

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVANOS MEDICAL, INC.,

Petitioner

v.

STRATUS MEDICAL, LLC,

Patent Owner

Case IPR2024-01212

Patent No. 10,925,664

REMOTE ORAL DEPOSITION OF

CODY JORGENSEN

Houston, Texas

August 26, 2025 - 8:36 a.m.

Reported by:

Micheal A. Johnson, RDR, CRR

Job No. 00168766

1 REMOTE ORAL DEPOSITION OF CODY JORGENSEN,
2 produced at the instance of the Petitioner, in the
3 above-styled and numbered cause on the 26th day of
4 August, 2025, at 8:36 a.m., before Micheal A.
5 Johnson, RDR, CRR, Notary Public in and for the
6 State of Texas, reported by realtime stenographic
7 means, remotely at the location of the witness,
8 Houston, Texas, pursuant to Notice of Oral
9 Deposition, and in accordance with the 37 C.F.R.
10 Section 42.53.

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DEPOSITION EXHIBITS
CODY JORGENSEN
August 26, 2025

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1 PROCEEDINGS

2 CODY JORGENSEN,

3 called as a witness, having been duly sworn, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. THOMAS:

7 Q. Good morning, Mr. Jorgensen. How are you
8 doing today?

9 A. Fine. And you?

10 Q. I'm well. As you were just administered
11 the oath by our court reporter, you understand that
12 that is an oath to tell truth -- tell the truth in
13 this testimony just like you were sitting on a
14 witness stand at a regular trial, right?

15 A. Yes.

16 Q. And is there anything that would prevent
17 you from providing complete and truthful testimony
18 today?

19 A. No.

20 Q. Any medications you're taking that affect
21 your memory?

22 A. No.

1 Q. Okay. Have you been deposed before?

2 A. Once in an unrelated different type of
3 incident. It was a car accident.

4 Q. Okay. And so this will be similar,
5 hopefully not as traumatic an experience as that
6 was. Nobody's literally hurting you today like that
7 was.

8 To remind you, I'm going to go over a few
9 what I call ground rules. So the court reporter --
10 first thing is the court reporter is transcribing
11 everything we say today. And so both you and I will
12 need to talk perhaps slower than we normally do,
13 especially me, and I'll ask you to try and let me
14 finish my questions before you answer; is that fair?

15 A. Yes.

16 Q. If at any point you don't understand a
17 question that I pose, if there's anything confusing
18 about it, will you let me know so that I can try to
19 clarify it?

20 A. Yes.

21 Q. Stratus' counsel, Mr. Laurence, may make
22 objections during the testimony and he will make

1 those objections after I answer my question -- ask
2 my question and before you answer it. And we will
3 deal with those objections sort of after the
4 deposition is over. That's between the counsel. So
5 unless it relates to something that we call
6 privileges, you will still need to answer the
7 question even if Mr. Laurence makes an objection.

8 Do you understand?

9 A. Yes.

10 Q. If at any point you need to take a break,
11 if you need to stand up to stretch, take a bio
12 break, you just let me know and we can do that.
13 Okay?

14 A. Okay.

15 Q. The only thing I'd ask is that you don't
16 ask to take a break before you've answered a
17 question. So if it's in the middle of asking a
18 question I answered [sic], we won't take a break
19 unless it relates to something you or your counsel
20 thinks might be a privilege issue. Is that okay?

21 A. Yes.

22 Q. And where are you sitting right now in

1 this the deposition, this Zoom deposition that we're
2 doing?

3 A. Like address-wise or --

4 Q. You're -- I think you said earlier when
5 we were off the record that you're in Houston,
6 correct?

7 A. Yes. Yes.

8 Q. Are you in the Stratus office?

9 A. We are not. We're in a conference room
10 in the Texas Med Center.

11 Q. What is the Texas Med Center?

12 A. It's a -- they have, like, offices for
13 start-up companies type of thing.

14 Q. Okay. Is anyone else in the room with
15 you?

16 A. My counsel, Kevin.

17 Q. Anyone else?

18 A. No.

19 Q. And what kind of device are you using?
20 Desktop? Laptop?

21 A. Laptop.

22 Q. Would you be able to move the camera

1 around so that I can see the room around you?

2 A. Yes.

3 Q. Is that something like you can turn the
4 laptop back and forth, kind of pan the room?

5 A. (Witness complies.)

6 Q. Thank you. So Mr. Laurence is sitting
7 immediately to your left, correct?

8 A. Correct.

9 Q. All right. We sent you a binder of some
10 exhibits, and you have those handy?

11 A. Yes. Yes, I have it here.

12 Q. Did you review them to prepare for this
13 deposition?

14 A. Yes.

15 Q. And you're generally familiar with the
16 direct testimony that you have given via your two
17 separate declarations?

18 A. Yes.

19 Q. Do you have any other papers or items in
20 front of you?

21 A. No.

22 Q. Any documents -- is the computer you're

1 using your regular work laptop, or is it a different
2 laptop that somebody else provided?

3 A. It's my regular work laptop, but there's
4 nothing else on it. I have everything closed out,
5 all -- all alerts, whatnot, turned off. So it is --

6 Q. You just reminded me.

7 A. It is just the Zoom screen up.

8 Q. Perfect. Thank you. And you just
9 reminded me to close my own Outlook so that I don't
10 get those annoying alerts too.

11 Since you do have everything closed, I
12 will ask you -- thank you for that, but you should
13 not review any other documents unless I ask you to;
14 is that fair?

15 A. Yes.

16 Q. And you'll agree not to do that?

17 A. Yes.

18 Q. And can you verify that you will not
19 communicate with Stratus' attorney or anyone else
20 while testifying about the subject of your
21 testimony?

22 A. Yes.

1 Q. And you won't consult any notes or other
2 documents, paper or electronic, while testifying
3 other than those that I asked you about in the
4 binder or that I provide to you in the Zoom chat?

5 A. Yes.

6 Q. And you understand that you can
7 communicate with your attorney only during the
8 breaks and, again, not about the subject of your
9 testimony but just casual non-litigation-related
10 communications?

11 A. Yes.

12 Q. Let's talk a little bit about your work
13 at Stratus. You're presently the director of
14 marketing, correct?

15 A. Correct.

16 Q. And you've been director of marketing
17 since about January 2023?

18 A. Yes.

19 Q. Before that you were a senior
20 marketing -- senior manager of marketing from around
21 January 2022 to January 2023?

22 A. Yes.

1 Q. You were marketing manager, that was your
2 title, from -- throughout January -- from
3 January 2021 to January 2022, thereabouts?

4 A. Yes.

5 Q. And you were a marketing specialist from
6 July 2019 to January 2021?

7 A. Yes.

8 Q. Okay. Were you the first hire at Stratus
9 Medical other than Bret -- sorry, let's pause. Let
10 me start over.

11 The CEO of Stratus Medical is Bret --
12 what's his last name?

13 A. Boudousquie.

14 Q. Boudousquie. I'm going to try and get
15 that right too. Were you the first hire at Stratus
16 Medical by Bret Boudousquie?

17 A. Yes.

18 Q. When you were hired by Bret Boudousquie,
19 you were not really a full-time employee, you were a
20 1099 -- you were not a -- some might call a W-2
21 employee, you were a 1099 employee, correct?

22 A. Yes. For a period of time from 2019

1 until January 1st of 2020, when we launched Stratus.

2 Q. Okay. And who was hiring you? What
3 business entity was hiring you in July 2019 and who
4 did you work for for that first period of time?

5 A. So it was -- we still -- we still were
6 kind of forming the company. It was the -- we -- it
7 was the NIMBUS product line, and it was at that time
8 just being funded by an investor group.

9 Q. Do you know what business entity was
10 making your paychecks?

11 A. It would have been under MedVenture.

12 Q. And how did you come to work for
13 MedVenture and eventually Stratus?

14 A. I met Bret through an Indeed post.

15 Q. And what was that Indeed post?

16 A. Marketing -- it was marketing --
17 marketing, graphic design. It was consultant with
18 potential of turning into a full-time position.

19 Q. So Mr. Boudousquie put a post on Indeed
20 saying he needed marketing and graphic design help
21 to do some consulting work for a business he was
22 doing and you just randomly saw this on the Internet

1 and applied?

2 A. Yes.

3 Q. And before that, immediately before you
4 were -- applied for the job via the Indeed post, you
5 were an art teacher at an elementary school,
6 correct?

7 A. Yes.

8 Q. And you had been an art teacher for about
9 seven years?

10 A. Yes.

11 Q. You have a bachelor of arts in art
12 teacher education?

13 A. Art education with a specialization in
14 graphic design, visual communications.

15 Q. And you received that degree in 2011?

16 A. Yes.

17 Q. So you had no formal business or
18 marketing training before working at Stratus?

19 A. Not -- not formal business, no MBA, that
20 type of thing.

21 Q. No -- did you take any business schools
22 in your undergraduate education -- or business

1 classes in your undergraduate education?

2 A. Not -- not -- no.

3 Q. And you're not an engineer?

4 A. No.

5 Q. Have you no engineering training or
6 experience?

7 A. No.

8 Q. If you would, turn to your binder and
9 pull up Exhibit 2037. And let me know when you have
10 that.

11 A. I have it here.

12 Q. And this is titled the Second Declaration
13 of Cody Jorgensen, correct?

14 A. Yes.

15 Q. Did you write this declaration?

16 A. Yes. It was a process back and forth
17 with counsel, but yes.

18 Q. Counsel helped you write it?

19 A. Yes. There was some back-and-forth
20 making sure that we had -- because this is basically
21 a follow-up of the original asking for, like, some
22 clarifications and whatnot.

1 Q. And this is -- it's just -- it's pretty
2 short. It's nine paragraphs, right?

3 A. Yes.

4 Q. Paragraph 1, this is as you -- this
5 paragraph basically as you just said just sort of
6 talks about how it's a follow-up to the previous
7 declaration?

8 A. Correct.

9 Q. And paragraph 2 is essentially no --
10 reminding us of something that you noted in
11 paragraph 4 of your first declaration talking about
12 the employment history we just went through, right?

13 A. Yes.

14 Q. Let's go down to the end, paragraph --
15 take a look at paragraphs 8 and 9.

16 A. Okay.

17 Q. Do you know why those are there?

18 A. Eight is declaring that my statements are
19 true and nine is -- basically -- basically they're
20 just agreeing -- basically they're agreeing to kind
21 of the overall rules to the declaration.

22 Q. And these two paragraphs are basically

1 repeating paragraphs 58 and 59 of your original
2 declaration, right?

3 A. Yes.

4 Q. In paragraph 8 you testified: All
5 statements made herein of my own knowledge are true.

6 What do you mean by that?

7 A. That all statements are made of my own
8 knowledge and are true.

9 Q. Well, then the next part of that sentence
10 says: And that all statements made on information
11 and belief are believed to be true, right?

12 A. Correct.

13 Q. So what does that second clause mean to
14 you?

15 A. That if it -- that if the -- that if
16 there is something that is not directly of -- that
17 if there is something that I was given by someone
18 else or that type of thing, that -- for example, if
19 I were to get information from accounting, if there
20 were -- if maybe there were some sort of flaw in
21 their information, that it's believed to be true,
22 but it may not necessarily be my own information.

1 Q. And is there any information in your
2 testimony in either declaration that you -- where
3 you -- sorry, let me strike that.

4 Is there any testimony that you have
5 given that you identified as a statement made,
6 quote, on information and belief, end quote?

7 A. As far as information and belief, I mean,
8 there's -- the information -- there is information
9 that -- there is information that -- like, for
10 example, some of the information that -- for
11 example, like our numbers come from accounting, the
12 data for the comparison charts, there is some
13 information that we have, say, between third
14 parties -- between third-party sources as well as
15 information that was obtained through public calls
16 of public companies as well as general -- as well as
17 information that is learned from customers and work
18 in the field.

19 Q. Okay. So you said that you believe that
20 the statements that you made on information and
21 belief would be testimony that you gave relating to
22 numbers that came from your accounting, data for the

1 comparison charts, information from third-party
2 sources, information from public calls and
3 information that was learned from customers and work
4 in the field. Those were all made -- statements
5 that you say are made on information and belief?

6 A. Correct.

7 Q. So the other paragraphs in this
8 declaration, 2037, that we haven't talked about
9 would be paragraphs 3 through 7. Aside from the
10 introduction and aside from the left -- paragraphs 8
11 and 9 -- 3 through 7, that's five paragraphs, right?

12 A. Correct.

13 Q. So that's, like, the meat of this
14 declaration is those five paragraphs?

15 A. Sure.

16 Q. And you used the phrase "personal
17 knowledge" four times in those paragraphs, those
18 five paragraphs, correct?

19 A. Yes.

20 Q. One of those is in paragraph 3. You say:
21 I have personal knowledge of the information that I
22 discuss in paragraphs 16 through 27 and 47 of my

1 first declaration, right?

2 A. Yes.

3 Q. And if you just flip briefly to that
4 declaration and just give a quick skim of 16
5 through -- what was it? 16 through 27. So that's,
6 like, pages 6 through 11.

7 A. Yes.

8 Q. And paragraph 47 --

9 A. Okay.

10 Q. -- which is page 15. So when you say you
11 have personal knowledge of that information, that
12 includes a lot of the information that you just said
13 you were testifying about on information and belief,
14 correct?

15 MR. LAURENCE: Objection, form.

16 A. I do, yes. As far as personal knowledge
17 of it, yes. Have we had -- have we received
18 other -- have we received third-party information
19 to, you know, compare and, you know, get some of
20 those -- some of those details, yes. As well as
21 information that was received from some of those
22 public calls that were held by some of the public

1 companies that -- in those charts.

2 BY MR. THOMAS:

3 Q. So when you say you have personal
4 knowledge of those things, you just mean that you
5 know it in your brain, like, now? That's
6 information that you possess in your brain now,
7 right?

8 MR. LAURENCE: Objection, form.

9 BY MR. THOMAS:

10 Q. Let me strike that question and let me
11 rephrase.

12 A. Okay.

13 Q. If someone tells you something or you
14 read something in a document, then you consider
15 yourself to have personal knowledge of that fact,
16 correct?

17 A. As far as -- as far -- are you asking me
18 if I learn about something from somewhere, if that
19 is -- if once I've learned it, that's personal
20 knowledge? Is that the question?

21 Q. Basically, yes.

22 A. I mean, that's typically how people learn

1 things is by, you know, learning through sources of
2 information.

3 Q. Let's look at an example, I guess. Maybe
4 this will help crystallize it. Paragraph 6 of this
5 Exhibit 2037. You say: With respect to my
6 statement in paragraph 51 of my first declaration, I
7 have personal knowledge that Avanos acquired Diros,
8 right?

9 A. Yes.

10 Q. So how did you obtain the personal
11 knowledge that Avanos acquired Diros?

12 A. Through press release, posts on social
13 media. For example, Exhibit 2030 is one of those
14 sources that I personally learned of that happening.

15 Q. Right. So you read it in a document?

16 A. Correct.

17 Q. Do you remember the five senses from,
18 like, elementary school? Do you remember what the
19 five senses are?

20 A. Sight, smell, taste, touch, hear.

21 Q. Yeah, that's what I remember too. And
22 you weren't in the room for the closing of the

1 **Avanos/Diros transaction, right?**

2 A. Correct.

3 Q. You didn't see it happen?

4 A. Yeah.

5 Q. You didn't hear it happen, like live?

6 You didn't observe that thing happening?

7 A. I did not observe it -- I did not observe
8 the closing. I did observe the public call of --
9 the quarterly call where they announced it to
10 their -- where they announced it to the investors.
11 So I guess that is a source of sight, hear. I
12 wasn't there --

13 Q. Of the --

14 A. I wasn't there to smell, touch, taste.

15 Q. You couldn't smell or taste an
16 acquisition, I suppose, right?

17 A. Correct.

18 Q. So the actual acquisition of Diros by
19 Avanos you didn't observe with any of your five
20 senses, did you?

21 A. The actual closing of it? I personally
22 was not there. However, I -- I did see the

1 quarterly call where they announced it to their
2 investors. I did see it in a press release. It's
3 public information, public knowledge at that point.

4 Q. Okay. Stratus provides a copy of its
5 product catalog on its website, correct?

6 A. Yes.

7 Q. That's at
8 stratusmedical.com/product-catalog?

9 A. Correct.

10 Q. Okay. I'm going to upload a document
11 into the chat. This document has been previously
12 marked Exhibit 1041. If you could take a look at
13 this.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. And what is it?

18 A. It is a product catalog.

19 Q. It's the Stratus product catalog for
20 2023?

21 A. Yes.

22 Q. And it features a picture of you on the

1 second page, right?

2 A. Yes.

3 Q. Are you using -- what PDF software are
4 you using to view this document?

5 A. It's currently in Preview.

6 Q. Okay. It's like -- when you say
7 "Preview," do you have a Mac?

8 A. Yes.

9 Q. Are you able to look at the -- well,
10 never mind. Go to the last page.

11 A. Okay.

12 Q. And then in the bottom left corner it
13 says: ECO 10234 MKT-022 Rev.F.

14 Do you see that?

15 A. Yes, I do.

16 Q. Do you have any idea what that refers to,
17 what that means?

18 A. It's a document number for our QMS
19 system.

20 Q. And as director of marketing for Stratus,
21 you're aware of how Stratus markets its products to
22 customers?

1 A. Correct.

2 Q. And generally for what purposes the
3 products are used, correct?

4 A. Correct.

5 Q. If you could go to page 2. It's page 2
6 in the bottom right.

7 A. Okay.

8 Q. And this page shows the NIMBUS multitined
9 expandable electrode, right?

10 A. So we're looking at page 2. Yes. Yes.

11 Q. And there's four different product codes
12 listed here for the NIMBUS. True?

13 A. Correct.

14 Q. Do you have an understanding of what the
15 numbers and the codes that make up the product code
16 mean?

17 A. Yes.

18 Q. Can you explain, kind of break -- can you
19 please break down, explain the product code form --
20 formulation.

21 A. The NIMBUS and then the length and then
22 the 10BB is the 10-millimeter active tip. BB's

1 typically used for straight cannula. And then CS is
2 typically used for a curved -- there is a variation
3 of the 100 that is a CS that's slightly longer.

4 Q. And that product code NIM-100-10BB-CS,
5 that means it's a NIMBUS electrode that's
6 100 millimeters in length with a 10-millimeter
7 active tip and it's curved, correct? And --

8 A. Yes. Go ahead.

9 Q. And that -- that product is compatible
10 with an Avanos white probe, correct?

11 A. Correct.

12 Q. And the probe is the thing you stick down
13 into the middle of the cannula to -- that transmits
14 the electric energy from the generator to the tip
15 and ultimately the tissue, right?

16 A. Yes. It's basically the connecting
17 factor between the RF generator and the cannula or
18 device that's being used.

19 Q. And this is the 2023 catalog. So does
20 Stratus sell the same four versions of the NIMBUS
21 electrode today in 2025?

22 A. Yes.

1 Q. Was it the same four versions in 2024?

2 A. Yes.

3 Q. 2022?

4 A. Yes.

5 Q. 2021?

6 A. Yes.

7 Q. 2020?

8 A. Yes.

9 Q. Are you familiar with NIMBUS concepts and
10 the sale of the NIMBUS device before Stratus Medical
11 was formed?

12 MR. LAURENCE: Objection, relevance.

13 BY MR. THOMAS:

14 Q. You may answer.

15 A. I am aware of some points of it. I don't
16 have knowledge of the entire -- of the entirety. So
17 I guess it depends on what exactly you're asking
18 there.

19 Q. That's fair. You're aware that the FDA
20 approved the NIMBUS to be marketed and sold in 2012?

21 A. Correct.

22 Q. Are you aware of what versions of the

1 NIMBUS electrode were sold between 2012 and 2019?

2 A. It was mostly sold -- it was -- it really
3 was not marketed in the US. It was mainly -- it was
4 mainly -- mainly sold in Australia up until that --
5 up until 2019.

6 Q. Okay. My question was, were you aware
7 what versions of the NIMBUS electrode were sold
8 between 2012 and 2019?

9 MR. LAURENCE: Objection, relevance.

10 A. I -- so I'm -- I know that there were
11 some -- I know more or less based off of the
12 documentation -- I know more or less based off of
13 the IFU numbers and some of the form -- some of the
14 labeling and forms of them that -- you know, some of
15 them were produced earlier, then some came later.
16 So I don't know that -- I don't know of which ones
17 exactly were sold, but I know that there were some
18 that were sold earlier on -- that were sold earlier
19 on and added later on.

20 BY MR. THOMAS:

21 Q. Let me go back to the Stratus Medical
22 time period at least, then. So 2020 to 2024 you've

1 said Stratus -- sorry. 2020 to present Stratus
2 Medical has sold all four versions of these
3 electrodes throughout that entire time period,
4 right?

5 A. Correct, yes.

6 Q. Are there any other versions of the
7 NIMBUS electrode that Stratus has sold during that
8 time period that are not in this 2023 catalog?

9 A. No.

10 Q. Did -- when you started working at
11 Stratus in -- or the precursor to Stratus in 2019
12 and that became Stratus in 2020, did Stratus make
13 any changes to the NIMBUS electrode?

14 A. No.

15 Q. So Stratus was just selling the same
16 products that had been sold before, correct?

17 MR. LAURENCE: Objection, form.

18 A. They -- I mean, the products had already
19 been -- I mean, the product -- the product was
20 already -- yeah, we -- so the products had been
21 available in markets. However, really it hadn't
22 been marketed in the -- it hadn't been -- to my

1 knowledge, it hadn't been marketed in the US. It
2 was -- it had -- but they had been sold in
3 Australia.

4 BY MR. THOMAS:

5 Q. But it was approved to market in the US
6 since 2012 you said?

7 A. Correct.

8 Q. And Stratus didn't add any new product
9 development to the NIMBUS electrode in 2020 when you
10 started selling those, right?

11 MR. LAURENCE: Objection, form.

12 BY MR. THOMAS:

13 Q. It was just selling the same thing that
14 had been sold or at least was -- let me strike the
15 question.

16 Stratus didn't add any new product to
17 development in 2020 when it began marketing and
18 selling the NIMBUS electrode, it was just selling
19 the same product or products, all four products,
20 that existed before, correct?

21 A. The products did exist. We are selling
22 products that did exist.

1 Q. Okay. Stratus sells two kinds of probes

2 to be used in the NIMBUS electrode, right?

3 Disposable -- sorry, strike that question.

4 Stratus sells a disposable probe and a
5 reusable probe to be used with the NIMBUS electrode,
6 correct?

7 A. Correct.

8 Q. And for each of those two kinds of
9 probes, disposable, reusable, they're sold in the
10 different lengths, right?

11 A. Yes.

12 Q. And the lengths match the lengths of the
13 electrode, right?

14 A. Yes.

15 Q. And there's three lengths of the
16 electrode?

17 A. Yes.

18 Q. So three lengths of the probe?

19 A. Three lengths of the probe, yes.

20 Q. Correct? Okay.

21 So there's six different product codes
22 for the NIMBUS probes, correct?

1 A. Yes.

2 Q. Does Stratus sell the same four versions
3 of -- sorry, strike that.

4 And -- I got lost. Those six versions --
5 six product codes for the probe are listed in this
6 product -- in this catalog, correct?

7 MR. LAURENCE: Objection, foundation.

8 BY MR. THOMAS:

9 Q. Might direct your attention to page 10.

10 A. Okay.

11 Q. And 11.

12 A. Okay.

13 Q. Has these -- pages 10 and 11 show the
14 product codes that Stratus was selling in 2023 as of
15 the publication of this 2023 catalog, right?

16 A. Yes.

17 Q. And similar to the question I asked
18 before about the electrodes, does Stratus still sell
19 those same six product codes for the probe today in
20 2025?

21 A. Yes.

22 Q. And were those the same product codes

1 that were sold in 2024?

2 A. Yes.

3 Q. And 2022?

4 A. 2022, yes.

5 Q. 2021?

6 A. It was a product that was launched toward
7 the end of 2021.

8 Q. Well, what do you mean the product -- it
9 was a product that was launched towards the end of
10 2021?

11 A. We're talking about the probes?

12 Q. Yes.

13 A. We did not sell probes early -- earlier
14 on in 2021. It was a product that was brought to
15 market toward the end of the year.

16 Q. Do you remember what month,
17 approximately?

18 A. It would have been around Q3.

19 Q. So like September, October time frame?

20 A. It would -- it would be around October.

21 Q. So Stratus did not sell a probe before
22 around October 2021, correct?

1 A. Correct.

2 Q. So every sale that Stratus made before it
3 launched the probe around October 2021 was a sale of
4 just an electrode, right?

5 A. Correct.

6 Q. Since it launched the probe, some of the
7 Stratus sales transactions are still just for an
8 electrode, correct?

9 A. Correct.

10 Q. Sometimes it's an electrode together with
11 probes or a probe or multiple probes?

12 A. Well, reusable probes they reuse them
13 till they don't work anymore, typically, the
14 facilities. As far as disposables, yes. If they're
15 using disposable probes, they have to use a
16 disposable probe with every cannula. And if they
17 are -- if they are using NIMBUS probes, then, yeah,
18 that's what they would be using. If they are using
19 another probe, then they would not be purchasing
20 probes to go with the cannulas.

21 Q. Are you aware even generally of what
22 price Stratus sells its products for?

1 A. Yes.

2 Q. Does Stratus sell the four different
3 NIMBUS electrodes that we talked about? Are those
4 sold at the same price or different prices?

5 A. [REDACTED]. The
6 difference is really length on those products.
7 It's --

8 Q. And --

9 A. They're not different -- they're not
10 different products by any means other than length.
11 There's no different -- there's no differences in
12 diameter, gauge, active tip.

13 Q. Does -- what about the probe, does
14 Stratus differentiate in pricing among the six
15 different NIMBUS probe product codes?

16 MR. LAURENCE: Excuse me. At this
17 point could we designate this section as
18 confidential?

19 MR. THOMAS: Okay.

20 MR. LAURENCE: Getting into pricing
21 information. Can we -- going back to where you
22 started asking questions about pricing.

1 THE WITNESS: Is it possible to do a
2 restroom break?

3 MR. THOMAS: That's fine. Yes, we
4 can do that. How long do you need, Mr. Jorgensen?
5 We can go off the record.

6 (Recess taken from 9:18 a.m. to
7 9:27 a.m.)

8 MR. THOMAS: We can go onto the
9 record then.

10 MR. LAURENCE: So before the break I
11 brought up the issue of confidentiality. If we
12 could keep the entire transcript confidential until
13 we've had a chance to review it and then
14 de-designate the sections that we don't need to keep
15 attorneys' eyes only. Is that acceptable?

16 MR. THOMAS: That's fine with Avanos
17 and we appreciate your doing that in a speedy
18 fashion so that we can all get everything filed when
19 we need it.

20 MR. LAURENCE: We will do that.

21 BY MR. THOMAS:

22 Q. So, Mr. Jorgensen, before the break that

1 we took, I had asked you if Stratus differentiates
2 in pricing among the six different NIMBUS probe
3 product codes. And I don't believe I got an answer
4 to that.

5 MR. LAURENCE: Objection, relevance.

6 A. As far as -- so reusable and disposable
7 probes are going to be [REDACTED].
8 [REDACTED] by length, [REDACTED] we really [REDACTED]
9 [REDACTED] the length of the
10 probe. So if it's a 50-, 100-, 150-length reusable
11 probe, [REDACTED]. If it is a
12 disposable probe, those are sold by the box and
13 they're -- they're disposable, they're used and
14 disposed of along with NIMBUS cannulas.

15 BY MR. THOMAS:

16 Q. And for the electrodes, is there, like,
17 an average sales price or a list price for those
18 products?

19 MR. LAURENCE: Objection, relevance.

20 A. Yes. I believe that's pretty typical
21 with most -- with most companies that sell products.

22

1 BY MR. THOMAS:

2 Q. And what is the average sales price of
3 the NIMBUS electrode?

4 A. Around [REDACTED] for a box of ten.

5 Q. So around [REDACTED]?

6 A. Yes.

7 Q. And has Stratus sold the NIMBUS electrode
8 for -- within five or \$10 of that price since 2020?

9 A. [REDACTED]

10 Q. [REDACTED]

11 A. [REDACTED]

12 Q. -- over that time? Okay.

13 In your first declaration you testified
14 that Stratus was recognized as one of the
15 fastest-growing companies in North America on the
16 Deloitte Technology Fast 500, correct?

17 A. Yes.

18 Q. And in your testimony you cited
19 Exhibit 2015 -- sorry. You cited Exhibit 2025 for
20 that, correct?

21 A. 2025 is one -- is -- yeah. Yes.

22 Q. That's the document that you cited in

1 paragraph 54 of your testimony?

2 A. Yes.

3 Q. And Exhibit 2025 is a copy of a Stratus
4 press release posted on Stratus' website, right?

5 A. Correct. I mean, if -- if you needed
6 the -- if you needed a copy of the actual listing,
7 it's a listing of, you know, 500 companies. So, I
8 mean, that could be -- that could have been
9 submitted instead.

10 Q. But you didn't?

11 A. I mean, that's, like, 30-some pages of
12 fluff for one little line.

13 Q. And selection for this program is based
14 on an applicant's fiscal year revenue growth
15 percentage over a three-year period, correct?

16 A. I believe -- I believe document --
17 Exhibit 2042 has some of the information on the
18 submission. But, yes, that is -- that is part of
19 the basis.

20 Q. It's the only basis, isn't it?

21 A. Yes.

22 Q. Do you have any knowledge as to where

1 Stratus was ranked on that list of the Fast 500?

2 A. I don't know the exact number right
3 offhand. I do know around where we were ranked.

4 Q. It was 483 out of 500, wasn't it?

5 A. I --

6 MR. LAURENCE: Objection, foundation.

7 A. I believe it was somewhere around there.

8 BY MR. THOMAS:

9 Q. Let's go back to the pricing real quick.
10 I asked about the prices of the electrodes. I meant
11 to also ask you about the prices of the -- do you
12 know what an average list -- average sales --
13 strike.

14 Do you know what the average sales price
15 is for the reusable NIMBUS probe?

16 MR. LAURENCE: Objection, relevance.

17 A. Yes.

18 BY MR. THOMAS:

19 Q. And around what price is that average
20 sales price for the reusable NIMBUS probe?

21 MR. LAURENCE: Objection, relevance.

22 A. Around [REDACTED].

1 BY MR. THOMAS:

2 Q. That's [REDACTED]?

3 A. Yes.

4 Q. And what is the average sales price for
5 the disposable NIMBUS probe?

6 MR. LAURENCE: Objection, relevance.

7 A. Around [REDACTED] for a box of ten.

8 MR. THOMAS: Can we go off the record
9 for a second?

10 (Recess taken from 9:35 a.m. to
11 9:36 a.m.)

12 BY MR. THOMAS:

13 Q. Mr. Jorgensen, you said that the average
14 sales price for the disposable probe was around [REDACTED]
15 for a box of ten. So the per-unit price of the
16 disposable probe would be about [REDACTED],
17 correct?

18 MR. LAURENCE: Objection, relevance.

19 A. Yes.

20 BY MR. THOMAS:

21 Q. If you would, in your binder, go to
22 Exhibit 2015.

1 A. Okay.

2 Q. That's your first declaration.

3 A. Yes.

4 Q. Turn to page 12.

5 A. Okay.

6 Q. This is the section of your testimony
7 under the heading Copying, correct?

8 A. Yes.

9 Q. And your testimony is that the Diros
10 Trident device copied the NIMBUS device, right?

11 A. Yes.

12 Q. Did you physically inspect a Diros
13 Trident before you testified that it was a copy of
14 the NIMBUS?

15 A. Yes, I had physically had -- I had
16 physically held a copy of -- held a unit of it.

17 Q. When was that?

18 A. I had a few times prior to the testimony
19 to my -- to my submission.

20 Q. Did you look at or inspect a Diros
21 Trident during the process of preparing your
22 declaration testimony?

1 A. Yes. I mean, I was already pretty
2 familiar with it. It wasn't -- it wasn't really
3 anything new to me at that point in time, so, you
4 know, I didn't need to study it.

5 Q. I didn't ask if you needed to study it.
6 I asked if you did. Did you look at the product
7 during the process of preparing this copying
8 testimony?

9 A. Yes.

10 Q. And which product did you look at? Which
11 Trident product did you look at?

12 A. A standard Trident device.

13 Q. Not the hybrid device?

14 A. Correct.

15 Q. But did you take any pictures of the
16 Trident device when you were examining it for the
17 purpose of preparing your testimony?

18 A. Not at that time. Prior -- prior --
19 prior there we had -- prior I had taken some images
20 of it and also, you know, tested it with -- for
21 lesion formation.

22 Q. You've tested the Diros Trident for

1 lesion formation?

2 A. A comparison, yeah.

3 Q. You've, like, stuck the probe in, turned
4 it on, heated up a piece of chicken or something
5 like that?

6 A. Yes.

7 Q. In paragraphs 33 to 37 of your
8 testimony -- sorry, hold on a second.

9 In paragraphs 33 to 37 of your direct
10 testimony you identify several similarities between
11 the Diros Trident and the Stratus NIMBUS, right?

12 A. Yes.

13 Q. And you've got an image there of the
14 NIMBUS and an image of the Trident, right?

15 A. Yes.

16 Q. And you say that one of those
17 similarities is that like the NIMBUS, the Trident
18 device has a cannula, right?

19 Sorry, what was your answer?

20 A. Yes. Yeah, that is a part of -- that is
21 a part of what's mentioned there.

22 Q. Yes, that's a part of what's mentioned

1 there. And that part, that's not unique in the
2 market for RF neurotomy devices, is it?

3 A. No. That's going to be consistent
4 amongst. However, that's not necessarily the --
5 that's not a part that is really a differentiator
6 amongst radiofrequency products. It can't be --

7 Q. No, it's not -- sorry. I'm sorry, I
8 apologize for interrupting your answer. Can you
9 finish -- say that again so we have that clear for
10 the record.

11 A. Just the cannula of a hollow tube with --
12 with insulation, that's not -- there's no -- I mean,
13 standard cannulas all have that. They're a
14 commodity product. So, yeah.

15 Q. The same goes for a tip for piercing
16 tissue of a patient that you also identify as a
17 similarity, correct?

18 MR. LAURENCE: Objection, form.

19 A. The tip -- yeah. A tip is going to be on
20 a cannula. However, those two factors are not
21 necessarily the whole. I think you're kind of
22 leaving some other details out on that.

1 BY MR. THOMAS:

2 Q. Other products also have a main hub
3 attached to the cannula, correct?

4 A. Yes. A hub of some sort. However, these
5 are differentiated from a standard cannula, like a
6 standard cannula hub or a protruding electrode hub
7 like the Venom or SideKick where that's just a
8 plastic end.

9 BY MR. THOMAS:

10 Q. And other RF neurotomy products on the
11 market also have, as you identify here in
12 paragraph 35 -- sorry, strike that.

13 In paragraph 35 you testify that
14 similarly, both the NIMBUS device and the Trident
15 device are operable with a removable RF probe which
16 is inserted into the cannula and provides RF energy
17 to the tip and tines.

18 And that similarity is also shared with
19 many other RF neurotomy products on the market,
20 isn't it?

21 MR. LAURENCE: Objection, foundation.

22 A. Yes.

1 BY MR. THOMAS:

2 Q. And --

3 A. Tines are not necessarily a factor with,
4 you know, standard cannulas. Obviously with the
5 protruding electrodes, the Venom and SideKick,
6 that's actually the probe that is coming out of a
7 hole in the side of the cannula. However, tines are
8 not involved with those other products.

9 Q. And there are other products on the
10 market that are similarly marketed and sold to the
11 same consumer and target consumers which are
12 hospitals, clinics, doctors' offices and the like in
13 which interventional pain specialists perform RF
14 neurotomy procedures as you identify in
15 paragraph 37, correct?

16 A. Correct.

17 Q. So -- strike that.

18 In fact, Stratus itself sells a product
19 called the Vesta that shares most of those
20 similarities with the NIMBUS, right?

21 MR. LAURENCE: Objection, foundation.

22 A. It is a standard cannula product just as

1 every other -- just as every other company that
2 sells radiofrequency ablation products for pain
3 carries a standard cannula. However, there are
4 clearly differentiations between the standard
5 cannula and a multitined expandable electrode like
6 NIMBUS.

7 BY MR. THOMAS:

8 Q. And those differentiations are important,
9 right?

10 A. Correct.

11 Q. And you talk about the Stryker Venom and
12 the -- what was the other product you referenced?

13 A. SideKick.

14 Q. And the -- who makes the SideKick?

15 A. Boston Scientific.

16 Q. So you also referenced the Stryker Venom
17 and Boston Scientific SideKick products that also
18 have some type of deployable electrode that goes
19 past the tip or outside the tip, right?

20 A. It's a hole where the -- where the actual
21 probe is coming out. It's a different -- it's a
22 different method of slightly expanding the lesion

1 size, as opposed to having a deployment mechanism
2 and tines.

3 Q. So your testimony is that the Venom and
4 the SideKick have a different deployment mechanism
5 than the NIMBUS?

6 MR. LAURENCE: Objection, foundation,
7 relevance.

8 A. They have a mark on both the probe and
9 the top of the cannula. It's more of a standard --
10 it's more similar to, like, the standard cannula on
11 top. And they have to align the probe in a certain
12 direction in order for it to come out the little
13 hole in the side.

14 BY MR. THOMAS:

15 Q. Looking back at the images in
16 paragraph 33 of your declaration, there's several
17 labels on those two products, right?

18 A. Correct.

19 Q. And you've agreed that many products
20 share many of these features that are labeled on
21 this figure, correct?

22 MR. LAURENCE: Objection, form.

1 A. Some. Clearly not all. I mean, yes, an
2 RF cannula is going to have some sort of a cannula.
3 They're going to have some sort of a tip and some
4 sort of a hub. However, there's differentiators
5 here, clearly.

6 BY MR. THOMAS:

7 Q. So sharing the specific similarities that
8 you just talked about, like a cannula, a tip, the
9 hub, those aren't themselves enough to make a
10 product a copy of the NIMBUS, are they?

11 MR. LAURENCE: Objection, form.

12 A. I guess it would depend on -- I guess it
13 would depend on the actual hub itself, because
14 clearly the hub is different from a standard cannula
15 hub like the Vesta or any of the other commodity
16 cannula products. So -- you know, so the -- so
17 there's parts there that are going to be common
18 between the product, but that's not really what
19 we're -- that's not really what is being focused on
20 here. Yes, you are correct in a cannula is a part
21 of all, but that's -- that's not the -- that's not
22 really the meat of what is being discussed there.

1 BY MR. THOMAS:

2 Q. Did you identify the meat of what is
3 being discussed in paragraphs 34, 35?

4 A. Rotatable actuator. So if you -- if you
5 look at 34, deployable tines that extend past a
6 distal end of the tip. Rotatable actuator that
7 rotates relative to the main hub to deploy and
8 retract the tines.

9 Q. Is that the meat?

10 A. That's getting more into -- yeah, that's
11 covering more of what is actually being discussed in
12 that -- in that section.

13 Q. But you're -- but the paragraph itself
14 discusses all the other similarities that are shared
15 with other products in the RF market -- RF neurotomy
16 market also, correct?

17 MR. LAURENCE: Objection, form.

18 A. Yes.

19 BY MR. THOMAS:

20 Q. You identify -- sorry. Go ahead.

21 A. Yes, it does -- it does cover -- it does
22 cover some items that are part of radiofrequency

1 ablation cannulas.

2 Q. Earlier you said -- in talking about the
3 differences or similarities, you said, I guess it
4 would depend on the actual hub itself because
5 clearly the hub's different -- and I think you're
6 referring to the NIMBUS or on the Trident. Clearly
7 the hub is different from a standard cannula hub
8 like the Vesta or any other commodity cannula
9 products.

10 You don't discuss any of these
11 similarities or differences about the hub in this
12 paragraph or the next, do you?

13 A. It's talking about the -- so the --
14 because this hub has the actuator on it, that is --
15 I'm speaking to, you know, some of the workings
16 between the actuator and the hub.

17 Q. But your direct testimony does not speak
18 to any of those differences between the actuator and
19 the hub, does it? Doesn't speak to any of those
20 workings between them, does it?

21 A. It mentions the hub attached to the
22 cannula, the rotatable actuator. I guess -- I guess

1 the way you're -- I guess the way that it's being
2 discussed currently, yes, it's -- so it's being
3 discussed as separate here versus -- so, no, it does
4 not speak to some of the inner workings between the
5 two.

6 Q. Paragraph 41, here you're talking about
7 Diros' 510(k) submission. You testified: The only
8 potential difference between -- sorry. The only
9 potential difference Diros noted between the Trident
10 devices and the NIMBUS device was the material of
11 which the tines are formed.

12 Now, my question is that when you say
13 Diros noted, are you talking about what you read
14 from the 510(k)?

15 A. Yes.

16 Q. And in paragraph -- at the end of
17 paragraph 41 there it says: See id. at 8. Do you
18 know what "id" means?

19 A. It's the -- it's the reference number for
20 the portion that that's pointing out.

21 Q. What reference number?

22 A. The id. at 8, it's in the document, which

1 is not in this -- it's not in this -- it's not in
2 this part here, so I don't have it in front of me
3 to --

4 Q. Do you know what document it's referring
5 to?

6 A. It's a part of the 510(k) filing.

7 Q. Did you write this portion of your
8 testimony?

9 A. Yes. It was -- the testimony was
10 written. There was -- there was some back-and-forth
11 with counsel, but, yes, the testimony is mine. It's
12 the identifier for the -- for one of the references
13 in the filing.

14 Q. Is that a reference that you usually use
15 in your writing, Mr. Jorgensen? And I'm referring
16 to the id. reference. Do you use that normally in
17 your writing?

18 A. Depending, but -- depending.

19 Q. Depending on what?

20 MR. LAURENCE: Objection, relevance.

21 A. I guess it depends on what the writing
22 is. If it's how I'm referencing it, like for 39 it

1 would be the Exhibit 2019 at 4 and 8. But in 41

2 we're talking about a 510(k) filing, which is a bit
3 different.

4 BY MR. THOMAS:

5 Q. So that's different than Exhibit 2019?

6 MR. LAURENCE: Objection, relevance.

7 A. Yes, in that instance it is. Yeah.

8 BY MR. THOMAS:

9 Q. Let's go back to this only potential
10 difference language. So rather than what Diros
11 noted, I want to know if you noted any differences
12 between the Trident device and the NIMBUS device.

13 Did you note any differences between
14 them?

15 A. Differences as in are we talking about
16 functionality or are we talking about what are --
17 where are we talking about differences?

18 Q. Well, you've testified that the Diros
19 Trident is a copy of the Trident, and I'm trying to
20 understand what you mean by a copy. Does it mean an
21 exact copy, they're the -- exactly the same, or does
22 it mean something else?

1 A. It's not entirely. However, they did --
2 they did utilize that -- they did utilize the NIMBUS
3 as a predicate and the way that they spoke to it was
4 that -- was that the -- was to it having an
5 expandable tip equivalent to the NIMBUS. They spoke
6 to -- in reference to the NIMBUS device pretty
7 heavily in the filing.

8 Q. But you said you inspected a NIMBUS and a
9 Trident, right?

10 A. Yes.

11 Q. You testified that the NIMBUS is a copy
12 of the Trident, right?

13 A. Yes.

14 Q. What differences are there between the
15 Diros Trident and the NIMBUS -- the Stratus NIMBUS?

16 A. The Trident has a shorter active tip. It
17 has three tines.

18 Q. Anything else?

19 MR. LAURENCE: Objection, form.

20 A. Those are the main differences with
21 functionality.

22

1 BY MR. THOMAS:

2 Q. Did you operate the Trident device when
3 you were doing this comparison? Well, sorry, strike
4 that. You did say that you had operated them
5 before.

6 Did you take one apart?

7 MR. LAURENCE: Objection, form.

8 A. I have not personally taken one apart,
9 no.

10 BY MR. THOMAS:

11 Q. Do you know where the tines exit the
12 needle on the NIMBUS?

13 A. Yes.

14 Q. Can you describe that? Just in your own
15 words is fine.

16 A. There are -- there are two channels that
17 the tines deploy out. It's a bit back from the
18 actual tip of the device. They're to the sides of
19 it, basically.

20 Q. And what about the Diros Trident, do you
21 know where the tine -- where the tines or electrodes
22 exit the needle on the Trident?

1 A. I don't have one in front of me
2 currently, but it's similar.

3 Q. **It's a bit back from the tip?**

4 MR. LAURENCE: Objection, form.

5 BY MR. THOMAS:

6 Q. **That's your understanding?**

7 MR. LAURENCE: Objection, form.

8 A. Yes. It's been a little bit since I --
9 it's been a little bit since I've had one in my
10 hand, but yes.

11 BY MR. THOMAS:

12 Q. **Do you know what the shape of the tines**
13 **is in each product?**

14 A. So with the NIMBUS device, the tines are
15 straight, whereas the Trident, they're curved.

16 Q. **And back to the last question I asked**
17 **about where the tines come out of the Trident. You**
18 **said you couldn't remember. And you can't tell from**
19 **the photos. Is that what you're saying? Is that**
20 **correct?**

21 A. It's -- I mean, they're not coming out of
22 the actual tip of the device because the tip of the

1 device is used for -- it's used when they're placing
2 the device when they're moving through tissue.

3 Q. And are you referring to the NIMBUS or
4 the Trident when you say that the tines aren't
5 coming out of the actual tip of the device?

6 A. Both.

7 Q. Both? Okay.

8 Do you know what material the tines of
9 the NIMBUS are made of?

10 A. Yes.

11 Q. What is that?

12 A. Stainless steel.

13 Q. And what about the Trident, what material
14 are their tines made of?

15 A. I believe nitinol.

16 Q. Looking at the images on paragraph 33 of
17 your testimony, the NIMBUS has -- the tines are
18 straight, right?

19 A. Yes.

20 Q. And the Trident has curved tines, right?

21 A. Yes.

22 Q. And there's -- you said there's three

1 tines on the Trident versus two tines on the NIMBUS,
2 right?

3 A. Yes.

4 Q. And the length of the tines is also not
5 the same, correct?

6 MR. LAURENCE: Objection, foundation.

7 A. That is correct.

8 BY MR. THOMAS:

9 Q. And a moment ago you were talking about
10 the 510(k) submission and the claim of equivalence
11 that Diros made to the NIMBUS, right? That's one of
12 the reasons that you think that the Trident is a
13 copy of the NIMBUS, correct?

14 MR. LAURENCE: Objection, form.

15 A. I mean, are we speaking to what -- are we
16 speaking to my personal knowledge of this or are we
17 speaking to -- because I'm not -- I'm not a patent
18 attorney. So there are some -- there are some
19 things that I -- that are -- there are some things
20 that are beyond the scope of what I submitted and
21 what an actual patent attorney would be -- would
22 have a better understanding of.

1 BY MR. THOMAS:

2 Q. Do you know whether or not patent
3 attorneys submit 510(k) forms to the FDA?

4 A. They would at least be -- there would be
5 some involvement if there's patents involved with
6 the product. They're working toward patenting a
7 product. But the 510(k) would be from the company.
8 The engineers would be involved.

9 Q. Well, you said -- you said -- you're
10 asking if I'm asking about your personal knowledge.
11 You said -- your testimony is that you have personal
12 knowledge of all the facts in this declaration,
13 right?

14 A. Correct. What I -- what I -- of what I
15 submitted and what I speak to, yes. Now, have I --
16 have I actually personally taken apart the device
17 and gone into every -- and examined every single
18 piece that goes into each? I have not. But as far
19 as what is being spoken to here, yes, I do have that
20 understanding of it and that is my submission.

21 Q. And one of the -- you have several
22 paragraphs of testimony in your declaration about

1 the 510(k) premarket notification for the Trident
2 and how it refers to equivalence with the NIMBUS,
3 correct?

4 A. Yes. Yes.

5 Q. And that's -- and you believe that
6 supports your opinion -- or your testimony that --
7 sorry, strike that.

8 And you believe that the claim of
9 equivalence supports your testimony that the Trident
10 is a copy of the NIMBUS, correct?

11 A. Now, that depends, because if we're just
12 speaking to, like, a substantially equivalent --
13 equivalence, which is what most -- most use -- is
14 some sort of equivalence for a predicate device,
15 that's one thing. But where they're speaking to the
16 expandable tip equivalent to that type of thing,
17 that's a bit of a different animal as opposed to
18 just, you know, comparing, like, NIMBUS to a
19 standard cannula in order to have a product to
20 compare to as far as safety, efficacy,
21 functionality.

22 Q. Are you finished?

1 A. Yes.

2 MR. THOMAS: Move to strike as
3 nonresponsive.

4 BY MR. THOMAS:

5 Q. Mr. Jorgensen, your testimony on copying
6 points to the 510(k) submission. You testified that
7 the 510(k) submission supports your testimony that
8 the Trident is a copy of the NIMBUS, doesn't it?

9 A. Yes.

10 Q. I'm going to upload an exhibit that's
11 been previously marked as 1049.

12 A. Okay.

13 Q. Let me know when you have that.

14 A. Okay.

15 Q. Do you recognize this document?

16 A. Yes, I do.

17 Q. And what is it?

18 A. It is the filing for the NIMBUS.

19 Q. And in this filing, Biomerics, which was
20 at the time the entity that was responsible for
21 seeking the -- well, strike that.

22 In this Exhibit 1049, the 510(k) filing

1 for the NIMBUS, it's asserted that the NIMBUS is
2 equivalent to a predicate device here as well,
3 correct?

4 A. Yes.

5 Q. And what is that predicate device?

6 A. The BMC RF cannula.

7 Q. And what is that device?

8 A. It is a Baylis standard cannula.

9 Q. It's not a tined cannula, correct?

10 A. Correct.

11 Q. And so the equivalence that is asserted
12 in a 510(k) -- sorry, strike that.

13 You don't think that the NIMBUS is a copy
14 of the Baylis BMC RF cannula, is it?

15 A. No.

16 Q. And you wouldn't support -- you wouldn't
17 cite this document in support of any allegation or
18 comparison of the NIMBUS to the -- strike that.

19 So just because a predicate device --
20 strike that. Let me start over. Some of these
21 questions are hard to ask.

22 Just because a company identifies a

1 predicate device in a 510(k) filing for a new
2 device, that doesn't mean that it's a copy of the
3 predicate device, does it?

4 A. No, it does not. Predicate device is
5 fairly common amongst 510(k) filings, but does not
6 require -- does not mean it's a copy.

7 Q. When we talked about the differences
8 between the Trident and the NIMBUS, right, there was
9 the shape of the tines, how many tines, the material
10 of tines, right? You remember that testimony just a
11 few minutes ago?

12 A. Yes.

13 Q. You didn't identify any of those
14 differences in your testimony that the Trident is a
15 copy of the NIMBUS, did you?

16 A. I did not.

17 Q. And you think those things -- sorry, go
18 ahead and finish your answer. I apologize.

19 A. I did not, because those are not
20 similarities between the devices.

21 Q. So you were only identifying the
22 similarities and not any differences?

1 MR. LAURENCE: Objection, form.

2 A. That is correct.

3 BY MR. THOMAS:

4 Q. All right. In paragraph 32 of your
5 testimony, back to Exhibit 2037 -- sorry, excuse me,
6 2015, paragraph 32. You mention here the Trident
7 hybrid, which you abbreviate as Trident hybrid
8 device. And you say: It's sufficient for my
9 present discussion to focus primarily on the Trident
10 device, as opposed to the Trident hybrid, correct?

11 A. The overall mechanism on both are the
12 same. One is -- one has a probe that is built into
13 it.

14 Q. The Trident hybrid device has a built-in
15 probe that is not removable, correct?

16 A. Correct.

17 Q. And --

18 A. Functionality -- functionality of the two
19 devices are the same.

20 Q. And the -- to you the lack of the
21 removable probe is not a notable difference as it
22 relates to whether Diros copied the patented NIMBUS

1 device?

2 A. The probe -- the probe involved is not --
3 is not a part of what is being discussed in the
4 copying. Every device has a probe. That one just
5 happens to not be removable.

6 Q. Okay. Let's look at the next section of
7 your declaration.

8 MR. THOMAS: Let's go off the record
9 for a second.

10 (Recess taken from 10:18 a.m. to
11 10:31 a.m.)

12 BY MR. THOMAS:

13 Q. Let's move to the next section of your
14 declaration and looking at paragraph 47.

15 A. Okay.

16 Q. You say -- you, quote, Refer to my
17 previous notes regarding Avanos's declining
18 performance in the US RFA cannula market since the
19 time Stratus began selling the NIMBUS device in the
20 US, right?

21 A. Yes.

22 Q. And when you refer to Avanos' declining

1 performance, you are talking about the chart and

2 testimony in paragraphs 17, 18 and 24, correct?

3 A. Correct.

4 Q. Paragraphs 48 and 49 then discuss an

5 Avanos product called COOLIEF --

6 A. Yes.

7 Q. -- and your direct testimony is that,

8 quote, Since it first began marketing the NIMBUS

9 device in the US, Stratus has seen great success

10 converting COOLIEF accounts to NIMBUS device

11 accounts.

12 So it's your testimony that the NIMBUS

13 product is successfully competing with COOLIEF,

14 right?

15 A. Correct.

16 Q. And you consider COOLIEF to be one of the

17 products that NIMBUS competes with for market share?

18 A. Not direct -- so yes and no. COOLIEF,

19 they position it more as a -- as, like, a premier

20 product. However, you know, there are accounts that

21 do convert over to using NIMBUS from the COOLIEF

22 product. However, a lot of those accounts are going

1 to be more of hospital systems, universities,
2 whatnot; whereas, NIMBUS also competes in ambulatory
3 surgery centers, that type of thing as well.

4 Q. But those hospital systems, universities,
5 whatnot, those are part of the US RFA cannula
6 market?

7 A. Yes and no. That -- those charts are
8 focused on just cannula and, for one, that product
9 is a bit different because it's not -- it's not --
10 it doesn't quite fit into a cannula category, but
11 it -- because it does require additional pieces in
12 order to function. It's not just a cannula.

13 Q. Is it your understanding that Avanos's
14 declining performance, as you refer to it, is due
15 the conversion of -- at least due in part to the
16 conversion of COOLIEF accounts to NIMBUS device
17 accounts?

18 A. A part of that.

19 Q. And Avanos's downward trajectory is due
20 to Stratus converting COOLIEF customers to NIMBUS
21 customers?

22 A. Yes, that's -- yeah, that's in -- yes,

1 that's...

2 Q. And Stratus advertises on its website
3 that NIMBUS -- NIMBUS' large lesion is comparable in
4 size and volume to cooled RF devices but at a much
5 lower cost, shorter procedure time and improved
6 efficiency, right?

7 MR. LAURENCE: Objection, foundation.

8 A. That is -- that is mentioned.

9 BY MR. THOMAS:

10 Q. And COOLIEF is a cooled RF device?

11 A. That is correct.

12 Q. So when Stratus competes with Avanos for
13 customers for RF neurotomy devices, that's including
14 the COOLIEF device and the Trident device?

15 A. Yes.

16 Q. Let's turn to paragraph 17 of your
17 testimony.

18 A. Okay.

19 Q. And here you talk about how -- you start
20 out talking about Stryker and Abbott are among the
21 ten largest medical device companies, and they have
22 historically dominated the RFA cannula market,

1 right?

2 A. Correct.

3 Q. Do you remember our discussion about
4 personal knowledge earlier in the conversation?

5 A. Yes.

6 Q. And in your second declaration you've
7 testified that you have personal knowledge of the
8 information in this paragraph, right?

9 A. Yes.

10 Q. This is one of those instances where when
11 you talk about personal knowledge, you're just
12 talking about what you read from a document,
13 correct?

14 A. It's also -- it's also what I -- what's
15 out in the -- what's seen out in the market, what's
16 seen -- yeah. But, you know, some -- some -- when
17 it comes to things like exact numbers and ensuring
18 that information is correct, yes, there is
19 information that comes from the document.

20 Q. And some of that information is shown on
21 pages -- in the charts on pages 7, 8, 9 and 10 of
22 your declaration, correct?

1 A. Yes.

2 Q. These other companies that are referenced
3 in those charts, you've never been employed by any
4 of them?

5 A. I have not been employed by them.

6 Q. You --

7 A. I have had them reach out to me, but I
8 have not been employed by them.

9 Q. You have never sold their products?

10 A. Correct.

11 Q. You have never sat in on any of their
12 board meetings?

13 A. Their public calls for investors, I have.

14 MR. THOMAS: Move to strike as
15 nonresponsive.

16 BY MR. THOMAS:

17 Q. You have never sat in on any of their
18 board meetings, have you?

19 A. No. I'm not a part of their board.

20 Q. And they wouldn't let you attend a board
21 meeting, would they?

22 A. I'm not a part of their board.

1 Q. You don't have access to their
2 confidential financial reporting?

3 A. I do not work for nor consult for those
4 companies, so I would not have -- I would not have
5 employee access to or board member access to
6 internal documents, no.

7 Q. In paragraphs 19 and 20 you have some
8 testimony about the size of each company's sales
9 force in 2020 and 2024, right?

10 A. Yes.

11 Q. You say that Stratus has a sales force of
12 [REDACTED]. And you -- is it right that
13 you know that because you work with those [REDACTED]
14 people?

15 A. Yes.

16 Q. Do you ever have meetings with the whole
17 sales team?

18 A. Yes.

19 Q. You have met them all face to face?

20 A. Yes.

21 Q. And you have personal knowledge of how
22 large the Stratus sales force is by virtue of your

1 role as the marketing director for Stratus, right?

2 A. Correct. Yes.

3 Q. And you don't have personal knowledge of
4 the sales force size for the other six companies in
5 this chart, do you?

6 MR. LAURENCE: Objection, form.

7 A. So I am not a part of the team of those
8 other companies. I -- I mean, there -- I do see --
9 I do know of what is, you know, seen out there
10 between the calls. They do some -- they do discuss
11 some of -- they do discuss some of that
12 information -- there is some information on the
13 public calls. It's not always -- it's not always as
14 in detail as what is in this chart. So there is --
15 in their -- so there is an element of comparison
16 amongst the numbers from different places. However,
17 this is -- this is as -- this is accurate to what we
18 know of and using the third-party sources and
19 combination of what we're told, what we see out and
20 what I -- what is seen out in the field, what is
21 told by customers, whatnot. But, yes, it's a --
22 from the combination of sources, this is where that

1 comes from.

2 BY MR. THOMAS:

3 Q. And your direct testimony doesn't
4 identify any of those sources, correct?

5 A. Correct.

6 Q. How many people in Stratus' -- let's talk
7 about Stratus' [REDACTED]-person sales
8 force. How many people in that sales force for
9 Stratus are focused on the RFA cannula market?

10 A. Considering that's our -- that is our
11 only market, everyone. We --

12 Q. And -- sorry.

13 A. But we don't sell products outside of
14 RFA.

15 Q. And this chart indicates, for example,
16 that Medtronic has more than 400 people on its sales
17 force or sales team, correct?

18 A. So, yes. Some of -- so some of the --
19 some of their sales force, you know, they sold RFA
20 as well as stimulators, other products.

21 Q. So --

22 A. Some of -- some of the larger companies

1 have their representatives carry more than one

2 product so they're not solely focused on just RFA.

3 Q. Are all 400 of the people that you have

4 indicated on this chart are sales force for

5 Medtronic, are all 400 of them selling to the US RFA

6 cannula market?

7 A. Yes, to my knowledge.

8 Q. And as you've testified in the previous

9 chart, Medtronic has, according to your testimony, a

10 little over 1 percent of the US RFA cannula market

11 share, correct?

12 A. Yes.

13 Q. And so it's your testimony Medtronic is

14 employing over 400 people to achieve a 1 percent

15 market share in the US RFA cannula market?

16 A. There's -- you know, there is more --

17 there is more than just cannulas that they're

18 carrying. For one, they do carry generator

19 stimulators, whatnot. That is -- and that is --

20 that is something with some of the larger -- some of

21 the larger companies and how they are able to sell

22 their other products that they have. They're able

1 to, you know, kind of combine items in contracts,
2 that type of thing.

3 **Q. And so if I'm understanding your answers**
4 **right, and maybe -- strike that.**

5 **Is it your testimony that the sales force**
6 **numbers you've depicted in this chart are just the**
7 **overall sales force for the company as a whole, not**
8 **necessarily limited to the US RFA cannula market,**
9 **but just the overall sales force?**

10 **A. With -- so that is a little bit -- it's a**
11 **little bit harder to say specifically just cannula**
12 **market because they also sell -- they also typically**
13 **sell other products.**

14 **Q. Stryker sells beds, for example, right?**

15 **A. Well, right. But you're not going to**
16 **have -- you're typically -- you're typically not**
17 **going to have a rep that's selling beds as well as,**
18 **you know, pain products, because call points are a**
19 **little bit different as far as selling beds versus**
20 **radiofrequency ablation cannulas or -- where they do**
21 **overlap more is when they get into, like, the**
22 **stimulators and that type of thing.**

1 Q. But you don't know -- according to the
2 testimony you have given, the sales numbers and
3 people, sales forces that you have identified here,
4 you don't know what those people are focusing on,
5 you don't know what all -- the total scope of the
6 products that each one of them is selling, and you
7 don't know how much of their time is spent on the US
8 RFA cannula market, do you?

9 MR. LAURENCE: Objection, form.

10 A. I have not personally gone out -- reached
11 out to every single representative at all of these
12 large companies to ask them how much -- how many
13 hours a week they spend on selling RFA cannulas, no.
14 BY MR. THOMAS:

15 Q. Let's go to paragraph 16.

16 A. Okay.

17 Q. You testify that the RFA cannula market
18 is a slow-growth, mature market sized at about
19 \$95 million.

20 A. Correct.

21 Q. And that is -- that's just the US RFA
22 cannula market, correct?

1 A. Yes.

2 Q. And was that the -- was that market size,
3 \$95 million, in 2024 or was it a different year?

4 A. That was for 2024.

5 Q. Paragraph 17, which goes from page 6 to
6 page 7, you have a chart that depicts the market
7 shares of the remaining market participants from
8 2019, the year before Stratus began marketing the
9 NIMBUS device in the US, through 2024, right?

10 A. Correct.

11 Q. And it's your testimony that market --
12 Stratus' share of that market is about [REDACTED],
13 right?

14 A. Correct.

15 Q. So doing a little math. [REDACTED] of
16 \$95 million is like [REDACTED]; is that right?

17 A. Yes.

18 Q. Or about right?

19 A. Yes.

20 Q. Around there?

21 A. Yes. Somewhere around there. I don't
22 have a -- but, yeah, I don't have a calculator in

1 front of me, but --

2 Q. Is it generally your understanding that
3 Stratus' sales in the US RFA cannula market in 2024
4 was around [REDACTED]?

5 A. Yes.

6 Q. Now, in the chart at the bottom of
7 paragraph 15, which is the top of page 6, this chart
8 seems to reflect that Stratus' US revenue in 2024
9 was about [REDACTED]. Am I reading that right?

10 A. So that is -- that is showing more than
11 just -- that's showing overall sales and not just
12 cannula.

13 Q. So what else would that include besides
14 cannula?

15 A. It would include the NIMBUS multitined
16 expandable electrode, the Vesta standard cannulas as
17 well as the NIMBUS probe, reusable and disposable.

18 Q. And it includes the probes that are sold
19 with -- or strike that.

20 Does -- is there a -- strike that.

21 Does Stratus sell a probe that goes with
22 the Vesta cannula?

1 MR. LAURENCE: Objection, relevance.

2 A. The NIMBUS probe is used with both
3 products.

4 BY MR. THOMAS:

5 Q. Okay. But the Vesta does have a
6 removable probe?

7 A. All radiofrequency ablation products need
8 to be connected to the generator with some sort of
9 probe device, whether it's -- whether it's built in
10 or if it's a probe that's being inserted.

11 Q. And some products on the market, not
12 Stratus' products, but other products on the market
13 have probes that are integrated into the device so
14 it's sold in one sale, correct?

15 A. There are companies that do that, yes.

16 Q. So this chart on paragraph 15 includes
17 cannula sales, or we've also called them electrodes,
18 and sometimes they're referred to as needles, right?

19 A. Yeah. Yeah. But, yes, you will have --
20 you will have physicians and staff that will refer
21 to them as needles, but yes.

22 Q. Okay. So this chart on paragraph 15

1 includes sales for both cannulas and probes, but you
2 excluded probe sales from your market share
3 calculation; is that correct?

4 A. Yes. Yes. It's -- so probe sale --
5 probe sales are a [REDACTED] portion of our sales and
6 were a later addition. So it's a little bit messier
7 to try to -- yeah. Yes.

8 Q. And other than 2020 when Stratus didn't
9 sell any probes, for the other years this chart does
10 not indicate how many cannulas it sold versus how
11 many probes it sold, correct?

12 A. Correct.

13 Q. And your direct testimony doesn't
14 indicate how many NIMBUS cannulas Stratus sold
15 versus how many Vesta cannulas Stratus sold,
16 correct?

17 A. Correct.

18 Q. So now let's go down to paragraph 24 on
19 page 10.

20 A. Okay.

21 Q. I've got to get there. Okay. So now
22 this is a bar chart that depicts the US RFA cannula

1 market and the market participants' respective
2 shares of that overall market. Is that what this is
3 intended to depict?

4 A. Yes.

5 Q. And let's look at the bar for 2024. This
6 reaches up to that around \$95 million amount that
7 you testified earlier was the total market in 2024,
8 correct?

9 A. Correct.

10 Q. And according to this chart and your
11 testimony, in 2024 Stryker had approximately
12 \$50 million in sales into what you refer to as the
13 US RFA cannula market, right?

14 A. Yes.

15 Q. So that's a little more than half the
16 total US RFA cannula market in 2024?

17 A. Correct.

18 Q. Whether you do the math based on the --
19 well, never mind.

20 The blue box at the top of the chart,
21 that's Stratus, right?

22 A. Correct.

1 Q. And that -- sort of looking at the width
2 of it, that appears to be around the [REDACTED]
3 number in line with your earlier testimony, right?

4 A. Correct.

5 Q. So the market share estimates in
6 paragraph 17 and the chart of revenue share in
7 paragraph 24 are basically linked. Would you agree
8 with that?

9 A. So the data that's in this chart and
10 which other one? I just want to clarify --

11 Q. Of course.

12 A. -- which other one we're --

13 Q. Paragraph 17.

14 A. In paragraph 17.

15 Q. The line chart showing the percentage of
16 the market.

17 A. Yes. Yes. The data -- the data for both
18 comes from the same numbers.

19 Q. They're different perspectives of the
20 same underlying data, right?

21 A. It's -- yeah.

22 Q. And that underlying data requires knowing

1 which company is selling how much into the US RFA

2 cannula market?

3 A. Correct.

4 Q. And because you're marketing director for

5 Stratus, you have access to Stratus systems and

6 people who can tell you how much Stratus has sold,

7 right?

8 A. Yes.

9 Q. But you don't have that for the other
10 companies' revenue, do you?

11 A. I do not have access to accounting for
12 the other companies, no.

13 Q. And -- did you -- was there something
14 else you wanted to add?

15 A. I don't have access to the -- I don't
16 have access to someone within the companies.

17 However, we have consulted with -- with market
18 research that has, you know, given data.

19 Q. And you only have this information
20 because this data was given to you by someone or
21 even multiple someones --

22 MR. LAURENCE: Objection, form.

1 BY MR. THOMAS:

2 Q. -- outside of Stratus, correct?

3 A. Correct.

4 Q. And these revenue numbers are just
5 estimates for the other companies?

6 A. There -- they've -- there -- I mean,
7 there is some element of comparison amongst data
8 that -- with what -- with also, with what we -- with
9 what I've -- with what I've seen in calls as well as
10 data from different services. Obviously I've -- I
11 get the data as close as possible, but to my
12 knowledge it is as accurate as -- it is accurate.

13 Q. It's as accurate as it could be if you're
14 relying on somebody else who doesn't necessarily
15 have access to the confidential information internal
16 to those companies, correct?

17 MR. LAURENCE: Objection, form.

18 BY MR. THOMAS:

19 Q. What was that answer, Mr. Jorgensen?

20 A. Without -- without having -- without
21 having access to someone that's internal within the
22 companies, correct. Yes.

1 Q. And the accuracy of your testimony in
2 these charts depends on the accuracy of that revenue
3 information provided to you, right?

4 A. Yes.

5 Q. If the various companies' revenue numbers
6 were wrong, then the market share percentages would
7 be wrong, wouldn't they?

8 A. Yes.

9 Q. At the very least, you couldn't know what
10 they would be, right, if the revenue number -- you
11 wouldn't -- sorry, strike that.

12 At the very least, if the revenue numbers
13 are wrong, then the market share percentage, you
14 wouldn't know what it was, correct?

15 MR. LAURENCE: Objection, form.

16 A. There is some -- there is some
17 information that is able to be compared. I mean,
18 some information is given on some of those public
19 calls that can be used to verify some details.
20 However, I don't have access to exactly what each
21 company -- I don't have access to the accounting for
22 each company.

1 BY MR. THOMAS:

2 Q. Not all of the information that's shared
3 on -- strike that.

4 The companies on their public calls, they
5 don't share all of the information about exactly
6 what they're selling and how much they're selling
7 for their US RFA cannula market --

8 MR. LAURENCE: Objection, form.

9 BY MR. THOMAS:

10 Q. -- do they?

11 A. Correct.

12 Q. And Stratus doesn't tell all of its
13 competitors how much it's selling either, correct?

14 A. Correct.

15 Q. Back to the chart on page 10,
16 paragraph 24. This is the bar chart depicting the
17 US RFA cannula market.

18 A. Okay.

19 Q. You have an orange box within the bar to
20 depict Avanos' share of the US RFA cannula market,
21 correct?

22 A. Correct.

1 Q. And that box is [REDACTED] than Stratus'?

2 A. Yes.

3 Q. So your testimony is that Avanos sold
4 somewhere [REDACTED] in the US RFA cannula
5 market?

6 A. For RFA cannulas, yes.

7 Q. And Avanos' slice of your chart is much
8 smaller than Stryker's [REDACTED], right?

9 A. Correct.

10 Q. So according to your testimony, in 2024
11 Stratus had a [REDACTED] share of the US RFA cannula
12 market than Avanos?

13 A. Of RFA cannulas, yes.

14 Q. And so you believe that Stratus had [REDACTED]
15 sales of US -- [REDACTED] sales of -- into the US RFA
16 cannula market than Avanos, correct?

17 A. Of the RFA cannulas, yes.

18 Q. And you keep making that distinction
19 about the RFA cannulas because this chart does not
20 include revenue from COOLIEF, does it, from Avanos'
21 COOLIEF product, does it?

22 A. It does not include COOLIEF, it does not

1 include generators, probes.

2 Q. But the customers that are buying COOLIEF
3 are buying COOLIEF because they want to perform RF
4 neurotomy procedures, correct?

5 A. Correct.

6 Q. And they want to have larger lesion sizes
7 for their RF neurotomy procedures, correct?

8 MR. LAURENCE: Objection, form,
9 foundation.

10 A. Yes.

11 BY MR. THOMAS:

12 Q. You advertise your product, the NIMBUS
13 product, as having lesion sizes comparable to the
14 COOLIEF, correct?

15 A. Correct. But, I mean, the COOLIEF
16 product is marketed as a -- as a premier product.
17 It's marketed toward the -- it's marketed more
18 toward the university systems, hospital --

19 Q. And you also -- sorry, go ahead.
20 University systems, hospitals, large things like
21 that?

22 A. Yes.

1 Q. And you also market to those, correct?

2 A. Yes.

3 Q. Does your sales reflected in this bar
4 chart of the NIMBUS include sales to universities,
5 hospitals and large systems like that?

6 A. Yes.

7 Q. So you included the NIMBUS sales to those
8 types of customers, but you didn't include the
9 COOLIEF sales to those types of customers?

10 A. It's a different -- it's marketed as a --
11 they've -- they market it as a different category of
12 product. It's marketed as more of a premium
13 product. It's not really an apples-to-apples
14 comparison because there's additional -- yeah, it's
15 different, but we -- but, yes, it does -- there is
16 some -- there is some overlap there, but it's being
17 sold at a -- as a -- they market as a -- as really a
18 different category of product. They don't
19 necessarily put them in that same category.

20 Q. And because based on your definition of
21 the category that you want to testify about, you
22 just decided you -- to exclude those kinds of sales,

1 correct, the sales of the COOLIEF product?

2 A. We don't carry a cooled product.

3 Q. Are there any other products that you
4 excluded from these competitors in the RF -- that
5 sell RF neurotomy devices?

6 A. Probes, generators.

7 MR. LAURENCE: Are you having a
8 problem with your computer?

9 A. The plug-in that my computer is plugged
10 into doesn't seem to be working, so I'm just going
11 to plug into a --

12 MR. LAURENCE: Try that one.

13 THE WITNESS: Thank you. There we
14 go. Sorry about that.

15 BY MR. THOMAS:

16 Q. Let me know when you're ready.

17 A. I'm ready.

18 Q. Okay. So if COOLIEF is a different
19 category, why did you indicate in your declaration
20 that you were converting COOLIEF accounts to NIMBUS
21 accounts?

22 A. Because there are COOLIEF accounts that

1 have converted over. I mean, it's -- it's like --
2 it's like comparing -- it's like if you would -- if
3 you will consider, you know, more of a car reference
4 that, you know, NIMBUS would be more of a Chevrolet
5 which, you know, it's not a base -- it's not a basic
6 one, it's more of a Corvette, which can compete
7 against a Ferrari, but they're not necessarily
8 always compared. They're not always considered the
9 same.

10 Q. I want to revisit the pricing of the
11 NIMBUS products just so we're clear. Do you recall
12 that you testified that the average sales price of
13 the NIMBUS electrode was about [REDACTED],
14 correct?

15 A. Correct.

16 Q. And the average sales price of each
17 NIMBUS reusable probe is about [REDACTED],
18 correct?

19 A. Correct.

20 Q. And the average sales price of each
21 NIMBUS disposable probe is about [REDACTED],
22 right?

1 A. Correct.

2 Q. So the average price of each NIMBUS
3 probe, disposable and reusable, is [REDACTED]
4 [REDACTED], correct?

5 A. Correct. Slightly.

6 Q. Let's turn to paragraph 21. Here you
7 provide a chart that purports to describe the
8 compound annual growth rate of US RFA cannula market
9 participants between 2020 and 2024, right?

10 A. Yes.

11 Q. Did you personally calculate these
12 compound annual growth rates?

13 A. Yes.

14 Q. What equations did you use to do that?

15 A. It's the formula for compound annual
16 growth. I don't have it off the top of my head,
17 but, you know, it's readily available. I didn't --
18 I did do the calculations, though, using the -- it's
19 used to find the -- over a span of time, as opposed
20 to year over year.

21 Q. And you didn't provide that or identify
22 that equation in your declaration, right?

1 A. I did not include the equation, no, I did
2 not.

3 Q. And in paragraph 2022 [sic] you say that
4 Stratus is [REDACTED] other market
5 participants, right?

6 A. As far as growth rate, yes.

7 Q. As far as growth rate. Not actually
8 sales, just growth rate, right?

9 A. Correct.

10 Q. Because you're [REDACTED] by other
11 market participants, correct?

12 MR. LAURENCE: Objection, form.

13 A. Correct.

14 MR. THOMAS: We have no further
15 questions.

16 MR. LAURENCE: Okay. I --

17 MR. THOMAS: Pass the witness.

18 THE WITNESS: Is that all?

19 MR. LAURENCE: No, you stay here.

20 MR. THOMAS: You going to take a
21 break, Kevin?

22 MR. LAURENCE: Yeah.

1 MR. THOMAS: Okay.

2 (Recess taken from 11:12 a.m. to
3 11:22 a.m.)

4 MR. LAURENCE: We have no questions.

5 MR. THOMAS: All right. We are done.

6 (Deposition concluded at 11:22 a.m.)

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1 REPORTER'S CERTIFICATION

2 I, Micheal A. Johnson, Registered Diplomate
3 Reporter and Notary Public within and for the State
4 of Texas do hereby certify:

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

10 I further certify that the adverse party,
11 STRATUS MEDICAL, LLC, was represented by counsel at
12 the deposition.

13 I further certify that the deposition of
14 CODY JORGENSEN occurred remotely at the location of
15 the witness, Houston, Texas on Tuesday,
16 August 26, 2025, commencing at 8:36 a.m. to
17 11:22 a.m.

18 I further certify that I am not related to
19 any of the parties to this action by blood or
20 marriage, I am not employed by or an attorney to any
21 of the parties to this action, and that I am in no
22 way interested, financially or otherwise, in the

1 outcome of this matter.

2 IN WITNESS WHEREOF, I have hereunto set my
3 hand this 27th day of August, 2025.

4

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MICHEAL A. JOHNSON, RDR, CRR

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My commission expires: 8/8/2028

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NOTARY PUBLIC IN AND

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FOR THE STATE OF TEXAS

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