

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 THE RIDGE WALLET, LLC)
4 Plaintiff) Case No.:
5 Vs.) 1:23-cv-0407-CNS-SBP
6 2985, LLC, d/b/a MOUNTAIN)
7 VOYAGE COMPANY, LLC)
8 Defendant)

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11 Deposition of JAMES BABCOCK, was taken on
12 Thursday, November 11, 2024, commencing at
13 9:00 a.m., at Veritext Legal Solutions, 36 South
14 Charles Street, 20th Floor, Baltimore, Maryland,
15 before MICHELE D. LAMBIE, Notary Public.

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18
19
20 Reported By:
21 Michele D. Lambie, CSR-RPR

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

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11 ON BEHALF OF THE DEFENDANT:

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EXAMINATION INDEX

JAMES BABCOCK

BY MR. WEED

4

BY MR. BUSCH

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EXHIBIT INDEX

(Attached to Transcript.)

MAR

Exhibit 2010 Expert Report of James Babcock 221

with Response to Invalidity of
U.S. Patent No. 10,791,808

P R O C E E D I N G S

JAMES BABCOCK,

the Deponent, called for examination by the
Plaintiff, being first duly sworn to tell the
truth, the whole truth, and nothing but the truth,
testified as follows:

EXAMINATION

BY MR. WEED:

Q. Good morning. Would you please state and
spell your full name for the record?

A. Yes. James Bennett Babcock. J-A-M-E-S,
B-E-N-N-E-T-T, B-A-B-C-O-C-K.

Q. And what's your current residential
address?

A. 13923 Sunnybrook Road, Phoenix, Maryland
21131.

Q. Okay. And for the record, we're here
today sitting in an office building in Baltimore,
right?

A. Correct.

Q. I've put a few documents in front of us,

1 so let's do a little bit of housekeeping before we
2 get into the meat of the questions.

3 So the first one is the thick one that
4 you have in front of you, which should have a
5 marking of Exhibit 1002 on the front of it. Do you
6 see that?

7 A. Yes, I see that.

8 Q. And it's a long document, but could you
9 just take a flip through it and confirm that this
10 is a copy of the Declaration that you signed in
11 connection with an IPR you were working on for
12 Mountain Voyage?

13 A. Without looking at every page, this
14 appears to be the Declaration I submitted in this
15 matter.

16 Q. Okay. And if you look at the last page
17 of the document, is that a copy of your signature?

18 A. Yes, it is.

19 Q. The date on that signature is March 15,
20 2024, do you see that?

21 A. Yes, I see that.

1 Q. So that's, obviously, quite a while ago.
2 Have you had a chance to review this
3 document since you signed it in March of 2024?

4 A. Yes.

5 Q. And as you sit here today, is there
6 anything you're aware of about this document that
7 is incorrect or erroneous or should be corrected?

8 A. Nothing I'm aware of --

9 Q. All right.

10 A. -- as I sit here today.

11 Q. I think we did this the last time we got
12 together, but if there's anything that comes up
13 during the course of today's deposition where you
14 say, Oh, that's a typo or should have been
15 something different, please let me know, okay?

16 A. I will do that.

17 Q. And we'll make it, make the record
18 complete.

19 All right. I believe you have several
20 other documents in front of you. I think the one
21 immediately to the left of the thick document is a

1 copy of U.S. Patent 10791808, right?

2 A. Yes, it is.

3 Q. And that document is marked as Exhibit
4 1001 in the lower right-hand corner, correct?

5 A. Correct.

6 Q. And that's the patent about which you
7 offer opinions on the issue of invalidity, correct?

8 A. Yes.

9 Q. Okay. Fair to refer to this as the '808
10 Patent?

11 A. Yes.

12 Q. All right. If you look, you should have
13 a copy of Exhibit 1003 as well. I believe it's a
14 copy of your CV.

15 A. Yes, I have that.

16 Q. And is this, to the best of your
17 knowledge, a copy of the CV that you submitted,
18 along with your Declaration, in this IPR?

19 A. Yes, I think that's correct.

20 Q. Okay. This is marked as Exhibit 1003,
21 right?

1 A. Correct.

2 Q. All right. I think you should also have
3 a copy of Exhibit 1011 -- oh, let's do 1010 first.
4 Do you have 1010?

5 A. Yes, I do.

6 Q. And what is Exhibit 1010?

7 A. It is a -- the cover page, the ISPN page
8 and a content page from a -- a textbook.

9 Q. Okay. What's the title of the textbook?

10 A. Mechanisms and Mechanical Devices
11 Sourcebook.

12 Q. And what -- at a high level, what is this
13 textbook about?

14 A. It's -- it's filled with different kinds
15 of mechanisms to accomplish different things;
16 locking, coupling, joining. It has chapters and
17 chapters of kind of different mechanisms arranged
18 by function basically --

19 Q. And --

20 A. -- and end function.

21 Q. And is the textbook, for which Exhibit

1 1010 is an excerpt, is that something you rely on
2 in your work?

3 A. Yes. I've had it for years, and -- and I
4 do refer to it in design work and as well as expert
5 witness work.

6 Q. Okay. So that was going to be part of my
7 question. This is a -- this is a book that you
8 have in your personal possession; is that right?

9 A. That's correct.

10 Q. Are these pages in Exhibit 1010, are they
11 scans out of that book you have in your personal
12 possession?

13 A. Yes, they are.

14 Q. And you mentioned there is an ISPN page,
15 right?

16 A. Yes.

17 Q. Is that page 3 of the document?

18 A. Yes, it is.

19 Q. On that page, it says Copyright 1991, do
20 you see that?

21 A. Yes, I see that.

1 Q. Do you know if there are any more
2 recently copyrighted versions of this textbook?

3 A. I do not know that.

4 Q. Is it fair to say that the only version
5 of this textbook that you have in your possession
6 is the 1991 version?

7 A. That's correct.

8 Q. Okay. Now, again, we have an excerpt
9 here. How -- how thick is the textbook?

10 A. It's about an inch and a quarter thick.

11 Q. Okay.

12 A. I don't -- I don't know how many pages.

13 Q. If you look at the back page of Exhibit
14 1010, that is a copy of page 412, right?

15 A. Yes.

16 Q. So we know that the book is at least 412
17 pages long, right?

18 A. Correct.

19 Q. Is there any reason why you decided to
20 include page 412 in Exhibit 1010?

21 A. Yes. I believe I used it to

1 support -- I'd -- I'd have to look in my deck, but
2 I -- where I cited to it, but to support the fact
3 that certain locking mechanisms are in the -- well
4 within the, you know, knowledge of a person of
5 skill in the art.

6 Q. If you would look in your Declaration,
7 please, and you can keep 1010 out if you want.

8 A. Okay.

9 Q. But in your Declaration, which is Exhibit
10 1003 --

11 A. 1002.

12 Q. Oh, sorry, 1002. The CV is 1003. The
13 first time that I see a reference to Exhibit 1010
14 is in paragraph 38. If you would go there, please.

15 A. Yes, I see that in paragraph 38.

16 Q. Okay. And, you know, it's hard to do
17 these sometimes by paper, but for -- you can take
18 my representation or not, but the only time that
19 the string 1010 shows up in your report, or in your
20 Declaration, is in the table of exhibits in
21 paragraph 38, and then there is a paragraph 1010 to

1 your Declaration. Is that consistent with how you
2 recall using Exhibit 1010?

3 A. I'm sorry, you said there's a paragraph
4 1010?

5 Q. Yeah, if you go all of the way to 1010.
6 So if you go to -- on page 344, you have paragraph
7 one. 1010.

8 A. Oh, there it is at the top. Oh, I -- I
9 understand now. You were referencing -- you were
10 searching the number 1010 --

11 Q. Exactly.

12 A. -- and those are the only two instances
13 where that paragraph --

14 Q. Exactly, yep. Yep.

15 A. Okay. I understand that.

16 Q. So is it -- I mean, again, I'm not going
17 to hold you to it, because you can't search the
18 whole document, --

19 A. Correct.

20 Q. -- but is it your recollection that that
21 citation in paragraph 38 to Exhibit 1010 is the

1 only time you cited to Exhibit 1010?

2 A. It sounds reasonable.

3 Q. Okay.

4 A. Again, without searching, I can't --

5 Q. Yeah. Yeah. And then, you know, in
6 paragraph 38 -- are you back there?

7 A. Yes.

8 Q. With regard to the sentence that you have
9 a citation for Exhibit 1010, you say, In addition,
10 prior to the critical date, hook and undercut
11 engagements were generally known design features
12 for inhibiting mechanical movement between parts.
13 Do you see that?

14 A. Yes, I see that.

15 Q. And when I look at page 4 of Exhibit
16 1010, I don't see the use of the word hook. Do
17 you?

18 A. I'm not sure they -- I don't think they
19 use the word hook.

20 Q. Okay. So are there any of the pictures
21 in Exhibit 1010 on page 4 that you are saying are

1 the hook and undercut engagements as you used that
2 phrase in paragraph 38 of your Declaration?

3 A. Yes.

4 Q. Which ones?

5 A. And, again, using the term hook as
6 construed in the patent, and then it would be
7 applied to these embodiments shown in -- in
8 figure -- on page 4 -- page 412 of the book.

9 Q. Okay. So that's -- that's good clarity.
10 So was it your intention in writing
11 paragraph 38 that the use of the word hook in
12 paragraph 38 has the same meaning as the use of the
13 word hook in the '808 Patent?

14 A. Yes.

15 Q. Okay. And is the same true with the word
16 undercut?

17 A. Yes.

18 Q. Okay, got it.

19 Okay. Let's look at -- you can keep your
20 report close by because I'm going to come back to
21 paragraph 38, but if you'd look at Exhibit 1011,

1 please.

2 A. Yes.

3 Q. It should be -- and so just for the
4 record, 1011 is a five-page-long document, right?

5 A. Yes, five pages.

6 Q. And it is a document from the Pew
7 Research Center, correct?

8 A. Yes, it is.

9 Q. Is this a document that you located for
10 inclusion in the Declaration?

11 A. Yes.

12 Q. And what were you searching for when you
13 found Exhibit 1011?

14 A. Just the -- you know, how many -- do
15 people -- I was -- let me see if I can articulate
16 this more elegantly -- validating what is said in
17 Kane as far as, you know, more people are using
18 credit cards and electronic means to pay for things
19 as opposed to cash, but there still remains a need
20 for cash. And this validates that from an unbiased
21 and un- -- uninterested party, that there's still a

1 need for cash. Even though it is true that, you
2 know, more and more people do pay with credit cards
3 and such, there still remains a need to carry cash
4 and -- and paper items with you.

5 Q. Okay. And, again, similar to with
6 Exhibit 1010, the only time I see the string 1011
7 show up in your report is in the table of exhibits
8 in paragraph 38 and then you have a paragraph 1011.

9 Is it consistent with your recollection
10 of how you prepared your report, that you only
11 cited to this Pew Research paper the one time?

12 A. Yeah. Again, without searching
13 completely, I -- I believe that's a fair
14 assessment.

15 Q. Okay. In paragraph 38, you mention the
16 date of 2015, do you see that?

17 A. Yes.

18 Q. And you didn't -- if I look at the front
19 page of the Pew research paper, there are bar
20 graphs for 2015, 2018, and 2022, correct?

21 A. Yes.

1 Q. Is there any reason why you cited only to
2 the 2015 data?

3 A. No. It says at least by, so
4 we're -- we're going back closer to the critical
5 date of the '808 Patent, but to be more, you know,
6 in line with what a person of skill in the art
7 would understand at the time of the invention.

8 Q. Right. But at least -- well, you would
9 agree with me that at least some people, both
10 before and after the critical date at least
11 according to the Pew paper, were still carrying
12 cash, right?

13 A. Yes. I mean, it shows that every -- cash
14 is still used in all date ranges of this paper.

15 Q. Is this a paper that you had seen before
16 your work in this case?

17 A. No.

18 Q. Do you know if this is a paper that
19 Mountain Voyage relies on in its business?

20 A. I don't know.

21 Q. Okay.

1 A. I -- I know I -- I found it and included
2 it.

3 Q. Since your last deposition, which was a
4 few months ago now, have you had further
5 conversations with anybody, but lawyers, about this
6 case? This case being The Ridge/Mountain Voyage
7 dispute.

8 A. Did you say other than lawyers?

9 Q. Yes.

10 A. Nothing substantial, other than telling
11 my kids that I'm working on a wallet case, but ...

12 Q. But you haven't spoken with Mr. Joe
13 Reeves since our last deposition?

14 A. No.

15 Q. Have you ever spoken with a nonlawyer
16 about Exhibit 1011?

17 A. No.

18 Q. All right. You can set that aside.

19 Let's talk a little bit more about some
20 of the background of this particular case.

21 A. Um-hmm.

1 Q. If you'd look at paragraph 3 of your
2 report, please.

3 A. Okay.

4 Q. We covered this a little bit last time.
5 Your -- your compensation in this matter is \$510 an
6 hour, right?

7 A. So that is the rate that Mountain Voyage
8 pays Vorys who then pays the search firm --

9 Q. Okay.

10 A. -- that then pays me at a different rate.

11 Q. Understood. Mountain Voyage is paying
12 \$510 an hour for your time, correct?

13 A. For my consulting time, and then my time
14 under oath today is at a different rate.

15 Q. What is the rate of your time under oath?

16 A. I know what I'm getting paid for it. I
17 don't know what they're charging for it.

18 Q. Do you know if it's higher than what
19 you're being paid for your consulting time?

20 A. It is.

21 Q. Do you know the percentage?

1 A. I do not.

2 Q. When we talked the last time, I don't
3 think you were able to put a good ballpark on the
4 number of hours you had spent by that point.

5 Can you tell me how many hours you spent
6 on the Mountain Voyage cases, or case, between our
7 last deposition and today?

8 A. Since concluding the deposition?

9 Q. Right.

10 A. No. I mean, I haven't added it up or
11 anything.

12 Q. Do you think it's more than a dozen?

13 A. No.

14 Q. At a high level, what did you do to
15 prepare for the deposition today?

16 A. I spoke with counsel, reviewed the
17 documents that are the references as well as my
18 report.

19 Q. Okay. And during what period of time did
20 you do that work?

21 A. This week.

1 Q. This week. Did you review your past
2 deposition testimony as part of your prep for
3 today?

4 A. No.

5 Q. I don't remember. Do you remember if you
6 reviewed that deposition testimony for errors
7 shortly after you gave the deposition?

8 A. It's standard practice for me to do that.

9 Q. Yes.

10 A. I -- I don't remember. I -- I had a
11 couple depositions this summer and fall, and I
12 don't recall whose. But I -- I usually do, do
13 that.

14 Q. Let's try it like this: As you sit here
15 right now, can you recall seeing a copy of your
16 prior deposition in this case at any point?

17 A. Not specifically.

18 Q. How many depositions have you given
19 between the time we last got together and today?

20 A. I think I gave one just before, which is
21 the errata that I recall working on, and then this

1 one was September. I don't think I've given
2 another one since.

3 Q. Okay.

4 A. But there was -- yeah, I think
5 that's -- I think that's true.

6 Q. And since we got together the last time,
7 have you testified at the patent office at all?

8 A. No.

9 Q. Have you testified in any Court since we
10 got together?

11 A. No.

12 Q. Okay. If you would look at paragraph 9
13 of your report.

14 A. Okay. I see paragraph 9.

15 Q. In paragraph 9, you use the phrase
16 analogous, do you see that?

17 A. Yes.

18 Q. And then in the next line, you say that
19 one way that a reference can be analogous is if it
20 is from the same field of endeavor, do you see
21 that?

1 A. Hold on. I'll have to unclip this.

2 Q. Yeah, sure.

3 A. The whole thing comes apart.

4 So I see the line in paragraph 9 where it
5 says, Even if it is not from the same field of
6 endeavor as the claimed invention. Is that what
7 you're ref- -- referring to?

8 Q. Well, so the second line of paragraph 9
9 says -- I'll just read the first part of paragraph
10 9.

11 A. Okay.

12 Q. It says, I understand that references are
13 analogous to the patent at issue when:

14 1. The reference is from the same field
15 of endeavor as the claimed invention. Do you see
16 that part?

17 A. Yes.

18 Q. What would you describe to be the field
19 of endeavor for the '808 Patent?

20 A. Compact devices that are worn on the body
21 or carried by people.

1 Q. So you wouldn't limit the field of
2 endeavor of the '808 Patent to wallets?

3 A. I mean, that's a narrower limitation
4 thereof, but ...

5 Q. But you think it's appropriate to
6 describe the field of endeavor of the '808 Patent
7 without saying it must be about wallets, is that
8 fair?

9 A. Yeah, I think so. I mean, especially
10 since we're -- if a -- where a person of skill in
11 the art would look to find analogous and relevant,
12 you know, prior art.

13 Q. Yeah. And so the other reason I'm asking
14 this question is because you also have a or number
15 2 on the next page, on page 10.

16 So you say -- and I can add an ellipses
17 to my reading here. It says, I understand that
18 references are analogous to the patent at issue
19 when ... the reference is reasonably pertinent to
20 the problem faced by the inventor (even if it is
21 not the same field of endeavor as the claimed

1 invention). Do you see that?

2 A. Yes, I do see that.

3 Q. So is it fair to say that what you got
4 after the 2 there is another way where a non-same
5 field of endeavor reference could nevertheless be
6 analogous art?

7 A. Yes, and this is, again, in the legal
8 standard section that I was informed of this by
9 counsel, so ...

10 Q. Yes.

11 A. I don't know that I've, you know, diced
12 it up such that -- I mean, I think I probably talk
13 about it, as I go through each reference, that this
14 one is in the field of endeavor or this one is
15 analogous because it's reasonably pertinent. I'm
16 pretty sure that's in -- as I go through each
17 grounds, I have talked about that more explicitly.

18 Q. Okay. That's fine, and we'll get to
19 that. I think that's exactly how you do it.

20 My question is going to be more along the
21 lines of what you've done in your career.

1 So is it fair to say that you have done
2 product or products -- sorry. Is it fair to say
3 that you've done product development work in your
4 career as an engineer?

5 A. Yes.

6 Q. And what product development work have
7 you done with products where you consider them to
8 be in the same field of endeavor as the '808
9 Patent? And you can certainly use your CV, if
10 you'd like.

11 A. Yeah, let me do that.

12 Q. I think on page 6 of the CV, there's a
13 page that may help.

14 A. Yes.

15 (Whereupon, there was a pause for
16 document examination.)

17 THE WITNESS: So I -- as you well know, I
18 have not developed a compact wallet before, but
19 I've done soft-sewn products where we have
20 a -- like a cooler that has carrying compartments
21 for cash and cards and those kind of things, but

1 that's -- it's fairly analogous.

2 Also, the corrugated box machines, we had
3 remote control panels that could be carried with
4 the operator, and the cable tie guns, those could
5 be put in your pocket, and we made sure they were
6 easy to take in and out of a storage pouch, if you
7 will. And this is not a -- again, an exhaustive
8 list, but it's exemplar.

9 BY MR. WEED:

10 Q. Any others on this list that you would
11 consider to be in the same field of endeavor as the
12 '808 Patent?

13 A. I think those are probably the -- the
14 closest that are listed here.

15 Q. Okay. Have you done any work as a
16 professional engineer, as contrasted with your work
17 as an expert witness, to develop products that had
18 a money clip?

19 A. No, not a money clip explicitly. A belt
20 clip we've done, but not a money clip.

21 Q. That was going to be my next question.

1 So tell me which projects you have worked
2 on where another kind of clip was part of the
3 design.

4 A. It's not listed here, but it's a -- it's
5 a trade-show registration system, where you go in
6 and register for a trade show.

7 Q. And what was the device that you worked
8 on for that?

9 A. Well, I'm -- I'm not sure I can tell you
10 because it's under an NDA and it's still in
11 development, so I can't.

12 Q. So then maybe we can nibble around the
13 edges.

14 A. Yeah.

15 Q. So can you give me a rough dimensional
16 description of the device in terms of centimeters
17 or inches?

18 A. Say five by five by a half inch.

19 Q. Five inches by five inches?

20 A. Yeah.

21 Q. And how much roughly does the device

1 weigh?

2 A. Fifty grams.

3 Q. Can you tell me if the clip on the device
4 is for holding it on a person's clothing?

5 A. I'm not sure if I can tell you that or
6 not.

7 Q. Okay.

8 A. I apologize.

9 Q. No, no.

10 A. It's a -- you know, the NDAs tend to be
11 fairly broad, and --

12 Q. Yeah. So let me ask you a few questions,
13 and if you can't tell me, that's fine. I
14 understand. The Protective Orders in the patent
15 office are not like they are in District Court
16 cases.

17 So can you tell me when the project
18 started?

19 A. Back two years ago.

20 Q. So it was certainly after the priority
21 date of the '808 Patent?

1 A. Yes.

2 Q. Can you tell me if the clip portion of
3 the device is removable?

4 A. No, I can't.

5 Q. You can't tell me?

6 A. I can't tell you.

7 Q. All right. Can you tell me if patents
8 have been filed on the device?

9 A. I'm not sure. It's -- again, the project
10 is ongoing, so ...

11 Q. Yeah, no, I understand.

12 Can you tell me if you're an inventor of
13 the device?

14 A. That remains to be seen if I -- any
15 claimed elements are things that I contributed.

16 Q. Let me ask it this like: It's your
17 understanding at some point a patent application is
18 filed and if it issues as a patent, it will become
19 public, right?

20 A. Yes.

21 Q. Can you give me any ways I can search now

1 or in the future to find out patents that
2 ultimately public -- published from the work you're
3 talking about?

4 A. Just search my name as inventor.

5 Q. So your name would be on it as an
6 inventor?

7 A. If -- if, indeed, I contributed a claimed
8 element.

9 Q. Can you tell me who the assign- -- if a
10 patent was filed and it was issued, can you tell me
11 who the assignee would be?

12 A. No.

13 Q. Okay. Other than that project that's
14 ongoing, have you ever worked on designing a device
15 as a professional engineer that has a clip of some
16 kind?

17 A. I'm sure we have done clips, for sure.
18 On the corrugated box machine, we may have clips to
19 hold documents on the side of the machine for the
20 order that's in progress. The guy puts his order
21 under there, and it's a spring-steel clip.

1 Oh, the -- we have got a patent pending
2 for my work at Taylor Technologies, and there's a
3 clip in there that I exclusively designed myself.
4 It's a clip that holds four test strips for
5 testing, spring loaded.

6 Q. Okay. And what is the nature of that
7 device you're talking about?

8 A. It is a water testing station. So you
9 take test strips, load them in the clip, dip them
10 in water, load them into the station and it
11 analyzes the colors and then gives you your water
12 analyte values.

13 Q. Did you say those are patents that are
14 pending?

15 A. Yes.

16 Q. Okay. Do you have any idea when they
17 were filed?

18 A. 2021-ish. Maybe '22.

19 Q. Do you know if they're published yet?

20 A. Yeah. I think the -- and it's also on my
21 resume. That -- that application number should be

1 on my CV.

2 Q. Can you point me to it?

3 A. Yeah.

4 Q. I missed that, I'm sorry. That will make
5 it easier.

6 A. Yeah. Yes, it's the second application
7 that ends in 726 on page 1, enumerated page 1. The
8 document exhibit page 2, University Education
9 Patents and Publications, and it says U.S.
10 Application 63/279,726.

11 Q. Got it. So that's a provisional
12 application?

13 A. No. That's a full application.

14 Q. It is now?

15 A. Yes.

16 Q. Do you know -- again, do you know if
17 that's been published?

18 A. I believe has. It's -- it's well in the
19 prosecution. Did that come up?

20 Q. It did.

21 A. Okay.

1 Q. Do you know -- and we can talk about this
2 later, but do you know if the claims as they
3 currently exist still recite a clamping mechanism?

4 A. I don't know. No recollection of what
5 the content of the claims is, other than I think
6 I'm a sole inventor.

7 Q. That's all right. I can look it up more
8 on a break.

9 A. Okay.

10 Q. Okay. Any other design work you've done
11 as a professional engineer that relied on clips in
12 some way?

13 A. I mean, clips is a -- is -- in a general
14 sense is, you know, a little clamping mechanism to
15 hold, we'll call it, thin objects, and a lot of the
16 automation stuff we've done is -- like for
17 microscope slides, there's clips to hold it while
18 the one operation is done, and then it's moved to
19 the next. So those had spring-loaded clips.

20 Granular -- granular, you would like to
21 get in the world of clips and work -- work holding.

1 Q. Yes, let me ask a more narrow question.

2 A. Okay.

3 Q. Have you done any work as a professional
4 engineer on products that relied on any clip that
5 is removable from the device to which it is
6 mounted?

7 A. I mean, unless it's welded in place, it's
8 removable basically. I mean, there's the -- so ...

9 Q. Yeah, we kind of got into this
10 existential discussion last time.

11 Is there any product you can think of
12 that you worked on as an engineer, as a
13 professional engineer where the normal use case of
14 the device involves removing the clip or
15 reinstalling the clip on the device?

16 A. Well, the one that's in progress, that I
17 can't tell you about, is -- that's a likely use
18 scenario.

19 Q. Okay.

20 A. But other than that, I think that's -- I
21 think everything else is, normal use case, the clip

1 would remain in place.

2 Q. Got it. Okay. We were talking about
3 paragraph 9, and let's just do it while
4 we're -- while I'm thinking of it.

5 I'm going to hand you --

6 A. Of my Declaration?

7 Q. Of the Declaration, yeah.

8 A. Okay.

9 Q. I'm going to hand you the prior art now.
10 I'll give you a stack of documents.

11 (Documents tendered.)

12 THE WITNESS: Thank you.

13 BY MR. WEED:

14 Q. All right. So, just for the record, you
15 should now have copies of Exhibits 1006, 1007, 1008
16 and 1009, right?

17 A. Correct.

18 Q. And just for some nomenclature, are you
19 comfortable referring to Exhibit 1006 as Kane?

20 A. Yes.

21 Q. And are you comfortable referring to

1 Exhibit 1007 as Beckley?

2 A. Yes.

3 Q. Are you comfortable with referring to
4 Exhibit 1008 as Pelz?

5 A. Yes.

6 Q. And are you comfortable referring to
7 Exhibit 1009 as Matthews?

8 A. Yes.

9 Q. For Kane, do you contend that Kane is a
10 reference in the same field of endeavor as the
11 claimed invention?

12 A. Yes.

13 Q. Do you contend that Beckley is in the
14 same field of endeavor as the claimed invention?

15 A. Yes, I believe I do.

16 Q. Do you contend that Pelz is in the same
17 field of endeavor as the claimed invention?

18 A. I have to look and see what I said in my
19 Declaration on that.

20 Q. Yes, let's do that. I think the Pelz
21 analysis started on page 186.

1 A. Okay. I think I have also --

2 Q. There was also a summary of Pelz earlier.

3 A. Right. There was an overview of Pelz on
4 48.

5 (Whereupon, there was a pause for
6 document examination.)

7 THE WITNESS: So in paragraph 488 and
8 489 --

9 BY MR. WEED:

10 Q. Okay.

11 A. -- is where I discuss the relevancy of
12 Pelz to the -- to the '808.

13 Q. And is it your opinion that Pelz is a
14 reference in the same field of endeavor as the '808
15 Patent or not?

16 A. I don't know that I declared it one way
17 or the other.

18 Q. Hold on. On page -- on 489, you say,
19 Kane and Pelz both disclose innovations in the
20 field of compact devices worn on one's person,
21 right?

1 A. Yes.

2 Q. If you look at paragraph 161 of
3 your -- of your Declaration, and maybe keep what
4 you were just looking at open?

5 A. Um-hum. Now I have got it unclipped,
6 so ...

7 Q. Yes.

8 A. You said paragraph 161?

9 Q. Paragraph 161. It's on page 74.

10 A. Okay. I'm at 161.

11 Q. Yeah. So this is a section talking about
12 Beckley, right?

13 A. Um-hum.

14 Q. And in paragraph 161, you say, Kane and
15 Beckley both disclose innovations in the field of
16 card-holder wallets, right?

17 A. Yes.

18 Q. And so you would agree with me that the
19 field in paragraph 161 is narrower than the field
20 in paragraph 489, right?

21 MR. BUSCH: Objection. Form.

1 THE WITNESS: I -- I don't know that I've
2 parsed it that finely. I just talk about the field
3 of both. I haven't considered whether one is more
4 narrow than the other.

5 BY MR. WEED:

6 Q. Well, there's certainly different fields,
7 right?

8 A. Yeah. It's compact devices worn on the
9 person and the field of card-holder wallets, so
10 it's two different fields.

11 Q. Would you agree with me that Pelz is not
12 in the field of card-holder wallets?

13 A. Yes, I think that's fair to say.

14 Q. Okay. Whether they're broader or
15 narrower, they're at least different fields in
16 paragraph 489 versus in paragraph, what did I say,
17 161?

18 A. 161, yes.

19 Q. They are at least different fields?

20 A. They're different fields.

21 Q. Getting back to my original question, are

1 either of those fields in the same field of
2 endeavor as the claimed invention?

3 A. I think they both are.

4 Q. They both are, okay.

5 Is it fair to say that you contend Pelz
6 is in the same field of endeavor as the '808
7 Patent?

8 A. Yes, the field of compact devices worn on
9 one's person.

10 Q. Okay.

11 A. Yeah.

12 Q. And then if we look at Matthews, is
13 Matthews in the same field of endeavor as the '808
14 Patent?

15 MR. BUSCH: Paragraph 770, page 267.

16 THE WITNESS: Okay. Thank you.

17 Yes, paragraph 769 on page 267.

18 BY MR. WEED:

19 Q. In paragraph 770, you say, Kane and
20 Matthews both disclosed innovations in the field of
21 card holders, right?

1 A. Yes.

2 Q. So is it fair to conclude from that
3 statement that you believe Kane and Matthews are in
4 the same field of endeavor?

5 A. Yeah. The field of card holders, yes.

6 Q. And, again, the description of the field
7 in which Kane and Matthews both reside is different
8 than the field that Kane and Pelz reside in and the
9 field that Kane and Beckley reside in, right?

10 A. Yes. I think I described them all
11 slightly differently, but ...

12 Q. You described the Kane and Beckley field
13 in paragraph 161 as being card-holder wallets and
14 you describe the Kane and Matthews field in 770 as
15 being just card holders, correct?

16 A. What was the Beckley reference, I'm
17 sorry?

18 Q. 161. Paragraph 161 on page 74.

19 A. I don't want to drop this. I'm sorry,
20 what -- what paragraph?

21 Q. For what?

1 A. For the Beckley.

2 Q. Beckley is 161 --

3 A. Okay.

4 Q. -- on page 74.

5 A. 161. Field of card-holder wallets, yes,
6 I see that.

7 Q. Right. On paragraph 770, you just say
8 it's the field of card holders, correct?

9 A. Yes, that's what I say.

10 Q. Is it fair to conclude from that, that
11 Matthews is not in the field of card-holder wallets
12 in your opinion?

13 A. Yeah. I think I say Matthews is in the
14 field of card holders.

15 Q. And you intentionally didn't use the word
16 wallet in paragraph 770; is that true?

17 A. Correct.

18 Q. What is the difference in your mind
19 between a card holder, like in Matthews, and a
20 card-holder wallet, like in Beckley?

21 A. Well, Beckley is, as it is described,

1 something to be carried in a -- you know, with your
2 cash and credit cards, driver's license, multiple
3 things that would be considered a wallet, you put
4 it in your pocket, and Matthews is slightly
5 different in that it holds cards as described.
6 This is all described in both of the references.
7 Matthews holds at least one card of credit-card
8 size, and it can be clipped to various things.

9 Q. Why is Matthews not a wallet in your
10 view?

11 A. I mean, it could be a wallet, but it
12 further describes a -- a reader to see how much is
13 left on your gift card and -- and other things like
14 that, so ...

15 Q. Okay.

16 A. It -- it goes off in a little different
17 direction with some of its other features.

18 Q. So is it true then, going all of the way
19 back to where we started, which is paragraph 9 --

20 A. Okay.

21 Q. -- each of the -- of the non-Kane

1 references that you rely on in the combinations, in
2 your opinion, are in the same field of endeavor as
3 the '808 Patent, correct?

4 A. Yes, that's what I've said in each of
5 those paragraphs, that they are in the same field.

6 Q. Okay.

7 A. Yeah, and if there's some formal term
8 field of endeavor that is limiting, I'm not -- I
9 don't know the bounds of that term, but I will say
10 these are -- as I say in my Declaration, you know,
11 this is -- I consider it to be the same field.

12 Q. Yes. I just want to understand what you
13 thought the field of endeavor in the '808 Patent
14 is. I think I understand your position on that.

15 A. Okay.

16 Q. Reorganizing?

17 A. Yeah, I have it in four pieces. I just
18 want to try to keep it organized. Okay.

19 Q. All right. In the legal -- still in the
20 Legal section of your report, I think you mentioned
21 a second ago that you received the legal summary or

1 the legal concepts that are in your legal section
2 from counsel, is that true?

3 A. Yes.

4 Q. And I know that every lawyer does it
5 differently, but is this -- this legal summary
6 relatively similar to other legal summaries you've
7 done in petitioner-side IPRs?

8 A. I don't recall anything that jumped out
9 at me as -- as very different from my previous
10 understandings of the IPRs and invalidity
11 contentions.

12 Q. Okay. And I think I asked you this
13 before, but approximately how many times have you
14 been a petitioner's expert in IPRs or CVMs or PGRs?

15 A. So petitioner, maybe once before.

16 Q. Okay.

17 A. It's typically been the patent holder.

18 Q. Okay. Have you ever heard of the concept
19 of hindsight bias?

20 A. Yes, I've heard that concept.

21 Q. And that phrase doesn't show up in your

1 Legal section. Did you take it into account when
2 doing your obviousness analysis here?

3 A. I always try to keep that in -- you know,
4 you can't -- the way I understand it is you
5 can't -- I mean, it's hard to unsee things that you
6 have seen, but you have to take that mind set of
7 what would a person of skill in the art at the time
8 of the invention, what would he know. Not knowing
9 what I know today, --

10 Q. Right.

11 A. -- but putting myself back into that mind
12 set.

13 Q. And so in that mind set, is it your
14 understanding that you should also take out of the
15 mind of a person of skill in the art whatever he
16 reads in the patent you're trying to assess the
17 validity of?

18 A. I believe so, because that patent didn't
19 exist --

20 Q. Right.

21 A. -- because it's at the priority date of

1 the patent, so that patent has not been issued. So
2 it would have to be all of the references that
3 we're considering to combine.

4 Q. Right. And have you ever heard
5 the -- the phrase -- it's used various ways -- but
6 that it's, One should avoid using the claims as a
7 blueprint to piece together prior art references?

8 A. I don't think I've heard that, --

9 Q. Okay.

10 A. -- in those words at least.

11 Q. Okay. I just wanted to make sure
12 that -- I didn't see it and I wanted to make sure
13 that you were, in fact, doing your task here with
14 an eye towards avoiding hindsight bias.

15 You were doing that, right?

16 A. Yes.

17 Q. In paragraph 13 of your report, which is
18 on page 11 --

19 A. Okay. I see it.

20 Q. -- the last sentence there says,
21 Moreover, a rearrangement of a device's parts to

1 perform the same function without any new or
2 unexpected results is an obvious design choice. Do
3 you see that?

4 A. Yes, I see that sentence.

5 Q. Are you contending here that the
6 arrangement of parts in the '808 Patent does not
7 present new or unexpected results?

8 A. Well, I don't think we're considering the
9 '808 Patent. We're talking about prior art when
10 we -- so we're talking about prior art references,
11 taking the parts of a prior art reference and
12 rearranging it.

13 Q. Right. But you're rearranging it in a
14 way, at least for purposes of this report, to meet
15 the claims of the '808 Patent, right? I understand
16 that's not the goal, but the result is you're
17 saying each combination would be combined and, when
18 combined, would equal the claims of the '808
19 Patent, correct?

20 A. Yes. We go through that in great
21 detail --

1 Q. Yes.

2 A. -- in each of these grounds.

3 Q. So whether we call it the claim of the
4 '808 Patent or the result of the combination, the
5 thing that you build is the same, right?

6 It's -- it's Kane plus a removable money clip
7 having certain features, right?

8 A. Kane plus Pelz; Kane plus Beckley; --

9 Q. Right.

10 A. -- Kane plus Matthews.

11 Q. So whether we call it what's claimed in
12 the '808 Patent or what is the result of the
13 combinations, are you saying that the thing that
14 results from the combinations does not have any new
15 or unexpected results?

16 A. No. This is -- this statement is -- is
17 more, I think more granular than that, more
18 detailed. We're talking about a -- for example,
19 the -- I think it's in Matthews I think is one
20 example.

21 In Matthews, the way the clip is

1 retained, you could reverse the two features that
2 retain the clip and get the same result and that
3 would be a design choice for a person of skill in
4 the art designing a device like that.

5 It doesn't matter whether you put A and B
6 or B and A. It's the same result, and so
7 that's -- that's what I mean by an obvious design
8 choice. I'm not speaking to the novelty of the
9 combination of elements to create a new -- you
10 know, a claimed device.

11 Q. Okay. So your opinions about design
12 choice here are in situations where even in the
13 combination, certain parts of the combined thing
14 have to still be rearranged, right?

15 MR. BUSCH: Objection. Form.

16 THE WITNESS: I don't think I understand
17 your question. I'm sorry.

18 BY MR. WEED:

19 Q. Are you saying that, for
20 example, -- strike that.

21 Are any of the opinions you offer here

1 opinions that incorporating one reference into Kane
2 would have been a design choice?

3 A. No. It's a -- it's an obvious
4 combination.

5 Q. So in all three of the combinations you
6 opine about here, you say, it would have been
7 obvious to combine Kane with another reference, but
8 what you're saying is in that some of those
9 situations, it would still have been an obvious
10 design choice to modify what resulted; is that
11 right?

12 A. I think what I'm saying -- and
13 it's -- it's detailed in my analysis, and we can go
14 to a specific example if you'd like, but the -- at
15 the granular level of, again, using, you know,
16 Matthews for an example, if we put feature A in
17 place of B and B in place of A, that's an obvious
18 design choice with predictable results, and both
19 elements are present in the -- in the asserted
20 prior art, and the order that you put them in is
21 still functional. It still gives predictable

1 results, and it would be an obvious design choice
2 to choose arrangement one or arrangement two.

3 Q. You say that the rearrangement that
4 results in obvious design choice has to perform the
5 same function, right?

6 A. It has to give the same result, right. I
7 mean --

8 Q. Right here you said rearrangement --
9 rearrangement of the device is, in part, to perform
10 the same function, right?

11 A. Yes, that's what it says. That's my
12 understanding.

13 Q. On the next page, in paragraph 16, you
14 talk about means plus function?

15 A. That's right.

16 Q. And there you say that a -- an equivalent
17 structure has to perform the claimed function in
18 substantially the same way, correct?

19 A. Yes. This is my understanding of the
20 legal standards that were presented to me,
21 so ...

1 Q. So the design choice analysis has a more
2 exacting requirement, the function be the same,
3 whereas, for means plus function, the function has
4 to be substantially the same. Do you agree with me
5 on that?

6 A. That's what is -- I mean it's written
7 differently. I don't know that at the practical
8 level that that comes into play, that you would
9 have a nuanced difference between them. I -- I
10 don't know if I've, you know, made a
11 differentiation between those two as I go through
12 my analysis.

13 Q. But you intentionally use the word
14 substantially the same in 16 and the same
15 unmodified by substantially in 13, correct?

16 A. Yes. And, again, this is legal standards
17 that's given to me from counsel, so I believe
18 there's some case law that dictates some of that
19 wording as well.

20 Q. You also include in the Legal section a
21 Written Description Support summary. Do you see

1 that on -- on page 12?

2 A. Yes.

3 Q. And why did you include that area of law?

4 A. So I -- I don't know that we did any 112
5 in this. I can't remember if we did any 112
6 analysis. I don't --

7 Q. Well, is it your understanding that 112
8 is not appropriate grounds for invalidity of the
9 PTAB?

10 A. I don't recall.

11 Q. Okay.

12 A. I think it's 102 and 103 is what the PTAB
13 wants to see.

14 Q. Right. Which is why -- I'm wondering why
15 we talk here about written description?

16 A. I'm not sure.

17 Q. If you go over to paragraph 49 on page
18 23 --

19 THE WITNESS: Are we getting near a good
20 stopping point, by the way?

21 MR. WEED: Yes. We can stop now if you

1 want to. This is a little bit of a new area.

2 THE WITNESS: Okay.

3 MR. WEED: Why don't we go off the
4 record.

5 (Recess taken -- 9:55 a.m.)

6 (After recess -- 10:05 a.m.)

7 BY MR. WEED:

8 Q. Okay. If you would open your report back
9 up, which is Exhibit 1002, and go to page 23,
10 please.

11 A. Okay.

12 Q. This is a section of the Declaration
13 called Critical Date Determination, do you see
14 that?

15 A. Yes.

16 Q. And you start this section by saying, I
17 am aware that a dispute exists as to whether Claims
18 1 and 9 and 11 to 21 of the '808 Patent are
19 entitled to claim priority to earlier filed '019
20 application, right?

21 A. Yes, I see that.

1 Q. I started to ask you this before we took
2 a break, but why did you include this section in
3 your Declaration here?

4 A. Well, I think it's always important to
5 have -- to know what the critical date should be,
6 such that any prior art would be acceptable.

7 Q. Is any of the prior art that you rely on
8 here prior -- strike that.

9 Does it matter as to the status of any of
10 the prior art you opine about what the critical
11 date is?

12 A. Let's see. I don't -- I think most of
13 this is much earlier. Pelz is definitely earlier,
14 '14 and 2009.

15 Without reading the whole section, I -- I
16 don't recall. I think most of it predates anything
17 of the '808, but I -- I don't recall that
18 specifically.

19 Q. Was there ever -- was there another prior
20 art reference you were considering including that
21 fell in that period of time between 2015 and 2017

1 where this would have mattered?

2 A. I don't remember.

3 Q. If you'd look at page 25 of the report,
4 please?

5 A. Okay.

6 Q. Do you see paragraph 56?

7 A. I see paragraph 56.

8 Q. You say -- there's a parenthetical in the
9 third line of paragraph 56. It says (expressly or
10 inherently), do you see that?

11 A. Yes, I see that phrase.

12 Q. And that is a parenthetical that modifies
13 the word disclosed, right?

14 A. Yes.

15 Q. What is the difference between express
16 disclosure and inherent disclosure?

17 A. So expressly means it's -- it's typed.
18 It's -- it says exactly, you know, a -- you know, a
19 bump is present.

20 Inherently means it's necessarily so. It
21 must be there. If all of these other things are

1 there, then that other feature is inherently there.
2 It can't not be there. It's just part of -- I
3 can't think of a good example, but it's necessarily
4 so given the context in which it lives.

5 Q. Okay. And so when you were looking at
6 the issue of whether certain subject matter was
7 supported by the prior application, you were
8 considering whether it was either expressly or
9 inherently disclosed in the prior application,
10 right?

11 A. Yeah. I think that's the standard to
12 which one needs to look at.

13 Q. In other words if you had found something
14 that was inherently disclosed, that would have been
15 enough for you to say the prior application
16 supported it, is that true?

17 A. I mean, that's the standard I used.

18 Q. Okay.

19 A. So I -- I think I would have --

20 Q. This may be a little bit of lawyer
21 semantics, but if you look at paragraph 60 --

1 sorry, 59 on page 26, --

2 A. Okay.

3 Q. -- you use the phrase in the second line,
4 necessarily follow, do you see that?

5 A. Yes.

6 Q. Is that necessarily-follow concept the
7 same as express or inherent disclosure?

8 A. I think it's a little different.

9 I -- I -- without rereading all this and getting
10 back into the mind set of where I was, necessarily
11 follow means, you know, it's derived from, and
12 I -- I can't give you the -- the perfect legal
13 description of what that means like I can with
14 inherency.

15 Q. Yes, that's why I asked, because that's
16 not a phrase I was familiar with, and I didn't know
17 if you were trying to equate it with inherency. It
18 seems like it to me, but --

19 A. It's similar, but, I'm sorry, I just
20 can't give you a nailed-down definition for that.

21 Q. That's fair. All right. Let's turn to

1 page 31 of the report.

2 A. Declaration.

3 Q. Declaration.

4 A. Not to be pedantic.

5 Q. Yes. No, it's actually important because
6 this is sworn testimony.

7 Are you there?

8 A. Yes.

9 Q. Okay. This was, again, signed in March
10 of 2024, right?

11 A. Yeah, March 15th.

12 Q. So this document precedes the Colorado
13 Court's claim construction opinion, right?

14 A. I'm not sure when the Colorado Court
15 issued its claim construction opinion.

16 Q. In your Declaration, Exhibit 1002, you
17 don't mention any opinion of the Colorado Court on
18 claim construction, right?

19 A. I would have to go to Materials
20 Considered, and that's -- that's what I considered.
21 I don't know what all of it is at this point, but I

1 don't think there's anything certainly from the
2 court in the District Court matter that I
3 considered.

4 Q. Yeah.

5 A. I was pretty sterile from that whole
6 matter when -- when doing this IPR.

7 Q. Okay. And if you look at Table 1 on page
8 31, --

9 A. Yeah.

10 Q. -- you have constructions from the
11 Central District of California and from the ITC,
12 right?

13 A. That's right.

14 Q. But in that table, there's no
15 construction from the District of Colorado listed,
16 right?

17 A. Correct.

18 Q. Is it your understanding that now the
19 District of Colorado has adopted the ITC's
20 construction of this term?

21 A. I don't recall what they adopted.

1 Q. You don't recall the claim construction
2 framework we talked about when we got together in
3 August?

4 A. Not specifically. Not enough to quote it
5 under oath.

6 Q. Do you remember that for everything, but
7 the term channeling means, the Colorado Court gave
8 disputed terms their plain and ordinary meaning?

9 A. I -- again, I don't remember explicitly,
10 but I will take your word for that.

11 Q. Do you have any reason to think that
12 that's not true?

13 A. No.

14 Q. All right. If you'd go to page 34 of the
15 Declaration, please.

16 A. Okay. I'm at paragraph 34.

17 Q. Paragraph 79 contains a sentence, I
18 understand that Petitioner has posited in The Ridge
19 Wallet LLC, 2985 LLC d/b/a Mountain Voyage Co. that
20 the term "recess," as used in the challenged
21 claims, should be construed as "a groove with a

1 sidewall that is adjacent to the longitudinally
2 extending groove (i.e., "channeling means"), Right?

3 A. You read that correctly.

4 Q. And that case that is italicized in the
5 first and second lines, that's the Colorado case
6 between Ridge and Mount Voyage involving the '808
7 Patent, right?

8 A. I -- I believe that's the one, yes.

9 Q. Okay. Let me just --

10 A. And that was the proposed claim
11 constructions.

12 Q. Yes, let's just make sure it is. I'll
13 show you that. That sentence cites to Exhibit
14 1015, right?

15 A. Yes.

16 Q. I'll hand you Exhibit 1015.

17 A. Right.

18 Q. And Exhibit 1015 is Defendant 2985 LLC's
19 Opening Claim Construction Brief in Civil Action
20 Number 1:23-cv-00407-CNS-SBP, right?

21 A. Yes.

1 Q. And that is the Colorado case involving
2 the '708 Patent in which you gave a deposition
3 earlier this year?

4 A. The '808 Patent?

5 Q. Sorry, the '808 Patent.

6 A. I believe it is. I don't -- I don't have
7 that Case Number in front of me, but I'll take your
8 word for it.

9 Q. And when you were writing paragraph 79
10 and referring to Exhibit 1015, you were referring
11 to Mountain Voyage's proposed construction, right?

12 A. Yes.

13 Q. Is it your understanding that the
14 Colorado case has rejected that as the appropriate
15 construction?

16 A. I -- I don't recall what the ruling was,
17 as I said earlier.

18 Q. Is it still your opinion as you sit here
19 today that even if the construction you articulate
20 in paragraph 79 is the correct one, each of the
21 prior art combinations discloses the claimed

1 recess?

2 A. Yes. I -- I -- also, if we look at the
3 rest of section B here, paragraph 82, in the
4 alternative, I applied an ordinary and customary
5 meaning to the term recess.

6 Q. Yes, I understand. I just want to make
7 sure that this opinion is still the same -- is
8 still an opinion that would apply if that
9 construction is adopted?

10 A. If the Colorado Court's or if
11 the -- which construction are you referring to?

12 Q. If the one you quoted in paragraph 79 is
13 the one that governs the PTAB's proceedings, this
14 is still your conclusion that the claims are
15 obvious, right?

16 A. Yes. Again, I've used both constructions
17 I think in my analysis, as I talk about in this
18 section B, so ...

19 Q. And I think you said this, but as you sit
20 here, you don't know one way or another whether the
21 Colorado course has -- Court has rejected the

1 Mountain Voyage proposed construction?

2 A. Yeah, I don't recall specifically recall
3 what their ruling was.

4 Q. Did you read your -- any of your District
5 Court expert reports in preparation for today's
6 deposition?

7 A. No.

8 Q. Okay. You mentioned paragraph 82 a
9 second ago. Let's look at that.

10 A. Okay. I'm there.

11 Q. You say in paragraph 82, In the
12 alternative, I have also applied an ordinary and
13 customary meaning to the term "recess," in which a
14 "recess" is a surface groove or depression, right?

15 A. Correct.

16 Q. Then you drop a footnote there to Exhibit
17 1016, right?

18 A. Yes.

19 Q. I'll get Exhibit 1016.

20 All right. I have handed you a document
21 marked as 1016. It is two pages. Do you see that?

1 A. Yes.

2 Q. And I guess one thing that's not clear
3 from this document is what dictionary are we
4 looking at here, do you know?

5 A. Well, it should be -- if we look at the
6 list of cites, it should tell us.

7 Q. Okay. It's on page 6 of your
8 Declaration.

9 A. So McGraw-Hill Scientific
10 Dictionary. Dictionary of Scientific and Technical
11 Terms to be exact, yes.

12 Q. Right. That is the 6th Edition dated
13 20- -- 2003, right?

14 A. Yes.

15 Q. Is this a dictionary that you have in
16 your personal possession?

17 A. I believe this is -- yeah, I believe this
18 is mine.

19 Q. And just because I don't know the book
20 all that well, what -- is there any kind of
21 particular focus? Is it a mechanical engineering

1 dictionary? Is it an electrical engineering?

2 What's the nature of that book?

3 A. It's a -- as it says, it's a fairly
4 broad -- it's quite thick, if I'm thinking of the
5 correct one, of -- I mean, this is page 1759 and
6 we're only into the -- into the Rs here, but it's a
7 term of broad scientific terms.

8 Q. Take a look, if you will, at page 1 of
9 Exhibit 1016 --

10 A. 1016.

11 Q. -- which is the dictionary?

12 A. Okay. Yes.

13 Q. Do you see a little bit above the
14 word -- where the word Recess is circled, do you
15 see the phrase, receiving station as an example?

16 A. I'm sorry, receiving?

17 Q. Halfway down that second column.

18 A. Yes.

19 Q. In the brackets after that, it says MECH
20 ENG, E-N-G?

21 A. Yes.

1 Q. Is that mechanical engineering?

2 A. Yes, I think that is what that means.

3 Q. And then a couple of entries below that,
4 it says Receiving Tube and then in brackets it says
5 ELECTR, right?

6 A. Right.

7 Q. Is that electrical engineering?

8 A. Electrical engineering or electronics,
9 yes.

10 Q. A few down from that, do you see the word
11 Reception defined?

12 A. Um-hum.

13 Q. And it says COMMUN?

14 A. Yes.

15 Q. What -- do you know what that would be?

16 A. Communications.

17 Q. And then so is it fair to say that this
18 dictionary provides context for the definitions it
19 lists out where appropriate?

20 A. Yeah, it does seem to do that
21 where -- where it's -- where it's appropriate.

1 Q. Now, the word recess, which is the one
2 that you quote in footnote 2 on page 35 of the
3 Declaration, that has two different sets of
4 brackets in it, right?

5 A. Oh, yes, it does.

6 Q. So the first one says ENG, which I think
7 we said is engineering, right?

8 A. I believe that's true.

9 Q. And then the second one is GEOL. Any
10 idea what that is?

11 A. I think that's geology.

12 Q. I assume it's not super relevant to look
13 at the geology definition of recess for this case
14 in your mind?

15 A. No. I think that the first definition is
16 the appropriate one.

17 Q. And is there anything about the
18 definition of recess which is, A surface groove or
19 depression that imparts some specific shape to a
20 recess?

21 A. Not necessarily, no.

1 Q. And this is, again, maybe a
2 pedantic-lawyer question, but in paragraph 82,
3 you -- you quote that surface groove or depression
4 language in the second line, do you see that?

5 A. Yes.

6 Q. And then in the next sentence, you say,
7 In my opinion, a person of skill in the art at the
8 critical date would have construed "recess," as
9 used in the challenged claims to mean a surface
10 groove in accordance with the intrinsic record and
11 further review of the extrinsic record, right?

12 A. Yes, I think you read that correctly.

13 Q. I actually think I -- I said the letter,
14 the words the acronym POSITA, but otherwise --

15 A. Yes.

16 Q. Did you intentionally omit the word
17 depression where you said to mean a surface groove
18 in the sentence in the bottom line of paragraph 82?

19 A. Not -- not intentionally.

20 Q. Okay.

21 A. It's -- it's an or in the definition.

1 Q. Right.

2 A. So either would suffice.

3 Q. I just wanted to make sure that you
4 weren't trying to say in that sentence that the
5 intrinsic record somehow compels just surface
6 groove, but not depression. You're not saying
7 that, right?

8 A. No.

9 Q. So in the alternative claim construction
10 analysis you did of the phrase recess, you looked
11 for things that were a surface groove or depression
12 to decide whether a recess was met in the claims,
13 right?

14 A. To decide if the prior art demonstrated
15 something that would match the claims, --

16 Q. Yes.

17 A. -- correct.

18 Q. Let's look at paragraph 85, if you would.
19 It should be the next page.

20 A. Yes.

21 Q. And here we're in a section about the

1 word, the claimed word hook, right?

2 A. Yes.

3 Q. You say that you understand the
4 Petitioner has posited that the term "hook," as
5 used in the challenged claims, should be construed
6 as "a device that abruptly changes directions from
7 a trunk section to define a ledge for catching or
8 holding." Right?

9 A. Yes, that's what I say.

10 Q. And you, again, cite to Exhibit 1015,
11 which was the Opening Claim Construction Brief from
12 Mountain Voyage, correct?

13 A. Yes.

14 Q. Do you have an understanding as to
15 whether or not the Colorado Court adopted that
16 construction?

17 A. As I said earlier, I don't -- I don't
18 recall what their ruling was specifically.

19 Q. In paragraph 88, you have another
20 alternative approach. You say, In the alternative,
21 I have also applied an ordinary and customary

1 meaning to the term hook in which a hook is a
2 curved or bent device for catching or holding,
3 right?

4 A. Yes.

5 Q. You cited to Exhibit 1017 for that. I'll
6 get Exhibit 1017.

7 MR. WEED: I'll hand you 1017.

8 (Document tendered.)

9 THE WITNESS: Yes.

10 BY MR. BUSCH:

11 Q. And, again, like with 1016, there's no
12 cover page. Could you just tell me, for the
13 record, what dictionary 1017 comes from?

14 A. 1017 is the Merriam-Webster Dictionary,
15 2016 Edition.

16 Q. And is it fair to say to say that that
17 book is not a technical dictionary?

18 A. Yeah. I think it's a general dictionary.

19 Q. In the part that you circled, the
20 first -- there's a No. 1 and a colon, do you see
21 that?

1 A. Yes.

2 Q. And that's the one that you have in the
3 footnote which says, A curved or bent device for
4 catching, holding or pulling, right?

5 A. That's correct.

6 Q. Is there any reason why that was a more
7 appropriate definition for use here than No. 2
8 which says, Something curved or bent like a hook?

9 A. Well, because No. 2 uses the word in the
10 definition, so it doesn't really define it.

11 Q. But this is from the Merriam-Webster
12 Dictionary, right?

13 A. But if we're trying to define something
14 without using the word that we're trying to define
15 in the definition, it's best -- it's best practices
16 is to use other -- anything other than the word
17 that you're trying to define.

18 Q. And you mentioned on the last definition
19 the use of the word or.

20 In the definition from Exhibit 1017, the
21 use of the word or happens twice, right?

1 A. Yes. So that happens talking about the
2 physical nature of it, and then the second part is
3 its function.

4 Q. And so, in your opinion, if a curved
5 device was for catching or a curved device was for
6 holding or a bent device was for catching or a bent
7 device were for holding, those would each be
8 examples of a hook, right?

9 A. Yes, according to this discussion.

10 Q. According to the permutations?

11 A. Yes.

12 Q. Yes.

13 A. But it doesn't mean that catching and
14 pulling are equated either. It's -- it's --

15 Q. Catching or holding, right?

16 A. Correct.

17 Q. Yes.

18 A. Yes. So curved or bent, it could be
19 either one, but then those three functions are
20 distinctly -- are -- are more separate than the
21 manifestation of it.

1 Q. Well, there's two functions, right,
2 catching or holding?

3 A. Or pulling.

4 Q. Oh, okay. That's a good point.

5 So in the footnote, you say catching,
6 holding or pulling. In your definition in
7 paragraph 88, you say just catching or holding?

8 A. Right.

9 Q. Are you excluding pulling from the
10 definition?

11 A. Well, because we're not doing any pulling
12 in this device, I just left it off.

13 Q. All right. Let's look at section D on
14 page 37.

15 A. Okay.

16 Q. Section D, paragraph 90 says that, In the
17 Mosaic Brands case, the parties disputed the phrase
18 undercut, right?

19 A. Yes.

20 Q. And you acknowledge there that the Court
21 gave the word undercut its plain and ordinary

1 meaning in the Mosaic case, right?

2 A. Yes, that's what I cite.

3 Q. In paragraph 91, you set out Mountain
4 Voyage's construction of undercut, which is "a cut
5 away portion of the sidewall of the recess," right?

6 A. Yes. Yes.

7 Q. In that definition, is it your opinion
8 that the phrase cut away portion refers to how a
9 recess is created?

10 A. Not necessarily.

11 Q. And so when I read this, what I'm
12 thinking of is, you know, on the one hand, you
13 could remove material to create a recess, but on
14 the other hand, you could use like a 3D printer and
15 build it up from the ground. You're not saying
16 that it has to be -- the removal of material has to
17 be done to create a recess, right?

18 A. No. It could be molded like that.

19 Q. Okay.

20 A. It could be --

21 Q. Have you ever heard of the phrase product

1 by process claim?

2 A. I'm not familiar with that.

3 Q. In paragraph 94, similar to the last
4 couple of terms, you have an alternative proposal,
5 right?

6 A. Yes.

7 Q. And for this one, you say, In the
8 alternative, that an undercut is "an underside
9 recess that is either cut or molded into an object
10 to at least partially define a lip or
11 protuberance," right?

12 A. Yes.

13 Q. And, again, that comes out of Exhibit
14 1016, so let's take a look at that one again. You
15 still have it?

16 A. I still have it, yes.

17 Q. So you have got a yellow circle around
18 the definition on page 2 of Exhibit 1016, right?

19 A. Yes.

20 Q. And like with the definition of recess,
21 the bracketed phrase before the definition says,

1 ENG, correct?

2 A. Yes, it does.

3 Q. In your interpretation of this
4 definition, what is meant by underside recess?
5 What does the underside word mean?

6 A. The kind of the backside of something,
7 another -- another edge of it.

8 Q. Is underside sort of the other side of
9 the coin from the topside phrase used at the bottom
10 of that -- strike that. The directions.

11 A. Right.

12 Q. Is underside the opposite of topside in
13 the definition?

14 A. I think that's how they mean it, yeah.

15 Q. Okay.

16 A. Again, opposite side.

17 Q. Can you tell me in the context of the
18 '808 Patent where the underside recess and the
19 topside lip are in the figures? I think that's
20 Exhibit 1001, which I gave you in the very, very
21 beginning.

1 A. Sorry. So we're -- it's not an exercise
2 I've done before, so ...

3 Q. Okay. Yeah.

4 A. So, I mean, since we don't have any video
5 record of any of this, right?

6 Q. No. Yeah, that's a good point. So try
7 to describe it, if you can, with pictures and
8 words.

9 A. So the protuberance is -- is 35 --

10 Q. Okay.

11 A. -- that is left, and the recess or cut is
12 34.

13 Q. Okay. So in your interpretation, the
14 underside recess from the definition in Exhibit
15 1016 is the rectangular structure that's numbered
16 34 in Figure 13 of the '808 Patent?

17 A. Yeah, because that's cut or molded into
18 the object and it leaves that 35 lip or
19 protuberance.

20 Q. I guess this is, again, maybe a semantics
21 question, but the word topside is what's throwing

1 me here in the definition.

2 Is it, in your opinion, referring to a
3 topside lip or a topside protuberance or is it a
4 topside lip on the one hand or a protuberance on
5 the other hand?

6 A. I'm sorry, ask that one more time.

7 Q. Do you think the word topside in this
8 definition is modifying both lip and protuberance
9 or is it referring to a topside lip on the one hand
10 or a protuberance on the other hand?

11 A. I think it's referring to a topside lip
12 or a protuberance. I think that's --

13 Q. Okay. And so in your --

14 A. So topside is not modifying lip and
15 protuberance.

16 Q. That was my question.

17 So your view of item 35 is that it is a
18 protuberance and, therefore, would meet the
19 definition of undercut from Exhibit 1016?

20 A. Yes.

21 Q. Okay. Again, as you sit here, is it your

1 understanding that the Colorado Court has found
2 that the word undercut should have its plain and
3 ordinary meaning?

4 MR. BUSCH: Objection. Asked and
5 answered.

6 THE WITNESS: Again, I don't recall what
7 specifically their ruling was on that matter.

8 BY MR. WEED:

9 Q. Let's talk about some of the prior art.
10 If you could pull up Exhibit 1006, please?

11 THE WITNESS: I'm sorry. I'm sorry, I
12 know it's probably early. Can we take a quick
13 break?

14 MR. WEED: Sure.

15 THE WITNESS: I know we're switching
16 subjects.

17 MR. WEED: Sure. Let's do it.

18 (Recess taken -- 10:37 a.m.)

19 (After recess -- 10:44 a.m.)

20 BY MR. WEED:

21 Q. Before the break, we were talking about

1 page 39 of the Declaration. Are you there?

2 A. Yes.

3 Q. And page 39 is the beginning of a section
4 titled Overview of Prior Art References, right?

5 A. Yes.

6 Q. Let's talk about Exhibit 1006, which is
7 the Kane reference. I think you have that in front
8 of you.

9 A. I do.

10 Q. Prior to your work in this case, had you
11 seen a copy of Exhibit 1006 before?

12 A. No.

13 Q. Had you seen the Kickstarter page for
14 Daniel Kane's Ridge Wallet before this case?

15 A. Not prior to my work in this case.

16 Q. Have you ever done a Kickstarter
17 yourself?

18 A. No.

19 Q. Have you ever bought something off of the
20 Kickstarter page?

21 A. Yes.

1 Q. What?

2 A. A watchband.

3 Q. Did you receive that watchband?

4 A. Yes.

5 Q. All right. You understand, I take it,
6 from paragraph 97 that the Daniel Kane referenced
7 in the Kickstarter page, Exhibit 1006, is the same
8 person who invented -- is the inventor of the '808
9 Patent?

10 A. Yes.

11 Q. Is it your opinion that in the
12 Kickstarter -- strike that.

13 Is it your opinion in Kane Exhibit 1006,
14 there is a disclosure of a money clip that can be
15 removed from the plate to which it is mounted?

16 A. So I know I talk about this in the
17 Discussions of Grounds.

18 Q. Well, here, let me do it like this: If
19 would you go to paragraph 102, which is on page
20 42, --

21 A. Okay. Yes.

1 Q. -- the last sentence of that paragraph
2 says, Kane depicts the money clips as attached to
3 the outer faceplates and/or interior plates, right?

4 A. Yes, that's what that says.

5 Q. And then if you look at the top of the
6 next page, there is a picture of the two described
7 money clips from Kane, right?

8 A. That's right.

9 Q. Which of those two clips is the example
10 of the one attached to the outer faceplate?

11 A. I believe it's the one on the left.

12 Q. Okay.

13 A. Yeah.

14 Q. And do you have an understanding as to
15 how the money clip on the left is attached to the
16 outer faceplate?

17 A. I have to go back through. I -- I know
18 I've talked about this later in the -- in my
19 detailed grounds and combination of elements, so I
20 don't want to misquote myself.

21 Q. Yeah. I just want to know how you

1 understand Kane -- if you have to look there, we
2 can, but I'm just asking about in the Kane
3 reference, how is that left-hand money clip
4 attached to the outer faceplate?

5 A. I'm going to look at --
6 (Whereupon, there was a pause for
7 document examination.)

8 THE WITNESS: Can you --

9 BY MR. WEED:

10 Q. Yeah.

11 A. -- ask me the question again?

12 Q. Yeah, exactly.

13 So, are you -- what are you looking at
14 now? Are you on page 43 of your Declaration?

15 A. I am at 71.

16 Q. Okay. Well, yeah. So maybe look at page
17 43 for the question and you can look at 71.

18 A. Okay.

19 Q. And my question was, in the left-hand
20 picture on the top part of page 43 of the
21 Declaration, how is the money clip mounted to the

1 outer plate of the wallet?

2 A. I don't think we're told how it is, and
3 they're both -- they're both auxiliary remotes.
4 They're both spring-mounted clips that are separate
5 from that outer plate. They're mounted somehow.
6 It's not disclosed, I don't think, explicitly.

7 Q. Okay. Let's -- I'm sorry.

8 A. And if it is, I wrote about it,
9 but ...

10 Q. I don't think it is. I just -- would you
11 agree with me that the one on the left, at least,
12 is a separate piece that is somehow attached
13 to --

14 A. Yes. That's -- that's the one that's
15 more obviously quite separate. It has a torsion
16 spring in it and a post and -- and a clip.

17 Q. And for the money clip on the right-hand
18 picture on the top of page 43, do you agree with me
19 that that is formed from the same piece of metal as
20 the outer plate?

21 A. Maybe. I -- I -- I can't ascertain that,

1 because the outer plate can also be carbon fiber
2 and other stuff that they talk about. So I don't
3 think we can say that, but for sure, the one on the
4 left, you know, you can see it on this picture on
5 page 4 of the Kane reference. That is, it is a
6 distinctly separate element there.

7 Q. Right. If you look at page 6 of the Kane
8 reference, which is I think where you pulled the
9 picture on page 43 from --

10 A. Yes.

11 Q. -- under the draw -- under the
12 photographs it says, On the aluminum options with
13 money clips, the clip and back plate will be a
14 chrome spring steel to increase durability. The
15 titanium options will have a matching color back
16 plate and clip. Do you see that?

17 A. Yes.

18 Q. Does that help at all with determining
19 that the clip on the right-hand side of that
20 drawing is formed from the same piece of material?

21 A. No. I mean, I can't see. Does it clip

1 in the back? It says that the material of both of
2 those elements is spring steel. It doesn't say
3 they are formed of the same piece, and it could be
4 going into a slot. I just can't see --

5 Q. Okay.

6 A. -- with -- with any clarity.

7 Q. I think your point on carbon fiber is
8 well taken.

9 Can you tell me if there are any
10 disclosures in Kane that a carbon fiber plate has a
11 clip on it at all?

12 A. It has the carbon fiber and titanium
13 money clip and the carbon fiber without the money
14 clip. Those are the only carbon fiber references
15 with pictures.

16 Q. Again, are you referring to the pictures
17 on pages 14 and 15?

18 A. Yes.

19 Q. In the pictures on pages -- on page 15,
20 the top two rows of pictures, if you will --

21 A. Um-hum.

1 Q. -- those are called carbon fiber with
2 titanium traditional money clip and carbon fiber
3 with titanium spring-loaded money clip, right?

4 A. That's right.

5 Q. But do you agree with me that the carbon
6 fiber is not on the plate with the money clip?

7 A. Yes. On the -- on the side showing the
8 carbon fiber, the money clip is -- is not on that
9 side where there's carbon fiber.

10 Q. So there's no disclosure in Kane of a
11 money clip mounted to the same side of a carbon
12 fiber plate of a wallet, is that fair?

13 A. Let's see. Well, I don't see it in those
14 pictures. Also, it doesn't say that it's not
15 available. I mean, it says optional carbon fiber
16 faceplates and designed additional money clip with
17 internal spring.

18 And then on page 6, it says, The Ridge is
19 available in two different types of money clips,
20 with or without a clip, and then right above that,
21 it shows the carbon fiber option for the titanium.

1 So I can't tell how that spring clip on the right
2 of page 43 is mounted.

3 Q. But you agree with me that there's no
4 picture, at least, of a wallet where the carbon
5 fiber side of the wallet has a money clip on it,
6 correct?

7 A. Yeah. I don't see a picture of the
8 carbon-fiber side of the wallet having a money
9 clip. It doesn't say you can't do it. It just
10 doesn't depict it.

11 Q. Right. Okay. Back on page 42 of your
12 Declaration, paragraph 102, we were looking before
13 at the last sentence of that paragraph, which says,
14 Kane depicts the money clips as attached to the
15 outer faceplates and/or interior plates. Do you
16 see that?

17 A. Yes.

18 Q. Where does Kane disclose money clips
19 attached to the interior plates?

20 A. Well, the -- the -- again, the clip on
21 the right may be attached to the interior plates,

1 and the one on the left, the attachment method,
2 there's got to be something on the inside.

3 Q. Well, when you use the phrase interior
4 plate, aren't you talking about the plate that has
5 a channel in it to accommodate the elastic?

6 A. The channeling means?

7 Q. Yeah.

8 A. Yeah, I think that's what I mean there.

9 Q. So, for example, if you go back to page
10 40 of your report, the interior plates in your
11 terminology are those silver-colored plates that
12 have the grooves, the T-shaped grooves in them,
13 right?

14 A. That's what it calls them at -- in the
15 middle of that paragraph. The track runs along two
16 hollow interior plates.

17 Q. Right. Right. And so let's go back to
18 what you said about the picture on the left on page
19 43. Given that there is an elastic strap under the
20 topmost plate in that picture, isn't it true that
21 the mounting mechanism can't go through to the

1 interior plate?

2 A. Most likely not, but, again,
3 there's -- it's not disclosed clearly enough to say
4 either way, so ...

5 Q. Is there any disclosure clearly enough to
6 say for sure that the money clip in any iteration
7 of the wallet in the Kane reference is attached to
8 the interior plates?

9 A. And you asked is it clearly enough to
10 discern either way? Is that what you said?

11 Q. Yeah. Well, your last answer you had
12 said, it's not disclosed clear enough to say either
13 way.

14 A. Right.

15 Q. So I'm looking for a disclosure clear
16 enough to say for sure that a money clip is
17 attached to an interior plate.

18 (Whereupon, there was a pause for
19 document examination.)

20 THE WITNESS: No, I don't think there's
21 one clear enough.

1 BY MR. WEED:

2 Q. Let's look at paragraph 104 on page 43 of
3 the Declaration. Are you there?

4 A. Yes.

5 Q. You say here, Moreover, Kane
6 discloses -- strike that. I read it wrong.

7 Moreover, Kane describes various modular
8 features of the compact wallet to promote
9 personalization, minimalist preferences, and/or
10 maintenance/repair operations, right?

11 A. Yes.

12 Q. Is there a disclosure in Kane that the
13 money clip can be separated from the outer plate to
14 which it is attached?

15 A. I think the disclosure in Kane on page 4
16 is the faceplate is interchangeable, so you can
17 swap money clips that way. It still remains
18 attached to the exterior, but it is a -- it is a
19 customizable feature to have or not have a money
20 clip.

21 Q. And in the instance where someone doesn't

1 want to have a money clip, they would have to get a
2 different faceplate with no money clip, right?

3 A. I believe that's true according to this
4 Kane disclosure.

5 Q. All right. Let's talk about Beckley a
6 little bit and then we'll come back and do the
7 combination of Kane and Beckley. So you can pull
8 out, if you would, Exhibit 1007.

9 A. I'll put this all back together.
10 Beckley, okay, I have Exhibit 1007 in
11 front of me.

12 Q. Great. And this is a reference where the
13 applicant is Daniel Vern Beckley, correct?

14 A. Yes.

15 Q. Do you know if this reference is owned by
16 a corporation of any kind, by chance?

17 A. I don't know.

18 Q. Have you ever seen a product that you
19 believe embodies the ideas described in Beckley?

20 A. I don't recall seeing anything. I
21 haven't looked either, so ...

1 Q. I assume you don't know Mr. Beckley?

2 A. I do not.

3 Q. In paragraph 106 -- and, you know, use
4 the reference as much as you want to as well, but
5 I'm going to ask about your Declaration.

6 A. Okay.

7 Q. So in paragraph 106 of your Declaration
8 on page 44, --

9 A. I came right to it, yes.

10 Q. -- the last sentence says, The container
11 portion 1 and base portion 2 are slidably
12 connectable via a set of rail features, right?

13 A. Yes.

14 Q. Sorry, rail feature 8. I left out the
15 number, right?

16 A. Yes.

17 Q. Is container portion 1 of Beckley a rigid
18 device?

19 A. I'd have to read Beckley. I think he
20 describes it a couple different ways.

21 Q. Could you confirm for me that the only

1 way that portion 1, and while you're at it, portion
2 2 are described are as rigid devices?

3 A. Okay. It's small print.

4 Q. I know.

5 (Whereupon, there was a pause for
6 document examination.)

7 THE WITNESS: So in Beckley page 12 of
8 the exhibit, paragraph 40, at the bottom it says,
9 Preferably the wallet is formed of semi-rigid
10 material allowing the base 2 to flex when coupling
11 the container 1 to the base 2.

12 BY MR. WEED:

13 Q. And it goes on then to say, In this way,
14 the stop 9 is coupled to a corresponding
15 indentation or meeting edge when inserting the
16 container 1 into base 2, right?

17 A. Yes, that's what it says.

18 Q. So is that referring to --

19 A. And that's -- that's just one instance I
20 found. I wanted to read it before I forgot where
21 it is, but --

1 Q. Yeah, yeah. Let's explore that for a
2 second.

3 So is that talking about -- if we look at
4 Figure 1 of Beckley, we see that item 9 is a bump
5 of some kind. What would you call that, a boss?

6 A. What do they call it? A stop.

7 Q. Okay.

8 A. Okay.

9 Q. So is that -- what you pointed me to, is
10 that referring to the fact that as the stop 9 gets
11 close to the left-most end of item 2, the wall of
12 item 2 can expand outwards slightly to then engage
13 stop 9 to prevent it from falling out?

14 A. So there's a better picture of how that
15 works.

16 Q. Okay.

17 A. It's Figure 3A. There's a top view
18 showing --

19 Q. Yes.

20 A. So there's no expansion at all. It just
21 slides in a track, and it runs into -- I don't know

1 what they number, but you can see 9 on item 1, and
2 it interferes with a -- a wall of the base 2 to
3 stop its outward motion.

4 Q. Right. And if -- if -- in Figure 3A if a
5 user were to continue to push item 1 downward in
6 that picture, stop 9 would then cause item 2 to
7 expand outwardly until it got almost to the end,
8 right?

9 A. Maybe. It depends on the geometry, the
10 coefficient of friction and the rigidity of the
11 materials being used.

12 Q. We know that -- we know that Figure 3B is
13 the end position, right?

14 A. Figure 3B is the -- is the assembled,
15 call it, position, the closed position. Let's
16 called it closed.

17 Q. Sure. Right. And to get from the
18 position in Figure 3A to the figure in 3B, stop 9
19 would be pushed downwards and would cause some
20 expansion of the base to accommodate that?

21 A. No. I think there's a track that it fits

1 right into. I don't think there's any expansion.

2 Q. Oh, okay.

3 A. I think it's in -- I think it's 12.

4 Q. Page 12?

5 A. No, no. Item 12 is the groove that
6 receives 9 all of the way down. You can kind of
7 see it in -- in Figure 3A, that there's
8 a -- because that's a bit of a prospective view.
9 I'll see if there's a better picture of it,
10 but ...

11 Q. Let me try it -- let me ask this
12 question: Is it your understanding of Beckley that
13 Figure 3A is the open position? In other words, in
14 a normal use case, a user wouldn't be pulling item
15 1 all of the way off of item 2?

16 A. Right. That's one way they describe it,
17 and that's why I think those stops are there, so
18 you can get the card off of the bottom of the -- of
19 one. You can --

20 Q. Okay. But at least the first time that
21 item 1 is installed into item 2, the material of

1 item 2 has to be flexible enough to expand for stop
2 9 to get to where it is in Figure 3A?

3 A. I -- I don't recall the assembly method
4 for that.

5 Q. Well, how about like this: Do you see
6 item 10 in Figure 3A?

7 A. Yes.

8 Q. When the device is in the closed
9 position, the item 10 nests into that item 16,
10 right?

11 A. Yes. That's kind of a click stop.

12 Q. And so the material, the base 2 has to at
13 least be flexible enough to allow the flexing
14 to -- to receive 10 when it's being closed and to
15 release 10 when it's being opened?

16 A. Right. So it's not the material that's
17 flexible. It's the geometry that's flexible
18 because it could be made of glass, and I could make
19 it flexible enough to do that. So it's --
20 flexibility is a function of geometry, not
21 necessarily material.

1 Q. Yes. But if it were -- if the material
2 were completely inflexible, you couldn't -- you
3 wouldn't be able to push item 1 down into item 2,
4 right?

5 A. Well, again, just to be pedantic, no
6 material is inflexible, and, again, we can make
7 very flexible things out of glass, okay. So it's a
8 geometry of the material is what dictates
9 flexibility.

10 Q. If we looked very closely at the material
11 right around -- of base 2 right around the end of
12 the line coming out of the 16, --

13 A. Yes.

14 Q. -- we would see the material expand
15 outwardly slightly as item 10 passed by, right?

16 A. I think that's a fair assessment --

17 Q. Okay.

18 A. -- of how that mechanism works, yeah.

19 Q. Okay. Got it. Is there any disclosure
20 in Beckley that the -- let me ask that question in
21 a second.

1 Would you look at Figure 5A, please?

2 A. Okay. I have 5A.

3 Q. Yeah. So let's figure out how we're
4 going to talk about this picture.

5 So this is a cross-section of an
6 embodiment of Beckley, right?

7 A. Yes, of one embodiment.

8 Q. And the -- there's a clip shown on the
9 bottom of the cross-section without -- without a
10 number arrow, correct?

11 A. Yes. I know the piece you're talking
12 about, --

13 Q. Yes.

14 A. -- is the -- the --

15 Q. And it's a little hard because they don't
16 give us all of the numbers we want, but --

17 A. Correct.

18 Q. -- do you see the horizontal line that
19 would be the outer surface of item 2 on the -- just
20 above the clip, but on the bottom part of the, you
21 know, actual holder portion of Beckley?

1 A. So what is 2 again? Sorry, 2 is the
2 base?

3 Q. Yes.

4 A. Okay. And -- okay. So I see a couple of
5 horizontal lines that I know belong to the base.

6 Q. I actually can maybe do this a little bit
7 easier if we look at Figure 5D.

8 A. 5D.

9 Q. That takes the clip out of the picture.

10 A. Okay.

11 Q. The top of Figure 5D and the bottom of
12 Figure 5D each have a horizontal line defining
13 those top and bottom, right?

14 A. The -- the -- there is a horizontal line
15 at the very top of 5D, and there's a horizontal
16 line at the very bottom of 5D; yes.

17 Q. In any embodiment of Beckley, does the
18 dimension between that horizontal line at the top
19 and the horizontal line at the bottom get larger or
20 smaller depending on how many cards are in the
21 device of Beckley?

1 A. I don't think so. Not within practical
2 consideration.

3 Q. In other words if I had one card or six
4 cards inside of the holder of Beckley, the outer
5 dimension from -- of thickness dimension would stay
6 the same, right?

7 A. Right. The -- the largest vertical
8 dimension in 5D, I would not expect that to change
9 appreciably. It will change a little bit because
10 it is going to push -- it might push the --

11 Q. Sure.

12 A. -- up in the limits of the track,
13 but -- or bulge a little bit.

14 Q. Right. Okay. But Beckley's design is
15 such that the clip 4 in Figure 5A and Figure 5B
16 pushes whatever cards are in the device upward
17 against item 1 to maintain them inside the device;
18 is that right?

19 A. Yeah, that's my understanding of how it
20 works.

21 Q. So there would be, more or less, empty

1 space inside of Beckley depending on how many
2 cards, but the external dimensions from top to
3 bottom are essentially the same, right?

4 A. I think that's fair to say, yeah.

5 Q. Okay.

6 A. Figure 5A shows one card and the spring
7 in its most-extended position or nearly-most
8 extended.

9 Q. Right. Now, another question I have, and
10 I honestly don't know the answer to this, is how do
11 you get cards out of the Beckley device? Can you
12 explain to me how that works?

13 A. My understanding is there's at least
14 three ways.

15 Q. Okay.

16 A. One way is Figure 5A, the top card. If
17 you look at the detail where it's circled with 18,
18 there's a little lip there that if you go to push
19 card 6 out to the right, it's going to hit that
20 little lip that's circled and it won't let it come
21 out, so you have to push it down and then push it

1 out.

2 Q. So if we look at, for example, Figure 6A,
3 I think we can see it there. In the Beckley
4 device, there is no material separating card 6 from
5 the outside world other than around the very edges,
6 is that true?

7 A. So the -- my understanding is that -- and
8 he's got a few embodiments of how to do this, --

9 Q. Yes.

10 A. -- but item 1 has a slot along its -- in
11 this Figure 6A in its right-most edge, which I
12 think might be denoted by 18, that that card 6 can
13 pass in and out of.

14 Q. And the user's finger can touch the
15 actual card 6. There's no window or plastic?

16 A. I don't believe there's -- yeah, I think
17 you can push on that card directly.

18 Q. And if you look at Figure 6B, that's an
19 example where there are more than one card
20 installed, right, or inserted?

21 A. Yes.

1 Q. So as we look at Figure 6B, if I wanted
2 to get the bottom card out of Beckley without
3 opening the whole device up, I'd have to push each
4 card on top of it out until the bottom one came
5 out, right?

6 A. Right. And that's why he has the other
7 way to do it, is you open the device halfway up and
8 then you can push the card out through the opening
9 between the halves.

10 Q. Does he show that in the picture?

11 A. Well, he shows --

12 Q. Or maybe you can explain it to me with a
13 picture.

14 A. Yeah, let me -- like 4B.

15 Q. Yes.

16 A. They're showing that driver's
17 license/credit card there, that's accessible on the
18 bottom now. Where it says Robert Schuman, --

19 Q. Right.

20 A. -- that card is now accessible by pushing
21 down through the top.

1 Q. In Beckley, is there any way to -- does
2 he disclose loading credit cards, or cards, in
3 through that slot 18?

4 A. I think so. I think he talks about in or
5 out, but I know, you know, just looking at it, you
6 could definitely load it through that and just push
7 the next one down a little bit and make room for
8 it. I don't know if he discloses that or not, but
9 you can -- a person of skill in the art would
10 understand it.

11 Q. Okay.

12 A. I can -- I can look for it if -- if
13 that's helpful.

14 Q. No, that's okay. I think I understand.
15 I'm with you.

16 A. Okay.

17 THE WITNESS: Are we at a good stopping
18 for a quick break?

19 MR. WEED: Yeah, sure.

20 THE WITNESS: All right. Thank you.

21 (Recess taken -- 11:23 a.m.)

1 (After recess -- 11:27 a.m.)

2 BY MR. WEED:

3 Q. Let's talk about the clip 3 of Beckley.
4 If you would go to page 47 of your report, please.

5 A. Okay. Yes. I'm on 47.

6 Q. Is it your opinion -- well, strike that.
7 You describe item 15 as a depression,
8 right?

9 A. I think that's the terminology Beckley
10 uses.

11 Q. Yes.

12 A. I'm just carrying that over.

13 Q. So even though it doesn't look super
14 visible, is it your understanding that there is a
15 surface where the line for 15 points to that is
16 lower than the surface where the line for No. 2
17 points to in the Beckley device?

18 A. Yes, and it's clearer in -- I mean, it's
19 pretty clear in Figure 1, but if we look at Figures
20 6A and 6B and also 5A and 5B, 5A and 5B show it,
21 because you can see the top surface of 2 and then

1 the spring 4 and clip 3 are both recessed and flush
2 with the top of the surface of 2.

3 Q. All right. And then the items which are
4 14, which are called cavities, those are further
5 depressions in the material of item 2, even below
6 the depression for item 15, right?

7 A. Correct.

8 Q. The depression for item 15 will have the
9 same thickness or the same depth as the thickness
10 of the clip 3, right?

11 A. I mean, I think it does in this instance.
12 That's not necessarily so.

13 Q. Would the device still work if the
14 depression was less deep than the clip is thick?

15 A. Let me look at this figure again. Within
16 certain limits, I think it would work if it was not
17 quite as deep as clip 3 was thick and it would work
18 if it was deeper, and because spring 4 appears to
19 be the same width as the clip and no cards
20 would -- would ride on it, but it's -- it's
21 disclosed as the same thickness I think is a -- is

1 a fair statement.

2 Q. Yeah, okay. If you look in Figure 5A or
3 5B, for that matter, and this could just be a
4 drawing anomaly, but do you see that above the top
5 surface of what would be clip 3, even though it's
6 not labeled, there's another rectangle drawn
7 between the top surface of clip 3 and the end of
8 clip 4? Do you see that?

9 A. Yes.

10 Q. Do you know what that is?

11 A. It doesn't jive with Figure 6A and 6B.
12 It may actually be -- well, it just -- I mean, it
13 may actually be the -- oh, you know what that is?
14 That's the bottom of 1. That's the bottom -- the
15 bottom lip of 1, perhaps, but it's strange because
16 it shows spring 4 is on that.

17 Q. Yes.

18 A. But in 6A and 6B, spring 4 is right on
19 clip 3.

20 Q. And in 6A and 6B, spring 4 would ride
21 along with the spring 3 as more and more cards are

1 put in, right?

2 A. Yes, it would always be attached to it,
3 so I don't -- I don't know what that is.

4 Q. And is it your opinion as a person of
5 ordinary skill in the art or opining as a person of
6 ordinary skill in the art that the clip 3 can be
7 removed from Beckley's device simply by pushing it
8 to the left from the outside of the product on, for
9 example, Figure 5A?

10 A. Pushing to the left? Well, he talks
11 about that. Let me just see.

12 (Whereupon, there was a pause for
13 document examination.)

14 THE WITNESS: Okay. So I talk about that
15 exact function in paragraph 159.

16 BY MR. WEED:

17 Q. 159?

18 A. Yes.

19 Q. Okay.

20 A. Page 73.

21 Q. So you're referring to where you say that

1 the clip 3 can be readily accomplished -- sorry,
2 strike that.

3 You're referring to the language where
4 you talk about unseating of barbs 14 -- 13 from the
5 cavities 14?

6 A. Yes.

7 Q. How is that accomplished in Beckley?

8 A. So the last sentence says, For instance,
9 the container 1 can be slid off of base 2 to access
10 and displace the barbs 13, lift them off by hand,
11 because spring 4 is no longer pushing clip 3 into
12 its recess and you can just lift it out.

13 Q. If the cavity 15 or I guess -- strike
14 that.

15 Depression -- so if depression 15 is in
16 the item 2, describe for me how that displacing of
17 the barbs 13 happens.

18 A. So clip 3 is slid over item 2 and fitted
19 into 15 and pushed all of the way back such that
20 the barbs 13 engaged into the cavities 14, --

21 Q. Right.

1 A. -- and it will hold itself there, because
2 it's -- it's squeezing itself against item 2 from
3 both sides. Further, it's -- item 4 is pushing down
4 on it on the -- pushing it into -- I want to use
5 the right words here --

6 Q. Yes.

7 A. -- into 15. Sorry, the term escapes me.
8 So in order --

9 Q. Depression?

10 A. I'm sorry?

11 Q. Depression?

12 A. Depression, yes. So what I say is the
13 container -- slide container 1 off of base 2, that
14 will release the pressure of spring 4 and then you
15 can push up on the rounded edge of clip 3, which
16 will rotate it and -- and lift it up, and then the
17 leading edges of the barbs, or hooks, should be
18 free of the cavities 14 and you can remove it.

19 Q. Right. But if the -- if the clip 3 is
20 inside of depression 15, how do you get under the
21 rounded edge to lift it up?

1 A. So there's a couple of ways to do that.
2 Again -- and this is hard on -- with words only,
3 but if we look at -- let's refer to, say,
4 Figure -- call it Figure 5A and pretend that the
5 top piece 1 is not there.

6 Q. Okay.

7 A. The far left end of clip 3, do you see
8 the rounded curve there and it's -- it comes quite
9 aways away from the bottom of the base 2? Without
10 4 or 1 in place, you can push up on the bottom of
11 that clip 3 such that that bottom edge is then
12 parallel with the bottom of base 2, which will
13 raise the interior portion of clip 3 out of
14 the -- out of 15, and then -- that may be high
15 enough to get those barbs out of 14 or you can
16 simply then get your fingers under it and pull it
17 out.

18 Q. And so you say in paragraph 159 that
19 that's -- that sentence is preceded with, For
20 instance. Is that the only way to remove the clip
21 3?

1 A. No. I mean, I think you could probably
2 get a little screwdriver or something under the
3 rounded end of it depending how tight the clearance
4 is between the two.

5 If the -- if the depression -- I've got
6 to come up with the right name of it. What's it
7 called? What's 15 again?

8 Q. Depression.

9 A. Depression 15 is, say, not the full
10 thickness of 3, then you have an edge and you could
11 pry that up with a razor blade or screwdriver and
12 you can get it out that way as well.

13 You may be able to -- depending on the
14 geometry and what those barbs look like on the
15 right-hand end, you might be able to push it
16 further to the right such that it comes out of that
17 seat and then you can slide it to the side or
18 something, but that's just -- you know, there's
19 more than one way to do it I'm certain.

20 Q. Is it your opinion that if the device is
21 in the state it is shown in Figure 5A, you cannot

1 push the clip 3 outward to the left to remove it?

2 A. It depends.

3 Q. On what?

4 A. The geometry of the barbs and hooks
5 and -- and the cavities undercuts that precede
6 them.

7 Q. Do you think that it's reasonable to
8 assume that in the pictures of Beckley, the
9 relative dimensions are approximately accurate?

10 A. I -- the relative dimensions are
11 approximately accurate?

12 Q. Yes. So let ask -- let me try it like
13 this: So if you look at Figure 5A of Beckley, 23
14 is a card like a credit card, right?

15 A. Yes, I think that's what they call it.

16 Q. And you would agree with me that item 3
17 is either slightly less thick or maybe about as
18 thick as item 23?

19 A. Roughly. I mean, we're not going to
20 scale patent figures, of course, but ...

21 Q. Right. But in the picture, that is

1 approximately what is at least shown, whether
2 that's --

3 A. I mean, I'm going to say that it's -- 3
4 is a little bit thinner than 23.

5 Q. And is it fair to assume, reading Beckley
6 as a person of ordinary skill in the art and
7 understanding that clip 3 is made out of bent sheet
8 metal, that the clip contemplated is equal to or
9 slightly less thick than a -- than a credit card?

10 A. I think a person of skill in the art
11 reading this would know that depending on the
12 modulus of elasticity of the material chosen, be it
13 spring steel, stainless steel, titanium, carbon
14 fiber spring, the thickness would need to be
15 appropriate for the holding force desired and that
16 is a function of the geometry and the modulus of
17 elasticity of the material.

18 So Beckley, I think, describes that as
19 steel, and we've all, I think, had dealings with
20 garage door openers with clips. And so is that to
21 scale-ish? I mean, it seems -- it doesn't seem

1 unreasonably drawn, let me put it that way.

2 Q. Well, part of Beckley's disclosure is a
3 device that can hold credit cards and be slid into
4 the pocket of a person, right?

5 A. Um-hum.

6 Q. So there are some constraints on the size
7 based on the use case for the device, true?

8 A. Yes. I mean, I think this
9 is -- specifically, the overall outline of the
10 device is going to fit credit cards as described,
11 because that's the principal use case that he talks
12 about.

13 Q. In Figure 5A, we can't see a
14 cross-section of the barb portion, do you agree?

15 A. Right, because this is a section right
16 through the middle, and they don't show any hidden
17 lines.

18 Q. Do you have any opinion about how deep
19 the -- either the barb portion or the cavities 14
20 would be relative to the thickness of item -- what
21 would be item 2 in Figure 5A?

1 A. The only thing I would surmise from
2 Figure, I guess it would be Figure 1 based
3 on -- we're really treading on thin ice here with
4 scaling patent drawings, but I would estimate that
5 the depth of 14 is about the same or, you know,
6 if -- if Figure 5A -- I just can't remember what 15
7 is called.

8 Q. Depression.

9 A. Depression 15, I would say item 14 is at
10 least that much further into base 2.

11 Q. Okay.

12 A. But, you know, it's -- it's a designer's
13 choice of how much -- how you deform 13 to form
14 those barbs and what kind of holding power you --
15 you want this to have.

16 Q. Sure. Okay. In -- well, let's look at
17 page 61 of the Declaration, please. And, again, to
18 orient ourselves, I think we're in the Kane-Beckley
19 combination.

20 A. Okay. Okay. I'm at 61.

21 Q. In -- this element, element C, you're

1 talking about the encircling elastic band, correct?

2 A. Yes, that's that limitation of Claim 1.

3 Q. And the second sentence of paragraph 138
4 says, Additionally, Kane discloses the encircling
5 elastic band as being interposed with the two
6 interior plate-outer faceplate pairs, along the
7 longitudinal extent thereof, right?

8 A. Yes.

9 Q. And if we go to the next limitation,
10 which is about a channeling means, it starts on
11 page 66.

12 A. Okay.

13 Q. You rely on what you call an integrated
14 elastic track in the interplate of Kane as the
15 claim channeling means, correct?

16 A. That's what I point to, yeah.

17 Q. Yeah. And that, again, is on the inner
18 plate of each of the two combined plates of Kane,
19 correct?

20 A. Yes. I believe that -- yes, I think that
21 is the inner plates, interior plates.

1 Q. So in a combination between Kane and
2 Beckley, is it your opinion that a person of skill
3 would have used a clip like 3 from Beckley and
4 cavities like 14 from Beckley on the outer plate of
5 Kane?

6 A. Let me read exactly what I wrote --

7 Q. Sure.

8 A. -- because I'm sure I talked about this.

9 Q. Sure.

10 (Whereupon, there was a pause for
11 document examination.)

12 THE WITNESS: All right. So I,
13 obviously, spent a lot of time talking about the
14 application of Beckley's clip into Kane --

15 BY MR. WEED:

16 Q. Yes. Yeah, and --

17 A. -- and through all of the limitations of
18 the tang, the hook.

19 Q. Right. So let me ask a better question
20 than the one I asked before.

21 The claims require there to be a recess,

1 right?

2 A. I believe that's the -- in some of the
3 claims.

4 Q. I think they all do. We can
5 talk -- let's talk about -- we can talk about Claim
6 1.

7 A. Okay.

8 Q. If you look on page 77 of your
9 Declaration, for example, that subheading F is the
10 called, the auxiliary feature having a tang
11 insertable into a recess formed inside the at least
12 two rigid plates, right?

13 A. Yes.

14 Q. And you agree with me that the claims
15 don't specify where in the at least two rigid
16 plates the recess must be formed, right?

17 A. That limitation there does not explicitly
18 say. It just says it's -- it limits it to
19 the -- inside the two rigid plates.

20 Q. Right.

21 A. So when you say the claims, I assume

1 you're meaning all asserted claims.

2 Q. Yes, that's right. We can -- we can talk
3 about Claim 1.

4 So in Claim 1, it requires at least two
5 rigid plates interposed to sandwich card-like
6 contents there between, right?

7 A. I'm sorry, yes.

8 Q. And I think it's fair to say that in each
9 ground of alleged invalidity in your Declaration,
10 you rely on Kane as disclosing those at least two
11 rigid plates, right?

12 A. I think that's a fair assumption.

13 Q. And in Kane, each of the at least two
14 rigid plates is made up of an outer plate and an
15 interior plate, correct?

16 A. Yes.

17 Q. Claim 1 requires a recess formed inside
18 the at least two rigid plates, correct?

19 A. Let me just find that limitation. So it
20 says there's a recess formed inside the at least
21 two rigid plates, yes.

1 Q. Right. Again, in the context of Kane as
2 a reference, each of the rigid plates is made up of
3 two laminae?

4 A. Laminae, yes.

5 Q. In the combination of Kane and Beckley,
6 which of the laminae of the rigid plate of Kane has
7 the claimed recess?

8 A. Sorry, can you say that one more time?

9 Q. Yeah. In the combination of Kane and
10 Beckley, --

11 A. Right.

12 Q. -- which of the laminae of Kane has the
13 claimed recess?

14 A. Well, I can give an example, which is not
15 limiting, but in paragraph 173, For example, I say,
16 a POSITA would be motivated to form a depression,
17 recess, like that disclosed in Beckley, in an
18 interior plate of the interior plate outer plate
19 faceplate pair.

20 Q. Why do you say that when in Beckley,
21 the -- why do you say that when in Beckley, the

1 cavities are on item 2 which defines the outer-most
2 structure of that product?

3 A. Well, again, my paragraph 173 is just an
4 exemplar, and that's one way it could be done.

5 Q. In Beckley, you agree with me that the
6 barbs extend toward the bent part of the clip,
7 right?

8 A. Yes, in -- in Beckley.

9 Q. So if -- if the clip of Beckley were
10 inserted into one of the laminae pair of Kane, the
11 barbs would extend toward the bent part of the clip
12 of Beckley, right?

13 A. Well, if you just took the clip verbatim
14 out of Beckley, which is -- you could do that, it
15 would extend toward the bent part of the -- of clip
16 3, right.

17 Q. In order to form recesses in an interior
18 plate, as you say in paragraph 173, would you have
19 to change the direction of the barbs of Beckley?

20 A. Not necessarily. It could be on the
21 interior side of the interior plate.

1 Q. If your were going to do that, how would
2 you have the clip avoid the -- the elastic of Kane?

3 A. You could -- it could be on the outside
4 of the elastic. It could have a slot in the
5 elastic. You could -- there's a couple of ways you
6 could do that.

7 Q. So when you wrote what you wrote in
8 paragraph 173, what were you envisioning the
9 product looked like? How did you envision the
10 barbs in Beckley extending into the interior plate
11 of Kane?

12 A. Where is -- so, again, there are many
13 ways we could do this, but you could have a --
14 let's see. Look at Figure 8, for example.

15 Q. Of which reference?

16 A. Oh, sorry. It's the '808, Exhibit 1001.

17 Q. All right.

18 A. Again, it's not my understanding that
19 this level of explicitness was required to
20 demonstrate, you know, obviousness, but you are
21 asking, so I'm answering.

1 Q. Yes.

2 A. For instance, Figure 8 is the inner plate
3 of the -- of a laminae, of a pair, right.

4 Q. Yes.

5 A. And on that, the left-hand edge where it
6 says 22, we could put a -- the clip could be at a
7 90-degree angle to that long edge and you could put
8 the recess into the surface where the 22 is, --

9 Q. Right.

10 A. -- and the barbs could face into, towards
11 the money in this picture and the clip would be on
12 the outside of 11.

13 Q. So you're -- so in what you're
14 describing, would the barbs still point toward the
15 money as well?

16 A. Right. Yes. The barbs would be like
17 oriented in -- let me back up and make sure I'm
18 answering the right question.

19 Q. Yes.

20 A. You're basically asking how can we take
21 the clip as it is in Beckley, with the barbs

1 oriented as in Beckley and apply that to Kane on an
2 interplate?

3 Q. Yeah. Well, I'm asking because you wrote
4 that the recesses would be on the interior plate.

5 A. Right.

6 Q. And so in your mind when you wrote that,
7 did you envision the barbs of Beckley looking the
8 way they do in Beckley or are they in some
9 different direction relative to the money clip?

10 A. They could be either way. So in -- if we
11 go back to the Figure 8 of the '808 Patent and if I
12 put a recess in that edge that's that thicker area
13 that's got the label of 22 on it, I could have the
14 barbs pointing toward the money and the clip
15 pointing to the outside and I would have the recess
16 and the -- the undercuts facing in that thicker
17 portion of 22. This -- this is hard to do with
18 words, mind you, but --

19 Q. Yes.

20 A. So I would have a money clip that's
21 perpendicular to the long edge of interplate 20.

1 Q. Oh, I see. So you're saying the money
2 clip would be oriented 90 degrees from what it's
3 oriented in both Kane and in Beckley?

4 A. Sure.

5 Q. Okay.

6 A. You could have it either way.

7 Q. All right. I think I understand more
8 now. And then in that scenario -- I see -- I see.

9 A. So that's just one way to do it, but we
10 could also, you know, take the exact clip of
11 Beckley and put it on the exterior plate of the
12 plate pair and put the -- the groove and the -- and
13 the -- I'm not using the right words here.

14 Q. The recess?

15 A. The recess and the undercuts on the outer
16 plate.

17 Q. And that would still line up with what
18 the claims say?

19 A. I believe it would, yes.

20 Q. Okay. Got it. And if you did that, you
21 could then orient it, the money clip, along the

1 long direction the same way that Beckley and Kane
2 both have it, right?

3 A. That's correct.

4 Q. Got it.

5 A. And there's other ways to do it. You
6 know, we could make an offset clip so that we do it
7 the long way on 22, but the -- the tang is not
8 centered on the clip, it's offset to the side, and
9 still not interfere with the elastic.

10 Q. Okay.

11 A. You can make the elastic narrower than is
12 shown, for instance. There's lots of ways to do
13 it. This is just an exemplar.

14 Q. Yes. Sort of along these lines, if you'd
15 go to page 84 of your Declaration page.

16 A. Okay.

17 Q. And for some context, this is a
18 limitation that says the hook extending at an angle
19 to the tang, right?

20 A. Okay.

21 Q. You agree?

1 A. Yes.

2 Q. I just want to confirm that the angle,
3 the direction of the angle of extension doesn't
4 matter. In other words, it could be perpendicular
5 to the flat part of the tang or longitudinally
6 outward from the flat part of the tang, right?

7 A. That's a very broad limitation, so ...

8 Q. But, obviously, in the patent, the '808
9 Patent itself, the -- the hooks extend outwardly
10 from the tang, correct?

11 A. Well --

12 Q. Inwardly, I guess?

13 A. Well, nobody can see what you just did
14 with your hands, but in the '808 Patent, the Figure
15 12 I think shows best what we're -- what you're
16 asking me.

17 Q. Right. And there, the angle of the hook
18 to the tang is toward the center line of the
19 product and not perpendicular to the product,
20 right?

21 A. Well, it's on the, call it the thin edge.

1 So 36 turns, say, 90 degrees from 33, if you -- I
2 mean, it's -- it's hard to get this limitation
3 wrong because any angle is -- zero degrees is an
4 angle, so ...

5 Q. Right. But I'm just saying that
6 in -- you would agree with me that in Figure 12, 36
7 extends 90 degrees from 33 in the same plain as 33,
8 right?

9 A. If we're talking thin sheet metal parts
10 and we're calling the -- the plain is the flattest,
11 the part of 33 where the most surface area is the
12 plain of 33?

13 Q. Yeah.

14 A. Then 36 extends at an angle to that from,
15 but it's off of the short edge of 33.

16 Q. Right.

17 A. But you also get an angle -- I mean, I
18 don't think anybody would say that 36 does not
19 extend at an angle to 33. There's so many ways you
20 could read it.

21 Q. Right. Obviously, in your picture on

1 page 84 of your Declaration, the angle at which the
2 hook extends to the tang can also be normal to the
3 plain of the tang, right?

4 A. The largest surface area plain of the
5 tang, yes.

6 Q. Okay. Got it.

7 A. Yeah, that's --

8 THE WITNESS: Are we at a good stopping
9 point again? I'm sorry.

10 MR. WEED: Yes.

11 (Recess taken -- 12:06 p.m.)

12 (After recess -- 12:50 p.m.)

13 BY MR. WEED:

14 Q. Let's look back at your Declaration and
15 go to page 86, please, still talking about Beckley.

16 A. Okay. I'm on 86.

17 Q. And on page 86, there's a heading that
18 says, The hook engaging in undercut of the recess
19 to prevent inadvertent dislodgment of the auxiliary
20 feature from the recess, right?

21 A. That's right.

1 Q. Paragraph 192 says, A POSITA reading
2 Beckley would have understood one or more of the
3 cavities 14 to constitute the claimed "undercut,"
4 right?

5 A. That's what it says, yes.

6 Q. Which part of the cavity is the undercut
7 opinion?

8 A. So at least -- let's see. Where's
9 Beckley? It's the -- and I talk about this in 192,
10 paragraph 192.

11 Q. Yes.

12 A. The -- I mean, it's the part -- Beckley
13 figures are lacking in -- for the detail we're
14 looking for here, but the -- the part that the barb
15 engages would be the undercut of the recess.

16 Q. If you could keep your finger on that
17 page and go back to page 38 as well of the
18 Declaration --

19 A. Okay.

20 Q. -- which is part of the claim
21 construction for undercut.

1 A. Okay. Thirty-eight, okay.

2 Q. Yes. So the end of paragraph 91, which
3 showed up -- shows up on page 38, I think contains
4 the Petitioner's proposed construction from the
5 Colorado case which is a cut away portion of the
6 sidewall of the recess, right?

7 A. Yes.

8 Q. And so I think if we look at paragraph
9 192, that first, For example -- with the sentence
10 starts out with, For example, explains why you
11 think the cavities 14 is a cut away portion of the
12 sidewall of the recess, right?

13 A. Yeah. That's what I'm explaining there,
14 yes.

15 Q. And then is it true that the next
16 sentence that starts out, Additionally, is the one
17 that explains why you think the dictionary
18 definition of undercut that you have on page 38 is
19 met?

20 A. Let's see. I think that's -- that sounds
21 like what I'm doing there, yes.

1 Q. It's a little bit confusing. Maybe you
2 can clarify it for me, because the word recess
3 shows up a couple of different ways.

4 A. Yes.

5 Q. It shows up once in the definition of the
6 dictionary and then it shows up to reflect the
7 claim term recess, right?

8 A. That's right.

9 Q. So is it fair to say that the cavities 14
10 satisfies both the claimed recess element and the
11 claimed undercut element?

12 A. It -- so, right. So cavities 14 is
13 the -- the recess, and then the wall of it is the
14 undercut.

15 Q. Is it the wall of the cavity that resists
16 longitudinal removal of the clip that's the
17 undercut?

18 A. The -- yeah, the barb, that the barb
19 hooks on to.

20 Q. Okay. Got it.

21 A. I say that in 193.

1 Q. Yes. Yes.

2 A. Okay.

3 Q. I'm going to flip really quick and we can
4 move on to Pelz.

5 Sorry, I said that, but one quick thing.
6 If you'd go to page 105 of your Declaration,
7 please.

8 A. Okay. I'm at 105.

9 Q. This is about Claim 5 which is -- which
10 recites the second laminae attached to the first
11 laminae by pressure sensitive adhesive means,
12 right?

13 A. Yes.

14 Q. In paragraph 237, you don't cite to any
15 actual prior art reference for pressure sensitive
16 adhesive, correct?

17 A. No. It's just so well known in the art
18 that I didn't think an external reference would be
19 even necessary for that.

20 Q. And as you sit here today, you can't
21 recall any of the actual printed publication prior

1 art references that you rely on disclosing pressure
2 sensitive adhesive; is that right?

3 A. I feel like it was in Kane.

4 (Whereupon, there was a pause for
5 document examination.)

6 THE WITNESS: Maybe not, but it's very
7 well known. We put airplanes together with
8 pressure sensitive adhesive, and it's a well-known
9 fastening method.

10 BY MR. WEED:

11 Q. You can set Beckley aside, and let's pull
12 out Pelz, which is 1008.

13 A. Yes.

14 Q. And if you could pop to page 48 of your
15 Declaration.

16 A. Page? I'm sorry, which page?

17 Q. Forty-eight.

18 A. Forty-eight. Okay. I'm at 48, and I
19 have Pelz, which is 1008.

20 Q. In paragraph 111, you say, Pelz addresses
21 problems associated with clips attached to compact

1 devices worn on one's person (e.g., hearing aid
2 microphone) right?

3 A. Yes.

4 Q. Does the clip in Pelz -- well, strike
5 that.

6 Is the clip in Pelz ever described as
7 holding on to paper currency or some other thin
8 sheet of material?

9 A. No, but as I say later in -- somewhere in
10 my Declaration, a person of skill in the art would
11 understand that a -- a clip for clothing could also
12 very easily hold money as well.

13 Q. But Pelz doesn't describe that that is a
14 use for its clip, right?

15 A. I don't believe so.

16 Q. Do you see on the front page of Pelz, the
17 top-left corner there's Figure 1 there?

18 A. Yes.

19 Q. And in Figure 1, and in a number of the
20 other figures, there's an item -- there are a pair
21 of items 4, do you see that?

1 A. Yes.

2 Q. What are those for in the context of
3 Pelz?

4 A. Those are called contact buttons, I
5 believe.

6 Q. And what do they do?

7 A. Let me -- this one is even smaller and
8 blurry.

9 Q. And blurry, yeah.

10 A. Yeah, called contact buttons.

11 Does anybody have a business card handy
12 that I can use? This text is making my eyes --

13 Q. Can you use the edge of a folder?

14 A. Yes. Thank you.

15 (Whereupon, there was a pause for
16 document examination.)

17 THE WITNESS: Just as they're contact
18 points and they're for engaging the clothing.

19 BY MR. WEED:

20 Q. So if you look at page 2 of Pelz -- well,
21 it's the patent numbered page 2 to it, it's exhibit

1 page 3, --

2 A. Yes.

3 Q. -- on the left-hand column at line 66, it
4 says, Due to the use of a leaf spring in the
5 two-point contact of the clip, the clip can't -- it
6 looks like a typo -- can't sufficiently to
7 compensate for unequal thickness of clothing and
8 thus always grip the clothing at two laterally
9 spaced points, right?

10 A. Yes. I think it's a typo that says
11 can't. It should be can.

12 Q. Yeah. Is it fair that in Pelz, the use
13 of the contact points on the clip are to
14 accommodate for the fact that you might have
15 clothing that's unequally thick?

16 A. I'm not sure that's why he did it, but
17 that is a result. He says that is a benefit of
18 having the two contact points that are spread
19 apart.

20 Q. Did you see anything else in Pelz about
21 why the contact points are used?

1 A. No. Just it says to grip the clothing,
2 so -- although it might be in the claims. I -- I
3 admittedly did not read the claims.

4 Q. All right. Looking, again, at -- well, I
5 guess whatever figure of Pelz you want,
6 what -- what item in Pelz is the spring?

7 A. The spring, I mean, he has different
8 embodiments, so ...

9 Q. I guess, okay. That's fair.
10 What item in Pelz is the spring that
11 permits the clip to be opened and closed?

12 A. It's -- in Figure 2, I think it's 7.
13 It's the U-shaped leaf spring.

14 Q. Maybe item 22 from Figure 8?

15 A. No. That's the -- it's in -- I guess
16 that would be potentially the bottom part of it,
17 but it's in Figure 2, and it's the -- it's a little
18 U-shaped spring. I don't think they put a number
19 on it. Maybe 7 is the closest thing. It's -- it's
20 in the middle of the gap of that section view.

21 Q. Yeah, I think I see it. You can sort of

1 see it in Figure 3 as well.

2 A. Yeah, it's dotted lines in 3.

3 Q. Yes.

4 A. So that shows it in the compressed
5 position, and it's in its extended position in
6 Figure 2.

7 Q. Okay.

8 A. It's also -- in Figure 4, there's a
9 bottom view of it, and it's -- maybe it's 10 in
10 that view.

11 Q. Well, 10 -- if you look at Figure 5, 10
12 is the part that --

13 A. Oh, right, is the --

14 Q. I think I understand.

15 A. Okay.

16 Q. I know what you're talking about.

17 So if we look at Figures 5, 6, 7 and
18 8, --

19 A. Yes.

20 Q. -- what you see in those figures is just
21 a small part of what we see in Figure 4, right?

1 A. Correct, and it's -- again, it's a
2 couple -- it's two different embodiments, and I
3 believe it's the upper end of Figure 4 sectioned
4 and turned the other way.

5 Q. Right. Okay. In any of Figures 5, 6, 7
6 or 8, is there anything that protrudes from --
7 well, strike that.

8 In the illustrations in Figures 5, 6, 7,
9 and 8, is anything in those pictures that you call
10 the hook a part of the metal clip?

11 A. So I have this in my Declaration. Let's
12 go to that.

13 Q. The Pelz part starts on 186, page 186.

14 A. Thank you. So if we look at pages 200
15 and 201 --

16 Q. Okay.

17 A. -- it's my discussion on the hook in
18 Pelz.

19 Q. All right. So if we look at 201, there's
20 an annotated version of Figure 8, right?

21 A. Yes.

1 Q. And you're pointing to a curved surface
2 on what you call the case-engaging arm/tang, right?

3 A. Yes.

4 Q. And there are actually two of those in
5 Figure 8 and you call them both an example of the
6 hook, right?

7 A. Correct.

8 Q. Why do you believe that that hook extends
9 at an angle to the tang?

10 A. Well, if we choose the top or bottom edge
11 of the tang -- and I should have a -- for that
12 limitation on page 204, I have a diagram for that
13 also.

14 Q. Yes.

15 A. Relative to the horizontal in this figure
16 edge of the tang, the hook is at an angle to that
17 and it's curved, so it's at many angles. But it's
18 at least an angle.

19 Q. And in your opinion, the -- so are you
20 saying that each of the points along that rounded
21 surface that you draw in a red semicircle on page

1 204, each point along there is at an angle to what
2 would be the surface of the tang if that curvature
3 wasn't there?

4 A. So, again, a point can't be at an angle
5 because it's a point, but a tangent to that angle,
6 which is the effective surface of that point in
7 contact with a -- a round piece, would be at an
8 angle to that edge of the -- of the tang.

9 Q. I think I understand the point about the
10 angle.

11 A. Okay.

12 Q. Is it fair to say with that analysis that
13 if we drew your HT data drawing at various points
14 along what you're calling the hook, it would change
15 direction of the arrows?

16 A. Yes, to the tangent of that curve.

17 Q. I got it. Why do you believe that the
18 thing you call the hook ends at an angle to the
19 tang?

20 A. Well, if -- if -- from its beginning to
21 its end, it extends, and the beginning is at one

1 angle and the end of it is at another angle.

2 Again, I considered this limitation to be
3 very broad. It doesn't specify any plain of
4 reference for either component. It doesn't say
5 from the base of the tang or the -- you know, it's
6 a very broad limitation, so ...

7 Q. I understand. So I guess I'm struggling
8 with what you understand the word extending to
9 mean.

10 Are you saying if something spans some
11 distance, that it extends?

12 A. It extends away from. It extends at an
13 angle to.

14 So if we consider, say, in this picture
15 the -- in Figure 8 on page 204, say, the -- for
16 example, the horizontal top edge of the tang, which
17 is kind of close to the H theta T, the curve line
18 at the beginning of that and the end of it extend
19 at an angle -- extends away from and at angle to
20 that line. So in my opinion, that's extending at
21 an angle to the tang.

1 Q. Okay.

2 A. I mean, we can pick other surfaces on the
3 tang that it extends at an angle to also, but
4 that's a convenient one, and more easily explained,
5 without diagrams since we're on the written record
6 here.

7 Q. You've charted or you've annotated here
8 Figure 8 of Pelz. Is that the only embodiment, in
9 your opinion, that has hooks that extend at an
10 angle to a tang?

11 A. In Pelz?

12 Q. Yes.

13 A. No. I think the 5, 6, 7 also show that.
14 It's just in a -- it's a design choice. This is
15 the preferred embodiment of a -- of a design
16 choice. Instead of going inward, it's outward. So
17 in 8, the hook is on the outside, and in, call it,
18 5, 6, and 7, the hooks are to the inside.

19 Q. In 5, 6, and 7, I assume you would say
20 the hooks are the round surfaces near where the
21 arrow 16 is?

1 A. Yes.

2 Q. Is there, in your opinion, one tang or
3 two tangs in the Figure 8 embodiment?

4 A. Just a single tang.

5 Q. Let's talk about the other piece of that,
6 which is the undercut and the recess.

7 First of all, in your opinion, what is it
8 that Pelz discloses is the claimed recess?

9 A. Oh, gosh. You know, I'm -- I -- as soon
10 as you said that -- so I've got the -- the hook and
11 recess that we just talked about backwards.

12 The hook is the -- gosh, I should read my
13 own words first, right. Because the red is at
14 the -- is at the junction of the two, it was hard
15 to differentiate them.

16 Q. So --

17 A. Let me -- let me read this again because
18 I don't want to -- the tang -- okay. So the tang
19 has the hooks, right? No, okay. We were right the
20 first time. I'm sorry. Sorry about that.

21 Q. So let's -- I want to make sure we're

1 clear. If we look at page 204 --

2 A. Yes.

3 Q. -- what is -- does item 23 make up the
4 hook?

5 A. No. No. The hook is on the tang.

6 Q. Okay.

7 A. Sorry.

8 Q. And in the context of Figure 8, what
9 is -- what is the recess?

10 A. So I talk about that on page 197 --

11 Q. Okay.

12 A. -- and point that out in the figure in
13 the middle of 197.

14 Q. So the depression 19 is the recess,
15 right?

16 A. I believe that's what I say, right. Yes,
17 correct.

18 Q. And, obviously, 19 isn't a number used in
19 Figure 8, but it's essentially the rectangular area
20 around the metal part shown in Figure 8, right?

21 A. Right, and they show it in all of the

1 other figures, but ...

2 Q. Yes. So the recess, in your opinion, is
3 the area 19?

4 A. Yeah, which the tang goes into.

5 Q. And what is the undercut of the recess?

6 A. Okay. So then --

7 (Whereupon, there was a pause for
8 document examination.)

9 THE WITNESS: So that limitation is
10 discussed on page 207 starting at 521, and on page
11 208, there's a figure, and it's that -- that side
12 of that pin.

13 BY MR. WEED:

14 Q. Is the pin the thing that's pointed to by
15 line 23?

16 A. Um-hum.

17 Q. Yes?

18 A. Yes.

19 Q. Yes. And is that -- in your opinion, is
20 that item 23 a separate physical structure than the
21 body of the case or is it something formed in the

1 body of the case?

2 A. Pelz contemplated it both ways, and it
3 could be either way. It's a design choice. He
4 said, you know, it could be molded or it could be a
5 separate pin.

6 Q. If it was a separate pin, does that
7 change your opinion about whether it's an undercut
8 of the recess?

9 A. No.

10 Q. Why not?

11 A. Because it's still the same -- the same
12 piece in the same place performing the same
13 function, so the different material, how it's
14 formed is not relevant to its function and how it
15 would be read by a person of skill in the art.

16 Q. If you go back -- you can keep your
17 finger on that page. If you go back to page
18 38, --

19 A. Okay. I'm at 38.

20 Q. -- and in footnote 4 again -- we talked
21 about this before -- but you cite to a dictionary

1 for a definition of undercut, which says, underside
2 recess either cut or molded into an object so as to
3 leave a topside lip or protuberance, right?

4 A. Um-hum.

5 Q. Yes?

6 A. Yes.

7 Q. What in the context of Pelz item 23 is an
8 underside recess?

9 A. Well, it's that -- the -- the void
10 between -- I talk about this, too.

11 (Whereupon, there was a pause for
12 document examination.)

13 THE WITNESS: So the -- the recess is 19,
14 right.

15 BY MR. WEED:

16 Q. Yes.

17 A. And then what was your question?

18 Q. Again, it gets a little bit tricky
19 because the definition of undercut uses the word
20 underside recess.

21 A. Okay.

1 Q. I understand that 19 is the claimed
2 recess in your view, but --

3 A. That's right. Okay.

4 Q. -- what is the underside recess that's
5 required by the definition of undercut?

6 A. So it's the -- let me find where I talk
7 about this, because there was no part of any claim
8 that I ignored, so ...

9 Q. Maybe the bottom of paragraph 523.

10 A. That's what I'm thinking it is.

11 (Whereupon, there was a pause for
12 document examination.)

13 THE WITNESS: It's the pins 23 that I
14 say, that are the -- the underside recess to form
15 the lip or protuberance.

16 BY MR. WEED:

17 Q. Yes, right. In that last sentence on
18 page 207, you say, A POSITA would understand
19 that -- that when the case 1 is in an upright
20 orientation, e.g., as depicted in Figure 1 of Pelz,
21 the pins 23 define an underside recess that is cut

1 or molded into the case 1 to define a lip or
2 protuberance.

3 So I think we used the word define here
4 twice. What part of the device is the underside
5 recess defined by the pins 23?

6 A. The -- in page 208, the figure on 208,
7 I've highlighted that edge of the pin.

8 Q. It's the edge of the pin is what you're
9 trying to highlight there?

10 A. Yes.

11 Q. Not the edge of the -- of the tang?

12 A. No. The tang we talked about is the
13 hook, and that was in the discussion a few minutes
14 ago.

15 Q. Okay.

16 A. But they meet each other, so
17 they're -- it's a little tricky in this Figure, but
18 this one, I have brought the red line around all of
19 the way to the surface to make it a little
20 different looking than when we're talking about the
21 hook.

1 Q. Right. Is the intention here to say that
2 the undercut is just the part of the pin that
3 resists a leftward pulling of the tang?

4 A. It's at least that. So I think -- I
5 think that's the part we care about that engages
6 the hook, so ...

7 Q. Okay. All right. In a combination with
8 Kane, is it your opinion that the clip of Pelz
9 would be mounted on the outside of the outer plate
10 of Kane like it is in Pelz?

11 A. I forget what I said. Let's see.
12 (Whereupon, there was a pause for
13 document examination.)

14 THE WITNESS: So in 503 --

15 BY MR. WEED:

16 Q. Paragraph 503?

17 A. Yes.

18 Q. Okay. Let me get there real quick.
19 Okay.

20 A. The first sentence, I say, a POSITA would
21 have been motivated to form a depression recess

1 like that disclosed by Pelz inside one or more of
2 the interior plate, outer plate, outer faceplate
3 pairs (rigid plates) to effectuate the removable
4 attachment of a clip like that disclosed by Pelz.

5 Q. Right. And I guess my question is
6 if -- in that scenario, which of the two plates of
7 Kane, which of the two laminae of Kane would item
8 23 be a part of?

9 A. So in paragraph 504, I get a little more
10 specific.

11 So I say, For example, to form the
12 depression in the interior plate of an interior
13 outer plate faceplate pair to effectuate the
14 removable attachment of the clip, auxiliary
15 feature, to the compact wallet.

16 Q. And, again, if you were going to
17 do -- when you wrote that sentence about forming
18 the depression in the interior plate of Kane, did
19 you envision that the depression would be across
20 the short dimension of the wallet and the
21 depression would be formed in the part of item 22

1 from the '808 Patent you showed me before?

2 A. That is one way you could do it, and you
3 could also do it 90 degrees to that with an offset
4 piece, and you could also do it in the interior
5 surface of the exterior plate.

6 Q. Okay. Given the nature of Pelz' device,
7 do you believe that a person of ordinary skill in
8 the art would have thought about having the clip
9 mounted inside of the device in some way, like what
10 we saw with Beckley?

11 MR. BUSCH: Objection. Form.

12 THE WITNESS: I'm afraid I don't
13 understand the question when you say given the
14 nature. What do you mean by given the nature?

15 BY MR. WEED:

16 Q. Well, I mean, I'm looking at Pelz and it
17 doesn't look like the device opens up. Would you
18 agree with me?

19 A. He doesn't -- he certainly doesn't talk
20 about it opening up.

21 Q. There are screw -- there are four screws

1 visible in Figure 1, right?

2 A. Yes, I see those 4 screws.

3 Q. It's an electronics device of some kind,
4 right?

5 A. They -- they do describe it as at least a
6 hearing aid.

7 Q. Right. So do you think a person of skill
8 in the art looking at Pelz would have looked at
9 Pelz and said that the clip design is only
10 appropriate on the outside of the device?

11 A. No, and I -- again, I talk about this in
12 my combination of Pelz to Kane.

13 Q. I think what you talk about is taking
14 Pelz' clip and putting it in Kane.

15 I'm saying does a person of skill in the
16 art looking at Pelz have the thought that a clip
17 partly inside the device would be appropriate for
18 the device of Pelz?

19 A. Yeah, I think so. I mean, not for Pelz,
20 for using on another device.

21 Q. Okay.

1 A. This attachment method can be used -- I
2 could use that on the inside of something or the
3 outside. It's not limiting.

4 Q. If Pelz' clip were to be incorporated in
5 between the two laminae of Kane, do you agree with
6 me that the position of the spring on Pelz would
7 have to be flipped?

8 A. So you're asking if you took Pelz' clip
9 exactly as depicted here and used it on Kane? I
10 mean, there's a lot of design choices that would be
11 easily made by a POSITA when transferring this from
12 a -- an exterior to an interior mounting and
13 putting the spring this way or that way is -- is a
14 simple choice.

15 Q. But that's something that would have to
16 be done, right, to make it work?

17 A. Yeah. I don't -- I'm not -- I haven't
18 considered using Pelz' clip as is. We were just
19 talking about the mounting of Pelz' clip and how to
20 use that in a device like Kane to achieve the same
21 results that you get with Pelz, of a clip that is

1 removable, yet keeps the wallet compact when you do
2 this combination.

3 Q. Well, let me ask you a question like
4 this: In Kane's reference, there is no portion of
5 the clip you can push on with your finger to lift
6 the opposite side, right?

7 A. No, I don't think that's true at all. I
8 think the -- where is -- what did I do with Kane?
9 Here it is.

10 I mean, page 7 of Kane, he's pushing on
11 the opposite side and lifts it up.

12 Q. In that embodiment, just like the
13 embodiment in Pelz, there has to be a pivot point
14 somewhere between the push point and the lifting
15 side of the clip, right?

16 A. All clips have pivot points.

17 Q. Right. My point is in that design, just
18 like in Pelz, the pivot point is in between where
19 you push down and the part that comes up?

20 A. Yes. The pivot point is, right, on the
21 other side of the fulcrum.

1 Q. But in the other embodiment of Kane where
2 you can't push down on one side to lift the other,
3 the pivot point is all of the way at the opposite
4 end of the clip, correct?

5 A. It's kind of a virtual pivot point since
6 it's a leaf spring. That's opposite from where you
7 slide the money in.

8 Q. Would you call that, in that embodiment,
9 the one with the -- the nonpush-to-lift clip, is
10 that a pivot -- I'm sorry, is that a fulcrum? Is
11 there a fulcrum in that?

12 A. There is a fulcrum in that.

13 Q. Even though you don't have something to
14 push on the other side of the fulcrum, it can be a
15 fulcrum all the way at one extreme end?

16 A. Yes, where it's -- typically, where it's
17 rigidly mounted is kind of a -- a virtual pivot
18 point, if you will. It's like the anchor, the
19 cantilever point of the spring.

20 Q. Is there a difference from a mechanical
21 engineering perspective in a device where the

1 fulcrum is not at one end or the other, meaning you
2 can push on one end and lift the other, versus a
3 device where the fulcrum is all of the way at one
4 extreme end where you can't push on one end to
5 raise the other? Do you see what I'm saying?

6 A. Yes.

7 Q. Is there a difference in that concept in
8 the mechanical engineering world?

9 A. Yeah. There's no, for instance, seesaw.
10 You can push on both sides, and one sides goes up,
11 one side goes down. If you cut off the one side
12 right at the pivot point and now you just have it,
13 you can only lift to effectuate movement. There's
14 nothing to push on, because the pivot, that far end
15 is right at the pivot. So you can't create what's
16 called a moment about that to rotate it in the
17 opposite direction.

18 Q. You can't create a moment by pushing.
19 You can only create a moment by lifting in that
20 case, right?

21 A. Right, or -- or pushing from underneath

1 or lifting. Yes.

2 Q. Is there a shorthand way to talk about
3 the difference? Because that's exactly the picture
4 I had in my mind.

5 Is there a shorthand way to talk about
6 the difference between the seesaw, where both seats
7 are there and a seesaw where you have chopped it
8 off at the fulcrum?

9 A. I'm trying to think of a -- you know, a
10 shorthand way to say that. Nothing comes to mind.
11 I'm sure there is something in the mechanisms
12 handbook.

13 Q. But you agree with me that in Pelz, the
14 illustrated device is the design approach where you
15 can push on one side of the fulcrum to lift the
16 other side of the fulcrum?

17 A. Yes, or lift the other side of the
18 fulcrum as well. You can do either.

19 Q. Well, you can always lift what side you
20 want to lift, --

21 A. Yes.

1 Q. -- but to lift it by pushing the other
2 side, you have to have something like what's in
3 Pelz, right?

4 A. Correct. And, again, you can just as
5 easily in Pelz put the -- this type of spring on
6 it, and that would be another design choice. It's
7 just as easy to do that.

8 Q. If you made that design choice, Figure 3
9 of Pelz would be irrelevant, right, because there
10 would be nothing to push on?

11 A. That's right. It would look more
12 like -- right. It would just be a regular clip
13 that we're used to for money clips.

14 Q. Got it. In the Pelz reference, is it
15 true that the clip part can be removed from the
16 device simply by pushing the entire clip upward in
17 the orientation of Figure 2?

18 A. I'm going to -- I've never done that. I
19 looked right at the patent and there was the phrase
20 I wanted. It never happens.

21 It says, by merely pushing the clip

1 upwardly, the spring will slide up --

2 THE COURT REPORTER: Hold on.

3 THE WITNESS: I'm sorry. So this is Pelz
4 column 2, line 47 -- 48. By merely pushing the
5 clip upwardly, the spring will slide up the case
6 with the stud entering the narrow end of the slot
7 and with the sides of the notch spreading apart as
8 they slide against the pin until the pin snaps into
9 the recess to hold the clip in place. The clip can
10 be readily removed by pushing it downwardly until
11 it can be pulled over the head of the stud.

12 So that's the assembly and removal
13 process. I believe he also goes on to talk about
14 the, you know, inadvertent -- it has to be
15 deliberate.

16 Q. Right. In the context of Pelz, and you
17 can see I think that best in Figure 5, there's an
18 item that they call 13, which this spec refers to
19 as slots 13?

20 A. Yes.

21 Q. And do I have it right that when the clip

1 is mounted on to the device of Pelz, those slots
2 create a situation where item 12 overhangs part of
3 the clip 10?

4 A. Yes.

5 Q. So it wouldn't -- it's not like Beckley
6 in that you couldn't just lift the clip off of the
7 device in Pelz, right?

8 A. Correct. You have to disengage the -- it
9 shows -- Figures 6 and 7 shows it locked and
10 unlocked.

11 So Figure 6 is the assembly and Figure 7
12 is the -- is the -- Figure 6 is putting it
13 together, and Figure 7 is fully locked and
14 assembled.

15 Q. And -- right. So in -- because of the
16 arrangement of item 12 related to item 10, it's not
17 a lifting-to-release type of action. It's a
18 sliding to release in Pelz, right?

19 A. Yes. You have to get past those
20 shoulders of -- that are formed by 13 in item 12 in
21 order to lift it off, and the -- the snap action

1 method of the hook and the undercut keeps you from
2 sliding it off inadvertently.

3 Q. Got it. Got it. And in your opinion, is
4 that arrangement that meets the Claim 1 requirement
5 for preventing inadvertent dislodgment of the
6 auxiliary feature?

7 A. That's right. You have to deliberately
8 push it to the left in these -- in these figures in
9 order to remove it.

10 Q. All right. You can set Pelz aside.

11 A. Okay.

12 Q. And let's find Matthews.

13 A. I have Matthews here.

14 Q. Matthews is Exhibit 1009?

15 A. Correct.

16 Q. Is Matthews a device that's intended to
17 hold more than one card at a time?

18 A. So the title of the invention is a Card
19 Holder-Reader for Wallet Sized Cards, plural, and
20 it goes on to use that terminology in several
21 places. But -- so it doesn't say you can't, but

1 then the claims say a holder for a single
2 wallet-sized card. So I think you could put more
3 than one in it, but they're not claiming anything
4 more than a single card.

5 Q. If you look at paragraph 4 of Matthews,
6 there's a sentence -- the second sentence starts
7 out, it says, The primary part, do you see that?

8 A. Yes, I do.

9 Q. It says, The primary part of the
10 invention is directed both to types of such cards
11 which can store account balance information on the
12 card, whether magnetically, chip based, i.e. RFID,
13 or using some other technology, as well as the
14 cards which contain an account number whose balance
15 information is stored on an external electronic
16 network, right?

17 A. Yes.

18 Q. Is it fair to summarize that statement of
19 what they call the primary part of the invention as
20 being enabling access to data stored on cards from
21 external devices to the card holder of Matthews?

1 A. I mean, the -- the title of the invention
2 is a Card Holder/Reader, so it does both. It just
3 says that the primary part of the invention is
4 directed to -- to cards, and then it goes on to
5 describe the card.

6 It doesn't say that the primary part of
7 the invention is to get that information off of the
8 cards. It says that it's for that type of card.
9 That's how I read that.

10 Q. Well, but if you look at the prior
11 sentence, it says, The present invention is
12 directed to the general use of all types of
13 standard cash cards, debit cards, credit cards,
14 gift cards and other standard wallet-sized cards
15 for performing monetary transactions, right?

16 A. That's what that says, yes.

17 Q. And I understand that the plural usage of
18 the word cards in the plural form is pervasive in
19 Matthews, but do you agree with me that this is a
20 disclosure related to a holder that holds a card
21 where you can still do a transaction with the card

1 while it's in the holder?

2 A. I believe that is one intent of the
3 invention, for sure, is to hold the card and be
4 able to do some sort of transaction or information
5 gathering from the card.

6 Q. And are there any embodiments or use
7 cases described in Matthews where the intent is to
8 be able to do some sort of transaction with
9 information on multiple different cards in the
10 holder at the same time?

11 A. I mean, I'll say if we look at paragraph
12 9, the primary general objective of this invention
13 is to provide a card holder that stores
14 wallet-sized cards easily in a convenient location
15 and holds them in a manner that prevents rattling
16 when used in locations where vibrations are
17 present, such as within a vehicle. So it's clearly
18 talking about multiple cards.

19 Q. I guess, again, I just struggle with this
20 one because it's, I think, somewhat poorly written.

21 If you look at paragraph 19, it says,

1 Therefore, according to these and other objectives,
2 the invention generally provides a compact
3 convenient device designed primarily for the
4 storage of a wallet-sized card and for
5 reading/writing to said card and remote interfacing
6 with an electronic network in order to process
7 transactions to the account associated with the
8 card while also allowing you to input and explain
9 transaction results.

10 So how do you reconcile something like
11 paragraph 9, where it does talk about multiple
12 cards, with something like paragraph 19 where it
13 talks about one?

14 A. I think Matthews discloses both --

15 Q. And so --

16 A. -- or not limited to.

17 Q. -- would you agree with me that in the
18 context of what paragraph 9 says, Matthews wouldn't
19 be talking about doing transactions on cards in its
20 holder because the reading device would be confused
21 by there being two cards in there?

1 A. Well, you have two reading devices, but
2 you could use one -- one holds it and -- one is
3 just a holder for the card, and the other is the
4 reader of the card.

5 I think it discloses a device that
6 can -- clearly to a person of skill in the art at
7 least holds more than one card. Whether the
8 transaction portion of it would work with that is
9 a -- is a -- something I haven't studied, but ...

10 Q. Do you read paragraph 9 as excluding or
11 omitting the possibility of performing transactions
12 with cards held therein?

13 A. It doesn't discuss it at all, so I -- I
14 don't know. There's no discussion in paragraph 9
15 of the transactions.

16 Q. Right. I know. I'm asking you as an
17 expert in the context of Matthews as a whole, do
18 you read paragraph 9 as a disclosure of a device
19 that could hold multiple cards where transactions
20 with the cards in the device aren't contemplated or
21 do you read it the way you said before, which is a

1 device that could hold multiple cards, but where
2 transactions can occur with at least one of the
3 cards in the device? Do you understand the
4 distinction that I'm making?

5 A. Yes.

6 Q. Okay.

7 A. I don't think -- again, paragraph -- if I
8 read paragraph 9, in -- in the context of it, it's
9 describing maybe an embodiment or an objective of
10 the invention, right. It says an objective,
11 so -- and it's the first thing they talk about, and
12 it makes no mention at that point of, when it's
13 talking about objectives about the card reading,
14 so -- and as far as, you know, to disclose -- we're
15 looking at what does this disclose to a person of
16 skill in the art?

17 Paragraph 9 discloses a holder for
18 multiple cards right there, prima facie, and it's
19 right -- very clearly said right there.

20 Q. What --

21 A. And the embodiment that it shows with the

1 little spring clip inside could clearly hold more
2 than one card.

3 Q. Right. No, I got it. You pointed me
4 before to the title, for example, which say a Card
5 Holder-Reader for Wallet Sized Cards?

6 A. Yes.

7 Q. That talks about multiple cards, but it's
8 also calling it a card holder-reader, right?

9 A. He does go on to talk about the reading
10 ability and spends quite a bit of time on the
11 reading ability as well.

12 Q. So you think a person of ordinary skill
13 in the art reading Matthews would read it as
14 disclosing some embodiments where the reading
15 ability is not a part of the invention?

16 A. I mean, there's nothing -- if you look at
17 Figures 1 and 2, there's no card reader. Three,
18 4 --

19 Q. Right. But --

20 A. -- 5, it doesn't get into the reading
21 part until 6, which is an attachment that goes on

1 top of the case that's described in the first five
2 figures.

3 Q. Well, that's an important distinction I
4 think, because if you look at paragraph 4, what I
5 think it says in paragraph 4 is that the intended
6 use is to hold cards where a wireless reading of
7 the card is possible, do you agree with that?

8 A. I -- I don't know that it's wireless
9 necessarily.

10 Q. Well, I think -- do you agree with me
11 that part of Matthews' is -- invention is that a
12 card, or maybe more than one cards, in the holder
13 of Matthews can be read without removing the card
14 from the holder?

15 A. Yes. I agree that's an aspect of the
16 invention that he discloses.

17 Q. And so do you read paragraph 9 as
18 disclosing embodiments where that aspect is not
19 required of the holder?

20 A. It doesn't talk about any of that, so
21 that's an aspect of describing just the holding

1 function of the device.

2 Q. Why don't we take the statement in the
3 first sentence of the abstract as limiting, which
4 says, The invention provides a case for holding a
5 single card.

6 A. Is -- is that proper to take the abstract
7 as limiting?

8 Q. I'm just asking you as a person of skill
9 in the art reading what, I think, is a confusing
10 disclosure, you know, what you see in the
11 disclosure of Matthews.

12 A. And I've told you that disclosure, be it
13 confusing or not, is telling the world what it's
14 telling them, and a person of skill in the art
15 would glean from that, from at least paragraph 9,
16 that this case can hold multiple cards. And he
17 would look at the construction of it with a
18 flexible spring inside where the cards go and say,
19 Yeah, this can hold more than one card.

20 Q. So you don't -- as a person of ordinary
21 skill in the art, you wouldn't read Richard

1 Matthews' first sentence in the abstract which
2 says, The invention provides a case for holding a
3 single card as a necessary feature of what he
4 invented?

5 A. I wouldn't say that it's limiting because
6 it goes on to say other things. Abstracts often
7 only describe, in my experience, a single
8 embodiment, for example, and other embodiments have
9 other features.

10 Q. Are you --

11 A. We're not looking at the claims here.
12 We're looking at what is it telling the world?
13 What is it giving up to a person of skill in the
14 art who looks at this?

15 Q. Right. You don't think his usage of the
16 phrase, The invention provides a case where only a
17 single card is telling the world he believes his
18 invention is a case for a single card?

19 MR. BUSCH: Objection. Asked and
20 answered.

21 THE WITNESS: Well, I believe it is

1 saying at least that, and then it goes on to say
2 more things.

3 BY MR. WEED:

4 Q. Okay. What materials is the holder of
5 Matthews disclosed as being made from?

6 A. Would you mind if I used a pen or pencil
7 just to mark something so I can come back to it
8 without completely losing my place?

9 Q. Yes.

10 A. Thank you. So one disclosure is
11 paragraph 37.

12 Q. Okay.

13 A. Would you like me to read it into the
14 record?

15 Q. Let me just find it real quick. No, you
16 don't have to read it.

17 A. Okay.

18 Q. So paragraph 37 talks about a number of
19 materials, including some that are metal, right?

20 A. Correct.

21 Q. Do you agree with me that in situations

1 where the Matthews holder permits wireless reading
2 of the card within the holder, it -- the use of
3 metal would not be appropriate?

4 A. Not necessarily.

5 Q. Why do you say that?

6 A. Well, if the -- and this is the part of
7 the patent I haven't studied very much, but
8 the -- the reader part may be in contact with the
9 card, and it's external. It can then transmit the
10 information.

11 Q. If -- if wireless reading of cards in the
12 case is being performed, do you agree with me that
13 the case could not be made out of metal?

14 A. If you were reading the RFID chip of the
15 card directly, I believe that metal would be a very
16 poor choice for the exterior of the -- of the
17 device.

18 Q. Okay. While I'm thinking of it, what
19 else did you want to come back to just so we can
20 get in the record?

21 A. Oh, it just says up at the top, the

1 halves may be press fit, adhesive bonding, welding
2 or any other method. So that was giving me some
3 idea of what materials they were talking about.

4 Q. Okay. Got it.

5 A. I marked it up here if you wanted to see
6 where I did it (indicating).

7 Q. Yes, I don't need to put it on the
8 record. Just what paragraph was that?

9 A. That was 32. It was a long paragraph,
10 but ...

11 Q. Yes.

12 A. On the second column of page 2, probably
13 15 lines down.

14 Q. Oh, yeah. Okay. Got it.

15 MR. WEED: All right. We've been going
16 about another hour. Why don't we take a quick
17 break.

18 THE WITNESS: Okay.

19 (Recess taken -- 1:57 p.m.)

20 (After recess -- 2:04 p.m.)

21 BY MR. WEED:

1 Q. All right. Let's keep talking about
2 Matthews, which is Exhibit 1009.

3 A. Okay.

4 Q. And you can look at Matthews or your
5 report or your Declaration, whatever you want to,
6 but I want to talk about the way the clip of
7 Matthews works.

8 So if you would look at maybe Figure 4 of
9 Matthews?

10 A. Okay. I see it.

11 Q. Now, the figures are okay in some ways
12 and kind of hard to read in others.

13 In Figure 4, does item 24 something that
14 protrudes upward from item 3?

15 A. I think there's a -- a better view of
16 that is Figure 5.

17 Q. Okay.

18 A. Even though I don't think they label item
19 24 there, --

20 Q. Yes.

21 A. -- but you can see it in the section

1 view.

2 Q. So looking at Figure 5, but using the
3 numerals on Figure 4, item 24 protrudes toward the
4 clip and nests inside item 23 when the clip is
5 installed; is that right?

6 A. I think that's a reasonable assertion
7 of that, yes.

8 Q. Would it be fair to call item 24 a bump?

9 A. Yeah, or protrusion or -- what does
10 Matthews call it? Protrusion, yeah.

11 Q. Protrusion?

12 A. Protrusion.

13 Q. Do you have any -- can you tell from
14 Figure 5 what the shape of that protrusion is?

15 A. Not well.

16 Q. Does it look like a bump?

17 A. I mean, I don't know what a -- I couldn't
18 give you a definition of a bump. I mean, it looks
19 like a protrusion of certainly proud of the
20 surface.

21 Q. Even if you can't define the term, is it

1 fair to call item 24 a bump, as an example of a
2 bump?

3 A. I guess there are more confusing things
4 you could call it, so I don't know why we just
5 don't use protrusion per Matthews but ...

6 Q. Well, protrusion could have a number of
7 different shapes, right?

8 A. So could a bump, but ...

9 Q. Well, I guess would you agree with me
10 that the protrusion of Matthews does not have a
11 sudden change of direction from the horizontal to
12 the vertical?

13 A. No. I think it has a -- I think it has a
14 very sudden change.

15 Q. You do?

16 A. Um-hum.

17 Q. Why?

18 A. Because there's a -- if you look at
19 Figure 4, there's a line around it, which indicates
20 an edge, which indicates a change in direction.

21 Q. And then as far as how the clip 6

1 operates in the Matthews reference, can the clip be
2 freely slid in to and out of the plate 3?

3 A. No. It will engage the -- the hole in
4 the clip.

5 Q. I guess freely was a bad word.

6 Is it your understanding that in
7 Matthews, a user could remove and reinstall the
8 clip if he or she so desired?

9 A. He talks about that pretty clearly.

10 Q. In paragraph 41?

11 A. Oh, of Matthews?

12 Q. Yes.

13 A. Yes, that's it.

14 Q. So in paragraph 41, Matthews says, This
15 combination provides sufficient retention force to
16 retain the clip against common loads during normal
17 use, but can be overcome by prying or transverse
18 force, although one which may be applied with a
19 person's hands, to allow the clip to be removed,
20 right?

21 A. Yes.

1 Q. So transverse force in the context of
2 Matthews means a force along the direction of the
3 clip; is that fair?

4 A. Along the long axis of the clip, yes. I
5 think that's well understood.

6 Q. And the amount of that transverse force
7 is determined, in part, by how much force it takes
8 to disengage the protrusion 24 from the hole 23?

9 A. Yeah. I mean, there's several -- again,
10 many variables to that, but the geometry of that.

11 Also, you know, the spring -- since
12 Matthews isn't a track, right, the -- the clip or
13 the -- what did you call it? The clip 6 slides in
14 a track, and once you push that up over the bump,
15 it's now going to engage the track a little more.
16 So there's some additional force there, but it's
17 mostly getting 23 and 24 disengaged.

18 Q. In the combination of Kane with Matthews,
19 is it your opinion that the combination involves
20 incorporating a track of Matthews into Kane?

21 A. So to answer your question, was -- did I

1 contemplate the use of the track, if you will, from
2 Matthews in -- into Kane? You could do it either
3 way. You could do it with or without it.

4 Q. Well, okay. I mean, did you offer
5 opinions that -- is it your opinion that a person
6 of skill in the art would have combined Matthews
7 with Kane either to include the track or to not
8 include the track of Matthews?

9 A. So in paragraph 780, page 273 --

10 Q. Okay.

11 A. -- the recess that received the tang is a
12 groove having a sidewall that is adjacent to the
13 longitudinal extending groove, like Matthews.

14 Q. Right. But does that talk about the part
15 of the Matthews plate that -- that caused it to be
16 a track that overlaps some of the --

17 A. Not -- not necessarily, no.

18 Q. Okay.

19 A. You could do it with or without it.

20 Q. And is it your opinion that whether you
21 do it with or without the track, if you will, the

1 amount of force presented by the Matthews
2 protrusion hole arrangement would be sufficient to
3 meet the preventing inadvertent dislodgment
4 limitation of Claim 1?

5 A. Yes. A person of skill in the art can
6 design it either way with -- with either
7 manifest- -- I'm sorry, a person of skill in the
8 art could design either embodiment to have the same
9 force such that inadvertent dislodgement was not
10 possible.

11 Q. Let's talk quickly -- we'll come back to
12 this in a second, but I want to talk about the
13 internal components of Matthews.

14 If you look at Figure 3 of
15 Matthews, --

16 A. Okay.

17 Q. -- item 2 and item 3 are the two halves
18 of the device, right?

19 A. I think that's correct, yes.

20 Q. And do you agree with me that
21 similar -- that similar to when we talked about

1 Beckley, the thickness of the device does not
2 change whether there are zero cards, one card, or
3 more cards inserted inside of it?

4 A. I think it's -- it will probably expand a
5 little bit, but nothing -- nothing appreciable. So
6 I think that's a fair statement.

7 Q. And in the context of Matthews, it is
8 the -- it is the items 15 that apply a force on
9 whatever cards are inside the device to ensure that
10 they are held still, is that fair?

11 A. Yeah, I think that's fair. 15 are the
12 little leaf springs that hold the cards in place.

13 Q. Let's -- I just want to make sure we get
14 the record clear here.

15 So if you look at the spec of Matthews,
16 it calls -- those things which I called 15,
17 probably erroneously, it calls them integral tabs
18 13, 14. You can see that in paragraph 31, for
19 example?

20 A. Three integral tabs, 13 and 14. So what
21 are they pointing to in that figure then? Oh. 13,

1 13, okay. So we must have been calling out
2 surfaces of the integral tabs or something.

3 Q. Yeah. If you keep reading somewhere
4 around there, I just saw it, paragraph 32, it
5 refers to 15 as the internal faces 15?

6 A. Okay. Yeah.

7 Q. Is it your understanding of Matthews that
8 the item 15 -- well, item 13, 14, 15, whatever you
9 want to call it, is formed of the same material as
10 the plate 3?

11 A. So it says preferably.

12 Q. Sorry, where are you reading?

13 A. So at the very -- early in paragraph 31,
14 about two sentences, three sentences down, it says,
15 Preferably, the back piece 3 includes three
16 integral tabs, 13 and 14, which are part of the
17 back piece 3. However, this design choice is not
18 required as the tabs 13, 14 may be attached to
19 separate parts.

20 Q. Okay.

21 A. So either way.

1 Q. And regardless of how the tabs are
2 attached, whether they're integral or as separate
3 parts, the exterior dimensions of the device don't
4 change appreciably depending on whether cards are
5 inserted or not, is that true?

6 A. I'm going to say that's true, because he
7 says in paragraph 29, In general, the body of the
8 case 1 includes a front piece 2 and a back piece 3
9 joined together at a seam 4, and it doesn't specify
10 that it's flexibly joined or -- or some sort of
11 expandable method there. So --

12 Q. Okay.

13 A. -- I -- I think the intent is that it's a
14 fixed-volume container.

15 Q. And is there any disclosure in Matthews
16 that the clip 6 is designed to hold cash?

17 (Whereupon, there was a pause for
18 document examination.)

19 THE WITNESS: So I don't see it
20 explicitly in that reference, but paragraph
21 1 -- 1034 of my Declaration states that I believe a

1 POSITA would understand that the same clip
2 structure could be used to hold cash or currency
3 bills, as I say.

4 BY MR. WEED:

5 Q. Okay. Let's go to page 276 of the
6 report, please, or of the Declaration.

7 A. 276?

8 Q. Yeah, page 276.

9 A. 276.

10 Q. Yes.

11 A. Okay. Sorry.

12 Q. That is in a section that starts on the
13 prior page about the limitation of tang having a
14 hook.

15 A. Okay.

16 Q. Do you agree with me that the thing you
17 point to as the tang in Matthews does not have a
18 hook as it is illustrated in Matthews?

19 A. That's right. I say it's a design choice
20 to reverse those two features.

21 Q. Yeah. I just -- I read paragraph 788

1 where you start out by saying, To the extent that
2 the protrusion 24 is not found to be of the tang,
3 you agree that protrusion 24 is not of the tang in
4 the parlance of the claims, right?

5 A. Yes. I mean, that's why I say that a
6 person of skill in the art would understand that's
7 a design choice.

8 Q. And is there any reason why it would be
9 superior to have the protrusion be a part of the
10 clip 6 as compared to it being a part of item 3?

11 A. Well, it could. You know, depending on
12 your manufacturing methods and certain other
13 objectives you may have, you may have
14 in-house -- if you make the spring clip yourself,
15 you might have a dimple punch already in-house that
16 you want to use for that to make the protrusion.
17 It may be referred to do that and not have that be
18 molded into the piece.

19 Q. But neither in your -- in your mind,
20 neither is sort of definitely secured to the other,
21 either arrangement?

1 A. Correct. I -- I think they -- I think
2 it's really a true design choice, and there may be
3 lots of other factors that would lead a person of
4 skill in the art to pick one or the other.

5 Q. But you agree with me that it would be a
6 modification to the arrangement in Matthews to move
7 the protrusion to the clip, right?

8 A. Yes. But, again, this is called a design
9 choice where it's of -- a person would know to put
10 the dimple on the -- on the clip is as simple as
11 putting a hole there and vice versa. I could put
12 the hole in the base piece just as easily as I
13 could put a protrusion there, so ...

14 Q. Right. But it's not -- it's not a
15 situation where you're picking from two different
16 embodiments in Matthews, because the only
17 disclosure in Matthews is a protrusion in the case
18 and a hole in the clip, right?

19 A. Right. But in the wheelhouse of a person
20 of skill in the art, those two things are front and
21 center. They would know, I could just flip those

1 as easily as changing their color.

2 Q. If you'd go to page 280, please.

3 A. Yes, I'm there.

4 Q. Now, we've seen drawings like this or
5 annotations like this before where you annotate one
6 arrow as a T for tang and one arrow as an H for
7 hook and then the theta angle.

8 Is there a reason why you didn't put a T
9 and H on this drawing?

10 A. No. I just didn't copy that over, I
11 guess.

12 Q. Well, is it because in the picture, the
13 hook is not even a part of the tang?

14 A. Well, again, we -- we have to make the
15 design choice to put the hook in the tang as
16 discussed in the previous sections of the -- of the
17 disclosure. Not disclosure. It's my Declaration.
18 Sorry.

19 Q. So what you're saying is that -- I think
20 what you're opining is that if -- when you make
21 that design choice modification to move the

1 protrusion to the clip and the opening to the body,
2 then the hook would extend at an angle to the tang,
3 right?

4 A. That's right. And I discuss that in here
5 as well, so ...

6 Q. Yeah. I guess, again, I got a little
7 confused reading this, because in the paragraph
8 above the figure, you say, Annotated in red to
9 delineate the angle at which the protrusion 24 and
10 "hook" extends there between.

11 And I think what we've -- what I
12 understand now is that you're not saying that the
13 illustrated protrusion is the claimed hook. It
14 only becomes the claimed hook when it gets moved to
15 the clip, right?

16 A. Using the design choice, that it would be
17 easy for a person of skill in the art.

18 Q. Right.

19 A. Right. I say that in paragraph 796.

20 Q. Yes. Yes. In 797, you say, to the
21 extent that the hooks are found not to extend at

1 the nearly perpendicular angle shown above, a
2 POSITA would have understood that a degree to the
3 angle is not recited in limitation h of Claim 1,
4 right?

5 A. That's right.

6 Q. So is this just a way to make it clear
7 that you're not saying the angle has to be 90
8 degrees?

9 A. That's right.

10 Q. Okay.

11 A. I'm illustrating the broadness of that
12 claim element.

13 Q. Now, you've talked about -- if you go
14 over to page 283, it's where we talk about the
15 inadvertent dislodgement limitation of Claim 1, and
16 we talked about the design choice conclusion
17 regarding moving the hook to the clip.

18 Does moving the hook to the clip affect
19 how much force is required to remove the clip from
20 the device in the modified Matthews device?

21 A. So a person of skill in the art could

1 design either embodiment to have the same removal
2 force.

3 Q. And to be consistent with Matthews'
4 disclosures, that removal -- removal force would be
5 one which may be applied with a person's hands,
6 right?

7 A. Yes. A person of skill in the art could
8 achieve that removal force with either embodiment.

9 Q. Well, that's what they would do in view
10 of the teachings in Matthews, correct?

11 A. Yes. I would expect that's the desire.
12 In the view of teaching of Matthews, yes, they
13 would have that removal force in mind, but they
14 could design it to be whatever they wanted.
15 There's --

16 Q. Right. But Matthews teaches -- as you
17 quote in paragraph 803, Matthews teaches that the
18 removal force is one which may be applied with a
19 person's hand, correct?

20 A. Yes, but still prevents inadvertent
21 removal.

1 Q. In the redesigned Matthews device where
2 the hook is a part of the clip, if the same track
3 shown in Matthews remains, in other words, if the
4 only change is to move the protrusion from the body
5 of the device to the clip and to move the hole from
6 the clip to the body of the device, would a person
7 of skill in the art understand there to be a
8 difference in design considerations based on the
9 fact that the track is made out of the same
10 material as what is now the hole, not what was the
11 protrusion? Do you understand my question?

12 A. I understand. I'm not sure what you mean
13 by design considerations.

14 Q. Well, in the Matthews design, as
15 illustrated, when the clip is removed and the hole
16 is pulled laterally from the bump, the same
17 material that forms the track deforms downwards to
18 allow the -- the clip to move past the bump?

19 A. Correct.

20 Q. Does the design of the device change if
21 the thing that is in the material that makes up the

1 track is the hole and not the bump?

2 A. Yeah, at least you -- you would be -- you
3 would -- because you're flipping the -- transposing
4 them, the hole for the bump, for lack -- just using
5 loose terminology here, you would probably not
6 shape them exactly the same as they were the other
7 way just due to tooling, if nothing else, but there
8 are -- you can adjust those variables to achieve
9 the same removal force as the other embodiment.
10 Again, all well within the range of the scale of a
11 person of ordinary skill in the art.

12 Q. And in the Matthews' modification where
13 the -- where the hook or the protrusion is moved to
14 the clip and the hole is moved to the body, what
15 becomes -- what is the recess in that product? We
16 talked a lot about what the hook is, but what would
17 the recess be?

18 A. The recess is the -- let's use some --

19 Q. Maybe the picture on 285 can help.

20 A. Okay. Let's see. So I'm sure we already
21 talked about this.

1 So you were asking what does the recess
2 become?

3 Q. Yeah. Where is the recess in the newly
4 modified Matthews?

5 A. It's still the same recess that we
6 identified. It's the --

7 Q. Is it the hole in the -- the hole that
8 has been moved to the body of the device?

9 A. That's the -- if I can get my terminology
10 right here. Sorry, I'm getting --

11 Q. It's a lot of very similar words.

12 A. So the recess doesn't change.

13 Q. It doesn't?

14 A. Because the -- no, because the tang goes
15 into the recess, the claimed recess.

16 Q. Right.

17 A. The tang still slides into that recess
18 that has a track above it, so that hasn't changed.

19 Q. So then where is the undercut --

20 A. Okay.

21 Q. -- in the redesigned product?

1 A. The undercut is in the recess. It's
2 the -- it's now the -- the -- sorry.

3 Q. No, that's okay.

4 A. The brain is -- we have so many pockets,
5 and I just want to make sure I use the claim
6 terminology here.

7 Q. Yeah, yeah.

8 A. Right. So if we look at page 272 --

9 Q. 272. Hold on one second. Okay.

10 A. There's the -- I've labeled the recess in
11 that figure.

12 Q. Okay. Right. Right. So where is the
13 undercut then? In the -- in the redesigned -- the
14 redesigned Matthews, where is the undercut?

15 A. Right. Okay. So then -- so the -- what
16 24 is pointing to then becomes the undercut.

17 Q. So right. In the picture on page 272,
18 which is from Figure 4 of Matthews, item 24 -- and
19 it's hard to tell from this view. Item 24 is a
20 protrusion upward, right, in Matthews?

21 A. Right. In Matthews, that's correct.

1 Q. In the design choice revision to
2 Matthews, once a protrusion becomes an opening,
3 right?

4 A. Right. So if we look at 285, --

5 Q. Yes.

6 A. -- we're going to flip protrusion hook
7 and hole undercut.

8 Q. Got it. When you flip it, does it matter
9 if the hole undercut, which is now on the place
10 where the protrusion hook was, will that go all of
11 the way through the surface or will it be a partial
12 indentation?

13 A. It could be either. It won't affect the
14 function of it.

15 Q. If it goes all of the way through, does
16 it still define the undercut of a recess?

17 A. Yeah, it doesn't matter.

18 Q. All right. Now, if we go back to -- I
19 just think it's easier to look at paragraph or
20 Figure 4. So wherever you want to find yourself a
21 copy of Figure 4.

1 A. I have got paper all over the place here.

2 Q. Let's look at page 272 of the Declaration
3 because that has the word recess on it.

4 A. Yes.

5 Q. So in the unmodified version of Matthews,
6 the recess is a roughly rectangular shape, roughly
7 a rectangular-shaped area with a little part where
8 there's a bump coming up into it, right?

9 A. Which is the protrusion hook.

10 Q. Correct. So if we were to make a mold
11 out of the recess in Matthews as described, the
12 external bounds of the mold would be the
13 rectangular shape and there would be one little
14 part in the mold that would be an indentation,
15 right?

16 A. Okay.

17 Q. Do you agree?

18 A. I -- yes. I mean, it's -- it's negative
19 space.

20 Q. Exactly. And so when we make the
21 modification to Matthews you're talking about,

1 which is to put a hole or a depression or some kind
2 of a space going downward right where 24 is in
3 Figure 4, if you made the negative space out of
4 that, you would have roughly a rectangular shape
5 with a bump coming out of it, do you agree?

6 A. If you made the mold of that?

7 Q. Yeah, the negative space.

8 A. For the hook -- I mean, for the clip?

9 Q. No, no. The negative space of what you
10 label as the recess in Figure 4, --

11 A. Okay. Right.

12 Q. -- but modified so that the opening is on
13 the body and the hook is on the clip.

14 A. Okay.

15 Q. Okay. If you make a mold of the negative
16 space of that new product, --

17 A. Okay.

18 Q. -- which we don't see here, but which we
19 would have, then you would have a rectangular style
20 with a little bit of a bump of its own?

21 A. Right, whatever shape you end up making

1 that.

2 MR. WEED: All right. Why don't we take
3 a quick break. I have a few more things, but not
4 too much.

5 THE WITNESS: Okay.

6 (Recess taken -- 2:43 p.m.)

7 (After recess -- 2:54 p.m.)

8 BY MR. WEED:

9 Q. I'm going to hand you another exhibit,
10 and while I do that, you can go to page 28 of your
11 Declaration, if you would.

12 A. There's some paper.

13 Q. I know, right.

14 So I handed you Exhibit 1004, do you see
15 that?

16 A. Yes.

17 Q. And if you look at your paragraph 63, for
18 example, you cite to Exhibit 1004 in connection
19 with a discussion of the examination of the '808
20 Patent, --

21 A. Correct.

1 Q. -- do you see that?

2 A. Yes, I do.

3 Q. So if you go to page 64 of Exhibit

4 1004 --

5 A. And this is exhibit page or?

6 Q. I assume so. Let's see.

7 A. Yeah, it probably is. Yes, it is.

8 Q. So pages 64 to 72 are the office action
9 rejecting the claims of the application that became
10 the '808 Patent, right?

11 A. Let me catch up to you here.

12 (Whereupon, there was a pause for
13 document examination.)

14 THE WITNESS: Yes, that looks like what
15 that is.

16 BY MR. WEED:

17 Q. And do you agree with me that some of the
18 rejections are over the Kane reference we've talked
19 about today?

20 A. Yes, as anticipated by Kane.

21 Q. In paragraph 65, you cite to page 70 of

1 Exhibit 1004, right?

2 A. Yes, paragraph 13 of the office action.

3 Q. Right. And in paragraph 14 of the office
4 action, you see that there's a rejection of some
5 claims over Kane in view of Chapin, do you see
6 that?

7 A. Yes.

8 Q. And I think this is probably a mistake by
9 the examiner, because the examiner says, The claims
10 are rejected under 35 U.S.C.102 (a)(1) as being
11 anticipated by Kane in view of Chapin, right?

12 A. It should be 103.

13 Q. Yeah, exactly. In fact, if you look at
14 the last sentence of that rejection paragraph, it
15 says, It would have been obvious to one of ordinary
16 skill in the art to provide a clip with two tangs,
17 protrusions, as taught by Chapin, and it goes on,
18 right? Yes?

19 A. Yes, you read that correctly.

20 Q. So as far as we look at this, it looks
21 like there's a typo, but this really was an

1 obviousness rejection over Kane in view of Chapin,
2 right?

3 A. Yes, I think that's fair.

4 Q. Did you look and see what Claims
5 19 -- well, strike that.

6 I also note there might be another typo
7 here in the report, because you say, Further, the
8 examiner rejected Claims 19 to 21, but in what we
9 were just reading, it says 19 to 24.

10 A. 19 to 24. Are 22, 23, and 24 being
11 asserted?

12 Q. Well, we'll get there.

13 A. Because I may have not put that in
14 because they're not being asserted. That's all I
15 can think.

16 Q. So how familiar are you with patent
17 prosecution?

18 A. Mildly --

19 Q. Okay.

20 A. -- as an expert and as an inventor, but I
21 certainly have never prosecuted patents.

1 Q. So what I think is going on here -- and
2 we can look and figure out how to verify it, but if
3 you -- first of all, look at the '808 Patent, if
4 you would, and confirm for me that it does not go
5 all of the way to Claim 24?

6 A. These get renumbered, too, after
7 issuance.

8 Q. That's where I'm going, yeah.

9 A. Yeah. Wait, there's 24.

10 Q. Oh, are there?

11 A. Yeah.

12 Q. My note is wrong. One second. Don't
13 tell Sean I don't have it memorized.

14 Okay. Fair enough.

15 All right. So then that may clear up
16 your report, at least, where you say, Claims 19 to
17 21 were rejected in view of Kane and Chapin, right?

18 A. Yes.

19 Q. But in the rejection itself, the examiner
20 did reject Claims 19 through 24, correct?

21 A. Yes.

1 Q. And if you go back a few pages in the
2 office action or in the file history, and, in
3 particular, if you go back to page 38 of the file
4 history.

5 A. Thirty-eight?

6 Q. Yes.

7 A. Okay. I'm at 38.

8 Q. In -- on this page, you can see the
9 claims that were filed with the application that
10 were numbered 20 through 24, do you see that?

11 A. Yes.

12 Q. So is it your understanding that these
13 claims are part of that list of group of claims
14 that the examiner was rejecting over Chapin?

15 A. If they haven't had a renumbering between
16 pages 38 and -- I mean, if it says office action,
17 then they have not been renumbered yet.

18 Q. Right. You agree with me that Claim 20
19 on page 38, as -- as it existed at that time,
20 recited aspects of a recess and a hook and an
21 undercut, right?

1 A. Yes. On page 38 of the file history in
2 Claim 20, as listed on that page, talks about
3 recess undercut.

4 Q. Did you consider the Chapin reference
5 itself as part of your preparation of the
6 Declaration in this IPR? Because if you look on
7 page 209 of your Declaration, I don't see an
8 exhibit number for Chapin.

9 A. I don't -- I didn't list it on my table
10 of exhibits, so if I considered it, it was
11 incorporated by reference by way of the file
12 history.

13 Q. Okay. In paragraph 66 of your
14 Declaration on page 29, you reference -- at the
15 end, you say, Applicant revised the '596
16 application and amended independent Claims 1, 14,
17 and 19, right?

18 A. That's what I wrote, yes.

19 Q. And after that, the case was allowed,
20 correct?

21 A. The patent was allowed.

1 Q. Yes. So there were no subsequent
2 amendments of the claims beyond the one you
3 referenced that you can see at pages 121 to 150 of
4 the file history, right?

5 A. I'm sorry, can you say that question one
6 more time?

7 Q. Yeah. There -- was it your intention
8 here to summarize the major events of the
9 prosecution of the '808 Patent?

10 A. Yes.

11 Q. So reading this summary, because there's
12 no other reference to claim amendments, is it fair
13 to conclude that your opinions are based on the
14 understanding that there was one set of amendments
15 to the claims prior to allowance?

16 A. That's my understanding.

17 Q. A little earlier today we talked about
18 claim construction --

19 A. Can I put the file history away?

20 Q. You can.

21 A. Okay. May I, I should say.

1 Q. Here you go. So I'm handing you a
2 document that's been marked in this IPR as Exhibit
3 1023, but as you can see from the case information
4 at the top of the page, this came out after you
5 signed your Declaration. Is that your
6 understanding?

7 A. Yes, this looks to be a little over a
8 month after I signed my Declaration.

9 Q. And have you ever seen Exhibit 1023
10 before?

11 A. I can't be sure. Probably in the
12 District Court matter, but --

13 Q. If you -- I can represent --

14 A. -- it's been a while.

15 Q. I can represent to you that this is the
16 Court's Claim Construction Order in this case -- in
17 the underlying District Court case with the '808
18 Patent, and so with -- that is true, and I have
19 handed you a copy of that, have you seen the
20 Court's Claim Construction Opinion in that case?

21 A. Probably.

1 Q. Okay.

2 A. I just don't have a specific memory of
3 reading it over. Since I submitted a Declaration
4 or a report in that matter, I'm sure I did read
5 this.

6 Q. Right. I just wanted to -- because when
7 we talked before, you weren't sure if the Court had
8 since construed the terms recess and undercut and
9 hook.

10 A. I don't think that's what I said. I said
11 I don't remember what they did.

12 Q. Okay. Well, if you look at page 9 of
13 Exhibit 1023 --

14 A. Okay. I'm at page 9.

15 Q. -- do you see in the right-most column,
16 it says Court's Construction?

17 A. Yes.

18 Q. And this is related to the term recess,
19 right?

20 A. Um-hum.

21 Q. Does this refresh your memory that the

1 Court construed the term recess to have its plain
2 and ordinary meaning?

3 A. That's what it says, yes. I mean, I
4 don't know.

5 Q. Okay. The same question with regard to
6 hook on page 12?

7 A. Yes, I see hook. The Court's
8 construction is plain and ordinary.

9 Q. Okay. And then the same with undercut on
10 page 14, do you see that the Court has construed
11 undercut to have its plain and ordinary meaning?

12 A. Yes, I see that on page 14.

13 Q. And we went through your Declaration in
14 pretty good detail, especially as to the
15 non-additional claims past Claim 1.

16 Is it fair to say that you haven't
17 offered opinions in this Declaration about whether
18 the plain and ordinary meaning is or is not the
19 correct construction for the terms recess, hook,
20 and undercut?

21 A. All I've offered is what's in my

1 Declaration in the Claim Construction section and
2 proposed construction as well as an alternative
3 plain and ordinary sort of discussion.

4 Q. Right. So, in other words, you've
5 offered alternative opinions under a pair of
6 different constructions for each of those three
7 terms, right?

8 A. And those would -- I would consider to be
9 the plain and ordinary meanings.

10 Q. Right. But you haven't offered opinions
11 about the legal correctness of adopting one
12 construction versus the other, right?

13 A. That's correct.

14 Q. Okay.

15 A. I don't think that's appropriate for an
16 expert witness.

17 Q. All right. One more.

18 (Whereupon, Babcock Deposition Exhibit
19 No. 2010, Expert Report of James Babcock with
20 Response to Invalidity of U.S. Patent
21 No. 10,791,808, marked for identification.)

1 BY MR. WEED:

2 Q. We're not going to go through this in any
3 detail, but could you at least look at this closely
4 enough to confirm that this is a report you
5 submitted about invalidity in the District Court
6 case involving the '808 Patent?

7 MR. BUSCH: I'm going to object for being
8 beyond the scope and relevancy.

9 THE WITNESS: May I answer?

10 BY MR. WEED:

11 Q. Yes.

12 A. Yeah, this appears to be my report
13 offered in the District Court case regarding
14 invalidity of the '808 Patent.

15 Q. And just so that we have the timing down,
16 you submitted the IPR Declaration in March of 2024.
17 We saw the claim construction opinion from April of
18 2024, and then this report was, which is
19 10 -- 2010, Exhibit 2010 was submitted July of
20 2024?

21 A. Yes, I think you have those dates

1 correct.

2 Q. Do you recall that in this report you
3 offer opinions about indefiniteness?

4 A. If it's in there. I mean, I -- I don't
5 have specific recollections, so ...

6 Q. Let me show you the page.

7 A. Okay.

8 Q. So it's on page 32 of Exhibit 2010.

9 A. Okay.

10 Q. Are you there?

11 A. Yes.

12 Q. Do you recall offering opinions that
13 certain of the claim terms are indefinite?

14 A. Well, yes, here they are.

15 Q. During the course of your deposition
16 today, did you have any trouble understanding the
17 claim terms of any of the claims that we talked
18 about in the '808 Patent?

19 A. Did I as an expert?

20 Q. Yes.

21 A. No, but I understand indefiniteness is

1 what would a person of ordinary skill in the art
2 understand.

3 Q. Okay.

4 MR. WEED: I have no further questions.

5 MR. BUSCH: I have just a couple.

6 EXAMINATION

7 BY MR. BUSCH:

8 Q. Let's turn to your Declaration, please,
9 in particular page 73?

10 A. Seventy-three.

11 Q. Seventy-three.

12 A. Okay.

13 Q. Looking at the figure there, is that
14 Figure 1 of Beckley on page 73?

15 A. It says Figure 1 annotated, but let me
16 verify it with the exhibit. Yes, that's Figure 1.

17 Q. In that annotated illustration of Figure
18 1, what Beckley feature is annotated as undercuts?

19 A. Item 14.

20 Q. Do you recall how Beckley refers to item
21 14? What nomenclature?

1 A. No, but I can -- we have a lot of terms
2 for this stuff that are mixed up. It should be
3 easier to find than this. Cavities.

4 Q. Okay. Going back to your Declaration, if
5 you could turn your attention to page 78, please.

6 A. Okay.

7 Q. Once again, the figure on page 78, is
8 that Figure 1 of Beckley?

9 A. Yes, that is Figure 1 of Beckley.

10 Q. And in that annotated figure, what
11 Beckley feature is annotated as recess?

12 A. Item 15.

13 Q. And how does Beckley refer to item 15?
14 What nomenclature?

15 A. Depression.

16 Q. Is it fair to say then that, in your
17 opinion, item 15, referred to as depression, is
18 what constitutes or could constitute the claimed
19 recess?

20 A. Yes, and I even note that in this figure,
21 depression/claimed recess.

1 Q. Is that feature item 15, known as a
2 depression, a distinct feature from item 14
3 referred to as a cavity?

4 MR. WEED: Object to the form.

5 THE WITNESS: Yeah, they're distinct
6 features. They're enumerated separately or named
7 differently.

8 MR. BUSCH: That's all I have.

9 MR. WEED: Okay. I have no more.

10 (Whereupon, the deposition of James
11 Babcock was concluded at 3:15 p.m., and the reading
12 and signing of the transcript was not waived.)
13
14
15
16
17
18
19
20
21

1 State of Maryland

2 County of Baltimore, to wit:

3 I, Michele D. Lambie, a Notary Public of
4 the State of Maryland, County of Baltimore, do
5 hereby certify that the within-named witness
6 personally appeared before me at the time and place
7 herein set out, and after having been duly sworn by
8 me, according to law, was examined by counsel.

9 I further certify that the examination
10 was recorded stenographically by me and this
11 transcript is a true record of the proceedings.

12 I further certify that I am not of
13 counsel to any of the parties, nor related to any
14 of the parties, nor in any way interested in the
15 outcome of this action.

16 As witness my hand and notarial seal this
17 10th day of November 2024.

18 
19
20
21

Veritext Legal Solutions

1100 Superior Ave

Suite 1820

Cleveland, Ohio 44114

Phone: 216-523-1313

December 2, 2024

To: JACOB M. BUSCH

Case Name: The Ridge Wallet, LLC v. 2985, LLC, etc.

Veritext Reference Number: 6981441

Witness: James Babcock Deposition Date: 11/14/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown

above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6981441

CASE NAME: The Ridge Wallet, LLC v. 2985, LLC, etc.

DATE OF DEPOSITION: 11/14/2024

WITNESS' NAME: James Babcock

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date James Babcock

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6981441

CASE NAME: The Ridge Wallet, LLC v. 2985, LLC, etc.

DATE OF DEPOSITION: 11/14/2024

WITNESS' NAME: James Babcock

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

James Babcock

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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