you see that?
3 **A Yes.**
4 Q Do you agree that they describe the
5 cleats and the sole as separate elements in Ruben?
6 **A They say that the cleats project downward**
7 **from the bottom of the sole.**
8 Q So they describe them as being separate
9 components of the shoe, correct?
10 **A Yes.**
11 Q And they're labeled differently with
12 different numbers and shown, for example, in Figures
13 1, 2, 3 and 4 as having separate numbers, right?
14 **A Well, the Figures 2 and 4 don't include**
15 **reference No. 14.**
16 Q Okay. So Figure 1 shows the Sole 14 and
17 the Cleats 22 separately, correct?
18 **A Yes.**
19 Q Same for Figure 3?
20 **A Yes.**
21 Q Take a look at Claim 3 of Ruben. Claim 3
22 reads in part: A golf shoe in accordance with Claim

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1 1 -- I'm sorry -- with Claim 2, including a plurality
2 of cleats attached to and depending from said sole
3 searching into a golf-playing surface.
4 Do you see that? Do you agree that Claim
5 3 claims the cleats is a separate claim element from
6 the shoe sole?
7 **A Yes.**
8 Q Turning to Column 2, Line 61 on Ruben.
9 I'll read starting Line 59, Column 2: Shoe 10
10 includes a conventional Upper 12 and a Sole 14 which
11 can be molded integrally with Upper 12 from such
12 material as polyvinyl chloride.
13 Sole 14 should be sufficiently flexible
14 to enable the wearer latitude, deflects the shoe when
15 walking, but rigid enough to preclude undo roll of
16 the shoe when used by the golfer once he's assumed a
17 proper stance over a golf ball.
18 Do you see that?
19 **A Yes.**
20 Q So you agree that Ruben explains that the
21 sole of the shoe is made of a sufficiently flexible
22 material to provide -- to flex enough to -- sorry --

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1 enable the wearer latitude to flex the shoe when
2 walking? Do you agree?
3 **A That's part of what that sentence says,**
4 **yes.**
5 Q I'm handing you now your declaration for
6 the '786 IPR. This is Exhibit 2008 for IPR
7 2024-00636.
8 Do you recognize this document,
9 Mr. Markison?
10 **A Yes, it looks to be my declaration.**
11 Q So I'll have you look at Paragraphs 306
12 and 307 for me. Let me know when you're done
13 reviewing those. And 308.
14 **A Okay.**
15 Q So if I understand this right, I want to
16 make sure I understand your position here, you're
17 stating that Ruben doesn't meet the claim limitations
18 for Claim 1 and Claim 5 in part because the entire
19 bottom surface of the sole isn't substantially
20 parallel to the reference slope; is that -- am I
21 understanding correct?
22 **A No.**

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1 Q What do I have wrong?
2 **A Paragraphs 306 through 308 are dealing**
3 **with the specific what-if embodiment shown in the**
4 **figures just above Paragraph 306.**
5 Q For that embodiment, is my understanding
6 incorrect?
7 **A Sorry. You have to repeat the -- the**
8 **question regarding that.**
9 Q So is my understanding of why you believe
10 Ruben doesn't meet Claim 1 and Claim 5 or what the
11 image -- what you're calling a what-if embodiment
12 shown on Page 127, is it because the bottom surface
13 of the sole in its entirety is not substantially
14 parallel to the reference slope?
15 **A That's an argument.**
16 Q I'm just trying to understand.
17 Is that what your argument is in those
18 paragraphs?
19 **A The argument in these paragraphs is that**
20 **Ruben does not have a flat bottom which to draw**
21 **reference -- to have it parallel with a reference**
22 **line.**

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1 Q And that flat bottom includes the
2 forefoot area, correct?
3 **A Correct.**
4 Q So here is Exhibit 1001. This is the
5 '786 patent that I'd like you to take a look at the
6 claims, and we can walk through them quickly. Here
7 we go. This is Exhibit 1001 to the '786 IPR
8 petition.
9 **A Okay.**
10 Q So this isn't the best copy, but we'll
11 make it do. So take a look at Claim 1 if you can,
12 Mr. Markison.
13 **A Okay.**
14 Q So in Claim 1 it reads: An apparatus
15 comprises...
16 And then the first section, it reads: A
17 heel platform section that has a uniform height from
18 an outer edge to an inner edge of the apparatus at
19 the rear -- excuse me -- edge of the apparatus
20 wherein the uniform height establishes a reference
21 slope from the outer edge to the inner edge. The
22 reference slope is substantially parallel to the

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1 bottom -- to a bottom surface of the apparatus.
2 Is that correct?
3 **A Yes.**
4 Q That's describing the uniform height and
5 reference slope with respect to the heel platform; is
6 that right?
7 **A The reference slope is with respect to**
8 **the bottom surface of the apparatus.**
9 Q Measured at the heel section, at the heel
10 platform, correct?
11 **A Reference slope from the outer edge to**
12 **the inner edge. Yes.**
13 Q Anywhere in Claim 1 does it have the
14 reference slope be measured to the bottom surface of
15 the forefoot of the apparatus?
16 **A It says: Bottom surface of the**
17 **apparatus.**
18 **The apparatus includes the heel platform,**
19 **the midfoot section and the toe section.**
20 Q Just, when you're measuring the reference
21 slope, you never measure that reference slope with
22 respect to anything besides the heel platform, in

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1 Claim 1 of the '786 patent; do you agree?
2 **A Sorry. One more time with your question.**
3 MR. BUGG: Tanya, can you repeat
4 that for me, please.
5 THE REPORTER: Yes, one second.
6 (The last question was read back
7 into the record.)
8 THE WITNESS: No.
9 BY MR. BUGG:
10 Q So let's go through it. So it says: The
11 uniform height establishes a reference slope from the
12 outer edge to the inner edge and that -- strike that.
13 It states: A uniform -- a heel platform
14 section that has a uniform height from an outer edge
15 to an inner edge of the apparatus at the rear edge of
16 the apparatus, wherein the uniform height establishes
17 a reference slope from the outer edge to the inner
18 edge.
19 Do you see that?
20 **A Yes.**
21 Q And that outer edge and inner edge is
22 referring to what?

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1 **A The heel platform. But it further says**
2 **the reference slope substantially parallel to the**
3 **bottom surface of the apparatus, not just the heel**
4 **section.**
5 Q Now I'm going to -- here's the '760
6 patent. This is Exhibit 1001 to the '760 IPR
7 petition. Please take a look at Claim 1 for me.
8 **A Okay.**
9 Q Claim 1, in part, reads: A left sole
10 coupled to the left upper shoe portion wherein a foot
11 platform of the left sole provides an athletic
12 positioning of a left big toe area of the left shoe
13 in a lower position than a left heel area of the left
14 shoe and at a lower position than an outer small toe
15 area of the left shoe.
16 And it continues. Do agree that Claim 1
17 of the '760 patent requires the big toe area of
18 the -- of the sole to be positioned at a lower
19 position than the heel area and the small toe area?
20 **A Yes. That's what it says in that Wherein**
21 **clause.**
22 Q Is there any reference in Claim 1 as to

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1 where that position is being measured relative to?
2 **A No, not specifically, but it does refer**
3 **to athletic positioning.**
4 Q So let's flip back to Ruben. This is
5 Exhibit 1007. Can you take a look at Figure 4 in
6 Ruben.
7 **A Okay.**
8 Q Do you agree that, in this embodiment
9 shown in Figure 4, the big toe area is at a lower
10 position than the small toe area?
11 **A Not with respect to the bottom of the**
12 **cleats.**
13 Q So where in the claim is that required?
14 **A It's a shoe.**
15 Q So let me ask it a different way.
16 In Figure 4, relative to the ground
17 surface, 32, is the left -- is the big toe area in
18 Figure 4 at a lower position than the small toe area?
19 **A So in Figure 4, with reference to the**
20 **ground, the big toe area is lower than the small toe**
21 **area.**
22 Q So staying with Ruben. In Figure 1, I

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1 believe it's your position that Figure 1 fails to
2 show that the toe area is at a lower position or is
3 not as thick as the heel area; is that your -- is
4 that your understanding?
5 MR. HOUGHTON: Object to form.
6 THE WITNESS: I didn't -- I'm
7 sorry. I didn't follow your question.
8 BY MR. BUGG:
9 Q Yeah. So in Figure 1, is it your
10 position that Figure 1 fails to show that the heel
11 section is thicker than the toe section?
12 MR. HOUGHTON: Object to form.
13 THE WITNESS: In Figure 1 -- so
14 that's the outside view of a right shoe
15 in Figure 1. It doesn't provide
16 information with respect to the inside
17 edge. I've referenced it in here.
18 Sorry. Wrong one. Okay.
19 So from the outer edge as shown in
20 Figure 1, looking at the outer edge, they
21 are at least the same height as we
22 annotated in -- on Page 130 of the '786

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1 declaration, and Page 126 of the '291
2 declaration.
3 BY MR. BUGG:
4 Q So we're just going to do a common
5 exercise like we did with the last one. So I'm going
6 to draw two lines in here and I'm going to ask you if
7 you can measure them or take a look at them.
8 Do you agree that Line A form the
9 thickness of the heel section?
10 **A That's a representation.**
11 Q Is that a yes?
12 **A Yes.**
13 Q Would you agree with me that Line B I
14 drew shows a thickness of the toe section of Ruben?
15 **A Not an accurate one.**
16 Q Does it show one?
17 **A Well, yeah, you could draw a line**
18 **anywhere, but it's not an accurate representation**
19 **because the angle of the shoe is curving.**
20 Q So you're saying, from Figure 1, you
21 can't tell if the toe section is lower than the heel
22 section; that's your position?

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1 **A No, I'm saying my position is reflected**
2 **in the two declarations that are submitted.**
3 Q So that position is the toe section and
4 the heel section have the same height; is that your
5 position?
6 **A In Figure 1 on the lateral edge, yes.**
7 Q Let's take a look at Figure 3. Figure 3,
8 I'm going to draw a line and mark that A.
9 Do you believe that A accurately depicts
10 the height of the heel section in Ruben?
11 **A It corresponds to what you drew on**
12 **Figure 1, yes.**
13 Q And that's the heel section, correct?
14 **A Yes.**
15 Q I'll draw a line, Figure B.
16 Do you agree that B shows the height of
17 the toe section in Ruben?
18 **A I mean, you drew a Line B in the toe**
19 **section, but it doesn't necessarily represent the**
20 **height of it.**
21 Q Why not?
22 **A Well, first of all, it's a perspective**

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1 view and you're interpreting these documents or
2 drawings to be 100 percent accurate and to scale.
3 And there's nothing in Ruben that says these are to
4 scale or accurate or how the perspective affects the
5 variations of the height.
6 Q So looking at Figure 3, is line A longer
7 than Line B; yes or no?
8 A Well, the way you drew it, yes, but it's
9 not an accurate representation.
10 (Markison Deposition Exhibit No. 2
11 was marked for the record.)
12 BY MR. BUGG:
13 Q I'll introduce Exhibit B -- I'm sorry.
14 I'm going to introduce to the Markison deposition,
15 this is a new exhibit. So please take a look at this
16 and I want to know if you recognize this document.
17 A Yes, it's something I wrote.
18 Q Do you remember when you wrote this?
19 MR. HOUGHTON: Object to the
20 exhibit. Foundation, relevance.
21 THE WITNESS: Not specifically, no.
22

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1 BY MR. BUGG:
2 Q Do you know if this is available on the
3 Athalonz website?
4 A It used to be. I don't know if it is
5 today.
6 Q But at some point it was on the Athalonz
7 website.
8 A I believe so, yes.
9 Q As kind of a summary, was this -- well,
10 why did you -- strike that.
11 What does this document describe?
12 A Athalonz shoes leveraging the laws of
13 physics.
14 Q What does that mean?
15 A Well, every shoe movement, every athletic
16 movement involves the laws of physics. So our shoes
17 are part of that equation.
18 Q So let's take a look at what's shown in
19 Figure 2, and it's on Page 3, and it's described. So
20 the bottom of Page 2 describes Figure 2, and then
21 Figure 2 is on Page 3.
22 A Which figure do you want me to look at?

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1 Q Figure 2. What's shown in Figure 2?
2 A Figure 2 illustrates ground reaction
3 force being exerted on the body in the name brand
4 shoe of Figure 1.
5 Q Is it fair to say this is depicting
6 ground reaction forces in a traditional athletic
7 shoe?
8 A With respect to one athletic shoe, yes.
9 Q And then can you explain what's shown in
10 Figure 5?
11 A Figure 5 is -- Figure 5 illustrates how
12 the foot engages the ground in an Athalonz shoe from
13 a front perspective.
14 Q And what's -- what's the difference
15 between the Athalonz shoe and the name brand athletic
16 shoe shown in Figure 2?
17 MR. HOUGHTON: Objection to form.
18 THE WITNESS: The -- the name brand
19 athletic shoe actually had a U-shaped
20 midsole where the foot is -- was just
21 shown as a block diagram, where Athalonz'
22 has a gradient slope from the heel

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1 towards the toe to help shift the athlete
2 into a better athletic position.
3 BY MR. BUGG:
4 Q So you mentioned a slope from the heel to
5 the toe. Is there also a slope from the outside of
6 the shoe to the inside of the shoe?
7 A In the -- in the forefoot section, yeah,
8 there's a gradient slope.
9 Q And that shifts to that ground reaction
10 force as that red arrow, is that what's shown in
11 Figure 5?
12 A Yes.
13 Q Is that the perceived benefit of the
14 Athalonz shoe design?
15 A That's a benefit, yes.
16 Q So that benefit is lining up -- for a
17 better word -- the ground reaction force with the
18 weight force of the foot; do I understand that right?
19 A Well, by angling that interaction with
20 the ground, you're increasing athletic force and
21 decreasing leakage force.
22 Q So I believe you mentioned that as

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1 being -- sorry.
2 MR. BUGG: Tanya, can you read that
3 answer back for me?
4 THE REPORTER: Yes. One second.
5 (The last answer was read back into
6 the record.)
7 BY THE REPORTER
8 Q So I think on the bottom of Page 4 of
9 Exhibit 2, it says, last sentence: Since the force
10 we apply is angular to the ground, the ground
11 reaction force is also at an angle to the ground,
12 which points towards our body.
13 Is that similar to what you just stated,
14 Mr. Markison?
15 **A Yes.**
16 Q So turning back to Figure 4 of Ruben.
17 Take a look at Figure 4. And Ruben is Exhibit 1007.
18 I know there's a lot of exhibits.
19 So if you compare Figure 4 of Ruben with
20 Figure 5 of Exhibit 2, and look at those together, do
21 you agree that the shoe in Figure 4 of Ruben is
22 providing a similar angle between the wearer's foot

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1 and the ground surface as in Figure 5?
2 MR. HOUGHTON: Objection.
3 Relevance, foundation.
4 THE WITNESS: Well, what Figure 5
5 does not show is the heel platform, which
6 is flat.
7 Figure 4 of Ruben indicates --
8 shows that the heel -- the whole foot is
9 tilted inward, not just the forefoot, as
10 we're representing in Figure 5 of the --
11 whatever reference this was.
12 BY MR. BUGG:
13 Q So, again, the angle of the foot in
14 Figure 4, would that provide a similar ground
15 reaction force between the body force of the wearer
16 and the ground reaction force from the ground, as in
17 Figure 5 of Exhibit 2?
18 MR. HOUGHTON: Objection to
19 relevance.
20 THE WITNESS: Not in the heel
21 section, but similar in the forefoot.
22

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1 BY MR. BUGG:
2 Q And you're saying not in the heel section
3 because your argument is the heel section of Ruben is
4 not flat; is that right?
5 **A Yes, it's angled inward. In our shoes,**
6 **it's -- the angle is flat.**
7 Q So in Figure 3 of Ruben, does it look
8 like that heel section is angled at all?
9 **A No, taking Figure 3 in a vacuum, absent**
10 **of what the patent teaches, it doesn't -- it appears**
11 **to be a conventional dress shoe block heel.**
12 Q Meaning -- "conventional" meaning having
13 a consistent height from the inside to the outside of
14 the heel section; is that right?
15 **A Yes.**
16 Q So I'd like you to turn back to Kim,
17 that's Exhibit 1005, keeping Exhibit 2 out at the
18 same time.
19 Please flip to Figure 5B of Kim. Do you
20 believe that the position of the wearer's feet in
21 Figure 5B provides a similar ground reaction force in
22 line with the body force as shown in Figure 5 of

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1 Exhibit 2?
2 MR. HOUGHTON: Objection.
3 Relevance.
4 THE WITNESS: Well, I actually
5 address that in Paragraph 68 and 69 of my
6 petition -- my declaration for the '456
7 patent where, you know, you're not
8 looking at heel from this perspective.
9 So the heel's actually going to tilt
10 inward, where in our shoes the ground
11 reaction force is going to be more
12 perpendicular to the ground.
13 So the difference between what's
14 shown in Figure 4 of Ruben and Figure 5A
15 of Kim are different than what's in --
16 in -- in what we disclose or -- sorry --
17 what I disclose in the '456.
18 I mean, this document was intended
19 to be just a marketing material to kind
20 of explain why we're different and how
21 physics come into play. It wasn't meant
22 to be a treatise.

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1 BY MR. BUGG:
2 Q But I think you explained it as
3 describing the technology in Athalonz' shoes,
4 correct?
5 **A Yeah.**
6 Q Do you agree that the ground reaction
7 force in the forefoot section of the shoe shown in 5B
8 of Kim is similar to the ground reaction force shown
9 in Figure 5 of Exhibit 2?
10 MR. HOUGHTON: Objection.
11 Relevance.
12 THE WITNESS: In the forefoot, but
13 not in the heel.
14 BY MR. BUGG:
15 Q And again, that's because you're
16 suggesting that Kim fails to disclose a heel that's
17 substantially flat from the inside to the outside of
18 the shoe, correct?
19 **A Correct. Kim is teaching that the whole**
20 **shoe tips inward, as does Ruben.**
21 Q And that's still your position despite
22 the fact that Kim Paragraph 46 expressly states the

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1 incline plane may be formed only at the front portion
2 of the outsole; is that correct?
3 **A Well, now you're getting into the what-if**
4 **scenarios that I described in the various**
5 **declarations regarding Kim.**
6 Q So that's a yes, right?
7 **A Yes, Paragraph 46, the last sentence**
8 **says: For example, the incline plane may be formed**
9 **only at the front portion of the outsole or at parts**
10 **of the front and/or rear portions of the outsole.**
11 **And again, it's "may." So it's not an**
12 **absolute.**
13 Q So in Figure 5B of Kim, do you believe
14 the spikes have any impact on the positioning of the
15 wearer's shoe relative to the ground?
16 MR. HOUGHTON: Object to form.
17 THE WITNESS: I don't follow the
18 question.
19 BY MR. BUGG:
20 Q So in Figure 5B of Kim, whether or not
21 you consider the spikes, when standing in soft
22 ground, is the -- is the foot -- strike that.

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1 Regardless of whether you have -- let's
2 have a hypothetical. Say there's no spikes on the
3 bottom of the shoe in Figure 5B. Would that impact
4 the positioning of the foot relative to the ground?
5 **A If you took the spikes off of Kim, you'd**
6 **have the same effect in Figure 5A and in 5B.**
7 Q Correct. So at a hard surface and soft
8 surface, the inside of the foot would be angled down
9 relative to the outside of the foot, correct?
10 **A Yeah, and then it defeats the purpose of**
11 **Kim.**
12 Q So same question. For Figure 4 of Ruben,
13 if there were no spikes on the bottom of Ruben, would
14 that impact the positioning of the foot relative to
15 the ground in Figure 4?
16 **A In Figure 2 -- without spikes, Figure 2**
17 **and Figure 4 would be pretty much identical, again,**
18 **defeating the purpose of Ruben.**
19 Q And both of those would show the outside
20 of the forefoot being higher than the inside of the
21 forefoot, correct?
22 **A So Figure 2 and 4 of Ruben, without the**

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1 **cleats, would show the outside edge higher than the**
2 **inside edge.**
3 Q So let's turn back to the '768
4 declaration.
5 MR. HOUGHTON: Not sure we've done
6 that one.
7 MR. BUGG: Oh, we haven't done it?
8 Thank you. First time. Okay.
9 BY MR. BUGG:
10 Q Mr. Markison, since this is your eighth
11 declaration, this is Exhibit 2008 to IPR 2024-00639.
12 Please let me know if this looks familiar to you.
13 **A Yes.**
14 MR. HOUGHTON: It's been about an
15 hour.
16 MR. BUGG: Do you want to take a
17 short break as I'm shuffling through my
18 exhibits?
19 (Brief pause.)
20 BY MR. BUGG:
21 Q So I was just about to hand you the '768
22 patent, which I don't think we've had yet. This is

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1 Exhibit 1001 to the '768 IPR. And if you could take
2 a look at Claim 1 for me. So there's two claim
3 limitations here I want to discuss with you.
4 So the first one, it starts at Line 29.
5 It states: A heel platform having a first height
6 that is substantially uniform around a perimeter heel
7 platform.
8 You see that, right?
9 **A Uh-huh.**
10 Q And then, also in Claim 1, the very last
11 part of Claim 1, it's the Wherein clause. It states,
12 starting at Line 3 on Column 44: Wherein the
13 forefoot platform at the outer edge has a first
14 thickness at a position proximal to the heel platform
15 and a second thickness at a toe portion wherein the
16 first thickness is greater than the second thickness.
17 Did I read that right?
18 **A Yes.**
19 Q I just wanted to kind of set the stage.
20 We're going to look at your declaration now about
21 these two limitations. I just wanted to make sure I
22 got the claim language right so we're all talking

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1 about the same thing.
2 So in the '768 declaration, this is
3 Exhibit 2008 to IPR 2024-639. I'll have you turn to
4 Paragraph 165. So I'll just read Paragraph 165. So
5 according to Mr. Delgotti: A person who is skilled
6 in the art would understand that shoes in general,
7 including athletic shoes and golf shoes, have several
8 traits and features that are conventional or
9 standard.
10 He goes on the state that these
11 conventional design traits include a heel platform
12 that is substantially uniform around its perimeter
13 and also include a heel -- include a forefoot
14 platform wearing at the outer edge. The thickness at
15 a position proximal to the heel platform is greater
16 than the thickness at the toe portion.
17 Do you see that?
18 **A Yes.**
19 Q And these correspond to those two
20 limitations we just looked at in Claim 1; is that
21 right.
22 **A Yes.**

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1 Q Then you further state: I disagree that
2 either of these design traits were conventional and
3 find the evidence Mr. Delgotti relies on to be
4 unpersuasive and not probative of the points for
5 which Mr. Delgotti relies on.
6 Is that correct?
7 **A That's what it says.**
8 Q So in paragraph 165, it says you disagree
9 that these two design traits are conventional, but
10 you don't provide any evidence in support, do you?
11 MR. HOUGHTON: Object to form.
12 THE WITNESS: Actually, the next
13 paragraph starts with, The evidence.
14 BY MR. BUGG:
15 Q Okay. Sorry. So you don't provide
16 any -- sorry.
17 I meant Paragraph 165, but that's -- I
18 understand there's other positions you take
19 throughout your declaration.
20 **A I'm sorry. Could you repeat the**
21 **question? Yeah. Sorry.**
22 Q Yeah. Paragraph 165 says you disagree,

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1 but doesn't provide any evidence specifically in
2 Paragraph 165, correct?
3 **A Correct. Paragraph 165 just says that I**
4 **disagree.**
5 Q Take a look at Paragraph 175 of the
6 declaration. Actually, before we jump into Paragraph
7 175, I do want to ask you what your understanding of
8 these two claim limitations are.
9 So the first limitation being:
10 Substantially uniform -- having a substantially
11 uniform height around the perimeter of the heel
12 platform.
13 What design would fall outside? What
14 heel design would fall outside that claim scope?
15 MR. HOUGHTON: Object to form.
16 THE WITNESS: It's a very
17 open-ended question. Well --
18 BY MR. BUGG:
19 Q I can ask it differently.
20 So what is substantially uniform --
21 having a substantially uniform height around the
22 perimeter of the heel platform, what does that mean

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1 to you?
2 **A To me, the words speak for themselves:**
3 **Substantially uniform height around the perimeter of**
4 **the heel platform.**
5 Q What design of a shoe would not meet that
6 description?
7 **A So like on Page 78 of my '768**
8 **declaration, that Figure 1 of patent 2,847,769 would**
9 **not meet that. Several embodiments of Juan did not**
10 **meet that. Several embodiments of Giese would not**
11 **meet that.**
12 Q So I'm not going to force you to having
13 to point out each one. That's not what this is for.
14 **A Okay.**
15 Q I promise you we're not going to cite to
16 the fact that you didn't cite every prior reference.
17 I'm just trying to understand what that means.
18 So one of them, you're pointing to like
19 Figure 1 on Page 78. That's because the heel is at a
20 lower position at the back end than you say the front
21 end of the heel, correct?
22 **A Yes.**

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1 Q So then probably the opposite would be
2 true, too. Right? So if the heel section was higher
3 at the back end of the heel versus the front end of
4 the heel sloping downward, that -- would you agree
5 that doesn't meet the limitation for substantially
6 uniform height around the perimeter of the heel
7 platform?
8 **A As well as tipped inside to outside or**
9 **outside to inside.**
10 Q So that was kind of the -- so those --
11 what we just described, either sloping up from back
12 to front, sloping down from back to front, so either
13 sloping from the inside to the outside or the outside
14 to the inside, correct?
15 **A I would say and/or.**
16 Q Yeah. And/or any of those cases?
17 **A Correct.**
18 Q Anything else you could think of that
19 wouldn't meet that limitation?
20 **A Not off the top of my head.**
21 Q So we started the question about what we
22 will call that second limitation. This is the

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1 limitation where: A forefoot platform wherein at the
2 outer edge the thickness at a position proximal to
3 the heel platform is greater than the thickness of
4 the toe portion.
5 So can you explain what that limitation
6 means to you?
7 **A The thickness proximal to the heel and a**
8 **second thickness at a toe portion where the first**
9 **thickness is greater.**
10 **So as you move from the heel to the toe,**
11 **towards the heel it has this first thickness which --**
12 **then towards the toe on the outer edge it has the**
13 **second thickness. And the first thickness is greater**
14 **than the second.**
15 Q Are you familiar with the term or the
16 phrase, a heel-to-toe drop of a shoe? Is that a term
17 that you're familiar with?
18 **A I mean, I know what it means.**
19 Q What does it mean?
20 **A I mean, it's basically what I cited in**
21 **that Background section of our patent, where**
22 **sometimes the heel is higher than the toe.**

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1 Q So is that a similar description of what
2 you just described as the forefoot platform having a
3 thickness at a position proximal to the heel greater
4 than the thickness at the toe?
5 **A Well, that's only at the outer edge.**
6 Q Yeah. Okay. So if measured at the outer
7 edge?
8 **A No. Actually what I said in the**
9 **Background section of these patents is that, at the**
10 **back of the heel to the toe, there could be a drop.**
11 **So I didn't -- the background of all of**
12 **these patents do not say that there's a substantially**
13 **uniform height around the heel and then there's a**
14 **drop. It starts at the back of the heel and drop.**
15 **That's what -- the prior art I disclosure here.**
16 Q So you're distinguishing between
17 measuring at the position proximal to the heel
18 platform, really like the front edge -- right after
19 the -- proximal to the front edge of the heel
20 platform, to the toe?
21 **A In that vicinity, yes. To the --**
22 **somewhere in the toe section.**

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1 Q So let's -- you mentioned -- so one of
2 the arguments you make here is that, you say that's
3 not -- I think you said -- a conventional design.
4 This is the forefoot platform having a thickness at
5 the outer edge at a position proximal to the heel
6 platform that's greater than the toe portion. Right?
7 And you cite to this Patent No. 2,847,769 as evidence
8 of that, correct?
9 **A Yes.**
10 (Markison Deposition Exhibit No. 3
11 was marked for the record.)
12 BY MR. BUGG:
13 Q So I'm introducing as Markison Exhibit
14 3 -- I'll give you this. Let me know if you
15 recognize that document, Mr. Markison.
16 **A I recognize Figure 1 of it.**
17 Q So is Figure 1, that's the same figure as
18 what's shown on Page 78 of your '768 declaration,
19 correct?
20 **A Yes.**
21 Q So in that Figure 1 -- so in Column 2 of
22 Exhibit 3, first line, it states: Figure 1 shows the

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1 outermost side of a right shoe embodying the
2 teachings of this invention.
3 Is that right?
4 **A Yes.**
5 Q In Column 3 of Exhibit 3, starting on
6 Line 45. I'll just read it if you want to follow
7 along. It says: The construction created for the
8 sole of a golf shoe to have a space between the heel
9 portions and the ground, which shoes when worn and
10 pressed downward on their heel regions to contact the
11 ground as the shoes of Figure 3 and the creation of
12 the shoes as in Figure 1, where the heel portions are
13 in contact with the ground, as well as the
14 cooperative action of the upper surfaces sloping in
15 downward conversion relation, are novel and efficient
16 contributions to this art for obtaining a rearward
17 transposition of the weight of the player through the
18 heel regions of the feet and to properly bend the
19 knees for creating a firm anchor to the ground.
20 Did I read that right?
21 **A I believe so, yes.**
22 Q Is that describing the figure -- the shoe

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1 design in Figure 1 as novel, a novel design, when
2 this patent was filed?
3 **A That's what they claim.**
4 Q Back in Column 1, Line 36, it says:
5 Therefore, the principal object of this invention to
6 provide novel and improved unions to automatically
7 compel a golfer to assume the correct position when
8 taking his stance so an effective footwork is
9 acquired for proficient performance.
10 So they explain that the principal object
11 of this invention is to provide an novel and improved
12 means for a golfer; is that right?
13 **A Yes, that's what that says, and then when**
14 **you take that in combination with what you just**
15 **previously read in Column 4, they're claiming the**
16 **proper stance has the weight in the heels. That's**
17 **contrary to what we teach an athletic positioning to**
18 **be -- an athletic position to be.**
19 Q You can put that aside.
20 Mr. Markison, I'm introducing Exhibit
21 1013 to, I believe, the '456 IPR. Let me know if you
22 recognize Exhibit 1013.

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1 **A I believe they represent -- just give me**
2 **a second. They appear to be shoes that Mr. Delgotti**
3 **included in one of his depos.**
4 Q Do they look like the Nike Boston running
5 shoes, if you know?
6 **A They look like a Nike running shoe.**
7 Q Do you agree that the -- looking at the
8 side, and then -- look at the top image on Page 1 of
9 Exhibit 1013.
10 Is that showing at least the outer edge
11 of both the outsole and the midsole of the shoe?
12 **A It certainly shows an edge of the**
13 **outsole. That's the tan portion. I don't know what**
14 **the combination of white and black materials are.**
15 Q You can't tell if that's a midsole or
16 not?
17 **A I could guess. The black could just be a**
18 **lip that goes up.**
19 Q Now, Mr. Markison, I'm handing you a
20 fairly large exhibit. It's Exhibit 1011 of the '768
21 IPR petition. You don't have to flip through the
22 whole thing. I'll represent to you that this is the

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1 file history of the '768 patent. But please do take
2 a look and see if that appears to be what.
3 **A I'm sorry. You said this is the file**
4 **wrapper for the '768 or the file petition?**
5 Q The file wrapper. Just on the front page
6 here, it shows Application No. 165555171, and then
7 Patent No. 11,375,768.
8 Do you see that on the cover?
9 **A So file wrapper.**
10 Q Yeah, file wrapper, right.
11 **A Okay.**
12 Q Sorry. Let me know when you're ready.
13 **A Okay.**
14 Q Did you prosecute all the asserted
15 patents that are at issue in this case in these IPRs?
16 **A Yes.**
17 Q They don't have page numbers in here
18 because we're using PDFs. Mr. Markison, if you could
19 turn to Page 87 of Exhibit 1011.
20 So on Page 87, do you see this is dated,
21 Notification Date, 6/23/2021? Do you see that? It's
22 on the right-hand side, halfway up.

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1 **A Yeah.**
2 Q And below that, it states: Please find
3 below and/or attached an office communication
4 concerning this application proceeding.
5 Is this something that typically is
6 referred to as an Office Action? Is that something
7 you're familiar with?
8 **A Yes, I'm familiar with Office Action.**
9 Q So on Page 90 of this exhibit, in this
10 Office Action dated June 23rd, 2021, Paragraph 5,
11 under Claim Rejections, 35UC102, it states: Claims 1
12 through 9 is/are rejected under pre-AIA 35 USC
13 Section 102B as being clearly anticipated by
14 Tallarico 2. And that's Patent No. 4,642,911.
15 Do you recall earlier today we were
16 talking about the Tallarico '911 reference, correct?
17 **A Yes.**
18 Q Is that the same reference as being cited
19 by the examiner here?
20 **A It appears to be, yes.**
21 Q And the examiner states in this Office
22 Action: Tallarico 2 shows a shoe comprising an

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1 upper, as is inherent in shoes, and a sole having a
2 heel platform which has a uniform thickness -- see
3 Column 12, Lines 1 through 3 -- which states that the
4 midsole material has a uniform overall thickness in
5 the forefoot area, which is shown to show to include
6 a midfoot and toe section -- see Figures 8 through 15
7 in Column 19 at Lines 3 through 15 -- which has
8 varying density formed by either a varying density of
9 a single material -- see Column 12, Lines 1 through
10 9 -- or plurality of material -- see Column 18, Lines
11 32 through 47 -- as claimed.
12 Did I read that correct?
13 **A It appears to be.**
14 Q Do you agree that the examiner found that
15 Tallarico '911 discloses a sole having a heel
16 platform that has a uniform thickness overall?
17 **A Okay. I believe the examiner wrote that.**
18 Q Yeah. I'm not saying you agree with it.
19 I'm just saying, did the examiner make that
20 rejection?
21 **A The examiner made that statement, yes.**
22 Q So I'll have you flip to Page 102 of this

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1 exhibit. Do you see that? It's actually starting on
2 Page 101. This is -- sorry. I'll let you get to it.
3 **A Okay.**
4 Q So this is a response to Nonfile's Office
5 Action dated 6/20/21.
6 Do you see that?
7 **A Yes.**
8 Q So if I understand correctly, this is the
9 last submission from you to the Patent Office prior
10 to that rejection we just saw; is that a proper
11 understanding?
12 **A Well, let's see. So this Office Action**
13 **that was dated 6/16/2021 predates this by like seven**
14 **days the Office Action that was issued on 6/23/21.**
15 Q So your understanding would be that
16 Office Action we just looked at was filed by the
17 Patent -- or was submitted to you from the Patent
18 Office based on what you had submitted on 6/16,
19 correct?
20 **A Yeah. They actually say that on the next**
21 **page.**
22 Q Okay.

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1 A **Responsive to what we filed on 6/16/2021.**
2 Q So now I'll have you look at Page 102. I
3 just want you to take a look at the Claim 1 on Page
4 102 of this exhibit.
5 A **Yeah.**
6 Q Okay. So you agree that Claim 1 --
7 currently pending Claim 1 at this time, stated: A
8 sole section coupled to the upper section wherein the
9 sole section includes a heel platform having a first
10 height that is substantially uniform from the inner
11 edge of the sole section to an outer edge of the sole
12 section, wherein the heel platform is constructed of
13 a first material.
14 And it continues: And a forefoot
15 platform juxtaposed to the heel platform wherein the
16 forefoot platform is constructed of a second material
17 having a gradient compression factor, wherein when
18 the athletic shoe is worn by an athlete and weight of
19 the athlete is applied to the athlete's shoe, the
20 second material compresses to a first level near an
21 outer edge of the shoe sole section and the second
22 material compresses to a second level near an inner

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1 edge of the sole section, wherein the second level of
2 compression is greater than the first level of
3 compression.
4 Is that correct?
5 A **That's what it says, yes.**
6 Q So turning back to the 6/23/2021 Office
7 Action that starts on Page 87, the examiner found
8 that Tallarico '911 anticipates that Claim 1 shown on
9 page 102; do you agree? That he found that
10 conclusion? He made that --
11 A **Yeah, that was actually a she. But yes,**
12 **she made that statement.**
13 Q Thank you.
14 A **Okay.**
15 Q And you agree that Claim 1, pending Claim
16 1 at the time, on Page 102 includes two things, both
17 a heel platform having a first height that is
18 substantially uniform from an inner edge of the sole
19 section to an outer edge of the sole section,
20 correct?
21 MR. HOUGHTON: Object to the form.
22 THE WITNESS: Well, it's an

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1 athletic shoe that has an upper section
2 and a sole section. The sole section,
3 primary elements are the heel platform
4 and the forefoot platform.
5 BY MR. BUGG:
6 Q And that heel platform is claimed as
7 having a first height that's substantially uniform
8 from an inner edge of the sole section to an outer
9 edge of the sole section?
10 A **Yes.**
11 Q And it also, at Claim 1, pending Claim 1
12 on Page 102, also requires that the heel platform is
13 constructed of a first material and the forefoot
14 platform is constructed of a second material; do you
15 agree?
16 A **Yes.**
17 Q Can we turn to Page 75 of this exhibit.
18 On 75, this says: Response to final
19 Office Action. Date, July 8th, 2021.
20 Do you see that?
21 A **Yes.**
22 Q It says in response to an Office Action

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1 dated June 23rd, 2021, you submit this response; do
2 you agree?
3 A **Yes.**
4 Q So I'll have you flip to Page 80. And
5 here it shows the amendment to the claims you made in
6 response to that Office Action. Is that a correct
7 understanding?
8 A **It appears so, yes.**
9 Q So in response to that rejection based on
10 Tallarico '911 that the examiner made, you didn't
11 argue either that the heel platform of Tallarico
12 didn't have a first material and a second material
13 that were two different materials, do you?
14 A **Sorry. What was your question?**
15 Q In response to the rejection from the
16 examiner on 6/23/2021, you amended the claims rather
17 than make an argument that Tallarico '911 failed to
18 disclose a heel platform that had a first material
19 that was different than the second material, correct?
20 A **In the Argument section?**
21 Q In the Argument section or the amendment
22 to the claims. Anywhere in that response.

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1 **A In the amendment to the claims, there's**
2 **no argument, and then -- so I'm confused. This seems**
3 **to be out of order.**
4 Q It does seem like it's --
5 **A Because the claims -- the claims go after**
6 **the first. So this is not -- this is the cover page**
7 **when we sent the Office Action in. And then the**
8 **first section after this is the amendment to the**
9 **claims. This is an authorization.**
10 **So I -- I don't know what I'm looking at**
11 **here.**
12 Q So on Page 77.
13 **A Yeah.**
14 Q So it says Remarks and Arguments.
15 **A Right.**
16 Q So it says Status of the Claims. And
17 then it says, Subsection 1: Claims 1 through 9 have
18 been rejected as being anticipated by Tallarico '911.
19 Do you agree?
20 **A Yeah, that's what this particular page**
21 **says.**
22 Q And then further down it says -- so Page

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1 78, in Paragraph -- do you see the little 3 there?
2 Do you see that?
3 **A Page 78?**
4 Q Yeah.
5 **A Yes.**
6 Q It says: Claims 1 through 9 have been
7 rejected under Section 102 as being anticipated by
8 Tallarico '911.
9 Do you agree?
10 **A Yes.**
11 Q It says: The Applicant respectfully
12 disagrees with this rejection and the reasoning
13 thereof. The Applicant has amended Claim 1 to
14 include the limitation of the forefoot platform has a
15 first thickness proximal to the heel platform and a
16 second thickness at a toe portion wherein the first
17 thickness is greater than the second thickness.
18 Do you see that?
19 **A Yes.**
20 Q And then you state: Tallarico 2 does not
21 teach or suggest such different thickness in the
22 forefoot platform. As such, Tallarico 2 does not

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1 anticipate Claims 1 through 9.
2 Do you agree?
3 **A Yes, that's what that says.**
4 Q And flipping to Page 80, that amendment
5 that's described that we just talked about is shown
6 on Page 80, correct?
7 **A It appears to be.**
8 Q So in response to the Office Action
9 remarks, you never make the argument that Tallarico
10 '911 fails to disclose a heel platform that is a
11 different material than the forefoot platform,
12 correct?
13 **A I did not address the heel platform in**
14 **this amendment. It doesn't mention the heel. So, I**
15 **mean, the argument is there. So that's what we said.**
16 Q So, similarly, the claim limitation
17 that's -- that we looked at earlier that's also shown
18 on Page 80, which is: A heel platform having a first
19 height that is substantially uniform from an inner
20 edge of the sole section to an outer edge of the sole
21 section.
22 Do you see that?

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1 **A Yes.**
2 Q You didn't argue that Tallarico '911
3 failed to disclose that claim limitation, did you?
4 **A So the argument says what it says. So to**
5 **get a patent allowed, I don't have to argue every**
6 **single point of differentiation. I have to argue a**
7 **point to get the claim allowed.**
8 Q Well, you didn't argue a point. You
9 amended the claims to get around Tallarico '911,
10 correct?
11 **A I argued with that amendment, it didn't**
12 **anticipate it, and the examiner agreed.**
13 Q Yep. So you amended the claims to
14 distinguish Tallarico '911, correct?
15 **A With respect to what I amended, yes.**
16 (Markison Deposition Exhibit No. 4
17 was marked for the record.)
18 BY MR. BUGG:
19 Q I'm having marked as Markison Exhibit 4,
20 a document produced as Athalonz 0007372. Please take
21 a look at this and let me know if you recognize this
22 document.

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1 A **I recognize it.**
2 Q What is this?
3 A **Sales brochure on our EnVe golf shoes.**
4 Q Sorry. On the EnVe golf shoe; is that
5 right?
6 A **Yes.**
7 Q And that's the shoe that's shown in the
8 middle of the front page there; is that correct?
9 A **Yes.**
10 Q Were you involved in the creation of this
11 document?
12 A **I don't recall.**
13 Q You don't know if you wrote it or not?
14 A **Well, I mean, there are certain aspects**
15 **that include stuff that I've written, but I don't**
16 **know if I actually wrote this document or not.**
17 Q So there's a paragraph that starts,
18 Athalonz' OEP technology. Can you read that
19 paragraph to yourself?
20 A **Sure. Okay.**
21 Q Do you recall writing that paragraph?
22 A **I don't recall writing it, no.**

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1 MR. HOUGHTON: Object to that
2 exhibit as foundation, scope and
3 relevance.
4 BY MR. BUGG:
5 Q Mr. Markison, were you ever interviewed
6 by Sports Illustrated?
7 A **Was I ever interviewed by Sports**
8 **Illustrated? No.**
9 Q You don't recall talking to anybody at
10 Sports Illustrated about any of your Athalonz shoes?
11 A **No. I would remember that. No.**
12 Q Do you know a -- a gentleman by the name
13 of Mike Purkey?
14 A **Mike Purkey?**
15 Q P-U-R-K-E-Y?
16 A **I do not.**
17 (Markison Deposition Exhibit No. 5
18 was marked for the record.)
19 BY MR. BUGG:
20 Q I'm going to introduce this as Exhibit 5.
21 Please take a look at that and let me know if that's
22 something you've ever seen before.

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1 A **Okay.**
2 Q Does this document look familiar to you?
3 A **Generally. I don't recall this**
4 **specifically.**
5 Q You don't recall having a conversation
6 about Athalonz shoes with anyone at Sports
7 Illustrated?
8 A **No. I'm surprised.**
9 Q So, for example, on Page 5, it says,
10 Markison explains the construction of the EnVe, and
11 then quotes you. You have no idea where those quotes
12 came from?
13 A **I mean, I've been interviewed a lot. So**
14 **those would seem like things I would say, but I don't**
15 **recall this specific interview and this specific**
16 **article. And it was six years ago.**
17 Q I understand. All right. You can put
18 that aside.
19 A **That's cool, we got talked about in**
20 **Sports Illustrated.**
21 Q I figured you would remember. Sports
22 Illustrated is a big one.

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1 A **You would think I would, but...**
2 Q I understand. You're a busy guy. You
3 have a lot of interviews.
4 I'm introducing what you included as
5 Exhibit 2014 to your declarations for the slope sole
6 patent IPRs. This is Exhibit -- at least in Exhibit
7 2014 of IPR 2024-00636.
8 A **Which patent is this for?**
9 Q So this is for IPR '636.
10 A **'291.**
11 Q Yeah, for '291. It also applies to --
12 you also submitted it for the '760 and '786. All
13 this is on the slope sole patents, if that makes
14 sense.
15 A **Okay.**
16 Q So you submitted this chart of Athalonz'
17 products. We're going to take a look at this and let
18 me know if this looks familiar.
19 A **This was submitted with our patent**
20 **owner's statement or with my declaration?**
21 Q I believe it was an exhibit to your
22 declaration. I can confirm. Either the declaration

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1 or patent owner response.
2 **A I'm pretty sure it was the patent owner's**
3 **response.**
4 Q Just for clarity, Exhibit 2014 of your
5 declaration.
6 **A Oh, okay.**
7 Q Claim charts for the '786, '291 and 760
8 Athalonz products.
9 **A Okay.**
10 Q So you understand that this was included
11 as an exhibit to your declarations, correct?
12 **A I do now, yes.**
13 Q Why did you -- why did you submit this
14 along with your declarations?
15 **A That would have been from advice of**
16 **counsel.**
17 Q Sorry. Let me repeat the question.
18 I believe what's -- what's being shown in
19 these charts is that the Athalonz EnVe golf shoe is a
20 product that practices these three patents; is that a
21 proper understanding of what's shown here?
22 **A I think that's a fair statement.**

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1 Q It's also cited in Paragraph 341 of your
2 declaration '291.
3 **A Okay.**
4 Q Just I'm going to ask you about some of
5 the things in here.
6 What's shown here on Page 2 -- oh -- Page
7 3 of the document, that's the Athalonz EnVe shoe,
8 correct, that we've seen a few times now?
9 **A This (indicating)?**
10 Q Yeah.
11 **A Yeah, that's one color layout of the**
12 **Athalonz EnVe shoe.**
13 Q Did you have any role in creating what's
14 shown throughout -- so there's some cutaways and some
15 labeling of the Athalonz EnVe shoe throughout these
16 exhibits.
17 Were you involved at all in creating
18 these images?
19 MR. HOUGHTON: Just instruct you
20 not to reveal the substance of any
21 communications, but you can answer that
22 generally yes or no.

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1 THE WITNESS: Generally, yes.
2 BY MR. BUGG:
3 Q So on Page 1, in the second paragraph, we
4 know you charted the EnVe show. There's a bunch of
5 pictures of EnVe shoe. It also says: Athalonz
6 contends that the shoes charted below are
7 representative of other Athalonz products as set
8 forth in Athalonz' infringement contentions.
9 Do you know what other Athalonz products
10 are -- according to you, practice these patents, the
11 sole slope patents?
12 **A Every product we've made practiced these**
13 **patents.**
14 Q So I happen to notice, are those the new
15 Mangrove shoes you're wearing right now?
16 **A Yes.**
17 Q Do you believe those also fall within the
18 claim limitations and practice the sloped sole?
19 **A Yes. And thank you for noticing.**
20 Q A very distinct sole on those.
21 I'll have you turn to Page 7. Sorry,
22 when I say "page," it's going to be the bottom

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1 right-hand corner page. Page 8. Do you see that?
2 **A Oh, yeah.**
3 Q We're going to be consistent through each
4 because otherwise we'll have to start renumbering.
5 **A Okay.**
6 Q So Page 8.
7 **A Page 8 of this one (indicating)?**
8 Q Yeah. So on the very bottom of that is
9 Limitation 1, subset 1F. In that box on the right,
10 it says: Athalonz' products have a first height and
11 an inside edge and outside edge of the shoe along the
12 heel section of the shoe.
13 And then continuing onto Page 9, it says:
14 For example, the EnVe has a first height of
15 20.6-milliliters on an inside edge and an outside
16 edge of the shoe along the heel section of the shoe.
17 So you agree that the -- what's shown
18 here -- and this is a cutaway of the EnVe shoe --
19 meets Limitation 1F, practices limitation 1F of the
20 '291 patent, correct?
21 MR. HOUGHTON: Object to the
22 relevance and scope.

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1 BY MR. BUGG:
2 Q That was a yes? Did I understand you?
3 **A Yes.**
4 MR. BUGG: You're objecting to
5 relevance of an exhibit that was included
6 as part of Mr. Markison's declaration.
7 BY MR. BUGG:
8 Q I'm going to have you turn to Page 14.
9 Sorry. Page 15, under Claim 2, it says: The
10 Athalonz products have the athletic positioning
11 shape, including the heel section and midfoot section
12 and a toe section, wherein the midfoot section is
13 between the heel section and the toe section, wherein
14 the heel section has the first height throughout.
15 And then it shows that in the cutaway
16 below; is that right?
17 **A That's what it shows, yes.**
18 Q And it says: The heel section has the
19 first height throughout.
20 So you believe the EnVe shoe has the same
21 first height throughout the heel section, correct?
22 MR. HOUGHTON: Objection. Scope.

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1 THE WITNESS: As it's labeled, yes.
2 BY MR. BUGG:
3 Q Can you turn to Page 28 of this exhibit.
4 So this is now referring to the '760 patent. Claim
5 1, Yee, states starting on Page 28: In the Athalonz
6 products, from inner edge out to outer edge of the
7 left shoe, the left heel area has substantially no
8 slope.
9 Continuing onto Page 29: For example, in
10 the EnVe, from the inner edge to the outer edge of
11 the left shoe, the left heel area has substantially
12 no slope as shown below.
13 So do you agree with the conclusion that
14 the heel section of the EnVe has substantially no
15 slope from the inner edge to the outer edge?
16 **A I agree with what we state here, yes.**
17 Q Similar question for Page 36. This is
18 with respect to Claim 3 of the '760 patent. It
19 states -- I'll just skip the first section so it will
20 save us a little time.
21 It says: For example, in the EnVe, the
22 heel section of the left sole comprises the heel

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1 platform that includes the surface having
2 substantially no slop from the inner edge to the
3 outer edge of the left shoe, as shown below. When
4 the left shoe is worn, the heel sports the
5 platform -- heel platform supports the left heel of
6 the wearer.
7 So one thing -- sorry. Above that -- I
8 tried to cut us some time and it didn't work.
9 So in the paragraphs directly above that,
10 I will read that: The Athalonz products have the
11 heel section of the foot platform of the left sole
12 wherein it comprises a heel platform that includes s
13 a surface having substantially no slope from the
14 inner edge to the outer edge of the left shoe and for
15 the length of the surface.
16 So do you agree that the Athalonz product
17 has a heel section that has substantially no slope
18 from the inner edge to the outer edge of the shoe and
19 for a length of the surface of the heel section?
20 **A I agree with what we wrote here, yes.**
21 Q I'll have you turn to Page 50 of this
22 exhibit. This is showing Claim Limitation 1B of the

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1 '768 patent.
2 **A Uh-huh.**
3 Q Here it states: In the Athalonz
4 products, the uniform height establishes a reference
5 slope from the outer edge to the inner edge, the
6 reference slope substantially parallel to a bottom
7 surface of the apparatus.
8 Do you see that?
9 **A Yes.**
10 Q And it says: For example, the EnVe has a
11 reference slope from the outer edge to the inner edge
12 that is substantially parallel to a bottom surface of
13 the apparatus.
14 Do you agree that the EnVe meets that
15 claim limitation?
16 **A Yes, I agree with what we said here.**
17 Q Do you agree that the substantial
18 parallel -- sorry -- the reference slope is measured
19 as being substantially parallel to the bottom surface
20 of the heel section shown on Page 50?
21 **A Well, the -- it says: Substantially**
22 **parallel to the bottom surface of the apparatus.**

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1 Q So what's shown in the figure on Page 50?
2 **A Well, it's the bottom surface -- from**
3 **that particular picture, that's the bottom surface of**
4 **that corresponding section of the heel. The**
5 **statement above says: Parallel to the bottom surface**
6 **of the apparatus.**
7 Q The only thing that's shown in the image
8 is the heel, correct?
9 **A From this perspective, it's just the heel**
10 **portion, yes. There's no picture of a forefoot**
11 **anywhere in -- on Page 50, correct. That is correct,**
12 **but there are pictures of it on other pages.**
13 Q Page 57, this is now we're in Claim 3 of
14 the '768 patent.
15 **A Sorry. Which page?**
16 Q Sorry. Page 57. So it states: For
17 example, in the EnVe, the heel platform section has a
18 uniform platform height, wherein from a front edge of
19 the heel platform to the rear edge of the apparatus,
20 the uniform platform height is the reference slope as
21 shown below.
22 Do you see that?

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1 **A Yes.**
2 Q And do you agree that the EnVe meets that
3 claim limitation as described on Page 57?
4 **A Yes, I agree with what we said here.**
5 Q And do you -- the last one.
6 Starting on Page 64, going onto Page 65,
7 this is referencing Limitation 5B of the '786 patent.
8 It states: The Athalonz products have a heel
9 platform section that has a uniform height from an
10 outer edge to an inner edge of the
11 athletic-positioning sole section and a rear edge of
12 the athletic-positioning sole section, wherein the
13 uniform height establishes a reference slope from the
14 outer edge to the inner edge, the reference slope
15 substantially parallel to a bottom surface of the
16 sole.
17 Do you see that?
18 **A Yes.**
19 Q And it just references -- rather than
20 include any other evidence, it just references
21 Limitation 1B above, correct?
22 **A Oh: See Claim 1B.**

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1 **Is that what you're referring to?**
2 Q Yeah. So the evidence is the same for
3 Limitation 1B as 5B, correct?
4 **A Yes.**
5 Q In that the EnVe shoe practices Claim 5B,
6 correct?
7 **A That's what it says here, yes.**
8 MR. BUGG: We've been going for
9 about an hour, and you tell me if you
10 want to stop. I would guess I
11 probably -- I guess, I don't know, I'm
12 hoping I can do it in one more hour, but
13 don't hold me to it, but I'll try?
14 THE WITNESS: Yeah, let's take a
15 little break.
16 (Brief pause.)
17 (Markison Deposition Exhibit No. 6
18 was marked for the record.)
19 BY MR. BUGG:
20 Q All right. So, Mr. Markison, I'm going
21 to mark as Exhibit 6, this is Exhibit A to
22 Infringement Contentions -- Supplemental Infringement

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1 Contentions that were submitted in the litigation.
2 Please take a look at this and see if
3 it's something you recognize.
4 **A So these were also for the '291?**
5 Q So this one is only for the '291.
6 **A Only for the '291.**
7 Q Yeah.
8 **A Okay.**
9 Q Is this a document you're familiar with?
10 **A Yes.**
11 Q Were you involved in creating some of the
12 images, and it shows some cutaways of the accused
13 Under Armour products in the District Court
14 litigation; is that correct? Sorry. That was a bad
15 question.
16 Do you recognize that there's images of
17 the accused products, Under Armour products, in the
18 related litigation?
19 **A Do I recognize that there are Under**
20 **Armour shoes that were accused of infringement in**
21 **this document, yes.**
22 Q Were you involved in preparing these

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1 images and the cutaways shown herein?
2 MR. HOUGHTON: I'll just give you
3 the same instruction as last time about
4 not revealing the substance of
5 attorney-client communications.
6 THE WITNESS: Generally, I was
7 involved.
8 BY MR. BUGG:
9 Q Generally you participated in the cutting
10 of the shoes?
11 MR. HOUGHTON: You can answer that
12 yes or no, but I object to the scope.
13 THE WITNESS: So could I -- did I
14 participate in the cutting of the shoes?
15 Yes, I did.
16 BY MR. BUGG:
17 Q So I'll have you turn to Page 27 of
18 Exhibit 6. Do you see that, Mr. Markison, this is
19 related to '291, Claim 1C?
20 Do you see that?
21 **A Yes.**
22 Q It says: Insole position proximal to the

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1 midsole and within the upper section.
2 Do you see that?
3 **A Yes.**
4 Q And in that first image there, it shows,
5 I think, the Curry 4 Flotro and a picture of the
6 midsole and the insole; is that correct?
7 **A Yes.**
8 Q So I'll have you turn to Page 42, same
9 exhibit. And this is now referencing Claim
10 Limitation 1E, and it states: When in combination,
11 the midsole, the insole and the bottom outsole form
12 an athletic position and shape where the athletic
13 position and shape has...
14 And then it continues. Do you see that?
15 **A Yes.**
16 Q In the images shown on Page 42 through
17 52, do you agree that the insole isn't shown in any
18 of those images?
19 MR. HOUGHTON: Object to the scope
20 and relevance.
21 THE WITNESS: So the question is,
22 with respect to Pages 42 through 52, is

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1 the insole shown?
2 BY MR. BUGG:
3 Q Right.
4 **A It is on Page 47. That's the only place**
5 **I see an insole other than when we were looking at**
6 **the previous section.**
7 Q Okay. And then following the next Claim
8 Limitation 1F, on Page 54.
9 **A Okay.**
10 Q Now, this is describing that sole shape,
11 right, where it says: A First Height of an inside
12 edge and an edge of the shoe along the heel section
13 of the shoe.
14 Do you see that?
15 **A Yes.**
16 Q And there's a chart with heel heights.
17 First Height, E-E, do you see that?
18 **A Yes.**
19 Q And there's some numbers there. Like for
20 the Charged Curry it's 20.1.
21 Do you see that?
22 **A Yes.**

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1 Q Were you involved in taking those
2 measurements?
3 MR. HOUGHTON: Same instruction
4 about privilege. You can answer yes or
5 no.
6 THE WITNESS: Yes.
7 BY MR. BUGG:
8 Q Is that millimeters? What is that
9 representing?
10 **A Yes. Yeah, it's referenced to on the**
11 **diagram.**
12 Q Okay. Thank you. So that E-E, is that
13 shown in the image above as like a heel section
14 cross-section cutaway of the shoe; is that correct?
15 **A Yeah are, the E-E in the table**
16 **corresponds to the E-E cutaway.**
17 Q Is that showing that as like those red
18 line heights? Is that what I'm looking at, those two
19 vertical red lines?
20 **A Approximately, yes.**
21 Q Approximately. So then for Limitation
22 1F, there's no other images shown, but in the

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1 preceding pages there are -- for each of the accused
2 products there's also an E-E cutaway; is that
3 accurate?
4 MR. HOUGHTON: Object to the scope,
5 relevance.
6 THE WITNESS: In the -- in the
7 figures -- I mean, sorry, on Pages 42 to
8 52 it shows essentially the same -- well,
9 let's see. Forty-two is the same.
10 Forty-three is the same. Forty-four is
11 just partial. Forty-five is the same.
12 Forty-six is partial. Forty-seven is the
13 same. Forty-eight appears to be the
14 same. Page 49 and 50 appear to be the
15 same. Page 51 doesn't have a
16 cross-section. And then Page 52 appears
17 to have the same general cross-sections.
18 BY MR. BUGG:
19 Q In any of these images where there's a
20 red line shown up and down, that's generally
21 approximately where those measurements shown in a
22 table on Page 54 to 55; is that your understanding?

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1 MR. HOUGHTON: Object to scope and
2 relevance.
3 THE WITNESS: Generally, yes.
4 BY MR. BUGG:
5 Q So just to skip through this a little
6 bit.
7 Down on Page 60 to 61 of this exhibit,
8 there's now a chart of all three measured heights of
9 each of the accused products, correct, First Height,
10 Second Height, Third Height?
11 **A Yes.**
12 Q And as described on Page 56, the accused
13 products have a Second Height in the outside edge of
14 the shoe at a toe section, and is that shown at
15 cross-section A-A of the cutaway as shown on Page 56?
16 MR. HOUGHTON: Object to scope,
17 relevance.
18 THE WITNESS: Second Height, this
19 is the -- okay. So what it says here is
20 the Curry 4 Flotro has a Second Height of
21 18.9 millimeters on the outside edge of
22 the shoe at the toe section of the shoe.

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1 BY MR. BUGG:
2 Q And that outside edge in that annotated
3 picture, I think, is showing the cutaway at A-A,
4 right?
5 MR. HOUGHTON: Objection. Scope,
6 relevance.
7 THE WITNESS: That's what this
8 diagram is showing, yes.
9 BY MR. BUGG:
10 Q And then the same thing for the inside
11 edge, which would be the Third Height as described on
12 Page 58 to 59?
13 MR. HOUGHTON: Objection to scope,
14 relevance.
15 THE WITNESS: According to this
16 document, yes.
17 BY MR. BUGG:
18 Q So I'm going to go to Page 62. This is
19 referencing Claim 2 of the '291.
20 And Claim 2 requires that the heel
21 section has a First Height throughout. Do you see
22 that on the left at the very end of Claim 2?

192

1 **A Yes.**
2 Q And then what I think it shows there on
3 the right is the Curry Flotro having that First
4 Height, what's allegedly shown as throughout the heel
5 section; is that correct?
6 MR. HOUGHTON: Objection. Scope,
7 relevance.
8 THE WITNESS: Yes, those two yellow
9 arrows point to different spots in the
10 cross-section saying First Height.
11 BY MR. BUGG:
12 Q Is there any measurements that were
13 included as to what that First Height is at those two
14 measurement points?
15 MR. HOUGHTON: Objection. Scope,
16 relevance.
17 THE WITNESS: I don't recall.
18 BY MR. BUGG:
19 Q I'll have you turn to the next Page, 63.
20 It shows a picture of the Charged Curry and the Curry
21 10.
22 Do you see that?

193

1 **A Yes.**
2 Q You see there's no cutaway of the shoe
3 sole; is that right?
4 MR. HOUGHTON: Objection. Scope,
5 relevance.
6 THE WITNESS: On the two figures --
7 I'm sorry. In the two figures on Page
8 63, there is no cutaway of the sole
9 assembly.
10 BY MR. BUGG:
11 Q And no measurements were provided, right?
12 MR. HOUGHTON: Objection. Scope,
13 relevance.
14 THE WITNESS: Correct.
15 BY MR. BUGG:
16 Q So how do you know they infringe?
17 MR. HOUGHTON: Objection. Scope,
18 relevance.
19 THE WITNESS: What page is that
20 again? Page 63.
21 BY MR. BUGG:
22 Q Sixty-three?

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1 **A So we're talking about the Curry Charge,**
2 **Curry 10. We're on Page 60 -- I'm sorry. Page 36,**
3 **we show some cutaways of the Curry 10, as well as the**
4 **Curry Charged. So we did -- we did do -- you know,**
5 **dissected those shoes similar to the way we did the**
6 **Curry 4 Flotro.**
7 **BY MR. BUGG:**
8 Q And there's no measurement or cutaways
9 provided in respect there to Claim 2, correct?
10 MR. HOUGHTON: Objection. Scope,
11 relevance.
12 THE WITNESS: I -- I don't know
13 this document well enough to answer that
14 off the top of my head. Now, Page 70 has
15 dimensions for the Curry Charged, Curry
16 10, Curry 11, Curry Splash, Flo Dynamics,
17 HOVR Drive, HOVR Highlight Ace, Flo FUTR
18 X and Drive Pro SL.
19 BY MR. BUGG:
20 Q So where on Page 7 does it show that the
21 heel section of those shoes has the same height
22 throughout the heel?

195

1 MR. HOUGHTON: Objection. Scope,
2 relevance.
3 THE WITNESS: So on Page 72 it
4 talks about the First Height for each of
5 those shoes. And then with reference
6 to -- that was Page 72.
7 So with reference to Page 60, the
8 First Height is shown to correspond to
9 the front edge of the heel section.
10 BY MR. BUGG:
11 Q Sorry. Say that again. On Page 60?
12 **A Yeah.**
13 Q So the First Height is the front edge of
14 the heel section?
15 **A Well, in this diagram, you know, but it's**
16 **measured as shown in those other figures.**
17 Q You already stated, I think, that the
18 First Height is shown at cross-section E-E
19 previously, correct?
20 **A Well, E-E, and then also in Figure 62 in**
21 **a lateral -- in a heel-to-toe direction.**
22 **Longitude -- longitude direction of the shoe.**

196

1 Q For the Curry 4, correct?
2 **A Yes.**
3 Q That's not shown for any of the others
4 you've cited, correct?
5 MR. HOUGHTON: Objection as to
6 relevance.
7 THE WITNESS: The dimensions are
8 shown. We're shown cutaways of this. I
9 just -- I'd have to scour this document
10 to see if we had support of it.
11 BY MR. BUGG:
12 Q Would you agree with me on Page 69, that
13 the First Height is -- we agree that previously was
14 shown at E-E, correct?
15 **A On page -- yeah, so the first height --**
16 **let me go back.**
17 **On Page 54 we talk about a First Height**
18 **of an inside edge and an outside edge of the shoe**
19 **along a heel section of the shoe. So that's the E-E**
20 **cut diagram as shown in Figure 54.**
21 **And then Claim 2 says -- the last Wherein**
22 **clause of Claim 2 on Page 62 is: Wherein the E**

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1 section has the First Height throughout. So that's
2 why that diagram is there.
3 But with respect to Claim 1, it's the E-E
4 section, and with Claim 2 we introduce the First
5 Height in the heel-to-toe direction of the heel.
6 Q So if you have the First Height
7 throughout, would that be with reference to the image
8 on Page 69, approximately from E-E to D-D?
9 MR. HOUGHTON: Objection. Scope,
10 relevance.
11 THE WITNESS: Well, with what this
12 document shows, I can't say that for
13 every shoe, but it's -- for the Curry 4
14 Flotro, it's E-E in the cross-section.
15 And it looks like E-G in the heel-to-toe
16 direction on Page 62.
17 I don't see where we have the same
18 cutaways for all of the other shoes. But
19 these are labeled as Force Height, so the
20 force height corresponds to, at a
21 minimum, E-E.
22

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1 BY MR. BUGG:
2 Q So I would keep out this Exhibit A, and
3 just keep it on Page 70 with that chart showing the
4 different heights, okay?
5 (Markison Deposition Exhibit No. 7
6 was marked for the record.)
7 BY MR. BUGG:
8 Q I'll mark this Markison Exhibit 7. This
9 is Exhibit B to Athalonz' supplemental infringement
10 contentions in the District Court litigation.
11 So similar to the document you were just
12 looking at, however, this is with reference to the
13 '760 patent. Does that make sense?
14 A Yes.
15 Q So I'll have you turn to Page 33 of this
16 document, Exhibit 7. This appears it's referencing
17 Claim 1D.
18 Do you see that?
19 A Yes.
20 Q This is the '760 patent. Claim 1D says:
21 Wherein a foot platform to the left sole provides an
22 athletic positioning of a left big toe area in a

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1 lower position than the heel area of the left shoe,
2 and then a lower position than an outer small toe
3 area of the left shoe, wherein...
4 And then it continues. Do you see that?
5 A Yes.
6 Q I'll have you flip to the next page, Page
7 34. Do you see that there?
8 A Yes.
9 Q So Page 7. Turning back to Exhibit 6,
10 I'll have you go back to Page 60 to 61. And I'd like
11 you to compare the chart in these two exhibits.
12 Let me know if you think -- or whether
13 these measurements are the same for each of the
14 accused products for each of the claim limitations?
15 A So what page on this?
16 Q Yeah, sorry. So Page 34 of Exhibit 7.
17 A Yeah.
18 Q Page 60 to 61 of Exhibit 6.
19 MR. HOUGHTON: I'll object to the
20 scope and relevance of this document and
21 these questions, and to foundation.
22 THE WITNESS: The table, it looks

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1 to be identical, other than the most
2 recent exhibit also includes -- no.
3 Curry Splash. No. No, it appears to be
4 identical.
5 BY MR. BUGG:
6 Q So when the heights of the combination of
7 the midsole, insole and outsole of Claim 1 of the
8 '291 patent were measured and the positioning
9 provided by the forefoot platform described in Claim
10 1 of the '760 patent, the same -- the accused
11 products were measured in the same places and the
12 same measurements were provided; is that right?
13 MR. HOUGHTON: Object to scope and
14 relevance.
15 And I actually want to caution the
16 witness not to reveal the substance of
17 any attorney-client privilege. I don't
18 know that there's an answer to that that
19 avoids that, so I'm going to instruct you
20 not to answer.
21 THE WITNESS: Upon advice of
22 counsel, I'm not going to answer.

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1 BY MR. BUGG:
2 Q So on Page 35 of Exhibit 7, Limitation
3 1E, it says: From inner edge to outer edge of the
4 left shoe, the left heel area has substantially no
5 slope.
6 Do you see that?
7 **A Yes.**
8 Q For all the accused products, it shows a
9 cutaway of the accused product at that E-E
10 cross-section, correct?
11 **A The cutaways are on Pages 35, 36, 37, 38,**
12 **39, 40 and 41, all referencing E-E.**
13 Q That's true of the HOVR Drive 2 that's
14 shown on Page 39 and 40, right?
15 MR. HOUGHTON: Objection to scope,
16 relevance.
17 THE WITNESS: Yes.
18 BY MR. BUGG:
19 Q Turn to Page 53 of this exhibit. That
20 shows the bottom, well, the cutaway on the left on
21 the HOVR Drive 2, and then the bottom of the HOVR
22 Drive 2, correct?

202

1 MR. HOUGHTON: Objection. Scope
2 relevance.
3 THE WITNESS: Sorry. Which page?
4 BY MR. BUGG:
5 Q Sorry. On Page 53.
6 **A Yeah, the label says: HOVR Drive 2.**
7 Q Do you know where the E-E cross-section
8 was cut with reference to the bottom of the sole for
9 the shoe?
10 MR. HOUGHTON: Objection. Form,
11 scope and relevance.
12 THE WITNESS: I don't recall
13 exactly.
14 BY MR. BUGG:
15 Q Does it look like it was cut somewhere
16 like there (indicating)? Does that look accurate?
17 In between the cleats on the heel portion of the
18 shoe?
19 MR. HOUGHTON: Objection. Scope,
20 relevance, form.
21 THE WITNESS: I honestly can't tell
22 from those two diagrams, and I don't

203

1 specifically recall.
2 BY MR. BUGG:
3 Q So looking at this image on the left, on
4 that E-E cut, you'll see cleats in a cut, correct?
5 MR. HOUGHTON: Objection. Scope,
6 relevance.
7 THE WITNESS: What are you pointing
8 to?
9 BY MR. BUGG:
10 Q So here, so if you look right here
11 (indicating). Right?
12 **A Yeah.**
13 Q You don't see any cutaway of like those
14 bottom cleats on section E-E, do you?
15 MR. HOUGHTON: Objection. Scope,
16 relevance.
17 THE WITNESS: I can't tell from
18 this particular angle of that photo
19 exactly where E was cut. But I don't
20 see -- it's hard to say because there's
21 black in there of different shape. I
22 just can't say exactly with any certainty

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1 where E-E was cut with respect to the
2 bottom.
3 BY MR. BUGG:
4 Q But does it appear to you to include a
5 cutaway of any of those four cleats on the bottom,
6 correct?
7 MR. HOUGHTON: Objection. Scope,
8 relevance.
9 THE WITNESS: I'm sorry. I got
10 it -- I lost my train of thought. Please
11 ask the question again.
12 BY MR. BUGG:
13 Q To me, it looks like E-E is cut almost
14 through the middle of that Under Armour logo, in
15 between the cleats. Right? You can almost see that
16 black section in the middle on the left-hand side.
17 Anyway, I agree, I don't know exactly where it's cut.
18 I don't think it includes any -- I think it was cut
19 between those four cleats in the heel.
20 I'm just trying to figure out if you
21 remember if that's true or not. That's all.
22 MR. HOUGHTON: Objection. Form,

205

1 scope, relevance.
2 THE WITNESS: I don't specifically
3 recall.
4 (Markison Deposition Exhibit No. 8
5 was marked for the record.)
6 BY MR. BUGG:
7 Q I'm going to mark this as Markison
8 Exhibit 8. This is Exhibit C to your supplemental
9 infringement contentions. This is a similar document
10 that we were just looking to -- looking at. This is
11 with respect to the '786 patent. So I have one
12 question on this one.
13 MR. HOUGHTON: I'll object to the
14 scope, relevance, foundation to the
15 exhibit.
16 BY MR. BUGG:
17 Q So I'll have you flip to Page 45 of this
18 exhibit, 45 to 46. I'm going to have you look at
19 that chart again. And you can compare that chart to
20 the chart on Page 60 of Exhibit 6.
21 Let me know if you agree that those
22 measurements and heights of the accused products are

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1 the same.
2 **A Sorry. Exhibit 6, which patent is that?**
3 Q Exhibit 6 was -- it says Exhibit A on the
4 front.
5 **A Okay.**
6 Q Page 60. And Exhibit 8 says Exhibit C on
7 the front, Page 45.
8 MR. HOUGHTON: Object to the scope
9 and relevance.
10 THE WITNESS: There appears to be a
11 small discrepancy between the two tables
12 with respect to the HOVR Drive. I think
13 it's just typos since the other two
14 tables were consistent.
15 BY MR. BUGG:
16 Q So is it your understanding that when the
17 midfoot section -- sorry -- the angled support
18 platform described in Claim 1E of '786 patent was
19 measured, the same measurements provided as proof of
20 infringement as for the heights of the combination of
21 the midsole, insole and outsole of Claim 1 of the
22 '291 patent and the positioning provided by the foot

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1 platform described in Claim 1 of the '760 patent.
2 MR. HOUGHTON: Object to form.
3 Object to scope and relevance. I'll also
4 object because that calls for
5 attorney-client privileged information
6 and I instruct you not to answer.
7 THE WITNESS: On advice of counsel,
8 I'm not going to answer.
9 BY MR. BUGG:
10 Q You agree the tables are the same or
11 should be the same despite there being possible
12 typos?
13 MR. HOUGHTON: Objection to scope.
14 THE WITNESS: Yes, the tables have
15 very similar data.
16 (Markison Deposition Exhibit No. 9
17 was marked for the record.)
18 BY MR. BUGG:
19 Q This is Markison Exhibit 9. This is
20 Exhibit D to supplemental infringement contentions
21 served in this court litigation. And this is
22 referenced to the '456 patent, you can see on Page 2

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1 of the document?
2 MR. HOUGHTON: Object to the scope
3 and relevance of the exhibit and its
4 foundation.
5 BY MR. BUGG:
6 Q Turn to 41 of this exhibit. Page 41,
7 that's is referencing '456 Claim Element 1C.
8 Do you see that?
9 **A Yes.**
10 Q And that claim requires that the heel
11 platform is constructed of a first material.
12 Do you see that?
13 **A Yes.**
14 Q Turn to Page 61.
15 **A Sixty-nine?**
16 Q Sixty-one. Page 61, that's referencing
17 Claim Element 1E of the '456 patent. And here, among
18 other things, it's disclosing the forefoot platform
19 constructed of a second material.
20 Do you see that?
21 **A Yes.**
22 Q Are you aware anywhere in this document

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1 where the suggestion or express statement that the
2 second material must be different than the first
3 material in these accused products?
4 MR. HOUGHTON: Objection. Scope,
5 relevance, foundation.
6 THE WITNESS: Am I aware of
7 anywhere in this document? I'm sorry.
8 Would you please --
9 BY MR. BUGG:
10 Q Yeah, sure. Where is there any evidence
11 that -- so I believe in your declaration it's your
12 position that the first material of the heel platform
13 has to be a different material than the second
14 material in the forefoot platform; is that right?
15 MR. HOUGHTON: Objection to form.
16 THE WITNESS: Well, for this
17 particular claim?
18 BY MR. BUGG:
19 Q Yes. Claim 1 of '456.
20 **A So how we stated it -- so how I stated it**
21 **in the declaration for the '456 patent is how I**
22 **interpret the first and second materials.**

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1 Q Yeah, this isn't supposed to be a memory
2 test. You can, by all means, consult your
3 declaration.
4 **A '456. So with respect to the '456 -- so**
5 **make sure I'm at the right section.**
6 **In my declaration on Page 43, Paragraph**
7 **100 is where -- Paragraph 105 is the first and second**
8 **materials.**
9 Q In those paragraphs do you suggest that
10 the first and second are the same?
11 **A Yeah, so Paragraph 101, I say: The terms**
12 **First and Second Material would be understood by a**
13 **person of ordinary skill in the art to refer to two**
14 **distinct materials, not the same material.**
15 Q Again, my question is, when you're
16 attempting to show infringement, does it suggest
17 anywhere in these infringement contentions that the
18 first material in the accused products has to be
19 different than the second material?
20 MR. HOUGHTON: Objection to
21 foundation, scope and relevance.
22 THE WITNESS: Sorry. Could you

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1 state the question again? I'm not trying
2 to be obstinate. I just --
3 BY MR. BUGG:
4 Q That's okay. It's been a long day
5 already.
6 **A Yeah.**
7 Q So in the infringement contentions that's
8 Exhibit 9.
9 **A Yeah.**
10 Q Is there any suggestion or statement that
11 the second material has to be a different material
12 than the first material in the Under Armour accused
13 products?
14 MR. HOUGHTON: Objection.
15 Foundation, relevance.
16 THE WITNESS: Yeah, the claims
17 itself say for a first material and a
18 second material.
19 BY MR. BUGG:
20 Q So aside from the claim language that you
21 repeat, is there anywhere that suggests those
22 materials have to be different from one another?

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1 MR. HOUGHTON: Objection.
2 Foundation, scope and relevance.
3 THE WITNESS: I think the claims
4 saying the second material having a
5 grading of -- gradient compression factor
6 speaks -- in the materials speaks for
7 itself.
8 BY MR. BUGG:
9 Q So when you were doing the analysis, did
10 you actually determine what the materials were in any
11 of these accused products in the heel and the
12 forefoot?
13 MR. HOUGHTON: Objection to the
14 extent that question calls for
15 attorney-client privileged information.
16 If it does, I instruct you not to answer.
17 THE WITNESS: On advice of counsel,
18 I won't that question.
19 BY MR. BUGG:
20 Q Do you know if any of the accused
21 products have different material in the heel and the
22 forefoot?

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1 MR. HOUGHTON: Objection. Scope,
2 relevance.
3 THE WITNESS: I do know. You know,
4 we've got 200 some pages where it says
5 that we believe the Under Armour shoes
6 meet the conditions of the claims for the
7 '456 patent. So while I don't have
8 immediate recall, I trust the documents
9 that have been put together demonstrates
10 that.
11 BY MR. BUGG:
12 Q So you trust that these documents
13 demonstrate that each of the accused products have a
14 different material in the heel and the forefoot?
15 MR. HOUGHTON: Objection. Scope,
16 relevance, and foundation.
17 THE WITNESS: Yeah, I stand by our
18 document.
19 (Markison Deposition Exhibit No. 10
20 was marked for the record.)
21 BY MR. BUGG:
22 Q This is Markison Exhibit 10. Take a look

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1 at this document. I don't think you've ever seen it
2 before, but just take a look at it and I'm going to
3 ask you some questions.
4 A It's hard to read.
5 MR. HOUGHTON: I object to the
6 foundation, scope and the relevance of
7 the document.
8 BY MR. BUGG:
9 Q So throughout your history at Athalonz,
10 have you seen shoe schematics like the one in Exhibit
11 10 before?
12 A Have I seen blueprints of shoes before;
13 is that your question?
14 Q Yes.
15 A I have.
16 Q Do you understand, you know, what these
17 different images are showing for the specific Under
18 Armour shoe shown on Exhibit 10?
19 MR. HOUGHTON: Objection. Scope,
20 relevance.
21 THE WITNESS: I'm having a really
22 hard time reading this document. Even

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1 with my glasses I'm like 20/35, 20/40
2 with my vision, so it's hard to read this
3 small print. But, I mean, I can --
4 BY MR. BUGG:
5 Q Let me ask you a question.
6 So do you see that there's some cutaway
7 cross-section? Right? So the top left is Section B
8 to B prime. Do you see that? Top left of the
9 drawing here.
10 Do you see that B-B prime?
11 A Can I take a picture and blow it up?
12 Q Yeah, if that will help you, by all
13 means. Yeah, this isn't supposed to be an eye test.
14 I apologize.
15 A I've never had good eyesight, even when I
16 was still wearing glasses when I was a kid.
17 And then, that's a cross-section of what?
18 Q So it's -- do you see that it says
19 Cross-section B-B Prime?
20 A Yes.
21 Q So I hate to make you do this, but for
22 each of these there are a few other cross-sections.

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1 There's Cross-section C-C Prime shown here
2 (indicating).
3 A Okay. Do you want me to do these ones,
4 too?
5 Q Yeah. Go ahead. And for each of the
6 ones on the bottom, starting from left to the right,
7 Section D-D Prime, E-E Prime and F-F Prime,
8 respectively.
9 A Okay.
10 Q So I'll point here, there's a material
11 listing here. And if you can't read that, maybe
12 you'll blow that up too.
13 And do you see there's a midsole and it's
14 showing some cross hatching there?
15 MR. HOUGHTON: Objection. Scope,
16 relevance.
17 THE WITNESS: It came out really
18 fuzzy. I mean, if you're telling me
19 that's midsole, I mean, I can't disagree,
20 but I can't read it either.
21 BY MR. BUGG:
22 Q I'll represent to you that it says that

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1 left to right crosshatch reads Midsole, and then
2 Material says IME DA 46 plus or minus 3.
3 So my question is, for each of the
4 cross-sections that you blew up, does it show the
5 midsole being made of the same material?
6 MR. HOUGHTON: Objection. Scope,
7 relevance, foundation.
8 THE WITNESS: It keeps rotating on
9 me. It appears that each of these
10 cross-sections have hash marks, or these
11 have the hash that seem similar to what's
12 in this table.
13 BY MR. BUGG:
14 Q So it wasn't meant to be an eye test. I
15 apologize.
16 **A I fail.**
17 Q I'm not going to ask you anymore
18 questions about that document, so put that aside.
19 **A Good. That was giving me a headache.**
20 Q So this is a document included as Exhibit
21 2013 to I think all of your IPRs. It's definitely
22 Exhibit 2013 to IPR 2024-636. Let me know if you

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1 recognize this document.
2 **A I don't specifically recall it. It**
3 **wasn't that long ago.**
4 Q Do you know kind of the background or the
5 history of how this article or this exhibit came to
6 be?
7 **A So how this article came to be, was that**
8 **the question?**
9 Q Yeah.
10 **A So we -- we, Jeremiah Johnston, he**
11 **submits -- he does most of the marketing, working**
12 **with some outside firms. And I'd have -- I don't**
13 **recall them off the top of my head because we keep**
14 **changing.**
15 **But he solicits influencers and golf**
16 **magazines to review our shoe and then write our**
17 **response, so I'm assuming that this is from that.**
18 Q Who is the individual you mentioned?
19 **A Jeremiah Johnston.**
20 Q What's his role?
21 **A He's a director of -- well, right now he**
22 **wears a lot of hats. So he's doing marketing, but**

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1 **also director of R&D and shoe development.**
2 Q So I'll have you turn back to your '291
3 declaration, which is probably close to the bottom.
4 Do you have that?
5 **A Yes.**
6 Q I'll have you turn all the way to the end
7 here, almost to the end, Paragraph 358. Well, so
8 this section labeled Copying really goes from 352 to
9 358.
10 Do you see that?
11 **A Yes.**
12 Q And can you refresh your recollection?
13 Go ahead and read those pages to yourself.
14 So is it your conclusion, as stated in
15 Paragraph 59, you provide evidence of copying of
16 Athalonz' technology by Under Armour's accused
17 products; is that right?
18 **A I'm sorry. One more time with the**
19 **question. I apologize.**
20 Q Yeah. So in this section of your
21 declaration, you conclude that you had provided
22 evidence of copying by Under Armour of Athalonz'

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1 patented technology.
2 Is that a proper conclusion?
3 **A So in Paragraph 358, we say: Under**
4 **Armour never purchased a license to Athalonz' patents**
5 **or technology. Instead, Armour began leasing its own**
6 **shoes that implemented the Athalonz positioning**
7 **technology claimed in the '291 patent.**
8 Q So do you provide any evidence of the
9 accused or the -- the allegedly copying Under Armour
10 products as practicing the claims of the '291 patent?
11 **A That was all the documents we just looked**
12 **at.**
13 Q The document that your counsel objected
14 to being irrelevant, I believe, right? Sorry.
15 **A I don't know how to answer.**
16 Q Those documents weren't included as part
17 of your declaration, correct?
18 **A Well, I thought -- let's see. Claim**
19 **charts. Am I looking at the right one? '291. Claim**
20 **charts were 8-6.**
21 **So, no. So those exhibits, those**
22 **exhibits we just looked at -- I forget which ones --**

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1 **but, you know, that was what we had included, along**
2 **with my declaration as Exhibit 2014.**
3 Q So I'll have you look back at Exhibit
4 2014. And it has a big Exhibit F on the front.
5 **A Okay.**
6 Q So take a look at Exhibit 2014. What's
7 shown in Exhibit 2014 is the Athalonz EnVe golf
8 shoes, correct?
9 **A Oh, you're correct.**
10 Q So no evidence was provided showing the
11 design of the Under Armour shoes with your
12 declaration; is that right?
13 **A With respect to the declaration. So**
14 **those exhibits we went through, these were part of**
15 **the litigation proceedings and that part of the IPR.**
16 Q Right.
17 **A Okay. I think that's accurate.**
18 Q So your conclusion that evidence of
19 copying was provided has no technical analysis of the
20 Under Armour products, correct?
21 **A Well, in this particular document, no,**
22 **but in these documents that accompanied the**

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1 **complaints, yes.**
2 Q And those aren't part of the record here
3 until I introduced them today, correct?
4 MR. HOUGHTON: Objection to form.
5 THE WITNESS: Well, these documents
6 are. The PowerPoint presentation that I
7 provided to Under Armour is.
8 BY MR. BUGG:
9 Q And in that PowerPoint presentation you
10 disclosure your, I believe, athletic-positioning
11 technology and the patents, correct?
12 **A Yes.**
13 Q There's no analysis in that PowerPoint
14 presentation of the Under Armour shoes, correct?
15 **A In that deck? No, this was done in 2013,**
16 **2014. Let's see. We don't have a specific date in**
17 **here of when we first noticed Under Armour using our**
18 **technology.**
19 Q Do you know who the specific designers of
20 the accused Under Armour products are at Under
21 Armour?
22 **A My primary contact there was Kevin**

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1 **Culley. I don't -- I don't recall his specific**
2 **title, but he was my primary contact in 2013, 2014.**
3 **We had numerous meetings with the design**
4 **team. I forget who the lead designer was. He's no**
5 **longer at the company. And then there were several**
6 **conversations with Kevin Culley subsequent -- right**
7 **around 2020 and 2021, I believe, maybe even 2022.**
8 Q Did any of those conversations involve
9 designing of the accused Under Armour product?
10 **A To my recollection, they were primarily**
11 **to still try and do a business deal about licensing**
12 **or buying the patents.**
13 Q I'll show you -- we're getting close to
14 the end here, I promise.
15 Go back to the '760 patent. Take a look
16 at the claims at the end. Look at Claim 6. Go ahead
17 and read Claim 6.
18 **A Do you want me to read it out loud or to**
19 **myself?**
20 Q To yourself.
21 **A Okay.**
22 Q So Claim 6 depends on Claim 1, right?

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1 **A It actually depends on Claim 5.**
2 Q Are you in the '768 patent?
3 **A Oh, '768.**
4 Q Yeah, sorry. Those two always get me
5 mixed up. I pull the wrong one every time.
6 **A Yeah, we had '762.**
7 Q I'm fully aware.
8 **A So as a point of clarification, claim 6**
9 **was not one of the claims I was asked to review in my**
10 **declaration.**
11 Q Okay. Did you draft Claim 6?
12 **A Yes.**
13 Q Can you review Claim 6 for me?
14 **A Okay.**
15 Q So Claim 6 depends on Claim 1, correct?
16 **A Yes.**
17 Q And it states: The first and second
18 materials are constructed of the same or one or more
19 materials, right?
20 **A Yes, that's what it says.**
21 Q So you agree that the first and second
22 material can be made of one singular material that's

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1 the same?
2 **A Same of one or more materials. As far as**
3 **the particular materials go, yes, but they still have**
4 **different purposes. Because the first material in**
5 **Claim 1 has a first compression factor and it's part**
6 **of the heel, and then the second material has a**
7 **gradient compression factor and it's part of the**
8 **forefront.**
9 Q So yes or no? Do you agree that the
10 material in the heel can be the same as the material
11 in the forefoot described in Claim 1?
12 MR. HOUGHTON: Object to form.
13 THE WITNESS: The material
14 composing the first material of the claim
15 and the second material of the claim
16 could be of the same material.
17 BY MR. BUGG:
18 Q So that's yes?
19 **A Yes.**
20 Q The last -- I think the last question on
21 the final document, which is the '291 declaration.
22 Hopefully we'll be done.

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1 MR. HOUGHTON: Is this going to be
2 more than five minutes? Because it's a
3 little over an hour.
4 MR. BUGG: It shouldn't be.
5 BY MR. BUGG:
6 Q Do you have it?
7 **A Yes.**
8 Q Turn to Paragraph 77 of the '291
9 declaration, Exhibit 2008 to IPR 2024-637.
10 **A You said Paragraph 77?**
11 Q Yeah.
12 **A Okay.**
13 Q This is describing athletic positioning
14 and shape. Do you see that?
15 **A Yeah.**
16 Q In Paragraph 77, you state: The term
17 athletic positioning and shape would be understood by
18 a person skilled in the art to be a sole shape that
19 has -- that provides an athletic positioning which
20 requires in this context that the heel section is
21 higher than the toe section and the outside edge of
22 the toe section higher than the inside edge of the

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1 toe section.
2 Do you see that?
3 **A Yes.**
4 Q So in there you state: Which requires in
5 this context.
6 What do you mean by "in this context"?
7 **A With respect to athletic positioning.**
8 Q So is athletic positioning -- the
9 athletic positioning term, that would be generally
10 understood by a person skilled in the art?
11 **A Not through its ordinary meaning, but**
12 **through the teaching of the specification, yes.**
13 Q Okay. Let's break that out a little bit.
14 So what -- what in your mind does
15 athletic positioning mean in the ordinary context?
16 **A In ordinary terms?**
17 Q Yeah. You distinguished between what was
18 taught in the patents versus -- I think you used
19 ordinary or something else.
20 **A Well, ordinary meaning, I'm not aware of**
21 **any ordinary meaning of athletic positioning. I'm**
22 **aware of, you know, what each term means**

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1 **individually. And then there's athletic position,**
2 **which is different from athletic positioning.**
3 Q So would a person skilled in the art
4 understand an athletic position to be the same thing?
5 MR. HOUGHTON: Object to form.
6 THE WITNESS: So -- well, you know,
7 talking about the ordinary meaning
8 outside of what the patent teaches I
9 don't think is appropriate. The patent
10 teaches athletic position to be -- let's
11 see. Where did we talk about it? Oh,
12 that's Paragraph 79. And then athletic
13 positioning is what the shoe does to put
14 the athlete in the athletic position.
15 BY MR. BUGG:
16 Q In the structure of an
17 athletic-positioning sole section change, does it
18 always have to have the characteristics you describe
19 in these paragraphs?
20 **A This is the -- the general definition of**
21 **athletic positioning shape or athletic positioning of**
22 **Paragraph 77 is that is there -- I mean, I think the**

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1 **words speak for themselves in Paragraph 77.**
2 Q Do you agree that athletic positioning
3 places more weight of the wearer of the shoes on the
4 inside of the legs and feet than the outside?
5 **A When somebody is wearing our Athalonz**
6 **shoes and they get into an athletic stance, yes,**
7 **there will be more weight on the inside part of the**
8 **shoes than on the outside part of the shoes, and a**
9 **little bit more weight in the forefoot than in the**
10 **heel. That's kind of the ideal athletic position.**
11 MR. BUGG: Could we take a short
12 break to make sure we don't have anymore
13 questions? We may be done for the day.
14 THE WITNESS: Okay.
15 MR. BUGG: So just give me five
16 minutes and we'll continue.
17 (Brief pause.)
18 MR. BUGG: No further questions,
19 Mr. Markison. Thank you for your time
20 today. Pass the witness.
21 MR. HOUGHTON: I just have a few
22 questions.

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1 EXAMINATION
2 BY MR. HOUGHTON:
3 Q Mr. Markison, you were asked a long time
4 ago about whether you had any personal interest in
5 the patents that are involved in the IPRs.
6 Do you remember that?
7 **A Yes.**
8 Q Are you able to give an objective opinion
9 as a person of ordinary skill in the art as an expert
10 in these proceedings?
11 **A Yes.**
12 Q Can you explain why?
13 **A Yes. So I have been involved in shoe**
14 **design since late 2010, early 2011 to present day.**
15 **So I've been involved in all aspects of the design,**
16 **manufacture. So I have, you know, 14 years of**
17 **experience now.**
18 Q And does the fact that you have some
19 personal interest in the patents make you biased?
20 **A No. I mean, I'm obligated as an attorney**
21 **and as a member of the patent bar to represent -- you**
22 **know, act ethically.**

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1 Q Do you take that seriously?
2 **A Absolutely.**
3 Q Have you ever had any kind of ethics
4 complaints made about you?
5 **A No.**
6 Q How long have you been practicing as a
7 patent lawyer?
8 **A A patent agent since '89, a patent**
9 **attorney since '93.**
10 Q You were asked about the Kim and the
11 Ruben references, if the cleats were not part of the
12 shoe.
13 Do you remember that?
14 **A Yes.**
15 Q And you mentioned briefly that that would
16 defeat the purpose of the inventions.
17 Do you recall that?
18 **A Yes.**
19 Q Can you explain what you meant by that?
20 **A Yeah. Well, Ruben and Kim are very**
21 **similar pieces of art. Both are dealing with when**
22 **you're on hard, flat ground, they want the shoe to be**

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1 **parallel to the ground, and only on soft ground does**
2 **it tip inward with the shoe. So if you remove the**
3 **cleats, then you defeat the purpose of having it flat**
4 **on flat ground or hard ground.**
5 Q And you were asked about the first and
6 second material in the '768 patent.
7 Do you remember that?
8 **A Yes.**
9 Q Is it your opinion that the first and
10 second material can be the same material?
11 MR. BUGG: Objection. Vague.
12 You can answer.
13 THE WITNESS: Well, they're -- in
14 the claims, they're different, but they
15 could be constructed of a same material
16 like a chair and a table could both be
17 made of wood, but they're clearly
18 different things.
19 MR. HOUGHTON: No further questions
20 is.
21 MR. BUGG: So follow up to that
22 last line of questioning.

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CONTINUED EXAMINATION
BY MR. BUGG:
Q So you said -- let me understand what you said. Previously you stated expressly that the first material and the second material can be the same material in the '768 patent; is that now -- are you now changing your testimony?
MR. HOUGHTON: Objection to form.
THE WITNESS: If I -- what I -- what I said or what I believe I said and what's in the declaration is they could be constructed of the same material.
BY MR. BUGG:
Q So what's the difference between being the same material and being constructed of the same material?
A Well, like the chair and the table example. They're both constructed of wood but have substantially different purposes.
Q So can the heel platform in the '768 patent be instructed of the same EVA material as the forefoot platform?

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A Providing it meets the other limitations of the claim, yes.
MR. BUGG: No further questions.
MR. HOUGHTON: Okay.

(Thereupon, the deposition was concluded at approximately 5:15 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
I, Tanya L. Verhoven-Page, Reporter and Notary Public within and for the State of Georgia do hereby certify:
That Timothy Markison, the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.
I further certify that the adverse party, Petitioner, was represented by counsel at the deposition.
I further certify that the deposition of Timothy Markison occurred via Zoom conference (Tempe, Arizona), on Tuesday, March 18, 2025, commencing at 8:57 a.m. to 5:15 p.m.

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I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of March, 2025.
My commission expires:
April 31, 2026

NOTARY PUBLIC IN AND FOR THE STATE OF GEORGIA

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