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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

1
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE PATENT TRIAL AND APPEAL BOARD

5
6 UNDER ARMOUR, INC.,

7 Petitioner,

8 v.

9 ATHALONZ, LLC,

10 Patent Owner.

11
12 IPR2024-00636 (Patent 10,674,786 B2)

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

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

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

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

17
18 Deposition of GRANT DELGATTY

19 Conducted Virtually

20 Thursday, December 19, 2024

21 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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By Mr. Houghton	5

E X H I B I T S

(Attached to transcript.)

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PREVIOUSLY MARKED EXHIBITS

(NOT ATTACHED TO TRANSCRIPT.)

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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
the record.

11:17:18

11:17:19

A. My name is Grant Delgatty.

11:17:20

Q. Okay. And, Mr. Delgatty, this is not your
first time being an expert witness. Right?

11:17:23

11:17:26

A. That's correct.

11:17:29

Q. Do you have an estimate of how many cases
you've worked on as an expert witness?

11:17:30

11:17:34

A. I believe this is -- I think this might be
my seventh or eighth case.

11:17:35

11:17:41

Q. Okay. And how many times have you been
deposed?

11:17:45

11:17:47

1	A. Probably eight to ten times, I would say.	11:17:48
2	Q. Okay. And how many of the cases that	11:17:55
3	you've worked on have been IPR proceedings?	11:17:58
4	A. I would say that, if I remember correctly,	11:18:01
5	I believe there was probably four. Around four	11:18:06
6	cases.	11:18:12
7	Q. Okay.	11:18:13
8	A. There might be more than that, actually.	11:18:14
9	It might be four to six, something like that.	11:18:16
10	Q. And were the other cases that were not	11:18:18
11	IPRs patent litigation cases?	11:18:21
12	A. Yes.	11:18:24
13	Q. Okay. Have you ever testified at a trial	11:18:25
14	before?	11:18:29
15	A. I came close, but no, I have not. I was	11:18:29
16	one day away. But yeah, no.	11:18:34
17	Q. Happens a lot.	11:18:37
18	A. Yeah.	11:18:39
19	Q. Okay. So I think you generally know how	11:18:40
20	this works.	11:18:43
21	Have you done a Zoom deposition before?	11:18:43
22	A. I have.	11:18:46

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1	Q. And so you understand that you're under	11:18:46
2	oath today?	11:18:49
3	A. I do.	11:18:49
4	Q. Is there any reason you can't give full	11:18:50
5	and accurate testimony?	11:18:53
6	A. No, there is not.	11:18:54
7	Q. Okay. We can take a break any time you	11:18:56
8	want, but just before we go out please finish	11:19:00
9	answering my questions unless there is a privilege	11:19:02
10	objection or something like that. Okay?	11:19:05
11	A. Will do.	11:19:07
12	Q. And I understand you and Rob are in the	11:19:07
13	same room today. Right?	11:19:11
14	A. That's correct.	11:19:12
15	Q. Is there anyone else in the room with you?	11:19:13
16	A. No, there's not.	11:19:16
17	Q. Okay. Do you have any documents printed	11:19:17
18	out with you?	11:19:21
19	A. I have my five declarations printed out.	11:19:21
20	Q. Okay. Are there any marks or notes on	11:19:25
21	those?	11:19:29
22	A. No, there are not.	11:19:29

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1	Q. Okay. And do you have any documents	11:19:30
2	besides those?	11:19:34
3	A. I don't.	11:19:38
4	Q. Okay. And so if you are referring to	11:19:38
5	anything in your declarations when answering my	11:19:43
6	question, just let me know. Okay?	11:19:45
7	A. Sure.	11:19:47
8	Q. Do you have any other computer programs	11:19:47
9	open besides this Zoom?	11:19:52
10	A. I'm on a -- on their system here. It	11:19:54
11	looks like there's some -- what is this?	11:20:00
12	MR. BUGG: That's my inbox. You can close	11:20:03
13	that if you want to. Just hit that X in the top	11:20:06
14	corner.	11:20:08
15	A. Now I'm looking at just a screen with you	11:20:15
16	on it.	11:20:17
17	Q. So if you do look at anything else besides	11:20:18
18	the documents in front of you or this Zoom, just	11:20:20
19	let me know. But try not to do that if possible.	11:20:24
20	Okay?	11:20:27
21	A. Understood.	11:20:28
22	Q. I'm going to drop exhibits in the chat as	11:20:28

1 we go. If you have them already, like if we're
2 using your declarations, you can just refer to the
3 printed one if that's easier.

4 But for the court reporter, I'm going to
5 put every exhibit that I talk about into the chat.
6 So if it's easier for you to open it that way,
7 feel free.

8 I might also share my screen sometimes.
9 You can feel free to look at that or look at the
10 actual document. Whatever is easier.

11 Right now I'm going to put the first
12 exhibit in the chat. This is Exhibit 1003 in all
13 five of the IPRs.

14 (Exhibit 1003, previously marked, is not
15 attached to the transcript.)

16 Q. This is a copy of your CV. Let me know
17 when you have that open.

18 A. Do I have to down -- I clicked on it, but
19 it looks like I have to download it.

20 Q. I think you might have to download it and
21 then open it up.

22 A. So I hit save?

11:20:36

11:20:39

11:20:41

11:20:43

11:20:45

11:20:47

11:20:50

11:20:55

11:20:58

11:21:01

11:21:02

11:21:04

11:21:08

11:21:13

11:21:13

11:21:15

11:21:18

11:21:22

11:21:25

11:21:27

11:21:28

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1	MR. BUGG: That's fine.	11:21:32
2	A. And then what, I just click on it again?	11:21:39
3	Okay.	11:21:45
4	So now it's fully on my screen. I can't	11:21:46
5	see it.	11:21:51
6	Q. Okay.	11:21:53
7	MR. BUGG: If you want to pull it up on	11:21:55
8	that screen, maybe you can have both open. Grab	11:21:57
9	that top and then pull it onto your screen and	11:22:01
10	then you can -- there you go.	11:22:04
11	A. Let's do it like this. No. Shoot. There	11:22:12
12	it is. Okay.	11:22:14
13	All right. I've got it.	11:22:15
14	Q. Okay. So hopefully we can do it this way	11:22:16
15	for exhibits and it will work now.	11:22:21
16	Just for the record, we're taking your	11:22:23
17	deposition here for the five IPR proceedings that	11:22:26
18	Under Armour filed against Athalonz's patents.	11:22:30
19	Those are IPR 2024-00636, -637, -638, -639, and	11:22:34
20	-640. And so you submitted an expert declaration	11:22:47
21	in each of those IPR proceedings. Right?	11:22:53
22	A. Correct.	11:22:55

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11

1	Q. Okay. And this copy of your CV is the	11:22:56
2	same in all five proceedings. Right?	11:23:00
3	A. I believe it is. Yes.	11:23:02
4	Q. Okay. So this was filed back I think in	11:23:04
5	March of this year. Is this CV still generally	11:23:09
6	accurate or do you have any changes to it?	11:23:12
7	A. No. I'd say it's probably generally	11:23:14
8	accurate at this point.	11:23:19
9	Q. Okay. And so are you still the chair of	11:23:20
10	product innovation and an associate professor at	11:23:24
11	USC?	11:23:27
12	A. Yes.	11:23:27
13	Q. And you're still working on Project X?	11:23:28
14	A. That -- let me see. It's sort of on the	11:23:40
15	back burner right now. We might pick it back up.	11:23:50
16	Q. Okay. Do you have any other current	11:23:53
17	positions that are not listed on your CV?	11:23:54
18	A. I'm an entrepreneur as well. I'm doing a	11:23:57
19	little bit of work in a field. I'm designing some	11:24:06
20	Pilates machines currently. Yeah.	11:24:12
21	Q. Okay.	11:24:16
22	A. Nothing -- at this point, nothing shoe	11:24:20

1 related except for the project.

11:24:24

2 Q. Okay. Do you have any patents of your
3 own?

11:24:27

11:24:29

4 A. Well, I don't personally own any patents,
5 but I'm listed as the lead inventor on a number of
6 patents.

11:24:29

11:24:36

11:24:39

7 Q. About how many?

11:24:39

8 A. I believe it's about 20.

11:24:41

9 Q. Okay. What's the general subject matter
10 of those patents?

11:24:45

11:24:47

11 A. That's varied from footwear, athletic
12 footwear and footwear concepts, both utility and
13 design, I believe.

11:24:53

11:24:57

11:25:01

14 I founded a company a few years ago that's
15 made a foldable electric scooter. We have a
16 number of patents with regard to that company,
17 both design and utility, some -- I believe I'm
18 listed as an inventor on a delivery scooter-type
19 device.

11:25:05

11:25:09

11:25:13

11:25:17

11:25:26

11:25:34

20 I'm trying to think what else. Oh,
21 there's a pending patent on the Pilates machine
22 that I just mentioned prior to this.

11:25:35

11:25:39

11:25:44

1 Q. Okay. None of the athletic
2 footwear-related patents that you just mentioned
3 that you're an inventor on are being asserted as
4 prior art in this case. Right?

11:25:47

11:25:52

11:25:54

11:25:57

5 A. That's correct.

11:25:59

6 Q. Okay. You have a bachelor of science
7 degree in industrial design from the Art Center
8 College of Design. Correct?

11:26:01

11:26:05

11:26:10

9 A. That's correct.

11:26:10

10 Q. Do you know if that degree is still
11 offered?

11:26:11

11:26:16

12 A. It's offered. My major that I took in --
13 at Art Center was technically considered
14 environmental design. And that program has sort
15 of shifted to a new way to describe it. I believe
16 they call it spatial experience design, but it's
17 essentially the same program. But yes, the degree
18 of industrial design at Art Center is still
19 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

20 Q. Okay. As part of your degree at Art
21 Center, did you take courses in physics or
22 engineering?

11:26:56

11:27:00

11:27:03

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14

1 A. I would say I took courses that -- I'm not
2 sure if they would be considered actual physics or
3 engineering courses, but they were -- there was
4 courses that I took. I believe the name of the
5 class was "The Way Things Work," where we would
6 dissect different types of machinery and
7 structures and understand the physics of how they
8 go together, how they're disassembled, how they're
9 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

10 Q. Okay. Did you take a traditional
11 Physics 1 class that went through a textbook on
12 physics?

11:27:42
11:27:45
11:27:49

13 A. I don't believe so.

11:27:49

14 Q. Okay. And you also have a diploma in
15 graphic design and illustration. Correct?

11:27:52
11:27:56

16 A. Correct.

11:27:59

17 Q. Okay. And as part of that degree, did you
18 take a traditional physics or engineering course?

11:28:00
11:28:03

19 A. No, I did not.

11:28:05

20 Q. Okay. You've designed a number of
21 different shoes in your career. Right?

11:28:07
11:28:12

22 A. Yes, I have.

11:28:13

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

2 A. I actually -- I gave some input on a 11:28:17

3 special project that we did at Vans that wasn't 11:28:27

4 really ever commercially offered for sale. It was 11:28:30

5 a promotional product that we made. 11:28:37

6 So yes, it was a golf shoe, but it was a 11:28:42

7 pretty -- we did it for a golf tournament. It was 11:28:45

8 kind of fun. It was black-and-white checkerboard 11:28:49

9 golf shoes. But that's -- technically, anything 11:28:53

10 that went to market, no, I haven't done any golf 11:28:55

11 shoes per se. 11:29:01

12 Q. I asked this about your patents already, 11:29:01

13 but none of the shoes that you designed in your 11:29:09

14 career are being asserted as prior art to any of 11:29:12

15 the Athalonz patents. Correct? 11:29:15

16 A. They are not. 11:29:18

17 Q. And your hourly rate on the IPR work is 11:29:22

18 \$400 an hour. Correct? 11:29:26

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

20 Q. Do you have an estimate of how many hours 11:29:27

21 of work you did prior to the petitions being 11:29:29

22 filed? 11:29:31

1 A. I don't have a specific number at this
2 point. I haven't done the latest addition or I
3 haven't added up the hours over the last month or
4 so, so I can't give you a specific number.

5 Q. Okay. My question was about before the
6 petitions were filed, so that's back in the March
7 time frame.

8 Do you know how long you worked on your
9 expert declarations and other associated tasks
10 prior to the petitions being filed?

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

15 Q. Was it more than 100 hours?

16 A. It might have been. It might have been
17 around that, maybe less. I'm not sure.

18 Q. Okay. Was it more than 200 hours?

19 A. I don't think so.

20 Q. Okay. Did you personally write the expert
21 declarations?

22 MR. BUGG: Objection just to the extent

11:29:31

11:29:40

11:29:43

11:29:47

11:29:53

11:29:55

11:29:58

11:29:59

11:30:00

11:30:04

11:30:05

11:30:12

11:30:14

11:30:19

11:30:19

11:30:21

11:30:29

11:30:31

11:30:33

11:30:41

11:30:46

11:30:49

1 this calls for any privileged information or
2 information pertaining to the actual production of
3 the declarations.

4 I'll just caution you not to share that
5 information, but you can otherwise answer the
6 question.

7 A. I would say that the declarations are my
8 thoughts and that I participated. It was a
9 collaborative -- it was collaborative with my
10 counsel that I'm working with on actually doing
11 the wording. But yeah, I was part of the team
12 that wrote these declarations.

13 Q. Okay. Are you also working on the
14 district court case between Athalonz and Under
15 Armour?

16 A. I believe at this point that is not
17 active. So I might be working if that moves
18 forward, but right now I've just been working on
19 these.

20 Q. Have you billed any time to work on the
21 district court case so far?

22 A. I don't believe -- I'm not sure. I don't

11:30:51

11:30:53

11:30:58

11:30:59

11:31:01

11:31:03

11:31:04

11:31:12

11:31:15

11:31:21

11:31:24

11:31:31

11:31:34

11:31:40

11:31:42

11:31:42

11:31:50

11:31:57

11:31:59

11:31:59

11:32:01

11:32:03

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

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

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

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

10 A. Yes. 11:32:41

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

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

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

16 A. I'm trying to remember if I have or not. 11:32:52

17 Yeah. I believe so. 11:33:08

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

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

1 Q. Okay. Have you looked at any internal
2 Under Armour or Athalonz documents?

11:33:27

11:33:31

3 A. "Internal" meaning what?

11:33:38

4 Q. Not something that was publicly filed at
5 the Patent Office or that is being called prior
6 art.

11:33:40

11:33:42

11:33:45

7 A. I'm not sure. I don't believe so, but I
8 don't know what was -- I'm not completely sure. I
9 don't think so.

11:33:45

11:33:52

11:33:55

10 Q. So you haven't looked at any, for example,
11 Under Armour PowerPoint presentations?

11:33:56

11:33:59

12 A. No.

11:34:01

13 Q. Okay. So I understand you have a copy of
14 the five expert declarations that you filed in
15 this case. And so those were all marked
16 Exhibit 1002. Correct?

11:34:02

11:34:09

11:34:12

11:34:16

17 A. Yes.

11:34:17

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

11:34:19

11:34:23

11:34:26

11:34:29

22 (Exhibit 1002, previously marked, is not

1	attached to the transcript.)	11:34:31
2	A. Sure.	11:34:31
3	Q. And I'm going to kind of have to flip back	11:34:35
4	and forth between these a little bit as we go. So	11:34:38
5	bear with me on that.	11:34:41
6	You're comfortable referring to the patent	11:34:46
7	numbers by the last three digits. Correct?	11:34:48
8	A. Yes.	11:34:50
9	Q. Okay. So for the '291, the '786, and the	11:34:51
10	'760 patents, I might refer to those as "the slope	11:35:01
11	patents" during the deposition. Will you	11:35:05
12	understand what I mean by that?	11:35:06
13	A. Yes.	11:35:08
14	Q. And then the '768 and the '456 patents, I	11:35:08
15	might refer to those as "the density patents."	11:35:14
16	Will you understand what I mean by that?	11:35:18
17	A. Yes.	11:35:19
18	Q. Okay. And sometimes I'll refer to the	11:35:20
19	individual patents, but other times I might refer	11:35:24
20	to them as a group. So if you're ever confused,	11:35:26
21	just let me know.	11:35:29
22	Okay. Can you pull out the expert	11:35:36

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

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

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

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

9 A. I did. 11:36:06

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

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

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

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

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

1	A. I do.	11:36:44
2	Q. Okay. Let's see. You also opined on the	11:36:45
3	level of skill in the art and you based your	11:36:53
4	opinions as of the invention date. Correct?	11:36:56
5	A. Yes, I did.	11:36:58
6	Q. Okay. And in Paragraph 28, you say that	11:37:00
7	that is March 8, 2011, the filing date of	11:37:03
8	Provisional Application 61/450,458?	11:37:07
9	A. Yes.	11:37:15
10	Q. And that's the same for all five patents	11:37:16
11	too. Correct?	11:37:25
12	A. Correct.	11:37:25
13	Q. In Paragraph 29 you list some factors that	11:37:26
14	you look to in determining the ordinary skill in	11:37:28
15	the art. Correct?	11:37:31
16	A. Yes.	11:37:32
17	Q. Where did you get that list?	11:37:33
18	A. Let me refresh my memory. I'm going to	11:37:36
19	read it real quick.	11:37:41
20	So my counsel informed me of these.	11:38:07
21	Q. Okay. So you list factors that include	11:38:10
22	the level of education and experience of persons	11:38:16

1 working in the field, the types of problems

11:38:21

2 encountered in the field, the teachings of the

11:38:24

3 prior art, and the sophistication of the

11:38:26

4 technology at the time of the alleged invention.

11:38:30

5 Correct?

11:38:33

6 A. Yes.

11:38:33

7 Q. You don't list the education level of the

11:38:34

8 inventor in this list in Paragraph 29, do you?

11:38:38

9 A. It doesn't -- I mean, it talks about the

11:38:41

10 level of education, but it doesn't specify that in

11:38:50

11 that paragraph.

11:38:57

12 Q. Okay. Are you aware that the Federal

11:38:57

13 Circuit has said that there are six factors that

11:38:59

14 you should look to and one of those is the

11:39:02

15 education level of the inventor?

11:39:04

16 A. I'm not an attorney, so I don't know

11:39:06

17 exactly the rules of what the -- how many factors

11:39:17

18 there should be. So I would -- I didn't -- I

11:39:24

19 wasn't aware that there had to be six. It does

11:39:27

20 say level of education in here, though. So I'm

11:39:31

21 not sure if that is not the same thing.

11:39:33

22 Q. Okay. I'm quoting from a Federal Circuit

11:39:35

1 case from 2022, Best Medical International versus
2 Elekta.

3 And it says, "These factors include, one,
4 the educational level of the inventor; two, types
5 of problems encountered in the art; three, prior
6 art solutions to those problems; four, rapidity
7 with which inventions are made; five,
8 sophistication of the technology; and six,
9 educational level of active workers in the field."

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

13 A. Yes. I would say that that is not
14 specifically listed in this paragraph.

15 Q. Okay. Was there a reason you didn't
16 include the education level of the inventor in the
17 list of factors in Paragraph 29?

18 A. Well, it does state it in Paragraph 31.
19 So I guess I would say that the information is in
20 my declaration, two paragraphs down. So I'm not
21 sure why, you know, it wasn't put in Paragraph 29.

22 Q. Okay. And when you say it says it in

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11:40:59

11:41:03

11:41:08

1 Paragraph 31, I don't see the word "inventor" in
2 there. Is it there?

3 A. Yeah. It's a person of ordinary skill in
4 the art would have a certain level of education.

5 Q. Right. But you don't talk about the level
6 of education of the inventor in Paragraph 31, do
7 you?

8 A. I don't believe so.

9 Q. Okay. Do you know what the education
10 level of the inventors of the five Athalonz
11 patents was?

12 A. I do not.

13 Q. Do you know who the inventors are?

14 A. I don't have the patents in front of me.

15 Q. Okay. But generally, do you know -- like,
16 personally know them?

17 A. No, I don't personally know them.

18 Q. And did you do anything to look into what
19 their education level was?

20 A. No, I did not.

21 Q. Would it be relevant to your analysis of
22 the correct level of skill in the art what the

11:41:10

11:41:13

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11:42:11

11:42:12

11:42:15

11:42:20

1	education level of the inventor was?	11:42:21
2	MR. BUGG: Objection, vague, calls for	11:42:25
3	speculation.	11:42:27
4	You can answer if you can.	11:42:28
5	A. I'm not quite sure what you mean by the	11:42:29
6	question. Can you rephrase it?	11:42:31
7	Q. Well, let me put it this way: You didn't	11:42:33
8	talk about what the education level of the	11:42:36
9	inventor was in giving your opinion on the level	11:42:39
10	of ordinary skill in the art. Right?	11:42:43
11	A. I did not talk about it. No.	11:42:44
12	Q. And so since you didn't talk about it, you	11:42:47
13	didn't think it was relevant to your analysis, did	11:42:49
14	you?	11:42:52
15	MR. BUGG: Objection, vague.	11:42:52
16	A. I don't know if it is relevant or not. I	11:42:53
17	believe an inventor can come up with ideas with	11:43:01
18	many different levels of education.	11:43:06
19	Q. Okay. And so if the inventor did not have	11:43:08
20	the education level that you proposed in	11:43:11
21	Paragraph 31, does that mean they can't be a	11:43:15
22	person of ordinary skill in the art?	11:43:18

1 MR. BUGG: Objection, vague, calls for
2 speculation.

3 A. Are you asking -- I'm sorry. I'm not
4 quite sure what your question is on that. Can you
5 restate it? You're saying that the inventor would
6 have to have the same level of knowledge as the
7 person having a skill -- a person of ordinary
8 skill in the art?

9 Q. I'm saying if the inventor did not have
10 the level of education you put in Paragraph 31,
11 then to you does that mean that they're not a
12 person of ordinary skill in the art?

13 MR. BUGG: Same objections.

14 A. I don't know if that would apply.

15 Q. Okay. So you don't have an opinion on
16 that one way or the other?

17 A. I haven't done an analysis on that. I
18 haven't thought that through, so no, I don't have
19 an opinion at this point.

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

1	'291 patent declaration.	11:44:40
2	Let me know when you have that.	11:44:48
3	A. I'm here.	11:44:50
4	Q. Okay. You have a section about	11:44:51
5	conventional shoes in each of your five	11:44:54
6	declarations. Right?	11:44:57
7	A. I do.	11:44:58
8	Q. Okay. You say here in Paragraph 47 that	11:44:58
9	"Having a heel section of consistent height	11:45:10
10	throughout is standard shoe design." Right?	11:45:13
11	A. Yes.	11:45:17
12	Q. And then you say, "the vast majority, if	11:45:19
13	not all, of the shoes I designed or oversaw the	11:45:22
14	design of had this feature." Correct?	11:45:26
15	A. Yes.	11:45:28
16	Q. Okay. And then you go on and you talk	11:45:30
17	about several different shoes here. I think there	11:45:33
18	are six or seven total. Right?	11:45:36
19	A. Yes.	11:45:38
20	Q. And none of those shoes are actually being	11:45:40
21	asserted as prior art in this case. Correct?	11:45:44
22	MR. BUGG: Objection, vague.	11:45:48

1	But you can answer.	11:45:52
2	A. I don't believe we have officially	11:45:56
3	asserted them, but I would say that some of these	11:45:57
4	shoes -- for instance, the Cortez that was	11:46:01
5	designed in 1971 -- would qualify as prior art.	11:46:04
6	Q. Okay. But you understand as part of the	11:46:07
7	IPR you have to identify grounds with specific	11:46:10
8	prior art as part of those grounds. Right?	11:46:13
9	A. I believe these were used as examples, not	11:46:14
10	as official prior art examples.	11:46:19
11	Q. Okay. So I understand your position is	11:46:24
12	that these shoes are literally prior art and that	11:46:28
13	they existed before the patents, but you're not	11:46:31
14	actually using these as a ground of invalidity for	11:46:34
15	prior art to say that these patents are invalid	11:46:38
16	based on these shoes. Right?	11:46:41
17	MR. BUGG: Objection, vague.	11:46:42
18	A. I don't know if I would need to have these	11:46:49
19	specified as the actual grounds for invalidity. I	11:46:51
20	do know that some of these shoes are definitely --	11:46:57
21	were definitely designed and brought to market	11:47:03
22	prior to the invention date. But I don't know if	11:47:08

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

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

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

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

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

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

15 A. Okay. 11:48:18

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

20 A. Yes. 11:48:30

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

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

1 your pictures. Right?

11:49:55

2 A. I am showing exterior views of shoes
3 except for there is a sectional diagram,
4 Exhibit 1016, which is the Air Force One sole.

11:49:56

11:50:06

11:50:15

5 However, I would say that there are a few
6 of the shoes that I am referring to here where the
7 exterior of the shoe is -- and the interior of the
8 shoe is actually represented without having to do
9 a cut-through view of the shoe.

11:50:24

11:50:26

11:50:35

11:50:39

11:50:41

10 Q. Okay. But in terms of actual pictures of
11 physical shoes that are not in design patents, you
12 only have pictures of the exterior of the shoes.
13 Right?

11:50:43

11:50:51

11:50:56

11:50:59

14 A. Yes.

11:50:59

15 Q. Okay. And you don't have any annotations
16 on any portions of the shoes that you included in
17 this section. Right?

11:51:01

11:51:06

11:51:10

18 A. No, I do not.

11:51:10

19 Q. Okay. And you don't have any measurements
20 of any of the components of the physical shoes
21 that are in this section either. Correct?

11:51:15

11:51:19

11:51:22

22 A. That's correct.

11:51:24

1	Q. Okay. So on the brown and blue Vans shoe	11:51:29
2	in Paragraph 47, page 19 -- are you there?	11:51:36
3	A. Yeah. Did you say brown and blue?	11:51:48
4	Q. Yeah. Maybe it's just me. On my screen,	11:51:49
5	it looks brown and blue to me.	11:51:52
6	A. I think it's brown and black and a little	11:51:55
7	bit of green.	11:51:58
8	Q. Okay. But it's on page 19. Right?	11:51:59
9	A. Yes.	11:52:01
10	Q. Okay. And you are giving this as an	11:52:01
11	example, you say, of a shoe that has a heel	11:52:05
12	section with a consistent height throughout.	11:52:07
13	Right?	11:52:09
14	A. Yes.	11:52:10
15	Q. You don't identify what the heel section	11:52:12
16	is on the shoe in your declaration, do you?	11:52:15
17	A. I believe that would be obvious.	11:52:17
18	Q. Okay. But you don't actually put it in	11:52:23
19	this picture? There's no annotation, for example.	11:52:26
20	Right?	11:52:29
21	A. There's nothing that's written over the	11:52:30
22	photo. No.	11:52:33

1	Q. Okay. You're saying this has a consistent	11:52:34
2	height throughout. Right?	11:52:37
3	A. A substantial uniform height. Yes.	11:52:39
4	Q. Well, let's go back up to Paragraph 47.	11:52:42
5	You say, "Having a heel section of consistent	11:52:55
6	height throughout is standard shoe design."	11:52:59
7	Right?	11:53:03
8	A. Yes.	11:53:03
9	Q. Okay. It doesn't say substantially	11:53:07
10	uniform, does it?	11:53:11
11	A. In Paragraph 47, it does not.	11:53:12
12	Q. Okay. And so is it your position that	11:53:19
13	this black-and-brown Vans shoe has a consistent	11:53:22
14	height throughout the heel platform?	11:53:25
15	A. Yeah, I would say it does.	11:53:27
16	Q. Okay. If you measured the rearmost	11:53:33
17	portion of the heel platform and then whatever you	11:53:37
18	say is the front of the heel platform, would the	11:53:40
19	height be the same?	11:53:44
20	A. Where the heel would sit, it would be.	11:53:45
21	Yes.	11:53:50
22	Q. I'm going to share my screen just so we	11:53:50

1	can be looking at the same thing. Can you see my	11:53:55
2	screen?	11:54:05
3	A. Yeah. I just have to move over my CV	11:54:06
4	here. Yes.	11:54:12
5	Q. Can you see my mouse on the screen or not?	11:54:12
6	A. Yes, I am.	11:54:15
7	Q. So if you measured the shoe right here at	11:54:16
8	the rear of the heel --	11:54:21
9	A. Yes.	11:54:22
10	Q. -- and then you measured the shoe right	11:54:23
11	here at the front of the heel, are you saying	11:54:25
12	that's the same height?	11:54:30
13	A. That's the height of the sidewall of the	11:54:31
14	midsole, which isn't representing where the heel	11:54:34
15	would be actually seated in the shoe. So the	11:54:38
16	surface that the heel would sit on would be flat.	11:54:43
17	The wall thickness of the midsole would be	11:54:47
18	slightly lower in the section that you have	11:54:51
19	highlighted right now than it would be in the	11:54:52
20	previous section that you highlighted just a	11:54:55
21	second ago.	11:54:57
22	Q. Okay. So you can't see from the exterior	11:54:58

1	of the shoe whether the heel platform is a	11:55:02
2	consistent height. Correct?	11:55:06
3	MR. BUGG: Objection, vague.	11:55:10
4	You can answer if you can.	11:55:11
5	A. From the view that you're looking at here	11:55:13
6	on the screen, no, you can't. But I can tell you	11:55:15
7	that me as the designer of that shoe knows that	11:55:20
8	the heel platform would be flat.	11:55:25
9	Q. Okay. Let's look at the white, gray, and	11:55:26
10	red Vans shoe. Same paragraph, the previous page.	11:55:36
11	A. I see it.	11:55:43
12	Q. Okay. You would agree that the outsole	11:55:44
13	here is thicker in part at the toe region than the	11:55:48
14	part of the foot immediately preceding the toe	11:55:54
15	region. Right?	11:55:59
16	MR. BUGG: Objection, vague.	11:55:59
17	A. The outsole?	11:56:00
18	Q. The part of the sole that you can see in	11:56:03
19	the picture gets thicker at some point near the	11:56:05
20	toe than it is prior to that. Right?	11:56:10
21	MR. BUGG: Objection, vague. It.	11:56:15
22	A. Actually, it would be helpful if you could	11:56:17

1 do the same thing and point at it with your
2 cursor.

3 Q. Right here towards the front, there's a
4 sort of upwards dip in the outsole. And so if you
5 look at the exterior of the shoe, it looks like
6 it's thicker here than just before it here.
7 Correct?

8 A. Again, that is a detail of a sidewall
9 design. Shoes -- typical athletic shoes have lots
10 of variability on what that top silhouette line
11 would look like. It has no bearing on where the
12 actual foot sits inside the shoe where the top of
13 the midsole would be.

14 Q. So you would agree that you can't tell
15 what the interior dimensions of this shoe are
16 based on the exterior view. Correct?

17 MR. BUGG: Objection, vague, calls for
18 speculation.

19 A. I can tell you that that higher point that
20 you just identified in the toe area is definitely
21 at a lower level than the heel area. So you can
22 tell generally by just the angle of the shoe that

1	it would be lower in the forefoot area.	11:57:37
2	Q. That wasn't the question --	11:57:41
3	A. And I know that --	11:57:42
4	Q. -- specifically.	11:57:46
5	A. But from this view, you don't know exactly	11:57:47
6	where the foot would be resting because the	11:57:49
7	sidewall comes up, wraps around the upper of the	11:57:55
8	shoe.	11:57:58
9	Q. But the question was just, you can't tell	11:57:58
10	what the interior dimensions of the shoe are from	11:58:01
11	this picture of the exterior of the shoe alone.	11:58:03
12	Correct?	11:58:05
13	MR. BUGG: Objection, vague.	11:58:12
14	A. Can you see where the actual top of the	11:58:13
15	midsole is that the foot is resting on from this	11:58:15
16	view? No. I can tell you that I know that it's	11:58:18
17	lower.	11:58:22
18	Q. Okay. Not the question.	11:58:25
19	Can you tell what the interior dimensions	11:58:26
20	of the shoe are from this picture of the shoe on	11:58:28
21	the outside?	11:58:31
22	MR. BUGG: Objection, vague.	11:58:33

1	A. You can't specify, see specifically what	11:58:34
2	the dimensions are from this view.	11:58:43
3	Q. Okay. Thank you. Scrolling down a little	11:58:46
4	ways, you have a couple of different golf shoes in	11:58:48
5	this conventional shoe section. Correct?	11:58:50
6	And I can direct you to page 24 --	11:59:00
7	A. Yes.	11:59:06
8	Q. -- which I believe is the first one. And	11:59:06
9	then there's also another one pictured on page 25.	11:59:10
10	Right?	11:59:14
11	A. Yes.	11:59:14
12	Q. Okay. And those are the only two golf	11:59:14
13	shoes that you put as examples in your	11:59:17
14	conventional shoe section. Right?	11:59:19
15	A. Yes.	11:59:21
16	Q. Both of these conventional shoes have	11:59:21
17	spikes in the heel section. Correct?	11:59:32
18	A. I believe -- well, on page 25, yes, for	11:59:33
19	sure. On page 24, I can see a vague hint of a	11:59:43
20	spike from the side view. So I would say yes.	11:59:53
21	Q. Okay. Did you actually take these	11:59:55
22	pictures on page 24 or were they provided to you?	11:59:57

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

1	A. I don't know these shoes.	12:01:15
2	Q. And what about any shoe that embodies this	12:01:21
3	design patent?	12:01:27
4	MR. BUGG: Objection, vague.	12:01:28
5	A. I don't believe I've owned a pair of shoes	12:01:30
6	that has this design patent.	12:01:37
7	Q. Okay. In Paragraph 52, you say, "See also	12:01:40
8	the Golf shoe sole." Do you see that?	12:01:46
9	A. Yes.	12:01:48
10	Q. Are you aware that the title of this	12:01:56
11	design pattern is actually "Golf Shoe Bottom"?	12:01:59
12	A. No, I wasn't aware of that.	12:02:03
13	Q. Okay. Did you ever actually look at the	12:02:08
14	design patent itself or did you just take this	12:02:10
15	picture from counsel?	12:02:13
16	MR. BUGG: Objection, vague.	12:02:15
17	And if it calls for -- it calls for any	12:02:16
18	kind of privileged information, please don't share	12:02:19
19	that.	12:02:21
20	A. I've looked at patents. I can't recall if	12:02:27
21	this is one of the patents I specifically looked	12:02:29
22	at. But I have reviewed a number of different	12:02:31

1	documents, and this could have been one of them.	12:02:38
2	I'm not sure.	12:02:40
3	Q. Okay. So you don't have any reason to	12:02:40
4	disagree with this design patent calls this a golf	12:02:45
5	shoe bottom. Right?	12:02:49
6	A. If you say that that's what it says, then	12:02:49
7	I would take you at your word.	12:02:54
8	Q. We can look at it just so we're sure.	12:02:56
9	This is Exhibit 1017. I will drop that in the	12:03:08
10	chat. Okay. This was Exhibit 1017 in the 636,	12:03:11
11	637, and 638 IPR.	12:03:23
12	(Exhibit 1017, previously marked, is not	
13	attached to the transcript.)	
14	Q. Do you have that open?	12:03:30
15	A. Yes, I do.	12:03:31
16	Q. And you agree the title of this design	12:03:38
17	patent is "Golf Shoe Bottom"?	12:03:41
18	A. Yes, it is.	12:03:43
19	Q. All right. Back to the Footjoy 1970 golf	12:03:45
20	shoe, just briefly. This might be another one	12:03:49
21	where I share my screen so we're looking at the	12:03:53
22	same part. But I'm looking at page 24 of your	12:03:56

1	declaration.	12:03:58
2	Are you with me?	12:04:10
3	A. I see it.	12:04:11
4	Q. Okay. The thickness of the sole just in	12:04:12
5	front of the heel platform, so here where my mouse	12:04:16
6	is --	12:04:20
7	A. Yes.	12:04:21
8	Q. -- is the same as the thickness of the	12:04:21
9	sole at the toe section. Right?	12:04:23
10	MR. BUGG: Objection, vague, calls for	12:04:26
11	speculation.	12:04:27
12	A. I don't know if I would qualify what you	12:04:29
13	would say as that being the same thickness. I	12:04:40
14	think -- it wouldn't account for the arch opening	12:04:42
15	in front of the heel. If the sole was flat all	12:04:45
16	the way across the bottom and it didn't have the	12:04:52
17	heel, then it would not be the same thickness.	12:04:54
18	It is at a higher level off the ground	12:04:56
19	surface than where the area that you identified in	12:04:58
20	the toe is.	12:05:05
21	Q. Okay. So the relevant part to look at is	12:05:05
22	where the foot sits relative to the ground or the	12:05:08

1	bottom of the shoe?	12:05:12
2	MR. BUGG: Objection, vague.	12:05:15
3	A. I believe where the foot sits relative to	12:05:16
4	the ground surface.	12:05:21
5	Q. Okay. But you would agree that the actual	12:05:21
6	sole material itself is the same thickness just in	12:05:29
7	front of the heel platform as it is at the toe,	12:05:32
8	based on this image?	12:05:35
9	MR. BUGG: Objection, calls for	12:05:37
10	speculation.	12:05:38
11	A. The thickness of that area of where the	12:05:39
12	sole is and the thickness of the area where the	12:05:48
13	sole is -- sorry -- in the area just in front of	12:05:53
14	the heel and the thickness of the actual material	12:05:57
15	where the toe is has a -- I would say a similar	12:06:01
16	thickness to it. It is definitely not the same	12:06:08
17	thickness with regards to where it sits on the	12:06:14
18	surface of the ground.	12:06:16
19	Q. Okay. I want to go to Paragraph 27 now in	12:06:18
20	the declaration. And now I'm going to have to	12:06:30
21	start bouncing around between your declarations.	12:06:35
22	We can start in this '291 section.	12:06:37

1	This is the "Claim Construction" heading.	12:06:48
2	A. Yes.	12:06:54
3	Q. Okay. In Paragraph 27 it says, "I was	12:06:54
4	asked by counsel to apply the plain and ordinary	12:07:04
5	meaning of the terms in the '291 Patent and prior	12:07:06
6	art." Correct?	12:07:09
7	A. Yes.	12:07:10
8	Q. Okay. And now if you can take out the	12:07:11
9	declaration filed on the '768 patent -- this is	12:07:19
10	IPR 2024-639 -- and go to the same section in that	12:07:25
11	declaration.	12:07:38
12	A. Are you referring to page 6?	12:07:47
13	Q. Page 11, "Claim Construction."	12:07:49
14	A. Okay.	12:07:55
15	Q. And here it says, "I was asked by counsel	12:08:04
16	to apply the following definitions in my analysis.	12:08:07
17	For all terms not specifically construed, I	12:08:11
18	applied the plain and ordinary meaning of the	12:08:13
19	terms in the '768 Patent and prior art." You see	12:08:15
20	that. Correct?	12:08:19
21	A. I see that.	12:08:20
22	Q. And then there are two subheadings here	12:08:20

1	where there are definitions that you're providing	12:08:30
2	in your analysis. Right?	12:08:32
3	A. Yes.	12:08:33
4	Q. Did you actually look at the patents to	12:08:37
5	decide whether these constructions you are	12:08:45
6	applying were consistent with what a person of	12:08:49
7	ordinary skill in the art would have understood	12:08:51
8	the term to mean?	12:08:54
9	A. I was asked by counsel to apply the	12:08:54
10	following definitions. I'm not -- I wasn't hired	12:09:07
11	to provide claim construction. I'm not an	12:09:13
12	attorney, so these are the definitions that were	12:09:18
13	told to me by counsel.	12:09:22
14	Q. Okay. But you understand that when you're	12:09:25
15	reading terms in a patent, you're supposed to read	12:09:28
16	them as a person of ordinary skill in the art	12:09:31
17	would have understood them. Right? That's your	12:09:34
18	basic understanding?	12:09:36
19	MR. BUGG: Objection, vague.	12:09:40
20	A. My understanding is that person having	12:09:41
21	ordinary skill in the art would understand these	12:09:44
22	terms.	12:09:46

1 Q. Okay. And so were the definitions that
2 you applied consistent with what a person of
3 ordinary skill in the art would have understood
4 those terms to mean?

5 A. I would say yes.

6 Q. Okay. Not looking specifically at any
7 part of the declaration but just as a general
8 question about a term, each of the slope patents,
9 the '291, the '760, and the '786, in the claims
10 they use the term "athletic positioning."
11 Correct?

12 A. Yes.

13 Q. Okay. And we just looked at your section
14 in the '291 patent where you were asked to apply
15 specific definitions and it didn't list "athletic
16 positioning" as one of those terms. Correct?

17 A. I believe it did not.

18 Q. Okay. And so then according to your
19 declaration, you applied the plain and ordinary
20 meaning of the term. Correct?

21 A. I would say so.

22 Q. What is the plain and ordinary meaning of

1	"athletic positioning"?	12:11:00
2	A. I believe it would be something that	12:11:02
3	alludes to the weight distribution of where the	12:11:09
4	person would be placing their -- how would I say	12:11:18
5	this?	12:11:27
6	It would be a weight distribution where it	12:11:27
7	puts the user in a position that gives them	12:11:35
8	probably a higher level of ability with whatever	12:11:39
9	support that might be that they're applying.	12:11:45
10	Q. Okay. And is there a particular weight	12:11:47
11	distribution that a person of ordinary skill in	12:11:51
12	the art would understand does that?	12:11:53
13	MR. BUGG: Objection, vague, calls for	12:11:57
14	speaks.	12:11:59
15	A. I would think that it would be based on	12:11:59
16	whatever a particular sport might be. If there's	12:12:05
17	something that an athlete might find to be -- give	12:12:09
18	them an advantage, I would say that maybe that	12:12:19
19	would be the position that they would want to	12:12:22
20	have.	12:12:24
21	Q. Okay. You've read the patents that you've	12:12:24
22	opined are invalid. Right?	12:12:28

1	A. Yes.	12:12:30
2	Q. Okay. And do you understand that those	12:12:30
3	patents are applying the term "athletic	12:12:33
4	positioning" in any particular way?	12:12:36
5	MR. BUGG: Objection, vague.	12:12:38
6	A. I'm not sure I understand the question.	12:12:39
7	Q. In the '291 patent, for example, would it	12:12:47
8	be an athletic positioning to have the heel lower	12:12:55
9	than the toe?	12:12:58
10	MR. BUGG: Objection, vague.	12:13:00
11	A. I would say that athletic positioning	12:13:06
12	would have a -- let me get to that section of my	12:13:37
13	declaration.	12:13:46
14	Q. Okay. When you get there, let me know	12:13:48
15	what page you're on.	12:13:49
16	A. Okay. So I think I'm in that section.	12:13:52
17	Sorry. Restate the question so I'm --	12:15:25
18	Q. Let me know what page you're on first.	12:15:28
19	A. I'm on page 11.	12:15:30
20	Q. Okay. Yeah. There's no mention of	12:15:32
21	athletic positioning as a term you were given a	12:15:36
22	definition of in Paragraph 27. Right?	12:15:38

1	A. I don't see a definition of that. No.	12:15:41
2	Q. So you applied the plain and ordinary	12:15:43
3	meaning. Right?	12:15:46
4	A. I would say yes.	12:15:47
5	Q. Okay. And you just gave me a little bit	12:15:51
6	earlier what you thought the plain and ordinary	12:15:53
7	meaning was, but I'm asking you in the context of	12:15:54
8	these patents could a shoe with a heel lower than	12:15:57
9	the toe still put the user in an athletic	12:16:00
10	positioning as claimed?	12:16:04
11	MR. BUGG: Objection, vague, calls for	12:16:07
12	speculation.	12:16:09
13	A. A shoe in the heel lower than the toe. I	12:16:09
14	would say that that probably depends on the	12:16:15
15	athlete. I'm not sure if one athlete might want	12:16:18
16	to be in a certain position more than another	12:16:24
17	athlete.	12:16:25
18	Q. Okay. So you understand the claims of all	12:16:28
19	of the slope patents, or at least one claim in	12:16:33
20	each of the slope patents, uses the term "athletic	12:16:36
21	positioning." Right?	12:16:39
22	A. I have seen that. Yes.	12:16:41

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

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

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

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

13 But you can answer. 12:17:43

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

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

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

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

1 MR. BUGG: Objection, vague, asked and
2 answered.

3 A. When I read the patent, the -- it
4 identified the term "athletic positioning" as
5 something other than what the other claims were in
6 the patent.

7 Q. But you're saying that the '291 patent
8 provided a definition of "athletic positioning"?

9 MR. BUGG: Objection, vague, misstates
10 prior testimony. You can answer if you can.

11 A. The '291 patent speaks about different
12 slopes. And the term "athletic positioning" is
13 a -- something that was identified in addition to
14 what those slopes would be. So I would interpret
15 the definition of "athletic positioning" as maybe
16 an optimal weight distribution.

17 Q. Okay. And is there any particular weight
18 distribution that it's defining it as?

19 MR. BUGG: Objection, asked and answered.

20 A. Whatever the weight distribution that
21 would be helpful for the athlete I would say in
22 that particular sport.

1	Q. Athletic positioning is in the claims of	12:19:34
2	the '291 patent. Right?	12:19:40
3	A. It is one of the claims. Yes.	12:19:41
4	Q. Okay. And so does the term limit the	12:19:43
5	claims in your view?	12:19:46
6	MR. BUGG: Objection, vague, calls for	12:19:55
7	speculation. You can answer.	12:19:56
8	A. Does the term limit the claims? Is that	12:19:59
9	the question?	12:20:01
10	Q. Yes.	12:20:01
11	A. I would say that the term is something	12:20:10
12	that is different than the slope claims because it	12:20:17
13	is a separate claim.	12:20:36
14	So it would have to mean something -- you	12:20:39
15	wouldn't be able to have a claim that states	12:20:43
16	"having a slope" and then also a claim that states	12:20:48
17	"having athletic positioning."	12:20:50
18	So athletic positioning, in my opinion,	12:20:53
19	would have to mean something different, which I	12:20:55
20	believe would be a weight distribution.	12:20:57
21	Q. Okay. Let's go to page 30 of the '291	12:20:58
22	declaration. Are you there?	12:21:04

1	A. Yes.	12:21:17
2	Q. Okay. Limitation 1.5 is the one that has	12:21:17
3	"athletic positioning" in it. Correct?	12:21:21
4	A. Yes.	12:21:23
5	Q. And you don't point to anything in	12:21:29
6	Paragraph 56 showing something different for	12:21:31
7	athletic positioning. Right?	12:21:35
8	A. Correct.	12:21:37
9	Q. Okay. Let's go to your other declaration	12:21:52
10	that you have in front of you, the '768. I want	12:21:54
11	to go back to the "Claim Construction" section of	12:22:05
12	that, which is page 11. Are you there?	12:22:07
13	A. Yes.	12:22:20
14	Q. Okay. The second subsection here talks	12:22:20
15	about a "'heel platform having a first height that	12:22:29
16	is substantially uniform around a perimeter of the	12:22:43
17	heel platform.'" Right?	12:22:45
18	A. Yes.	12:22:47
19	Q. Okay. And you're applying this definition	12:22:49
20	that was provided to you by counsel. Right?	12:22:55
21	A. Yes.	12:22:57
22	Q. Is this definition consistent with how the	12:22:59

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

1	several of the patents. Right?	12:23:56
2	A. Yes.	12:23:58
3	Q. And the definition you applied of inside	12:24:00
4	edge or inner edge and outside edge or outer edge	12:24:04
5	is with reference to where the foot sits in the	12:24:07
6	shoe, not the absolute inner edge or outer edge of	12:24:09
7	the shoe. Right?	12:24:13
8	A. I believe the patent refers to the foot	12:24:13
9	sitting near an edge of the shoe.	12:24:20
10	Q. Can you go to your '786 patent	12:24:28
11	declaration. This is the 636 IPR, and I want to	12:24:45
12	go to this same part about claim construction,	12:24:52
13	which is on page 12.	12:24:55
14	A. Okay.	12:25:12
15	Q. And about halfway through this	12:25:12
16	Subparagraph "a," you say, "'Inner,' 'outer,'	12:25:14
17	'front' and 'rear' edge of the heel	12:25:20
18	platform/apparatus means the edges of the portion	12:25:26
19	of the shoe where the heel of the foot sits, not	12:25:29
20	the inner and outer-most edges of the shoe." Do	12:25:31
21	you see that?	12:25:34
22	A. Yes.	12:25:35

1 Q. You agree that is the correct definition
2 of inner and outer edge as it's used in these
3 patents?

4 MR. BUGG: Objection, misstates the prior
5 testimony.

6 But you can answer.

7 A. Yeah. As I state in my declaration,
8 inner, outer, front, and rear edge of the heel
9 platform apparatus means the edges of the portion
10 of the shoe where the heel of the foot sits, not
11 the inner and outermost edges of the shoe.

12 Q. Right. You agree with that statement.
13 Correct?

14 A. Yes.

15 MR. BUGG: Objection, vague.

16 Q. Okay. And that's the definition you
17 applied in your opinions. Right?

18 A. Well, yes. But I also applied what the
19 specifications were in the patents.

20 Q. Is that definition consistent with what
21 the specification in the patent is?

22 MR. BUGG: Objection, calls for

1 speculation.

12:26:46

2 A. I believe that some of the specifications
3 in the patents speak to being near the edges.

12:26:46

12:26:50

4 Q. Okay. I understand that. But where the
5 term used is just "inner edge" or "outer edge,"
6 you agree the specification defines that in terms
7 of where the foot sits in the shoe and not the
8 absolute inner or outer edge, as you state in this
9 paragraph. Right?

12:27:02

12:27:04

12:27:08

12:27:10

12:27:12

12:27:14

10 MR. BUGG: Objection, misstates testimony.

12:27:16

11 A. It states here that it's "where the heel
12 of the foot sits but not the inner or outer-most
13 edges of the shoe."

12:27:17

12:27:26

12:27:29

14 Q. Okay. And my question is just, do you
15 agree that that is consistent with the
16 specification?

12:27:30

12:27:35

12:27:37

17 MR. BUGG: Objection, vague.

12:27:43

18 A. I believe some of the specifications refer
19 to being near the edge of the shoe.

12:27:44

12:27:49

20 But in this case where it states what the
21 definition is, it states that it's "where the heel
22 of the foot sits, not the inner and outer-most

12:27:54

12:28:00

12:28:08

1 edges of the shoe."

12:28:10

2 Q. Okay. And that's the definition you
3 applied in your opinions. Right?

12:28:12

12:28:15

4 A. I've applied these definitions.

12:28:16

5 Q. Okay. And if you thought they were wrong,
6 would you still have applied them?

12:28:22

12:28:24

7 MR. BUGG: Objection, calls for
8 speculation.

12:28:30

12:28:31

9 A. I don't believe I would apply these if I
10 thought they were wrong.

12:28:32

12:28:39

11 Q. Okay. And so you're not disavowing that
12 statement in your declaration. Right? It's
13 accurate?

12:28:40

12:28:45

12:28:47

14 MR. BUGG: Objection, form.

12:28:48

15 A. I would say it's an accurate statement.

12:28:52

16 Q. Okay. Back to the '768 patent

12:28:54

17 declaration.

12:29:03

18 MR. BUGG: We've been going for about an
19 hour and 15 minutes. Is this a related question
20 or is this a good time to take a break?

12:29:08

12:29:10

12:29:12

21 MR. HOUGHTON: I've got a few more on

12:29:14

22 claim construction. So it's up to you if you want

12:29:16

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

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

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

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

5 BY MR. HOUGHTON: 12:44:16

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

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

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

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

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

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

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

1	11.	12:45:26
2	A. Yes.	12:45:30
3	Q. The first subbullet says, "'gradient	12:45:31
4	compression factor.'" Do you see that?	12:45:37
5	A. Yes.	12:45:39
6	Q. And then you say, "'Gradient compression	12:45:41
7	factor' . . . "requires that the forefoot platform	12:45:49
8	becomes 'increasingly less compressible' as you	12:45:52
9	move from its inner edge to its outer edge."	12:45:56
10	Right?	12:45:59
11	A. Yes.	12:45:59
12	Q. That's the definition you applied in your	12:45:59
13	analysis?	12:46:03
14	A. Yes.	12:46:04
15	Q. And did you do any analysis of your own to	12:46:06
16	determine whether that's actually what the '768	12:46:13
17	patent defines "gradient compression factor" to	12:46:17
18	be?	12:46:20
19	MR. BUGG: Objection, vague.	12:46:20
20	A. I applied these terms to my opinions.	12:46:22
21	Q. Right. But did you check -- you read the	12:46:26
22	patent. Right?	12:46:32

1	A. I did read the patent. Yes.	12:46:32
2	Q. And you are a person of ordinary skill in	12:46:34
3	the art and you were at the time of the invention?	12:46:38
4	A. Yes, I am and was.	12:46:41
5	Q. And is this the definition that you're	12:46:43
6	applying consistent with how a person of ordinary	12:46:45
7	skill in the art would understand the term	12:46:47
8	"gradient compression factor"?	12:46:49
9	A. Yes, it is.	12:46:51
10	Q. Okay. And are you basing that off some	12:46:53
11	special portion of the specification or is this	12:46:56
12	the plain and ordinary meaning of "gradient	12:46:58
13	compression factor"?	12:47:01
14	MR. BUGG: Objection, calls for	12:47:02
15	speculation.	12:47:03
16	A. This was a term that was presented that	12:47:04
17	was agreed upon. And I would agree that it	12:47:10
18	represents what it means to a person of ordinary	12:47:16
19	skill in the art.	12:47:21
20	Q. Okay. Is that based off any specific	12:47:21
21	portion of the patent or is that just your	12:47:26
22	understanding of the term outside of the patent?	12:47:28

1 A. I've considered the specifications of the
2 patents and have applied this terminology to
3 those.

4 Q. Okay. And you say above, "For all terms
5 not specifically construed, I applied the plain
6 and ordinary meaning." Right?

7 A. Yes.

8 Q. And this is a term that is specifically
9 construed. Right?

10 A. What term are you talking about?

11 Q. "Gradient compression factor."

12 A. Yeah, I would say it is.

13 Q. Okay. So you're not applying the plain
14 and ordinary meaning? You're applying the
15 specific construction below. Right?

16 MR. BUGG: Objection, improper question,
17 vague.

18 You can answer, if you understand it.

19 A. I believe both would apply. I believe
20 it's somewhat of an understandable term, so I
21 would say it's the ordinary way to say it, but
22 it's also what's been defined as the definition.

12:47:30

12:47:34

12:47:37

12:47:38

12:47:41

12:47:44

12:47:46

12:47:47

12:47:50

12:47:52

12:47:56

12:48:02

12:48:03

12:48:05

12:48:08

12:48:09

12:48:13

12:48:14

12:48:16

12:48:21

12:48:26

12:48:34

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

5 A. Yes. 12:48:46

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

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

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

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

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

18 A. Okay. 12:49:42

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

21 A. Yes. 12:49:50

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

1	material and a second material. Right?	12:49:58
2	A. Yes, I see that.	12:50:00
3	Q. And the last sentence of your footnote	12:50:03
4	says, "I understand the 'first' material to be	12:50:07
5	that which is used in the heel platform and the	12:50:09
6	'second' material to be that which is used in the	12:50:11
7	forefoot platform, which may be the same as, or	12:50:14
8	different from, the first material. " Right?	12:50:17
9	A. Yes.	12:50:20
10	Q. Okay. Why didn't you put that in the	12:50:22
11	claim construction section?	12:50:35
12	MR. BUGG: Objection, calls for	12:50:38
13	speculation.	12:50:39
14	You can answer, if you can.	12:50:41
15	A. Again, I'm not an attorney, and I wasn't	12:50:42
16	asked to determine what the claim construction	12:50:51
17	should be, so I applied what the terms were that	12:50:58
18	were given to me.	12:51:00
19	Q. Okay. Now I want to quickly look at the	12:51:10
20	petition itself on the '768 patent, which I don't	12:51:12
21	think you have in front of you. So I'm going to	12:51:16
22	drop it in the chat. And if you could open that	12:51:18

1	up when you have it and go to page 25. Let me	12:51:20
2	know when you're there.	12:51:25
3	Are you on page 25?	12:52:10
4	A. I'm almost there.	12:52:11
5	Q. Okay.	12:52:12
6	A. Just need to scroll to it. Okay. I'm	12:52:13
7	there.	12:52:19
8	Q. This footnote in the petition says, "While	12:52:20
9	claim 1 recites that the heel platform is	12:52:23
10	constructed of a 'first material' and the forefoot	12:52:25
11	platform of a 'second material,' Athalonz contends	12:52:28
12	that they can be the same material," and then I'm	12:52:30
13	cutting out a little bit of the sentence.	12:52:34
14	And then it says, "Without conceding	12:52:36
15	alternative arguments, Under Armour applies	12:52:38
16	Athalonz's apparent construction."	12:52:42
17	Do you see that?	12:52:44
18	A. I do see it. Yeah.	12:52:45
19	Q. Okay. And so in the petition, Under	12:52:49
20	Armour is applying a construction where the first	12:52:53
21	material and the second material can be the same	12:52:55
22	material. Do you agree with that?	12:52:57

1	A. They can be. Yes.	12:52:58
2	Q. Okay. Do you agree that is consistent	12:53:10
3	with the '768 patent specification?	12:53:22
4	A. I believe the '768 patent claims that it	12:53:25
5	can be one material or different materials.	12:53:30
6	Q. Okay. But Under Armour is applying a	12:53:38
7	construction where they can be the same material.	12:53:40
8	Right?	12:53:44
9	A. Yes.	12:53:45
10	Q. Okay. And now I want to look at the	12:53:49
11	petition on the '456 patent. I'm going to drop	12:54:03
12	that in the chat. And go to the same footnote in	12:54:09
13	that, which is on page -- let me figure it out.	12:54:15
14	Page 27 of the '456 petition.	12:54:39
15	A. Okay. I'm there.	12:54:54
16	Q. Okay. And this footnote is saying the	12:54:55
17	same thing, that the first material and the second	12:54:57
18	material can be the same. And that's the	12:54:59
19	construction Under Armour is applying in this	12:55:02
20	petition too. Right?	12:55:03
21	A. Yes.	12:55:06
22	Q. Okay. It says "While claim 10 recites	12:55:15

1 that the heel platform is constructed of a 'first
2 material' and the forefoot platform of a 'second
3 material,' Athalonz suggests that they can be the
4 same material," citation, "accusing shoes with the
5 heel platform and forefoot platform constructed of
6 the same material(s) as infringing claim 1." Do
7 you see that?

12:55:19

12:55:21

12:55:25

12:55:29

12:55:34

12:55:38

12:55:41

8 A. I see that.

12:55:41

9 Q. Okay. Is that a typo? Is it supposed to
10 say "While claim 1" recites?

12:55:46

12:55:51

11 MR. BUGG: Objection, calls for
12 speculation. This is the petition. This isn't
13 his declaration.

12:55:55

12:55:57

12:55:59

14 But if you know the answer, you can answer
15 that.

12:56:00

12:56:01

16 A. This is the first time I'm seeing this
17 document, and I haven't done an analysis on it. I
18 don't know for sure the answer to that question.

12:56:02

12:56:05

12:56:08

19 Q. Have you ever seen the petition before?

12:56:12

20 A. I don't know if I -- I might have seen
21 this. It's not something I spent a lot of time
22 on.

12:56:13

12:56:21

12:56:26

1	Q. Okay. Let's go to your declaration on the	12:56:28
2	'456 patent.	12:56:31
3	A. Okay.	12:56:32
4	Q. Page 41.	12:56:34
5	A. Okay.	12:56:56
6	Q. Footnote on page 41 says, "While claim 10	12:56:57
7	recites that the heel platform is constructed of a	12:57:02
8	'first material' and the forefoot platform of a	12:57:04
9	'second material,' Athalonz suggests that they can	12:57:07
10	be the same material," citation, "accusing shoes	12:57:10
11	with the heel platform and forefoot platform	12:57:15
12	constructed of the same material(s) as infringing	12:57:18
13	claim 1." Do you see that?	12:57:22
14	A. I see that.	12:57:23
15	Q. Is that a typo? Is it supposed to say	12:57:25
16	"While claim 1" recites?	12:57:28
17	A. I don't believe it's a typo.	12:57:29
18	Q. Okay. Well, let's look at Claim 10 of the	12:57:40
19	'456 patent. We can do that by actually going to	12:57:45
20	the patent or looking in your section.	12:57:48
21	Why don't we go back to the petition	12:57:52
22	document that I had you looking at before.	12:57:54

1	A. Sorry. Say that again.	12:58:08
2	Q. I want to look at the claims of the '456	12:58:09
3	patent. And I think that they're listed in the	12:58:12
4	petition. So if you open up the '456 petition	12:58:16
5	that I just sent you in the chat we were just	12:58:21
6	looking at --	12:58:23
7	A. Okay.	12:58:24
8	Q. -- if you'd go to PDF page 8, which is the	12:58:26
9	physical page of the document.	12:58:35
10	A. Page 8, you said?	12:58:41
11	Q. It's like little 8. So it's the 8th page	12:58:43
12	of the pdf, but it's Roman numeral viii, "claim	12:58:46
13	listing." Are you there?	12:58:51
14	A. Yeah.	12:59:10
15	Q. Does claim 10, which is on little ix, say	12:59:10
16	anything about first material and second material?	12:59:19
17	A. I'm looking at Claim 1 here, and it	12:59:24
18	doesn't . . .	12:59:58
19	Q. So Claim 1 says in the third limitation	13:00:12
20	about the heel platform that it "is constructed of	13:00:15
21	a first material." And then in the next	13:00:17
22	limitation it talks about how "the forefoot	13:00:20

1	platform is constructed of a second material."	13:00:23
2	Do you see that?	13:00:25
3	A. Yes. "Second material having a gradient	13:00:25
4	compression factor"?	13:00:35
5	Q. Right. Does Claim 10 have anything about	13:00:36
6	a first material and a second material?	13:00:40
7	A. Claim 10 states "a heel platform having a	13:00:41
8	first type of substantial uniform from an inner	13:01:05
9	edge of the sole section to the outer edge of the	13:01:08
10	sole section, wherein the heel platform is	13:01:11
11	constructed of a first material; and a forefoot	13:01:13
12	platform juxtaposed to the heel platform, wherein	13:01:18
13	the heel platform is constructed to have a first	13:01:21
14	level of compression."	13:01:24
15	So the second material -- it doesn't say	13:01:30
16	anything about a second material.	13:01:51
17	Q. Okay. So going back to your declaration	13:01:52
18	on the '456 patent, page 41, the footnote says,	13:01:55
19	"While claim 10 recites that the heel platform is	13:02:01
20	constructed of a 'first material' and the forefoot	13:02:04
21	platform of a 'second material.'" Do you see	13:02:07
22	that?	13:02:09

1	A. Yeah. So that must have -- I must have	13:02:09
2	meant Claim 1.	13:02:13
3	Q. Right. And then you do say at the bottom	13:02:14
4	"infringing claim 1." Right?	13:02:16
5	A. Yeah.	13:02:18
6	Q. And that was the same typo that was in the	13:02:19
7	petition, wasn't it?	13:02:21
8	A. I believe -- yeah, I believe that is a	13:02:22
9	typo.	13:02:29
10	Q. Okay. And it's the same typo in the	13:02:30
11	petition in your declaration. Right?	13:02:32
12	A. I would guess it is.	13:02:34
13	Q. Okay. Was this your typo or was this a	13:02:40
14	typo from counsel?	13:02:44
15	MR. BUGG: Objection to the extent it	13:02:47
16	calls for privileged information.	13:02:49
17	But to the extent you don't share that and	13:02:51
18	to the extent you remember, you can answer.	13:02:53
19	A. I can't remember completely if this was	13:02:55
20	something that I had written or counsel had	13:03:04
21	written.	13:03:05
22	Q. Okay. I want to go to the '786 patent	13:03:11

1	declaration now.	13:03:13
2	A. Okay.	13:03:28
3	Q. And go to page 32.	13:03:28
4	A. Okay.	13:03:45
5	Q. Limitation 1.5, which you talk about on	13:03:46
6	page 32, requires having a first slope, a second	13:03:51
7	slope, and a third slope, each greater than the	13:03:56
8	reference slope. Right?	13:04:01
9	A. Yes. That's what it states.	13:04:02
10	Q. Okay. And your opinion is that Kim, the	13:04:11
11	reference we're talking about here, discloses this	13:04:15
12	limitation?	13:04:17
13	A. In my declaration I write, "Kim teaches	13:04:18
14	and/or suggests that the mid-foot section and the	13:04:28
15	toe section form an angled support platform that	13:04:31
16	has a first slope along the inner edge of the	13:04:35
17	apparatus from a front edge of the apparatus to	13:04:38
18	the heel platform section, a second slope along	13:04:43
19	the front edge of the apparatus from the inner	13:04:48
20	edge to the outer edge of the apparatus, and a	13:04:51
21	third slope along the outer edge of the apparatus	13:04:53
22	from the front edge of the apparatus to the heel	13:04:56

1	platform."	13:05:00
2	Q. Okay.	13:05:05
3	A. "Kim also teaches and/or suggests that the	13:05:07
4	first slope, second slope, and the third slope are	13:05:09
5	each greater than the reference slope."	13:05:12
6	Q. Okay. So is it your opinion that Kim	13:05:15
7	discloses this limitation?	13:05:20
8	A. Yes.	13:05:22
9	Q. Okay. And so for this to be true, there	13:05:26
10	has to be a first slope and a third slope that are	13:05:31
11	greater than the reference slope. Right?	13:05:34
12	A. Yes, I believe so.	13:05:35
13	Q. Okay. And if you go down to Paragraph 62	13:05:47
14	on page 38, you say, "A POSITA would also	13:05:55
15	understand that each of the first, second, and	13:06:07
16	third slopes are greater than the reference slope	13:06:12
17	(which is essentially no slope since it runs	13:06:15
18	parallel to the un-sloped bottom of the surface of	13:06:18
19	the shoe)." Right?	13:06:20
20	A. I see that.	13:06:21
21	Q. And then in the previous paragraph you say	13:06:32
22	that "slopes inherently form between areas of	13:06:40

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

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

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

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

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

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

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

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

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

1	A. Yes. I see those.	13:09:44
2	Q. And these are all shown on Figure 2 of	13:09:47
3	Kim. Right?	13:09:53
4	A. Yes.	13:09:53
5	Q. Figure 2 of Kim is a perspective drawing.	13:09:59
6	Do you agree with that?	13:10:05
7	A. Yes, it is.	13:10:06
8	Q. It doesn't show the ground?	13:10:07
9	A. The ground -- it's hard to say if it	13:10:19
10	doesn't show the ground because I would look at	13:10:21
11	this and know that the shoe is sitting on a	13:10:24
12	surface, even though it's a white -- it's just	13:10:28
13	plain white. I can tell where the ground would be	13:10:34
14	just by looking at the images.	13:10:38
15	Q. Okay. But you can't -- with respect to	13:10:40
16	any reference point on Kim, you can't point to a	13:10:44
17	part of this drawing to say that's the ground.	13:10:47
18	Right?	13:10:49
19	A. Well, I would, just by looking at the	13:10:49
20	drawings. And any person having ordinary skill in	13:10:54
21	the art would understand that the ground would be	13:10:57
22	at the point of the drawing where the heel is --	13:11:00

1 the bottom line of the heel would be and the
2 bottom line of the forefoot would be.

3 Q. I'm going to send Kim, the reference, in
4 this chat. This is Exhibit 1005 in the 636, 637,
5 and 638 IPR.

6 (Exhibit 1005, previously marked, is not
7 attached to the transcript.)

8 Q. If you could open that up. I want to look
9 at the figures. Let me know when you have it and
10 you're looking at Figure 1.

11 A. I see it.

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

15 A. I would not agree with that statement.

16 Q. Okay. I'm going to share my screen. If
17 you draw a straight line across from the top of
18 the heel section in Figure 1, you agree that the
19 toe is at a higher point along that straight line
20 than the heel. Correct?

21 A. The way that you're looking at the shoe is
22 not the way that it would be viewed if someone

1 were to be standing in the shoes on a ground
2 surface.

3 Q. Okay. But as pictured in Figure 1, the
4 actual shoe that's shown there as depicted, the
5 heel section is lower than the toe section. Do
6 you agree with that?

7 A. I would not say that the heel section is
8 lower than the toe section because the image could
9 be rotated clockwise slightly, which it looks like
10 it is.

11 Q. Okay. So you can't tell where the ground
12 is in Figure 1? Do you agree with that?

13 A. I would say that anyone, including a
14 person of ordinary skill in the art, would
15 understand that the ground surface would be where
16 the -- you see the tread on the forefoot and the
17 tread in the heel area. So if you were to look
18 at -- you can't see my cursor.

19 But if you were to look at the height of
20 the forefoot sole and the height of the heel when
21 someone is wearing that shoe, those two surfaces
22 would be on the ground.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 A. Yes. 13:17:24

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

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

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

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

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

19 A. Okay. 13:18:24

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

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

1 Q. Well, it says they are. Right? In

13:18:41

2 Paragraph 33.

13:18:45

3 A. Yeah.

13:18:46

4 Q. Okay. And there are spikes 11 shown in
5 Figure 1 in the forefoot and the heel. Right?

13:18:46

13:18:59

6 MR. BUGG: Objection, calls for
7 speculation.

13:19:05

13:19:09

8 A. There are spikes visible in this view.

13:19:10

9 My understanding of the patent is they --
10 the spikes can be different embodiments where you
11 might have spikes only in the forefoot or only in
12 the heel area. Maybe not in the heel area. Maybe
13 just only in the forefoot area.

13:19:12

13:19:15

13:19:19

13:19:22

13:19:27

14 Q. In Figure 2, Kim is only showing spikes at
15 one cross-section. Right?

13:19:29

13:19:34

16 MR. BUGG: Objection, vague.

13:19:38

17 A. There's only one cross-section viewed
18 here. Yes.

13:19:40

13:19:45

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

13:19:45

13:19:49

13:19:52

13:19:55

1 A. In order for the -- what's claimed in this
2 patent to work, I would imagine that the spikes
3 would be in the forefoot area. In this view, I
4 don't see any spikes in the heel area and I don't
5 believe that this patent teaches a functionality
6 of what's happening in the forefoot to be in the
7 heel area.

8 Q. But you agree there are more spikes than
9 just what are shown in Figure 2. Right?

10 MR. BUGG: Objection, calls for
11 speculation.

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

17 Q. Going back to Paragraph 62 of your
18 declaration that you were just looking at on the
19 '786 patent.

20 A. '786, you said?

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

22 A. Yes, I see it.

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

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

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

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

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

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

12 A. Yes. 13:22:22

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

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

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

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

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

1	cursor?	13:23:12
2	Q. I'm referencing Figure 2 at the top of	13:23:13
3	page 37 where you draw a second slope.	13:23:15
4	A. Okay.	13:23:16
5	Q. And I'm asking is the second slope	13:23:17
6	parallel to the reference slope in your drawing?	13:23:19
7	A. In the reference drawing it appears to be	13:23:21
8	in a slightly different angle.	13:23:38
9	Q. You're saying the second slope is at a	13:23:49
10	different angle than the reference slope in the	13:23:51
11	Figure 2 drawing that you annotated?	13:23:54
12	A. Yes.	13:23:56
13	Q. Which line are you referring to? The	13:24:06
14	solid line or the dotted line?	13:24:21
15	A. That would be the solid line.	13:24:23
16	Q. Go to page 39.	13:24:27
17	A. Okay.	13:24:38
18	Q. It says, "from a front edge of the heel	13:24:39
19	platform to the rear edge of the apparatus, the	13:24:49
20	uniform platform height has the reference slope."	13:24:53
21	Do you see that?	13:24:56
22	A. Sorry. Where on page 39 is that?	13:24:57

1	Q. Claim limitation 3.1.	13:25:01
2	A. Okay. "The apparatus of claim 1 further	13:25:04
3	comprises: the heel platform section has a	13:25:10
4	uniform platform height, wherein, from a front	13:25:12
5	edge of the heel platform to the rear edge of the	13:25:17
6	apparatus, the uniform platform height has the	13:25:19
7	reference slope; and" -- yeah. Okay.	13:25:23
8	Q. So the reference slope we just talked	13:25:27
9	about was substantially parallel to the ground.	13:25:36
10	Correct? Or substantially parallel to the bottom	13:25:39
11	of the shoe? Sorry.	13:25:42
12	A. In the heel, yes.	13:25:44
13	Q. So you agree that the uniform platform	13:25:47
14	height has to be substantially parallel to the	13:25:57
15	bottom of the shoe to satisfy this claim?	13:25:59
16	A. In the heel area, yes.	13:26:02
17	Q. From the front edge of the heel platform	13:26:06
18	to the rear edge of the apparatus. Right?	13:26:13
19	A. Yes.	13:26:15
20	Q. Okay. And then in the second part of	13:26:19
21	Claim 3, which is on page 42, this part says that	13:26:42
22	you need to have "a second dimension at a front	13:26:54

1	outer edge of the apparatus and a third dimension	13:26:56
2	at a front inner edge of the apparatus." Right?	13:26:59
3	A. I see that.	13:27:02
4	Q. And you annotated Figure 5b here?	13:27:04
5	A. I did.	13:27:10
6	Q. And your annotations exclude the cleats.	13:27:14
7	Right? Or the spikes?	13:27:19
8	A. Yes, they do.	13:27:20
9	Q. If the spikes were included, do you agree	13:27:25
10	that the second dimension and the third dimension	13:27:27
11	would be the same?	13:27:29
12	MR. BUGG: Objection, calls for	13:27:33
13	speculation.	13:27:35
14	A. I don't know if they would be or not. I	13:27:35
15	don't see that here.	13:27:37
16	Q. Go back to Kim, the abstract.	13:27:44
17	A. Sorry. Go back to where?	13:27:46
18	Q. The Kim reference, Exhibit 1005.	13:27:47
19	A. Okay.	13:28:05
20	Q. I'm looking at the first page. In the	13:28:05
21	abstract it says, "the lower surface of the	13:28:08
22	outsole is inclined from an outer edge of the	13:28:11

1 outsole to an inner edge of the outsole so that 13:28:14
2 the spikes at the inner edge of the outsole have a 13:28:17
3 height larger than that of the spikes at the outer 13:28:20
4 edge of the outsole, and the spikes respectively 13:28:22
5 have heights so that an upper surface of the 13:28:26
6 outsole is substantially parallel with the 13:28:29
7 ground." Do you see that? 13:28:32

8 A. I see that. Yes. 13:28:34

9 Q. For the upper surface of the outsole to be 13:28:36
10 substantially parallel to the ground, do you agree 13:28:39
11 that the height at the outside and inside edge of 13:28:44
12 Kim would have to be the same, including the 13:28:47
13 spikes? 13:28:49

14 MR. BUGG: Objection, vague. 13:28:51

15 A. In the application where this shoe would 13:28:53
16 be on a hard surface, it would appear that those 13:29:00
17 heights would be the same. 13:29:05

18 Q. Okay. And nothing about the physical shoe 13:29:06
19 changes when it's on a hard surface or a soft 13:29:09
20 surface. Right? 13:29:12

21 MR. BUGG: Objection, vague. 13:29:13

22 A. The shoe will be at a different angle when 13:29:15

1 it's on a soft surface, which is where the 13:29:19

2 intended invention is meant to apply. 13:29:21

3 Q. But it's the same physical shoe. Right? 13:29:27

4 A. The shoe is the same. Yes. It's not a 13:29:30

5 Q. So the height of the spikes itself doesn't 13:29:34

6 change when it's on one surface or another. 13:29:38

7 Right? 13:29:40

8 A. The height of the spikes don't change. 13:29:40

9 The height of the shoe does change when it's used 13:29:45

10 in its intended purpose. 13:29:48

11 Q. Relative to the ground? 13:29:50

12 A. Relative to a soft surface, which is where 13:29:53

13 a golf shoe would be used. 13:29:56

14 Q. But not relative to the bottom surface of 13:29:57

15 the cleats. Right? 13:30:00

16 MR. BUGG: Objection, vague. 13:30:02

17 A. The bottom surface of the cleats would be 13:30:03

18 penetrated into the grass, soft ground, where the 13:30:10

19 shoe is designed to be used. 13:30:15

20 Q. The distance between the top of the foot 13:30:17

21 platform and the bottom surface of the cleat 13:30:20

22 remains the same on any surface. Right? 13:30:23

1 A. In this view that we're looking at here,
2 yes, I would say that the bottom of the cleats and
3 the foot surface or the top of the midsole would
4 be substantially parallel in an application where
5 it was on a hard surface.

6 Q. No matter what the surface, the distance
7 between the top of the foot platform and the
8 bottom of the cleats remains the same. Right?

9 A. Those distances would remain the same.

10 Q. Okay. I want to go to your '291 patent
11 declaration.

12 A. Okay.

13 Q. Your opinion is that a person of skill in
14 the art would have found Claims 1 to 5 obvious
15 based on Kim. Right?

16 A. Yeah. As I state here, "It is my opinion
17 that a POSITA would have found claims 1-5 obvious
18 based on Kim."

19 Q. Okay. You don't offer an opinion that Kim
20 anticipates Claims 1 through 5. Right?

21 A. I applied obviousness, not anticipation,
22 in my declaration.

1 Q. What's the difference between obviousness
2 and anticipation, in your understanding?

3 A. I believe that the claims of Kim directly
4 relate to the obviousness of the patents that are
5 assessed here. So I don't -- there isn't a need
6 for anticipation, as I believe that all of the
7 specifications of Kim apply.

8 Q. That wasn't my question.

9 What is the difference between obviousness
10 and anticipation?

11 A. I don't have those definitions in front of
12 me right now. I wouldn't want to miss -- I know
13 what they are or I've read what the differences
14 are, but I don't -- I don't want to recall it just
15 based on what I'm trying to remember.

16 Q. Have you ever offered an opinion that a
17 patent claim was anticipated by a prior art
18 reference?

19 A. At this point, I can't remember if I have
20 or not.

21 Q. Okay. In your declaration on page 8 --
22 page 7, actually. Are you there?

1	A. Yeah. Page 7?	13:34:14
2	Q. You have a section called "Obviousness."	13:34:18
3	Do you see that?	13:34:24
4	A. I do.	13:34:24
5	Q. Okay. And on the next page, 8,	13:34:25
6	Paragraph 16, you say, "I have been informed in	13:34:31
7	considering the obviousness of a claim, one must	13:34:35
8	consider the scope and content of the prior art,	13:34:37
9	the level of ordinary skill in the art at the	13:34:39
10	relevant time, differences between the prior art	13:34:41
11	and the claim, and any 'secondary	13:34:44
12	considerations.'" Do you see that?	13:34:47
13	A. Yes, I do.	13:34:49
14	Q. Okay. And so one of those factors is the	13:34:50
15	differences between the prior art and the claim.	13:34:54
16	Right?	13:34:56
17	A. Yes.	13:34:56
18	Q. And so you're supposed to consider those	13:35:03
19	differences when you're doing an obviousness	13:35:08
20	analysis, at least according to what you say the	13:35:11
21	standard is. Right?	13:35:13
22	A. Yes.	13:35:14

1 Q. Okay. Do you agree there are differences
2 between the claims and what Kim discloses?

3 MR. BUGG: Objection, vague, calls for
4 speculation.

5 A. I believe Kim discloses Claims 1 through 5
6 as obvious.

7 Q. Does it disclose them or does it render
8 them obvious?

9 A. I would say it renders them obvious.

10 Q. Okay. And so what are the differences
11 between Kim and the claim?

12 MR. BUGG: Objection, vague.

13 A. All of the -- I would say all of the
14 examples that I've cited in my declaration.

15 Q. You don't rely on any additional reference
16 in combination with Kim for Ground 1 for the '291
17 patent. Correct?

18 MR. BUGG: Objection, vague.

19 A. As I state in my declaration on page 64,
20 "I believe claims 1-5 would be obvious based on
21 Rubin in view of Kim." So that's referring to
22 Rubin.

1	But I believe that Kim alone would -- I	13:38:15
2	believe Kim alone would have found the Claims 1	13:38:38
3	through 5 obvious.	13:38:40
4	Q. Okay. And one of your grounds, the one	13:38:41
5	that starts on page 25, is just based on Kim, not	13:38:44
6	Kim combined with anything else. Right?	13:38:49
7	MR. BUGG: Objection to the form of the	13:38:53
8	question.	13:38:56
9	A. I believe Kim alone would be obvious.	13:38:59
10	Q. Okay. Go to page 34 of this declaration.	13:39:14
11	A. I'm there.	13:39:33
12	Q. And this is where you're showing what the	13:39:34
13	second height on the outside edge of the shoe at a	13:39:36
14	toe section of the shoe is in Kim?	13:39:38
15	A. I see that.	13:39:41
16	Q. And then lower on that page, you start	13:39:42
17	talking about "a third height on the inside edge	13:39:47
18	of the shoe at a toe section of the shoe." Do you	13:39:49
19	see that?	13:39:51
20	A. Yes.	13:39:51
21	Q. And then on page 36 you draw that third	13:39:57
22	height onto Kim?	13:40:01

1	A. I see that. Yes.	13:40:03
2	Q. In both of your drawings, you're measuring	13:40:05
3	the second and third height excluding the spikes.	13:40:10
4	Correct?	13:40:14
5	A. Correct.	13:40:14
6	Q. If you include the spikes, the second and	13:40:16
7	third height are the same. Right?	13:40:20
8	MR. BUGG: Objection, calls for	13:40:23
9	speculation.	13:40:24
10	A. I haven't done an analysis on that. They	13:40:25
11	could be, I suppose.	13:40:35
12	Q. Would the foot of the wearer be	13:40:38
13	substantially parallel to the ground if the spikes	13:40:40
14	were a different height?	13:40:42
15	MR. BUGG: Objection, vague.	13:40:44
16	Q. Let me rephrase that.	13:40:46
17	If the distance between the top of the	13:40:48
18	foot platform and the bottom of the cleats of Kim	13:40:50
19	at the inside and outside edge were different,	13:40:54
20	then would the foot be substantially parallel to	13:40:58
21	the ground?	13:41:01
22	MR. BUGG: Objection, vague.	13:41:01

1 A. The foot would be substantially parallel 13:41:02
2 if the wearer of the shoe was standing on a hard 13:41:08
3 surface. But on the intended surface where the 13:41:12
4 invention is meant to perform, they would not be 13:41:19
5 parallel. 13:41:22

6 Q. I understand. But talking about the hard 13:41:24
7 surface, the cleats plus -- sorry. Rephrase that. 13:41:26

8 The distance between the top of the foot 13:41:36
9 platform and the bottom of the cleats is the same 13:41:38
10 on the inside and the outside edge of Kim. 13:41:41
11 Correct? 13:41:44

12 MR. BUGG: Objection, vague. 13:41:51

13 A. Yeah. I mean, I guess the top edge of the 13:41:53
14 sole and the bottom surface of where all the 13:41:56
15 cleats would be would be relatively parallel, 13:42:01
16 based on the section views in the patent. 13:42:04

17 But again, it's not the intended use of 13:42:09
18 the shoe. So in the intended use, they would not 13:42:12
19 be parallel. 13:42:16

20 Q. "Parallel" means with reference to 13:42:17
21 something. Right? So when you're saying they 13:42:26
22 would not be parallel, you mean they would not be 13:42:28

1	parallel with the ground. Right?	13:42:30
2	A. They would not be parallel with the soft	13:42:31
3	ground surface. No.	13:42:33
4	Q. Okay. But the top of the foot platform	13:42:34
5	and the bottom surface of the cleats are always	13:42:37
6	going to be parallel in Kim regardless of the	13:42:39
7	ground surface. Do you agree with that?	13:42:42
8	A. Sure.	13:42:44
9	Q. Okay. On page 40, you're measuring a	13:42:46
10	third slope in the third diagram?	13:42:56
11	A. Yes.	13:43:05
12	Q. You have two dashed lines. I'm wondering	13:43:05
13	which one is the third slope?	13:43:09
14	A. So the third slope would be created by	13:43:23
15	the -- I'd say . . .	13:43:57
16	I'd say the third slope would be created	13:44:00
17	by the top line, the top dashed line.	13:44:02
18	Q. In Ground 2 of the '291 patent, which	13:44:06
19	starts on page 47, you say, "Claims 1-5" are	13:44:21
20	"obvious over Dufour in view of Kim." Do you see	13:44:27
21	that?	13:44:30
22	A. Yes.	13:44:30

1 Q. You say in Paragraph 70, "Dufour teaches
2 and/or suggests a golf shoe, but does not
3 expressly disclose a midsole or an insole. Kim,
4 however, does." Do you see that?

13:44:37

13:44:41

13:44:44

13:44:48

5 A. I see that. Yes.

13:44:51

6 Q. You agree the only thing you're relying on
7 from Kim in this ground is the express disclosure
8 of a midsole and an insole?

13:44:52

13:44:55

13:44:59

9 A. Yes.

13:45:01

10 Q. You're not making any other modifications
11 to Dufour from Kim besides the express
12 incorporation of a midsole and an insole?

13:45:07

13:45:09

13:45:13

13 A. I don't believe so.

13:45:15

14 Q. Okay. And then I'm going to have the same
15 questions about your Rubin ground, which is
16 Ground 3. I think it's the same answer, but just
17 to confirm. This starts on page 64.

13:45:21

13:45:24

13:45:28

13:45:31

18 You say "Claims 1-5 are Obvious Based on
19 Rubin in View of Kim."

13:45:39

13:45:43

20 A. I see that. Yes.

13:45:48

21 Q. And again, you say Rubin "does not
22 expressly disclose a midsole or an insole," but

13:45:49

13:45:52

1	Kim does. Right?	13:45:56
2	A. I see that.	13:45:59
3	Q. You're not making any other modifications	13:46:01
4	to Rubin based on Kim other than the midsole or	13:46:05
5	insole disclosure?	13:46:09
6	A. I don't believe so.	13:46:09
7	MR. HOUGHTON: I'm kind of shifting gears,	13:46:24
8	so do you want to take a ten-minute break again	13:46:26
9	here?	13:46:28
10	MR. BUGG: Yes. Let's do it. We've been	13:46:28
11	going for a little while.	13:46:30
12	MR. HOUGHTON: Okay.	13:46:32
13	THE WITNESS: Thank you.	13:46:33
14	(Recess, 1:46 p.m. to 1:55 p.m.)	13:46:34
15	Q. Back on the record. And I want to look at	13:55:09
16	your '786 patent declaration. And specifically,	13:55:12
17	Ground 2 regarding Dufour, specifically looking at	13:55:22
18	page 53. Let me know when you're there.	13:55:43
19	A. I am there.	13:56:01
20	Q. Okay. And so starting here is where you	13:56:02
21	show the first height, second height, and third	13:56:07
22	height over the course of the next couple of	13:56:09

1 pages. And I just want to confirm that for these 13:56:11
2 limitations you're relying on Figures 9, 10, 11, 13:56:16
3 and 12? 13:56:25

4 A. I'm sorry. You said we were looking at 13:56:25
5 the '786 patent. Correct? 13:56:31

6 Q. Yes. Although I -- I'm looking at the 13:56:33
7 wrong one, but I'm trying to ask you about the 13:56:39
8 '786. Sorry about that. 13:56:42

9 A. You meant first slope, second slope, third 13:56:42
10 slope? 13:56:45

11 Q. I did. So let me ask the question again 13:56:46
12 just so we're clear. 13:56:48

13 I'm asking you about Ground 2 in the '786 13:56:54
14 patent declaration, which starts on page 49. And 13:56:58
15 your opinion is that Claims 1 through 3, 5 through 13:57:01
16 6, and 8 are obvious based on Dufour. Right? 13:57:05

17 A. Claims 1 through 3 and 5 through 6 and 8 13:57:08
18 are obvious based on Dufour. 13:57:18

19 Q. And then I'm looking at the limitation 13:57:20
20 starting on page 53 about the first slope, second 13:57:24
21 slope, and third slope. And the three figures of 13:57:28
22 Dufour that you're pointing to for those 13:57:39

1	limitations are 9, 10, and 11. Right?	13:57:43
2	A. Yes.	13:57:45
3	Q. Okay. And specifically on page 56, you	13:57:55
4	annotate what you say is the first slope, second	13:57:58
5	slope, third slope, and reference slope onto	13:58:01
6	Figures 10 and 11. Right?	13:58:07
7	A. Correct.	13:58:08
8	Q. Okay. I'm going to send over the Dufour	13:58:11
9	reference in the chat so we can look at one thing	13:58:18
10	in it. So if you could open that up and go to	13:58:22
11	Column 3 when you have it. And let me know when	13:58:25
12	you're there.	13:58:30
13	A. Okay. Column 3? Yes.	13:58:50
14	Q. So around line 25, it says "FIGS. 11 and	13:58:52
15	12 schematically present another embodiment of the	13:58:56
16	sole." Do you see that?	13:58:59
17	A. Yes.	13:59:00
18	Q. So Figures 11 and 12 are the same	13:59:01
19	embodiment. Right?	13:59:04
20	A. Let me look at the Figure 12. One sec.	13:59:05
21	Q. Figure 12 is on page 4 of Exhibit 1006.	13:59:39
22	(Exhibit 1006, previously marked, is not	

1	attached to the transcript.)	13:59:52
2	A. I'm looking at Figure 12. Okay. Yes, it	13:59:52
3	appears to be the same embodiment.	14:00:23
4	Q. Okay. And in Figure 12, which is on	14:00:25
5	page 4, the outer edge of the shoe is at the same	14:00:28
6	height as the heel. Do you agree with that?	14:00:35
7	MR. BUGG: Objection, vague, calls for	14:00:38
8	speculation.	14:00:40
9	A. Okay. I'm looking at -- I scrolled back	14:00:44
10	to Figure 12. What was your question again?	14:00:46
11	Q. The outer edge, 65, in Figure 12 is at the	14:00:49
12	same height as the heel in area 60. Do you agree	14:00:55
13	with that?	14:01:01
14	MR. BUGG: Same objection.	14:01:02
15	A. I just want to go back to see what they	14:01:03
16	claim Figure 12 is.	14:01:15
17	Q. It's a cross-section along line XII in	14:01:16
18	Figure 11.	14:01:23
19	A. So if it's a cross-section, you wouldn't	14:01:24
20	be able to see the heel in that view.	14:01:27
21	Q. So what do you think Figure 12 is showing,	14:01:29
22	then? Because you can see the back of the inner	14:01:34

1	edge. Correct?	14:01:40
2	A. Yeah. I don't know exactly. It's a	14:01:41
3	little bit -- it's not a particularly great figure	14:02:15
4	drawing. But if it says it's a cross-section and	14:02:19
5	not a perspective view, then you technically	14:02:31
6	wouldn't be able to see the rest of the shoe.	14:02:38
7	Q. Go back to Column 3, line 28. It says	14:02:40
8	"FIG. 12 is a cross section along line XII--XII of	14:02:52
9	this sole." Right?	14:02:56
10	A. Yeah.	14:02:57
11	Q. Okay. Go to page 54 of your declaration,	14:02:59
12	please. Actually, I'm turning to the '291 now.	14:03:08
13	Sorry about that. So this is a different	14:03:13
14	declaration, still looking at the Dufour ground.	14:03:16
15	But this is going to be page 54 of your '291	14:03:19
16	patent declaration.	14:03:22
17	A. Okay. I'm there.	14:03:42
18	Q. Here where you show the first height, you	14:03:43
19	show it in Figure 11 and in Figure 12. Right?	14:03:49
20	A. Yes. It's in my declaration.	14:03:52
21	Q. Okay. And you're drawing that first	14:04:01
22	height to be along that back edge of Figure 12.	14:04:04

1	Right?	14:04:10
2	A. It appears that that is the case. Yes.	14:04:10
3	Q. Is there a mistake?	14:04:14
4	A. What's difficult is I'm indicating that	14:04:17
5	that top line of Figure 12 is referencing the	14:04:40
6	first height. But if you take both figures into	14:04:45
7	consideration and you look at where the	14:04:52
8	cross-section Roman numeral VII VII is and you	14:04:54
9	look at the cross-section of where the heel is, as	14:05:04
10	indicated where it says "First height," it teaches	14:05:07
11	that those heights are different.	14:05:10
12	So perhaps in a perspective view, if this	14:05:12
13	is, in fact, looking at a perspective view	14:05:17
14	cross-section of Figure 12, then maybe it appears	14:05:20
15	that it's the same height as 65, the outside. But	14:05:25
16	it doesn't teach that in the Figure 11.	14:05:31
17	Q. Figure 11 and 12 are the same embodiment.	14:05:35
18	Correct?	14:05:38
19	A. They're the same embodiment. Yes.	14:05:38
20	Q. And you drew the first height in Figure 12	14:05:41
21	along the back edge of the figure. Right?	14:05:44
22	A. That's what I've drawn in my declaration.	14:05:47

1	Yes.	14:05:53
2	Q. Okay. I want to look at your opinion on	14:05:53
3	the second height, which is on the next page.	14:05:56
4	A. Okay.	14:06:05
5	Q. You draw the second height along the	14:06:06
6	outside edge of Figures 9 and 10?	14:06:13
7	MR. BUGG: Objection, misstates testimony.	14:06:24
8	But you may answer.	14:06:25
9	A. I've annotated the second height in	14:06:26
10	Figures 9 and 10.	14:06:38
11	Q. Okay. The second height, if you go back	14:06:39
12	to Figure 12, would be measured at point 65,	14:06:57
13	right, on the outside edge?	14:07:06
14	MR. BUGG: Objection, vague.	14:07:09
15	A. The second height that I've annotated is a	14:07:14
16	slightly different position than where that	14:07:44
17	cross-section is in Figure 12. So I wouldn't say	14:07:46
18	that it's exactly what I've identified as the	14:07:50
19	second height.	14:07:57
20	Q. You didn't use Figure 12 to show the	14:07:57
21	second height. Right?	14:08:00
22	A. I used Figure 10, 9, and 11 to show the	14:08:00

1	second height.	14:08:18
2	Q. Figures 9 and 10 are a different	14:08:19
3	embodiment than Figures 11 and 12. Right?	14:08:22
4	A. If I understand the patent correctly, I	14:08:24
5	believe they could be different or the same.	14:08:57
6	Q. Can you go back to your '786 patent	14:09:04
7	declaration.	14:09:13
8	A. Where?	14:09:23
9	Q. Rubin ground, page 64.	14:09:23
10	A. I'm at page 64.	14:09:39
11	Q. Your opinion is that Claims 1-3, 5-6, and	14:09:41
12	8 are obvious based on Rubin?	14:09:46
13	A. Yes.	14:09:48
14	Q. Go to page 72.	14:09:51
15	A. Okay.	14:10:08
16	Q. This is where you're drawing the slopes	14:10:09
17	that you say Rubin has?	14:10:15
18	A. Yes.	14:10:19
19	Q. If you include the cleats of Rubin and	14:10:19
20	you're on a solid surface, there's no second	14:10:36
21	slope. Right?	14:10:39
22	MR. BUGG: Objection, vague.	14:10:40

1 A. The innovation of the patent is such that 14:10:41
2 it's designed to be utilized on a soft grass 14:11:00
3 surface. So in that case, there would be a second 14:11:04
4 slope. 14:11:09

5 In the case where the cleats are standing 14:11:09
6 on a hard surface, there may or may not be a 14:11:11
7 second slope. 14:11:16

8 Q. Well, Rubin says that on a hard surface 14:11:18
9 the foot is substantially parallel to the ground, 14:11:21
10 doesn't it? 14:11:23

11 MR. BUGG: Objection, vague. 14:11:24

12 A. I'm not seeing that, but I can take your 14:11:26
13 word that that's what it states. 14:11:44

14 Q. Well, in Rubin, the cleat heights are 14:11:45
15 inversely proportional due to the sole thickness. 14:11:48
16 Do you agree with that? 14:11:53

17 MR. BUGG: Same objection. 14:11:56

18 A. They look to be relatively inverse. 14:11:59

19 Q. I'm going to put Rubin in the chat, 14:12:06
20 Exhibit 1007, in each of the 636, 637, 638 IPRs. 14:12:08

21 (Exhibit 1007, previously marked, is not
22 attached to the transcript.)

1	Q. Let me know when you have that open.	14:12:21
2	A. Okay. I have the patent open. Where am I	14:12:22
3	looking?	14:12:32
4	Q. The bottom of the abstract says, "The	14:12:32
5	cleats adjacent the outer side of the sole are	14:12:35
6	smaller than the sleets adjacent the inner side of	14:12:38
7	the sole by an amount approximately equal to the	14:12:41
8	difference in elevation between the outer and	14:12:44
9	inner sides of the sole so that when the golfer	14:12:46
10	walks on a planar surface, his foot will be	14:12:51
11	substantially level." Do you see that?	14:12:53
12	A. I see that.	14:12:55
13	Q. Okay. And so if you measure from the top	14:12:56
14	of the foot platform to the bottom surface of the	14:13:02
15	cleats, the height at the inside edge and outside	14:13:05
16	edge of Rubin is the same. Right?	14:13:09
17	A. I would say it would be substantially	14:13:11
18	similar. Yes.	14:13:14
19	Q. And in that case, there would not be a	14:13:15
20	second slope if that's what you're measuring	14:13:17
21	relative to. Do you agree with that?	14:13:21
22	MR. BUGG: Objection, vague.	14:13:23

1 A. In the case where the shoe would be on a
2 hard surface, there would not be a substantial
3 slope, second slope.

14:13:24

14:13:27

14:13:33

4 Q. I'm not asking about the surface. I'm
5 asking if you measure the height relative to the
6 bottom of the cleat regardless of the surface,
7 there would not be a slope -- a second slope. Do
8 you agree with that?

14:13:34

14:13:36

14:13:40

14:13:44

14:13:48

9 MR. BUGG: Objection, vague.

14:13:48

10 A. Relative to the bottom of the cleats, the
11 surface of the foot and the bottom of the cleats
12 would be relatively parallel.

14:13:50

14:13:55

14:13:58

13 Q. Okay. And in that case, there is no
14 second slope greater than the reference slope.
15 Right?

14:13:59

14:14:02

14:14:05

16 MR. BUGG: Objection, vague.

14:14:07

17 A. In the case in that instance, no. There
18 would be no second slope. Yes. You're correct.

14:14:08

14:14:13

19 Q. And you didn't offer any opinion on claim
20 construction or interpretation of the slope
21 patents that said that you had to measure the
22 slopes relative to the ground, did you?

14:14:19

14:14:21

14:14:25

14:14:27

1	MR. BUGG: Objection to the form of the	14:14:32
2	question.	14:14:34
3	A. I didn't do a full analysis of claim	14:14:39
4	construction.	14:14:42
5	Q. Okay. When you in your declaration,	14:14:42
6	Exhibit 1002, in the Rubin section, are measuring	14:15:03
7	the slopes, you're excluding the cleat height from	14:15:09
8	that measurement for all three slopes. Is that	14:15:16
9	accurate?	14:15:19
10	A. Can you tell me where in my declaration	14:15:19
11	you're referring to?	14:15:28
12	Q. Page 72.	14:15:29
13	A. Okay. I'm not including the cleats in	14:15:32
14	those annotated figures.	14:15:35
15	Q. Okay. And if you could go quickly back to	14:15:40
16	your '291 patent declaration.	14:15:44
17	A. Okay.	14:15:52
18	Q. Page 74.	14:15:52
19	A. Okay.	14:16:06
20	Q. This is where you're talking about the	14:16:07
21	first height, second height, and third height?	14:16:10
22	A. Yes.	14:16:13

1	Q. You're excluding the height of the cleats	14:16:13
2	in these measurements too. Correct?	14:16:18
3	A. I am. Yes.	14:16:20
4	Q. If you included the height of the cleats,	14:16:22
5	then the second height and the third height would	14:16:28
6	be the same. Right?	14:16:30
7	A. If the shoe was sitting on a hard surface	14:16:31
8	then, yeah, the height of the cleat would be	14:16:39
9	relatively -- the height of the cleats would be	14:16:41
10	relatively parallel to the top surface of the	14:16:43
11	sole.	14:16:47
12	Q. Okay. Can you open back up your '768	14:16:48
13	declaration. This is one of the ones we looked at	14:17:02
14	earlier, but we haven't talked about it in a	14:17:04
15	while.	14:17:08
16	A. Where to?	14:17:14
17	Q. Paragraph 43 on page 16. I'm actually	14:17:16
18	looking at the top of page 17. Here, we're	14:17:30
19	talking about a reference called Umezawa.	14:17:33
20	A. Yes.	14:17:37
21	Q. And this is one of the prior art	14:17:37
22	references you used for your opinions on this	14:17:39

1	patent?	14:17:42
2	A. Yes.	14:17:43
3	Q. Okay. You say here at the top of page 17,	14:17:44
4	"Umezawa also discloses that the novel midsole has	14:17:48
5	a consistent thickness throughout, which includes	14:17:51
6	the heel platform." Right?	14:17:53
7	A. Yes.	14:17:54
8	Q. So your opinion is that Umezawa's midsole	14:18:01
9	has a consistent thickness throughout. Right?	14:18:05
10	A. Yes.	14:18:07
11	Q. Okay. Now, if you go to page 44. Are you	14:18:11
12	there?	14:18:36
13	A. Yeah.	14:18:37
14	Q. The bottom of Paragraph 75, you say that	14:18:37
15	"A POSITA would understand that" -- from	14:18:44
16	Umezawa -- "that the sole is thicker at a position	14:18:46
17	proximal to the front edge of the heel platform	14:18:50
18	than at the toe portion"?	14:18:53
19	A. Yes.	14:18:56
20	Q. You also say that Umezawa's midsole has a	14:18:57
21	consistent thickness throughout. Right?	14:19:04
22	A. I believe that the consistent thickness is	14:19:05

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

1	Right?	14:21:15
2	MR. BUGG: Objection, vague.	14:21:15
3	A. That the heel platform has a consistent	14:21:16
4	thickness going from the inside to the outside and	14:21:22
5	also from the back of the heel to the front edge	14:21:29
6	of the heel area, not throughout the entire sole.	14:21:34
7	Q. You next talk about Norton. Right?	14:21:39
8	That's another prior art reference you used.	14:22:01
9	A. Yes.	14:22:05
10	Q. And you cite here on page 17 that Norton	14:22:05
11	is recognizing that injuries can arise during	14:22:13
12	athletic events associated with pronation or	14:22:17
13	supination?	14:22:20
14	A. Yes.	14:22:22
15	Q. I'm going to put an Exhibit 2020 into the	14:22:22
16	chat. This is a new one. Let me know when you	14:22:26
17	have that open.	14:22:40
18	(Delgatty Exhibit 2020 was marked for	
19	identification and is attached to the transcript.)	14:22:43
20	A. Okay. I have it open.	14:22:43
21	Q. Do you agree with how this illustration is	14:22:53
22	showing the difference between pronation and	14:22:56

1	supination?	14:22:57
2	A. Yes.	14:22:58
3	Q. So pronation is when the foot is rotating	14:23:08
4	from the inside to the outside? Pronation is	14:23:13
5	leaning inward. Right?	14:23:22
6	A. Yes.	14:23:24
7	Q. And supination is leaning outward?	14:23:24
8	A. Yes.	14:23:27
9	Q. And one of the things Norton is trying to	14:23:27
10	do is prevent these things from happening. Right?	14:23:33
11	A. Uh-hmm.	14:23:35
12	Q. Okay. On page 20 of this declaration,	14:23:37
13	you're talking about another prior art reference.	14:24:01
14	It starts on the previous page. Won.	14:24:03
15	A. Yes.	14:24:05
16	Q. And you're relying on Figure 5 on page 20.	14:24:06
17	Right?	14:24:11
18	A. Correct.	14:24:12
19	Q. Figure 5 is showing the bottom surface of	14:24:15
20	the shoe. Right?	14:24:19
21	A. Correct.	14:24:19
22	Q. What is a surface of a shoe?	14:24:22

1	MR. BUGG: Objection, vague.	14:24:27
2	A. What is the surface of a shoe. My	14:24:32
3	understanding of that would be the outsole.	14:24:37
4	Q. Okay. And so Figure 5 is showing the	14:24:43
5	outsole from the bottom looking up?	14:24:45
6	A. It appears to be so. Yes.	14:24:51
7	Q. Okay. And so the hard surface is the	14:24:53
8	outsole and the soft surface is the outsole in	14:24:57
9	Figure 5. Right?	14:25:00
10	A. Yes.	14:25:01
11	Q. And according to Won, the spikes are fixed	14:25:07
12	on the hard and soft surfaces. Right?	14:25:10
13	A. It appears to be so. Yes.	14:25:12
14	Q. We talked earlier about one of the	14:25:18
15	things -- one of the factors for obviousness being	14:25:32
16	secondary considerations. Do you remember that?	14:25:34
17	If it's helpful, you can go back to page 8 of this	14:25:43
18	declaration, Paragraph 16.	14:25:47
19	A. It states in here secondary	14:26:10
20	considerations. Yes.	14:26:12
21	Q. And that's one of the four factors that	14:26:12
22	you list in Paragraph 16 as something you're	14:26:16

1	supposed to consider for obviousness?	14:26:18
2	A. Yes, it is.	14:26:19
3	Q. And in Paragraph 17 and 18, you talk about	14:26:26
4	a variety of secondary considerations and some of	14:26:33
5	your understandings of what those are?	14:26:35
6	A. Yes.	14:26:37
7	Q. Okay. Do you understand that the Federal	14:27:01
8	Circuit has said that it's error to reach a	14:27:07
9	conclusion of obviousness until all of the four	14:27:09
10	factors, including secondary considerations, are	14:27:12
11	considered?	14:27:15
12	MR. BUGG: Objection, calls for	14:27:17
13	speculation, vague. But you can answer.	14:27:19
14	A. Is that a legal standard?	14:27:20
15	Q. Yes.	14:27:24
16	A. I'm not an attorney. I don't know if I	14:27:25
17	would know those terminologies.	14:27:31
18	Q. Okay. You don't address secondary	14:27:32
19	considerations in your declaration other than in	14:27:36
20	this legal standard section. Right?	14:27:39
21	A. I don't recollect if I referred to any	14:27:41
22	secondary considerations.	14:28:04

1 Q. There's no section in any of your five 14:28:09
2 declarations called "secondary considerations." 14:28:11
3 Right? 14:28:14

4 A. Well, if I -- okay. So if I read in 14:28:14
5 Paragraph 19, "I further have been informed that 14:28:26
6 prior art references can be combined where there 14:28:33
7 is an express or implied rationale to do so. Such 14:28:36
8 rationale might include an expected advantage to 14:28:40
9 be obtained or might be implied under the 14:28:44
10 circumstances. 14:28:48

11 "For example, a claim is likely obvious if 14:28:49
12 the design needs or market pressures existing in 14:28:52
13 the prior art make it natural for one or more 14:28:57
14 known components to be combined where each 14:29:00
15 component continues to function in the expected 14:29:02
16 manner when combined (i.e., when there are no 14:29:05
17 unpredictable results). 14:29:08

18 "A claim is also likely unpatentable where 14:29:10
19 it is the combination of a known base system with 14:29:13
20 a known technique that can be applied to the base 14:29:17
21 system without an unpredictable result. 14:29:21

22 "In these cases, the combination must be 14:29:23

1 within the capabilities of the person of ordinary
2 skill in the art."

14:29:26

14:29:28

3 Q. I see that. Yeah.

14:29:36

4 Do you have a section in any of your
5 declarations addressing secondary considerations
6 of nonobviousness?

14:29:37

14:29:39

14:29:41

7 A. No.

14:29:42

8 Q. Okay. Why not?

14:29:45

9 A. I didn't feel it was necessary.

14:29:47

10 Q. Did you do any analysis to determine
11 whether there were any secondary considerations of
12 nonobviousness?

14:29:52

14:29:54

14:29:57

13 A. Yes.

14:29:57

14 Q. What did that consist of?

14:30:02

15 A. Looking at the specifications in the prior
16 art.

14:30:04

14:30:13

17 Q. The only thing you looked at to determine
18 whether there are any secondary considerations of
19 nonobvious were the specifications in prior art?

14:30:15

14:30:18

14:30:19

20 A. As I state here in my declaration in
21 Paragraph 18, "Other kinds of secondary
22 considerations are possible. For example,

14:30:22

14:30:46

14:30:48

1 evidence that the relevant field had a 14:30:53
2 long-established, unsolved problem or need that 14:30:55
3 was later provided by the claimed invention could 14:30:58
4 be indicative of nonobviousness. 14:31:01

5 "Evidence that others have tried but 14:31:04
6 failed to make an aspect of the claim might 14:31:06
7 indicate that the art lacked the requisite skill 14:31:09
8 to do so. 14:31:13

9 "Evidence of copying the patent owner's 14:31:14
10 product before the patent was published might also 14:31:16
11 indicate that its approach to solving a particular 14:31:19
12 problem was not obvious. 14:31:22

13 "Evidence that the art recognized the 14:31:25
14 value of products embodying a claim, for example, 14:31:27
15 by praising the named inventor's work, might show 14:31:30
16 that the claim was nonobvious." 14:31:35

17 Q. Right. So that's discussing the legal 14:31:44
18 standard. And nowhere in your declarations do you 14:31:47
19 actually talk about any such evidence, and you 14:31:49
20 didn't do any analysis to figure out if there was 14:31:51
21 any such evidence. Right? 14:31:53

22 MR. BUGG: Objection, vague. 14:32:00

1	A. I didn't apply any.	14:32:01
2	Q. Are you aware that Athalonz gave a	14:32:04
3	presentation to Under Armour in August of 2013	14:32:06
4	where it told Under Armour about its patents and	14:32:09
5	its company?	14:32:12
6	A. I'm not sure if I recall that.	14:32:14
7	Q. Okay. You didn't consider that fact as	14:32:27
8	part of your analysis in the IPRs. Right?	14:32:31
9	MR. BUGG: Objection, vague.	14:32:36
10	A. I'm not sure if I did or not.	14:32:37
11	Q. You didn't write about it. Did you?	14:32:46
12	A. I don't believe so.	14:32:47
13	Q. Okay. And so if you had any opinion about	14:32:52
14	it, it would be in your declaration. Right?	14:32:55
15	A. Yeah.	14:32:57
16	Q. Okay. Are you aware that all of the shoes	14:33:03
17	Athalonz contends infringe in this district court	14:33:10
18	case were released after Athalonz gave Under	14:33:14
19	Armour that presentation?	14:33:16
20	A. I can't recall when these things happened.	14:33:17
21	Q. Okay. So you're not offering any opinion	14:33:25
22	that Under Armour did not copy Athalonz's products	14:33:28

1	or patents. Right?	14:33:33
2	MR. BUGG: Objection to the form.	14:33:35
3	A. I haven't done a full analysis of the	14:33:36
4	infringement.	14:33:41
5	Q. Or of copying as a secondary	14:33:43
6	consideration. Right?	14:33:46
7	A. I haven't done a full analysis of that.	14:33:46
8	Q. Okay. Are you aware of any commercial	14:33:50
9	products on the market today that embody any of	14:33:56
10	the prior art patents that you have asserted in	14:34:00
11	your opinions?	14:34:04
12	A. I'm not 100 percent sure if there are any	14:34:04
13	products on the market that embody these.	14:34:16
14	Q. You're not aware of any. Right?	14:34:19
15	MR. BUGG: Objection, misstates prior	14:34:21
16	testimony.	14:34:23
17	A. Well -- sorry. Repeat the question.	14:34:23
18	Q. I'll give you an example. It might be	14:34:32
19	easier to understand.	14:34:36
20	Are you aware of any commercial product on	14:34:37
21	the market that embodies the patent Rubin -- the	14:34:39
22	Rubin patent?	14:34:44

1	A. No. I don't believe so.	14:34:51
2	Q. And do you have the same answer for the	14:34:51
3	other prior art patents that you've asserted in	14:34:54
4	this case?	14:34:57
5	A. I don't personally know of any products	14:34:58
6	that embody them.	14:35:04
7	Q. Okay. Have you analyzed Athalonz's	14:35:05
8	products?	14:35:09
9	A. No. I don't believe I have.	14:35:16
10	Q. Are you aware that Athalonz marks its	14:35:17
11	products as practicing the sloped patents?	14:35:22
12	A. I haven't done an analysis of the Athalonz	14:35:26
13	products.	14:35:30
14	Q. Okay. Are you aware that half of all of	14:35:31
15	the world long-drive athletes wore Athalonz's	14:35:36
16	shoes in competition in 2019?	14:35:40
17	A. I was not aware of that.	14:35:42
18	Q. Okay. Are you aware that the professional	14:35:44
19	golfer, Bernhard Langer, has been wearing	14:35:47
20	Athalonz's golf shoes since 2020?	14:35:51
21	A. I was not aware of that.	14:35:53
22	Q. Do you know anything that he said about	14:35:57

1	the golf shoes and their performance?	14:36:00
2	A. No, I do not.	14:36:02
3	Q. And you didn't consider any of that as	14:36:07
4	secondary considerations evidence in offering your	14:36:09
5	opinions. Right?	14:36:13
6	A. Well, the fact that I didn't know about	14:36:14
7	them, no, I did not.	14:36:21
8	Q. Okay. Did you ask anybody whether there	14:36:22
9	was any evidence of secondary considerations	14:36:25
10	before you offered these opinions?	14:36:27
11	MR. BUGG: Objection, vague.	14:36:30
12	To the extent it calls for privileged	14:36:31
13	information, don't share that.	14:36:34
14	A. Well, I'm going to defer to my counsel on	14:36:39
15	that question.	14:36:42
16	Q. Okay. So you're not going to disclose	14:36:42
17	whether you asked anybody whether there was	14:36:48
18	evidence of secondary considerations?	14:36:50
19	MR. BUGG: Again, same caution. The	14:36:52
20	contents of the discussion between attorneys and	14:36:56
21	yourself can't be disclosed, but otherwise you can	14:36:59
22	answer the question.	14:37:03

1 A. I'm going to go ahead and not answer that
2 question.

3 Q. Were you aware of any evidence of
4 secondary considerations that you did not include
5 in your declarations when you submitted them?

6 A. No.

7 Q. Okay.

8 MR. HOUGHTON: I don't have any more
9 questions.

10 MR. BUGG: Okay. Could we take a
11 five-minute break and we'll come back and see if
12 there's any redirect?

13 MR. HOUGHTON: Yup.

14 (Recess, 2:37 p.m. to 2:40 p.m.)

15 MR. BUGG: No further questions from me.
16 So that should do it for the day here.

17 (Off the record at 2:40 p.m.)
18
19
20
21
22

Transcript of Grant Delgatty
Conducted on December 19, 2024

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1 CERTIFICATE OF SHORTHAND REPORTER NOTARY PUBLIC

2 I, Michelle Keegan, Registered Merit
3 Reporter and Notary Public within and for the
4 Commonwealth of Massachusetts, do hereby certify:

5 That GRANT DELGATTY, the witness whose
6 deposition is hereinbefore set forth, was duly
7 sworn by me before the commencement of such
8 deposition and that such deposition was taken
9 before me and is a true record of the testimony
10 given by such witness.

11 I further certify that the adverse party,
12 Under Armour, Inc., was represented by counsel at
13 the deposition.

14 I further certify that the deposition of
15 GRANT DELGATTY, was conducted virtually on
16 Thursday, December 19, 2024, commencing at
17 11:17 a.m. to 2:40 p.m.

18 I further certify that I am not related to
19 any of the parties to this action by blood or
20 marriage, I am not employed by or an attorney to
21 any of the parties in this action, and that I am
22 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.



NOTARY PUBLIC IN AND FOR THE
COMMONWEALTH OF MASSACHUSETTS

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