Transcript of Grant Delgatty

Date: December 19, 2024
Case: Under Armour, Inc. -v- Athalonz, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

UNDER ARMOUR, INC.,

Petitioner,

v.

ATHALONZ, LLC,

Patent Owner.

_____

IPR2024-00636 (Patent 10,674,786 B2)

IPR2024-00637 (Patent 11,013,291 B2)

IPR2024-00638 (Patent 11,064,760 B2)

IPR2024-00639 (Patent 11,375,768 B2)

IPR2024-00640 (Patent 11,510,456 B2)

_____

Deposition of GRANT DELGATTY

Conducted Virtually

Thursday, December 19, 2024

11:17 a.m. Eastern Standard Time

Job No.: 563286

Pages: 1 - 127

Reported By: Michelle Keegan, RMR, CRR, CSR

Deposition of GRANT DELGATTY, conducted virtually, before Michelle Keegan, Registered Merit Reporter and Notary Public in and for the Commonwealth of Massachusetts.

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A P P E A R A N C E S

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C O N T E N T S

EXAMINATION OF GRANT DELGATTY PAGE

By Mr. Houghton 5

E X H I B I T S

(Attached to transcript.)

DELGATTY DEPOSITION EXHIBITS PAGE

Exhibit 2020 Illustration, "Foot Supination and Pronation," one page without Bates numbering 115

PREVIOUSLY MARKED EXHIBITS

(NOT ATTACHED TO TRANSCRIPT.)

EXHIBIT 1002 19

EXHIBIT 1003 9

EXHIBIT 1005 78

EXHIBIT 1006 102

EXHIBIT 1007 108

EXHIBIT 1017 42

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P R O C E E D I N G S

GRANT DELGATTY,

having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR

PATENT OWNER ATHALONZ, LLC 11:17:08

BY MR. HOUGHTON: 11:17:08

Q. Good morning. My name is Connor Houghton. 11:17:10

I'm with Reichman Jorgensen Reedman & Feldberg, 11:17:12

and I'm representing Athalonz. 11:17:16

Could you please state your full name for 11:17:18

the record. 11:17:19

A. My name is Grant Delgatty. 11:17:20

Q. Okay. And, Mr. Delgatty, this is not your 11:17:23

first time being an expert witness. Right? 11:17:26

A. That's correct. 11:17:29

Q. Do you have an estimate of how many cases 11:17:30

you've worked on as an expert witness? 11:17:34

A. I believe this is -- I think this might be 11:17:35

my seventh or eighth case. 11:17:41

Q. Okay. And how many times have you been 11:17:45

deposed? 11:17:47

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A. Probably eight to ten times, I would say. 11:17:48

Q. Okay. And how many of the cases that 11:17:55

you've worked on have been IPR proceedings? 11:17:58

A. I would say that, if I remember correctly, 11:18:01

I believe there was probably four. Around four 11:18:06

cases. 11:18:12

Q. Okay. 11:18:13

A. There might be more than that, actually. 11:18:14

It might be four to six, something like that. 11:18:16

Q. And were the other cases that were not 11:18:18

IPRs patent litigation cases? 11:18:21

A. Yes. 11:18:24

Q. Okay. Have you ever testified at a trial 11:18:25

before? 11:18:29

A. I came close, but no, I have not. I was 11:18:29

one day away. But yeah, no. 11:18:34

Q. Happens a lot. 11:18:37

A. Yeah. 11:18:39

Q. Okay. So I think you generally know how 11:18:40

this works. 11:18:43

Have you done a Zoom deposition before? 11:18:43

A. I have. 11:18:46

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Q. And so you understand that you're under oath today? 11:18:46 11:18:49

A. I do. 11:18:49

Q. Is there any reason you can't give full and accurate testimony? 11:18:50 11:18:53

A. No, there is not. 11:18:54

Q. Okay. We can take a break any time you want, but just before we go out please finish answering my questions unless there is a privilege objection or something like that. Okay? 11:18:56 11:19:00 11:19:02 11:19:05

A. Will do. 11:19:07

Q. And I understand you and Rob are in the same room today. Right? 11:19:07 11:19:11

A. That's correct. 11:19:12

Q. Is there anyone else in the room with you? 11:19:13

A. No, there's not. 11:19:16

Q. Okay. Do you have any documents printed out with you? 11:19:17 11:19:21

A. I have my five declarations printed out. 11:19:21

Q. Okay. Are there any marks or notes on those? 11:19:25 11:19:29

A. No, there are not. 11:19:29

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Q. Okay. And do you have any documents besides those? 11:19:30 11:19:34

A. I don't. 11:19:38

Q. Okay. And so if you are referring to anything in your declarations when answering my question, just let me know. Okay? 11:19:38 11:19:43 11:19:45

A. Sure. 11:19:47

Q. Do you have any other computer programs open besides this Zoom? 11:19:47 11:19:52

A. I'm on a -- on their system here. It looks like there's some -- what is this? 11:19:54 11:20:00

MR. BUGG: That's my inbox. You can close that if you want to. Just hit that X in the top corner. 11:20:03 11:20:06 11:20:08

A. Now I'm looking at just a screen with you on it. 11:20:15 11:20:17

Q. So if you do look at anything else besides the documents in front of you or this Zoom, just let me know. But try not to do that if possible. Okay? 11:20:18 11:20:20 11:20:24 11:20:27

A. Understood. 11:20:28

Q. I'm going to drop exhibits in the chat as 11:20:28

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we go. If you have them already, like if we're using your declarations, you can just refer to the printed one if that's easier. 11:20:36 11:20:39 11:20:41

But for the court reporter, I'm going to put every exhibit that I talk about into the chat. So if it's easier for you to open it that way, feel free. 11:20:43 11:20:45 11:20:47 11:20:50

I might also share my screen sometimes. You can feel free to look at that or look at the actual document. Whatever is easier. 11:20:55 11:20:58 11:21:01

Right now I'm going to put the first exhibit in the chat. This is Exhibit 1003 in all five of the IPRs. 11:21:02 11:21:04 11:21:08

(Exhibit 1003, previously marked, is not attached to the transcript.) 11:21:13

Q. This is a copy of your CV. Let me know when you have that open. 11:21:13 11:21:15

A. Do I have to down -- I clicked on it, but it looks like I have to download it. 11:21:18 11:21:22

Q. I think you might have to download it and then open it up. 11:21:25 11:21:27

A. So I hit save? 11:21:28

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MR. BUGG: That's fine. 11:21:32

A. And then what, I just click on it again? 11:21:39

Okay. 11:21:45

So now it's fully on my screen. I can't 11:21:46

see it. 11:21:51

Q. Okay. 11:21:53

MR. BUGG: If you want to pull it up on 11:21:55

that screen, maybe you can have both open. Grab 11:21:57

that top and then pull it onto your screen and 11:22:01

then you can -- there you go. 11:22:04

A. Let's do it like this. No. Shoot. There 11:22:12

it is. Okay. 11:22:14

All right. I've got it. 11:22:15

Q. Okay. So hopefully we can do it this way 11:22:16

for exhibits and it will work now. 11:22:21

Just for the record, we're taking your 11:22:23

deposition here for the five IPR proceedings that 11:22:26

Under Armour filed against Athalonz's patents. 11:22:30

Those are IPR 2024-00636, -637, -638, -639, and 11:22:34

-640. And so you submitted an expert declaration 11:22:47

in each of those IPR proceedings. Right? 11:22:53

A. Correct. 11:22:55

Q. Okay. And this copy of your CV is the same in all five proceedings. Right? 11:22:56 11:23:00

A. I believe it is. Yes. 11:23:02

Q. Okay. So this was filed back I think in March of this year. Is this CV still generally accurate or do you have any changes to it? 11:23:04 11:23:09 11:23:12

A. No. I'd say it's probably generally accurate at this point. 11:23:14 11:23:19

Q. Okay. And so are you still the chair of product innovation and an associate professor at USC? 11:23:20 11:23:24 11:23:27

A. Yes. 11:23:27

Q. And you're still working on Project X? 11:23:28

A. That -- let me see. It's sort of on the back burner right now. We might pick it back up. 11:23:40 11:23:50

Q. Okay. Do you have any other current positions that are not listed on your CV? 11:23:53 11:23:54

A. I'm an entrepreneur as well. I'm doing a little bit of work in a field. I'm designing some Pilates machines currently. Yeah. 11:23:57 11:24:06 11:24:12

Q. Okay. 11:24:16

A. Nothing -- at this point, nothing shoe 11:24:20

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related except for the project. 11:24:24

Q. Okay. Do you have any patents of your own? 11:24:27 11:24:29

A. Well, I don't personally own any patents, but I'm listed as the lead inventor on a number of patents. 11:24:29 11:24:36 11:24:39

Q. About how many? 11:24:39

A. I believe it's about 20. 11:24:41

Q. Okay. What's the general subject matter of those patents? 11:24:45 11:24:47

A. That's varied from footwear, athletic footwear and footwear concepts, both utility and design, I believe. 11:24:53 11:24:57 11:25:01

I founded a company a few years ago that's made a foldable electric scooter. We have a number of patents with regard to that company, both design and utility, some -- I believe I'm listed as an inventor on a delivery scooter-type device. 11:25:05 11:25:09 11:25:13 11:25:17 11:25:26 11:25:34

I'm trying to think what else. Oh, there's a pending patent on the Pilates machine that I just mentioned prior to this. 11:25:35 11:25:39 11:25:44

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Q. Okay. None of the athletic footwear-related patents that you just mentioned that you're an inventor on are being asserted as prior art in this case. Right? 11:25:47 11:25:52 11:25:54 11:25:57

A. That's correct. 11:25:59

Q. Okay. You have a bachelor of science degree in industrial design from the Art Center College of Design. Correct? 11:26:01 11:26:05 11:26:10

A. That's correct. 11:26:10

Q. Do you know if that degree is still offered? 11:26:11 11:26:16

A. It's offered. My major that I took in -- at Art Center was technically considered environmental design. And that program has sort of shifted to a new way to describe it. I believe they call it spatial experience design, but it's essentially the same program. But yes, the degree of industrial design at Art Center is still available. 11:26:16 11:26:29 11:26:33 11:26:40 11:26:45 11:26:48 11:26:52 11:26:55

Q. Okay. As part of your degree at Art Center, did you take courses in physics or engineering? 11:26:56 11:27:00 11:27:03

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A. I would say I took courses that -- I'm not sure if they would be considered actual physics or engineering courses, but they were -- there was courses that I took. I believe the name of the class was "The Way Things Work," where we would dissect different types of machinery and structures and understand the physics of how they go together, how they're disassembled, how they're assembled. So yeah. 11:27:03 11:27:12 11:27:15 11:27:20 11:27:24 11:27:27 11:27:32 11:27:37 11:27:41

Q. Okay. Did you take a traditional Physics 1 class that went through a textbook on physics? 11:27:42 11:27:45 11:27:49

A. I don't believe so. 11:27:49

Q. Okay. And you also have a diploma in graphic design and illustration. Correct? 11:27:52 11:27:56

A. Correct. 11:27:59

Q. Okay. And as part of that degree, did you take a traditional physics or engineering course? 11:28:00 11:28:03

A. No, I did not. 11:28:05

Q. Okay. You've designed a number of different shoes in your career. Right? 11:28:07 11:28:12

A. Yes, I have. 11:28:13

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Q. Have you ever designed a golf shoe? 11:28:14

A. I actually -- I gave some input on a special project that we did at Vans that wasn't really ever commercially offered for sale. It was a promotional product that we made. 11:28:17 11:28:27 11:28:30 11:28:37

So yes, it was a golf shoe, but it was a pretty -- we did it for a golf tournament. It was kind of fun. It was black-and-white checkerboard golf shoes. But that's -- technically, anything that went to market, no, I haven't done any golf shoes per se. 11:28:42 11:28:45 11:28:49 11:28:53 11:28:55 11:29:01

Q. I asked this about your patents already, but none of the shoes that you designed in your career are being asserted as prior art to any of the Athalonz patents. Correct? 11:29:01 11:29:09 11:29:12 11:29:15

A. They are not. 11:29:18

Q. And your hourly rate on the IPR work is $400 an hour. Correct? 11:29:22 11:29:26

A. Yes, it is. 11:29:27

Q. Do you have an estimate of how many hours of work you did prior to the petitions being filed? 11:29:27 11:29:29 11:29:31

A. I don't have a specific number at this point. I haven't done the latest addition or I haven't added up the hours over the last month or so, so I can't give you a specific number. 11:29:31 11:29:40 11:29:43 11:29:47

Q. Okay. My question was about before the petitions were filed, so that's back in the March time frame. 11:29:53 11:29:55 11:29:58

Do you know how long you worked on your expert declarations and other associated tasks prior to the petitions being filed? 11:29:59 11:30:00 11:30:04

A. I don't have a specific number. I can't remember exactly how many hours I put into it. It was a number of hours. I can't recall. I'm sorry. 11:30:05 11:30:12 11:30:14 11:30:19

Q. Was it more than 100 hours? 11:30:19

A. It might have been. It might have been around that, maybe less. I'm not sure. 11:30:21 11:30:29

Q. Okay. Was it more than 200 hours? 11:30:31

A. I don't think so. 11:30:33

Q. Okay. Did you personally write the expert declarations? 11:30:41 11:30:46

MR. BUGG: Objection just to the extent 11:30:49

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this calls for any privileged information or information pertaining to the actual production of the declarations. 11:30:51 11:30:53 11:30:58

I'll just caution you not to share that information, but you can otherwise answer the question. 11:30:59 11:31:01 11:31:03

A. I would say that the declarations are my thoughts and that I participated. It was a collaborative -- it was collaborative with my counsel that I'm working with on actually doing the wording. But yeah, I was part of the team that wrote these declarations. 11:31:04 11:31:12 11:31:15 11:31:21 11:31:24 11:31:31

Q. Okay. Are you also working on the district court case between Athalonz and Under Armour? 11:31:34 11:31:40 11:31:42

A. I believe at this point that is not active. So I might be working if that moves forward, but right now I've just been working on these. 11:31:42 11:31:50 11:31:57 11:31:59

Q. Have you billed any time to work on the district court case so far? 11:31:59 11:32:01

A. I don't believe -- I'm not sure. I don't 11:32:03

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believe that any of the work that we've been doing has been towards that at this point. 11:32:10 11:32:12

Q. Okay. Have you looked at any of the Under Armour shoes that Athalonz contends infringe the patents that are at issue in this IPR? 11:32:15 11:32:21 11:32:24

A. I have not physically looked at the shoes, but I have seen the images of -- some of the images of the shoes. Yes. 11:32:26 11:32:30 11:32:37

Q. Were those the infringement contentions? 11:32:38

A. Yes. 11:32:41

Q. Okay. And you cite some of those in your declaration. Right? 11:32:41 11:32:45

A. Yes, I do. 11:32:45

Q. Okay. Have you reviewed Under Armour's invalidity contentions from the district court? 11:32:47 11:32:50

A. I'm trying to remember if I have or not. Yeah. I believe so. 11:32:52 11:33:08

Q. Okay. Have you reviewed any other Athalonz or Under Armour documents that were produced in the district court case? 11:33:10 11:33:14 11:33:15

A. I've looked at the -- some of the prosecution history. So yeah, I would say so. 11:33:17 11:33:25

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Q. Okay. Have you looked at any internal Under Armour or Athalonz documents? 11:33:27 11:33:31

A. "Internal" meaning what? 11:33:38

Q. Not something that was publicly filed at the Patent Office or that is being called prior art. 11:33:40 11:33:42 11:33:45

A. I'm not sure. I don't believe so, but I don't know what was -- I'm not completely sure. I don't think so. 11:33:45 11:33:52 11:33:55

Q. So you haven't looked at any, for example, Under Armour PowerPoint presentations? 11:33:56 11:33:59

A. No. 11:34:01

Q. Okay. So I understand you have a copy of the five expert declarations that you filed in this case. And so those were all marked Exhibit 1002. Correct? 11:34:02 11:34:09 11:34:12 11:34:16

A. Yes. 11:34:17

Q. So I'm going to put the five declarations in the chat. You don't need to download them if you'd prefer to look on paper. But if you do want an electronic copy, they're there. 11:34:19 11:34:23 11:34:26 11:34:29

(Exhibit 1002, previously marked, is not

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attached to the transcript.) 11:34:31

A. Sure. 11:34:31

Q. And I'm going to kind of have to flip back and forth between these a little bit as we go. So bear with me on that. 11:34:35 11:34:38 11:34:41

You're comfortable referring to the patent numbers by the last three digits. Correct? 11:34:46 11:34:48

A. Yes. 11:34:50

Q. Okay. So for the '291, the '786, and the '760 patents, I might refer to those as "the slope patents" during the deposition. Will you understand what I mean by that? 11:34:51 11:35:01 11:35:05 11:35:06

A. Yes. 11:35:08

Q. And then the '768 and the '456 patents, I might refer to those as "the density patents." Will you understand what I mean by that? 11:35:08 11:35:14 11:35:18

A. Yes. 11:35:19

Q. Okay. And sometimes I'll refer to the individual patents, but other times I might refer to them as a group. So if you're ever confused, just let me know. 11:35:20 11:35:24 11:35:26 11:35:29

Okay. Can you pull out the expert 11:35:36

declaration from the '291 patent. And so this is in IPR 2024-637. 11:35:38 11:35:43

Let me know when you have that. 11:35:52

A. I have it in front of me. 11:35:53

Q. Okay. So just a general question about your opinions. You opined on what the level of ordinary skill in the art was in these proceedings. Right? 11:35:54 11:35:59 11:36:03 11:36:06

A. I did. 11:36:06

Q. Okay. And you applied the same definition for all five of the patents. Right? 11:36:08 11:36:11

A. Yes, I did. 11:36:13

Q. Okay. And for the '291 patent, as an example, but this would be the same in all of them, you did this in Paragraph 31, which is on page 12 of your declaration. Let me know when you're there. 11:36:15 11:36:19 11:36:22 11:36:26 11:36:30

A. I have it in front of me. 11:36:31

Q. Okay. And you agree that this definition that's listed in Paragraph 31 is your opinion about what the level of ordinary skill is in this case. Right? 11:36:32 11:36:39 11:36:41 11:36:43

A. I do. 11:36:44

Q. Okay. Let's see. You also opined on the 11:36:45

level of skill in the art and you based your 11:36:53

opinions as of the invention date. Correct? 11:36:56

A. Yes, I did. 11:36:58

Q. Okay. And in Paragraph 28, you say that 11:37:00

that is March 8, 2011, the filing date of 11:37:03

Provisional Application 61/450,458? 11:37:07

A. Yes. 11:37:15

Q. And that's the same for all five patents 11:37:16

too. Correct? 11:37:25

A. Correct. 11:37:25

Q. In Paragraph 29 you list some factors that 11:37:26

you look to in determining the ordinary skill in 11:37:28

the art. Correct? 11:37:31

A. Yes. 11:37:32

Q. Where did you get that list? 11:37:33

A. Let me refresh my memory. I'm going to 11:37:36

read it real quick. 11:37:41

So my counsel informed me of these. 11:38:07

Q. Okay. So you list factors that include 11:38:10

the level of education and experience of persons 11:38:16

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working in the field, the types of problems encountered in the field, the teachings of the prior art, and the sophistication of the technology at the time of the alleged invention. Correct? 11:38:21 11:38:24 11:38:26 11:38:30 11:38:33

A. Yes. 11:38:33

Q. You don't list the education level of the inventor in this list in Paragraph 29, do you? 11:38:34 11:38:38

A. It doesn't -- I mean, it talks about the level of education, but it doesn't specify that in that paragraph. 11:38:41 11:38:50 11:38:57

Q. Okay. Are you aware that the Federal Circuit has said that there are six factors that you should look to and one of those is the education level of the inventor? 11:38:57 11:38:59 11:39:02 11:39:04

A. I'm not an attorney, so I don't know exactly the rules of what the -- how many factors there should be. So I would -- I didn't -- I wasn't aware that there had to be six. It does say level of education in here, though. So I'm not sure if that is not the same thing. 11:39:06 11:39:17 11:39:24 11:39:27 11:39:31 11:39:33

Q. Okay. I'm quoting from a Federal Circuit 11:39:35

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case from 2022, Best Medical International versus Elekta. 11:39:40 11:39:44

And it says, "These factors include, one, the educational level of the inventor; two, types of problems encountered in the art; three, prior art solutions to those problems; four, rapidity with which inventions are made; five, sophistication of the technology; and six, educational level of active workers in the field." 11:39:45 11:39:48 11:39:52 11:39:55 11:40:01 11:40:03 11:40:06

Now, that list I think overlaps exactly with your list except that it also includes the educational level of the inventor. Do you agree? 11:40:11 11:40:14 11:40:16

A. Yes. I would say that that is not specifically listed in this paragraph. 11:40:18 11:40:29

Q. Okay. Was there a reason you didn't include the education level of the inventor in the list of factors in Paragraph 29? 11:40:30 11:40:34 11:40:37

A. Well, it does state it in Paragraph 31. So I guess I would say that the information is in my declaration, two paragraphs down. So I'm not sure why, you know, it wasn't put in Paragraph 29. 11:40:38 11:40:51 11:40:59 11:41:03

Q. Okay. And when you say it says it in 11:41:08

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Paragraph 31, I don't see the word "inventor" in there. Is it there? 11:41:10 11:41:13

A. Yeah. It's a person of ordinary skill in the art would have a certain level of education. 11:41:14 11:41:26

Q. Right. But you don't talk about the level of education of the inventor in Paragraph 31, do you? 11:41:31 11:41:35 11:41:38

A. I don't believe so. 11:41:38

Q. Okay. Do you know what the education level of the inventors of the five Athalonz patents was? 11:41:43 11:41:46 11:41:49

A. I do not. 11:41:50

Q. Do you know who the inventors are? 11:41:53

A. I don't have the patents in front of me. 11:41:55

Q. Okay. But generally, do you know -- like, personally know them? 11:42:00 11:42:05

A. No, I don't personally know them. 11:42:06

Q. And did you do anything to look into what their education level was? 11:42:08 11:42:11

A. No, I did not. 11:42:12

Q. Would it be relevant to your analysis of the correct level of skill in the art what the 11:42:15 11:42:20

education level of the inventor was? 11:42:21

MR. BUGG: Objection, vague, calls for 11:42:25

speculation. 11:42:27

You can answer if you can. 11:42:28

A. I'm not quite sure what you mean by the 11:42:29

question. Can you rephrase it? 11:42:31

Q. Well, let me put it this way: You didn't 11:42:33

talk about what the education level of the 11:42:36

inventor was in giving your opinion on the level 11:42:39

of ordinary skill in the art. Right? 11:42:43

A. I did not talk about it. No. 11:42:44

Q. And so since you didn't talk about it, you 11:42:47

didn't think it was relevant to your analysis, did 11:42:49

you? 11:42:52

MR. BUGG: Objection, vague. 11:42:52

A. I don't know if it is relevant or not. I 11:42:53

believe an inventor can come up with ideas with 11:43:01

many different levels of education. 11:43:06

Q. Okay. And so if the inventor did not have 11:43:08

the education level that you proposed in 11:43:11

Paragraph 31, does that mean they can't be a 11:43:15

person of ordinary skill in the art? 11:43:18

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MR. BUGG: Objection, vague, calls for speculation. 11:43:20 11:43:21

A. Are you asking -- I'm sorry. I'm not quite sure what your question is on that. Can you restate it? You're saying that the inventor would have to have the same level of knowledge as the person having a skill -- a person of ordinary skill in the art? 11:43:26 11:43:30 11:43:33 11:43:39 11:43:42 11:43:48

Q. I'm saying if the inventor did not have the level of education you put in Paragraph 31, then to you does that mean that they're not a person of ordinary skill in the art? 11:43:48 11:43:50 11:43:54 11:43:56

MR. BUGG: Same objections. 11:43:59

A. I don't know if that would apply. 11:44:00

Q. Okay. So you don't have an opinion on that one way or the other? 11:44:09 11:44:14

A. I haven't done an analysis on that. I haven't thought that through, so no, I don't have an opinion at this point. 11:44:15 11:44:18 11:44:21

Q. Okay. I'd like to turn to your opinions about conventional shoes. That's a section in your declaration that starts on page 17 of the 11:44:22 11:44:28 11:44:32

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'291 patent declaration. 11:44:40

Let me know when you have that. 11:44:48

A. I'm here. 11:44:50

Q. Okay. You have a section about 11:44:51

conventional shoes in each of your five 11:44:54

declarations. Right? 11:44:57

A. I do. 11:44:58

Q. Okay. You say here in Paragraph 47 that 11:44:58

"Having a heel section of consistent height 11:45:10

throughout is standard shoe design." Right? 11:45:13

A. Yes. 11:45:17

Q. And then you say, "the vast majority, if 11:45:19

not all, of the shoes I designed or oversaw the 11:45:22

design of had this feature." Correct? 11:45:26

A. Yes. 11:45:28

Q. Okay. And then you go on and you talk 11:45:30

about several different shoes here. I think there 11:45:33

are six or seven total. Right? 11:45:36

A. Yes. 11:45:38

Q. And none of those shoes are actually being 11:45:40

asserted as prior art in this case. Correct? 11:45:44

MR. BUGG: Objection, vague. 11:45:48

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But you can answer. 11:45:52

A. I don't believe we have officially 11:45:56

asserted them, but I would say that some of these 11:45:57

shoes -- for instance, the Cortez that was 11:46:01

designed in 1971 -- would qualify as prior art. 11:46:04

Q. Okay. But you understand as part of the 11:46:07

IPR you have to identify grounds with specific 11:46:10

prior art as part of those grounds. Right? 11:46:13

A. I believe these were used as examples, not 11:46:14

as official prior art examples. 11:46:19

Q. Okay. So I understand your position is 11:46:24

that these shoes are literally prior art and that 11:46:28

they existed before the patents, but you're not 11:46:31

actually using these as a ground of invalidity for 11:46:34

prior art to say that these patents are invalid 11:46:38

based on these shoes. Right? 11:46:41

MR. BUGG: Objection, vague. 11:46:42

A. I don't know if I would need to have these 11:46:49

specified as the actual grounds for invalidity. I 11:46:51

do know that some of these shoes are definitely -- 11:46:57

were definitely designed and brought to market 11:47:03

prior to the invention date. But I don't know if 11:47:08

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this is exactly something that we've incorporated as prior art. 11:47:10 11:47:17

Q. I just want to make clear. So you don't know or you agree that these are not actually specified as individual prior art references? 11:47:17 11:47:25 11:47:28

MR. BUGG: Objection to form. 11:47:31

A. It's in my declaration. I don't believe it's on the list of the shoes that we are relying on as prior art. These are examples of conventional shoe design. 11:47:32 11:47:45 11:47:50 11:47:54

So I'm not a lawyer. I don't know exactly how that works. But yeah. 11:47:56 11:47:58

Q. Okay. Well, let's go down a little ways in your declaration to page 25. 11:48:01 11:48:05

A. Okay. 11:48:18

Q. On page 25 you have a section called "Opinions on Unpatentability" and then you have a subheading, "Ground 1: Claims 1-5 are Obvious Based on Kim." Do you see that? 11:48:18 11:48:21 11:48:24 11:48:27

A. Yes. 11:48:30

Q. And so your position is that Kim renders the claims of this patent obvious. Right? 11:48:31 11:48:34

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A. Yes. 11:48:36
Q. And none of your opinions on 11:48:38
unpatentability rely on a specific one of these 11:48:42
conventional shoes that you list above as a prior 11:48:47
art reference that invalidates the claims. Right? 11:48:52
MR. BUGG: Objection, vague. 11:48:55
But you can answer, if you can. 11:48:58
A. As I go through my opinions on all the 11:49:00
grounds of prior art that render this invention 11:49:06
obvious, I don't refer to any of the examples of 11:49:12
shoes that I have in the section that's called 11:49:21
conventional shoe design. 11:49:25
Q. Okay. Thanks. So we can go back up to 11:49:26
the start of that "'Conventional' Shoes" section 11:49:30
again. 11:49:31
A. Sure. 11:49:32
Q. Page 17. 11:49:32
A. I'm there. 11:49:40
Q. Okay. And so for all of the physical 11:49:41
shoes that you have pictures of here, so excluding 11:49:45
the patent references, but the physical shoes, 11:49:47
you're only showing the exterior of those shoes in 11:49:51

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your pictures. Right? 11:49:55

A. I am showing exterior views of shoes 11:49:56

except for there is a sectional diagram, 11:50:06

Exhibit 1016, which is the Air Force One sole. 11:50:15

However, I would say that there are a few 11:50:24

of the shoes that I am referring to here where the 11:50:26

exterior of the shoe is -- and the interior of the 11:50:35

shoe is actually represented without having to do 11:50:39

a cut-through view of the shoe. 11:50:41

Q. Okay. But in terms of actual pictures of 11:50:43

physical shoes that are not in design patents, you 11:50:51

only have pictures of the exterior of the shoes. 11:50:56

Right? 11:50:59

A. Yes. 11:50:59

Q. Okay. And you don't have any annotations 11:51:01

on any portions of the shoes that you included in 11:51:06

this section. Right? 11:51:10

A. No, I do not. 11:51:10

Q. Okay. And you don't have any measurements 11:51:15

of any of the components of the physical shoes 11:51:19

that are in this section either. Correct? 11:51:22

A. That's correct. 11:51:24

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Q. Okay. So on the brown and blue Vans shoe in Paragraph 47, page 19 -- are you there? 11:51:29 11:51:36

A. Yeah. Did you say brown and blue? 11:51:48

Q. Yeah. Maybe it's just me. On my screen, it looks brown and blue to me. 11:51:49 11:51:52

A. I think it's brown and black and a little bit of green. 11:51:55 11:51:58

Q. Okay. But it's on page 19. Right? 11:51:59

A. Yes. 11:52:01

Q. Okay. And you are giving this as an example, you say, of a shoe that has a heel section with a consistent height throughout. Right? 11:52:01 11:52:05 11:52:07 11:52:09

A. Yes. 11:52:10

Q. You don't identify what the heel section is on the shoe in your declaration, do you? 11:52:12 11:52:15

A. I believe that would be obvious. 11:52:17

Q. Okay. But you don't actually put it in this picture? There's no annotation, for example. Right? 11:52:23 11:52:26 11:52:29

A. There's nothing that's written over the photo. No. 11:52:30 11:52:33

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Q. Okay. You're saying this has a consistent height throughout. Right? 11:52:34 11:52:37

A. A substantial uniform height. Yes. 11:52:39

Q. Well, let's go back up to Paragraph 47. 11:52:42

You say, "Having a heel section of consistent height throughout is standard shoe design." 11:52:55 11:52:59

Right? 11:53:03

A. Yes. 11:53:03

Q. Okay. It doesn't say substantially uniform, does it? 11:53:07 11:53:11

A. In Paragraph 47, it does not. 11:53:12

Q. Okay. And so is it your position that this black-and-brown Vans shoe has a consistent height throughout the heel platform? 11:53:19 11:53:22 11:53:25

A. Yeah, I would say it does. 11:53:27

Q. Okay. If you measured the rearmost portion of the heel platform and then whatever you say is the front of the heel platform, would the height be the same? 11:53:33 11:53:37 11:53:40 11:53:44

A. Where the heel would sit, it would be. Yes. 11:53:45 11:53:50

Q. I'm going to share my screen just so we 11:53:50

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can be looking at the same thing. Can you see my screen? 11:53:55 11:54:05

A. Yeah. I just have to move over my CV here. Yes. 11:54:06 11:54:12

Q. Can you see my mouse on the screen or not? 11:54:12

A. Yes, I am. 11:54:15

Q. So if you measured the shoe right here at the rear of the heel -- 11:54:16 11:54:21

A. Yes. 11:54:22

Q. -- and then you measured the shoe right here at the front of the heel, are you saying that's the same height? 11:54:23 11:54:25 11:54:30

A. That's the height of the sidewall of the midsole, which isn't representing where the heel would be actually seated in the shoe. So the surface that the heel would sit on would be flat. 11:54:31 11:54:34 11:54:38 11:54:43

The wall thickness of the midsole would be slightly lower in the section that you have highlighted right now than it would be in the previous section that you highlighted just a second ago. 11:54:47 11:54:51 11:54:52 11:54:55 11:54:57

Q. Okay. So you can't see from the exterior 11:54:58

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of the shoe whether the heel platform is a consistent height. Correct? 11:55:02 11:55:06

MR. BUGG: Objection, vague. 11:55:10

You can answer if you can. 11:55:11

A. From the view that you're looking at here on the screen, no, you can't. But I can tell you that me as the designer of that shoe knows that the heel platform would be flat. 11:55:13 11:55:15 11:55:20 11:55:25

Q. Okay. Let's look at the white, gray, and red Vans shoe. Same paragraph, the previous page. 11:55:26 11:55:36

A. I see it. 11:55:43

Q. Okay. You would agree that the outsole here is thicker in part at the toe region than the part of the foot immediately preceding the toe region. Right? 11:55:44 11:55:48 11:55:54 11:55:59

MR. BUGG: Objection, vague. 11:55:59

A. The outsole? 11:56:00

Q. The part of the sole that you can see in the picture gets thicker at some point near the toe than it is prior to that. Right? 11:56:03 11:56:05 11:56:10

MR. BUGG: Objection, vague. It. 11:56:15

A. Actually, it would be helpful if you could 11:56:17

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do the same thing and point at it with your cursor. 11:56:19 11:56:23

Q. Right here towards the front, there's a sort of upwards dip in the outsole. And so if you look at the exterior of the shoe, it looks like it's thicker here than just before it here. Correct? 11:56:23 11:56:28 11:56:34 11:56:37 11:56:40

A. Again, that is a detail of a sidewall design. Shoes -- typical athletic shoes have lots of variability on what that top silhouette line would look like. It has no bearing on where the actual foot sits inside the shoe where the top of the midsole would be. 11:56:40 11:56:46 11:56:52 11:56:55 11:57:01 11:57:06

Q. So you would agree that you can't tell what the interior dimensions of this shoe are based on the exterior view. Correct? 11:57:07 11:57:10 11:57:13

MR. BUGG: Objection, vague, calls for speculation. 11:57:15 11:57:17

A. I can tell you that that higher point that you just identified in the toe area is definitely at a lower level than the heel area. So you can tell generally by just the angle of the shoe that 11:57:18 11:57:22 11:57:27 11:57:34

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it would be lower in the forefoot area. 11:57:37

Q. That wasn't the question -- 11:57:41

A. And I know that -- 11:57:42

Q. -- specifically. 11:57:46

A. But from this view, you don't know exactly 11:57:47

where the foot would be resting because the 11:57:49

sidewall comes up, wraps around the upper of the 11:57:55

shoe. 11:57:58

Q. But the question was just, you can't tell 11:57:58

what the interior dimensions of the shoe are from 11:58:01

this picture of the exterior of the shoe alone. 11:58:03

Correct? 11:58:05

MR. BUGG: Objection, vague. 11:58:12

A. Can you see where the actual top of the 11:58:13

midsole is that the foot is resting on from this 11:58:15

view? No. I can tell you that I know that it's 11:58:18

lower. 11:58:22

Q. Okay. Not the question. 11:58:25

Can you tell what the interior dimensions 11:58:26

of the shoe are from this picture of the shoe on 11:58:28

the outside? 11:58:31

MR. BUGG: Objection, vague. 11:58:33

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A. You can't specify, see specifically what the dimensions are from this view. 11:58:34 11:58:43

Q. Okay. Thank you. Scrolling down a little ways, you have a couple of different golf shoes in this conventional shoe section. Correct? 11:58:46 11:58:48 11:58:50

And I can direct you to page 24 -- 11:59:00

A. Yes. 11:59:06

Q. -- which I believe is the first one. And then there's also another one pictured on page 25. Right? 11:59:06 11:59:10 11:59:14

A. Yes. 11:59:14

Q. Okay. And those are the only two golf shoes that you put as examples in your conventional shoe section. Right? 11:59:14 11:59:17 11:59:19

A. Yes. 11:59:21

Q. Both of these conventional shoes have spikes in the heel section. Correct? 11:59:21 11:59:32

A. I believe -- well, on page 25, yes, for sure. On page 24, I can see a vague hint of a spike from the side view. So I would say yes. 11:59:33 11:59:43 11:59:53

Q. Okay. Did you actually take these pictures on page 24 or were they provided to you? 11:59:55 11:59:57

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A. I did not take these pictures. 11:59:59
Q. Do you know where they came from? 12:00:02
A. They were provided to me by counsel. 12:00:04
Q. Did you take any of the pictures in this section on conventional shoes? 12:00:08 12:00:12
A. I did. 12:00:14
Q. Which ones? 12:00:14
MR. BUGG: Before you answer, I'd just caution you not to share any privileged information. But you can answer the question. 12:00:19 12:00:20 12:00:22
A. I took the photos of the three Vans shoes that are presented in this section. 12:00:24 12:00:30
Q. Okay. So besides those three Vans shoes, you didn't have a physical version of the other shoes that are in this section? 12:00:34 12:00:37 12:00:40
A. I've owned these shoes. But no, I didn't have them in front of me. 12:00:45 12:00:49
Q. When you say you've owned these shoes, do you mean you owned the yellow Nike Cortez shoes? 12:00:51 12:00:53
A. I have owned a pair of Cortez shoes, yes. And I have owned a pair of Air Force Ones. 12:00:57 12:01:07
Q. Okay. What about the 1970 Footjoy? 12:01:09

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A. I don't know these shoes. 12:01:15

Q. And what about any shoe that embodies this design patent? 12:01:21 12:01:27

MR. BUGG: Objection, vague. 12:01:28

A. I don't believe I've owned a pair of shoes that has this design patent. 12:01:30 12:01:37

Q. Okay. In Paragraph 52, you say, "See also the Golf shoe sole." Do you see that? 12:01:40 12:01:46

A. Yes. 12:01:48

Q. Are you aware that the title of this design pattern is actually "Golf Shoe Bottom"? 12:01:56 12:01:59

A. No, I wasn't aware of that. 12:02:03

Q. Okay. Did you ever actually look at the design patent itself or did you just take this picture from counsel? 12:02:08 12:02:10 12:02:13

MR. BUGG: Objection, vague. 12:02:15

And if it calls for -- it calls for any kind of privileged information, please don't share that. 12:02:16 12:02:19 12:02:21

A. I've looked at patents. I can't recall if this is one of the patents I specifically looked at. But I have reviewed a number of different 12:02:27 12:02:29 12:02:31

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documents, and this could have been one of them. I'm not sure. 12:02:38 12:02:40

Q. Okay. So you don't have any reason to disagree with this design patent calls this a golf shoe bottom. Right? 12:02:40 12:02:45 12:02:49

A. If you say that that's what it says, then I would take you at your word. 12:02:49 12:02:54

Q. We can look at it just so we're sure. This is Exhibit 1017. I will drop that in the chat. Okay. This was Exhibit 1017 in the 636, 637, and 638 IPR. 12:02:56 12:03:08 12:03:11 12:03:23

(Exhibit 1017, previously marked, is not attached to the transcript.)

Q. Do you have that open? 12:03:30

A. Yes, I do. 12:03:31

Q. And you agree the title of this design patent is "Golf Shoe Bottom"? 12:03:38 12:03:41

A. Yes, it is. 12:03:43

Q. All right. Back to the Footjoy 1970 golf shoe, just briefly. This might be another one where I share my screen so we're looking at the same part. But I'm looking at page 24 of your 12:03:45 12:03:49 12:03:53 12:03:56

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declaration. 12:03:58

Are you with me? 12:04:10

A. I see it. 12:04:11

Q. Okay. The thickness of the sole just in front of the heel platform, so here where my mouse is -- 12:04:12 12:04:16 12:04:20

A. Yes. 12:04:21

Q. -- is the same as the thickness of the sole at the toe section. Right? 12:04:21 12:04:23

MR. BUGG: Objection, vague, calls for speculation. 12:04:26 12:04:27

A. I don't know if I would qualify what you would say as that being the same thickness. I think -- it wouldn't account for the arch opening in front of the heel. If the sole was flat all the way across the bottom and it didn't have the heel, then it would not be the same thickness. 12:04:29 12:04:40 12:04:42 12:04:45 12:04:52 12:04:54

It is at a higher level off the ground surface than where the area that you identified in the toe is. 12:04:56 12:04:58 12:05:05

Q. Okay. So the relevant part to look at is where the foot sits relative to the ground or the 12:05:05 12:05:08

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bottom of the shoe? 12:05:12

MR. BUGG: Objection, vague. 12:05:15

A. I believe where the foot sits relative to the ground surface. 12:05:16 12:05:21

Q. Okay. But you would agree that the actual sole material itself is the same thickness just in front of the heel platform as it is at the toe, based on this image? 12:05:21 12:05:29 12:05:32 12:05:35

MR. BUGG: Objection, calls for speculation. 12:05:37 12:05:38

A. The thickness of that area of where the sole is and the thickness of the area where the sole is -- sorry -- in the area just in front of the heel and the thickness of the actual material where the toe is has a -- I would say a similar thickness to it. It is definitely not the same thickness with regards to where it sits on the surface of the ground. 12:05:39 12:05:48 12:05:53 12:05:57 12:06:01 12:06:08 12:06:14 12:06:16

Q. Okay. I want to go to Paragraph 27 now in the declaration. And now I'm going to have to start bouncing around between your declarations. We can start in this '291 section. 12:06:18 12:06:30 12:06:35 12:06:37

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This is the "Claim Construction" heading. 12:06:48

A. Yes. 12:06:54

Q. Okay. In Paragraph 27 it says, "I was asked by counsel to apply the plain and ordinary meaning of the terms in the '291 Patent and prior art." Correct? 12:06:54 12:07:04 12:07:06 12:07:09

A. Yes. 12:07:10

Q. Okay. And now if you can take out the declaration filed on the '768 patent -- this is IPR 2024-639 -- and go to the same section in that declaration. 12:07:11 12:07:19 12:07:25 12:07:38

A. Are you referring to page 6? 12:07:47

Q. Page 11, "Claim Construction." 12:07:49

A. Okay. 12:07:55

Q. And here it says, "I was asked by counsel to apply the following definitions in my analysis. For all terms not specifically construed, I applied the plain and ordinary meaning of the terms in the '768 Patent and prior art." You see that. Correct? 12:08:04 12:08:07 12:08:11 12:08:13 12:08:15 12:08:19

A. I see that. 12:08:20

Q. And then there are two subheadings here 12:08:20

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where there are definitions that you're providing in your analysis. Right? 12:08:30 12:08:32

A. Yes. 12:08:33

Q. Did you actually look at the patents to decide whether these constructions you are applying were consistent with what a person of ordinary skill in the art would have understood the term to mean? 12:08:37 12:08:45 12:08:49 12:08:51 12:08:54

A. I was asked by counsel to apply the following definitions. I'm not -- I wasn't hired to provide claim construction. I'm not an attorney, so these are the definitions that were told to me by counsel. 12:08:54 12:09:07 12:09:13 12:09:18 12:09:22

Q. Okay. But you understand that when you're reading terms in a patent, you're supposed to read them as a person of ordinary skill in the art would have understood them. Right? That's your basic understanding? 12:09:25 12:09:28 12:09:31 12:09:34 12:09:36

MR. BUGG: Objection, vague. 12:09:40

A. My understanding is that person having ordinary skill in the art would understand these terms. 12:09:41 12:09:44 12:09:46

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Q. Okay. And so were the definitions that you applied consistent with what a person of ordinary skill in the art would have understood those terms to mean? 12:09:46 12:09:50 12:09:52 12:09:54

A. I would say yes. 12:09:56

Q. Okay. Not looking specifically at any part of the declaration but just as a general question about a term, each of the slope patents, the '291, the '760, and the '786, in the claims they use the term "athletic positioning." Correct? 12:10:00 12:10:09 12:10:11 12:10:15 12:10:20 12:10:24

A. Yes. 12:10:25

Q. Okay. And we just looked at your section in the '291 patent where you were asked to apply specific definitions and it didn't list "athletic positioning" as one of those terms. Correct? 12:10:26 12:10:30 12:10:33 12:10:38

A. I believe it did not. 12:10:40

Q. Okay. And so then according to your declaration, you applied the plain and ordinary meaning of the term. Correct? 12:10:41 12:10:46 12:10:48

A. I would say so. 12:10:52

Q. What is the plain and ordinary meaning of 12:10:58

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"athletic positioning"?

A. I believe it would be something that alludes to the weight distribution of where the person would be placing their -- how would I say this?

It would be a weight distribution where it puts the user in a position that gives them probably a higher level of ability with whatever support that might be that they're applying.

Q. Okay. And is there a particular weight distribution that a person of ordinary skill in the art would understand does that?

MR. BUGG: Objection, vague, calls for speaks.

A. I would think that it would be based on whatever a particular sport might be. If there's something that an athlete might find to be -- give them an advantage, I would say that maybe that would be the position that they would want to have.

Q. Okay. You've read the patents that you've opined are invalid. Right?

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A. Yes. 12:12:30

Q. Okay. And do you understand that those 12:12:30

patents are applying the term "athletic 12:12:33

positioning" in any particular way? 12:12:36

MR. BUGG: Objection, vague. 12:12:38

A. I'm not sure I understand the question. 12:12:39

Q. In the '291 patent, for example, would it 12:12:47

be an athletic positioning to have the heel lower 12:12:55

than the toe? 12:12:58

MR. BUGG: Objection, vague. 12:13:00

A. I would say that athletic positioning 12:13:06

would have a -- let me get to that section of my 12:13:37

declaration. 12:13:46

Q. Okay. When you get there, let me know 12:13:48

what page you're on. 12:13:49

A. Okay. So I think I'm in that section. 12:13:52

Sorry. Restate the question so I'm -- 12:15:25

Q. Let me know what page you're on first. 12:15:28

A. I'm on page 11. 12:15:30

Q. Okay. Yeah. There's no mention of 12:15:32

athletic positioning as a term you were given a 12:15:36

definition of in Paragraph 27. Right? 12:15:38

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A. I don't see a definition of that. No. 12:15:41

Q. So you applied the plain and ordinary 12:15:43

meaning. Right? 12:15:46

A. I would say yes. 12:15:47

Q. Okay. And you just gave me a little bit 12:15:51

earlier what you thought the plain and ordinary 12:15:53

meaning was, but I'm asking you in the context of 12:15:54

these patents could a shoe with a heel lower than 12:15:57

the toe still put the user in an athletic 12:16:00

positioning as claimed? 12:16:04

MR. BUGG: Objection, vague, calls for 12:16:07

speculation. 12:16:09

A. A shoe in the heel lower than the toe. I 12:16:09

would say that that probably depends on the 12:16:15

athlete. I'm not sure if one athlete might want 12:16:18

to be in a certain position more than another 12:16:24

athlete. 12:16:25

Q. Okay. So you understand the claims of all 12:16:28

of the slope patents, or at least one claim in 12:16:33

each of the slope patents, uses the term "athletic 12:16:36

positioning." Right? 12:16:39

A. I have seen that. Yes. 12:16:41

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Q. Okay. And so in determining whether that limitation, athletic positioning, is in the prior art, you would have to understand what that term means. Right? 12:16:42 12:16:49 12:16:53 12:16:56

A. Yeah. I would say it's a bit of a vague term, but I would have to -- yeah. I would have to apply what the ordinary meaning would be. 12:16:57 12:17:06 12:17:16

Q. Okay. And you just said that athletic positioning could mean a different thing for one athlete than another? 12:17:29 12:17:32 12:17:34

MR. BUGG: Objection, vague, misstates prior testimony. 12:17:37 12:17:38

But you can answer. 12:17:43

A. I would say depending upon the sport, athletic positioning would probably vary depending on what the performance needs were for an athlete. 12:17:44 12:17:47 12:17:50

Q. Okay. Did you read the '291 patent to look at how it defined "athletic positioning"? 12:17:53 12:17:58

A. I read through the patent. 12:18:03

Q. Okay. And in doing that, did you understand it to be applying any particular meaning of "athletic positioning"? 12:18:05 12:18:08 12:18:11

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MR. BUGG: Objection, vague, asked and answered. 12:18:13 12:18:17

A. When I read the patent, the -- it identified the term "athletic positioning" as something other than what the other claims were in the patent. 12:18:17 12:18:23 12:18:29 12:18:32

Q. But you're saying that the '291 patent provided a definition of "athletic positioning"? 12:18:32 12:18:39

MR. BUGG: Objection, vague, misstates prior testimony. You can answer if you can. 12:18:44 12:18:46

A. The '291 patent speaks about different slopes. And the term "athletic positioning" is a -- something that was identified in addition to what those slopes would be. So I would interpret the definition of "athletic positioning" as maybe an optimal weight distribution. 12:18:48 12:18:51 12:18:58 12:19:02 12:19:08 12:19:12

Q. Okay. And is there any particular weight distribution that it's defining it as? 12:19:14 12:19:19

MR. BUGG: Objection, asked and answered. 12:19:26

A. Whatever the weight distribution that would be helpful for the athlete I would say in that particular sport. 12:19:27 12:19:29 12:19:33

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Q. Athletic positioning is in the claims of the '291 patent. Right? 12:19:34 12:19:40

A. It is one of the claims. Yes. 12:19:41

Q. Okay. And so does the term limit the claims in your view? 12:19:43 12:19:46

MR. BUGG: Objection, vague, calls for speculation. You can answer. 12:19:55 12:19:56

A. Does the term limit the claims? Is that the question? 12:19:59 12:20:01

Q. Yes. 12:20:01

A. I would say that the term is something that is different than the slope claims because it is a separate claim. 12:20:10 12:20:17 12:20:36

So it would have to mean something -- you wouldn't be able to have a claim that states "having a slope" and then also a claim that states "having athletic positioning." 12:20:39 12:20:43 12:20:48 12:20:50

So athletic positioning, in my opinion, would have to mean something different, which I believe would be a weight distribution. 12:20:53 12:20:55 12:20:57

Q. Okay. Let's go to page 30 of the '291 declaration. Are you there? 12:20:58 12:21:04

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A. Yes. 12:21:17

Q. Okay. Limitation 1.5 is the one that has 12:21:17

"athletic positioning" in it. Correct? 12:21:21

A. Yes. 12:21:23

Q. And you don't point to anything in 12:21:29

Paragraph 56 showing something different for 12:21:31

athletic positioning. Right? 12:21:35

A. Correct. 12:21:37

Q. Okay. Let's go to your other declaration 12:21:52

that you have in front of you, the '768. I want 12:21:54

to go back to the "Claim Construction" section of 12:22:05

that, which is page 11. Are you there? 12:22:07

A. Yes. 12:22:20

Q. Okay. The second subsection here talks 12:22:20

about a "'heel platform having a first height that 12:22:29

is substantially uniform around a perimeter of the 12:22:43

heel platform.'" Right? 12:22:45

A. Yes. 12:22:47

Q. Okay. And you're applying this definition 12:22:49

that was provided to you by counsel. Right? 12:22:55

A. Yes. 12:22:57

Q. Is this definition consistent with how the 12:22:59

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patent defines this term? 12:23:04
MR. BUGG: Objection, vague, calls for 12:23:08
speculation. 12:23:10
A. I would believe so. 12:23:10
Q. Okay. If you thought it was wrong, then 12:23:15
you wouldn't have done it. Right? 12:23:18
MR. BUGG: Objection, calls for 12:23:20
speculation. 12:23:21
A. I wouldn't have done it if I thought it 12:23:23
was wrong. 12:23:25
Q. So you agree with the definition that's in 12:23:25
Subsection b. Correct? 12:23:29
A. I do agree with it. 12:23:30
Q. Okay. And that's the definition you 12:23:32
applied in your analysis? 12:23:35
A. Yes. 12:23:39
Q. Okay. And then this inside edge and 12:23:39
outside edge term or inner edge and outer edge, 12:23:44
that's defined a little bit later in that 12:23:47
Paragraph b? 12:23:50
It's not as specific in this patent, but 12:23:52
you recognize that as a term that appears in 12:23:54

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several of the patents. Right? 12:23:56

A. Yes. 12:23:58

Q. And the definition you applied of inside edge or inner edge and outside edge or outer edge is with reference to where the foot sits in the shoe, not the absolute inner edge or outer edge of the shoe. Right? 12:24:00 12:24:04 12:24:07 12:24:09 12:24:13

A. I believe the patent refers to the foot sitting near an edge of the shoe. 12:24:13 12:24:20

Q. Can you go to your '786 patent declaration. This is the 636 IPR, and I want to go to this same part about claim construction, which is on page 12. 12:24:28 12:24:45 12:24:52 12:24:55

A. Okay. 12:25:12

Q. And about halfway through this Subparagraph "a," you say, "'Inner,' 'outer,' 'front' and 'rear' edge of the heel platform/apparatus means the edges of the portion of the shoe where the heel of the foot sits, not the inner and outer-most edges of the shoe." Do you see that? 12:25:12 12:25:14 12:25:20 12:25:26 12:25:29 12:25:31 12:25:34

A. Yes. 12:25:35

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Q. You agree that is the correct definition of inner and outer edge as it's used in these patents? 12:25:40 12:25:42 12:25:45

MR. BUGG: Objection, misstates the prior testimony. 12:25:46 12:25:47

But you can answer. 12:25:49

A. Yeah. As I state in my declaration, inner, outer, front, and rear edge of the heel platform apparatus means the edges of the portion of the shoe where the heel of the foot sits, not the inner and outermost edges of the shoe. 12:26:01 12:26:04 12:26:07 12:26:10 12:26:15

Q. Right. You agree with that statement. Correct? 12:26:19 12:26:20

A. Yes. 12:26:22

MR. BUGG: Objection, vague. 12:26:23

Q. Okay. And that's the definition you applied in your opinions. Right? 12:26:25 12:26:27

A. Well, yes. But I also applied what the specifications were in the patents. 12:26:30 12:26:37

Q. Is that definition consistent with what the specification in the patent is? 12:26:40 12:26:42

MR. BUGG: Objection, calls for 12:26:45

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speculation. 12:26:46

A. I believe that some of the specifications in the patents speak to being near the edges. 12:26:46 12:26:50

Q. Okay. I understand that. But where the term used is just "inner edge" or "outer edge," you agree the specification defines that in terms of where the foot sits in the shoe and not the absolute inner or outer edge, as you state in this paragraph. Right? 12:27:02 12:27:04 12:27:08 12:27:10 12:27:12 12:27:14

MR. BUGG: Objection, misstates testimony. 12:27:16

A. It states here that it's "where the heel of the foot sits but not the inner or outer-most edges of the shoe." 12:27:17 12:27:26 12:27:29

Q. Okay. And my question is just, do you agree that that is consistent with the specification? 12:27:30 12:27:35 12:27:37

MR. BUGG: Objection, vague. 12:27:43

A. I believe some of the specifications refer to being near the edge of the shoe. 12:27:44 12:27:49

But in this case where it states what the definition is, it states that it's "where the heel of the foot sits, not the inner and outer-most 12:27:54 12:28:00 12:28:08

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edges of the shoe." 12:28:10

Q. Okay. And that's the definition you 12:28:12

applied in your opinions. Right? 12:28:15

A. I've applied these definitions. 12:28:16

Q. Okay. And if you thought they were wrong, 12:28:22

would you still have applied them? 12:28:24

MR. BUGG: Objection, calls for 12:28:30

speculation. 12:28:31

A. I don't believe I would apply these if I 12:28:32

thought they were wrong. 12:28:39

Q. Okay. And so you're not disavowing that 12:28:40

statement in your declaration. Right? It's 12:28:45

accurate? 12:28:47

MR. BUGG: Objection, form. 12:28:48

A. I would say it's an accurate statement. 12:28:52

Q. Okay. Back to the '768 patent 12:28:54

declaration. 12:29:03

MR. BUGG: We've been going for about an 12:29:08

hour and 15 minutes. Is this a related question 12:29:10

or is this a good time to take a break? 12:29:12

MR. HOUGHTON: I've got a few more on 12:29:14

claim construction. So it's up to you if you want 12:29:16

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to finish it or take a break now. I'm fine. 12:29:19

MR. BUGG: We can finish it. 12:29:22

THE WITNESS: I'm going to take a break. 12:29:26

(Recess, 12:29 p.m. to 12:44 p.m.) 12:29:29

BY MR. HOUGHTON: 12:44:16

Q. All right. During the break did you discuss the substance of any of your testimony or opinions with counsel? 12:44:16 12:44:19 12:44:21

A. We discussed just a little about the -- reminding me of how we applied claim construction. That was the only substance we talked about. 12:44:22 12:44:33 12:44:36

Q. And what was said during that conversation? 12:44:38 12:44:41

A. That these were terms that were agreed upon that you had provided and that I applied -- that we applied to my understanding. 12:44:43 12:44:46 12:44:52

Q. And when you said "we agreed upon," who is the "we"? 12:44:56 12:45:00

A. Well, me. I'm applying these claim construction terms to my opinions. 12:45:01 12:45:08

Q. Okay. On the '768 declaration, again, still in the "Claim Construction" section, page 12:45:10 12:45:23

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11.

A. Yes.

Q. The first subbullet says, "'gradient compression factor.'" Do you see that?

A. Yes.

Q. And then you say, "'Gradient compression factor' . . . "requires that the forefoot platform becomes 'increasingly less compressible' as you move from its inner edge to its outer edge." Right?

A. Yes.

Q. That's the definition you applied in your analysis?

A. Yes.

Q. And did you do any analysis of your own to determine whether that's actually what the '768 patent defines "gradient compression factor" to be?

MR. BUGG: Objection, vague.

A. I applied these terms to my opinions.

Q. Right. But did you check -- you read the patent. Right?

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A. I did read the patent. Yes. 12:46:32

Q. And you are a person of ordinary skill in 12:46:34

the art and you were at the time of the invention? 12:46:38

A. Yes, I am and was. 12:46:41

Q. And is this the definition that you're 12:46:43

applying consistent with how a person of ordinary 12:46:45

skill in the art would understand the term 12:46:47

"gradient compression factor"? 12:46:49

A. Yes, it is. 12:46:51

Q. Okay. And are you basing that off some 12:46:53

special portion of the specification or is this 12:46:56

the plain and ordinary meaning of "gradient 12:46:58

compression factor"? 12:47:01

MR. BUGG: Objection, calls for 12:47:02

speculation. 12:47:03

A. This was a term that was presented that 12:47:04

was agreed upon. And I would agree that it 12:47:10

represents what it means to a person of ordinary 12:47:16

skill in the art. 12:47:21

Q. Okay. Is that based off any specific 12:47:21

portion of the patent or is that just your 12:47:26

understanding of the term outside of the patent? 12:47:28

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A. I've considered the specifications of the patents and have applied this terminology to those. 12:47:30 12:47:34 12:47:37

Q. Okay. And you say above, "For all terms not specifically construed, I applied the plain and ordinary meaning." Right? 12:47:38 12:47:41 12:47:44

A. Yes. 12:47:46

Q. And this is a term that is specifically construed. Right? 12:47:47 12:47:50

A. What term are you talking about? 12:47:52

Q. "Gradient compression factor." 12:47:56

A. Yeah, I would say it is. 12:48:02

Q. Okay. So you're not applying the plain and ordinary meaning? You're applying the specific construction below. Right? 12:48:03 12:48:05 12:48:08

MR. BUGG: Objection, improper question, vague. 12:48:09 12:48:13

You can answer, if you understand it. 12:48:14

A. I believe both would apply. I believe it's somewhat of an understandable term, so I would say it's the ordinary way to say it, but it's also what's been defined as the definition. 12:48:16 12:48:21 12:48:26 12:48:34

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Q. Okay. And that's the only definition of "gradient compression factor" that you applied in your analysis. Right? The one that's listed here on page 11? 12:48:37 12:48:40 12:48:42 12:48:45

A. Yes. 12:48:46

Q. Okay. One more term that I want to talk about. And so we're looking at the '768 patent section on claim construction and there are just these two subbullets. Right? 12:48:58 12:49:03 12:49:07 12:49:10

A. That's correct. 12:49:12

Q. So those are the only terms in this section that you're offering or providing a specific construction on, at least in this section. Right? 12:49:14 12:49:17 12:49:20 12:49:23

A. Specific term, yes. 12:49:24

Q. Okay. Now, I want to go down to page 40. Let me know when you're there. 12:49:28 12:49:39

A. Okay. 12:49:42

Q. You have a footnote at the end of this notation, Footnote 1. Do you see that? 12:49:43 12:49:47

A. Yes. 12:49:50

Q. And this footnote is talking about a first 12:49:52

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material and a second material. Right? 12:49:58

A. Yes, I see that. 12:50:00

Q. And the last sentence of your footnote 12:50:03

says, "I understand the 'first' material to be 12:50:07

that which is used in the heel platform and the 12:50:09

'second' material to be that which is used in the 12:50:11

forefoot platform, which may be the same as, or 12:50:14

different from, the first material. " Right? 12:50:17

A. Yes. 12:50:20

Q. Okay. Why didn't you put that in the 12:50:22

claim construction section? 12:50:35

MR. BUGG: Objection, calls for 12:50:38

speculation. 12:50:39

You can answer, if you can. 12:50:41

A. Again, I'm not an attorney, and I wasn't 12:50:42

asked to determine what the claim construction 12:50:51

should be, so I applied what the terms were that 12:50:58

were given to me. 12:51:00

Q. Okay. Now I want to quickly look at the 12:51:10

petition itself on the '768 patent, which I don't 12:51:12

think you have in front of you. So I'm going to 12:51:16

drop it in the chat. And if you could open that 12:51:18

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up when you have it and go to page 25. Let me know when you're there. 12:51:20 12:51:25

Are you on page 25? 12:52:10

A. I'm almost there. 12:52:11

Q. Okay. 12:52:12

A. Just need to scroll to it. Okay. I'm there. 12:52:13 12:52:19

Q. This footnote in the petition says, "While claim 1 recites that the heel platform is constructed of a 'first material' and the forefoot platform of a 'second material,' Athalonz contends that they can be the same material," and then I'm cutting out a little bit of the sentence. 12:52:20 12:52:23 12:52:25 12:52:28 12:52:30 12:52:34

And then it says, "Without conceding alternative arguments, Under Armour applies Athalonz's apparent construction." 12:52:36 12:52:38 12:52:42

Do you see that? 12:52:44

A. I do see it. Yeah. 12:52:45

Q. Okay. And so in the petition, Under Armour is applying a construction where the first material and the second material can be the same material. Do you agree with that? 12:52:49 12:52:53 12:52:55 12:52:57

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A. They can be. Yes. 12:52:58

Q. Okay. Do you agree that is consistent 12:53:10

with the '768 patent specification? 12:53:22

A. I believe the '768 patent claims that it 12:53:25

can be one material or different materials. 12:53:30

Q. Okay. But Under Armour is applying a 12:53:38

construction where they can be the same material. 12:53:40

Right? 12:53:44

A. Yes. 12:53:45

Q. Okay. And now I want to look at the 12:53:49

petition on the '456 patent. I'm going to drop 12:54:03

that in the chat. And go to the same footnote in 12:54:09

that, which is on page -- let me figure it out. 12:54:15

Page 27 of the '456 petition. 12:54:39

A. Okay. I'm there. 12:54:54

Q. Okay. And this footnote is saying the 12:54:55

same thing, that the first material and the second 12:54:57

material can be the same. And that's the 12:54:59

construction Under Armour is applying in this 12:55:02

petition too. Right? 12:55:03

A. Yes. 12:55:06

Q. Okay. It says "While claim 10 recites 12:55:15

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that the heel platform is constructed of a 'first material' and the forefoot platform of a 'second material,' Athalonz suggests that they can be the same material," citation, "accusing shoes with the heel platform and forefoot platform constructed of the same material(s) as infringing claim 1." Do you see that? 12:55:19 12:55:21 12:55:25 12:55:29 12:55:34 12:55:38 12:55:41

A. I see that. 12:55:41

Q. Okay. Is that a typo? Is it supposed to say "While claim 1" recites? 12:55:46 12:55:51

MR. BUGG: Objection, calls for speculation. This is the petition. This isn't his declaration. 12:55:55 12:55:57 12:55:59

But if you know the answer, you can answer that. 12:56:00 12:56:01

A. This is the first time I'm seeing this document, and I haven't done an analysis on it. I don't know for sure the answer to that question. 12:56:02 12:56:05 12:56:08

Q. Have you ever seen the petition before? 12:56:12

A. I don't know if I -- I might have seen this. It's not something I spent a lot of time on. 12:56:13 12:56:21 12:56:26

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Q. Okay. Let's go to your declaration on the '456 patent. 12:56:28 12:56:31

A. Okay. 12:56:32

Q. Page 41. 12:56:34

A. Okay. 12:56:56

Q. Footnote on page 41 says, "While claim 10 recites that the heel platform is constructed of a 'first material' and the forefoot platform of a 'second material,' Athalonz suggests that they can be the same material," citation, "accusing shoes with the heel platform and forefoot platform constructed of the same material(s) as infringing claim 1." Do you see that? 12:56:57 12:57:02 12:57:04 12:57:07 12:57:10 12:57:15 12:57:18 12:57:22

A. I see that. 12:57:23

Q. Is that a typo? Is it supposed to say "While claim 1" recites? 12:57:25 12:57:28

A. I don't believe it's a typo. 12:57:29

Q. Okay. Well, let's look at Claim 10 of the '456 patent. We can do that by actually going to the patent or looking in your section. 12:57:40 12:57:45 12:57:48

Why don't we go back to the petition document that I had you looking at before. 12:57:52 12:57:54

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A. Sorry. Say that again. 12:58:08

Q. I want to look at the claims of the '456 patent. And I think that they're listed in the petition. So if you open up the '456 petition that I just sent you in the chat we were just looking at -- 12:58:09 12:58:12 12:58:16 12:58:21 12:58:23

A. Okay. 12:58:24

Q. -- if you'd go to PDF page 8, which is the physical page of the document. 12:58:26 12:58:35

A. Page 8, you said? 12:58:41

Q. It's like little 8. So it's the 8th page of the pdf, but it's Roman numeral viii, "claim listing." Are you there? 12:58:43 12:58:46 12:58:51

A. Yeah. 12:59:10

Q. Does claim 10, which is on little ix, say anything about first material and second material? 12:59:10 12:59:19

A. I'm looking at Claim 1 here, and it doesn't . . . 12:59:24 12:59:58

Q. So Claim 1 says in the third limitation about the heel platform that it "is constructed of a first material." And then in the next limitation it talks about how "the forefoot 13:00:12 13:00:15 13:00:17 13:00:20

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platform is constructed of a second material." 13:00:23

Do you see that? 13:00:25

A. Yes. "Second material having a gradient compression factor"? 13:00:25 13:00:35

Q. Right. Does Claim 10 have anything about a first material and a second material? 13:00:36 13:00:40

A. Claim 10 states "a heel platform having a first type of substantial uniform from an inner edge of the sole section to the outer edge of the sole section, wherein the heel platform is constructed of a first material; and a forefoot platform juxtaposed to the heel platform, wherein the heel platform is constructed to have a first level of compression." 13:00:41 13:01:05 13:01:08 13:01:11 13:01:13 13:01:18 13:01:21 13:01:24

So the second material -- it doesn't say anything about a second material. 13:01:30 13:01:51

Q. Okay. So going back to your declaration on the '456 patent, page 41, the footnote says, "While claim 10 recites that the heel platform is constructed of a 'first material' and the forefoot platform of a 'second material.'" Do you see that? 13:01:52 13:01:55 13:02:01 13:02:04 13:02:07 13:02:09

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A. Yeah. So that must have -- I must have meant Claim 1. 13:02:09 13:02:13

Q. Right. And then you do say at the bottom "infringing claim 1." Right? 13:02:14 13:02:16

A. Yeah. 13:02:18

Q. And that was the same typo that was in the petition, wasn't it? 13:02:19 13:02:21

A. I believe -- yeah, I believe that is a typo. 13:02:22 13:02:29

Q. Okay. And it's the same typo in the petition in your declaration. Right? 13:02:30 13:02:32

A. I would guess it is. 13:02:34

Q. Okay. Was this your typo or was this a typo from counsel? 13:02:40 13:02:44

MR. BUGG: Objection to the extent it calls for privileged information. 13:02:47 13:02:49

But to the extent you don't share that and to the extent you remember, you can answer. 13:02:51 13:02:53

A. I can't remember completely if this was something that I had written or counsel had written. 13:02:55 13:03:04 13:03:05

Q. Okay. I want to go to the '786 patent 13:03:11

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declaration now. 13:03:13

A. Okay. 13:03:28

Q. And go to page 32. 13:03:28

A. Okay. 13:03:45

Q. Limitation 1.5, which you talk about on page 32, requires having a first slope, a second slope, and a third slope, each greater than the reference slope. Right? 13:03:46 13:03:51 13:03:56 13:04:01

A. Yes. That's what it states. 13:04:02

Q. Okay. And your opinion is that Kim, the reference we're talking about here, discloses this limitation? 13:04:11 13:04:15 13:04:17

A. In my declaration I write, "Kim teaches and/or suggests that the mid-foot section and the toe section form an angled support platform that has a first slope along the inner edge of the apparatus from a front edge of the apparatus to the heel platform section, a second slope along the front edge of the apparatus from the inner edge to the outer edge of the apparatus, and a third slope along the outer edge of the apparatus from the front edge of the apparatus to the heel 13:04:18 13:04:28 13:04:31 13:04:35 13:04:38 13:04:43 13:04:48 13:04:51 13:04:53 13:04:56

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platform." 13:05:00

Q. Okay. 13:05:05

A. "Kim also teaches and/or suggests that the first slope, second slope, and the third slope are each greater than the reference slope." 13:05:07 13:05:09 13:05:12

Q. Okay. So is it your opinion that Kim discloses this limitation? 13:05:15 13:05:20

A. Yes. 13:05:22

Q. Okay. And so for this to be true, there has to be a first slope and a third slope that are greater than the reference slope. Right? 13:05:26 13:05:31 13:05:34

A. Yes, I believe so. 13:05:35

Q. Okay. And if you go down to Paragraph 62 on page 38, you say, "A POSITA would also understand that each of the first, second, and third slopes are greater than the reference slope (which is essentially no slope since it runs parallel to the un-sloped bottom of the surface of the shoe)." Right? 13:05:47 13:05:55 13:06:07 13:06:12 13:06:15 13:06:18 13:06:20

A. I see that. 13:06:21

Q. And then in the previous paragraph you say that "slopes inherently form between areas of 13:06:32 13:06:40

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1	incline and/or different thickness in shoe sole."	13:06:44
2	Right?	13:06:48
3	A. Yes.	13:06:48
4	Q. Your opinion that there is a first slope,	13:06:53
5	second slope, and third slope greater than the	13:07:00
6	reference slope requires the heel of Kim to be	13:07:03
7	higher than the toe section. Correct?	13:07:07
8	A. It does.	13:07:09
9	Q. And same for this last limitation that	13:07:12
10	we're looking at on page 38, "wherein the toe	13:07:16
11	section is lower than the heel platform section as	13:07:22
12	a result of the first, second, and third slopes."	13:07:25
13	Do you see that?	13:07:27
14	A. What paragraph are you referencing?	13:07:30
15	Q. I'm reading the claim limitation 1.6 on	13:07:37
16	page 38.	13:07:40
17	A. Okay. I see that.	13:07:51
18	Q. Your opinion on this limitation also	13:07:52
19	requires the heel of Kim be higher than the toe	13:07:54
20	section of Kim. Right?	13:07:57
21	A. Yes.	13:07:58
22	Q. Okay. If the heel of Kim was not higher	13:08:00

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than the toe section, then you'd agree there would not be a first slope or a third slope. Right? 13:08:07 13:08:09

A. I'm looking at my declaration here just to confirm. And I just want to make sure that I understood the question correctly. I apologize. But can you please restate it? 13:08:13 13:08:41 13:08:44 13:08:48

Q. If the heel section of Kim was not higher than the toe section of Kim, then there would not be a first slope or a third slope greater than the reference slope. Right? 13:08:51 13:08:53 13:08:58 13:09:00

A. The heel section would have to be higher to create the slope. 13:09:03 13:09:10

Q. And same for that next limitation, 1.6, that requires the toe section to be lower than the heel section as a result of the slopes. 13:09:14 13:09:17 13:09:19

That limitation would also not be met if the heel section was not higher than the toe section. Right? 13:09:22 13:09:25 13:09:27

A. I believe that would be correct. Yes. 13:09:29

Q. Okay. And so you have some drawings from Kim showing the slopes, according to you? Page 36 and 37. 13:09:32 13:09:38 13:09:44

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A. Yes. I see those. 13:09:44

Q. And these are all shown on Figure 2 of Kim. Right? 13:09:47 13:09:53

A. Yes. 13:09:53

Q. Figure 2 of Kim is a perspective drawing. Do you agree with that? 13:09:59 13:10:05

A. Yes, it is. 13:10:06

Q. It doesn't show the ground? 13:10:07

A. The ground -- it's hard to say if it doesn't show the ground because I would look at this and know that the shoe is sitting on a surface, even though it's a white -- it's just plain white. I can tell where the ground would be just by looking at the images. 13:10:19 13:10:21 13:10:24 13:10:28 13:10:34 13:10:38

Q. Okay. But you can't -- with respect to any reference point on Kim, you can't point to a part of this drawing to say that's the ground. Right? 13:10:40 13:10:44 13:10:47 13:10:49

A. Well, I would, just by looking at the drawings. And any person having ordinary skill in the art would understand that the ground would be at the point of the drawing where the heel is -- 13:10:49 13:10:54 13:10:57 13:11:00

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the bottom line of the heel would be and the bottom line of the forefoot would be. 13:11:06 13:11:09

Q. I'm going to send Kim, the reference, in this chat. This is Exhibit 1005 in the 636, 637, and 638 IPR. 13:11:11 13:11:18 13:11:24

(Exhibit 1005, previously marked, is not attached to the transcript.) 13:11:30

Q. If you could open that up. I want to look at the figures. Let me know when you have it and you're looking at Figure 1. 13:11:30 13:11:31 13:11:46

A. I see it. 13:11:50

Q. Okay. In Figure 1, the heel section is actually at a lower point than the toe section. Do you agree? 13:11:51 13:12:07 13:12:10

A. I would not agree with that statement. 13:12:11

Q. Okay. I'm going to share my screen. If you draw a straight line across from the top of the heel section in Figure 1, you agree that the toe is at a higher point along that straight line than the heel. Correct? 13:12:15 13:12:31 13:12:33 13:12:39 13:12:41

A. The way that you're looking at the shoe is not the way that it would be viewed if someone 13:12:42 13:12:50

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were to be standing in the shoes on a ground surface. 13:12:56 13:13:01

Q. Okay. But as pictured in Figure 1, the actual shoe that's shown there as depicted, the heel section is lower than the toe section. Do you agree with that? 13:13:04 13:13:07 13:13:11 13:13:13

A. I would not say that the heel section is lower than the toe section because the image could be rotated clockwise slightly, which it looks like it is. 13:13:14 13:13:17 13:13:23 13:13:28

Q. Okay. So you can't tell where the ground is in Figure 1? Do you agree with that? 13:13:31 13:13:33

A. I would say that anyone, including a person of ordinary skill in the art, would understand that the ground surface would be where the -- you see the tread on the forefoot and the tread in the heel area. So if you were to look at -- you can't see my cursor. 13:13:36 13:13:40 13:13:42 13:13:48 13:13:55 13:13:59

But if you were to look at the height of the forefoot sole and the height of the heel when someone is wearing that shoe, those two surfaces would be on the ground. 13:14:01 13:14:04 13:14:09 13:14:12

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And in that embodiment or in that situation, you could definitely tell that the forefoot area would be lower than the heel area. 13:14:15 13:14:22 13:14:25

Q. Okay. But you can't actually see the ground in Figure 1? 13:14:30 13:14:34

A. You can't. There's no line indicating the ground surface, but any person having ordinary skill in the art would understand that the ground would be where those two surfaces would be touching. 13:14:37 13:14:42 13:14:46 13:14:49 13:14:52

Q. In Figures 3 and 4, 3b, 4a, 4b, and 4c, there is a ground surface pictured. Right? 13:14:52 13:15:02

A. Yes, there is a ground surface. 13:15:05

Q. Okay. And in this cross-sectional view, you can't see whether the heel is higher than the toe. Right? 13:15:10 13:15:12 13:15:16

A. This is a cross-section of I believe an area in the forefoot of the shoe. So no, you cannot see in this view the heel. 13:15:16 13:15:23 13:15:27

Q. Okay. And in Figure 5, you can't see whether the heel is higher than the toe. Right? 13:15:30 13:15:35

A. Is it depicted in this image? It's hidden 13:15:37

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by the forefoot of the shoe, so you can't actually see where the heel is. 13:15:46 13:15:51

But if I were to apply what is learned in the patent on the side view, seeing that the heel height is higher than the forefoot, I would interpret that to know that this view would be that the heel would be higher than the toe. 13:15:54 13:15:58 13:16:02 13:16:05 13:16:08

Q. Okay. But you couldn't draw a slope on Figure 5 showing the heel being higher than the toe. Correct? 13:16:09 13:16:14 13:16:17

A. You know, if you actually look at Figure 5 -- if you look at the area where the sole wraps around the toe, you can see a little bit of a surface area on the part of the sole that sticks out beyond the upper. 13:16:18 13:16:27 13:16:30 13:16:34 13:16:40

And you can see that in that view the little white space in the toe area, in the very front of the toe area, is narrower than the little bit of white space on the left and right side of the image. And because the -- that little white space is increasing in height, it would indicate that it's going on a slope. 13:16:43 13:16:49 13:16:53 13:16:56 13:16:59 13:17:04 13:17:08

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Q. Kim discloses spikes 11 and 50 that are present in both the forefoot and the heel. Right? 13:17:18 13:17:21

A. Yes. 13:17:24

Q. And Kim discloses that the height of the spikes at the outer edge is smaller than the height of the spikes at the inner edge. Right? 13:17:25 13:17:31 13:17:35

MR. BUGG: Objection, vague. 13:17:40

You can answer if you can. 13:17:42

A. Sorry. I just want to make sure I understand your question. Can you point to something on the screen? 13:17:43 13:17:47 13:17:51

Q. The height of the spikes 11 and 50 is inversely proportional to the variation in the thickness of the outsole. That is, the height of the spikes 11 and 50 at the outer edge is smaller than the height of the spikes 11 and 50 at the inner edge? I was only reading parts of that, but this is what I'm referring to. 13:17:59 13:18:02 13:18:05 13:18:09 13:18:13 13:18:15 13:18:19

A. Okay. 13:18:24

Q. Do you agree that the spikes 11 and 50 are higher at the outer edge than the inner edge? 13:18:24 13:18:30

A. I believe they can be. Yes. 13:18:33

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Q. Well, it says they are. Right? In Paragraph 33. 13:18:41 13:18:45

A. Yeah. 13:18:46

Q. Okay. And there are spikes 11 shown in Figure 1 in the forefoot and the heel. Right? 13:18:46 13:18:59

MR. BUGG: Objection, calls for speculation. 13:19:05 13:19:09

A. There are spikes visible in this view. 13:19:10

My understanding of the patent is they -- the spikes can be different embodiments where you might have spikes only in the forefoot or only in the heel area. Maybe not in the heel area. Maybe just only in the forefoot area. 13:19:12 13:19:15 13:19:19 13:19:22 13:19:27

Q. In Figure 2, Kim is only showing spikes at one cross-section. Right? 13:19:29 13:19:34

MR. BUGG: Objection, vague. 13:19:38

A. There's only one cross-section viewed here. Yes. 13:19:40 13:19:45

Q. But you agree that there have to be spikes on other positions at the bottom of the shoe for this to make any sense. Right? Like, there can't just be these spikes at the cross-section? 13:19:45 13:19:49 13:19:52 13:19:55

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A. In order for the -- what's claimed in this patent to work, I would imagine that the spikes would be in the forefoot area. In this view, I don't see any spikes in the heel area and I don't believe that this patent teaches a functionality of what's happening in the forefoot to be in the heel area. 13:19:57 13:20:04 13:20:07 13:20:12 13:20:16 13:20:23 13:20:25

Q. But you agree there are more spikes than just what are shown in Figure 2. Right? 13:20:26 13:20:31

MR. BUGG: Objection, calls for speculation. 13:20:32 13:20:34

A. What is actually seen in Figure 2 is a section view where you can only see one row of spikes. I would imagine that -- and based on what's taught in the patent on different views, that the spikes would be in other areas as well. 13:20:37 13:20:41 13:20:43 13:20:47 13:20:50

Q. Going back to Paragraph 62 of your declaration that you were just looking at on the '786 patent. 13:20:53 13:21:02 13:21:10

A. '786, you said? 13:21:13

Q. Yeah. The one we've been looking at. 13:21:15

A. Yes, I see it. 13:21:18

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Q. You agree that the reference slope is parallel to the bottom surface of the shoe in this patent? 13:21:19 13:21:22 13:21:25

MR. BUGG: Just for clarification, did you say Paragraph 62 or page 62? 13:21:30 13:21:32

MR. HOUGHTON: Paragraph 62. 13:21:34

MR. BUGG: Thank you. 13:21:35

A. I'm sorry. I was looking at page 62. I want to make sure I heard your question correctly. 13:21:35 13:22:15

Q. You agree that the reference slope is parallel to the bottom surface of the shoe? 13:22:18 13:22:20

A. Yes. 13:22:22

Q. Okay. Scrolling up just a little bit or going one page earlier on your drawings of Kim where you show the slopes. This is page 37. 13:22:27 13:22:34 13:22:37

And this figure, the second slope is parallel to the reference slope. Right? 13:22:46 13:22:48

MR. BUGG: Objection, calls for speculation. 13:22:53 13:22:54

Q. Where you draw the second slope. 13:23:02

A. Can you bring it up on the screen and point to what you're referencing, not with your 13:23:05 13:23:07

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cursor? 13:23:12

Q. I'm referencing Figure 2 at the top of 13:23:13

page 37 where you draw a second slope. 13:23:15

A. Okay. 13:23:16

Q. And I'm asking is the second slope 13:23:17

parallel to the reference slope in your drawing? 13:23:19

A. In the reference drawing it appears to be 13:23:21

in a slightly different angle. 13:23:38

Q. You're saying the second slope is at a 13:23:49

different angle than the reference slope in the 13:23:51

Figure 2 drawing that you annotated? 13:23:54

A. Yes. 13:23:56

Q. Which line are you referring to? The 13:24:06

solid line or the dotted line? 13:24:21

A. That would be the solid line. 13:24:23

Q. Go to page 39. 13:24:27

A. Okay. 13:24:38

Q. It says, "from a front edge of the heel 13:24:39

platform to the rear edge of the apparatus, the 13:24:49

uniform platform height has the reference slope." 13:24:53

Do you see that? 13:24:56

A. Sorry. Where on page 39 is that? 13:24:57

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Q. Claim limitation 3.1. 13:25:01

A. Okay. "The apparatus of claim 1 further comprises: the heel platform section has a uniform platform height, wherein, from a front edge of the heel platform to the rear edge of the apparatus, the uniform platform height has the reference slope; and" -- yeah. Okay. 13:25:04 13:25:10 13:25:12 13:25:17 13:25:19 13:25:23

Q. So the reference slope we just talked about was substantially parallel to the ground. Correct? Or substantially parallel to the bottom of the shoe? Sorry. 13:25:27 13:25:36 13:25:39 13:25:42

A. In the heel, yes. 13:25:44

Q. So you agree that the uniform platform height has to be substantially parallel to the bottom of the shoe to satisfy this claim? 13:25:47 13:25:57 13:25:59

A. In the heel area, yes. 13:26:02

Q. From the front edge of the heel platform to the rear edge of the apparatus. Right? 13:26:06 13:26:13

A. Yes. 13:26:15

Q. Okay. And then in the second part of Claim 3, which is on page 42, this part says that you need to have "a second dimension at a front 13:26:19 13:26:42 13:26:54

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outer edge of the apparatus and a third dimension at a front inner edge of the apparatus." Right? 13:26:56 13:26:59

A. I see that. 13:27:02

Q. And you annotated Figure 5b here? 13:27:04

A. I did. 13:27:10

Q. And your annotations exclude the cleats. Right? Or the spikes? 13:27:14 13:27:19

A. Yes, they do. 13:27:20

Q. If the spikes were included, do you agree that the second dimension and the third dimension would be the same? 13:27:25 13:27:27 13:27:29

MR. BUGG: Objection, calls for speculation. 13:27:33 13:27:35

A. I don't know if they would be or not. I don't see that here. 13:27:35 13:27:37

Q. Go back to Kim, the abstract. 13:27:44

A. Sorry. Go back to where? 13:27:46

Q. The Kim reference, Exhibit 1005. 13:27:47

A. Okay. 13:28:05

Q. I'm looking at the first page. In the abstract it says, "the lower surface of the outsole is inclined from an outer edge of the 13:28:05 13:28:08 13:28:11

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outsole to an inner edge of the outsole so that the spikes at the inner edge of the outsole have a height larger than that of the spikes at the outer edge of the outsole, and the spikes respectively have heights so that an upper surface of the outsole is substantially parallel with the ground." Do you see that? 13:28:14 13:28:17 13:28:20 13:28:22 13:28:26 13:28:29 13:28:32

A. I see that. Yes. 13:28:34

Q. For the upper surface of the outsole to be substantially parallel to the ground, do you agree that the height at the outside and inside edge of Kim would have to be the same, including the spikes? 13:28:36 13:28:39 13:28:44 13:28:47 13:28:49

MR. BUGG: Objection, vague. 13:28:51

A. In the application where this shoe would be on a hard surface, it would appear that those heights would be the same. 13:28:53 13:29:00 13:29:05

Q. Okay. And nothing about the physical shoe changes when it's on a hard surface or a soft surface. Right? 13:29:06 13:29:09 13:29:12

MR. BUGG: Objection, vague. 13:29:13

A. The shoe will be at a different angle when 13:29:15

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it's on a soft surface, which is where the intended invention is meant to apply. 13:29:19 13:29:21

Q. But it's the same physical shoe. Right? 13:29:27

A. The shoe is the same. Yes. It's not a 13:29:30

Q. So the height of the spikes itself doesn't change when it's on one surface or another. Right? 13:29:34 13:29:38 13:29:40

A. The height of the spikes don't change. The height of the shoe does change when it's used in its intended purpose. 13:29:40 13:29:45 13:29:48

Q. Relative to the ground? 13:29:50

A. Relative to a soft surface, which is where a golf shoe would be used. 13:29:53 13:29:56

Q. But not relative to the bottom surface of the cleats. Right? 13:29:57 13:30:00

MR. BUGG: Objection, vague. 13:30:02

A. The bottom surface of the cleats would be penetrated into the grass, soft ground, where the shoe is designed to be used. 13:30:03 13:30:10 13:30:15

Q. The distance between the top of the foot platform and the bottom surface of the cleat remains the same on any surface. Right? 13:30:17 13:30:20 13:30:23

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A. In this view that we're looking at here, yes, I would say that the bottom of the cleats and the foot surface or the top of the midsole would be substantially parallel in an application where it was on a hard surface. 13:30:26 13:30:36 13:30:39 13:30:45 13:30:49

Q. No matter what the surface, the distance between the top of the foot platform and the bottom of the cleats remains the same. Right? 13:30:51 13:30:55 13:30:58

A. Those distances would remain the same. 13:31:02

Q. Okay. I want to go to your '291 patent declaration. 13:31:10 13:31:15

A. Okay. 13:31:25

Q. Your opinion is that a person of skill in the art would have found Claims 1 to 5 obvious based on Kim. Right? 13:31:25 13:31:35 13:31:39

A. Yeah. As I state here, "It is my opinion that a POSITA would have found claims 1-5 obvious based on Kim." 13:31:41 13:32:00 13:32:04

Q. Okay. You don't offer an opinion that Kim anticipates Claims 1 through 5. Right? 13:32:05 13:32:08

A. I applied obviousness, not anticipation, in my declaration. 13:32:10 13:32:16

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Q. What's the difference between obviousness and anticipation, in your understanding? 13:32:17 13:32:19

A. I believe that the claims of Kim directly relate to the obviousness of the patents that are assessed here. So I don't -- there isn't a need for anticipation, as I believe that all of the specifications of Kim apply. 13:32:22 13:32:44 13:32:50 13:32:54 13:32:59

Q. That wasn't my question. 13:33:03

What is the difference between obviousness and anticipation? 13:33:04 13:33:06

A. I don't have those definitions in front of me right now. I wouldn't want to miss -- I know what they are or I've read what the differences are, but I don't -- I don't want to recall it just based on what I'm trying to remember. 13:33:08 13:33:12 13:33:20 13:33:23 13:33:28

Q. Have you ever offered an opinion that a patent claim was anticipated by a prior art reference? 13:33:36 13:33:38 13:33:40

A. At this point, I can't remember if I have or not. 13:33:41 13:33:50

Q. Okay. In your declaration on page 8 -- page 7, actually. Are you there? 13:33:50 13:34:12

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A. Yeah. Page 7? 13:34:14

Q. You have a section called "Obviousness." 13:34:18

Do you see that? 13:34:24

A. I do. 13:34:24

Q. Okay. And on the next page, 8, 13:34:25

Paragraph 16, you say, "I have been informed in 13:34:31

considering the obviousness of a claim, one must 13:34:35

consider the scope and content of the prior art, 13:34:37

the level of ordinary skill in the art at the 13:34:39

relevant time, differences between the prior art 13:34:41

and the claim, and any 'secondary 13:34:44

considerations.'" Do you see that? 13:34:47

A. Yes, I do. 13:34:49

Q. Okay. And so one of those factors is the 13:34:50

differences between the prior art and the claim. 13:34:54

Right? 13:34:56

A. Yes. 13:34:56

Q. And so you're supposed to consider those 13:35:03

differences when you're doing an obviousness 13:35:08

analysis, at least according to what you say the 13:35:11

standard is. Right? 13:35:13

A. Yes. 13:35:14

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Q. Okay. Do you agree there are differences between the claims and what Kim discloses? 13:35:18 13:35:21

MR. BUGG: Objection, vague, calls for speculation. 13:35:27 13:35:29

A. I believe Kim discloses Claims 1 through 5 as obvious. 13:35:30 13:35:50

Q. Does it disclose them or does it render them obvious? 13:35:54 13:35:56

A. I would say it renders them obvious. 13:35:56

Q. Okay. And so what are the differences between Kim and the claim? 13:36:03 13:36:05

MR. BUGG: Objection, vague. 13:36:11

A. All of the -- I would say all of the examples that I've cited in my declaration. 13:36:12 13:36:29

Q. You don't rely on any additional reference in combination with Kim for Ground 1 for the '291 patent. Correct? 13:36:31 13:36:43 13:36:47

MR. BUGG: Objection, vague. 13:36:50

A. As I state in my declaration on page 64, "I believe claims 1-5 would be obvious based on Rubin in view of Kim." So that's referring to Rubin. 13:36:51 13:38:08 13:38:11 13:38:15

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But I believe that Kim alone would -- I believe Kim alone would have found the Claims 1 through 5 obvious. 13:38:15 13:38:38 13:38:40

Q. Okay. And one of your grounds, the one that starts on page 25, is just based on Kim, not Kim combined with anything else. Right? 13:38:41 13:38:44 13:38:49

MR. BUGG: Objection to the form of the question. 13:38:53 13:38:56

A. I believe Kim alone would be obvious. 13:38:59

Q. Okay. Go to page 34 of this declaration. 13:39:14

A. I'm there. 13:39:33

Q. And this is where you're showing what the second height on the outside edge of the shoe at a toe section of the shoe is in Kim? 13:39:34 13:39:36 13:39:38

A. I see that. 13:39:41

Q. And then lower on that page, you start talking about "a third height on the inside edge of the shoe at a toe section of the shoe." Do you see that? 13:39:42 13:39:47 13:39:49 13:39:51

A. Yes. 13:39:51

Q. And then on page 36 you draw that third height onto Kim? 13:39:57 13:40:01

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A. I see that. Yes. 13:40:03

Q. In both of your drawings, you're measuring the second and third height excluding the spikes. 13:40:05 13:40:10

Correct? 13:40:14

A. Correct. 13:40:14

Q. If you include the spikes, the second and third height are the same. Right? 13:40:16 13:40:20

MR. BUGG: Objection, calls for speculation. 13:40:23 13:40:24

A. I haven't done an analysis on that. They could be, I suppose. 13:40:25 13:40:35

Q. Would the foot of the wearer be substantially parallel to the ground if the spikes were a different height? 13:40:38 13:40:40 13:40:42

MR. BUGG: Objection, vague. 13:40:44

Q. Let me rephrase that. 13:40:46

If the distance between the top of the foot platform and the bottom of the cleats of Kim at the inside and outside edge were different, then would the foot be substantially parallel to the ground? 13:40:48 13:40:50 13:40:54 13:40:58 13:41:01

MR. BUGG: Objection, vague. 13:41:01

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A. The foot would be substantially parallel if the wearer of the shoe was standing on a hard surface. But on the intended surface where the invention is meant to perform, they would not be parallel. 13:41:02 13:41:08 13:41:12 13:41:19 13:41:22

Q. I understand. But talking about the hard surface, the cleats plus -- sorry. Rephrase that. 13:41:24 13:41:26

The distance between the top of the foot platform and the bottom of the cleats is the same on the inside and the outside edge of Kim. Correct? 13:41:36 13:41:38 13:41:41 13:41:44

MR. BUGG: Objection, vague. 13:41:51

A. Yeah. I mean, I guess the top edge of the sole and the bottom surface of where all the cleats would be would be relatively parallel, based on the section views in the patent. 13:41:53 13:41:56 13:42:01 13:42:04

But again, it's not the intended use of the shoe. So in the intended use, they would not be parallel. 13:42:09 13:42:12 13:42:16

Q. "Parallel" means with reference to something. Right? So when you're saying they would not be parallel, you mean they would not be 13:42:17 13:42:26 13:42:28

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parallel with the ground. Right? 13:42:30

A. They would not be parallel with the soft ground surface. No. 13:42:31 13:42:33

Q. Okay. But the top of the foot platform and the bottom surface of the cleats are always going to be parallel in Kim regardless of the ground surface. Do you agree with that? 13:42:34 13:42:37 13:42:39 13:42:42

A. Sure. 13:42:44

Q. Okay. On page 40, you're measuring a third slope in the third diagram? 13:42:46 13:42:56

A. Yes. 13:43:05

Q. You have two dashed lines. I'm wondering which one is the third slope? 13:43:05 13:43:09

A. So the third slope would be created by the -- I'd say . . . 13:43:23 13:43:57

I'd say the third slope would be created by the top line, the top dashed line. 13:44:00 13:44:02

Q. In Ground 2 of the '291 patent, which starts on page 47, you Say, "Claims 1-5" are "obvious over Dufour in view of Kim." Do you see that? 13:44:06 13:44:21 13:44:27 13:44:30

A. Yes. 13:44:30

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Q. You say in Paragraph 70, "Dufour teaches and/or suggests a golf shoe, but does not expressly disclose a midsole or an insole. Kim, however, does." Do you see that? 13:44:37 13:44:41 13:44:44 13:44:48

A. I see that. Yes. 13:44:51

Q. You agree the only thing you're relying on from Kim in this ground is the express disclosure of a midsole and an insole? 13:44:52 13:44:55 13:44:59

A. Yes. 13:45:01

Q. You're not making any other modifications to Dufour from Kim besides the express incorporation of a midsole and an insole? 13:45:07 13:45:09 13:45:13

A. I don't believe so. 13:45:15

Q. Okay. And then I'm going to have the same questions about your Rubin ground, which is Ground 3. I think it's the same answer, but just to confirm. This starts on page 64. 13:45:21 13:45:24 13:45:28 13:45:31

You say "Claims 1-5 are Obvious Based on Rubin in View of Kim." 13:45:39 13:45:43

A. I see that. Yes. 13:45:48

Q. And again, you say Rubin "does not expressly disclose a midsole or an insole," but 13:45:49 13:45:52

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Kim does. Right? 13:45:56

A. I see that. 13:45:59

Q. You're not making any other modifications to Rubin based on Kim other than the midsole or insole disclosure? 13:46:01 13:46:05 13:46:09

A. I don't believe so. 13:46:09

MR. HOUGHTON: I'm kind of shifting gears, so do you want to take a ten-minute break again here? 13:46:24 13:46:26 13:46:28

MR. BUGG: Yes. Let's do it. We've been going for a little while. 13:46:28 13:46:30

MR. HOUGHTON: Okay. 13:46:32

THE WITNESS: Thank you. 13:46:33

(Recess, 1:46 p.m. to 1:55 p.m.) 13:46:34

Q. Back on the record. And I want to look at your '786 patent declaration. And specifically, Ground 2 regarding Dufour, specifically looking at page 53. Let me know when you're there. 13:55:09 13:55:12 13:55:22 13:55:43

A. I am there. 13:56:01

Q. Okay. And so starting here is where you show the first height, second height, and third height over the course of the next couple of 13:56:02 13:56:07 13:56:09

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pages. And I just want to confirm that for these limitations you're relying on Figures 9, 10, 11, and 12? 13:56:11 13:56:16 13:56:25

A. I'm sorry. You said we were looking at the '786 patent. Correct? 13:56:25 13:56:31

Q. Yes. Although I -- I'm looking at the wrong one, but I'm trying to ask you about the '786. Sorry about that. 13:56:33 13:56:39 13:56:42

A. You meant first slope, second slope, third slope? 13:56:42 13:56:45

Q. I did. So let me ask the question again just so we're clear. 13:56:46 13:56:48

I'm asking you about Ground 2 in the '786 patent declaration, which starts on page 49. And your opinion is that Claims 1 through 3, 5 through 6, and 8 are obvious based on Dufour. Right? 13:56:54 13:56:58 13:57:01 13:57:05

A. Claims 1 through 3 and 5 through 6 and 8 are obvious based on Dufour. 13:57:08 13:57:18

Q. And then I'm looking at the limitation starting on page 53 about the first slope, second slope, and third slope. And the three figures of Dufour that you're pointing to for those 13:57:20 13:57:24 13:57:28 13:57:39

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limitations are 9, 10, and 11. Right? 13:57:43

A. Yes. 13:57:45

Q. Okay. And specifically on page 56, you 13:57:55

annotate what you say is the first slope, second 13:57:58

slope, third slope, and reference slope onto 13:58:01

Figures 10 and 11. Right? 13:58:07

A. Correct. 13:58:08

Q. Okay. I'm going to send over the Dufour 13:58:11

reference in the chat so we can look at one thing 13:58:18

in it. So if you could open that up and go to 13:58:22

Column 3 when you have it. And let me know when 13:58:25

you're there. 13:58:30

A. Okay. Column 3? Yes. 13:58:50

Q. So around line 25, it says "FIGS. 11 and 13:58:52

12 schematically present another embodiment of the 13:58:56

sole." Do you see that? 13:58:59

A. Yes. 13:59:00

Q. So Figures 11 and 12 are the same 13:59:01

embodiment. Right? 13:59:04

A. Let me look at the Figure 12. One sec. 13:59:05

Q. Figure 12 is on page 4 of Exhibit 1006. 13:59:39

(Exhibit 1006, previously marked, is not

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attached to the transcript.) 13:59:52

A. I'm looking at Figure 12. Okay. Yes, it 13:59:52

appears to be the same embodiment. 14:00:23

Q. Okay. And in Figure 12, which is on 14:00:25

page 4, the outer edge of the shoe is at the same 14:00:28

height as the heel. Do you agree with that? 14:00:35

MR. BUGG: Objection, vague, calls for 14:00:38

speculation. 14:00:40

A. Okay. I'm looking at -- I scrolled back 14:00:44

to Figure 12. What was your question again? 14:00:46

Q. The outer edge, 65, in Figure 12 is at the 14:00:49

same height as the heel in area 60. Do you agree 14:00:55

with that? 14:01:01

MR. BUGG: Same objection. 14:01:02

A. I just want to go back to see what they 14:01:03

claim Figure 12 is. 14:01:15

Q. It's a cross-section along line XII in 14:01:16

Figure 11. 14:01:23

A. So if it's a cross-section, you wouldn't 14:01:24

be able to see the heel in that view. 14:01:27

Q. So what do you think Figure 12 is showing, 14:01:29

then? Because you can see the back of the inner 14:01:34

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edge. Correct? 14:01:40

A. Yeah. I don't know exactly. It's a 14:01:41

little bit -- it's not a particularly great figure 14:02:15

drawing. But if it says it's a cross-section and 14:02:19

not a perspective view, then you technically 14:02:31

wouldn't be able to see the rest of the shoe. 14:02:38

Q. Go back to Column 3, line 28. It says 14:02:40

"FIG. 12 is a cross section along line XII--XII of 14:02:52

this sole." Right? 14:02:56

A. Yeah. 14:02:57

Q. Okay. Go to page 54 of your declaration, 14:02:59

please. Actually, I'm turning to the '291 now. 14:03:08

Sorry about that. So this is a different 14:03:13

declaration, still looking at the Dufour ground. 14:03:16

But this is going to be page 54 of your '291 14:03:19

patent declaration. 14:03:22

A. Okay. I'm there. 14:03:42

Q. Here where you show the first height, you 14:03:43

show it in Figure 11 and in Figure 12. Right? 14:03:49

A. Yes. It's in my declaration. 14:03:52

Q. Okay. And you're drawing that first 14:04:01

height to be along that back edge of Figure 12. 14:04:04

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Right? 14:04:10

A. It appears that that is the case. Yes. 14:04:10

Q. Is there a mistake? 14:04:14

A. What's difficult is I'm indicating that 14:04:17

that top line of Figure 12 is referencing the 14:04:40

first height. But if you take both figures into 14:04:45

consideration and you look at where the 14:04:52

cross-section Roman numeral VII VII is and you 14:04:54

look at the cross-section of where the heel is, as 14:05:04

indicated where it says "First height," it teaches 14:05:07

that those heights are different. 14:05:10

So perhaps in a perspective view, if this 14:05:12

is, in fact, looking at a perspective view 14:05:17

cross-section of Figure 12, then maybe it appears 14:05:20

that it's the same height as 65, the outside. But 14:05:25

it doesn't teach that in the Figure 11. 14:05:31

Q. Figure 11 and 12 are the same embodiment. 14:05:35

Correct? 14:05:38

A. They're the same embodiment. Yes. 14:05:38

Q. And you drew the first height in Figure 12 14:05:41

along the back edge of the figure. Right? 14:05:44

A. That's what I've drawn in my declaration. 14:05:47

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Yes. 14:05:53

Q. Okay. I want to look at your opinion on 14:05:53

the second height, which is on the next page. 14:05:56

A. Okay. 14:06:05

Q. You draw the second height along the 14:06:06

outside edge of Figures 9 and 10? 14:06:13

MR. BUGG: Objection, misstates testimony. 14:06:24

But you may answer. 14:06:25

A. I've annotated the second height in 14:06:26

Figures 9 and 10. 14:06:38

Q. Okay. The second height, if you go back 14:06:39

to Figure 12, would be measured at point 65, 14:06:57

right, on the outside edge? 14:07:06

MR. BUGG: Objection, vague. 14:07:09

A. The second height that I've annotated is a 14:07:14

slightly different position than where that 14:07:44

cross-section is in Figure 12. So I wouldn't say 14:07:46

that it's exactly what I've identified as the 14:07:50

second height. 14:07:57

Q. You didn't use Figure 12 to show the 14:07:57

second height. Right? 14:08:00

A. I used Figure 10, 9, and 11 to show the 14:08:00

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second height. 14:08:18

Q. Figures 9 and 10 are a different 14:08:19

embodiment than Figures 11 and 12. Right? 14:08:22

A. If I understand the patent correctly, I 14:08:24

believe they could be different or the same. 14:08:57

Q. Can you go back to your '786 patent 14:09:04

declaration. 14:09:13

A. Where? 14:09:23

Q. Rubin ground, page 64. 14:09:23

A. I'm at page 64. 14:09:39

Q. Your opinion is that Claims 1-3, 5-6, and 14:09:41

8 are obvious based on Rubin? 14:09:46

A. Yes. 14:09:48

Q. Go to page 72. 14:09:51

A. Okay. 14:10:08

Q. This is where you're drawing the slopes 14:10:09

that you say Rubin has? 14:10:15

A. Yes. 14:10:19

Q. If you include the cleats of Rubin and 14:10:19

you're on a solid surface, there's no second 14:10:36

slope. Right? 14:10:39

MR. BUGG: Objection, vague. 14:10:40

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A. The innovation of the patent is such that it's designed to be utilized on a soft grass surface. So in that case, there would be a second slope. 14:10:41 14:11:00 14:11:04 14:11:09

In the case where the cleats are standing on a hard surface, there may or may not be a second slope. 14:11:09 14:11:11 14:11:16

Q. Well, Rubin says that on a hard surface the foot is substantially parallel to the ground, doesn't it? 14:11:18 14:11:21 14:11:23

MR. BUGG: Objection, vague. 14:11:24

A. I'm not seeing that, but I can take your word that that's what it states. 14:11:26 14:11:44

Q. Well, in Rubin, the cleat heights are inversely proportional due to the sole thickness. Do you agree with that? 14:11:45 14:11:48 14:11:53

MR. BUGG: Same objection. 14:11:56

A. They look to be relatively inverse. 14:11:59

Q. I'm going to put Rubin in the chat, Exhibit 1007, in each of the 636, 637, 638 IPRs. 14:12:06 14:12:08

(Exhibit 1007, previously marked, is not attached to the transcript.)

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Q. Let me know when you have that open. 14:12:21

A. Okay. I have the patent open. Where am I looking? 14:12:22 14:12:32

Q. The bottom of the abstract says, "The cleats adjacent the outer side of the sole are smaller than the sleets adjacent the inner side of the sole by an amount approximately equal to the difference in elevation between the outer and inner sides of the sole so that when the golfer walks on a planar surface, his foot will be substantially level." Do you see that? 14:12:32 14:12:35 14:12:38 14:12:41 14:12:44 14:12:46 14:12:51 14:12:53

A. I see that. 14:12:55

Q. Okay. And so if you measure from the top of the foot platform to the bottom surface of the cleats, the height at the inside edge and outside edge of Rubin is the same. Right? 14:12:56 14:13:02 14:13:05 14:13:09

A. I would say it would be substantially similar. Yes. 14:13:11 14:13:14

Q. And in that case, there would not be a second slope if that's what you're measuring relative to. Do you agree with that? 14:13:15 14:13:17 14:13:21

MR. BUGG: Objection, vague. 14:13:23

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A. In the case where the shoe would be on a hard surface, there would not be a substantial slope, second slope. 14:13:24 14:13:27 14:13:33

Q. I'm not asking about the surface. I'm asking if you measure the height relative to the bottom of the cleat regardless of the surface, there would not be a slope -- a second slope. Do you agree with that? 14:13:34 14:13:36 14:13:40 14:13:44 14:13:48

MR. BUGG: Objection, vague. 14:13:48

A. Relative to the bottom of the cleats, the surface of the foot and the bottom of the cleats would be relatively parallel. 14:13:50 14:13:55 14:13:58

Q. Okay. And in that case, there is no second slope greater than the reference slope. Right? 14:13:59 14:14:02 14:14:05

MR. BUGG: Objection, vague. 14:14:07

A. In the case in that instance, no. There would be no second slope. Yes. You're correct. 14:14:08 14:14:13

Q. And you didn't offer any opinion on claim construction or interpretation of the slope patents that said that you had to measure the slopes relative to the ground, did you? 14:14:19 14:14:21 14:14:25 14:14:27

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MR. BUGG: Objection to the form of the question. 14:14:32 14:14:34

A. I didn't do a full analysis of claim construction. 14:14:39 14:14:42

Q. Okay. When you in your declaration, Exhibit 1002, in the Rubin section, are measuring the slopes, you're excluding the cleat height from that measurement for all three slopes. Is that accurate? 14:14:42 14:15:03 14:15:09 14:15:16 14:15:19

A. Can you tell me where in my declaration you're referring to? 14:15:19 14:15:28

Q. Page 72. 14:15:29

A. Okay. I'm not including the cleats in those annotated figures. 14:15:32 14:15:35

Q. Okay. And if you could go quickly back to your '291 patent declaration. 14:15:40 14:15:44

A. Okay. 14:15:52

Q. Page 74. 14:15:52

A. Okay. 14:16:06

Q. This is where you're talking about the first height, second height, and third height? 14:16:07 14:16:10

A. Yes. 14:16:13

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Q. You're excluding the height of the cleats in these measurements too. Correct? 14:16:13 14:16:18

A. I am. Yes. 14:16:20

Q. If you included the height of the cleats, then the second height and the third height would be the same. Right? 14:16:22 14:16:28 14:16:30

A. If the shoe was sitting on a hard surface then, yeah, the height of the cleat would be relatively -- the height of the cleats would be relatively parallel to the top surface of the sole. 14:16:31 14:16:39 14:16:41 14:16:43 14:16:47

Q. Okay. Can you open back up your '768 declaration. This is one of the ones we looked at earlier, but we haven't talked about it in a while. 14:16:48 14:17:02 14:17:04 14:17:08

A. Where to? 14:17:14

Q. Paragraph 43 on page 16. I'm actually looking at the top of page 17. Here, we're talking about a reference called Umezawa. 14:17:16 14:17:30 14:17:33

A. Yes. 14:17:37

Q. And this is one of the prior art references you used for your opinions on this 14:17:37 14:17:39

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patent? 14:17:42
A. Yes. 14:17:43
Q. Okay. You say here at the top of page 17, 14:17:44
"Umezawa also discloses that the novel midsole has 14:17:48
a consistent thickness throughout, which includes 14:17:51
the heel platform." Right? 14:17:53
A. Yes. 14:17:54
Q. So your opinion is that Umezawa's midsole 14:18:01
has a consistent thickness throughout. Right? 14:18:05
A. Yes. 14:18:07
Q. Okay. Now, if you go to page 44. Are you 14:18:11
there? 14:18:36
A. Yeah. 14:18:37
Q. The bottom of Paragraph 75, you say that 14:18:37
"A POSITA would understand that" -- from 14:18:44
Umezawa -- "that the sole is thicker at a position 14:18:46
proximal to the front edge of the heel platform 14:18:50
than at the toe portion"? 14:18:53
A. Yes. 14:18:56
Q. You also say that Umezawa's midsole has a 14:18:57
consistent thickness throughout. Right? 14:19:04
A. I believe that the consistent thickness is 14:19:05

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1	referring to from an inner edge to outer edge but	14:19:26
2	not necessarily laterally through the length of	14:19:31
3	the sole.	14:19:35
4	Q. Okay. But you didn't limit it that way in	14:19:36
5	the sentence we read before on page 17. Right?	14:19:41
6	A. Page 17?	14:19:44
7	Q. The part we just read into the record,	14:19:58
8	yeah, about the consistent thickness.	14:20:01
9	A. Okay. Page 17 is talking about a Norton	14:20:04
10	reference.	14:20:08
11	Q. Sorry. I guess maybe it was a different	14:20:08
12	page. Let me look back. At the top of page 17 --	14:20:10
13	A. Oh, I see. At the top of page 17. Yeah.	14:20:18
14	In that statement, I didn't reference a	14:20:30
15	consistent thickness going laterally through the	14:20:34
16	shoe. I only -- I stated a consistent thickness	14:20:39
17	throughout which in my understanding would be from	14:20:49
18	the inside to the outside perpendicular to the	14:20:57
19	length of the shoe.	14:21:03
20	Q. But you're also saying that the heel	14:21:04
21	platform has a consistent thickness from the front	14:21:09
22	to the back, relying on this part of Umezawa.	14:21:11

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Right? 14:21:15

MR. BUGG: Objection, vague. 14:21:15

A. That the heel platform has a consistent thickness going from the inside to the outside and also from the back of the heel to the front edge of the heel area, not throughout the entire sole. 14:21:16 14:21:22 14:21:29 14:21:34

Q. You next talk about Norton. Right? That's another prior art reference you used. 14:21:39 14:22:01

A. Yes. 14:22:05

Q. And you cite here on page 17 that Norton is recognizing that injuries can arise during athletic events associated with pronation or supination? 14:22:05 14:22:13 14:22:17 14:22:20

A. Yes. 14:22:22

Q. I'm going to put an Exhibit 2020 into the chat. This is a new one. Let me know when you have that open. 14:22:22 14:22:26 14:22:40

(Delgatty Exhibit 2020 was marked for identification and is attached to the transcript.) 14:22:43

A. Okay. I have it open. 14:22:43

Q. Do you agree with how this illustration is showing the difference between pronation and 14:22:53 14:22:56

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supination? 14:22:57
A. Yes. 14:22:58
Q. So pronation is when the foot is rotating 14:23:08
from the inside to the outside? Pronation is 14:23:13
leaning inward. Right? 14:23:22
A. Yes. 14:23:24
Q. And supination is leaning outward? 14:23:24
A. Yes. 14:23:27
Q. And one of the things Norton is trying to 14:23:27
do is prevent these things from happening. Right? 14:23:33
A. Uh-hmm. 14:23:35
Q. Okay. On page 20 of this declaration, 14:23:37
you're talking about another prior art reference. 14:24:01
It starts on the previous page. Won. 14:24:03
A. Yes. 14:24:05
Q. And you're relying on Figure 5 on page 20. 14:24:06
Right? 14:24:11
A. Correct. 14:24:12
Q. Figure 5 is showing the bottom surface of 14:24:15
the shoe. Right? 14:24:19
A. Correct. 14:24:19
Q. What is a surface of a shoe? 14:24:22

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MR. BUGG: Objection, vague. 14:24:27

A. What is the surface of a shoe. My understanding of that would be the outsole. 14:24:32 14:24:37

Q. Okay. And so Figure 5 is showing the outsole from the bottom looking up? 14:24:43 14:24:45

A. It appears to be so. Yes. 14:24:51

Q. Okay. And so the hard surface is the outsole and the soft surface is the outsole in Figure 5. Right? 14:24:53 14:24:57 14:25:00

A. Yes. 14:25:01

Q. And according to Won, the spikes are fixed on the hard and soft surfaces. Right? 14:25:07 14:25:10

A. It appears to be so. Yes. 14:25:12

Q. We talked earlier about one of the things -- one of the factors for obviousness being secondary considerations. Do you remember that? If it's helpful, you can go back to page 8 of this declaration, Paragraph 16. 14:25:18 14:25:32 14:25:34 14:25:43 14:25:47

A. It states in here secondary considerations. Yes. 14:26:10 14:26:12

Q. And that's one of the four factors that you list in Paragraph 16 as something you're 14:26:12 14:26:16

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supposed to consider for obviousness? 14:26:18
A. Yes, it is. 14:26:19
Q. And in Paragraph 17 and 18, you talk about a variety of secondary considerations and some of your understandings of what those are? 14:26:26 14:26:33 14:26:35
A. Yes. 14:26:37
Q. Okay. Do you understand that the Federal Circuit has said that it's error to reach a conclusion of obviousness until all of the four factors, including secondary considerations, are considered? 14:27:01 14:27:07 14:27:09 14:27:12 14:27:15
MR. BUGG: Objection, calls for speculation, vague. But you can answer. 14:27:17 14:27:19
A. Is that a legal standard? 14:27:20
Q. Yes. 14:27:24
A. I'm not an attorney. I don't know if I would know those terminologies. 14:27:25 14:27:31
Q. Okay. You don't address secondary considerations in your declaration other than in this legal standard section. Right? 14:27:32 14:27:36 14:27:39
A. I don't recollect if I referred to any secondary considerations. 14:27:41 14:28:04

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Q. There's no section in any of your five declarations called "secondary considerations." Right? 14:28:09 14:28:11 14:28:14

A. Well, if I -- okay. So if I read in Paragraph 19, "I further have been informed that prior art references can be combined where there is an express or implied rationale to do so. Such rationale might include an expected advantage to be obtained or might be implied under the circumstances. 14:28:14 14:28:26 14:28:33 14:28:36 14:28:40 14:28:44 14:28:48

"For example, a claim is likely obvious if the design needs or market pressures existing in the prior art make it natural for one or more known components to be combined where each component continues to function in the expected manner when combined (i.e., when there are no unpredictable results). 14:28:49 14:28:52 14:28:57 14:29:00 14:29:02 14:29:05 14:29:08

"A claim is also likely unpatentable where it is the combination of a known base system with a known technique that can be applied to the base system without an unpredictable result. 14:29:10 14:29:13 14:29:17 14:29:21

"In these cases, the combination must be 14:29:23

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within the capabilities of the person of ordinary skill in the art." 14:29:26 14:29:28

Q. I see that. Yeah. 14:29:36

Do you have a section in any of your declarations addressing secondary considerations of nonobviousness? 14:29:37 14:29:39 14:29:41

A. No. 14:29:42

Q. Okay. Why not? 14:29:45

A. I didn't feel it was necessary. 14:29:47

Q. Did you do any analysis to determine whether there were any secondary considerations of nonobviousness? 14:29:52 14:29:54 14:29:57

A. Yes. 14:29:57

Q. What did that consist of? 14:30:02

A. Looking at the specifications in the prior art. 14:30:04 14:30:13

Q. The only thing you looked at to determine whether there are any secondary considerations of nonobvious were the specifications in prior art? 14:30:15 14:30:18 14:30:19

A. As I state here in my declaration in Paragraph 18, "Other kinds of secondary considerations are possible. For example, 14:30:22 14:30:46 14:30:48

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evidence that the relevant field had a long-established, unsolved problem or need that was later provided by the claimed invention could be indicative of nonobviousness. 14:30:53 14:30:55 14:30:58 14:31:01

"Evidence that others have tried but failed to make an aspect of the claim might indicate that the art lacked the requisite skill to do so. 14:31:04 14:31:06 14:31:09 14:31:13

"Evidence of copying the patent owner's product before the patent was published might also indicate that its approach to solving a particular problem was not obvious. 14:31:14 14:31:16 14:31:19 14:31:22

"Evidence that the art recognized the value of products embodying a claim, for example, by praising the named inventor's work, might show that the claim was nonobvious." 14:31:25 14:31:27 14:31:30 14:31:35

Q. Right. So that's discussing the legal standard. And nowhere in your declarations do you actually talk about any such evidence, and you didn't do any analysis to figure out if there was any such evidence. Right? 14:31:44 14:31:47 14:31:49 14:31:51 14:31:53

MR. BUGG: Objection, vague. 14:32:00

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A. I didn't apply any. 14:32:01
Q. Are you aware that Athalonz gave a 14:32:04
presentation to Under Armour in August of 2013 14:32:06
where it told Under Armour about its patents and 14:32:09
its company? 14:32:12
A. I'm not sure if I recall that. 14:32:14
Q. Okay. You didn't consider that fact as 14:32:27
part of your analysis in the IPRs. Right? 14:32:31
MR. BUGG: Objection, vague. 14:32:36
A. I'm not sure if I did or not. 14:32:37
Q. You didn't write about it. Did you? 14:32:46
A. I don't believe so. 14:32:47
Q. Okay. And so if you had any opinion about 14:32:52
it, it would be in your declaration. Right? 14:32:55
A. Yeah. 14:32:57
Q. Okay. Are you aware that all of the shoes 14:33:03
Athalonz contends infringe in this district court 14:33:10
case were released after Athalonz gave Under 14:33:14
Armour that presentation? 14:33:16
A. I can't recall when these things happened. 14:33:17
Q. Okay. So you're not offering any opinion 14:33:25
that Under Armour did not copy Athalonz's products 14:33:28

or patents. Right? 14:33:33

MR. BUGG: Objection to the form. 14:33:35

A. I haven't done a full analysis of the infringement. 14:33:36 14:33:41

Q. Or of copying as a secondary consideration. Right? 14:33:43 14:33:46

A. I haven't done a full analysis of that. 14:33:46

Q. Okay. Are you aware of any commercial products on the market today that embody any of the prior art patents that you have asserted in your opinions? 14:33:50 14:33:56 14:34:00 14:34:04

A. I'm not 100 percent sure if there are any products on the market that embody these. 14:34:04 14:34:16

Q. You're not aware of any. Right? 14:34:19

MR. BUGG: Objection, misstates prior testimony. 14:34:21 14:34:23

A. Well -- sorry. Repeat the question. 14:34:23

Q. I'll give you an example. It might be easier to understand. 14:34:32 14:34:36

Are you aware of any commercial product on the market that embodies the patent Rubin -- the Rubin patent? 14:34:37 14:34:39 14:34:44

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A. No. I don't believe so. 14:34:51

Q. And do you have the same answer for the 14:34:51

other prior art patents that you've asserted in 14:34:54

this case? 14:34:57

A. I don't personally know of any products 14:34:58

that embody them. 14:35:04

Q. Okay. Have you analyzed Athalonz's 14:35:05

products? 14:35:09

A. No. I don't believe I have. 14:35:16

Q. Are you aware that Athalonz marks its 14:35:17

products as practicing the sloped patents? 14:35:22

A. I haven't done an analysis of the Athalonz 14:35:26

products. 14:35:30

Q. Okay. Are you aware that half of all of 14:35:31

the world long-drive athletes wore Athalonz's 14:35:36

shoes in competition in 2019? 14:35:40

A. I was not aware of that. 14:35:42

Q. Okay. Are you aware that the professional 14:35:44

golfer, Bernhard Langer, has been wearing 14:35:47

Athalonz's golf shoes since 2020? 14:35:51

A. I was not aware of that. 14:35:53

Q. Do you know anything that he said about 14:35:57

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the golf shoes and their performance? 14:36:00

A. No, I do not. 14:36:02

Q. And you didn't consider any of that as secondary considerations evidence in offering your opinions. Right? 14:36:07 14:36:09 14:36:13

A. Well, the fact that I didn't know about them, no, I did not. 14:36:14 14:36:21

Q. Okay. Did you ask anybody whether there was any evidence of secondary considerations before you offered these opinions? 14:36:22 14:36:25 14:36:27

MR. BUGG: Objection, vague. 14:36:30

To the extent it calls for privileged information, don't share that. 14:36:31 14:36:34

A. Well, I'm going to defer to my counsel on that question. 14:36:39 14:36:42

Q. Okay. So you're not going to disclose whether you asked anybody whether there was evidence of secondary considerations? 14:36:42 14:36:48 14:36:50

MR. BUGG: Again, same caution. The contents of the discussion between attorneys and yourself can't be disclosed, but otherwise you can answer the question. 14:36:52 14:36:56 14:36:59 14:37:03

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A. I'm going to go ahead and not answer that question. 14:37:04 14:37:11

Q. Were you aware of any evidence of secondary considerations that you did not include in your declarations when you submitted them? 14:37:11 14:37:13 14:37:15

A. No. 14:37:20

Q. Okay. 14:37:20

MR. HOUGHTON: I don't have any more questions. 14:37:24 14:37:25

MR. BUGG: Okay. Could we take a five-minute break and we'll come back and see if there's any redirect? 14:37:28 14:37:29 14:37:32

MR. HOUGHTON: Yup. 14:37:33

(Recess, 2:37 p.m. to 2:40 p.m.) 14:37:37

MR. BUGG: No further questions from me. So that should do it for the day here. 14:40:26 14:40:29

(Off the record at 2:40 p.m.) 14:40:31

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CERTIFICATE OF SHORTHAND REPORTER NOTARY PUBLIC

I, Michelle Keegan, Registered Merit Reporter and Notary Public within and for the Commonwealth of Massachusetts, do hereby certify:

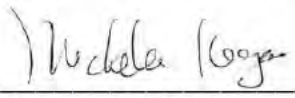
That GRANT DELGATTY, the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the adverse party, Under Armour, Inc., was represented by counsel at the deposition.

I further certify that the deposition of GRANT DELGATTY, was conducted virtually on Thursday, December 19, 2024, commencing at 11:17 a.m. to 2:40 p.m.

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 in 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 19th day of December, 2024.
My commission expires May 15, 2026.



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