

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOMMY JOHN, INC.,

Petitioner,

vs.

Case No.

IPR2024-01163

Pakage Apparel, Inc., Patent
Owner,

Patent 10,834,974

Defendants.

VIDEOTAPED DEPOSITION OF ROBIN WAGNER

CONDUCTED REMOTELY VIA ZOOM

APRIL 3, 2025

10:02 A.M.

REPORTED BY:

MICHELLE GONZALEZ

CSR No. 13891

APPEARING REMOTELY FROM LOS ANGELES COUNTY, CALIFORNIA

1 REMOTE APPEARANCES:

2
3 For TOMMY JOHN, INC.:

4 HOGAN LOVELLS US LLP
5 JOSEPH J. RAFFETTO, ESQ.
6 555 13th Street N.W.
7 Washington, D.C. 20004
8 202.637.5600
9 Joseph.raffetto@hoganlovells.com

10 For PACKAGE APPAREL, INC.:

11 DANIELS & TREDENNICK PLLC
12 JOHN F. LUMAN, ESQ.
13 HEATH NOVOSAD, ESQ.
14 6363 Woodway, Suite 700
15 Houston, Texas 77057
16 713.917.0024
17 John.luman@dtlawyers.com

18 Also Present:

19 Huntington Paulson, Videographer
20
21
22
23
24
25

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WITNESS: ROBIN WAGNER

EXAMINATION

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ROBIN WAGNER

Tommy John, Inc. V. Pakage Apparel, Inc.

THURSDAY, APRIL 3, 2025

MICHELLE GONZALEZ, CSR No. 13891

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1 REPORTED REMOTELY FROM LOS ANGELES COUNTY, CALIFORNIA;
2 THURSDAY, APRIL 3, 2025, 10:02 A.M.

3
4 THE VIDEOGRAPHER: We are now on the record at
5 17:02 UTC, Time Zone and 10:02 a.m. Pacific Standard
6 Time. Today's date is April 3rd, 2025. Video and audio
7 recording will continue to take place until all parties
8 agree to go off the record. Please note that the
9 microphones are sensitive and may pick up whispering and
10 private conversations. For the purpose of creating a
11 witness-only video recording, the witness is being
12 spotlighted on all video screens while in speaker view.
13 We ask that the witness not remove the spotlight setting
14 during the deposition as it may cause other participants
15 to appear on the final video rather than just the
16 witness. This is the video recorded proceeding of Robin
17 Wagner in the matter of Tommy John, Inc. versus Pakage
18 Apparel, Inc. My name is Huntington Paulson, remote
19 videographer on behalf of U.S. Legal Support. I'm not
20 related to any party in this action nor am I financially
21 interested in the outcome. The court reporter is
22 Michelle Gonzalez on behalf of U.S. Legal Support.
23 Counsel will now state their appearances for the record
24 after which the court reporter will swear in the
25 witness.

1 MR. LUMAN: Good morning. I'm John Luman
2 with Daniels and Tredennick on behalf of Pakage Apparel.
3 With me on the video is my partner, Heath Novosad.

4 MR. RAFFETTO: I'm Joseph Raffetto from
5 Hogan Lovells on behalf of Tommy John, Inc., and the
6 witness, Ms. Robin Wagner.

7
8 ROBIN WAGNER,
9 having been first duly sworn, was examined
10 and testified follows:

11
12 EXAMINATION

13
14 BY MR. LUMAN:

15 Q. Good morning, Ms. Wagner.

16 A. Good morning.

17 Q. As I mentioned, I represent Pakage Apparel in
18 this matter. You understand that this matter is before
19 the Patent Trial and Appeal Board; right?

20 A. I do.

21 Q. Would you state your complete name for the
22 record.

23 A. Robin Kathleen Wagner.

24 Q. Thank you. Where are you today?

25 A. Century City at Hogan Lovells' office.

1 Q. Where do you reside?

2 A. San Pedro, California. City and County of L.A.

3 Q. And have you given a deposition before?

4 A. I have.

5 Q. Have you testified at trial before?

6 A. I have not.

7 Q. I'm sorry, I didn't hear you.

8 A. No.

9 Q. How many times have you testified in a
10 deposition?

11 A. Two, I believe.

12 Q. So you generally know the rules. You're under
13 oath today; right?

14 A. Correct.

15 Q. And you're sworn to tell the truth; right?

16 A. Correct.

17 Q. Is there any reason that your testimony today
18 wouldn't be truthful and accurate?

19 A. No, no reason.

20 Q. And have you testified on behalf of Tommy John
21 before?

22 A. I have not.

23 Q. Have Tommy John hired you for anything prior to
24 today?

25 A. No.

1 Q. Who reached out to you to be an expert in this
2 case?

3 A. Rubin Anders.

4 Q. You said Rubin?

5 A. Rubin Anders. It's an agency for experts. I'm
6 on the roster. I'm sorry. Rubin Anders Scientific.

7 Q. Rubin Anders Scientific?

8 A. Yeah.

9 Q. Who did they introduce you to that represents or
10 Tommy John? Who did they introduce you to for this
11 matter?

12 A. It was a long time ago. Perhaps Scott Hughes.

13 Q. When you say it was a long time ago, when did
14 that happen?

15 A. At least six months.

16 Q. Were you hired for this matter or for a lawsuit?

17 A. No, I was hired for this matter.

18 Q. And are you currently on anything other than your
19 report or the obviousness allegation in your report for
20 Tommy John?

21 A. No.

22 Q. When did you first meet Scott Hughes?

23 A. Probably six months ago. Shortly after I was
24 retained.

25 Q. So summertime, like August?

1 A. Maybe a little bit before that. July. I don't
2 actually remember.

3 Q. Did you meet with him in person?

4 A. No.

5 Q. Have you ever met him in person?

6 A. I have not.

7 Q. Who else representing Tommy John have you met
8 with?

9 A. Joe Raffetto and Jacob Felicetty.

10 Q. What was the third one?

11 A. Jacob Felicetty.

12 Q. Have you met with anyone from Tommy John?

13 A. No.

14 Q. And when I say that, it's sort of a broad
15 question. You know, meeting, whether it's over the
16 phone, any type of video, in person. If you have met
17 with anybody from Tommy John?

18 A. No.

19 Q. Do you have a relationship with anyone at Tommy
20 John?

21 A. I do not.

22 Q. You have no personal relationships with anyone at
23 Tommy John?

24 A. No.

25 Q. Do you know the co-founder of Tommy John, Tom

1 Paterson?

2 A. No.

3 Q. Have you ever met him?

4 A. No.

5 Q. What about his wife, Erin Fujimoto?

6 A. No.

7 Q. With respect to Tommy John, do you know a
8 gentleman named; I'm going to butcher this. I'll spell
9 it. Okay. And, Joe, you can help me out with this.
10 I'm going to call him Grnot Senk. It's G-r-n-o-t
11 S-e-n-k.

12 A. I don't know.

13 Q. Pardon me?

14 A. I don't know him.

15 MR. LUMAN: Joe, how do I pronounce that for
16 future reference?

17 MR. RAFFETTO: I think about the way you
18 did.

19 BY MR. LUMAN:

20 Q. Do you know a Susan Barton at Tommy John?

21 A. I don't.

22 Q. She previously worked for Calvin Klein. Have you
23 ever done work for Calvin Klein?

24 A. A long time ago.

25 Q. When you say "a long time ago" how long?

1 A. 19 -- 1978.

2 Q. That would be a long time ago. What did you do
3 for them back in 1978?

4 A. I was a contract sampler knitter for sweaters for
5 runway.

6 Q. Nothing since 1978 with respect to Calvin Klein?

7 A. No, it was a one-time thing.

8 Q. Do you know a gentleman named Jason Scarlatti?
9 And I'll spell the last name, S-c-a-r-l-a-t-t-i.

10 A. I don't.

11 Q. And then what about the CEO of Tommy John? She
12 was formally the CEO of Calvin Klein. Her name is
13 Cheryl Abel-Hodges?

14 A. No.

15 Q. With respect to the law firm, Hogan Lovells, have
16 you done any work for them previously?

17 A. No, I haven't.

18 Q. With the lawyers that you mentioned, Scott, Joe,
19 and the third person, had you done any work with them
20 prior to this case?

21 A. No.

22 Q. You provided a report in this matter; right?

23 A. Yes.

24 Q. And we'll talk about that as we go through it, as
25 we go through today, I should say. You're not offering

1 any opinions with respect to liability in this case;
2 right?

3 A. No.

4 Q. And you're not a lawyer?

5 A. No, I'm not a lawyer.

6 Q. Did you ever go to law school?

7 A. I did not.

8 Q. And you're not an expert on patent law; right?

9 A. No.

10 Q. Not opining any issues on law whatsoever; is that
11 fair?

12 A. No.

13 Q. Let me ask that a different way. It was a
14 negative. You're not opining on issues of law; correct?

15 A. Right. Correct.

16 Q. And you're just, you don't have to go to law
17 school to be a patent attorney. So I'm going to ask you
18 this question. You're not a patent attorney; is that
19 fair?

20 A. I am not a patent attorney.

21 Q. And in your report you don't opine on any claim
22 construction; right?

23 A. No.

24 Q. And you're not a patent attorney but are you a
25 patent agent? You don't have to be an attorney. You're

1 not a patent agent either; correct?

2 A. I don't know what that is. But I don't think.

3 Q. Rest assure you would know what it is if you were
4 one. Let me put up on the screen here really quick.
5 I'm going to put up your, it might be -- I'm going to
6 put your report up here. If you got a hard copy in
7 front of you, you're welcome to look at that as well.
8 You see your report?

9 A. I do.

10 Q. Did you draft your report?

11 A. I did.

12 Q. Did you draft all of it or did you have help with
13 it?

14 A. There was some boilerplate things that the
15 lawyers helped me with because I'm not a lawyer but
16 the --

17 Q. What was the boilerplate?

18 A. Very beginning and the references I used. Things
19 like that.

20 Q. So they provided you with the three references?

21 A. Yes.

22 Q. So they selected the references?

23 A. Yes.

24 Q. So they and I don't mean to speak over you and
25 the court reporter will admonish me shortly, I'm

1 positive of that. So the three references that you used
2 are, if you recall, Carrillo, Brocks and Kitsch.

3 Do those ring a bell?

4 A. Yes.

5 Q. Those three references were provided by the
6 lawyers; right?

7 A. Yeah.

8 Q. Did they provide you any other reference to look
9 at?

10 A. There was some other material. There was a file
11 history.

12 Q. But as far as references go to arrive at your
13 obviousness opinion, they gave you the three references;
14 right?

15 A. Yes.

16 Q. Are all of your opinions contained in this
17 report?

18 A. Yes.

19 Q. Are there any opinions that are not in your
20 report?

21 A. Not that I know of at this moment.

22 Q. Have you formulated additional opinions from the
23 date of this report that are not in the report?

24 A. Not that I can recall.

25 Q. Okay. Moving to, briefly stop sharing this.

1 Before I do, did you title your report?

2 MR. RAFFETTO: I'm going to make an
3 objection on privilege. But you can answer, Ms. Wagner.

4 THE WITNESS: No.

5 BY MR. LUMAN:

6 Q. Who titled the report?

7 A. The lawyers.

8 Q. Did you know there was a misspelling in your
9 report?

10 A. No, I didn't even see that.

11 MR. LUMAN: And, Joe, I just I heard your
12 objection. But are you claiming privilege on anything
13 today? She's a paid expert; right?

14 MR. RAFFETTO: Well, generally as you know
15 drafted reports aren't discoverable or communications
16 about draft reports. So, I mean, that was what my
17 objection was in relation to but --

18 MR. LUMAN: Understood. Understood.

19 BY MR. LUMAN:

20 Q. Before I switch to something else here. I
21 noticed in paragraph 2 of your report it says you're
22 compensated at \$200 to \$610 per hour.

23 Do you see that?

24 A. I do.

25 Q. What are -- what do you do that you're

1 compensated at 200 bucks an hour?

2 A. For the range I provide expert opinion based on
3 my experience.

4 Q. So, when you were drafting your report what
5 billing rate did you bill at?

6 A. It's within the ranges.

7 Q. Was it 200? Was it 250? When do you go in
8 between those two numbers?

9 A. It's within the range.

10 Q. So how much are you being compensated today for
11 your testimony?

12 A. I'm contracted by Rubin Anders. I signed an
13 agreement that that's private.

14 Q. You actually have to answer my question on this.
15 And if this needs to be private, you could take that up
16 with your handlers. But the fact of the matter is I am
17 entitled to know how much you're being compensated today
18 per hour.

19 MR. RAFFETTO: I think what Mr. Luman may be
20 getting at, Ms. Wagner, is why is there a range. Are
21 there different compensation rates for different types
22 of work?

23 THE WITNESS: Yeah. For travel. For trial.
24 Declaration for deposition, I believe it's 450 an hour
25 for half a day based on half a day, minimum.

1 BY MR. LUMAN:

2 Q. When you were drafting your report to provide
3 your opinions, how much were you billing at?

4 A. 375.

5 Q. And then the \$610. When would that kick in?

6 A. You know, I actually maybe for trail. I actually
7 don't remember.

8 Q. Okay.

9 A. I'd have to look at my contract.

10 Q. But today it's 450?

11 A. Yes.

12 Q. How many hours to date have you billed on this
13 matter?

14 A. I would have to look at my records. I don't
15 really know. Offhand.

16 Q. Can you give me an estimate?

17 A. I'm guessing but like 15, maybe. 20. I honestly
18 don't recall.

19 Q. So let me just make sure I understand the 15 or
20 20. It took you 15 or 20 hours to draft your report?

21 A. No. You know, I take that back. It's got to be
22 a lot longer. Like I said, it was six months ago and I
23 don't have my records in front of me.

24 Q. Okay. So you're estimate of 10 -- 15 to 20 is
25 not accurate; right?

1 A. No. No.

2 Q. What would be more accurate?

3 MR. RAFFETTO: Objection. Calls for
4 speculation.

5 THE WITNESS: I don't have my records in
6 front of me. It took me weeks to do the declaration.

7 BY MR. LUMAN:

8 Q. Weeks of 40 hours a week?

9 MR. RAFFETTO: Objection.

10 THE WITNESS: No. It's on an
11 intermittent-basis.

12 BY MR. LUMAN:

13 Q. You can't estimate how long it took you to do
14 this?

15 A. Without looking at my records, I can't be sure.

16 Q. How much have you been paid so far?

17 A. Without looking at my records, I can't be sure.

18 Q. Is it more than \$450?

19 A. Oh, yes.

20 Q. Is it \$45,000?

21 A. No.

22 Q. Is it more or less than \$45,000?

23 A. I can't be sure without looking at my records.

24 Q. You could get close.

25 MR. RAFFETTO: Objection. Calls for

1 speculation.

2 THE WITNESS: I actually can't get close
3 because I don't have my records in front of me.

4 BY MR. LUMAN:

5 Q. Did you prepare for your deposition today?

6 A. Yes.

7 Q. When?

8 A. Last week and yesterday.

9 Q. How many hours?

10 A. Last week, maybe -- I don't know. Five to ten.

11 Q. And you said yesterday?

12 A. Uh-huh.

13 Q. How many hours yesterday?

14 A. Maybe five.

15 Q. Who did you prepare with?

16 A. Last week, myself. And I had a couple very brief
17 meetings with Scott, Jack and Joe and I finished.

18 Q. Were those in person, those meetings?

19 A. No. No.

20 Q. Where were you when you had these meetings?

21 A. I was in my office.

22 Q. In San Pedro?

23 A. Yeah.

24 Q. Did you do them over video?

25 A. Yes. We had a couple Zoom meetings.

1 Q. What did you review in preparation for today?

2 A. I looked at the prior art, I re-read my
3 declaration. I re-read the 974 Patent and the file
4 history.

5 Q. Which file history did you review?

6 A. 030 and it starts with a 6. 6 something. And
7 the 974.

8 Q. When you read through the 974-file history, did
9 you read through the file history that you originally
10 looked at or a different one?

11 A. I can't say.

12 Q. Do you know what exhibit number it was?

13 A. I don't know.

14 Q. Have you seen the file history that has about
15 2,000 pages in it?

16 A. I honestly don't know.

17 Q. What was the other file history that you're
18 talking about? The 60 something?

19 A. I recall 030. And there is a patent related to
20 it. 600 something. I don't recall.

21 Q. Okay. I got it. It's the file histories of the
22 parent and then the other two, the two patents. All
23 three patents that are related to the 974 Patent; is
24 that fair?

25 A. It's the two other ones and 974.

1 MR. LUMAN: Joe, that's right; right?

2 MR. RAFFETTO: Right. You said all three
3 patents related to the 974. She was saying there is
4 only two related to the 974. But yes.

5 MR. LUMAN: Okay.

6 BY MR. LUMAN:

7 Q. What's your understanding of the 974 Patent?

8 A. I'm not sure what you're asking me.

9 Q. Sure. Do you have an understanding of what the
10 asserted claims cover?

11 A. Yes.

12 Q. What does it cover?

13 A. Do you want me to tell you claim by claim?

14 Q. No. I'm asking you; I want to make sure that you
15 read the patent, which you said you have, and I want if
16 you were to just explain to somebody what it covers and
17 that's what I would like. What does the patent cover to
18 your understanding?

19 A. A specific invention concerning men's underwear.

20 Q. No details?

21 MR. RAFFETTO: Objection. Vague.

22 THE WITNESS: That's really broad. What
23 specifically do you want to know?

24 BY MR. LUMAN:

25 Q. What's your understanding of the patent? There

1 is a lot of patents out there of men's underwear.

2 What's your understanding of the 974? What does it
3 cover?

4 A. It's men's underwear that's constructed in a
5 specific way.

6 Q. To do what?

7 A. To hold a man's genitals.

8 Q. Anything specific about that because there is a
9 lot of patents out there. I think almost every man's
10 pair of underwear probably does that, holds men's
11 genitals. What's specific about the 974 Patent?

12 MR. RAFFETTO: Objection. Vague. Asked and
13 answered.

14 THE WITNESS: Do you want me to read the
15 patent to you?

16 BY MR. LUMAN:

17 Q. No. I want to know your understanding. If
18 you're standing around at a cocktail party with other
19 folks, which I'm sure you have, because this is an
20 interesting subject matter. What do you tell them the
21 974 Patent covers?

22 A. I'm not really allowed to talk about it with
23 other people.

24 Q. You're not allowed to talk about a public
25 document?

1 A. I'm not allowed to talk about the case.

2 Q. Who said that?

3 A. That's in my agreement.

4 Q. Your agreements with the lawyers or your
5 agreements with you handlers?

6 A. Without looking, I don't know.

7 Q. So you don't know who prevents you from talking
8 about this case?

9 A. Without looking, I said I don't.

10 Q. All right. Let's go back to this. What is your
11 understanding of the events described in the 9740
12 patent?

13 A. It's a specific invention to cradle men's
14 genitals.

15 Q. All right. What's the Carrillo patent? What
16 does that cover?

17 A. Other specific invention to cradle men's
18 genitals.

19 Q. So that's let me ask you about Brocks. What's
20 your summary of Brocks?

21 A. Another specific invention to cradle men's
22 genitals.

23 Q. Okay. And then what about Kitsch? What's your
24 summary of Kitsch?

25 A. The same thing, another specific invention to

1 cradle men's genitals.

2 Q. I'm still sharing my screen; right? You all see
3 it?

4 A. Yes.

5 Q. I'm going to look through paragraphs 3 through 19
6 and sort of talk to you a little bit about that?

7 MR. RAFFETTO: Ms. Wagner, feel free to
8 refer to your hard copy, too, if it's easier.

9 MR. LUMAN: For sure. You'll probably get a
10 headache as I scroll through this other stuff if you
11 don't.

12 BY MR. LUMAN:

13 Q. My understanding is you have a Bachelor's of Fine
14 Arts in product design; is that right?

15 A. Yeah. Product Design, Apparel and Accessories.

16 Q. What is that specifically for us uninitiated?

17 A. I have a background developing apparel and
18 accessories and the technology that goes behind it. So
19 pattern making, textile science. I have experience in
20 woven and knitwear. That's my course of study. And
21 programming industrial knitting machines.

22 Q. I'm somewhat distracted about the way this thing
23 is set up on my screen. So bear with me. I notice you
24 have a MicroMasters from the University of Maryland.
25 What is that?

1 A. That's a certificate in instructional design.

2 Q. What is instructional design?

3 A. Learning theory and technology.

4 Q. About what?

5 A. About anything.

6 Q. You lost me there. About anything related to
7 apparel? What's it related to?

8 A. It's related to adult learning. So I would
9 create coursework. Generally corporate. Using a
10 subject matter expert. That's why I say anything. I
11 don't have to be the expert but I set up learning
12 experiences for other people.

13 Q. Okay. So it's not related to apparel and your
14 background of what you're testifying today, it relates
15 to something much broader than that; is that fair?

16 A. Correct.

17 Q. Is that the state of your formal education with
18 respect to degrees like you don't have a PhD; right?

19 A. No, I do not.

20 Q. And you don't have a Master's in, you know, Fine
21 Arts like you originally got from the State University
22 of New York; right?

23 A. No, I do not.

24 Q. I didn't see anything in your CV other than this
25 case that you worked on in developing men's underwear.

1 Have you ever worked in the development of men's
2 underwear?

3 A. I have.

4 Q. With who?

5 A. John Karl.

6 Q. Who is John Karl?

7 A. John Karl, I believe, let me refer to my
8 declaration.

9 Q. Sure.

10 A. Paragraph 15. From '78 to '79 I was a freelance
11 assistant designer for John Karl in New York, New York,
12 where I assisted in design room activities for menswear,
13 made patterns, and spread and cut fabric for production.

14 Q. Define menswear.

15 A. Pardon.

16 Q. It doesn't say anything other than menswear.
17 What is menswear?

18 A. In the case of John Karl; shirts, bottoms, boxer
19 shorts, which are men's underwear.

20 Q. So you worked on sort of designing the structure
21 of boxer shorts? What did you do?

22 A. I was a design assistant. So, whatever -- it was
23 a long time ago. So, whatever designer activities I had
24 to do. The construction of them, supervising sample
25 hands.

1 Q. So it was basic, you know, boxer-shorts-type
2 thing?

3 A. Yup. Correct.

4 Q. Your activity with that, was it putting patterns
5 on men's underwear, you know, you see some creative
6 stuff when you go in the store that gets your attention
7 or something more substantial than that?

8 A. No. It was the pre-production and production of
9 them.

10 Q. What does that mean?

11 A. That means creating the text, creating patterns,
12 creating markers, cutting, ordering materials.

13 Q. Sorry. Go ahead. Would you say that again
14 because I started to speak. My bad.

15 A. I said creating patterns, doing sewing
16 instructions, making tech packs, ordering materials.

17 Q. At the time you were doing that, did you look at
18 competitor's underwear?

19 A. I did not.

20 Q. Who was giving you the information -- who was
21 providing you with the information on what the underwear
22 should look like?

23 A. John Karl.

24 Q. So John Karl was the -- is John Karl an
25 individual?

1 A. Yes, he is or was. I don't know if he's still
2 alive. He was older than I was.

3 Q. Okay. Did Mr. Karl say, "Hey, I want boxer
4 designs to look like this." And you executed?

5 A. Correct.

6 Q. And when I say, "he said I want it to look like
7 this" was he interested in patterns? Is that what he
8 was interested in?

9 A. He gave me a sketch of whatever we were making, a
10 basic idea and then he chose the fabric to go on it,
11 which was print base, which he designed.

12 Q. He designed a print base and then you created or
13 you executed or your team executed on, you know, laying
14 out the underwear and sending it to production, getting
15 it all set up and go to production?

16 A. Correct.

17 Q. You didn't have any input on the design, it was
18 given to you by Mr. Karl; right?

19 A. That's correct.

20 Q. I didn't hear you.

21 A. That's right.

22 Q. Okay. Other than that experience with Mr. Karl
23 and this case, do you have any other experience working
24 with and designing men's underwear?

25 A. I make dancewear currently for men and there is a

1 short that people use as underwear but it's
2 traditionally dancewear but it's body conforming.

3 Q. Where on your CV would I find that?

4 A. Paragraph 6.

5 Q. Dancewear is the last word in pair Photograph 6;
6 right?

7 A. Correct.

8 Q. Dancewear is somebody, if I understand your
9 testimony, the dancewear some folks use it as underwear?

10 A. Correct.

11 Q. But there is no respect to actual underwear, the
12 dancewear is not designed for that, it's just used for
13 that sometimes?

14 A. Correct.

15 Q. Let me switch to your CV for just a second here.
16 Let me see if I could be successful with that. Is your
17 CV on the screen?

18 A. It is.

19 Q. That's it right there. Right. Are you all
20 seeing it?

21 A. Yes.

22 MR. LUMAN: Just for the record, this is
23 Exhibit 1006. And previously her expert report is
24 Exhibit 1005.

25 ///

1 (Exhibits 1005 and 1006 marked remotely
2 introduced and provided electronically to the reporter).

3 BY MR. LUMAN:

4 Q. What company do you work for today?

5 A. I work for -- well, I'm a consultant for -- I
6 work for Robin Wagner, LLC.

7 Q. Do you have any employees?

8 A. I do not.

9 Q. And you're located -- and that's, you're Robin
10 Wagner, LLC, is that located in San Pedro?

11 A. It is.

12 Q. Does your CV accurately reflect your education
13 and work experience?

14 A. Yes.

15 Q. Let me just go down a little bit here and I want
16 to look at your Publications really quick. I think it's
17 on page 11 and 13. 11 through 13. Publications. It's
18 on page 11 of Exhibit 1006. Do you see that in your
19 Publications?

20 A. Yeah. Uh-huh.

21 Q. Were you the sole author on all those
22 Publications?

23 A. They were photographs of my designs.

24 Q. So you're not an author other than your
25 photographs of your designs?

1 A. Correct.

2 Q. So like no written text type thing?

3 A. No.

4 Q. And I noticed that 2007 was the last, unless I
5 missed it, 2007 is the last entry for Publication.
6 Have you done anything since 2007?

7 A. I have but I don't know -- I've worked for other
8 people and they've been other people's public -- I don't
9 know how to answer that. Because there were things that
10 were in Publication that are not listed that I don't
11 really have knowledge of. I know that they happened but
12 I don't really have a specific date or publication. You
13 know, the publisher.

14 Q. Okay. And you were aware of all the ones on your
15 resume because they gave you a copy of it? How are you
16 aware of the ones on your resume or your CV and you're
17 not aware of the others?

18 A. I was more involved in what I was doing at those
19 companies and some of them I had -- I had the
20 responsibility of getting them published and doing the
21 marketing.

22 Q. The timeframe of John Karl. That's not on your
23 publications; right?

24 A. No.

25 Q. Do you know if John Karl ever put into print

1 anything that you worked on?

2 A. I'm sure he did but I wasn't the designer so that
3 wouldn't be considered something of mine.

4 Q. You used the word "designer" and I probably
5 missed it when you were explaining it earlier. John
6 Karl was the designer; right?

7 A. Yes, John Karl was the designer.

8 Q. And you executed on the designs that he wanted
9 created and made; right?

10 A. Correct.

11 Q. Let me ask you, I want to ask you a few things
12 about your expert witnessing. I have New Balance
13 written first. Is that -- if you're on page 4 of
14 Exhibit 1006 and it says Expert Witness-Knitted Shoe
15 Technology, Goodwin Proctor, New Balance Athletics.
16 What type of matter is the New Balance Athletics?

17 A. It's intellectual property infringement case.

18 Q. And who is the other party in this case?

19 A. Nike.

20 Q. So you're adverse to Nike?

21 A. Pardon me.

22 Q. You're adverse to Nike?

23 A. I don't understand what you're asking.

24 Q. Sure. Who hired -- New Balance is your client;
25 right?

1 A. Yes.

2 Q. And are they the defendant or the plaintiff in
3 that case?

4 A. They are the defendant.

5 Q. And Nike is the plaintiff?

6 A. Yes.

7 Q. So adverse your opinions, whatever they are, are
8 adverse to Nike; is that right?

9 A. I still don't understand.

10 Q. Who owns the patent, New Balance or Nike?

11 A. Nike.

12 Q. And what is your role in that case?

13 A. I provided expert opinions on Nike's product.

14 Q. Did you do anything with respect to invalidity?

15 A. No. I haven't gotten that far in the case.

16 Q. So your role so far has been what?

17 A. Technical consultant for them on knitting
18 technology.

19 Q. Are you hired as a non-infringement expert?

20 A. I don't know.

21 Q. Have you provided any opinions whatsoever?

22 A. I have.

23 Q. In writing?

24 A. No.

25 Q. So you provided oral opinions to the lawyers that

1 represent New Balance?

2 A. Correct.

3 Q. But you have nothing in writing?

4 A. No.

5 Q. Have you been hired to do both non-infringement
6 and invalidity?

7 A. No.

8 Q. What have you been hired for?

9 A. As I mentioned before, I was hired to be a
10 technical knitting consultant on the infringed products.

11 Q. So your position is that the patent would not
12 be infringed; right?

13 A. I only consulted on very specific parts.

14 Q. Are there other experts in that case?

15 A. I believe so. I'm not sure, though.

16 Q. You've been hired as a consulting expert or a
17 testifying expert?

18 A. So far all I've done is consult.

19 Q. Do you know what the outcome of this case is or
20 is it still going on?

21 A. I don't know.

22 Q. Next one on page 4 is your current case that
23 we're here on; right? Skechers. You've been hired by
24 Skechers to be an expert witness; right?

25 A. Yes.

1 Q. Are you -- what is your role in that case?

2 A. So far I have only researched prior art.

3 Q. When you say "researched prior art" what do you
4 mean by that?

5 A. Looked for prior instances of what the patent
6 asserts.

7 Q. So you're trying to find prior art that
8 invalidates the patent?

9 A. Correct.

10 Q. So like in this case you're a patent invalid
11 expert; fair?

12 A. I haven't really gotten that far. We just
13 started. So all I've done is saw prior art.

14 Q. But the patent has been asserted against
15 Skechers; right?

16 A. Correct.

17 Q. How far along are you in this case?

18 A. As I mentioned, all I submitted was prior art.

19 Q. When you say that, I'm a little confused. All
20 you've done is submit prior art. Is that to the
21 lawyers? Is it then publicly disclosed?

22 A. I don't know if it's been publicly disclosed,
23 just to Skechers lawyers.

24 Q. Got you. Lululemon. Is that case still going
25 on?

1 A. I'm not sure but I believe it is.

2 Q. What is your role in the Lululemon case?

3 A. Provided, as my CV says, provide knit technology
4 consultation regarding knitted wrap and weft shoe
5 manufacturing, claim construction, deposition testimony
6 and visited overseas factories.

7 Q. I appreciate what it says. Are you an invalidity
8 expert on that case?

9 A. I don't know what my title is. I provided
10 invalidity opinion. Actually, I did not provide any
11 invalidity opinions. I only provided opinions on claim
12 construction so far.

13 Q. You're working with the lawyers at Knobbe
14 Martens?

15 A. Yes.

16 Q. I'm curious here. The next two, these aren't or
17 are they, the next two on page 5 of your report -- CV,
18 Exhibit 1006. Instructional Designer, Sandbox Learning
19 and Learning Experience Designer. Are those -- are
20 those lawsuits or anything like that?

21 A. No. That's instructional design. Creating
22 trainings for corporations.

23 Q. And then the learning Experience Designer?

24 A. Same.

25 Q. Same thing. Okay. A couple more down here.

1 Expert witness for Adidas; is that right?

2 A. Yes.

3 Q. What's your role in that matter?

4 A. Invalidity expert.

5 Q. Is Nike the one that has the patents?

6 A. Yes.

7 Q. And have you provided an invalidity report?

8 A. I have.

9 Q. Do you know if it's public?

10 A. Yes.

11 Q. Has it been filed somewhere?

12 A. I can't tell you. I don't know.

13 Q. Is it an ITC proceeding?

14 A. It is. Or was.

15 Q. So it's over?

16 A. Yes.

17 Q. What was the outcome?

18 A. They settled.

19 Q. So Adidas was the accused infringer; is that
20 fair?

21 A. Yes.

22 Q. Next one here that I see is Brooks Kushman.
23 That's a law firm; right?

24 A. Correct.

25 Q. Who was the client in that case?

1 A. I would have to look that up. I don't remember.

2 Q. Do you know if it was a lawsuit, an IPC, ITC?

3 A. It was an IPC about turban design.

4 Q. When you say turban design, do you mean like wind
5 turbans?

6 A. No. Headwear. An apparel expert.

7 Q. What was your role in that case?

8 A. Researched prior art. Write an invalidity
9 report.

10 Q. So you wrote an invalidity report on whoever's
11 patent the client's was -- it's a butchered question.
12 But whoever the client was, you wrote an opinion on
13 their behalf against whoever had the patent; is that
14 fair?

15 A. Yes, that's correct.

16 Q. Do you know who owned the patent?

17 A. Like I said, I don't remember. I'd have to look
18 it up.

19 Q. When was this case?

20 A. 2022.

21 Q. Did it start and finish in 2022?

22 A. Yes, it was very short.

23 Q. What was the outcome, do you know?

24 A. I actually don't know.

25 Q. Us lawyers are bad at getting back to people in

1 letting them know what happens sometimes. As I went
2 through this I didn't see any testimony regarding men's
3 underwear other than this case; is that fair?

4 A. That's correct.

5 Q. Have you ever been challenged as unqualified to
6 give an expert opinion?

7 A. I have not.

8 Q. Has any of your testimony or opinions been
9 excluded from proceedings?

10 A. I wouldn't know that. Not that I know of.

11 Q. Have you ever been engaged to defend the
12 patentability against an IPR challenge?

13 A. You mean invalidity?

14 Q. Yes.

15 A. Yes.

16 Q. This case here?

17 A. This case here and Nike versus Adidas.

18 Q. Right. So you're on the invalidity side,
19 correct, in both of those cases?

20 A. Yeah. Correct.

21 Q. In an IPR have you ever been on the side that
22 says the patent is valid?

23 A. No.

24 Q. I'm not out to make this a marathon. So if you
25 need -- we've been going for about an hour so if you

1 want to take a short break, I'm good with that. My
2 coffee is kicking in and this is a good breaking point.

3 A. Okay. We can take a break.

4 MR. LUMAN: Does that work for everybody.

5 MR. RAFFETTO: Sure. Ten minutes.

6 MR. LUMAN: Yeah. Okay.

7 MR. RAFFETTO: Thanks.

8 THE VIDEOGRAPHER: We're off the record at
9 10:53 a.m.

10 (Recess)

11 THE VIDEOGRAPHER: We're back on the record
12 at 11:09 a.m.

13 BY MR. LUMAN:

14 Q. Okay. Let me, I'm going to turn to your expert
15 report again of Exhibit 1005. I'll put it up on the
16 screen. And just so we have it. You see it?

17 A. Yes.

18 Q. Exhibit 1005. I'm just doing it so the record is
19 clear. It's your Declaration of Robin Wagner. If you
20 would, we're going to turn to, I think it's paragraph 31
21 and 32, where you talk about the Person of Ordinary
22 Skill in the Art. You're familiar with that phrase;
23 right?

24 A. I am.

25 Q. If I call it a POSITA, it's sort of take all the

1 capital letters and make it into a word. Do you know
2 what a POSITA is?

3 A. I do.

4 Q. Let's go down here to where POSITA is. It's on
5 page 10 of your report. Do you see that, paragraph 31?

6 A. I do.

7 Q. What were your qualifications for a Person of
8 Ordinary Skill in the Art? How did you come up with
9 this?

10 A. The qualifications are someone who has an
11 undergrad in design or product development in apparel
12 and about your experience or, you know, some balance
13 so that. Maybe a little bit less education and more
14 experience.

15 Q. Did you come up with that?

16 A. Yeah.

17 Q. How did you come up with that?

18 A. From my experience from being a POSITA at one
19 point myself and from teaching.

20 Q. Who provided you the legal standard to come up
21 with a Person of Ordinary Skill in the Art?

22 A. I don't think anybody told me that or maybe a
23 past case. I don't recall.

24 Q. Do you know what the criteria is that the courts
25 and the P tab look for?

1 A. Yes.

2 Q. What are they?

3 A. They look for someone who would be able to
4 understand what the patent is inserting with the minimum
5 amount of experience or education.

6 Q. So do you have -- do you have bullet points that
7 you use to figure out what the level of Ordinary Skill
8 in the Art is?

9 A. No.

10 Q. You just -- did you talk with someone that has a
11 level of skill in the art to come up with this
12 definition?

13 A. No. I'm an expert and I would understand that
14 easily.

15 Q. Is this a low-level skill in the art or a
16 high-level?

17 A. POSITA is the average.

18 Q. So this is an average skill of the art?

19 A. Yeah. I would say these are the minimum
20 qualifications for somebody.

21 Q. Is it hard to meet these qualifications?

22 A. You have to do the work.

23 Q. Is it hard to reach a POSITA?

24 A. I'm not sure I understand the question.

25 Q. Sure. Is this -- I don't see you need a PhD or a

1 master's degree or anything like that. So this is sort
2 of a low-level skill; right?

3 A. I wouldn't say that. If you consider a
4 bachelor's degree low-level skill.

5 Q. Do you need a bachelor's degree?

6 A. You don't have to have a bachelor's degree but it
7 certainly helps.

8 Q. Did you talk with your lawyers about the criteria
9 for a Person of Ordinary Skill in the Art?

10 A. No.

11 Q. So what were your guide post to come up with the
12 level of Ordinary Skill in the Art?

13 MR. RAFFETTO: Objection. Asked and
14 answered.

15 THE WITNESS: I'm an expert and I've also
16 been a POSITA at one point and I know what they are.

17 BY MR. LUMAN:

18 Q. Is this POSITA the same in all of your opinions
19 that you've given before?

20 A. It depends on the level of complexity of the
21 patent and the things that people need to know to be
22 able to create it, to create the product or understand
23 what's being claimed.

24 Q. So creating men's underwear, does that take a lot
25 of experience?

1 A. It takes knowledge of -- takes pretty full
2 knowledge of patent making and construction.

3 Q. That's the construction part of it. What about
4 the design of it?

5 A. I wouldn't say the same. It takes full knowledge
6 of those two things to be able to create men's
7 underwear.

8 Q. Does it take experience with men's underwear?

9 A. Of course.

10 Q. If I understood your testimony correctly, John
11 Karl is the only fore you have into designing men's
12 underwear; right?

13 MR. RAFFETTO: Objection. Mischaracterizes.

14 THE WITNESS: The design of men's underwear
15 relies on basic design of pattern making principals that
16 people learn in school.

17 BY MR. LUMAN:

18 Q. So you're saying an undergrad has the opportunity
19 to or can design men's underwear?

20 A. Yeah. An undergrad with a year of experience
21 could certainly do it.

22 Q. You've never designed men's underwear; right?

23 A. I've been the technical designer. I've been an
24 assistant designer making men's underwear.

25 Q. We talked about that a few minutes ago. John

1 Karl gave you the designs he wanted created. You didn't
2 come up with those creations; right?

3 A. I consulted on the construction of them.

4 Q. Right. He told you the design he wanted. What
5 he wanted it to look like. How he wanted it to fit and
6 you executed; right?

7 A. Correct.

8 Q. Other than that experience and someone wearing
9 your exercise pants, your dance pants, you have no
10 design experience with men's underwear; right?

11 A. I have the experience in pattern making and
12 construction and the technics involved that would
13 produce men's underwear.

14 Q. So you have the experience after the fact, after
15 someone has given you the design of the underwear they
16 want to make; right?

17 A. No, that's not correct.

18 Q. Maybe I'm missing something but you have no
19 experience designing men's underwear?

20 A. I have the experience of construction and design
21 now. But to put together just about anything, including
22 men's underwear.

23 Q. Just so I'm clear. You have -- I understand what
24 you said after the fact, but the reality is, you have
25 never sat down and designed men's underwear; right?

1 MR. RAFFETTO: Objection. Asked and
2 answered. Mischaracterizes.

3 THE WITNESS: That doesn't mean that I
4 couldn't.

5 BY MR. LUMAN:

6 Q. So the level of skill in the art, if I
7 understand, which you've discussed here, is that you
8 don't need an undergraduate degree, you could be one
9 year in and come up with men's underwear?

10 A. No, that's not correct.

11 Q. I thought I understood you to say that an
12 undergrade with one year of undergraduate school could
13 design men's underwear?

14 A. I did not say that.

15 Q. Then explain to me what you did say about one
16 year of undergraduate school.

17 A. I never said anything about one year of
18 undergraduate school.

19 Q. We'll let the record work with that. So you're
20 the only person in paragraph 31 that came up with that
21 definition of the POSITA?

22 A. Yeah. Correct.

23 Q. And paragraph 32?

24 A. Correct.

25 Q. Those are your definitions of Person of Ordinary

1 Skill in the Art?

2 A. Correct.

3 Q. You mentioned earlier that Hogan Lovells lawyers
4 gave you boilerplate, I think it was law, is that right?

5 A. No.

6 Q. What boilerplate stuff did Hogan Lovells give
7 you?

8 A. The title page, table of contents, some of the
9 engagement things. It would be in the back, list of
10 materials considered. I believe definition of -- there
11 is a definition. Claims construction, A, paragraph 30.

12 Q. Paragraph 30. It's titled Claim Construction.
13 They gave you that boilerplate paragraph?

14 A. Without reviewing the e-mails and all the
15 versions, I would say yes.

16 Q. They didn't give you a standard for the
17 definition of Person of Ordinary Skill in the Art;
18 right?

19 A. I answered that already. No, they didn't.

20 Q. So you don't know legally what course look for
21 for a person in Ordinary Skill in the Art?

22 A. I'm not a lawyer.

23 Q. Let's scroll down here to paragraph 50. Let me
24 context as I do that. So let's -- let's before I do
25 that. Let's go to page 10 and 11 of Exhibit 1005.

1 That's your expert report. If I understood your
2 testimony a few minute ago, this section A that's titled
3 Obviousness. Understanding of Legal Standards.

4 That was provided to you by Hogan Lovells?

5 A. 10 and 11. I said 30 was. 31 and 32. That was
6 mine.

7 Q. I understood. Go ahead. Sorry.

8 A. 33 is Hogan Lovells.

9 Q. 34?

10 A. I said 33.

11 Q. I'm asking about 34. Is that Hogan Lovells?

12 A. That's Hogan Lovells also.

13 Q. Is 35 also Hogan Lovells?

14 A. Yes.

15 Q. Is 36 provided to you by Hogan Lovells?

16 A. Yes.

17 Q. And 37, was that provided to you by Hogan
18 Lovells?

19 A. Yes.

20 Q. Is there any other law that you believe is
21 missing from your report?

22 A. I'm not sure I understand the question.

23 Q. Sure. Is there any other law Obviousness that
24 you believe should be in your report?

25 A. I'm not a lawyer. So I'm not sure.

1 Q. So you don't -- other than these boilerplate, as
2 you've characterized them, boilerplate Obviousness law
3 of 33, 34, 36 and 37, you have no other understanding of
4 the legal basis for Obviousness?

5 A. I'm not a lawyer. I understand what Obviousness
6 is.

7 Q. How do you understand what Obviousness is?

8 A. By reading what Hogan Lovells supplied me with.

9 Q. Other than this law, do you know any other law of
10 Obviousness?

11 A. I'm not a lawyer.

12 Q. So the answer is no, this is -- Obviousness right
13 here is in this report provided by Hogan Lovells, that's
14 the only law that you're aware of with Obviousness?

15 A. This is what I base my report on.

16 Q. So the answer is you don't know any other law
17 other than what was provided to you; right?

18 A. At this moment in time, I can't say.

19 Q. So do you know of other law of Obviousness or is
20 this it?

21 A. Like I said, at this moment in time, I don't
22 know.

23 Q. You don't know if you know other Obviousness law?

24 A. At this moment in time, I don't know. What I
25 know is in my report.

1 Q. All right. What you know of Obviousness is in
2 your report, that's fair; right?

3 A. Correct.

4 Q. All right. Giving you context here. I'm
5 scrolling down. Your opinion, your Ground 1 opinion is
6 Kitsch in View of Brocks Renders Obvious Claims 1
7 through 13 and 15 through 16. Let me re-say it again.
8 On page 14 of your declaration it says Ground 1, Kitsch
9 in View of Brocks Renders Obvious Claims 1 through 13
10 and 15 through 16. Do you see that?

11 A. Yes.

12 Q. Okay. I'm going to scroll down and look at
13 paragraph 50 of your report. Do you see that?

14 A. Yes.

15 Q. Claims Elements 1c. There is a heading above
16 paragraph 50. It says, "A stretch panel attached to the
17 body inside the front portion." Do you see that?

18 A. I do.

19 Q. And you understand that a stretch panel, which
20 I've highlighted, that's the first time that the term
21 stretch panel is introduced in this claim; right?

22 A. I need to see the claim to say yes or no.

23 Q. Okay.

24 A. It's mentioned in the description.

25 Q. What's mentioned in the description?

1 A. Stretch panel.

2 Q. What are you looking at?

3 A. I'm looking at the 974 Patent or a review
4 referring to Kitsch --

5 Q. No. I'm referring to the 974 Patent. And you're
6 the expert and you've written a stretch panel attached
7 to the body inside the front portion. You see that?

8 A. Yeah.

9 Q. And stretch panel shows up, what you call 1c in
10 the claim?

11 A. Correct. That's correct.

12 Q. That's the first time in claim 1 that stretch
13 panel shows up?

14 A. Yes. Sorry. I misunderstood. I thought you
15 were saying in the whole patent.

16 MR. RAFFETTO: He's -- just for the record,
17 he's referring, Mr. Luman is referring to the claim not
18 the --

19 THE WITNESS: I understand now.

20 MR. RAFFETTO: Ms. Wagner was looking at the
21 description.

22 MR. LUMAN: Got you.

23 BY MR. LUMAN:

24 Q. Okay. I'm going to stop sharing for just a
25 second here. I'm going to do something else. Let's do

1 this. I'm going to share my screen again. On the
2 screen do you have Kitsch to your right and your expert
3 report to the left?

4 A. Yes.

5 MR. LUMAN: And for the record, Kitsch is
6 Exhibit 1007.

7 (Exhibit 1007 marked remotely introduced and
8 provided electronically to the reporter).

9 BY MR. LUMAN:

10 Q. Where in Kitsch is the term stretch panel used?
11 Let me ask you this way. Is the term stretch panel
12 found in Kitsch anywhere?

13 A. Without searching the entire patent, I don't
14 know.

15 Q. Do you know one way or the other why stretch
16 panel is in there?

17 A. Kitsch cites that a material made of containing
18 Spandex is in there, which means -- which means it would
19 be stretch. And the panels are made of that fabric.

20 MR. LUMAN: Objection. Nonresponsive.

21 BY MR. LUMAN:

22 Q. The term stretch panel is not found in the Kitsch
23 Reference; correct?

24 A. It would be understood that panel containing 80
25 Nylon, 20 Spandex is a stretch panel.

1 MR. LUMAN: Objection. Nonresponsive.

2 BY MR. LUMAN:

3 Q. The term stretch panel is not used in Kitsch;
4 correct?

5 A. It would be understood that the panel stretch
6 because they have Spandex in them.

7 MR. LUMAN: Objection. Nonresponsive.

8 BY MR. LUMAN:

9 Q. So in other words, you're going to keep saying
10 that because you know the term stretch panel doesn't
11 show up in Kitsch; right?

12 A. Without reading the entire patent right now, I
13 don't know if the mention of stretch panel is in there.
14 But it is understood that the panel stretch.

15 MR. LUMAN: Objection. Nonresponsive.

16 BY MR. LUMAN:

17 Q. Kitsch uses the phrase side panels; right?

18 A. Yes.

19 Q. It doesn't use the term stretch panels; right?

20 A. Without reading the entire patent, as I mentioned
21 before, I don't -- I couldn't say right now.

22 Q. In fact, the term stretch only shows up once in
23 Kitsch; doesn't it?

24 A. I don't know without --

25 Q. Turn to paragraph 30. It says stretch weave;

1 right?

2 A. Where do you see that? I see stretch weave.

3 Yeah.

4 Q. Do you know that's the only place in Kitsch where
5 the word stretch is used?

6 A. I don't know that.

7 Q. Can you see my screen on the right?

8 A. Yeah.

9 Q. Can you see where in paragraph 30, I've searched
10 the term stretch. It has your stretch weave.
11 Four-by-four stretch weave. Do you see that? And there
12 is no other stretch anywhere as I search through this.
13 Would you agree with me that stretch only occurs in
14 paragraph 30?

15 MR. RAFFETTO: Objection. Asked and
16 answered.

17 THE WITNESS: It's understood that they are
18 stretch and it's mentioned once, according to your
19 search.

20 BY MS. LUMAN:

21 Q. The term stretch is mentioned once; right?

22 A. According to your search it is. But it's
23 understood that it's there because the fabric has
24 Spandex in them.

25 Q. Okay. I get that you keep wanting to say that.

1 It's really a pretty simple question. The term stretch
2 shows up one time; right?

3 MR. RAFFETTO: Objection. Asked and
4 answered.

5 THE WITNESS: According to your search it
6 shows up one time.

7 BY MR. LUMAN:

8 Q. Okay. Let's go back to paragraph 50 of your
9 report, Exhibit 1005. Do you see that I've highlighted
10 the sentence the constructed -- it's a quote. It says,
11 "Constructed of an elasticized breathable mesh fabric,
12 for the purpose of isolating the genitalia... into the
13 pouch compartment." Do you see that?

14 A. I do.

15 Q. Where did you get that quote from? Over in the
16 Kitsch Patent, paragraph 26. Let's see if I can get
17 where you're quoting from. I think I'm highlighting
18 right here. It's paragraph 26. It says, "Constructed
19 of an elasticized breathable mesh fabric." Right?

20 A. Can you zoom in a little bit?

21 Q. Sure. Is that better?

22 A. Yeah. I found it.

23 Q. All right. So let's go back. It's in
24 paragraph 26. It says in the Kitsch Reference, which is
25 Exhibit 1007. It says, "Constructed of an elasticized

1 breathable mesh fabric, for the purpose of isolating the
2 genitalia." And here is the part that's not in your
3 quote. In Kitsch it says, "In particular scrotum 14 and
4 phallus 16, shown diagrammatically in dotted outline in
5 Figure 7, into the pouch compartment. Thereby isolating
6 the genitalia from contacting the inner thighs and legs
7 of the user wearing the briefs. Do you see that? Why
8 didn't you quote the whole language in your --

9 A. That's what the dot dot dot means. It continues.

10 Q. Where is the dot dot dot after the word pouch
11 compartment describing, thereby isolating the genitalia
12 from contacting the inner thighs and legs of the user
13 wearing the briefs?

14 A. I don't know.

15 Q. You actually misquoted this. It's deceptive;
16 isn't it?

17 MR. RAFFETTO: Objection. Mischaracterizes.

18 THE WITNESS: I chose to put just that part.

19 BY MR. LUMAN:

20 Q. Why? Why didn't you put the rest of it, thereby
21 isolating the genitalia from --

22 A. Because I didn't think it was necessary.

23 Q. Did anyone tell you to take out the rest of it?

24 A. Uh-uh.

25 Q. You just chose to short-quote the whole thing

1 without dot dot dots, without anything; right?

2 A. (No audible response.)

3 Q. Right? You're still there?

4 A. Yeah. I'm still here. I answered your question.

5 Q. Why didn't you?

6 A. Because I didn't want to.

7 Q. Why not?

8 A. Because what I wrote was referring to claim 1c.

9 Q. You used dot dot dot to remove some stuff but you
10 left the reader here thinking that's where that sentence
11 ends, didn't you?

12 A. No. And dot dot dot is not exclusionary. It
13 means there is something there continued.

14 Q. Well, I'm looking at your expert report,
15 Paragraph 50. And it says, "In support for the
16 scrotum." Where is the rest of that sentence?

17 A. I chose not to put it in there.

18 Q. Let's look at, "As explained in the 97 -- I'm
19 still on paragraph 50. You see that? The next sentence
20 says, "As explained in the 974 Patent, the stretch panel
21 may be formed from a single piece of fabric or like in
22 Kitsch, from a plurality of pieces of fabric." Do you
23 see that?

24 A. Yeah.

25 Q. Let me do something here. Stop sharing for just

1 a second. I should have it now. Let me share my
2 screen. Exhibit 1005, your expert report. It says, "As
3 explained in the 974 Patent, the stretch panel may be
4 formed from a single piece of fabric or like in Kitsch,
5 from a plurality of pieces of fabric." Do you see that?

6 A. Yes.

7 MR. LUMAN: That's in paragraph 50. If you
8 would, we're using Exhibit 1001, it's the 974 Patent.
9 They are both on your screen. Column 8.

10 (Exhibits 1001 marked remotely introduced
11 and provided electronically to the reporter).

12 BY MR. LUMAN:

13 Q. You see column 8?

14 A. Uh-huh.

15 Q. It actually says in the 974 Patent, stretch
16 panel. It's going to be highlighted here. The stretch
17 panel -- I'm reading from column 8, lines 5 through 10.
18 "Stretch panel may optionally be formed from a plurality
19 of pieces of fabric seamed together." And so what it's
20 saying is, is it not, that the stretch panel of the 974
21 Patent is effectively one piece; right?

22 A. No. It says it's seamed together.

23 Q. It's seamed together along two sides, reading
24 from the 974 Patent, one of which extends transversely
25 across the bottom of the opening. Right. So they're

1 seamed together to create one stretch panel; right?

2 A. I would have to see exactly what you're pointing
3 to.

4 Q. What do you mean you have to see exactly what
5 I'm --

6 A. Without seeing the garment that we're talking
7 about, I can't say whether it's functioning as one piece
8 or two pieces.

9 Q. Are you saying you need garments to make your
10 opinion?

11 MR. RAFFETTO: Objection. Mischaracterizes.

12 MR. LUMAN: That's what I heard.

13 THE WITNESS: In certain cases.

14 BY MR. LUMAN:

15 Q. So you need to have a patent, a 974 Patent, the
16 underwear of the 974 Patent in front of you to make a
17 decision of what the 974 Patent has in it?

18 MR. RAFFETTO: Objection. Mischaracterizes.

19 THE WITNESS: That's not what I said.

20 BY MR. LUMAN:

21 Q. Why do you need 974 underwear in order to figure
22 out what that means?

23 A. I didn't say I needed 974 underwear.

24 Q. What do you need?

25 A. I said in order to see something that was new

1 that was proposed and not the actual 974, it would be
2 useful to see it to determine whether it's functioning
3 as one piece or two.

4 Q. Were you provided an exemplar of the 974
5 underwear, the packaged apparel underwear?

6 A. I was.

7 Q. You have -- you've looked at the packaged apparel
8 underwear?

9 A. I don't know if it's the original, from the
10 original patent or that it's just an example.

11 Q. What did you take from that? That the 974 Patent
12 has a stretch panel formed of what?

13 A. It was two pieces.

14 Q. And they were sewn together?

15 A. I believe so. Yes.

16 Q. To act as one piece; right?

17 A. In that case, yes. In this case, this is not
18 talking about 974. This is talking about another
19 iteration. I can't say.

20 Q. What -- okay -- sorry. Go ahead.

21 A. I would need to see drawings or samples.

22 Q. Of what?

23 A. Of what you're proposing.

24 Q. I'm reading from the 974 Patent; right?

25 A. Uh-huh.

1 Q. And it says, you kind of short-quoted this thing
2 again. It says in column 8, "Stretch panel 22 may
3 optionally be formed from a plurality of pieces of
4 fabric seamed together." Right?

5 A. That's correct.

6 Q. And so the part you don't have in your report is
7 the part "seamed together." I don't see that in
8 paragraph 50. And you quote from paragraph 50. And you
9 even have the lines, 8:5-10 of the 974; right?

10 A. Uh-huh.

11 Q. It says "seemed together." Why did you leave
12 that out?

13 A. At the time that's what I needed to talk about
14 stretch panel attached to the body inside of the front
15 portion.

16 Q. So the stretch panel of 974, if it has a
17 plurality of pieces, and I'm looking at the 974 Patent
18 where you quoted, if it has multiple pieces, they are
19 seamed together to create a stretch panel; right?

20 A. Repeat that question.

21 Q. Sure. The 974 Patent, Exhibit 1001, column 8,
22 like you quoted in your report in paragraph 50 or almost
23 quoted. It says the stretch panel 22, I'm reading in
24 the 974 Patent. "Stretch panel 22 may optionally be
25 formed from a plurality of pieces of fabric seamed

1 together." You see that?

2 A. Right.

3 Q. So the stretch panel of the 974 Patent may have
4 multiple pieces but they are seamed together; correct?

5 A. The 974 Patent figures are not seamed together.

6 Q. Does the language say something different to you
7 than I'm reading from column 8?

8 A. To me it seems like it's a different iteration
9 than what is -- what's in the figures of the 974.

10 Q. So, "Stretch panel 22 may optionally be formed
11 from a plurality of pieces of fabric seamed together."
12 I'm reading that correctly; right?

13 A. Yup.

14 Q. That full quote is not in your report in
15 paragraph 50; right?

16 A. No.

17 Q. So the stretch panel of the 974 Patent may be
18 created of multiple pieces but they are seamed together;
19 right?

20 A. It may be.

21 Q. That's what it says; correct?

22 A. Yeah. That's what it says.

23 Q. Can you see my screen?

24 A. Can you make that a little bigger? Thank you.

25 Q. I'm showing you Kitsch, which is on the screen,

1 Exhibit 1007. Right. And I believe that the side
2 panels are number 12. Right. That's in figure, I'm
3 showing you Figure 8?

4 A. Yeah.

5 Q. Those side panels, those two side panels, 12,
6 are not stitched together, are they?

7 A. They are seamed together at 24 and -- let's see.
8 I don't know.

9 Q. Number 12 on both sides, the fences are not
10 stitched together; correct?

11 A. They are seamed together at 24.

12 Q. I think my question is pretty clear. Number 12
13 in the Kitsch Patent are side panels. And nowhere in
14 Kitsch does it say they are stitched together?

15 MR. RAFFETTO: Objection. Asked and
16 answered.

17 THE WITNESS: They are seamed together at
18 the top and bottom.

19 BY MR. LUMAN:

20 Q. Show me in Kitsch where it says number 12, the
21 side panels are stitched together.

22 A. I'm going to have to read the whole patent.

23 Q. You're an expert. You read through this stuff
24 and you spent hours doing it and now you need to reed
25 through it now to see if it says that?

1 A. Yes.

2 Q. Because it doesn't say it, does it?

3 A. I don't know that.

4 Q. So how can I take your opinion and rely upon it
5 if you don't know what's in Kitsch?

6 MR. RAFFETTO: Objection. Argumentative.
7 Asked and answered.

8 THE WITNESS: From the figure. Go back up
9 to the figure you're talking about.

10 BY MR. LUMAN:

11 Q. Figure 8?

12 A. Yes. From the figure it shows at 24 that the two
13 side panels are seamed together and at the top end also.
14 I don't have a number there, but adjacent to -- scroll
15 down a little bit. Thank you. Scroll down a little bit
16 more. I can't see the numbers. Sorry. Up. The other.

17 Q. So you're looking at Figure 8?

18 A. Adjacent to 18a, horizontally there is a line,
19 that is also a seam.

20 Q. I get there are seams. Tell me where the side
21 panels are disclosed as being stitched together?

22 MR. RAFFETTO: Objection. Asked and
23 answered several times.

24 MR. LUMAN: She has not answered that
25 question.

1 THE WITNESS: I'm answering it right now.
2 It's understood from the figure that 24 is seamed and
3 they are on the same seam line. They are seamed
4 together.

5 BY MR. LUMAN:

6 Q. We're looking at Figure 8. We're looking at the
7 same figure. Where is the end of 12 attached to the end
8 of 12, left and right? Where are they attached
9 together?

10 A. It's on the same seam line. To me, that's
11 attached together.

12 Q. So what you're saying is number 12 attaches to a
13 seam? Number 12 don't attach to one another.

14 A. They attach on the same seam.

15 Q. They attach to a seam; is that fair?

16 A. They are seamed together.

17 Q. No, they are not stitched together; are they?

18 A. They are seamed together.

19 Q. Because they both come down to a seam?

20 A. What's the question?

21 Q. Number 12 in Figure 8, if I attach left number
22 12, I can attach that to the seam that you're talking
23 about without attaching number 12 on the right at the
24 same time; right?

25 MR. RAFFETTO: Objection. Vague.

1 THE WITNESS: You could do anything in this
2 garment. You could make it any way you want it. The
3 way the garment is made and the way the figure shows the
4 garment is made, they are on the same seam. They are
5 seamed together.

6 BY MR. LUMAN:

7 Q. Figure 14. There is number 12. Does it show
8 that it's stitched to the other number 12?

9 A. That's a pattern piece.

10 Q. They cut both pattern pieces out to make number
11 12; right? Right?

12 A. I'm not sure I understand.

13 Q. Wait a minute. What do you mean you don't
14 understand? You're the one that's the expert on pattern
15 making. And you can't tell me that somehow someway
16 these two number 12's aren't cut out and then put in the
17 garment. They are separate; right?

18 A. That's just -- what you're showing me is just one
19 pattern.

20 Q. Sure. It's either the left or the right; right?

21 A. It doesn't say which one it is.

22 Q. It's one or the other?

23 A. It doesn't say cut two. So I -- actually, I
24 would be guessing.

25 Q. You're an expert, now you're guessing on how they

1 make it?

2 MR. RAFFETTO: Objection. Mischaracterizes.

3 THE WITNESS: I'm guessing how many pattern
4 pieces you would cut from this figure. It's not noted
5 on the figure.

6 BY MR. LUMAN:

7 Q. So number 12, are you saying that it's connected
8 to another number 12 that I'm missing?

9 A. It's joined together on, I don't know the seam
10 number. It's joined together on, I believe it's 24,
11 perhaps. Hang on. It's joined together on 24.

12 Q. When they join together with number 24 -- so now
13 we're down in the perineum area; right?

14 A. Forward of the perineum.

15 Q. But down there; right?

16 A. Uh-uh. Yes.

17 Q. The two are attached to that seam independently;
18 right?

19 A. They are attached to the same sewing operation.

20 Q. Okay. But they are attached to a seam that
21 exists in the underwear already; right?

22 A. No. The seam is made by sewing them together.

23 Q. So I'm looking at number, what figure is this?
24 This is Figure 14. Are you telling me that at the end
25 where it says 12c is attached to another 12c, like right

1 next to it, like they are seamed together on that
2 vertical?

3 A. I am telling you they are seamed together on seam
4 24.

5 Q. But there is a gap between them; right?

6 A. Yes.

7 Q. I'm scrolling back up to Figure 8 to see if we
8 could all be on the same page. There is a gap between
9 the two number 12's; right?

10 A. In this illustration, yes.

11 Q. Is there any other illustration where the two
12 12's are actually combined together to come together?

13 A. It's a little hard to tell.

14 Q. Have you seen a figure or a description where the
15 two number 12's are attached to one another directly?

16 A. Figure 3, it looks at the back on 24 like they
17 are adjacent to each other.

18 Q. Which figure?

19 A. Figure 3.

20 Q. But there is your seam right there; right? The
21 two number 12's are not sewed together in Figure 3;
22 right?

23 A. They are attached together on the seam 24.

24 Q. Understood. I know that. You're going to
25 continue to say that. But I think the question is

1 pretty simple. Without that seam that you're talking
2 about, number 24 or 18d, whatever that is, the two
3 number 12's aren't touching one another in the back; are
4 they?

5 A. In this illustration, this figure, it looks like
6 they aren't.

7 Q. Well, do we want to do the color one where you
8 can show me that they are not? Look at that.

9 A. That's a different illustration.

10 Q. Figure 8. You've never shown me anywhere in your
11 report that, I'm looking at Figure 8 on page 21 of your
12 expert report. They aren't "they" being number 12's,
13 are not touching one another; are they?

14 A. In this figure, no. In the other figure,
15 Figure 3, it looks like they are.

16 Q. All right. Let's go to Figure 3 on page 22 of
17 your report. You got another colorful picture. Look at
18 that. Number 12's aren't touching one another; are
19 they?

20 A. No. But they are on the same seam still.

21 Q. All right. I get your testimony. It's going to
22 be the same but they aren't touching one another in the
23 perineum; right?

24 A. No.

25 Q. Let's look at paragraph 53. Let's see. I'm

1 putting your expert report back on the screen. Is it on
2 there?

3 A. Yeah.

4 Q. I just want to make sure -- I've done something,
5 I can't even see you all anymore. Sorry. On the screen
6 I'm scrolling it up and down; correct?

7 A. Uh-huh. Yes.

8 Q. So I've got your expert report, Exhibit 1005.
9 And let's look at paragraph 53. You see that?

10 A. Yes.

11 Q. 58. Let's look at paragraph 58. So paragraph
12 58. Let's see if I get this right. We're talking about
13 the side edges. I'm going to put Kitsch up here as
14 well. Hopefully I could do this. Since you're talking
15 about Kitsch, I just want to have it there for you.
16 Paragraph 58. It says -- paragraph 58 of your Exhibit
17 1005. "Third, Kitsch's side panels have side edges
18 attached to the body at side seams extending
19 substantially continuously along either side of the
20 front portion, as the panels have sides that attach to
21 the laterally spaced apart pouch seams that connect the
22 pouch material to the front walls." Do you see that?

23 A. Yes.

24 Q. Paragraph 27. Let's see if we could do -- let's
25 go to -- we can use your Figure 3. You would agree that

1 the side panels or the side edges sewn to the front of
2 Kitsch are the only attachment in the vertical direction
3 between the side panels and the body of the garment;
4 right?

5 MR. RAFFETTO: Objection. Vague. Compound.

6 THE WITNESS: Can you break that apart?

7 BY MR. LUMAN:

8 Q. Sure. If you're looking at the side edges are
9 sewn to the front of the garment; right?

10 A. Yes.

11 Q. And they are the only attachment, the side edges
12 here that I'm pointing to on Figure 3 in your -- on
13 page 28 of your report, these are the -- that's the only
14 vertical direction in which the side panels are attached
15 in the front; right?

16 A. Yes.

17 Q. These attachments, they allow the side panels.
18 So the attachment is in the front that we just talked
19 about. And the side panels that you have in red, the
20 attachments in the front allow the side panels of Kitsch
21 to hang loosely; right?

22 A. They don't hang loosely.

23 Q. They don't hang loosely?

24 A. No.

25 Q. They are taut?

1 A. They are attached all the way to the perineum.

2 Q. The top edge here. Right. The top edge because
3 of the way it's attached to the front part of Kitsch,
4 the side panels, the attachment to the front part of
5 Kitsch is vertical. Right. And then the way it's
6 attached it allows the upper edge of the side panels to
7 be somewhat loosely; right?

8 A. It has Spandex.

9 Q. Are you saying -- I appreciate they are made of
10 Spandex. But this, I'm looking at the -- excuse me.
11 The curvature of the side panel. Right. Because of the
12 way it's attached to the front, it allows the upper edge
13 of the side panel to be somewhat loose; right?

14 A. That edge is sewn in.

15 Q. The top edge is sewn in? 12a is the top of the
16 side panel; correct?

17 A. I need to see another figure to tell you that.

18 Q. Why don't you take a read through. You're the
19 expert. You're the one that is providing the opinion.

20 A. That was six months ago. So I need to refresh
21 myself.

22 Q. You just refreshed yourself yesterday and last
23 week.

24 MR. RAFFETTO: Objection. Argumentative.

25 It's a 116-page report. The witness can spend a little

1 time refreshing her recollection.

2 MR. LUMAN: Sure.

3 THE WITNESS: 20 is attached all the way.

4 20 where the green line is, is attached all the way to
5 forward of the perineum.

6 BY MR. LUMAN:

7 Q. You're looking at Figure 3 of your --

8 A. Yeah. Yeah.

9 Q. Figure 3 of your report?

10 A. Yes.

11 Q. So the top edge, the side panel top edge because
12 of the way the green is attached, the top edge is not
13 top, right, it's loose; correct?

14 A. I don't think so. Because its shape in pattern
15 making when you make a top edge, the smaller it cuts in.
16 So I don't think so.

17 Q. So you don't think this top edge of the side
18 panel in red, I think it's 18a. No. My bad. It's 12a.
19 Right 12a at the top. We would agree with that?

20 A. Yes.

21 Q. So you are saying 12a is topped?

22 A. I think so because it wouldn't cup the genitals
23 and provide the support that the patent discloses.

24 Q. Let's be clear on what this patent discloses.
25 Right. It discloses preventing the genitals from

1 sticking to the thighs; right?

2 MR. RAFFETTO: Objection. Vague. Not sure
3 which patent you're talking about now.

4 BY MR. LUMAN:

5 Q. We're looking at Figure 3 in your expert report.
6 It shows Kitsch, does it not?

7 A. Yes.

8 Q. So the purpose of Kitsch is to prevent the
9 genitals from contacting the thigh; right?

10 A. I can't say that's the only thing it does without
11 reading the patent.

12 Q. Why don't we look at it together. Kitsch is in
13 the right hand of your screen. Exhibit 1007. I think
14 you even quoted this somewhere?

15 A. Claim one says --

16 Q. Paragraph 6 for you here first. "The present
17 invention provides a solution to the above by addressing
18 the issues of scrotum independence from inner legs, and
19 improved comfort and support." Right? Do you see that?

20 A. Can you make that bigger, please.

21 Q. What's that?

22 A. Can you make that bigger, please.

23 Q. I'll try. For sure. The one I'm reading,
24 paragraph 6 of the Kitsch Reference. Right. "The
25 present invention provides a solution to the above by

1 addressing the issues of scrotum independence from inner
2 legs, and improved comfort and support." Right?

3 A. That's what that says but claim 1 says that --
4 said pouch having a valid supporting portion extending.
5 And so on. Said pouch having a scrotum supporting
6 portion.

7 Q. Are we going to get into the claims or are we --
8 I'm happy to go through claim by claim. If you want to
9 go through Kitsch and do that.

10 A. You asked me if it was in any in Kitsch and it's
11 in Kitsch.

12 Q. What's in Kitsch?

13 A. That there is more than just separating the
14 scrotum from the -- the scrotum and testicles from the
15 leg and provide -- the panel -- supply support.

16 Q. So you're saying the pouch does?

17 A. I'm saying the panels do.

18 Q. The what does?

19 A. I'm saying the panels do.

20 Q. So the panels, they don't connect in the back and
21 they don't look anything like the stretch panel in the
22 974 Patent but you're claiming they do; right?

23 A. I think they do. I think it's understood.

24 Q. Have you ever -- earlier you said all men's
25 underwear, all these patents relate to men's underwear

1 in providing support; right? Remember that?

2 A. I don't remember. You'd have to read that back
3 to me.

4 Q. Oh, I will. Are you telling me that there is
5 nothing patentable in any men's underwear patent?

6 A. I never said that.

7 Q. Is the Kitsch Patent patentable?

8 A. They have a patent, obviously.

9 Q. So the 974 Patent exists as well; right?

10 A. It exists. Sure.

11 Q. So is the Kitsch Patent in your opinion invalid?

12 MR. RAFFETTO: I would just like to say for
13 the record, Kitsch is a publication.

14 MR. LUMAN: Kitsch also has a patent. I'm
15 happy to pull up the Kitsch Patent. You want me to do
16 that?

17 MR. RAFFETTO: Ms. Wagner is not here to
18 testify about whether the claims of Kitsch are invalid.

19 MR. LUMAN: That's already -- she's already
20 gone down the road that they are all the same.

21 THE WITNESS: I never said that.

22 BY MR. LUMAN:

23 Q. Is the Kitsch Patent invalid in your view?

24 A. I never said that. I don't know. I'm not a
25 lawyer. I wasn't asked to review it in lieu of that.

1 Q. Let's go to paragraph 60. Right before that,
2 let's go -- let me do this. Let me get a context. I've
3 got to go up just a little bit to give it context
4 because you put it way up here. 1e. Right. It says,
5 paragraph 59. Right above paragraph 55 of your report.
6 It has, which you characterize as 1e. By the way, did
7 you break up the patent into these 1e's, 1ei's or did
8 your lawyers do that?

9 MR. RAFFETTO: I'm going to object. Again,
10 it seems like you're continuing to try to get into draft
11 reports. And the witness has testified extensively that
12 this report reflects her opinions.

13 BY MR. LUMAN:

14 Q. I'm not saying it doesn't reflect opinions. What
15 I'm asking is, she said earlier, and correct me if I'm
16 wrong, that boilerplate things were given to you. And
17 you went through them. And I'm wondering did you miss
18 this? Did you get boilerplate for 1e and other claims
19 as to how it's broken out?

20 A. I didn't.

21 Q. What's that?

22 A. I said I didn't. I told you what was boilerplate
23 already.

24 Q. So you created the 1e. The little i, the little
25 ii, the little iii, that's your work?

1 A. Yeah. That's basic outlining.

2 Q. Okay. So with 1e, it's sort of basic outlining;
3 right? And you did the basic outlining?

4 A. Yes.

5 Q. Through the whole thing?

6 A. Except for the boilerplate part.

7 Q. No. No. No. No. Maybe we're miscommunicating
8 here, which could be likely. So this 1d, you see I've
9 scrolled back up to page 22? You see that? We talked
10 about this earlier; right? The stretch panel?

11 A. Yes.

12 Q. So 1d. Is the d part of that, why is that in
13 square brackets?

14 A. It's a separation because they are several parts
15 just to be clear.

16 Q. And your testimony is that you broke up the
17 claims into these different parts?

18 A. Yes, to be clear.

19 Q. Okay. I'm just making sure. The 1e is -- you
20 did the 1e and then you did the, which you call the
21 basic outlining to go to this; right? The 1e, i, ii and
22 the iii?

23 A. It says parts to it.

24 Q. I just wanted to make sure we're on the same
25 page. You broke that up; right?

1 A. I already answered you. I said yes.

2 Q. Okay. All right. So we were looking at 1e and
3 if you look at this right here, 1e iv. So 1e 4. Right.
4 You see that in right above paragraph 55. So now we're
5 going to scroll down to where you talk about that.
6 Which I believe is in paragraph 59, where it says,
7 "Fourth, Kitsch's side panels include an opening for
8 receiving a wearer's genitals in an anatomical pouch
9 compartment." Do you see that?

10 A. Where are you?

11 MR. RAFFETTO: Paragraph 59.

12 BY MR. LUMAN:

13 Q. Are you there?

14 A. Yeah.

15 Q. Just so I'll put Figure 8 up here on the other
16 side. Just on the right-hand side so we got the same
17 thing. I put Figure 8 on the Kitsch Patent on your
18 right-hand screen. But now let's look at and you got a
19 colorful version of Figure 8 in paragraph 16; right?

20 A. Yes.

21 Q. Just so I'm clear, you're saying the opening in
22 claim 1e 4. Right. Is the area in blue between the two
23 side panels?

24 A. That's the area.

25 Q. Right. So your definition of opening is the area

1 that's in blue between the two side panels that are in
2 red?

3 A. Yeah. It's the area in blue.

4 Q. Which are between the two side panels that are in
5 red; correct?

6 A. Yes.

7 Q. Okay. So just so I understand, the red side
8 panels that you have, number 12's that are colored in
9 red, do you see those?

10 A. I see.

11 Q. There is no hole in either of those two red side
12 panels; right?

13 A. No. They create an orifice by the way they are
14 sewn.

15 MR. LUMAN: I'm going to object as
16 nonresponsive after the word no.

17 BY MR. LUMAN:

18 Q. I just want to make sure we're on the same page.
19 The two side panels in red themselves do not have holes
20 in them; right?

21 A. They don't have holes but they create an orifice
22 by the way they are sewn.

23 Q. I know you want to keep saying that but I just
24 want to have a very clean record. The two side panels,
25 number 12, in Figure 8 that you've colored in red, those

1 two side panels themselves do not have holes in them;
2 right?

3 A. Correct.

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

6 BY MR. LUMAN:

7 Q. You said correct to that?

8 A. Each side panel does not have a hole.

9 Q. Thank you.

10 MR. RAFFETTO: John, whenever you get to a
11 breaking point, I think we've been going another hour.

12 MR. LUMAN: Yeah. I've got four questions,
13 tops.

14 MR. RAFFETTO: Okay.

15 MR. LUMAN: I say that. Depends on how the
16 testimony goes. I think I got four questions.

17 BY MR. LUMAN:

18 Q. Let's look at on the right-hand side of your
19 screen got Exhibit 1007. That's Kitsch; right? You see
20 that?

21 A. Uh-uh.

22 Q. In paragraph 7 it says as seen paragraph 27. "As
23 seen in the interior of briefs 10, side panels 12 are
24 formed of two separate and substantially parallel pieces
25 of mesh fabric attached to the laterally spaced apart

1 pouch seams 20." Do you see that?

2 A. Yeah.

3 Q. The word opening doesn't appear in that
4 description; right?

5 A. That's right.

6 Q. Does Kitsch describe anywhere that the space
7 between the side panels is an opening?

8 A. Again, without reading the entire patent, I can't
9 say but they do form an opening.

10 Q. I know that's your testimony. That's not the
11 question I asked.

12 A. It's understood and it shows it in the figure.

13 Q. This is why we didn't have four more questions.
14 Does Kitsch describe anywhere that the side panels
15 create an opening?

16 MR. RAFFETTO: Objection. Asked and
17 answered.

18 THE WITNESS: The figure, Figure -- what is
19 that? Figure 6? I can't really see it. I believe it's
20 Figure 6.

21 BY MR. LUMAN:

22 Q. This one here?

23 MR. RAFFETTO: Figure 8.

24 THE WITNESS: Sorry. Figure 8 shows an
25 opening.

1 BY MR. LUMAN:

2 Q. No. No. We already talked about that. We
3 already talked about that. That's an open area.
4 Anywhere in Kitsch does it describe or use the word
5 opening?

6 MR. RAFFETTO: Objection. Compound and also
7 asked and answered.

8 THE WITNESS: There is an opening described
9 in the figures.

10 BY MR. LUMAN:

11 Q. Does Kitsch use the word opening anywhere to
12 describe the space between the two side panels?

13 A. As I said before, without reading the entire
14 patent or doing a search I don't have access to, I don't
15 know.

16 Q. Is it fair to say that if it did, you would have
17 quoted it?

18 A. No.

19 Q. You wouldn't have quoted it to support --

20 A. I don't know. I can't answer that. I don't --

21 Q. Why can't you answer it? You're an expert.
22 Maybe on a break look for the word opening. See if it's
23 in Kitsch. I can assure you that it's not there to
24 describe the area between the fences; is it?

25 MR. RAFFETTO: Objection. I'm not sure that

1 was even a question. Go ahead.

2 THE WITNESS: I already said I don't know
3 without reading the entire patent.

4 BY MR. LUMAN:

5 Q. Haven't you read the entire patent?

6 A. A few times. Yes.

7 Q. A few times. Okay. And as you sit here today
8 you don't know if you used the word opening to describe
9 that area between the side panels?

10 A. We're talking about several patents with
11 thousands and thousands of words. So, that's my answer
12 without reading the entire patent again to find one
13 word. I don't know.

14 MR. LUMAN: Okay. It's a good time for a
15 break.

16 MR. RAFFETTO: Thanks:

17 THE VIDEOGRAPHER: We're off the record at
18 12:30 p.m.

19 (Lunch)

20 THE VIDEOGRAPHER: We are back on the record
21 at 1:18 p.m.

22 BY MR. LUMAN:

23 Q. Ms. Wagner, who is in the room with you?

24 A. Joe.

25 Q. Anyone else?

1 A. No.

2 Q. Who did you have lunch with?

3 A. Joe.

4 Q. Maybe I didn't -- my own fault. Did you prep
5 with Joe in person yesterday?

6 A. Yes.

7 Q. And at the offices in where you are now?

8 A. Yes.

9 Q. In Hogan Lovells?

10 A. Yes.

11 Q. And was there anybody else present during that
12 prep session?

13 A. Not in person.

14 Q. Who was there by video or phone?

15 A. Scott joined us briefly.

16 Q. Was that by video or phone?

17 A. Video.

18 Q. And then I think, if I recall correctly, last
19 week you prepped on your own; right?

20 A. There were, yes, with a couple short video calls.

21 Q. Who are on those calls?

22 A. Joe and Jacob.

23 Q. And I missed Jacob's last name. What's Jacob's
24 last name?

25 A. Felicetty.

1 Q. Okay. Let's -- let's do this. Let's get your
2 expert report back up here. Just so you know, you can
3 pull it up on your own. If you go to paragraph 63,
4 which is Exhibit 1005. So I'm looking at Exhibit 1005,
5 it's your expert report and right above paragraph 63 I
6 see claim language of, was it 1g. Do you see that?

7 A. Uh-huh. Yes.

8 Q. And that's claim language that is claim language
9 that you're basing the next portion of your report on;
10 right?

11 A. Correct.

12 Q. And then you've done the, and I'm pointing if
13 that helps you. I've highlighted it. You've done i,
14 ii, iii; right?

15 A. Yes.

16 Q. I want to focus here on little iii, which I
17 believe is -- do you see that? I'll read it just so
18 everybody has got it in the record here. So you've
19 outlined it as 1g, iii. And it says, "Front portion is
20 gathered by the stretch panel and defines a
21 three-dimensional pouch between the stretch panel and
22 the front portion for receiving the wearer's genitals
23 and holding the wearer's genitals while the garment is
24 being worn." Did I get that right?

25 A. Yes.

1 Q. So that's where I'm going to be talking about.
2 So now I'm going to scroll down to paragraph 68 because
3 I think those two align. Paragraph 68 talks about I
4 believe it talks about Brocks. So if you read the first
5 sentence, it's the first paragraph 68 on page 35. You
6 say, "It would have been obvious to a POSITA to modify
7 Kitsch to stitch Kitsch's elasticized side panels to the
8 front panel 18 in a stretched condition, as taught by
9 Brocks, in order to create a gathering and shirring
10 forming a secure enclosure pouch for the male genitals."
11 Do you see that?

12 A. Yes.

13 Q. What does Brocks disclose?

14 A. Brocks discloses that you can take an elastic
15 strip shorter than the main compartment and stretch it
16 so that the two together and form a pouch to secure
17 someone's genitals.

18 MR. LUMAN: So I put Brocks, which is
19 Exhibit 1008, on your right-hand screen.

20 (Exhibit 1008 marked remotely introduced and
21 provided electronically to the reporter).

22 BY MR. LUMAN:

23 Q. Do you see that?

24 A. Yes.

25 Q. It always seems a little small. So based upon

1 what you said is it fair to say that Brocks uses elastic
2 around the legs to prevent the scrotal sack or any part
3 thereof to slip through the band in circling the legs?

4 A. It's fair to say that he forms a compartment, a
5 pouch from using an elasticized strip sewn to the front
6 portion to make a dimensional object to cradle the
7 genitals.

8 Q. Let me make sure we're on the same page because I
9 think Brocks does a pretty good job of like telling
10 everybody what his invention is. Right. The field of
11 the invention, do you see that on column 1?

12 A. Yes.

13 Q. So I'm looking at Exhibit 1008, it's the Brocks
14 Patent. Right. And under the field of invention.
15 Let's see. Let me just as you read this, it says, the
16 invention in Brocks, 729 patent, it says, "This
17 invention relates to men's knitted underwear briefs
18 often referred to as Jockey shorts." What's your
19 understanding of the term Jockey shorts?

20 A. Regular men's underwear.

21 Q. Like Whitey Tightly type thing?

22 A. Yeah. Traditional wide-front.

23 Q. So continuing on it says, "The design of this
24 type of men's brief of similar construction widely sold
25 under many brand names often causes an annoying

1 discomfort, discomfiture, and embarrassment by allowing
2 the scrotal sack or any part thereof to slip through the
3 band encircling the legs." You see that?

4 A. Yes.

5 Q. And then I'm happy to read the next sentence but
6 I was going to focus on the one after it. "Also there
7 is no particular pouch defined by the construction to
8 accommodate the male genital organs." Do you see that?

9 A. Yes.

10 Q. So then in column 1, I think this is line 13.
11 They kind of always get a little -- but at line 13
12 begins, "The structure of the briefs according to the
13 invention, in particular the construction of the front
14 panel of the briefs joining the panel plys forms a soft
15 pouch or cage enveloping the male privates and genital
16 area, thereby providing greater comfort and security,
17 and eliminating the foregoing problems." Right. "This
18 is achieved by the inclusion of elastic sections added
19 to the hem along the curved edge of the leg opening
20 portion of the inserted front panel plys." Do you see
21 that?

22 A. Yes.

23 Q. So, Brocks, Exhibit 1008, his invention is to
24 include elastic sections along the leg openings; right?

25 A. Yes.

1 Q. You're familiar with Brocks; right?

2 A. Yes.

3 Q. And Brocks doesn't have side panels; right?

4 A. I don't know if he particularly says side panels
5 but there are side panels to the garment or otherwise
6 you couldn't wear it if they weren't.

7 Q. When you say side panels you mean going around
8 the legs --

9 A. Side -- excuse me. Excuse me. Could you define
10 side panels for me?

11 Q. Sure. I mean, you've been using the term side
12 panels. You used it in connection with Kitsch. Is
13 there Kitsch type side panels in Brocks?

14 A. No. No.

15 Q. And then Brocks doesn't have a stretch panel like
16 the side panels in Kitsch; right? Let me ask it a
17 different way. Are there side panels in Brocks?

18 A. No.

19 Q. And is there a stretch panel in Brocks?

20 A. No.

21 Q. What Brocks has is, I'm looking at Figure 9 as
22 I'm scrolling through it, giving everybody a headache.
23 It has this 76, I think, it's 76e and 78e, it has these
24 elastic bands; right?

25 A. Yes.

1 Q. Does your report have a picture of that? I don't
2 think it does. Yeah it does. You've got Figure 8 and
3 Figure 9 in your expert report. Figure 8 and Figure 9
4 of Brocks in your expert report in paragraph 67; right?

5 A. Yes.

6 Q. The elastic strips are just that, they are not
7 stretch panels, they are just elastic strips; right?

8 A. That's correct.

9 Q. Go down to 69 of your expert report, which is
10 Exhibit 1005. I'm a little confused. I'm looking at
11 page -- sorry. Paragraph 69 of your report. I'm a
12 little confused on what you say Brocks brings to the
13 table. Are you saying that a POSITA, if they read
14 Brocks discussion about using the elastic stretch around
15 the leg openings, they would use that concept somehow
16 with Kitsch?

17 A. Yes.

18 Q. And that concept is really elastic material;
19 right?

20 A. No. It's elastic material in combination with
21 the material that's not as elastic or as stretched.

22 Q. I missed what you said because it cut in and out.
23 Would you say that again?

24 A. It's the concept of sewing something in a
25 pre-stretched state to something that is less stressed

1 to create fullness gathering.

2 Q. Brocks didn't invent elastic material; right?

3 A. No.

4 Q. So the use of elastic material has been used for
5 a long time in men's clothing; right?

6 A. Yes.

7 Q. And in even like the waistband of men's underwear
8 is elastic material; right?

9 A. Yes. Maybe not the same. Depends on the
10 garment.

11 Q. And Kitsch doesn't use any sort of elastic
12 material other than the waistband; right?

13 A. No, that's not true.

14 Q. What's elastic in Kitsch?

15 A. The side panels.

16 Q. Okay. So the side panels in Kitsch are some sort
17 of mesh material that has stretch characteristics;
18 right?

19 A. They contain Spandex. Yes.

20 Q. And Kitsch didn't use Spandex material to create
21 a sheering; right?

22 A. Correct.

23 Q. So is it your position that you need somehow
24 Brocks to identify that electricity or elastic will
25 create sheering if you attach it to something?

1 A. No. You need something that is less stretched
2 attached to something that is shorter and more stretched
3 to create that gathering. Both can be elastic but one
4 of them needs to be elastic.

5 Q. Are you -- is it your position that Brocks came
6 up with that idea?

7 A. No.

8 Q. Do you know of anyone other than Brocks in the
9 prosecution history that used that?

10 A. No. But it's very common in sewing to use that
11 technic and has been. I went to school in 1977 and I've
12 been sewing since I was seven and I've done this.

13 Q. You've done what Brocks has done?

14 A. Yeah.

15 Q. Okay. Let's go back to -- let's go back to the
16 claim language here for just a second. Let's go back to
17 right above paragraph 63. So you've got your lgi. And
18 we've been focusing on iii. Let me make sure I
19 understand. Let me make sure I understand where that
20 comes from. We're at lg. It says, "The stretch panel
21 having a length when un-stretched." That's this on the
22 right-hand side I've got Exhibit 1001, which is the 974
23 Patent. You see that? So you've got lg, which is this
24 paragraph here; is that fair?

25 A. Yes.

1 Q. So we were focused on this front portion having
2 or the front portion is gathered by the stretch panel.
3 You see that?

4 A. Yes.

5 Q. So would you read that out loud for me?

6 A. The front portion is gathered by the stretch
7 panel and defines a three-dimensional pouch between the
8 stretch panel and the front portion for receiving the
9 wearer's genitals and holding the wearer's genitals
10 while the garment is being worn.

11 Q. That is right here. And I said right here, it's
12 on the right-hand column. It's in the right-hand
13 column. It's in claim 1 of Exhibit 1001. And the part
14 that you just quoted is missing, which is actually in
15 the claim language, isn't it?

16 A. Could you repeat that. I didn't hear you.

17 Q. The part that you quote in 1g iii, it's not what
18 it says in the claim language; is it? The claim
19 language says, "The front portion between the side seams
20 such that the front portion is gathered from
21 side-to-side and top-to-bottom by the stretch panel and
22 defines a three-dimensional pouch between the stretch
23 panel and the front portion for receiving the wearer's
24 genitals and holding the wearer's genitals while the
25 garment is being worn." Right?

1 A. That's what the patent says.

2 Q. That's not what your expert report says?

3 MR. RAFFETTO: Objection. Mischaracterizes.
4 Her expert report does address this.

5 MR. LUMAN: Counsel, I'm happy to swear you
6 in and you can testify.

7 BY MR. LUMAN:

8 Q. Where is the portion in your 1g3 where it says is
9 gathered from side-to-side and top-to-bottom by the
10 stretch panel?

11 A. It talks about top-to-bottom --

12 Q. Where is it?

13 A. May I finish?

14 Q. Sure.

15 A. It says, length when un-stretch is smaller than a
16 length measured along the front portion. You're talking
17 top-to-bottom, un-stretched smaller than a width. So
18 you're talking about side-to-side right there.

19 MR. LUMAN: Objection. Nonresponsive.

20 BY MR. LUMAN:

21 Q. Where, where in your claim language right above
22 63, paragraph 63 in your expert report, where is the
23 part that says is gathered from side-to-side and
24 top-to-bottom by the stretch panel?

25 A. I just told you where it was.

1 Q. No. No, you didn't. Where is it in right above
2 paragraph 63, where is it in your report?

3 A. I didn't say it verbatim.

4 Q. You're missing a lot, aren't you? You're missing
5 side-to-side and top-to-bottom in your quoted claim
6 language; aren't you?

7 A. That's your opinion. I think I covered it.

8 MR. LUMAN: Objection. Nonresponsive.

9 BY MR. LUMAN:

10 Q. It's not there in your quoted claim language; is
11 it?

12 A. I summarized it.

13 Q. Oh, now we can summarize claims; is that what
14 we're doing?

15 MR. RAFFETTO: Objection. Argumentative.

16 BY MR. LUMAN:

17 Q. Is it okay to just summarize a claim the way you
18 want to?

19 A. I'm not a lawyer.

20 Q. So apparently we can summarize claims. I'm going
21 to go back to this. Was this a paragraph you were
22 provided or did you do this?

23 A. I did this. I copied some of it and pasted some
24 of it.

25 Q. So somehow you didn't copy the part that says is

1 gathered from side-to-side and top-to-bottom?

2 A. I summarized it.

3 Q. Okay. So we're summarizing claims; right?

4 A. I summarized it. I already answered you.

5 Q. Does your copy and paste work differently from
6 others? Does your copy and paste take things out when
7 you cut and paste it?

8 MR. RAFFETTO: Objection. It's a ridiculous
9 question.

10 MR. LUMAN: It's a ridiculous thing that
11 she's got in her report.

12 MR. RAFFETTO: It's obviously a
13 typographical error, Counsel, because if you look at the
14 paragraphs in her report, she specifically --

15 MR. LUMAN: Counsel, you're going to
16 testify? Because you're testifying right now.

17 MR. RAFFETTO: I'm addressing --

18 MR. LUMAN: You're not. Counsel, did you
19 provide this paragraph?

20 THE WITNESS: No, he did not. No, they did
21 not.

22 BY MR. LUMAN:

23 Q. Somehow you took out from side-to-side and
24 top-to-bottom; right? Fair enough; right?

25 A. It's a very long report and I imagine I

1 summarized.

2 Q. Did you summarize any other portions of the claim
3 language?

4 A. I don't know without checking them.

5 Q. I've got to go through and find out. I can't
6 rely upon what's purportedly to be the claim language,
7 I've got to go see whether you summarized it; is that
8 fair?

9 A. You can do whatever you'd like.

10 Q. Let me pull your expert report back up here.
11 Let's see. Ya'll seeing anything?

12 A. No.

13 MR. LUMAN: Thanks for bearing with me.

14 BY MR. LUMAN:

15 Q. Let's look at paragraph 80 of your expert report.
16 Exhibit 1005. It says, page 41, paragraph -- I'm
17 directing you to the language right above 79. It says
18 claim 3: "A male garment according to claim 1 wherein
19 the stretch panel is rectangular and the opening is
20 U-shaped." You see that?

21 A. Yes.

22 Q. We've got Kitsch, Figure 8 in there. Do you see
23 Figure 8 in your report on page 44?

24 A. Yes.

25 Q. And also it's there twice. There's a color

1 version of it and a non-color version of it; right?

2 A. Yes.

3 Q. Okay. Did you know that the phrase or the term
4 "rectangular" doesn't show up anywhere in Kitsch?

5 A. I'm not aware of whether it does or doesn't
6 without reading the patent again.

7 Q. Would it surprise you that the word rectangular
8 doesn't show up there?

9 A. Surprised or not surprised.

10 Q. Do you know the phrase "U-shaped" does not show
11 up anywhere in Kitsch?

12 A. Without reading the patent, again, I don't know.

13 Q. So you're an expert. You're alleging that my
14 client's patent is invalid due to Kitsch. You don't
15 know what's in Kitsch?

16 MR. RAFFETTO: Objection. Mischaracterizes.

17 THE WITNESS: I know the claims of Kitsch
18 generally and I know what the invention is. I don't
19 know the patent word for word.

20 BY MR. LUMAN:

21 Q. Let's pull up Kitsch. Let's find Kitsch for you.
22 I believe Kitsch is Exhibit 1007; is that right? Nope.
23 Yeah. 1007. That is the Kitsch Patent. Correct. Got
24 the Kitsch Patent, Exhibit 1007 on your screen. And if
25 you go to paragraph 41, and again, it might be easier

1 for you to look at what you have in front of you. Here
2 is 41. It's on page -- it's in column 3, paragraph 41.
3 Do you see that?

4 A. Uh-huh. Yeah.

5 Q. If I need to make it larger, I'm happy to do
6 that.

7 A. No. I got it in front of me also.

8 Q. It says an example -- let me find it easier here.
9 Look for the phrase an example of the side panel 12.
10 Really what I wanted to show you is Figure 12. So an
11 illustration of the rear panels in Figure 12. See that
12 in paragraph 41. I want to show you Figure 14,
13 actually. There it is. "An example of the side panel
14 12 is illustrated in Figure 14." Do you see that?

15 A. Yeah.

16 Q. I'm going to scroll down to Figure 14 or up.
17 That's the side panel; right?

18 A. Yes.

19 Q. That's not rectangular; is it?

20 A. Got an ark to it.

21 Q. If you're in geometry class and you call that a
22 rectangle, would you get that question right?

23 A. The patent says generally rectangular 974. And
24 the 974 Patent, it's not a rectangle. If this is your
25 definition of a rectangle, that's not a rectangle.

1 Q. Figure 14 is not a rectangle; correct?

2 A. No, that's not what I said.

3 Q. I'm asking you that question.

4 A. No. It's definitely rectangle --

5 Q. So we talked over one another. So let's just be
6 clear. I'm looking at Exhibit 1007, which is the Kitsch
7 Reference. And it's Figure 14. Looking at the same
8 pages on the screen; right?

9 A. Uh-uh.

10 Q. It's on the screen?

11 A. Yes.

12 Q. Is that shape rectangle?

13 A. It's generally rectangular when it's laid into
14 the garment. It's rectangularly.

15 Q. Is that shape in Figure 14 a rectangle?

16 MR. RAFFETTO: Objection. Asked and
17 answered.

18 MR. LUMAN: She really hasn't, actually.

19 THE WITNESS: It's rectangular.

20 BY MR. LUMAN:

21 Q. So I see two straight lines. You see the two
22 straight lines? One here where it says 12c and then one
23 down here that doesn't have, it's lower left on
24 Figure 14. Those are the only two straight lines in
25 Figure 14; right?

1 A. Partly a straight edge on the top. There is
2 partial straight lanes all around.

3 Q. A rectangle has four straight edges; does it not?

4 A. It does.

5 Q. Does Figure 14 have four straight edges?

6 A. Not continuously. But I did say it was generally
7 rectangular.

8 Q. Figure 14 looks like a boomerang; doesn't it?

9 A. Yes.

10 Q. Let's look at your report again. Ya'll see your
11 report on the screen? Let's scroll down to paragraph
12 109. 109, we're on to Carrillo. Is that how you
13 pronounce it? That's how I was going to pronounce it.

14 A. That's how I pronounce it.

15 Q. And let me pause this for just a second. I'm
16 going to put the two of them next to one another, your
17 report and Carrillo so it can be on the same -- if we
18 need to be on the same page. I have a question for you,
19 you're not communicating with anyone during this?

20 A. I'm looking at the patents. No.

21 Q. Okay. I was just curious because you were
22 looking down.

23 A. No. No. I was looking at the 974 Patent.

24 MR. LUMAN: There we go. All right. So we
25 should have ground 2, page 68 of your expert report,

1 which is Exhibit 1005. And on the right-hand side we've
2 got Exhibit 1010, which is the English translation of
3 Carrillo.

4 (Exhibits 1010 marked remotely introduced
5 and provided electronically to the reporter).

6 BY MR. LUMAN:

7 Q. Is that accurate?

8 A. Yes.

9 Q. Let's see. So Carrillo actually isn't men's
10 underwear; right? It's an attachment of some variety;
11 correct?

12 A. It's men's underwear and the attachment.

13 Q. Well. Let's see. Reading the abstract. "The
14 invention relates to a hygienic elastic garment for
15 men's underwear." Do you see that?

16 A. Yeah.

17 Q. I just read that from the first page of the
18 abstract.

19 A. Right.

20 Q. Paragraph 57. Right. It's for men's underwear,
21 it's not actually men's underwear; right? Would you
22 agree with that?

23 A. Give me one second. The invention is the elastic
24 garment.

25 Q. Which I think is number 1; is that right?

1 A. Number 1. Yes. Right.

2 Q. So let me go back to or to the left in paragraph
3 109 of your report. And you say in your second
4 sentence. "Carrillo, entitled Hygienic Garment for
5 Men's underwear, like Kitsch, is directed to an
6 underwear garment for men with a pouch to hold a
7 wearer's genitals between the front portion of the
8 garment and elastic material attached to the inside of
9 said front portion." You see that?

10 A. Yes.

11 Q. Is that -- is there a quote there that a --
12 quotation marks that I'm missing in that paragraph in
13 109?

14 A. I don't believe so.

15 Q. So the term said front portion.

16 A. Pardon me, repeat that.

17 Q. I've highlighted in your paragraph 109 the phrase
18 "said front portion."

19 A. Yes.

20 Q. Do you use the term said often?

21 A. Every now and then, yeah, when I'm writing.

22 Q. Did you write that?

23 A. I did right that.

24 Q. So maybe I misunderstand what you've written here
25 and I believe the way you've written this it says,

1 Carrillo. There is a comma. Has the title and it says
2 like Kitsch with a couple other commas. The way I read
3 the English language, the way you've written this
4 Carrillo is directed to an underwear garment for men
5 with a pouch to hold a wearer's genitals; is that right?

6 A. That's right.

7 Q. Did you know that the word pouch doesn't exist
8 anywhere in the Carrillo patent?

9 A. I don't know that.

10 Q. Do you know where the word pouch is in the
11 Carrillo patent?

12 A. It's very short. So, no, it doesn't say pouch
13 but it infers pouch just by the way it is constructed.

14 Q. Interesting. Where is the pouch?

15 A. The pouch is between number 1 in the under pants.

16 Q. Just because someone has sewn something to the
17 inside of underwear it becomes a pouch?

18 A. If there is an opening and number 2 is the
19 opening. Yes.

20 Q. So number 2 creates the pouch?

21 A. Number 1 creates the pouch sewn to the
22 undergarment. So Carrillo says underwear. So it's the
23 hygienic elastic garment number 1 sewn to underwear.

24 Q. All of a sudden anything that is sewn to the
25 inside becomes a pouch for you?

1 A. No. I never said that.

2 Q. Why don't you define for me pouch. It doesn't
3 show up anywhere on this patent. So I want to know what
4 your definition of pouch is?

5 A. Pouch is, in this illustration, something that
6 holds something else.

7 Q. Something that holds something else?

8 MR. RAFFETTO: Counsel, let her finish.

9 MR. LUMAN: I thought she was done. Go
10 ahead.

11 THE WITNESS: It forms a cavity.

12 BY MR. LUMAN:

13 Q. So if there is something sewn to underwear then
14 it becomes a pouch?

15 A. I never said that.

16 Q. All right. I'm trying to get your definition of
17 pouch.

18 A. I just gave it to you.

19 Q. Give it to me again.

20 A. It's in this invention the elastic garment sewn
21 to the front of underpants with an opening to introduce
22 genitals that are held between the underpants and the
23 elastic garment.

24 Q. Did you do a claim construction on that?

25 A. I believe I did. I don't know without reading

1 it.

2 Q. So that's your claim construction for the word
3 pouch?

4 A. No. I'd have to read my declaration.

5 Q. Well, your declaration doesn't have anything in
6 the way of claim construction but now you've just given
7 me one. Is that your definition of pouch for a claim
8 construction?

9 A. I honestly don't understand what you're asking
10 me.

11 Q. You're an expert; right? You've done this
12 before. It's not your first rodeo. In fact, you've
13 attempted to invalidate lots of patents; right?

14 MR. RAFFETTO: Objection. Argumentative.

15 THE WITNESS: I'm an expert. I'm not a
16 lawyer.

17 BY MR. LUMAN:

18 Q. We talked about it earlier on. In no less than
19 three or four cases you've been an invalidity expert;
20 right?

21 A. I've been an invalidity expert maybe two other
22 cases.

23 Q. And you have even testified or provided a
24 declaration on claim construction in a case; right?

25 A. Only one.

1 Q. Yeah. So you know what claim construction is;
2 right? You know what claim construction means; right?

3 A. Yes.

4 Q. What does it mean?

5 A. A claim construction is -- you know, I don't even
6 know now. Now I'm confused.

7 Q. Are you going to give me a definition for pouch
8 to use in a claim construction?

9 MR. RAFFETTO: Objection. This line of
10 questioning is incredibly confusing.

11 THE WITNESS: I am confused. I don't
12 understand what you're asking. I've already asked you
13 to repeat it in language I understand. I'm not a
14 lawyer.

15 BY MR. LUMAN:

16 Q. You're an expert. You've --

17 A. I'm not a lawyer.

18 Q. You've given testimony -- you're an expert.
19 You've given testimony on claim construction in the
20 past; right?

21 A. (No audible response.)

22 Q. Right?

23 A. Yes, I think so. I don't know. I'm confused. I
24 don't know.

25 Q. You don't know if you've given testimony in a

1 case about claim construction?

2 A. I wrote an invalidity before. I'm not sure.

3 Q. What aren't you sure about?

4 MR. RAFFETTO: Counsel, this is a ridiculous
5 line of questioning.

6 MR. LUMAN: Counsel, I'm happy to swear you
7 in after her and you can testify till your heart's
8 content.

9 MR. RAFFETTO: I'm not testifying. You're
10 being very combative and confusing to the witness. It
11 does not help to have a confusing record.

12 MR. LUMAN: I'll clear it up, counsel. You
13 can just sit there and be a tree. Okay.

14 MR. RAFFETTO: No, I'm not going to sit here
15 and be a tree.

16 BY MR. LUMAN:

17 Q. Ms. Wagner. Ms. Wagner, you've given testimony,
18 a declaration about claim construction in another
19 matter; right?

20 A. Yes.

21 Q. And you've given invalidity reports in other
22 matters; right?

23 A. Yes.

24 Q. I'm asking you if pouch, as you just defined it,
25 is a claim construction?

1 A. I don't understand the question.

2 Q. Pouch appears nowhere in Carrillo; right?

3 A. Repeat that.

4 Q. The word pouch is nowhere to be found in the
5 Carrillo reference?

6 A. That's correct. Yes.

7 Q. You've just given me a definition for pouch,
8 remember that?

9 A. Yes.

10 Q. Is that your claim construction for the word
11 pouch when it comes to Carrillo?

12 A. I don't know what you're asking me.

13 Q. What part of that don't you understand?

14 A. I don't understand how it could be claim
15 construction.

16 Q. There is no word pouch in there. So I'm trying
17 to get at how you believe there is a pouch?

18 A. Because I'm an expert and I sew and I've made
19 things with pouches. You sew one thing to another or
20 you create a gathering that holds something else, in
21 this case someone's genitals. That's how I know there
22 is a pouch. There is a technical drawing right here.
23 It denotes a pouch. There is an opening to put other
24 things through. That makes it a pouch.

25 Q. Gathering. Where is that word in Carrillo?

1 A. It's not there.

2 Q. Okay. Is there any gathering whatsoever in
3 Carrillo?

4 A. No.

5 Q. Does stretch panel show up anywhere in Carrillo?

6 MR. RAFFETTO: Objection. Vague.

7 BY MR. LUMAN:

8 Q. Can you answer that question?

9 A. Yes. Hang on one second. I want to review the
10 patent. The hygienic garment on Figure 1 is an elastic
11 garment. So I would assume it stretches.

12 Q. Understand that's your testimony. My question,
13 probably not clear. Does the phrase stretch panel show
14 up anywhere in Carrillo?

15 A. No. But it is clear that there is a panel that
16 stretches.

17 MR. LUMAN: Objection to everything after no
18 as nonresponsive.

19 BY MR. LUMAN:

20 Q. I just want to be clear on something else. Can
21 you go down to paragraph 19. 119 is where it starts.
22 Right above 119 it has your claim, what you call your
23 claim outlining. 1d. "The stretch panel comprising a
24 sheet of elastically resilient four-way stretch
25 material." Do you see that?

1 A. I do.

2 Q. Carrillo doesn't mention four-way stretch
3 material anywhere; does it?

4 A. No. He mentions an elastic garment.

5 Q. Did you know that Carrillo doesn't use the word
6 stretch at all?

7 A. He uses elastic, which denotes stretch.

8 Q. But the word stretch isn't it Carrillo at all; is
9 it?

10 A. No.

11 Q. There is nothing in Carrillo other than the word
12 elastic and forms thereof, there is nothing in Carrillo
13 that describes the characteristics of the elastic
14 garment; right?

15 A. It's understood that even though it's not
16 mentioned, it stretches and stretched properties.

17 MR. LUMAN: Objection. Nonresponsive.

18 BY MR. LUMAN:

19 Q. There is nothing in Carrillo that describes the
20 stretch characteristics of the elastic; correct?

21 A. Because it is elastic it would be understood by a
22 POSITA that it stretches.

23 Q. I get that's what you keep wanting to say. My
24 question is way more basic. Show me in Carrillo where
25 it tells us what the elastic is made of.

1 A. It doesn't. However, stretches is understood by
2 a POSITA that it would be elastic and stretch and made
3 of something stretch. Spandex.

4 MR. LUMAN: Object to everything as
5 nonresponsive after the words it doesn't.

6 BY MR. LUMAN:

7 Q. This will go much faster if you can simply answer
8 the question. I can read your report. Right. You keep
9 saying the same thing that's in your report. I'm asking
10 you really more basic questions than that. Where does
11 it give the characteristics of the elastic material?

12 MR. RAFFETTO: Objection. Asked and
13 answered.

14 THE WITNESS: As I said before, it doesn't,
15 but it's understood that it would stretch if it's made
16 of something stretching. And just the word elastic says
17 stretch. And there would be stretched characteristics
18 attached to that.

19 BY MR. LUMAN:

20 Q. Okay. It doesn't specifically mention the
21 characteristics of the elastic material; right?

22 A. It would be understood that it stretches.

23 Q. It doesn't specifically mention the
24 characteristics of the elastic material?

25 MR. RAFFETTO: Objection. Asked and

1 answered.

2 THE WITNESS: It would be understood that it
3 stretches by a POSITA.

4 BY MR. LUMAN:

5 Q. Can you not answer that question? Yes or no?

6 A. I already answered that question.

7 Q. So if I asked you what color the sky is, is it
8 blue?

9 MR. RAFFETTO: Objection. It's not a real
10 question.

11 MR. LUMAN: It is a real question.

12 MR. RAFFETTO: You're continuously combative
13 with the witness, Counsel.

14 MR. LUMAN: Counsel, the witness is trying
15 to invalidate a patent, that's kind of combative on its
16 on right; isn't it? So I appreciate you want to
17 interject and coach her through this but that's got to
18 stop.

19 MR. RAFFETTO: No one is coaching anyone.

20 MR. LUMAN: Oh, yeah, you are, dude.

21 BY MR. LUMAN:

22 Q. Let's look at paragraph 132 of your report. So
23 we got 1f on page 81, paragraph 132. I wanted to go to
24 133. There we go. Now we've got, we're talking about
25 Carrillo. We're on page 83 of Exhibit 1005. You see

1 that? We're on page 83.

2 A. Yes.

3 Q. I'm a little curious now. We talked about
4 paragraph 1g extensively a few minutes ago, with respect
5 to the little i, the little i, ii, iii. And it appears
6 now that your cut and paste isn't including those
7 letters in this paragraph. Where are the little i's?
8 Where are the little i's?

9 A. I don't know. It's a very long document.

10 Q. You kind of mail it in at the end, is that what
11 you did?

12 MR. RAFFETTO: Objection. Mischaracterizes.

13 THE WITNESS: That's not true.

14 BY MR. LUMAN:

15 Q. Where are the little i's?

16 A. I told you I don't know.

17 Q. The cut and paste didn't work for you so there is
18 no little i, ii or iii?

19 A. I'm not responding to that.

20 Q. Let me ask you this question. You're under oath.
21 Were you provided 1g?

22 A. No.

23 Q. Okay.

24 A. If I was, it would be perfect.

25 Q. Really. Let's talk about this paragraph. This

1 section right here. Remember this section?

2 A. Yeah.

3 Q. So in paragraph right above 133, page 83. You
4 got 1g. And it says, the same trouble I had before.

5 "That front portion is gathered by the stretch panel and
6 defines a three-dimensional pouch." Where is the
7 side-to-side and top-to-bottom language that's in the
8 claim of the 974 Patent?

9 A. Brocks is diagonal. So I think it covers it.

10 Q. I didn't hear you. I'm sorry.

11 A. I said Brocks is -- what Brocks teaches is a
12 diagonal -- strips diagonally and it stretches in both
13 directions. So I think it covers it.

14 Q. You don't have a problem with representing to the
15 PTAB that this is the actual language and it's not?

16 A. I stand by what I said. It's diagonal and I
17 think it stretches in both directions.

18 Q. Why isn't the claim language accurately reflected
19 in 1g?

20 MR. RAFFETTO: Objection.

21 THE WITNESS: I don't know. I can't answer.
22 It was written months ago.

23 BY MR. LUMAN:

24 Q. Did you have help writing your report? Anyone
25 other than you write your report?

1 A. No. Except for what I talked about.

2 Q. Carrillo doesn't discuss gathering; right?

3 A. No.

4 Q. There is no discussion in Carrillo about the
5 front portion being gathered from side-to-side; right?

6 A. Correct.

7 Q. Or gathered from top-to-bottom; right?

8 A. Yeah.

9 Q. And Brocks doesn't have that either, does it? It
10 doesn't have being gathered from side-to-side; right?

11 A. Brocks describes something that gathers on
12 diagonally and a POSITA would know that you could use
13 that anywhere and on any direction.

14 Q. I could read your report. My question is simpler
15 than that. There is nothing in Brocks that talks about
16 gathering from side-to-side and top-to-bottom; right?

17 A. That doesn't prevent it from being combined and
18 show the same teaching that things could be gathered to
19 form a pouch. Things -- something elastic could be
20 attached to something less stretched and form a pouch
21 and gathering.

22 MR. LUMAN: Objection. Nonresponsive.

23 BY MR. LUMAN:

24 Q. Fundamentally these questions are really simple.
25 There is nothing in Brocks that mentions gathering from

1 side-to-side and top-to-bottom; right?

2 A. It mentioned gathering and it could be used in
3 either direction as known as a POSITA.

4 Q. You've worked hard on that answer. I know it.
5 But where does it say top-to-bottom and side-to-side?

6 A. It's understood. It's diagonal.

7 Q. Sort of like diagonal is equivalent to the
8 rectangle in Figure 14 of Kitsch; right?

9 MR. RAFFETTO: Objection. Not sure that's a
10 question.

11 MR. LUMAN: It is a question, Counsel.

12 THE WITNESS: No, it's not the same.

13 MR. LUMAN: Let's take a break.

14 MR. RAFFETTO: Ten minutes.

15 MR. LUMAN: Yup.

16 MR. RAFFETTO: All right. Thank you.

17 THE VIDEOGRAPHER: We're off the record at
18 2:17 p.m.

19 (Recess)

20 THE VIDEOGRAPHER: We are back on the record
21 at 2:29 p.m.

22 BY MR. LUMAN:

23 Q. Ms. Wagner, did you speak with Mr. Raffetto at
24 the break?

25 A. Yeah.

1 Q. About your testimony?

2 A. Not really directly, no.

3 Q. When you say not really directly, what do you
4 mean by that?

5 A. Just about how it's going.

6 Q. Okay. Let me put your report back up here. Are
7 you seeing your report on the left-hand side?

8 A. Only seeing my report. Center not left-hand
9 side.

10 Q. Okay. Good. Now it stopped. Is it back up
11 there?

12 A. No.

13 Q. So if you would go to Exhibit 1005, it's your
14 declaration, your report. I'm going to use page 29.
15 You've got Figure 8. Do you see that?

16 A. Yes.

17 Q. And let me scroll back up. The preceding page,
18 page 26, Figure 3, you've got colored in as well; right?
19 Who did the coloring?

20 A. Jack.

21 Q. I didn't hear you?

22 A. Jack. Jacob.

23 Q. Is that Jacob Felicetty?

24 A. Yeah.

25 Q. I mispronounced, not intentionally. I heard you

1 say it and I said the same thing.

2 A. Yeah. I didn't pronounce it right.

3 Q. So did Jack -- he's a lawyer with Hogan Lovells;
4 right?

5 A. Uh-huh.

6 Q. Is it fair to say he did all the coloring for you
7 in all of the --

8 A. Yes. We talked about it and he put that
9 together.

10 Q. Did he put that together when?

11 MR. RAFFETTO: What was the question? I'm
12 sorry.

13 BY MR. LUMAN:

14 Q. When did he put that together for you?

15 A. More than six months ago.

16 Q. Okay. Let me go to the end of your report. I
17 just want to see something here. You submitted this
18 report in July. Right. See the date on the last page?

19 A. Yeah.

20 Q. And he provided those to you obviously prior to
21 July 12th; right?

22 A. Yes.

23 Q. Do you know how far in advance of July 12th that
24 you received them?

25 MR. RAFFETTO: I'm going to object and

1 instruct the witness not to answer.

2 MR. LUMAN: Why is that?

3 MR. RAFFETTO: Because you repeatedly are
4 trying to get into the details of communications around
5 the drafting process.

6 MR. LUMAN: Actually that's a total
7 mischaracterization of every that I've asked. Indeed I
8 am asking her when she got them, not a draft, not
9 anything, to put in her report.

10 BY MR. LUMAN:

11 Q. When did you receive the color drawings from
12 Hogan and Lovells to put in your report?

13 MR. RAFFETTO: I'm going to object and
14 instruct the witness not to answer.

15 BY MR. LUMAN:

16 Q. Did he provide the coloring?

17 MR. RAFFETTO: Same objection.

18 BY MR. LUMAN:

19 Q. Did you tell him what colors to make them?

20 MR. RAFFETTO: Same objections.

21 MR. LUMAN: Counsel.

22 MR. RAFFETTO: I'm going to instruct the
23 witness not to answer.

24 MR. LUMAN: Do you represent the witness?
25 Counsel, do you represent the witness?

1 MR. RAFFETTO: I'm instructing the witness
2 not to answer, Mr. Luman.

3 BY MR. LUMAN:

4 Q. Ms. Wagner, are you represented by counsel today?

5 A. I don't know what that means. I'm not a lawyer.

6 Q. Do you pay Hogan Lovells to be your lawyers?

7 A. No.

8 Q. So you're not represented by counsel today;
9 right?

10 A. I don't pay Hogan Lovells.

11 Q. The color drawings, I'm on page 120. There is a
12 red seam written there. Figure 8 on page 115 is very
13 colorful. Did you identify those colors?

14 MR. RAFFETTO: I'm going to object and
15 instruct the witness not to answer.

16 BY MR. LUMAN:

17 Q. So your testimony earlier was that Hogan Lovells
18 really only provided you some boilerplate things for
19 your report. You didn't mention figures. They provided
20 the figures, didn't they?

21 MR. RAFFETTO: Objection. Mischaracterizes
22 the witness' testimony.

23 BY MR. LUMAN:

24 Q. Did you mention figures when I asked you what
25 Hogan Lovells provided for your report?

1 A. No, I didn't. This was done in, I don't know if
2 I should answer that. No, I didn't mention figures.

3 Q. Why not?

4 A. I forgot.

5 Q. As I'm scrolling through here, Exhibit 1005. All
6 the colored figures were provided by Hogan Lovells;
7 right?

8 A. Yes.

9 Q. Now, let's go back to how I originally asked the
10 question. What else now other than figures and
11 boilerplate legal stuff, legal language that you
12 mentioned earlier, is there anything else that Hogan
13 Lovells provided you?

14 A. No.

15 MR. LUMAN: I'm going to pass the witness.

16 MR. RAFFETTO: Nothing from me.

17 MR. LUMAN: Okay. Before we go off the
18 record, Ms. Wagner, this is lawyer stuff so you don't
19 have to listen to it or talk about it or anything like
20 that. So thank you for your time today. I appreciate
21 it.

22 THE WITNESS: Thank you.

23 MR. LUMAN: And I'm sure we'll be hearing
24 from you all again. So as far as the deposition goes, I
25 want to make sure that all of the exhibits that I used

1 are entered as exhibits today. That was Exhibit 1001,
2 which is the 974 Patent. Exhibit 1005, which is the
3 Robin Wagner Declaration. Exhibit 1006, which is the
4 Robin Wagner CV. Exhibit 1007 was the Kitsch Reference.
5 We interchangeably called that Kitsch and the Kitsch
6 Reference, the Kitsch Patent. Unless otherwise
7 mentioned specifically, it was not the Kitsch Patent, it
8 was the Kitsch Disclosure of 1007. Exhibit 1008 is the
9 Brocks, which we used as well. And then we used
10 Carrillo 110, which is the English translation --
11 Carrillo is -- the English translation of Carrillo,
12 which is Exhibit 1010, in the attached to counsel's
13 brief or part thereof. So I don't believe I missed any.
14 If I did, I will have to let you know and do an
15 amendment. But I think that covered it. Heath, did I
16 miss any?

17 MR. NOVOSAD: I think that's all of them.

18 MR. LUMAN: Okay.

19 THE VIDEOGRAPHER: Right before we go off.
20 Mr. Raffetto, did you want a transcript or video copy
21 from today?

22 MR. RAFFETTO: A transcript. We do not need
23 the video. And regular delivery.

24 THE VIDEOGRAPHER: Okay. Great. If that's
25 everything then we are off the record at 2:39 p.m.

(Deposition concluded at 2:39 p.m.)

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DECLARATION UNDER PENALTY OF PERJURY

I, ROBIN WAGNER, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on APRIL 3, 2025; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____, 2025, at _____, California.

ROBIN WAGNER

DEPOSITION ERRATA SHEET

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ROBIN WAGNER _____ DATED _____

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF LOS ANGELES)
4

5 I, MICHELLE GONZALEZ, a Certified Shorthand
6 Reporter, do hereby certify:

7 That prior to being examined, the witness in the
8 foregoing proceedings was by me duly sworn to testify to
9 the truth, the whole truth, and nothing but the truth;

10 That said proceedings were taken remotely before
11 me at the time and place therein set forth and were
12 taken down by me in shorthand and thereafter transcribed
13 into typewriting under my direction and supervision;

14 I further certify that I am neither counsel for,
15 nor related to, any party to said proceedings, not in
16 anywise interested in the outcome thereof.

17 In witness whereof, I have hereunto subscribed my
18 name.

19 Dated: April 6, 2025

20
21 

22 MICHELLE GONZALEZ
23 CSR No. 13891
24
25

Exhibits	\$		
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