UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SINCLAIR PHARMA LIMITED ET AL., Petitioner, vs. HYDRAFACIAL LLC, Patent Owner.	Case No. IPR2025-00145 U.S. Patent No. 11,865,287

DEPOSITION OF HAROLD WALBRINK

COSTA MESA, CALIFORNIA

WEDNESDAY, JULY 30, 2025

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Aesthetic Management Partners, LLC et al v. HydraFacial
IPR2025-01217
HydraFacial Ex. 2150

1 DEPOSITION OF HAROLD WALBRINK, taken
2 before Cody Knacke, RDR, CSR No. 13691, Certified
3 Shorthand Reporter for the State of California,
4 commencing on Wednesday, July 30, 2025, at 9:05
5 a.m., at 600 Anton Boulevard, Suite 1800,
6 Costa Mesa, California.
7
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PREVIOUSLY MARKED EXHIBITS

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QUESTIONS INSTRUCTED NOT TO ANSWER

None.

INFORMATION REQUESTED

None.

1 COSTA MESA, CALIFORNIA; WEDNESDAY, JULY 30, 2025
2 9:05 A.M.
3 THE STENOGRAPHER: This is Cody Knacke,
4 CSR 13691.
5 Please raise your right hand.
6 Do you swear or affirm under penalty of
7 perjury that the testimony you will give in today's
8 matter will be the truth, the whole truth, and
9 nothing but the truth?
10 THE WITNESS: Yes.
11 HAROLD WALBRINK,
12 called as a witness, was sworn and testified as
13 follows:
14 EXAMINATION
15 BY MR. EVERTON:
16 Q. Good morning, Mr. Walbrink.
17 A. Good morning.
18 Q. Do you understand that you're here for a
19 deposition for an IPR proceeding?
20 A. I do.
21 Q. And is it your understanding that the IPR
22 is IPR Number 2025-00145?
23 A. I believe so.
24 Q. And that's for the '287 patent; is that
25 correct?

A. Yes, it is.
Q. So just for some housekeeping items here, can you please state for the record your name and address?
A. Sure. My name is Harold J. Walbrink. I live at 58 Coronado Pointe -- that's with an E on the end -- Laguna Niguel, California 92677.
Q. Are you taking any medication that would impair your ability to give truthful testimony today?
A. No.
Q. Is there any reason you couldn't give truthful and accurate testimony today?
A. No.
Q. Throughout the deposition, if you don't understand a question, please let me know; otherwise, I'll assume that you understand.
Is that okay?
A. Yes, I understand.
Q. And your attorney will make objections to my questions for the record, but once he makes an objection, you understand that you must answer my question, unless he instructs you not to answer.
Do you understand that?
A. Yes, I do.

1 Q. And you've been deposed a number of times;
2 is that correct?
3 A. A few, yes.
4 Q. Do you know how many?
5 A. I think it's at 17, at the point -- at this
6 point.
7 Q. And when were you retained to work on this
8 IPR matter?
9 A. Initially in, I believe, November or
10 December of last year.
11 Q. So that was November, December of 2004?
12 A. Yes.
13 Q. Or 2024?
14 A. 2024.
15 Q. And by whom? Who retained you to do work
16 in this IPR?
17 A. I don't recall off the top of my head who
18 contacted me. The agency was Teklicon.
19 Q. Do you recall which law firm initially
20 worked with you and retained you?
21 A. I want to say Foley.
22 Q. What did you do to prepare for this
23 deposition?
24 A. Well, I certainly reviewed the Simon
25 declaration, which I swear behind as my own

1 testimony. I reviewed all the documents that were
2 identified in the Simon declaration. I studied the
3 patents, obviously, related to this and all the
4 patents that are mentioned in the Simon declaration.
5 And just basically studied that material.
6 Q. Did you have any meetings with counsel?
7 A. Well, sure. Yes.
8 Q. Who did you meet with?
9 A. These two gentlemen right here, Roberto and
10 Jorde.
11 Q. Anyone else?
12 A. There were other people on the phone at
13 various times that they were talking to.
14 Q. Did you meet with any nonattorneys as part
15 of your preparation for this deposition?
16 A. No.
17 Q. For how long did you meet with counsel to
18 prepare for the deposition?
19 A. Yesterday for about six hours or so.
20 Q. So to get some background, can you just
21 provide your educational background?
22 A. Sure. So I went to Cal State Fullerton,
23 studied engineering. But at the time, the
24 engineering program was not accredited. So I got a
25 very general background education in applied physics

1 with an emphasis in electrical engineering. I've
2 taken a few courses outside of that in
3 microprocessors and different mechanical
4 engineering, manufacturing engineering, cost
5 reduction, things like that.
6 Q. So is your undergraduate degree in applied
7 physics or engineering?
8 A. It's actually a BS in engineering with an
9 emphasis in electrical.
10 Q. And do you have any other degrees other
11 than that BS in engineering?
12 A. No.
13 Q. And you're not licensed to practice
14 medicine in the United States; correct?
15 A. No, I'm not.
16 Q. Are you licensed to practice medicine in
17 any country?
18 A. No, I'm not.
19 Q. And you're not licensed to perform
20 aesthetic treatments; correct?
21 A. I have no licenses for any medical
22 procedure.
23 Q. Are you otherwise trained to perform
24 aesthetic treatments?
25 A. Not formally trained, no.

1 Q. What is your experience with
2 microdermabrasion?
3 A. Well, not so much with microdermabrasion,
4 but aesthetics, in there was a company we worked on
5 that was called Thermage, which basically applied RF
6 energy to the surface of the skin to tighten the
7 collagen underneath. So, I mean, it's in the same
8 general category as aesthetics.
9 Q. Any other experience you have with
10 aesthetics?
11 A. No, other than attending conferences that
12 are held by Octane and networking events here that I
13 attend every year.
14 Q. Have you ever operated a microdermabrasion
15 machine?
16 A. No, I have not.
17 Q. Have you ever inspected a microdermabrasion
18 machine?
19 A. No.
20 Q. Have you ever received a microdermabrasion
21 treatment?
22 A. No, I have not.
23 Q. Have you ever operated a hydrodermabrasion
24 machine?
25 A. No, I have not.

1 Q. Have you ever received a hydrodermabrasion
2 treatment?
3 A. No.
4 Q. What is your experience with
5 hydrodermabrasion?
6 A. Other than attending the aesthetic
7 conference and seeing the actual Hydrafacial unit
8 displayed there, I have no experience.
9 Q. Have you seen any other hydrodermabrasion
10 system other than the Hydrafacial machine?
11 A. There are several different -- at these
12 conferences, several different units. I couldn't
13 identify one, but, yes, I've seen several.
14 Q. And you're not a mechanical engineer;
15 correct?
16 A. No, but all my patents are in mechanical
17 and fluidic devices.
18 Q. So do you have experience working with
19 pumps?
20 A. Oh, extensive experience.
21 Q. And you understand typically how pumps
22 work?
23 A. Absolutely, yes.
24 Q. And do you also have experience working
25 with vacuum systems?

1 A. Yes.
2 Q. What types of vacuum systems have you
3 worked with?
4 A. Well, the most recent one was a device that
5 lowers the intraocular pressure in the eyes by
6 drawing a vacuum on a pair of goggles as a treatment
7 for glaucoma.
8 Q. Have you ever designed a skin treatment
9 device?
10 A. Thermage was the one that I was telling you
11 about.
12 Q. Any others other than that?
13 A. Not that I recall at the moment, but I have
14 worked on over 100 projects in 30 years, so if I
15 think of another one, I'll let you know.
16 Q. Okay. You let me know.
17 Have you ever designed any other type of
18 medical device?
19 A. Like I say, I've been involved -- I have a
20 40 -- over a 40-year career in medical devices in
21 primarily the design of these, so I think the last
22 count in April of this year was 107 projects with my
23 current company that I founded in 1995, and they
24 span ophthalmology, respiratory care,
25 electrosurgery.

1 So I guess that would be another area of
2 skin treatment, cutting and coagulating of tissue.
3 We designed a small unit that's used in the doctor's
4 office to cut skin tags, lesions, and cauterize the
5 wounds.
6 Q. But you never designed a microdermabrasion
7 device; correct?
8 A. Not specifically, no.
9 Q. And you've never designed a
10 hydrodermabrasion device; right?
11 A. No.
12 Q. Have you ever used a hydrodermabrasion
13 device?
14 A. No.
15 MR. SCOTT: Objection. Form.
16 BY MR. EVERTON:
17 Q. Have you ever used a microdermabrasion
18 device?
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: No.
21 BY MR. EVERTON:
22 Q. Have you ever seen a microdermabrasion
23 device?
24 A. Like I say, at the aesthetic conferences
25 put on by Octane here locally, the aesthetic

1 conference, there are all different types of
2 machines there. So yes, I've seen microdermabrasion
3 units and hydroderm. I've seen the Hydrafacial
4 unit.
5 Q. And do you recall which microdermabrasion
6 devices you saw?
7 A. I do not.
8 Q. And you haven't worked in the field of
9 hydrodermabrasion; correct?
10 MR. SCOTT: Objection. Form.
11 THE WITNESS: No, I have not.
12 BY MR. EVERTON:
13 Q. And you haven't worked with others involved
14 in the field of hydrodermabrasion; correct?
15 A. I have not worked on a project with others
16 in the -- in that field, no.
17 Q. And then the one time that you worked in
18 the field of skin treatment was for the one device
19 that you mentioned.
20 What was the name of that device?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: I believe you're talking
23 about the Thermage --
24 BY MR. EVERTON:
25 Q. That's right.

1 A. -- or the electrosurgery unit?
2 Q. Okay. So those two devices, the Thermage
3 and the...
4 Do you recall the name of the
5 electrosurgery?
6 A. It was Delasco something or another,
7 D-E-L-S-K -- C-O.
8 And I should mention when I was with
9 Birtcher Medical Systems, electrosurgery was our --
10 our main product line. And so there were several
11 office space units that applied RF energy for
12 cutting and coagulating tissue in the doctor's
13 office, primarily on the skin.
14 Q. What is microdermabrasion?
15 A. It's the removal of tissue using abrasive
16 materials or agents.
17 Q. And do you understand that abrasive
18 particles are propelled against the patient's skin
19 in microdermabrasion?
20 A. I do.
21 Q. How does that happen? How does the system
22 propel those abrasive particles?
23 A. Well, it depends on which system you're
24 talking about, I guess.
25 Q. And are you aware of any systems and how

1 they perform that function?
2 A. I am. I think it's the subject matter of
3 my report.
4 Q. Can you explain to me that function, then,
5 how the systems in your report propel the dried
6 particles against the patient's skin?
7 MR. SCOTT: Objection to form.
8 THE WITNESS: I'd prefer to have my report,
9 if I could, to refer to it so that I'm accurate.
10 BY MR. EVERTON:
11 Q. Sure.
12 So this has been previously marked as
13 Exhibit 1003. I'll hand that over to you.
14 (Exhibit 1003 was previously marked by the
15 Certified Shorthand Reporter, and a copy is
16 attached hereto.)
17 MR. SCOTT: Thank you.
18 THE WITNESS: This looks dangerous that
19 it's not fastened in any way.
20 BY MR. EVERTON:
21 Q. It's too large for a staple.
22 A. Yeah, I guess.
23 Q. I even did it double-sided.
24 A. Okay. So in particular, I have examined a
25 few different devices. I guess you pronounced

1 Karasiuk. Can we agree on that pronunciation or...
2 Q. Sure. I call it Karasiuk.
3 A. Karasiuk. Okay. Fair enough.
4 Q. But go ahead with however you pronounce it.
5 I think we'll have the spelling, so it will be okay.
6 A. So Karasiuk, in particular. Greenberg is
7 another one that I talk about. And basically, it
8 applies suction or vacuum to the system to draw
9 particles out of a container through a handpiece.
10 Q. And those particles that you're referring
11 to, are those the dry abrasive particles?
12 A. Yes.
13 MR. SCOTT: Objection. Form.
14 BY MR. EVERTON:
15 Q. And are you aware that the
16 microdermabrasion can operate using a pump to supply
17 positive pressure to propel the abrasive particles?
18 MR. SCOTT: Objection. Form.
19 THE WITNESS: Am I aware of -- would you
20 repeat the question?
21 BY MR. EVERTON:
22 Q. Yeah.
23 Are you aware that microdermabrasion
24 devices can use a pump to supply a positive pressure
25 that propels the particles?

1 A. I think there's some evidence, yes, that I
2 examined that has that embodiment.
3 Q. Do either Greenberg or Karasiuk have a
4 pump, that you recall?
5 A. Karasiuk. Let's look at the -- Karasiuk,
6 Figure 6, they use a vacuum source.
7 And Greenberg also uses a similar situation
8 to draw the particles out of the supply container
9 into the waste container.
10 Q. And are you familiar with the size of the
11 particles that are used in these microdermabrasion
12 devices?
13 A. I don't recall off the top of my head, no,
14 but I've -- I do recall seeing various sizes in some
15 of the reference material in the specifications of
16 the patents I examined.
17 Q. Do you recall any specific benefits
18 relating to the size of the particles?
19 A. They have different effects on the skin.
20 Q. What do you mean by that?
21 A. Some are more abrasive than others.
22 Q. And that depends on the size of the
23 particle can affect the abrasiveness?
24 A. And the type of material.
25 Q. Are you aware of any differences between

1 microdermabrasion and hydrodermabrasion?
2 A. Well, microdermabrasion, as in Greenberg
3 and Karasiuk, use particles in an air flow,
4 fluidized particles. Hydro, as the '287 patent
5 refers to it, is in a solution.
6 Q. What do you mean by that, "is in a
7 solution"?
8 A. Whatever agents they are delivering to the
9 skin are suspended in a solution.
10 Q. What types of agents are you referring to
11 in hydrodermabrasion?
12 A. Well, if you give me the '287 patent, I'd
13 be glad to...
14 MR. EVERTON: Sure. So let's -- this
15 '287 patent, I have a copy of that, it's been
16 previously marked as Exhibit 1001.
17 (Exhibit 1001 was previously marked by the
18 Certified Shorthand Reporter, and a copy is
19 attached hereto.)
20 THE WITNESS: Yeah, I think if we look at
21 Column 5 around line 47 it talks about the treatment
22 materials. And in particular, treatment material in
23 the claim is a very broad term, it includes but not
24 limited to medicament, that's how I pronounce it
25 anyways, a substance leading to flow or conform to

1 the outline of its container such as a gas, liquid
2 serums, water, gel, fluidized materials, additives,
3 and are a plurality of fine solids. The general
4 term "fluid" is throughout synonymously the term
5 "treatment material" and is given the same broad
6 definition.
7 So there's a variety of different materials
8 that are referenced in this hydrodermabrasion
9 patent, '287 patent.
10 BY MR. EVERTON:
11 Q. So then going back to, we were talking
12 about the differences between microdermabrasion and
13 hydrodermabrasion.
14 So what are the differences that you're
15 aware of between microdermabrasion and
16 hydrodermabrasion?
17 MR. SCOTT: Objection. Form.
18 THE WITNESS: Well, I think the '287 patent
19 has coined the term "hydro microdermabrasion" to
20 address materials suspended in a fluid, in a
21 solution, a liquid form.
22 BY MR. EVERTON:
23 Q. So when you refer to "a solution," that's a
24 liquid; is that correct?
25 A. Generally, yes.

1 Q. So one of the main differences between
2 microdermabrasion and hydrodermabrasion is
3 microdermabrasion uses the dry particles that are
4 suspended in air, whereas hydrodermabrasion is
5 focused on liquid solutions; is that correct?
6 MR. SCOTT: Objection. Form.
7 THE WITNESS: In general, yes.
8 BY MR. EVERTON:
9 Q. And are you familiar with any differences
10 between the actual systems, the microdermabrasion
11 systems and the hydrodermabrasion systems?
12 A. I think there are several differences.
13 Q. And can you identify any of those?
14 A. Well, this brings up an interesting point
15 in the fact that when I read through the
16 '287 patent, it isn't really -- I can't from the
17 specification get a clear indication of exactly the
18 schematic, if you will, to give you a definite, you
19 know, item component-by-component difference between
20 the systems.
21 Very clear in the Karasiuk patent, they're
22 very clear with the schematic. As a matter of fact,
23 most of the patents I've looked at in preparing this
24 declaration are very clear schematic-wise.
25 Like, for instance, on page -- oh, you've

1 got double page numbers here. I'll say Figure 6 of
2 Karasiuk, they've schematically laid out, I'm very
3 clear as to what the configuration is. I don't see
4 any similar schematic or figure that shows me that
5 kind of breakdown. So it's difficult to tell you
6 exactly what all the differences are.
7 Q. And based on your actual knowledge of
8 hydrodermabrasion devices and systems that you've
9 seen, are you aware of any differences in those
10 systems compared to the microdermabrasion systems
11 you're familiar with?
12 A. In general operational principle, the
13 '287 versus the microdermabrasion units of Karasiuk
14 and Greenberg, the operating principles are very
15 similar.
16 What I don't know from the '287 patent is
17 what the pump is. There are some terms that are
18 used in claim language that aren't defined in the
19 specification, and there's no figure to help me out
20 there. So you're going to have to get much more
21 specific if you want to know differences.
22 Q. So let's -- let's try it this way. Are you
23 aware of any drawbacks in using a microdermabrasion
24 system?
25 MR. SCOTT: Objection. Form.

1 THE WITNESS: Any drawbacks? No. To my
2 understanding they work just fine.
3 BY MR. EVERTON:
4 Q. And same question for the hydrodermabrasion
5 systems. Are you aware of any drawbacks in using
6 hydrodermabrasion system?
7 A. I hadn't considered drawbacks, so...
8 Q. And are you aware of any benefits in one
9 compared to the other? So if you're comparing
10 microdermabrasion versus hydrodermabrasion, are you
11 aware of any comparison -- or any benefits that one
12 would have over the other?
13 A. Well, when you're talking about
14 hydrodermabrasion, I assume you're limiting that
15 definition to the contents of the '287 patent.
16 Q. No, I'm not. I'm not limiting it at all.
17 Your understanding of hydrodermabrasion is all I
18 want to limit it to, not to the patent itself.
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: I can't speak to an advantage
21 or a disadvantage of either system.
22 MR. EVERTON: Let's turn to -- and I'll
23 hand you what has been previously marked as
24 Exhibit 1028. This is the declaration of Harold J.
25 Walbrink in this IPR.

1 (Exhibit 1028 was previously marked by the
2 Certified Shorthand Reporter, and a copy is
3 attached hereto.)
4 BY MR. EVERTON:
5 Q. Are you familiar with this document,
6 Exhibit 1028?
7 A. Yes.
8 Q. What is it?
9 A. It's a declaration stating my
10 qualifications, and based on my review of the
11 materials in the case that are presented in the
12 Simon declaration, it's basically my declaration
13 saying that I agree with Simon, that I adopt all of
14 his opinions and analysis.
15 Q. So if we go to paragraph 3 where you say:
16 "Specifically I was asked to review the declaration
17 of Eric Simon."
18 Is that what you were referring to, that's
19 the declaration of Eric Simon that you reviewed and
20 adopted?
21 A. Yes.
22 Q. Who asked you to review the Simon
23 declaration?
24 A. One of the attorneys.
25 Q. Do you remember which one?

1 A. So this -- this gets a little complicated
2 in that I understand I was originally contacted by
3 Foley for '287, I believe. Now you're testing my
4 memory here -- and provided declaration -- yeah.
5 And then I was asked -- I guess law firms got
6 switched.
7 MR. SCOTT: I just want to jump in real
8 quick and caution the witness not to reveal the
9 substance of any communications with lawyers.
10 THE WITNESS: Okay.
11 So I don't recall exactly the attorney that
12 I was involved with originally when I was asked to
13 do this particular declaration.
14 BY MR. EVERTON:
15 Q. Do you recall when you were asked to review
16 the Simon declaration?
17 A. It was sometime, I believe, back in
18 November, December of 2024.
19 Q. How much time did you spend reviewing the
20 Simon declaration before you signed your own
21 declaration?
22 A. I want to say on the order of somewhere
23 around 40 to 50 hours.
24 Q. Does that include reviewing the exhibits to
25 the Simon declaration?

1 A. Yes. It's including the materials that are
2 mentioned that are reviewed and signed in the
3 declaration.
4 Q. What was your total time spent on this IPR
5 before submitting your declaration, which is
6 Exhibit 1028?
7 A. I'm sorry. I don't understand the question
8 exactly.
9 Q. What is the total time that you spent on
10 this IPR before submitting your declaration,
11 Exhibit 1028?
12 A. It would be the 40 to 50 hours.
13 Q. Did you review all of the exhibits to the
14 Simon declaration before signing your declaration?
15 A. I had looked at all of them to understand
16 what they were. I probably looked at the specific
17 citations of the declaration so that I understand --
18 understood what the basis was of the material, the
19 opinions in the declaration. But if you say -- if
20 you ask me if I read the prosecution history cover
21 to cover back, then, no.
22 Q. Were there any of the other exhibits that
23 you did not review entirely?
24 MR. SCOTT: Objection. Form.
25 THE WITNESS: I don't recall which I

1 reviewed. Some I dug deeper into than others, so I
2 don't recall which ones that would be.
3 BY MR. EVERTON:
4 Q. If you had to estimate a percentage of the
5 exhibits that you reviewed from the Simon
6 declaration, what would that percentage be?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: I think I just said, I looked
9 at all of them to understand what they were. It
10 varied as far as the depth I went into. So
11 percentage-wise I can't give you a percentage on
12 each one how far I dug into it, but I did look at
13 all the documents.
14 BY MR. EVERTON:
15 Q. Have you seen materials from other
16 Hydrafacial proceedings that are not IPRs?
17 A. I don't recall that I have.
18 Q. Have you been retained to help with any
19 other district court or ITC proceedings that are not
20 IPRs?
21 A. No, I have not.
22 Q. Now, if we go in Exhibit 1028, your
23 declaration.
24 A. Yes.
25 Q. To paragraph 20. Can you read out loud

1 that paragraph for us, number 20?
2 A. Sure. Paragraph 20 in the "Summary of
3 Opinions": "After considering the Simon declaration
4 and other materials listed in Appendix B, I agree
5 with the facts, analyses, and conclusions in the
6 Simon declaration, and I adopt the testimony in
7 Sections III through XV," 15, "of the Simon
8 declaration as my own for purposes of this
9 proceeding."
10 Q. Other than adopting the Simon declaration,
11 you have not provided any other opinions in this
12 IPR; correct?
13 A. I don't believe so. No.
14 Q. And the specific sections of the Simon
15 declaration that you adopted are limited to
16 Sections III through XV; correct?
17 A. Just so I'm accurate, I'm going to take a
18 look.
19 MR. SCOTT: Mr. Everton, is there any
20 chance we could go off the record for, like,
21 30 seconds?
22 MR. EVERTON: Yeah, no problem.
23 (Recess.)
24 BY MR. EVERTON:
25 Q. So we were looking at Exhibit 1028, which

1 was the Walbrink declaration.
2 A. Yes, sir.
3 Q. If we can turn to your CV at the back of
4 that declaration, page 13.
5 A. 13 of my CV?
6 Q. Yes.
7 A. Okay.
8 Yes, sir.
9 Q. The second-to-last row, do you see that, it
10 says December 2010?
11 A. Oh, I'm on page 12. That's why I was
12 missing it.
13 Second-to-last row. December 2010. Yes,
14 sir.
15 Q. So in that row, if you go to the last
16 column, it says: "IPR of U.S. Patent Number
17 8,061,359."
18 Do you see that?
19 A. Yes, I do.
20 Q. And do you recall that IPR proceeding?
21 A. That was a long time ago. Let's see.
22 Vaguely, yes.
23 Q. And that was an IPR on that '359 patent.
24 And was the petitioner Interlace Medical?
25 A. Yes, I believe so.

1 Q. And what was your role in that IPR
2 proceeding?
3 A. Quite honestly, I don't recall the details.
4 Q. Is it your recollection that that was
5 back -- that occurred back in December 2010, 2011
6 time frame?
7 A. I believe this is an accurate statement of
8 my experience, so I'm going to have to rely on this
9 document. I don't specifically recall at the
10 moment.
11 Q. Okay. Let's turn back to Exhibit 1003,
12 which is the Simon declaration.
13 A. Yes, sir.
14 Q. If we go to paragraph 16.
15 A. Yes, sir.
16 Q. Is this paragraph in the "Legal Principles"
17 section of the declaration?
18 A. Yes, it is under Section V "Legal
19 Principles."
20 Q. Can you read the first sentence of
21 paragraph 16?
22 A. "I understand that claim terms are
23 generally given their plain and ordinary meaning in
24 light of the patent's specification and file history
25 as understood by a POSITA at the time of the

1 purported invention."
2 Q. So in this paragraph, what does that mean,
3 "the plain and ordinary meaning"?
4 MR. SCOTT: Objection. Form.
5 THE WITNESS: Well, if the patent
6 specification, I mean, isn't specific and they
7 haven't become their own lexicographer defining some
8 term specifically in a certain way, particularly out
9 of the ordinary, what would be the ordinary, let's
10 say, dictionary definition, then you're allowed to
11 assume that it's plain and ord- -- as someone,
12 anyone would understand, plain and ordinary meaning.
13 BY MR. EVERTON:
14 Q. And you say "as understood by a POSITA."
15 Is that the -- so it's the ordinary meaning
16 understood by a POSITA?
17 A. Yeah, someone skilled in the art.
18 Q. Okay. So what is a POSITA?
19 A. It's someone with experience in the type of
20 technologies and processes presented in a particular
21 patent, the subject matter of a patent.
22 Q. And are you a POSITA in the field of the
23 '287 patent?
24 A. I believe I am, yes.
25 Q. You also refer to file history in that

1 sentence.
2 What is the file history?
3 A. File history is all of the prosecution back
4 and forth between the patentee and the examiner.
5 That would be the prosecution history.
6 In particular, any documents that were
7 considered, prior art references, all of that.
8 Q. Let's go to paragraph 20 of this same
9 exhibit, 1003.
10 Can you read the first sentence there in
11 paragraph 20.
12 A. Sure. This is paragraph D, "Obviousness."
13 Paragraph 20: "I understand that a patent claim is
14 invalid if the claimed invention would have been
15 obvious to a person of ordinary skill in the art" --
16 or skilled in the -- I stand corrected -- "ordinary
17 skill in the field at the time of the purported
18 invention, which is often considered to be the time
19 the application was filed."
20 Q. So in that sentence, you refer to "ordinary
21 skill in the field."
22 And what does that mean, "the field"?
23 A. So that means that in this particular case,
24 '287, familiar with fluidics and devices for vacuum
25 pumps generating negative pressure, transporting

1 fluids and the like, in general. That's very
2 generalized.
3 Q. Let's turn to paragraph 23.
4 A. Yes.
5 Q. You say in paragraph 23: "I also
6 understand that certain objective indicia can be
7 important evidence regarding whether a patent is
8 obvious or nonobvious."
9 Do you see that?
10 A. Yes, I do.
11 Q. What is this objective indicia that you
12 refer to?
13 A. Well, I've listed it here. "Commercial
14 success of products covered by the patent claims, a
15 long-felt need for the invention, failed attempts by
16 others to make the invention, copying of the
17 invention by others in the field, unexpected results
18 achieved by the invention as compared to the closest
19 prior art, praise of the invention by the infringer
20 or others in the field, the taking of licensing --
21 licenses under the patent by others, expressions of
22 surprise by experts and those skilled in the art at
23 the making of the invention, and the patentee
24 proceeded contrary to the accepted wisdom of the
25 prior art."

1 Q. What does it mean where you say that this
2 "objective indicia can be important evidence"?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: Well, I'm not an attorney,
5 but it's my understanding that the success of a
6 product could indicate that it was unique, that the
7 patent was, in fact, patenting a unique device or
8 product.
9 You can look to these indicators that the
10 product is a uniquely patented device over the prior
11 art.
12 BY MR. EVERTON:
13 Q. Are there any other reasons that you're
14 aware of why these objective indicia can be
15 important evidence?
16 A. Well, I think generally, as I understand
17 the legal principle, these are the primary indicia
18 that are considered when trying to determine
19 commercial success.
20 Q. Now, if we go to paragraph 24, can you read
21 that paragraph.
22 A. Paragraph 24: "To the extent these factors
23 have been brought to my attention, if at all, I have
24 taken them into consideration in rendering my
25 opinions and conclusions." Yes.

1 Q. Have any of these factors been brought to
2 your attention in this IPR matter?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: Other than a general
5 discussion of what commercial success means, I have
6 no awareness of the commercial success of this
7 product, the Hydrafacial unit, other than seeing it
8 at multiple aesthetic conferences and so forth.
9 BY MR. EVERTON:
10 Q. So other than that, seeing the Hydrafacial
11 device at multiple conferences, are you aware of any
12 of these other objective indicia as it relates to
13 this IPR?
14 A. No.
15 Q. And the -- your declaration and the Simon
16 declaration do not include any analysis of the
17 objective indicia or the secondary considerations;
18 correct?
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: I believe they do not.
21 BY MR. EVERTON:
22 Q. So at least at this point in the
23 proceeding, you have not taken into account any of
24 these objective indicia in your opinions; correct?
25 A. No, I have not.

1 Q. Let's go to paragraph 26 of the Simon
2 declaration.
3 A. Yes.
4 Q. If you can read that paragraph, 26.
5 A. I'm sorry. You said the Simon declaration?
6 Q. Yes.
7 A. Okay. Paragraph 26: "As part of my
8 independent analysis for this declaration, I have
9 considered the following: The background,
10 knowledge/technologies that were commonly known to
11 persons of ordinary skill in the art during the time
12 before the critical date, my own knowledge and
13 experiences gained from my work experience in the
14 field of the '287 patent and related disciplines,
15 and my experience in working with others involved in
16 this field and related disciplines."
17 Q. So when Mr. Simon says that he's considered
18 his own "knowledge and experiences gained from work
19 experience in the field of the '287 patent and
20 related disciplines," what is that referring to?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: Well, I believe he was a
23 mechanical engineer who dealt with fluidic transport
24 and the underlying operational principles that the
25 '287 patent is based upon.

1 BY MR. EVERTON:
2 Q. And so do you know what specific knowledge
3 and experiences Simon was referring to in this
4 paragraph 26?
5 A. I don't know specifically what he referred
6 to in his CV, but I know his CV is extensive.
7 Q. And you didn't rely on his knowledge and
8 experiences that he's referring to here; correct?
9 A. I have not talked with him. I only am
10 relying on the information that is in his
11 declaration and the underlying documents in this
12 case, which I examined like he did.
13 Q. And you don't know the specific knowledge
14 and experiences that he's referring to here
15 regarding the field of the '287 patent; correct?
16 MR. SCOTT: Objection. Form.
17 THE WITNESS: I have not discussed anything
18 with Dr. Simon.
19 BY MR. EVERTON:
20 Q. Let's go back to paragraph 16 of
21 Exhibit 1003.
22 A. Yes.
23 Q. We just read this, some of this paragraph
24 relating to claim construction; is that correct?
25 A. I believe so, yes.

1 Q. Did you construe any claim terms in forming
2 your opinions in this IPR?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: As in a claim construction?
5 BY MR. EVERTON:
6 Q. Yes.
7 A. Not specifically, no.
8 Q. Did you rely on any claim constructions
9 from other sources for your work in this IPR?
10 MR. SCOTT: Objection. Form.
11 THE WITNESS: I don't recall seeing a claim
12 construction in this IPR proceeding.
13 BY MR. EVERTON:
14 Q. And you didn't provide any specific claim
15 constructions for any of the claim terms; correct?
16 A. Not in a formal manner if item by item
17 other than I do go down through the claims read
18 against the various prior art references. And
19 that's the subject matter of this report.
20 Q. Is it your opinion that all of the
21 '287 patent claim terms should be given their plain
22 and ordinary meaning?
23 MR. SCOTT: Objection. Form.
24 THE WITNESS: That brings up an interesting
25 point because there are claim terms that are in the

1 actual claims that aren't supported by the
2 specification. So it leaves the door open to
3 speculation, I guess. Particularly I understand
4 "block" is not found anywhere in the specification,
5 but yet it shows up in several of the patent claims.
6 So I think we'd have to go down item by
7 item, element by element in the claims and talk
8 about whether we apply a plain and ordinary meaning
9 or is it actually supported in the -- within the
10 specification, the figures, the abstract, the
11 prosecution history.
12 BY MR. EVERTON:
13 Q. So you mentioned block. Other than block,
14 are there any other claim terms that you're aware of
15 that the meaning of those claim terms is unclear?
16 A. Well, as I read through the '287 patent,
17 there are -- I'll just say there were questions that
18 I felt -- specifically there are phraseologies or
19 elements within some of the claims that are not
20 specifically called out in the specification and
21 more inferential.
22 Q. And these opinions that you're providing
23 right now regarding the understanding of different
24 claim terms, are those included anywhere in your
25 declarations in this IPR?

1 MR. SCOTT: Objection. Form.
2 THE WITNESS: Not in the declaration, no.
3 BY MR. EVERTON:
4 Q. So for these declarations, the Simon
5 declaration and your declaration, were you able to
6 understand what each of the claim terms means in
7 order to apply it, then, to the prior art?
8 MR. SCOTT: Objection. Form.
9 THE WITNESS: Yes. I believe I did.
10 BY MR. EVERTON:
11 Q. And then I'll go back and ask my previous
12 question. So is it your opinion that all of the
13 '287 patent claim terms should be given their plain
14 and ordinary meaning, or are you saying that some of
15 the claim terms should actually be construed?
16 MR. SCOTT: Objection. Form.
17 THE WITNESS: Well, I think in light of the
18 prior art that you can give them a meaning by
19 looking at the -- all of the prior art and so forth
20 and understanding the function of each element of
21 the claim.
22 So plain and ordinary meaning according to
23 a POSITA, yes.
24 BY MR. EVERTON:
25 Q. And that applies to all the claim terms in

1 the '287 patent; correct?
2 A. Yes.
3 MR. SCOTT: Objection. Form.
4 BY MR. EVERTON:
5 Q. So you have the '287 patent there; correct?
6 A. Yes.
7 Q. That's Exhibit 1001. If we go to that.
8 And let's go back to the claims, specifically
9 Claim 16.
10 Claim 16 says: "The skin treatment
11 apparatus of claim 11, wherein the treatment
12 material in the first container is a skin treatment
13 fluid."
14 A. Yes, I see that.
15 Q. And in this context, what is a skin
16 treatment fluid?
17 MR. SCOTT: Objection. Form.
18 THE WITNESS: I believe in the context of
19 the specification that it's any -- any fluid that is
20 delivered to the skin for accomplishing the skin
21 treatment.
22 BY MR. EVERTON:
23 Q. So if we go earlier in that Claim 16, it
24 says: "wherein the treatment material."
25 So what is it referring to there,

1 "treatment material"?
2 A. Whatever is contained in the supply
3 container and delivered to the handpiece for
4 effecting the treatment on the skin.
5 Q. Then it says that "treatment material in
6 the first container is a skin treatment fluid."
7 So is it your understanding that there's a
8 difference between skin treatment fluid and
9 treatment material in this Claim 16?
10 MR. SCOTT: Objection. Form.
11 THE WITNESS: Well, if I go to the
12 specification, they are -- they are used
13 interchangeably. As a matter of fact, I believe
14 Column 5 talks to that.
15 BY MR. EVERTON:
16 Q. So I'm just trying to understand. So in
17 Claim 16 it says that "wherein the treatment
18 material in the first container is a skin treatment
19 fluid."
20 Does that suggest that the skin treatment
21 fluid is a specific type of treatment material or is
22 it suggesting that they're the same thing, the
23 treatment material and the skin treatment fluid?
24 MR. SCOTT: Objection. Form.
25 THE WITNESS: Well, I think, you know, if

1 we look at, again, Column 5, there are many types of
2 treatment materials identified.
3 BY MR. EVERTON:
4 Q. Then is skin treatment fluid one type of
5 treatment material?
6 A. I'm sorry. Ask that question again.
7 Q. So is a skin treatment fluid a type of
8 treatment material?
9 A. Well, it is a treatment material by
10 definition in Column 5. It says it's a very broad
11 term, treatment material.
12 Q. And so do you have an understanding of what
13 a skin treatment fluid is as opposed to just a
14 treatment material?
15 MR. SCOTT: Objection. Form.
16 THE WITNESS: A fluid would be, as I talk
17 about here, it could be solids, it could be
18 solutions. Fluidized materials that are solids. So
19 it could be a number of things.
20 BY MR. EVERTON:
21 Q. So if we go to Claim 11 of the '287 patent,
22 you see --
23 A. Uh-oh, I've done it.
24 Q. Do we need to staple that one?
25 A. Yeah, I think we better staple this one.

1 (Discussion held off the record.)
2 BY MR. EVERTON:
3 Q. If we can go to Claim 11 of the
4 '287 patent.
5 In the first limitation do you see where it
6 says "fluid control member"?
7 A. Yes, I do.
8 Q. What is a fluid control member in this
9 context?
10 MR. SCOTT: Objection. Form.
11 BY MR. EVERTON:
12 Q. So it's been a couple of minutes. Are you
13 reviewing the '287 patent?
14 A. Yes, I am. Just want to make sure I'm
15 accurate.
16 May I use a pen to mark a few places in
17 the --
18 THE WITNESS: That's right. You've got my
19 pen.
20 BY MR. EVERTON:
21 Q. Sure.
22 A. So after reviewing the specification, I
23 come up with two references that talk about
24 control -- what would be interpreted as a control
25 unit in the context of -- what was it -- Claim 11 we

1 were looking at.
2 The -- so the handpiece -- starting at
3 Column 9, 11, line 11: "The handpiece assembly can
4 also include one or more flow rate controllers
5 within the main body that cooperate with the
6 controller 60."
7 However, after reviewing the figures, I
8 don't see a reference Item 60 in the figures. But
9 it talks about to adjust the fluid flow out of the
10 tip. For example, the controller may comprise of a
11 flow control valve, which is a globe valve,
12 butterfly valve, needle valve, variable orifice.
13 So something that throttles or modulates
14 the flow in that paragraph there.
15 But again, I look at the figures, I go to
16 the figures to see what that really is. I don't see
17 an Item 60. If you can point me to it, I'd be happy
18 to look at it.
19 And then when I go to Column 20, in or
20 around about line 35, it talks about, for example,
21 "a power supply can provide power to a plurality of
22 fluid control devices and/or a flow control unit."
23 And the control switch 371.
24 And I'm -- I was looking for 371 and I did
25 not see it. If you can point me to it, it would

1 speed things up, but I do not see an Item 371 in the
2 figures.
3 Q. If you look at Figure 19.
4 A. Okay. Okay. So in that particular case,
5 it's a -- it looks to be some kind of a button or
6 some kind of interface that controls the fluid flow.
7 Q. So going back to Claim 11 where we started
8 with this question, after reviewing the
9 specification, what is the plain and ordinary
10 meaning, then, of "fluid control member" --
11 MR. SCOTT: Objection. Form.
12 BY MR. EVERTON:
13 Q. -- in Claim 11?
14 MR. SCOTT: Sorry.
15 Objection. Form.
16 THE WITNESS: In the context of the patent,
17 although it's not specifically identified, it's
18 something that controls the flow of fluid out of the
19 console.
20 BY MR. EVERTON:
21 Q. What do you mean by "console"?
22 A. Out of the device.
23 Q. What do you mean by that, "out of the
24 device"? Can you explain that?
25 A. The system --

1 Q. The "out of" part --
2 A. It could -- let's just back up and say it
3 controls the flow of fluid out of one of the
4 containers. That's what we're talking about is the
5 control of fluid.
6 Q. So the fluid control member could be any
7 part that controls the fluid coming out of any of
8 the containers; is that correct?
9 A. That's what I'm --
10 MR. SCOTT: Objection. Form.
11 THE WITNESS: That's what I'm left to
12 assume based on the specification.
13 BY MR. EVERTON:
14 Q. Now if we go to Claim 22 of the
15 '287 patent. In the second limitation it says: "a
16 collection lumen."
17 Do you see that?
18 A. Yes.
19 Q. In this context of Claim 22, what does
20 "collection lumen" mean?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: Okay. So in Column 18,
23 referencing Figure 15C, there's an Item 171 on
24 Figure 15C. And it is identified as: "The fluid
25 can flow to and through the lumen 171 towards the

1 line 20."
2 I believe that's the collection lumen.
3 BY MR. EVERTON:
4 Q. So going back to Claim 22, in the context
5 there at Claim 22, then, what is the plain and
6 ordinary meaning of "collection lumen"?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: It's a passageway that
9 communicates the fluid.
10 BY MR. EVERTON:
11 Q. Can a collection lumen be anywhere within
12 the system?
13 MR. SCOTT: Objection. Form.
14 THE WITNESS: Yeah, that is a very general
15 term. Specifically, it's talking about
16 communication of the fluid out of the bottle. This
17 is the only reference that I have of collection
18 lumen that I can find in the specification.
19 BY MR. EVERTON:
20 Q. And the specification doesn't provide a
21 definition for the term "collection lumen"; correct?
22 A. No, not specifically.
23 Q. So you instead just relied on the plain and
24 ordinary meaning in your analysis.
25 A. I relied on the specification, in the

1 context of the specification to determine that.
2 Q. Now let's turn to Claim 1 of the
3 '287 patent, the third limitation down is a block.
4 What is the plain and ordinary meaning of
5 the term "block" in this context?
6 MR. SCOTT: Objection. Form.
7 THE WITNESS: Well, there's no reference in
8 the specification of block at all.
9 BY MR. EVERTON:
10 Q. Right.
11 So you've just in your analysis given it
12 its plain and ordinary meaning; correct?
13 A. As a POSITA would understand a block in
14 this application, yes.
15 Q. And what is that? What is the plain and
16 ordinary meaning that you've applied for block?
17 MR. SCOTT: Objection. Form.
18 THE WITNESS: Well, in this case, I believe
19 it's synonymous with manifold.
20 BY MR. EVERTON:
21 Q. And what do you mean by that?
22 A. Well, there are a number of references in
23 the specification. In particular, Column 3: "In
24 some embodiments, a manifold system comprises a body
25 portion configured to receive releasably at least

1 two bottles." So...
2 Q. Is it your opinion that the term "block,"
3 as used in the claims in the '287 patent, is
4 indefinite?
5 MR. SCOTT: Objection. Form.
6 THE WITNESS: I believe it's not supported
7 by the specification and, therefore -- I'm not an
8 attorney, but I think it falls under the definition
9 of indefinite.
10 BY MR. EVERTON:
11 Q. And why do you think it's indefinite?
12 A. Because I'm left to bridge from the
13 specification language to arrive at a meaning of a
14 block in the claim language.
15 Q. Do you think that a block is shown in the
16 figures of the '287 patent?
17 MR. SCOTT: Objection. Form.
18 THE WITNESS: If we draw that bridge I just
19 talked about, potentially, yes.
20 BY MR. EVERTON:
21 Q. And can you identify in which figures that
22 block is.
23 MR. SCOTT: Objection. Form.
24 THE WITNESS: There's no specific call-out,
25 but we talk about interfacing with the bottles in a

1 manifold, so I'd have to assume.
2 So it's -- I am inferring that it's Item 24
3 in Figures -- all of the Figures 15A through D.
4 BY MR. EVERTON:
5 Q. Okay. So you're pointing to Figures 15A
6 through D. And the Item 24 there, that's what you
7 would consider a block; is that correct?
8 MR. SCOTT: Objection. Form.
9 THE WITNESS: That's what I'm pointing to,
10 is Item 24 in those figures.
11 BY MR. EVERTON:
12 Q. And would a person of ordinary skill in the
13 art understand that what's shown in those figures,
14 15A through 15E, is a block?
15 MR. SCOTT: Objection. Form.
16 THE WITNESS: If I, again, take the
17 specification and form a bridge to what is meant in
18 the specification as interface of the bottles, I
19 would have to assume that's a block.
20 BY MR. EVERTON:
21 Q. And is it your understanding that that
22 Item 24 of Figure 15A has the shape of a block?
23 MR. SCOTT: Objection. Form.
24 THE WITNESS: It's a rectangular device, so
25 by a layman's term it would be, I suppose, a block.

1 BY MR. EVERTON:
2 Q. So then in the context of the '287 patent,
3 what is the plain and ordinary meaning of "block"?
4 MR. SCOTT: Objection. Form.
5 THE WITNESS: Again, it isn't specifically
6 called out in the specification, but we're talking
7 about a device that interfaces with a bottle that
8 contains solution.
9 BY MR. EVERTON:
10 Q. And so you mentioned that you're a POSITA,
11 a person of ordinary skill in the art; correct?
12 A. Yes, sir.
13 Q. And then what is your understanding of the
14 term "block" in this context?
15 A. I have --
16 MR. SCOTT: Objection. Form.
17 THE WITNESS: I have to make assumptions
18 because there's no specific definition of it in the
19 specification. And like I say, I'm assuming that it
20 is the device that the bottle connects to, the
21 bottle that contains the fluid.
22 BY MR. EVERTON:
23 Q. So the term "block" in this context is a
24 device that the bottles are connected to; is that
25 correct?

1 MR. SCOTT: Objection. Form.
2 THE WITNESS: Again, that's -- I'm making
3 that assumption, yes, based on the information in
4 the specification and my knowledge.
5 BY MR. EVERTON:
6 Q. And is that also based on the disclosure of
7 this block 24 in Figure 15A?
8 A. Well, you're calling it a block. It's
9 definitely not a sphere. So, I mean, by a layman's
10 term, I guess it would be a block. But as far as
11 the -- it doesn't give me any context in the
12 functionality of this device to just say block. I
13 understand manifold. But block is very in -- a very
14 general term, and it gives me no guidance other than
15 a picture that appears to be rectilinear, I'll call
16 it.
17 Q. So you're telling me that what's shown as
18 Item 24 in Figure 15A is not a block?
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: It's not a sphere. Is it a
21 block? I don't know. There isn't any definition of
22 what a block is in the context of this patent.
23 BY MR. EVERTON:
24 Q. Right.
25 So if there isn't any definition, then you

1 would apply the plain and ordinary meaning; is that
2 correct?
3 A. As a POSITA would understand it. And --
4 Q. So what I'm trying to get at is, well, what
5 is that plain and ordinary meaning, then, that
6 you've applied for "block" in your analysis?
7 A. I think --
8 MR. SCOTT: Objection. Form.
9 THE WITNESS: -- based on the content of
10 the specification, I have to assume that it's a
11 manifold, that it interfaces with the bottles.
12 BY MR. EVERTON:
13 Q. And would that include the block-shaped
14 Item 24 in 15A?
15 A. Yes.
16 Q. Are you aware of any other blocks that are
17 disclosed in the '287 patent?
18 A. Again, Item 24 is disclosed in 15A
19 through E, Figures 15A through E. So if we are
20 saying that 24 is the block, then I guess it's
21 disclosed there.
22 Q. And do you have an understanding of the
23 function of that block 24 in Figure 15A?
24 MR. SCOTT: Objection. Form.
25 THE WITNESS: If I go over the bridge of

1 the assumption that I've made, it collects the
2 fluid, controls the fluid coming out of the bottle,
3 the container.
4 BY MR. EVERTON:
5 Q. Does that block 24 have a manifold that
6 directs the fluid from the containers?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: It says it has a lumen.
9 BY MR. EVERTON:
10 Q. But you're not aware of whether or not the
11 block 24 in Figure 15A has a manifold, as described
12 in this specification.
13 MR. SCOTT: Objection. Form.
14 THE WITNESS: I think I already talked
15 about this, the definition of a manifold.
16 BY MR. EVERTON:
17 Q. I think it might be helpful to direct you
18 to Column 18, I think is where you read from about a
19 manifold.
20 A. Well, okay, hold on.
21 Yes. It says Item 24, the last -- well,
22 let me give you a line number.
23 Column 18, starting at about line 16: "If
24 the switch 29 is off, the fluid from one or more of
25 the upstream bottles can flow along the passage 173.

1 The manifold system 24 then directs the fluid into
2 line 20."
3 So that's where I -- I get that it is a
4 manifold.
5 Q. Okay. So the block 24 in Figure 15A
6 defines a manifold; is that fair?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: The specification talks about
9 it being a manifold, but the element in the claim
10 talks about it being a block.
11 BY MR. EVERTON:
12 Q. And in the context of the '287 patent, what
13 is a manifold?
14 A. I think that is right at the beginning of
15 the specification.
16 So the best definition, I think, is in the
17 "Summary" in Column 2, starting at line 25. But
18 when we get down to around line 30, it says: "A
19 manifold system is coupled to the console and
20 controlled by the user input device, such as a
21 computer screen, touch screen, keyboard, and the
22 like. The manifold system is configured to hold
23 releasably a plurality of fluid sources and deliver
24 fluid from at least one of the plurality of fluid
25 sources to the handpiece assembly."

1 I think that's probably the best definition
2 of a manifold in this specification.
3 Q. Okay. So is it your opinion that the term
4 "manifold" should be construed and is defined in the
5 '287 patent?
6 MR. SCOTT: Objection. Form.
7 THE WITNESS: I think it talks about what a
8 manifold is. However, again, if we're trying to
9 bridge to a block, I have no basis within the
10 specification to have a definite construction that
11 draws the equivalence. I'm left to figure it out
12 for myself.
13 BY MR. EVERTON:
14 Q. And you mentioned that at least in this
15 IRR, you have applied the plain and ordinary meaning
16 for the terms; is that correct?
17 You haven't construed any more terms.
18 A. No, I have not.
19 Q. What is the plain and ordinary meaning of
20 "manifold"?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: Well, I don't need the plain
23 and ordinary meaning. Other -- I can read exactly
24 what the specification says it is. It's configured
25 to hold the bottles and fluid sources and deliver

1 the fluid from at least one of the plurality of
2 fluid sources to the handpiece assembly. So I don't
3 need to speculate. It tells me right there what the
4 manifold is.
5 BY MR. EVERTON:
6 Q. So the manifold is something holds the
7 bottles; is that correct?
8 A. It has the bottles connected to it,
9 releasably connected to it, yes.
10 Q. And what do you mean by that, the manifold
11 has the bottles releasably connected to it?
12 A. I mean exactly what the patent says. And
13 if we go through the specification, it illuminates
14 as to what "releasably" means. And we can go down
15 through the spec and talk about the mechanism for
16 releasing or retaining.
17 Q. Okay. But it's your opinion that the plain
18 and ordinary meaning of the word "manifold" is what
19 the '287 patent says there in Column 2, lines 30
20 through 35; is that correct?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: It's not only the plain -- I
23 mean, yes, I believe it's the plain and ordinary
24 meaning, but it's also the absolute definition that
25 the patent specification applies to it.

1 And whenever we have language in the patent
2 specification, we need to apply that meaning.
3 BY MR. EVERTON:
4 Q. So other than being releasably coupled to
5 the containers, are there any other requirements of
6 a manifold?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: We can read it again. It
9 says -- so: "The manifold system is configured to
10 hold releasably a plurality," we've established
11 that, "of fluid sources and deliver" -- the
12 secondary function is to "deliver fluid from at
13 least one of a plurality of fluid sources to the
14 handpiece."
15 BY MR. EVERTON:
16 Q. So a manifold is anything that is connected
17 to the fluid sources and delivers fluid to the
18 handpiece.
19 Is that the fair --
20 A. I just said --
21 Q. -- interpretation of the plain and ordinary
22 meaning?
23 A. -- it's the specific meaning in the patent.
24 So if you want to say that's plain and ordinary,
25 okay.

1 Q. Can a manifold system -- can a manifold
2 have a single inlet and a single outlet?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: I believe the patent refers
5 to that more as a lumen, if it only had an entry and
6 an exit.
7 BY MR. EVERTON:
8 Q. Okay. So a manifold is different from a
9 lumen.
10 Can you explain how a manifold is different
11 than a lumen?
12 A. Typically a manifold is connected to more
13 than one source or more than one outlet, it has
14 multiple different ports.
15 Q. Okay. So is it fair to say that the plain
16 and ordinary meaning of a manifold is something that
17 has multiple inlets or multiple outlets?
18 A. It depends on the configuration, yes, but
19 generally a manifold is meant to direct a fluid or
20 some medium, and it could have multiple inlets and a
21 single outlet. It could have one inlet and multiple
22 outlets in a general sense, not referring to the
23 specific configuration in this particular patent.
24 Q. But that's how a manifold differs from just
25 a lumen, is that it has to have either multiple

1 inlets or multiple outlets. It can't just be a
2 single inlet, single outlet; is that correct?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: A manifold will have a lumen.
5 It may have multiple lumens, again, connected to
6 multiple inlets or multiple outlets. It depends on
7 the configuration.
8 In the context of this patent, the manifold
9 has multiple inlets collecting the fluid and
10 delivering it to the handpiece.
11 BY MR. EVERTON:
12 Q. So in the context of the '287 patent, could
13 a single lumen with one inlet and one outlet be a
14 manifold?
15 MR. SCOTT: Objection. Form.
16 THE WITNESS: I've already said that lumen
17 is a passageway. A manifold would typically collect
18 multiple inputs or have multiple outputs.
19 Ask the question again.
20 BY MR. EVERTON:
21 Q. So is that the difference between, then, a
22 lumen and a manifold is the multiple inlets or
23 multiple outlets?
24 A. Yeah, a lumen is a passageway.
25 Q. And a manifold is what?

1 A. Multiple passageways.
2 Q. But you agree with me that the '287 patent
3 has not provided a definition, lexicography, for the
4 term "manifold"; is that correct?
5 MR. SCOTT: Objection. Form.
6 THE WITNESS: No, I don't necessarily agree
7 with that.
8 How could you take that position in view of
9 the summary that we just read? I don't -- maybe I'm
10 missing your question.
11 BY MR. EVERTON:
12 Q. That's fine.
13 You're saying that in view of the
14 specification, the term "manifold" should be
15 construed and given the meaning provided in the
16 '287 specification; is that right?
17 MR. SCOTT: Objection to form.
18 THE WITNESS: I have to rely on the
19 specification. Yes.
20 BY MR. EVERTON:
21 Q. But a manifold can't be something that just
22 has a single inlet and a single outlet; correct?
23 MR. SCOTT: Objection. Form.
24 THE WITNESS: I'm going to stick to the
25 '287 specification. And it says that in this

1 particular device that it has a -- it collects a
2 plurality of sources.
3 So your question was, it can't have just a
4 single inlet and a single outlet.
5 BY MR. EVERTON:
6 Q. That's my question.
7 A. According to the specification, it has a
8 plurality, a manifold has a plurality of
9 connections.
10 Q. Either inlets or plurality of outlets; is
11 that correct?
12 A. Well, in this case it has a plurality of
13 inputs and one output.
14 Q. So just to make sure you answered my
15 question.
16 A. Okay.
17 Q. In the context of the '287 patent, the
18 manifold cannot be something that is just a single
19 inlet, single outlet.
20 A. That, in the context of this patent is a
21 lumen, not a manifold.
22 Q. Not a manifold.
23 Let's go back to the claims of the
24 '287 patent. If we can go to Claim 1.
25 MR. SCOTT: Mr. Everton.

1 MR. EVERTON: Do you want to take a break?
2 THE WITNESS: Yeah, I do.
3 MR. EVERTON: We can go off the record.
4 (Recess.)
5 BY MR. EVERTON:
6 Q. So we were looking at the '287 patent.
7 That's Exhibit 1001. If we can go to the claims,
8 back to Claim 1.
9 You'll see about halfway down under the
10 block limitation it says: "Configured to
11 selectively be in fluid communication with the
12 handpiece."
13 Do you see that?
14 A. You're talking about what line, line 30?
15 Q. About 30 -- 37.
16 A. Yes.
17 Q. So in the context of these claims, what
18 does "fluid communication" mean?
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: It's able to pass fluid.
21 BY MR. EVERTON:
22 Q. So "fluid communication" means something --
23 just is it like a state that's able to pass fluid or
24 how -- what do you mean by that, that it's able to
25 pass fluid?

1 A. It's able to transport fluid from one place
2 to another.
3 Q. So is that similar to being plumbed
4 together?
5 MR. SCOTT: Objection. Form.
6 THE WITNESS: That's not a term used in the
7 patent, so define "plumbed together."
8 BY MR. EVERTON:
9 Q. So do you have any understanding of what
10 that means, for something to be plumbed together
11 with another thing?
12 A. Well, I know my house plumbing is all
13 connected to a water source out in the street, so I
14 guess that's all plumbed together.
15 Q. And does fluid communication require
16 passage of liquid?
17 MR. SCOTT: Objection. Form.
18 THE WITNESS: No. It requires passage of
19 fluid. And in the definition in the patent, there
20 are several fluids. It can be solid material, it
21 can be liquids.
22 BY MR. EVERTON:
23 Q. So fluid communication could include being
24 able to pass liquids or gases?
25 A. Gases, fluidized solids as it talks about

in, I think it's Column 5.

Q. Are there any other requirements that you're aware of for fluid communication other than it meaning that it's able to pass fluids, including gases or liquids?

A. And solids. No. It's able to transport all of the treatment materials, treatment fluids, all of the things that are described in, I believe it was Column 5.

Let's just make sure we're clear.

So at Column 5, line 47, it's the beginning of a new paragraph: "As used herein, the term 'treatment material' is a broad term and includes, but is not limited to, medicament, a substance tending to flow or conform to the outline of its container such as fluid, gas, liquid (serums, water, saline, etc.) gel, fluidized materials, additives, and/or a plurality of fine solids."

So it's able to communicate all of those.

Q. Or any of those.

A. Or any of those.

Q. So does the term "fluid communication" in the '287 claims require that the fluid is passing or just that fluid is able to pass?

MR. SCOTT: Objection. Form.

1 THE WITNESS: Certainly it's able to pass.
2 And in active use it is passing, a fluid, a gas,
3 solids.
4 BY MR. EVERTON:
5 Q. But when it says that something is in fluid
6 communication in these claims, it doesn't require
7 that fluid is actually passing?
8 MR. SCOTT: Objection. Form.
9 THE WITNESS: I would agree with that.
10 BY MR. EVERTON:
11 Q. Just that the configuration is something
12 that allows for fluid to pass.
13 Is that your understanding?
14 MR. SCOTT: Objection. Form.
15 THE WITNESS: A fluid communication? Sure,
16 yes.
17 BY MR. EVERTON:
18 Q. Sorry, going back to that same claim, the
19 same line 37, Claim 1.
20 A. Yes.
21 Q. It says: "configured to selectively be in
22 fluid communication."
23 What does that "selectively" mean?
24 MR. SCOTT: Objection. Form.
25 THE WITNESS: That means there's some kind

1 of control mechanism within -- we're talking about
2 the block here. So within the block there's some
3 means of selecting fluid from one of the containers.
4 BY MR. EVERTON:
5 Q. So for it to be selectively in fluid
6 communication, does that mean sometimes it's in
7 fluid communication and sometimes it's not,
8 depending on the selection?
9 A. It's talking about receiving the fluid. So
10 the passageway is there.
11 Q. Okay. And do you have any other
12 understanding of what the "selectively" means, what
13 the plain and ordinary meaning of "selectively" is
14 in this context?
15 A. That you're -- that you have the ability to
16 turn off and on access to that passageway and select
17 whether or not you're drawing fluid from one or
18 another or both containers.
19 Q. Okay. So now if we go in that same Claim 1
20 of the '287 patent back up to the second limitation,
21 line 28 of Column 21, it says: "A handpiece
22 configured" --
23 A. Whoa, whoa, you said Claim 28?
24 Q. No.
25 A. Line 28, you meant.

1 Q. Line 28, yeah. So Column 21, line 28. So
2 that's --
3 A. Yes.
4 Q. It says: "A handpiece configured to
5 contact skin tissue of a subject."
6 What is a handpiece in this context? What
7 does that mean?
8 A. In this context, it's a device that is held
9 by, presumably, by a doctor who is treating the
10 patient and applying -- putting the handpiece, the
11 hand tool on the surface of the patient to be
12 treated.
13 Q. Can the handpiece include a removable tip
14 that's attached to the handpiece?
15 A. I don't see that in the claim language.
16 Are you saying does the patent talk about
17 removable tips?
18 Q. I'm just trying to see what all is included
19 within this handpiece.
20 Does that also include the tip that
21 contacts the skin?
22 A. I believe in the context of the patent,
23 yes. Several figures detail what various tips look
24 like.
25 Q. Okay. So, for example, if we look at

1 Figure 19.
2 Does Figure 19 of the '287 patent show a
3 handpiece that includes a tip?
4 It might be helpful if I just point you to
5 Column 13 where it talks about tips, starting at
6 line 43.
7 A. Yes. And also in Column 20 at line 46.
8 Yes, I would say it has a tip.
9 Q. So Figure 19 of the '287 patent shows a
10 handpiece that includes a tip 34; correct?
11 A. Yes.
12 Q. So in the claims of the '287 patent, when
13 it claims a handpiece, that handpiece could include
14 a tip; is that correct?
15 A. Yes. And there are a number of tip
16 configurations disclosed in Figures -- oh, gosh,
17 starting back at Figure 5. And actually, Figure 4.
18 Geez, yeah, Figure 4 through 10.
19 Q. Is it your understanding that the tip of
20 the handpiece can be removable from the body of the
21 handpiece?
22 A. Are we talking in reference to Claim 1
23 still?
24 Q. Sure.
25 A. Well, Claim 1 is silent on whether the tip

1 is detachable or not, but the specification talks
2 about interchangeability of tips.
3 Q. So that handpiece in Claim 1 could have a
4 removable tip.
5 A. It could. It isn't an element of that
6 claim.
7 Q. But there's nothing in the claims that
8 would prevent the handpiece from having a removable
9 tip.
10 A. No, there is --
11 MR. SCOTT: Objection. Form.
12 THE WITNESS: -- nothing in the claim
13 language.
14 BY MR. EVERTON:
15 Q. Okay. Let's go back to the Simon
16 declaration, Exhibit 1003. If we can go to
17 paragraph 48.
18 A. Yes, sir.
19 Q. Do you see that under paragraph 48, there
20 is Figure 6 of the Karasiuk reference?
21 A. Yes.
22 Q. I want to look a little bit at this
23 Figure 6 that has the annotations.
24 What -- what is the part labeled 76 in
25 Karasiuk Figure 6?

A. Do you have the Karasiuk patent that I could look at?
Q. Yeah.
Okay. Careful, that staple is really long.
A. No problem.
Q. It comes out the other end, and it's quite sharp there.
A. No problem.
MR. EVERTON: So this has been previously marked as Exhibit 1004. It's the Karasiuk reference.
(Exhibit 1004 was previously marked by the Certified Shorthand Reporter, and a copy is attached hereto.)
BY MR. EVERTON:
Q. Have you reviewed this reference before?
A. I have.
Q. So I was just asking what is the part that is labeled 76 in Figure 6?
And it might be helpful if I direct you to paragraph 59 --
A. All right.
Q. -- of Karasiuk.
A. Sure. There it is.
So in paragraph 59, the second sentence

1 starts: "A breather line 76 may be connected in
2 line via T-joint 76 prime, for example, or other
3 interconnection, and includes an adjustable valve."
4 Q. What is the purpose of this breather
5 line 76?
6 A. It -- that paragraph goes on to say, or
7 other means of -- for varying an amount of air that
8 is allowed into the tube 14. This feature not only
9 allows the amount of vacuum to be adjusted for a
10 given fluid, but also allows fluid of different
11 viscosities to be applied at the same vacuum level,
12 since viscosity -- different viscosities require
13 varying amounts of air to be inletted through the
14 breather line, to give a constant vacuum level.
15 Then it goes on to say: "Alternatively, a
16 breather line or input with adjustment valve may be
17 located on elbow line 74 or directly on manifold
18 cover 79."
19 Q. So does this breather line in Karasiuk
20 allow the system to draw ambient air into the system
21 as needed?
22 A. That's my understanding, to offset the
23 vacuum.
24 Q. So the breather line is a line that
25 basically goes from the system out to the ambient

1 air. There's no specific input from the
2 breather line; right?
3 A. Well, the input is whatever the orifice is
4 in the adjustment valve that allows the air in.
5 So...
6 Q. And so why does the breather line allow for
7 air to come into this otherwise closed loop of the
8 system?
9 A. Well, the paragraph states exactly why.
10 It -- it says, "for varying an amount of air that is
11 allowed into the tube. This feature not only allows
12 the amount of vacuum to be adjusted for a given
13 fluid, but allows fluids of different viscosities to
14 be applied at the same vacuum level."
15 Q. So why would you want the breather line to
16 allow the ambient air to come into the line?
17 A. So that you can modulate or vary the amount
18 of solution or material, treatment material that's
19 being extracted from the container.
20 Q. Let's go back to the Simon declaration
21 paragraph 57.
22 A. Yes, sir.
23 Q. Did you analyze the Palmer reference?
24 A. I did.
25 MR. EVERTON: I'll go ahead and hand you --

I don't want to do it too hard so the staple doesn't come through.

THE WITNESS: It will.

MR. EVERTON: So this has been previously marked as Exhibit 1005, the Palmer reference.

(Exhibit 1005 was previously marked by the Certified Shorthand Reporter, and a copy is attached hereto.)

BY MR. EVERTON:

Q. Have you reviewed this exhibit?

A. Yes, I have.

Q. So, sorry, back to the Simon declaration.

A. Yes.

Q. Paragraph 57.

Above paragraph 57, does that show Figure 1 from the Palmer reference?

A. It does.

Q. And do you know what the part is that's labeled 16 in Palmer?

A. Well, according to Column 8 around line 60: "Liquid solution coupling and selector means generally designated 16 for coupling handpiece means 14 to a selected one of the liquid solutions in a respective solution reservoir 12."

Q. So is the part labeled number 16 the

1 selector means?
2 A. Yes. That's what the declaration states.
3 Q. How does that selector means work in this
4 Palmer system?
5 And if it's helpful, I think --
6 A. No, go ahead.
7 Q. Were you looking at Column 4?
8 A. I am looking at Column 4, the line about
9 27, 28 refers to Figure 5. And so, basically,
10 there's a -- it allows to -- the user to rotate a
11 knob which then lines up ports to select the --
12 select the solution, desired solution to be
13 delivered to the handpiece.
14 Q. Okay. And then if we go further down in
15 Column 4 of Palmer, around line 60, it says:
16 "Liquid solution coupling and selector means,
17 generally designated 16, for coupling handpiece
18 means 14 to a selected one of the liquid solutions
19 in a respective solution reservoir 12."
20 So is that what you were referring to?
21 A. Yes. That's what it says in the patent.
22 Q. So the selector means connects the
23 handpiece to one of the liquid solutions in the
24 respective solution reservoir; right?
25 A. That's what it says.

1 Q. It can only select and allow one of the
2 solutions to pass at a time; correct?
3 MR. SCOTT: Objection. Form.
4 THE WITNESS: That's what the specification
5 says, select one as it's configured in this patent.
6 BY MR. EVERTON:
7 Q. So at any given time, the selector means
8 connects the end of the handpiece to one of the
9 tubes that runs to the solution reservoirs; is that
10 right?
11 A. Yes.
12 Q. But the selector means 16 cannot connect
13 the handpiece tube with more than one of the tubes
14 from the solution reservoirs at the same time; is
15 that right?
16 A. That's what the patent says, yes.
17 Q. So at any given time on this selector
18 means, however it's adjusted, there will be --
19 there's always one outlet coming out of the selector
20 means; right, and that's the outlet out to the
21 handpiece; is that correct?
22 A. That is the function. I don't know that
23 there isn't an off position here. I mean, I could
24 look at that. But generally, it's meant to select
25 one of the solutions, yes.

1 Q. So at any given time or any selection, the
2 selector means has one of the solution tubes as the
3 inlet and then the handpiece as the outlet; is that
4 correct?
5 A. I believe that's correct.
6 Q. But at any given selection, it can't have
7 two of the solution tubes as the inlet, it can only
8 have one solution tube as the inlet?
9 A. Not according to the specification. Yes,
10 it can only have one.
11 Q. Okay. So one inlet into the selector means
12 and then one outlet going to the handpiece; correct?
13 A. Yes.
14 MR. SCOTT: Objection. Form.
15 BY MR. EVERTON:
16 Q. Okay. And the same figure, Figure 1 of
17 Palmer that we're looking at there.
18 A. Yes.
19 Q. Do you see the fluid line 30?
20 A. I do.
21 Q. Do you know the dimensions of Palmer's
22 line 30?
23 A. Unless I'm missing something, I don't know
24 that it speaks -- the patent is silent on the
25 dimensions. If you know otherwise, please direct me

1 to the passage.
2 Q. Yeah. I'm just asking whether or not
3 you're aware of any dimensions in here.
4 A. I -- I don't recall any dimensions. And
5 the references to 30 throughout the specification of
6 the patent, I can't find a reference that speaks to
7 the inner lumen or outer lumen -- or outer diameter
8 of the tip.
9 Q. Okay. As a person -- oh, sorry.
10 As a person of ordinary skill in the art,
11 do you have an understanding of what those
12 dimensions might be in this system of Palmer for the
13 line 30?
14 A. I understand how I would determine that, is
15 based on the viscosity of the fluids that I'm trying
16 to pass and the flow rate that I'm trying to achieve
17 would determine the sizing of that lumen.
18 Q. Okay. But in your opinions you haven't
19 done anything to determine the dimensions of the
20 line 30 in Palmer for your analysis; is that right?
21 A. I don't believe so.
22 Q. If we go to -- back to paragraph 57 -- I
23 think you still have it open there -- in the Simon
24 declaration, Figure 1 of Palmer.
25 A. Yes.

1 Q. What is the part that's labeled 18 in
2 Palmer?
3 A. It's a peristaltic pump.
4 Q. So from the figure you can tell what kind
5 of pump it is?
6 A. Being skilled in the art, yes.
7 Q. What is a peristaltic pump?
8 A. A peristaltic pump basically is, in general
9 terms, a roller-type pump that you place an elastic
10 tube segment into the mechanism, and rollers are on
11 arms about a central axis, and the rollers are
12 caused to roll across in a circular fashion across
13 that elastic member which has the lumen with the
14 solution in it, in this case, in order to move the
15 fluid, pump the fluid from one side to the other.
16 In this case it'd be from -- well, I better not
17 assume -- from, let's say, 124 to 126 of Figure 6.
18 Q. Does the peristaltic pump create a pressure
19 difference?
20 A. It can, depending on the dimensions of
21 the -- of the tubing on either side and the
22 resistance and so forth of the system. It doesn't
23 have to. It can merely transport fluid. It doesn't
24 have to pressurize.
25 Q. Does the peristaltic pump shown in Figure 1

1 of Palmer control the flow of fluid in the line 30?
2 A. Well, I think if we look at Claim 1 in
3 particular, Column 11 down around 64: Pump means
4 for causing selected one of said liquid irrigating
5 solutions to flow from said reservoir therefore to
6 said handpiece for delivery to treatment site, pump
7 means operatively engaging only said second tubing
8 means and being situated entirely out of the path of
9 said flow of said liquid irrigating solutions from
10 reservoir and therefore to handpiece.
11 So, yes, it's in the -- in the transport
12 line to the handpiece. So it does control the flow.
13 Q. So the peristaltic pump 18 in Figure 1 of
14 Palmer controls the flow of fluid in line 30;
15 correct?
16 A. Yes.
17 Q. Does that peristaltic pump 18 restrict the
18 flow of fluid?
19 MR. SCOTT: Objection. Form.
20 THE WITNESS: Potentially in some cases,
21 but it basically is a control element. Depending on
22 the speed of the pump will determine how much flow
23 is achieved. So I guess if it stopped, it would
24 restrict it.
25 ///

BY MR. EVERTON:
Q. Can you explain how that would happen? How would the peristaltic pump restrict the flow through line 30?
A. Well, it -- it controls the flow. So it's not free-flowing out of the solution container to the handpiece. So depending on the speed, you'll get more or less. So that is a restriction.
If it entirely stopped, the rollers, by the nature of a peristaltic pump, would close off the lumen and there would be no flow.
Q. Okay. And then if the peristaltic pump were removed, there would be free flow?
A. You'd have free flow.
Q. Okay. So turning off the pump would stop the flow of fluid through line 30; is that correct?
A. Yes.
Q. And removing the pump, the peristaltic pump 18, would allow for free flow of the solutions through line 30; correct?
A. Yes, depending on the solution height. I think it would be a gravity feed system at that point.
Q. Let's turn to paragraph 67 of this Simon declaration.

1 Okay. Now, if we look at -- under
2 paragraph 67 you see Figure 5 of Greenberg; right?
3 A. Yes, sir.
4 Q. And Greenberg's Figure 5 does not include a
5 vacuum source; correct?
6 MR. SCOTT: Objection. Form.
7 THE WITNESS: Not shown in Figure 5, no.
8 BY MR. EVERTON:
9 Q. Are you aware of any embodiment in
10 Greenberg that includes a vacuum?
11 A. Would you hand me Greenberg, please.
12 Q. Yes.
13 MR. EVERTON: Okay. So this has been
14 previously marked as 1006.
15 (Exhibit 1006 was previously marked by the
16 Certified Shorthand Reporter, and a copy is
17 attached hereto.)
18 BY MR. EVERTON:
19 Q. Is this the Greenberg reference that you
20 reviewed?
21 A. Yes, it's the application. Yes.
22 Q. My question was, are you aware of any
23 embodiment in Greenberg that includes a vacuum?
24 A. Thank you.
25 Yes. It is in paragraph 59 and it refers

1 to Figures 1 and 2. And I'll read it from the
2 beginning.
3 "Turning now to figures in detail,
4 specifically in Figures 1 and 2, there is shown an
5 Apparatus 10 for making abrasions including a vacuum
6 pump 12 operatively connected in a series to either
7 the first assembly, including the recovery
8 container."
9 Q. So you relied on Figure -- the embodiment
10 in Figure 5 of Greenberg for the containers and
11 handle but relied on the embodiments of Figures 1
12 and 2 for the vacuum; is that correct?
13 MR. SCOTT: Objection. Form.
14 THE WITNESS: Well, if we go to Figure 1
15 on -- above paragraph 69, Greenberg discloses that a
16 pneumatic source is a vacuum pump. And it provides
17 for the air flow through the recovery container.
18 BY MR. EVERTON:
19 Q. Okay. So you relied on that embodiment in
20 Figures 1 and 2 for the vacuum source; is that
21 correct?
22 A. To add the vacuum.
23 Q. So you could add that vacuum source to the
24 embodiment of Figure 5 that doesn't have a vacuum
25 source.

1 Is that what you did?
2 MR. SCOTT: Objection. Form.
3 THE WITNESS: I believe Figure 5 just
4 illustrates -- let me -- illustrates the supply
5 container selection.
6 BY MR. EVERTON:
7 Q. And that embodiment of Figure 5 doesn't
8 have a vacuum, as you previously confirmed; right?
9 MR. SCOTT: Objection. Form.
10 THE WITNESS: It doesn't diagrammatically
11 show the vacuum. Figure 1 talks about the vacuum
12 that is contained within the -- within the system.
13 And if you look at Figure 3, it clearly
14 shows the vacuum source.
15 BY MR. EVERTON:
16 Q. But Figure 3 has a different setup and
17 arrangement than that of Figure 5; correct?
18 A. Well, it's showing two sources and two
19 waste containers. So, yes, it's limited to two
20 sources. And in Figure 5 they're showing multiple
21 sources. In particular they're showing three.
22 Q. So looking at Figure 5 of Greenberg, what
23 is the part that's labeled 108?
24 A. Okay. They're valves. It's a valve.
25 Q. What does that valve do?

A. It selects between the supply containers, 90, 94, and 98.

Q. And what type of valve is it?

A. It's the type that selects the supply container, and that's all that the patent identifies it as.

Q. So from this figure, Figure 5 of Greenberg, you can't tell what specific type of valve it is?

A. So can you be more specific in what your question is? Because I can tell it's a selector valve.

Q. And -- okay. So can you explain the details of what a selector valve includes? Here it's just showing kind of schematically. I'm just wondering if you know how it actually functions, 108?

A. I don't know what the physical embodiment would be. There are several choices you can make. Butterfly valve, there are a number of choices that you can make.

Q. Do you know what that arrow means? There's an arrow inside of the block that is called out as the valve 108.

A. Yeah, that's the -- the mechanism that has to be moved to connect the outline -- outlet which

1 goes to the right out to the handle to one of the
2 source ports.
3 Q. Okay. So the valve selects one of the
4 inlets coming from one of the containers to then be
5 connected to an outlet going to the handpiece; is
6 that correct?
7 A. I think that states it accurately, yes.
8 Q. So in a way it's similar to Palmer that we
9 just looked at where you have a selector or a valve
10 that selects one input and connects it to the output
11 going to the handpiece; is that right?
12 A. Yes.
13 Q. But it can't -- it can't have two inputs at
14 the same time; right? It always just selects one
15 single input from one of the containers; is that
16 right?
17 A. For this application. A person of skill in
18 the art would know that you can make it to select
19 more than one. I mean, it's not excluded.
20 Q. But as disclosed here, Figure 5 of
21 Greenberg, it discloses only one inlet going to the
22 outlet to the handpiece; right?
23 A. Yes.
24 Q. So if you go to paragraph 67, just looking
25 at Figure 5 of Greenberg, the containers 90, 94, and

1 98 contain dry, abrasive particles; is that correct?
2 A. You're in paragraph 67?
3 Q. Paragraph 67, yeah, I'm just looking at the
4 figure underneath that paragraph looking at those
5 containers. You'll see that there are particles in
6 each of those three containers in Figure 5; is that
7 right?
8 A. I see there as material, treatment
9 material.
10 Q. Do you know if that material inside the
11 container is particles?
12 A. I think at paragraph 69, starting at 69
13 they talk about the different materials, pulverized
14 shells, nutshells, microabrasion, different types
15 of -- in 70: "Different types of organic material
16 has shown, that provided that the particles are
17 sufficiently dry" -- "a suitable size, a whole range
18 of organic particles may be used."
19 Q. Do you know why Greenberg uses these types
20 of dry particles in its system?
21 MR. SCOTT: Objection. Form.
22 THE WITNESS: Yeah. To get an abrasive
23 effect on the skin.
24 BY MR. EVERTON:
25 Q. And these dry particles in Greenberg, are

1 they suspended in air as they go to the handpiece
2 and then engage with the skin?
3 A. I think the term that the '287 patent uses
4 is fluidize when it comes to particles.
5 Q. But in Greenberg, that -- that fluid is
6 air. The articles are fluidized in air.
7 Is that what you're saying?
8 A. I believe that's accurate, yes.
9 Q. So if we can go to Greenberg, the Greenberg
10 reference.
11 A. Yes.
12 Q. It's Exhibit 1006. If we turn to
13 paragraph 49.
14 A. Yes.
15 Q. Can you read paragraph 49.
16 A. Sure. Paragraph 49: "Turning now to the
17 figures in detail, and specifically Figures 1 and 2,
18 there is shown an apparatus 10 for making abrasions,
19 including a vacuum pump 12 operatively connected in
20 series to either a first assembly, including a
21 recovery container 14, a handle 16, and a supply
22 container 18 by tubes 20, or operatively connected
23 to a second assembly, including a recovery
24 container 22, a handle 24, and a supply container 26
25 by tubes 28."

1 Q. So you understand from reading this
2 paragraph 49, that each assembly includes one supply
3 container, one handle, and one recovery container;
4 is that correct?
5 MR. SCOTT: Objection. Form.
6 THE WITNESS: In Figure 1?
7 BY MR. EVERTON:
8 Q. Yes.
9 A. That's what's shown.
10 Q. And that's what's being described here in
11 the paragraph that we just read in 49; correct?
12 A. Yes.
13 Q. Okay. So each assembly includes one supply
14 container, one handle, and one recovery container;
15 correct?
16 A. Correct.
17 Q. Let's now look at Greenberg paragraph 50.
18 A. Okay.
19 Q. If you can read the first sentence.
20 A. Paragraph 50: "Switch 30 contains a
21 solenoid that switches the vacuum pump from
22 operatively being connected either to the first or
23 second assembly."
24 Q. So you understand that Greenberg's
25 switch 30 controls which assembly is activated;

1 correct?
2 A. For Figure 1, yes.
3 Q. And you understand that only one assembly
4 is activated at a time; correct?
5 A. In that configuration, yes.
6 Q. And sticking with that embodiment in
7 Figure 1, let's look at Figure 1 itself.
8 Do you see label 18 on the right side?
9 A. Yes.
10 Q. It's pointing to the supply container;
11 correct?
12 A. It is, yes.
13 Q. And that is the supply container 18 for the
14 device's first assembly; correct?
15 A. Yes.
16 Q. Do you see label 16 on Figure 1?
17 A. Yes. Referring to the handle?
18 Q. Yeah, on the lower-right side for label 16,
19 that's the handle for the device's first assembly;
20 correct?
21 A. Yes.
22 Q. Do you see label 20 in Figure 1 on the
23 lower-right side?
24 A. Yes.
25 Q. Label 20 is for a tube or conduit; right?

1 A. Yes. That's what paragraph 49 says.
2 Q. And that tube 20 is a conduit that connects
3 the handle 16 to the supply container 18; correct?
4 A. Correct.
5 Q. And sticking with Figure 1 of Greenberg, do
6 you see label 14 on the right side?
7 A. Yes, I do now. Yep.
8 Q. That is the recovery container; correct?
9 A. Correct.
10 Q. And at the top of Figure 1 on the right
11 side, there's another label 20.
12 Do you see that?
13 A. Yes.
14 Q. That label 20 is for another tube or
15 conduit; correct?
16 A. Yes.
17 Q. And that tube 20 is a conduit that connects
18 handle 16 to the recovery container 14; correct?
19 A. Yes.
20 Q. Now, if we go back to paragraph 61 of the
21 Simon declaration.
22 A. Yes.
23 Q. Have you reviewed the Trueba reference?
24 A. I have.
25 Q. That's Exhibit 1008; correct?

A. If you say so.
Oh, yes. I see it.
MR. EVERTON: I'll hand you a copy of Exhibit 1008, which has been previously marked.
THE WITNESS: Yes, sir.
(Exhibit 1008 was previously marked by the Certified Shorthand Reporter, and a copy is attached hereto.)
THE WITNESS: Yes, sir.
BY MR. EVERTON:
Q. So if we look at -- as shown there in Figure 3 of Trueba.
A. Yes.
Q. Do you know how the dispenser decides when to dispense in this embodiment?
A. So if we go to Column 3, starting at line 35: "The applicator also may include a programmable controller, such as a microprocessor, for controlling the jet dispenser. The controller may be programmed via a keypad, touch screen, connection to a remote computer, removable memory device, or other suitable device."
So it can be programmed.
Q. And do you know how the dispenser decides how much to dispense? Is it the same?

1 MR. SCOTT: Mr. Everton, do you mind,
2 whenever you get done with this line of questioning,
3 if we go to our, I guess, lunch break? We've been
4 going for about an hour ten.
5 MR. EVERTON: Sounds good.
6 MR. SCOTT: Okay.
7 THE WITNESS: Could you repeat the
8 question?
9 BY MR. EVERTON:
10 Q. Sure.
11 Do you know how the dispenser in Trueba
12 decides how much to dispense?
13 A. Yeah. It's under control of user input in
14 one of the many forms that we mentioned in the
15 previous line of questioning.
16 Q. Do you know what specific parameters are
17 monitored in Trueba's system?
18 A. Well, time of delivery in Column 5 around
19 line 5.
20 So it's definitely monitoring time for
21 dispensing.
22 Q. What structures are controlled by the
23 system, by the applicator to cause dispensing of
24 fluid?
25 A. Well, in Column 6, line 27: "One

1 particular embodiment of the device includes a
2 piezoelectric or thermal jet dispenser that includes
3 a plurality of removable modules in fluid
4 communication with one or more of the dispenser
5 orifices."
6 Q. Okay. I just have a few other questions
7 before we take a break here.
8 If we go in Trueba to -- so this is
9 Exhibit 1008, Column 11, lines 1 through 3 it says:
10 "And then stopping ejection automatically after the
11 selected metered amount has been dispensed."
12 A. Yes, I see that.
13 Q. And do you know what that means, "the
14 selected metered amount"?
15 A. Sure. It's the dosage. It's how much is
16 delivered.
17 Q. And is that what "metered" means in this
18 context?
19 A. Yes, I believe so.
20 Q. Are you aware of any valves in the Trueba
21 system?
22 A. So I go back to Column 6, line 27. It
23 talks about: "One particular embodiment of the
24 device includes a piezoelectric or thermal...
25 dispenser that includes a plurality of removable

1 modules in fluid communication with one or more of
2 the dispenser orifices."
3 So what they're using is these dispensers.
4 These piezoelectric dispensers, basically, are the
5 valving. So by electronically energizing one,
6 you've created a valve for a particular medication.
7 Q. And do you know what those modules look
8 like?
9 A. Well, I believe that, you know, what
10 they're talking about, a thermal jet dispenser, is
11 much like an inkjet cartridge.
12 Q. And what is the configuration of an inkjet
13 cartridge?
14 A. Yeah, it has a supply reservoir and it has
15 a piezoelectric element. When it's energized, it
16 forms a droplet. It spits out a droplet of
17 whatever's in the reservoir.
18 Q. And that's similar to what these modules do
19 here?
20 A. Well, that's what --
21 Q. When they're energized, they can spit out a
22 droplet of whatever amount?
23 A. That's what the specification says, yes.
24 MR. EVERTON: Okay. I think we can go off
25 the record.

1 (Luncheon recess taken at 12:38 p.m.)
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1 COSTA MESA, CALIFORNIA; WEDNESDAY, JULY 30, 2025
2 1:24 P.M.
3 HAROLD WALBRINK,
4 having been previously duly sworn,
5 was examined and testified as follows:
6 BY MR. EVERTON:
7 Q. All right. Welcome back.
8 A. Well, thank you. Hope you had a great
9 lunch.
10 Q. You as well.
11 Okay. So let's go back to the Trueba
12 reference, if you have that one.
13 A. Yes. Yes, I do.
14 Q. Okay. And do you understand that Trueba is
15 directed to an inhaler; is that right?
16 A. Generally, yes, but I seem to recall that
17 there was some skin treatment directive somewhere
18 along in the patent specification.
19 Q. But the disclosed embodiments shown in
20 Trueba are for an inhaler; right?
21 A. That is the configuration in the figures,
22 yes.
23 Q. And for an inhaler the idea is to
24 aerosolize the liquid; is that right?
25 A. Yes, in general.

1 Q. And you understand that the inhaler
2 disclosed in Trueba incorporates Hewlett Packard's,
3 inkjet technology; correct?
4 A. I believe they do mention that that's the
5 embodiment, yes.
6 Q. And Trueba is attempting to incorporate
7 this inkjet technology into an inhaler; right?
8 A. Yes, essentially the valve.
9 Q. So let's look at Figure 1 of Trueba.
10 A. Yes.
11 Q. So in this figure Trueba discloses discreet
12 fluid reservoirs 50 through 56 along the top;
13 correct?
14 A. Yes.
15 Q. That's where the fluid is maintained;
16 correct?
17 A. Yes.
18 Q. Now, looking at Figure 3, you see that
19 there are separate fluid ejection heads, 40 through
20 46; correct?
21 A. Yes.
22 Q. And each of these fluid ejection heads is
23 connected to a single reservoir via the conduits 60
24 through 66; correct?
25 A. Yes.

1 Q. Now let's go back to the Palmer reference,
2 it's Exhibit 1005.
3 A. Yes. I have it.
4 Q. If we can go to Figure 1.
5 A. Yes.
6 Q. And as we already discussed, Palmer
7 discloses a peristaltic pump; correct?
8 A. That is correct. 18, Figure 1.
9 Q. Now if we go to -- in Palmer at line --
10 Column 11 starting at line 17. If you can read that
11 sentence.
12 A. Yes. Starting at line 17, Column 11: The
13 use of a peristaltic pump enabled irrigating
14 solution to be delivered in pulsed jets as desired
15 substantially constant -- at a desired substantially
16 constant pressure and a substantially constant
17 volumetric flow rate.
18 Q. So Palmer describes delivery of this
19 irrigation fluid as pulse jets; right?
20 A. That's what the specification says, yes.
21 Q. And what does it mean by "constant
22 pressure" and "volumetric flow rate"?
23 A. So as I mentioned before, depending on the
24 fluidic characteristics of the system, you're going
25 to get a pressure when you start moving fluid

1 through the system. Very large opening, you're
2 going to get very little pressure. In a smaller
3 lumen you're going to get a higher pressure. So
4 that would be substantially constant pressure, so
5 they modulate the rotation in the pump to achieve
6 the desired pressure. And volumetric, again, it's a
7 balance between the system characteristics, fluidic
8 resistance in the system, and the speed of the pump
9 determines what pressure you're going to deliver the
10 prescribed volume at.
11 Q. And in this embodiment it can be -- that
12 can establish a constant pressure and constant
13 volumetric flow rate; right?
14 A. It can.
15 Q. Let's turn to Figure 1 of Palmer.
16 A. Yes.
17 Q. This is a schematic diagram; right?
18 A. Yes, it is.
19 Q. And Figure 1 shows Element 16; correct?
20 A. Yes.
21 Q. And can you remind me what that -- what
22 that part is, labeled 16?
23 A. Well, instead of making it a memory test,
24 let's get it directly from the patent.
25 Q. I think we looked at it in Column 4 at the

1 bottom.
2 A. Yes. They call it a selector means for
3 coupling the handpiece means to selected one of the
4 liquid solutions.
5 Q. Now, if we go to Palmer Figure 2, here in
6 Figure 2, this is an embodiment of what is shown in
7 the schematic of Figure 1; correct?
8 A. It is one embodiment, yes.
9 Q. And do you see that Figure 2 has a control
10 unit enclosure 35?
11 A. Well, this is in Column 5 at about 17, it
12 says there: Reservoirs to the selector valve inputs
13 within the enclosure.
14 So 35 is an enclosure, unless you can show
15 me something to the contrary.
16 Q. Yeah. Is that the control unit enclosure,
17 35?
18 MR. SCOTT: Objection. Form.
19 BY MR. EVERTON:
20 Q. So if you go to -- let's just go real quick
21 to --
22 A. Sure.
23 Q. -- Column 5, line, about, 13.
24 Do you see there where it says "control
25 unit" --

A. "Control unit enclosure."
Q. 35?
A. Okay. Yes.
Q. So you agree that item number 35 is a control unit enclosure; right?
A. It's an enclosure for a control unit, yes.
Q. Now, if we go to Figure 4 of Palmer, this is an exploded view of the control unit enclosure 35 as shown here in Figure 4; is that correct?
A. It appears to be, yes.
Q. Now, that's -- we'll look at Palmer at Column 8, line 54.
If you could read those two sentences.
A. Sure. So Column 8, line 54: Also situated within the control unit enclosure 35 are a pump -- are the pump means, generally designed -- designated 18 in Figure 1. In accordance with the invention, the pump means 18 comprises a peristaltic pump assembly 102 referring to Figure 6, the peristatic pump assembly 102 comprises a pump housing 104 to which a rotor 106 is rotatably mounted by a shaft 108.
Q. Here Palmer explains that the peristaltic pump is located within the control unit enclosure 35; right?

A. Yes.
Q. Now let's look at Palmer Column 9, lines 1 through 6, that first paragraph.
It says: "A length of tubing 124, comprising a part of the second tubing means 30, has one end connected to the outlet port 24 of the selector valve means 20 and its other end connected to the inlet fitting 118 of peristaltic pump 102 so that the silicone pump tubing 116 comprises a part of the second tubing means 30."
Do you see that? Do you see that?
A. I do see that.
Q. So it talks about a length of tubing 124 that is part of the second tubing means; right?
A. Yes. That's what it says.
Q. And one end of that tubing is connected to the inlet fitting 118 of the peristaltic pump 102; right?
A. What figure are you referring to?
Q. So let's go -- I think Figure 1.
So one end of the tubing is connected to inlet fitting 118. Is that in Figure 1? Oh, maybe it's not in Figure 1.
A. No, I don't see 118 in Figure 1.
Q. Sorry, Figure 4. Let's see here.

1 A. This is a pictorial diagram, not a
2 schematic diagram. Figure 4, that is.
3 So what are you asking?
4 Q. So actually if we go back to that language
5 in Column 9, I'm asking about that language
6 specifically. So Column 9, first paragraph at the
7 top, it says, the one end of that tubing, the length
8 of tubing 124.
9 A. Okay. Let's find that on the pictorial.
10 Q. Is -- and so I just want to look at this
11 language first before we go to the figures.
12 A. Okay.
13 Q. So according to this language, one end of
14 that tubing 124 is connected to the inlet fitting
15 118.
16 That's what it says; right, when it says
17 "its other end connected to the inlet fitting 118"?
18 A. Yes.
19 Q. "Of the peristaltic pump 102."
20 A. That's what it says, yes.
21 So this is the pump. I'm not seeing 118.
22 Q. Yeah, I don't know that the figure shows --
23 A. The valve 120. This is the valve.
24 Q. Oh, 118 is in Figure 6.
25 A. But isn't Column 4 talking about

1 Figure 4 -- or, I mean, Column 9 talking about
2 Figure 4? Yeah.
3 Q. Right. But it may not have that detail of
4 the peristaltic pump in Figure 6.
5 A. Okay. All right.
6 Q. So you can see what 118 is on the pump?
7 A. Yes, I see that.
8 Q. Okay. So then, sorry, going back to my
9 question.
10 A. Yes.
11 Q. One end of that second tubing is connected
12 to the inlet fitting 118 of the peristaltic pump
13 102; right?
14 A. I'm going to -- so let's see. "Valve means
15 20 and its other end."
16 So we have to go to another diagram.
17 Q. And you can actually see it there right on
18 Figure 6. 124 is the second tubing.
19 A. Okay.
20 Q. And one end of that length of tubing 124,
21 which is the second tubing, is connected to the
22 inlet fitting 118 of the peristaltic pump 102;
23 right?
24 A. 124 is connected to 118.
25 Q. As we see with these figures and Figure 1,

1 the handpiece is connected directly to the
2 peristaltic pump in that control unit enclosure 35;
3 right?
4 A. I'm sorry. Repeat that again.
5 Q. Yeah.
6 The handpiece is connected through that
7 tubing directly to the peristaltic pump in the
8 control unit enclosure 35.
9 A. Where are you seeing that language?
10 Q. I was just saying based on those figures we
11 were just looking at in Figure 1, you can see that
12 the handpiece is connected directly to the
13 peristaltic pump in that -- which is in that control
14 unit enclosure 35.
15 A. Mm-hmm. It's connected by 19, and I want
16 to see what they are calling that.
17 Bottom of Column 4.
18 Q. So is there a heating means that goes
19 around the conduit?
20 A. Apparently, yes. That's 19.
21 Okay, yes, the outlet of the peristaltic
22 pump is connected to the handpiece.
23 Q. So the handpiece is connected directly to
24 the peristaltic pump via that tubing; correct?
25 A. Yes, although the tubing doesn't have a

1 particular item number that I can see. Maybe 126.
2 Tubing 126 is connected to the outlet
3 fitting 120 of the pump. Six-foot long -- oh, so
4 they do give a diameter.
5 Yes, Column 9 starting at about 6, 17 down
6 through about 30 it talks about how it's connected.
7 That is the outlet of the peristaltic pump is
8 connected to the handpiece.
9 Q. Okay. Now, let's -- if we can go back to
10 Karasiuk, which is Exhibit 1004.
11 A. Yes.
12 Q. If we go to paragraph 58 of Karasiuk.
13 A. Yes.
14 Q. In the second sentence of that
15 paragraph 58, it says --
16 A. 58 or 59.
17 Q. 58.
18 It says: "A power switch is used to
19 activate the vacuum source, and a vacuum in the
20 range of about 2 to 14 PSI is generally used during
21 a procedure, depending upon the skin condition of
22 the person being treated."
23 Do you see that?
24 A. Yes.
25 Q. In your opinion, is a vacuum pressure in

1 the range of 2 to 14 PSI appropriate for performing
2 the type of skin treatment procedure disclosed in
3 Karasiuk?
4 A. According to the specification, that's what
5 they're calling out. I would have to understand the
6 actual fluidic resistance of the system and where
7 they're measuring the pressure at. Is this being
8 measured at the patient? Is it measured within the
9 system by the pump or by the vacuum source?
10 Like I say, fluidic resistance within the
11 system will cause varying pressures within the
12 system, so it isn't clear that this is a pressure
13 delivered to the patient, necessarily. This talks
14 about the vacuum source and the range of pressures
15 that it's capable of generating.
16 Q. But you have no reason to believe that this
17 range of 2 to 14 PSI would be inappropriate for
18 performing this type of skin treatment?
19 A. I don't have no reason to believe one way
20 or the other, other than the fact that this patent
21 is in the art, and that's what they're claiming.
22 Q. Would a vacuum pressure greater than 14 PSI
23 be appropriate for this type of skin treatment
24 procedure disclosed in Karasiuk?
25 A. Again, it depends on the fluidic resistance

1 in the system and what materials you're passing.
2 Q. Could there be a vacuum pressure greater
3 than 14 PSI in such a system?
4 MR. SCOTT: Objection. Form.
5 THE WITNESS: Possible, depending on the
6 configuration of the system, the size of the
7 tubings, the lengths of the tubings. Again, it all
8 comes down to fluidic resistance and what's the
9 desired pressure at the patient.
10 BY MR. EVERTON:
11 Q. And would a vacuum pressure less than 2 PSI
12 be appropriate for the type of skin treatment
13 procedure disclosed in Karasiuk?
14 MR. SCOTT: Objection. Form.
15 THE WITNESS: It may be. Again, it depends
16 on what you're trying to accomplish and the fluidic
17 resistance of the system.
18 BY MR. EVERTON:
19 Q. And you don't know the fluidic resistance
20 of the system here in Karasiuk?
21 A. It's silent on that.
22 Q. If we can go back to the Simon declaration,
23 Exhibit 1003.
24 A. Yes.
25 Q. To page 43 paragraph 71, 72.

1 A. Yes.
2 Q. Here, Mr. Simon is shown a combination of
3 Palmer's Figure 1 and Karasiuk's Figure 6; correct?
4 A. That is in Figure 6 of the declaration,
5 yes.
6 Q. It's referred to here as "Modified Figure 6
7 of Karasiuk (annotated)"; correct?
8 A. That is correct.
9 Q. And you have adopted Mr. Simon's opinions
10 with respect to Karasiuk and Palmer as your own;
11 correct?
12 A. Yes, I have.
13 Q. You describe this combination of Karasiuk
14 and Palmer in these paragraphs 71 and 72; correct?
15 A. Yes.
16 Q. And here, you describe selecting certain
17 components from Karasiuk and combining them with
18 certain components from Palmer; right?
19 A. Yes.
20 Q. Now let's go to, in paragraph 71 you say:
21 "It is my opinion that a POSITA would have been
22 motivated to combine Karasiuk and Palmer with a
23 reasonable expectation of success. In the
24 Karasiuk-Palmer combination, Karasiuk's reservoir 70
25 would have been modified based on Palmer's teachings

1 of multiple containers (e.g., Palmer's reservoirs
2 12-1 through 12-6) and selector means (Palmer's
3 selector means 16), an example of which is
4 illustrated in Modified Figure 6 below."
5 A. That is what it says.
6 Q. So here, you describe moving Karasiuk's
7 reservoir 70 and replacing it with Palmer's
8 teachings of multiple containers and selector means;
9 correct?
10 A. Correct.
11 Q. So when you remove Karasiuk's reservoir 70,
12 you replace that with Palmer's reservoirs 121
13 through 126 and the selector means 16; right?
14 A. Yes, along with the associated tubing.
15 Q. Now, let's look at paragraph 72 of the
16 Simon declaration.
17 A. Yes.
18 Q. Could you read this paragraph for us.
19 A. Certainly. 72, paragraph 72: Further,
20 Karasiuk's vacuum source would be used to collect
21 debris and pump the treatment fluids from the
22 multiple containers (e.g., Palmer's fluid
23 containers) in the combination. Instead of being
24 connected to a single reservoir 70, Karasiuk's
25 tube 72 would replace Palmer's second tube means 30

1 or would be connected to the second tubing means 30
2 or an output from the multiple fluid containers
3 (e.g., Palmer's output 24) to achieve the benefits
4 that flow from selection of different treatment
5 solutions. In the resulting system, the vacuum
6 source serves two functions simultaneously:
7 Number one, pumping the treatment solution; and
8 Number two, removing waste/debris, as described in
9 Karasiuk," which is Eunsung 1004 at paragraph 20.
10 Q. Here, you explain that Karasiuk's vacuum
11 source is used in the Karasiuk-Palmer combination;
12 correct?
13 A. Yes.
14 Q. Why are you proposing to use Karasiuk's
15 vacuum source in this combination?
16 A. Well, the reason we selected Karasiuk in
17 the first place is it draws -- by vacuum on the
18 collector's side, it draws material from the supply
19 side.
20 Q. So Karasiuk's vacuum source is on
21 the downstream side of the handle; correct?
22 A. On the collector debris side, yes.
23 Q. And Palmer's solution reservoirs 12-1
24 through 12-6 are on the upstream side of the handle;
25 correct?

A. Yes.
Q. And Palmer's liquid solution coupling and selector means 16 is on the upstream side of the handle; correct?
A. Yes, it is.
Q. In this Karasiuk-Palmer combination, the upstream side of the handle does not have a vacuum or a pump; correct?
A. You keep saying "upstream," but I don't use that term, so I -- I say supply side.
Q. Okay.
A. Okay. Do we agree on that?
Q. Yeah, supply side.
A. Okay.
Q. So supply side would be from the handpiece to the solution containers, right, reservoirs.
A. Well, from the solution containers to the handpiece in the direction of flow.
Q. Okay. That's what I've been referring to.
A. Yeah, okay.
Q. Upstream to the handpiece.
A. All right.
Q. So let me redo my question.
A. Yes.
Q. So in this Karasiuk-Palmer combination, the

upstream side -- or the supply side, as you call it -- of the handle does not have a vacuum or a pump; correct?

A. It does not have a vacuum source or a pump source, but in contact with the skin, it would have a vacuum within that lumen, which is 14 and 30 of this Figure 6 modified, or annotated.

Q. So when contacting the skin, that upstream side would be affected by the vacuum source, Karasiuk's vacuum source 40, but that would be the only vacuum source affecting the system; correct?

A. Yes. 40 is the vacuum source.

Q. So in this proposed combination of features from Karasiuk and Palmer, you have removed Palmer's peristaltic pump; correct?

A. Yes.

Q. Why have you removed Palmer's peristaltic pump in this proposed combination?

A. Well, in Palmer, they talked about producing jets and controlling the flow on the pressures delivered to the handpiece. In this particular combination of system, all that is controlled by the vacuum source once it's -- the handpiece is connected to the scanner in contact with the skin.

1 Q. So Palmer's peristaltic pump is not
2 necessary; is that correct?
3 A. In this configuration, no.
4 Q. And the '287 patent claims recite a vacuum
5 source. So are you using Karasiuk's vacuum source
6 because the claims recite a vacuum source?
7 MR. SCOTT: Objection. Form.
8 THE WITNESS: Not because, but Karasiuk
9 does cite a vacuum source, and the subject matter of
10 the patent, '287 patent, requires a vacuum source.
11 BY MR. EVERTON:
12 Q. And in this combination, could you have
13 used Palmer's peristaltic pump instead of Karasiuk's
14 vacuum source 40?
15 A. No. I don't believe you'd get the same
16 effect.
17 Q. How does Karasiuk's -- in this -- let me
18 start over.
19 In this combination of modified --
20 A. Let me back up --
21 Q. Yeah, go ahead.
22 A. -- on my last statement.
23 Your question was, could you use the
24 peristaltic pump of Palmer in the Karasiuk modified
25 configuration of Figure 6? Was that your question?

1 Q. Yes, instead of using Karasiuk's vacuum
2 source.
3 A. Oh. That's why I wanted to come back and
4 correct the record.
5 Not in the position that it's in in Palmer.
6 So if you can create a vacuum with a peristaltic
7 pump by running at a certain speed, it's going to
8 create a suction. So it could be a vacuum source if
9 it were placed in place of Karasiuk's vacuum source.
10 So the peristaltic pump is a specific kind
11 of pump that could create a vacuum.
12 Q. So is there a reason why you used
13 Karasiuk's vacuum source instead of the peristaltic
14 pump?
15 A. Well, it would have required me to move one
16 more item and another substitution. Figure 6 is
17 probably the simplest annotation of the combined
18 systems.
19 Q. How does Karasiuk's vacuum source draw
20 fluid from Palmer's solution reservoirs in this
21 combination?
22 A. So let me get -- let me restate the
23 question so I understand it, make sure I understand
24 it.
25 How does Karasiuk's vacuum source draw

1 fluids from Palmer's multi-sources, solution
2 reservoirs. That was your question?
3 Q. Yes.
4 A. Again, so a vacuum is created in the system
5 by the vacuum source of Karasiuk and is applied to
6 the handpiece. When the handpiece comes in contact
7 with the skin, the vacuum is transferred to line 14,
8 or communicated through line 14, up to the Palmer's
9 selector. And then depending on which solution is
10 selected, it'll draw it out of the solution
11 reservoir.
12 Q. So this only works if the handpiece is
13 contacting the skin; is that correct?
14 A. Yes, just like the '287 patent.
15 Q. So Karasiuk's vacuum source would need to
16 draw vacuum pressure through several different
17 components to reach the solution reservoirs;
18 correct?
19 A. In this particular configuration there's a
20 filtering line and a collection reservoir, yes.
21 Q. So Karasiuk's vacuum source would have to
22 draw vacuum pressure through the filter 60 and the
23 collection reservoir 50; correct?
24 A. Yes.
25 Q. And Karasiuk's vacuum source would also

1 need to draw the pressure through the handle itself,
2 correct, handle 10?
3 A. Yes. When in contact with the skin.
4 Q. And then the vacuum source would also need
5 to draw vacuum pressure through lines 44, 42, and
6 14; correct?
7 A. Depending on which one's selected, yes.
8 Q. Then it would also have to draw vacuum
9 pressure through the selector valve means?
10 A. 16, yes.
11 Q. And you would agree there would be a drop
12 in pressure across each of these components;
13 correct?
14 A. Potentially, depending on how the system's
15 designed, what restrictions would be in the line. A
16 person of skill in the art would know how to size
17 these lumens and the selector switch and all of that
18 to appropriately accommodate whatever material,
19 treatment material or fluid that you're trying to
20 pass.
21 Q. Right. But there would be some sort of
22 drop in pressure across these components; correct?
23 A. That's basic physics, yes.
24 MR. EVERTON: All right. Can we take a
25 break? Off the record.

(Recess.)

MR. EVERTON: Yes. No further questions, so I pass the witness.

MR. SCOTT: Okay. No questions from Aesthetic Management Partners.

MR. FERNANDEZ: And no questions from Sinclair.

MR. EVERTON: Great. Thank you very much.

THE WITNESS: No answers from Hal Walbrink.

(Deposition concluded at 2:13 p.m.)

THE STENOGRAPHER: Rough or expedite?

MR. SCOTT: Let me shoot an e-mail because I honestly don't know. I should have asked that beforehand.

MR. FERNANDEZ: I think we typically do expedite. I don't know if you're comfortable with that.

THE STENOGRAPHER: So officially, yes, expedite, no rough draft? Or any combination of those?

MR. FERNANDEZ: We usually do expedite. That's fine.

MR. SCOTT: We can expedite, yeah.

MR. FERNANDEZ: Yeah, that sounds good.

(Deposition concluded at 2:16 p.m.)

DECLARATION UNDER PENALTY OF PERJURY

I hereby declare under penalty of perjury that the foregoing is my deposition under oath; that I have read same; and that I have made the corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this day of , 2025.

_____
HAROLD WALBRINK

1 COUNTY OF LOS ANGELES,)
)
2 STATE OF CALIFORNIA,)

3 I, Cody R. Knacke, Registered Diplomate Reporter, Certified Shorthand Reporter in and for
4 the State of California, License No. 13691, do hereby certify:
5 That HAROLD WALBRINK, the witness whose deposition is hereinbefore set forth, was duly
6 sworn by me before the commencement of such deposition and that such deposition was taken
7 before me and is a true record of the testimony given by such witness.
8 I further certify that the adverse party, HYDRAFACIAL LLC, was represented by counsel at the
9 deposition.
10 I further certify that the deposition of HAROLD WALBRINK, occurred at the offices of Morgan, Lewis & Bockius LLP 600 Anton Boulevard, Suite 1800
11 Costa Mesa, California 92626-7653 on Wednesday, July 30, 2025 from 9:05 a.m. to 2:16 p.m.
12 I further certify that I am not related to any of the parties to this action by blood or
13 marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way
14 interested, financially or otherwise, in the outcome of this matter.
15 In witness whereof, I have hereunto set my hand this day: August 4, 2025.
16
17
18 _____
19 CODY R. KNACKE, RDR, CSR No. 13691
20
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