# Transcript of Lance Rake

**Date:** August 1, 2025
**Case:** Chongqing Qiulong Tech., et al. -v- Tanli Power Tech., et al.

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CHONGQING QIULONG TECHNOLOGY CORPORATION LIMITED, DBA SURRON,
Plaintiff,
-vs-
TANLI POWER TECHNOLOGY (CHONGQING) CO., LTD. And TALARIA POWER TECH (HONGKONG) CO., LTD.,
Defendants.
No. 1:23-cv-00442-RP

REMOTE VIDEO RECORDED EXAMINATION
OF LANCE RAKE
TAKEN ON
FRIDAY, AUGUST 1, 2025

CERTIFIED STENOGRAPHER:
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JOB NO.: 594956

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REMOTE VIDEO RECORDED
EXAMINATION of LANCE RAKE, taken before JESSICA R. WAACK, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Registered Diplomate Reporter, California Certified Realtime Reporter, New Jersey Certified Court Reporter (License No. 30XI008238700); Texas Certified Shorthand Reporter (License No. 11958); Washington State Certified Court Reporter (License No. 21007264); California Certified Shorthand Reporter (License No. 14420); New York Association Certified Reporter, New York Realtime Court Reporter and Notary Public of Washington, D.C. and the States of New York, Pennsylvania, Delaware, Maryland and Virginia, held remotely via a videoconference platform, on Friday, August 1, 2025, commencing at 9:02 a.m. CDT and concluding at 5:22 p.m. CDT.

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JOE DELMAN, expert witness

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None

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** All exhibits were attached to the original transcript **

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between counsel no party to the litigation will object to the remote deposition on the grounds that the certified stenographer may not have the legal authority to swear in the witness.

FURTHER STIPULATED AND AGREED that all parties are aware the certified stenographer is not physically present in the deposition room with the witness and will be administering the oath and reporting this deposition remotely.

FURTHER STIPULATED AND AGREED this transcript and all testimony will have the same force and effect as if everyone was present in person in the deposition room.

FURTHER STIPULATED AND AGREED all parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

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REMOTE PROCEEDINGS
August 1, 2025, 9:02 a.m.
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THE VIDEOGRAPHER: Here begins Media Number 1 in the videotaped deposition of Lance Rake in the matter of -- I'm sorry, Counsel. You're going to have to tell me how to pronounce this. In the case...
ATTORNEY MAAS: I think it's Chongqing Qiulong vs. Tanli and Talaria.
THE VIDEOGRAPHER: Thank you.
In the United States District Court for the Western District of Texas, Austin Division, Case Number 1-23-CV-00442-RP.
Today's date is August 1, 2025. The time on the video monitor is 9:03 a.m. Central Standard Time [sic].
The remote videographer today is Micah Hardin representing Planet Depos.
All parties of this deposition are attending remotely.

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Would counsel please voice identify themselves and state whom they represent.
ATTORNEY MAAS: Good morning. This is Eric Maas from Perkins Coie LLP on behalf of Defendants Tanli and Talaria.
I'm joined today by defense expert witness Joel Delman.
ATTORNEY LYNCH: Good morning. This is Kathleen Lynch on behalf of Plaintiff from the law firm of Benesch Law, and with me on the call is my co-counsel Mr. Sean Li.
THE VIDEOGRAPHER: The court reporter today is Jessie Waack representing Planet Depos.
The witness will now be sworn.
*****
LANCE RAKE, sworn
on oath and/or affirmed, called as a witness herein, was examined and testified as follows:
*****
///

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EXAMINATION
BY ATTORNEY MAAS:
Q. Good morning, Mr. Rake.
**A. Good morning.**
Q. How many times have you been deposed before?
**A. I don't know exactly. I'm going to -- approximately 12.**
Q. Would you please describe your educational background.
**A. I have an undergraduate degree in industrial design in the University of Kansas in 1974. I've got a master's degree from North Carolina State that was -- that was a master of product design. And that was in 1982.**
Q. Any other degrees or licenses you received over the years that you believe relate to your analysis in this case?
**A. Not degrees, per se. Licenses, I did -- I don't know if it was officially a license. I think it was.**
**I did a workshop on design patent -- becoming a design patent expert. I don't know when that was. It might have**

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**been 10 or 12 years ago. And I -- that was, like, an IDSA sponsored workshop.**
Q. Why did you -- why did you take that workshop on becoming a design patent expert?
**A. I was interested in -- one of the graduates from the University of Kansas, the alum that kept coming back a lot was a guy named Cooper Woodring. He's recently deceased. But he was one of the kind of early almost pioneers, you could say, in this design patent expert stuff.**
**And he had done it. I talked to him about it. And, I don't know. After -- after some conversation here in Lawrence, I thought that it might be something that I should try.**
ATTORNEY LYNCH: Counsel, sorry to interrupt, but we did not receive a realtime link. Could you make sure that we can get that?
ATTORNEY MAAS: Sure. Madam Court Reporter, can you send that in the chat?
THE STENOGRAPHER: Can we go off

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the record so I can?
ATTORNEY MAAS: Sure.
THE VIDEOGRAPHER: Stand by.
Going off the video record. The time is 9:07 a.m.
(Whereupon, a recess was taken at 9:07 a.m.)
THE VIDEOGRAPHER: We are back on the video record. The time is 9:09 a.m.
BY ATTORNEY MAAS:
Q. Welcome back, Mr. Rake.
Before taking that program on becoming a design patent expert, had you served as an expert witness before?
**A. I had. I don't remember the specifics again. But I think there were a couple of product liability cases and possibly one that was in design patent.**
**I was -- I get contacted once in a while as a professor of industrial design. People would look for experts that would come, not really, you know, looking for experience, but looking for credentials. So I would -- I would**

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**available sometimes.**
**But that was pretty rare.**
Q. And then after you took this becoming a design patent expert course, how many times have you served as an expert in a design patent infringement lawsuit?
**A. Again, I don't know specifically, but it -- probably 35 or 40.**
Q. Who is your current employer?
**A. University of Kansas.**
Q. What do you do for the University of Kansas?
**A. I am a full professor of industrial design, yeah. And all the duties that that involves, yes.**
Q. What courses do you teach as a professor of industrial design?
**A. I always teach a studio in -- it's almost always undergraduate students that I teach. And I almost -- I will always teach a studio that is -- you know, say, the third year or fourth year or second year studio that will be basic industrial design where I give projects that are usually consumer products of some**

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**type for -- for my students to work on.**
**Typically 15 to 20 students in a studio. And the projects will range from soft goods kind of design to toys to hard goods. We try -- we try to have a variety of projects that they work on. So there's always that.**
**And then there's -- there's other ones. Like, sometimes -- it kind of depends on need, and it sometimes depends on interests.**
**For instance, in the fall, I'm teaching a class that I've taught before that is a design class where the students design and build electric guitars. And they do that -- it's a digital fabrication class. So I teach it so they can build 3D models of a guitar. Then they can CNC out parts. They can 3D print parts.**
**They can -- yeah, 3D print, CNC and probably laser cutting some parts too. So it's all, like, digital fabrication.**
**I've taught -- I teach footwear design almost every semester -- or almost every year. Sometimes every semester. I**

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**taught last spring. I taught a footwear design class.**
**There's -- but it depends. I've done classes where I teach students how to using VR. I've done 3D modeling. I've taught materials and processes, drawing classes. There's kind of a variety.**
**And I say that one or two of those other kind of classes I'll be teaching along with my studio class.**
Q. At the University of Kansas, have you ever taught a class on the design of an electric motorbike?
**A. I've -- I've taught a class where we -- at the University of Kansas, I've taught a class where we built electrical bicycles, but, yeah, like, a pedal-assist electric bike.**
Q. Would you say a pedal-assist electric bike is different from an electric motorbike?
**A. Yeah. It's different. But largely in scale. A lot of the features are similar, especially if you take, like, an electric mountain bike, for instance.**

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**Electric mountain bike can be quite similar to a lightweight electric motorcycle. It's less powerful typically.**

**But the terrain that you're on, a lot of -- a lot of the handling skills and stuff like that are very similar. A lot of the construction materials used in fabrication are similar. So not the same, but there's a lot of similarities.**

Q. How would you define the word "bicycle"?

**A. This is interesting. I've designed a lot of bicycles. I guess -- I guess, you know, you're literally looking at -- from the definition, it would be two wheels.**

**But I would think just from my own use and I think from a lot of common understanding of what a bicycle is, it doesn't have to be a two-wheeler. It could be a three-wheeler. But it's typically a pedal-powered or pedal-assisted product.**

**But basically it's a two-wheel -- it's a two-wheel vehicle. So I think it leaves open other possibilities.**

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Q. What do those other possibilities include?

**A. I'm thinking if you have two-wheeled vehicles -- I was looking for a while into -- into a possibility of doing a vehicle like a travel on unused rails, rail system that would be like a -- like a sail thing, but it had two wheels that were engaged with a track. I thought it would be interesting. It never really got very far from being off the paper.**

**But when I was teaching mobility design in India, one of the projects I gave there was a wind-powered -- we called it a land yacht. So it was -- the power strictly was from sail. And they could go really fast on the right sort of surfaces.**

**But they were all, like -- more like bicycle-type wheels, very lightweight wheels. Sometimes, like, two wheels with an outrigger. Sometimes a three-wheeler. I can't remember if any of them were strictly two wheels. I don't remember that.**

**But that was a pretty fun project.**

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Q. So in your view, a bicycle encompasses a vehicle with, I guess, two or three wheels and is powered by something?

**A. Yeah, I mean, it seems like the -- like, if you wanted to really sort of -- sort of precise with it, it would be a bicycle. I think it would be, like, a two-wheeled vehicle, and then power could -- yeah, maybe they -- maybe they're just gravity powered rolling down hills and stuff.**

Q. Okay. What about a motorcycle? How would you define the term "motorcycle"?

**A. Again, I think it would just -- looking at what the name would imply, there's a motor involved. So I think the power -- the idea was -- was having a motor that would power this cycle. And probably, again, two wheel or three wheel.**

**But I don't think that's implied in the name. But the motor is. So power was coming from a motor.**

Q. So just to bring it all back together, what would your definition of a

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motorcycle be?

**A. It would have to -- you know, when you're looking at transportation, vehicle powered -- powered by a motor.**

Q. A vehicle powered by a motor?

**A. Yeah, that's not very accurate, though. I'm not happy with it. So you kind of -- kind of got me on the spot on that one.**

Q. Do you -- are you familiar with the term "dirt bike"?

**A. Yes.**

Q. Would off-road -- strike that.

Would a motorcycle intended for off-road use seem to be a fair definition of the term "dirt bike"?

**A. Could you say that again, please?**

Q. Yeah.

Would a motorcycle intended for off-road use be a fair definition of a dirt bike?

**A. I think a dirt bike might be a subcategory of the motorcycle intended for off-road use.**

Q. What do you mean by that?

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**A. I think there are -- there are vehicles that are intended -- motorized vehicles that are intended for off-road use that could be, like, 4X4s and that kind of stuff that are, like, work vehicles that are used on farms and other things like that.**

**I think it doesn't have to be -- like, I look at dirt bike as more of a sport category where -- yeah, where there's kind of that -- yeah, it's more of a sport thing than, say, a work vehicle than even just a -- like a casual recreational vehicle.**

**Maybe I want to just go travel slow and light and quiet in the woods, and that might be -- that might be a different sort of vehicle than what a dirt bike is.**

Q. You mentioned --

**A. Again, that's just me. I'm not -- I'm not in the official dirt bike definition there. Just from my experience.**

Q. You said -- you mentioned a 4x4.

Would you consider a 4x4 a motorcycle?

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**A. No. It's a vehicle, motor-powered vehicle. I can't remember what our original -- or what your original thing was, if that was a...**

Q. Why is a 4x4 not a motorcycle?

**A. You know, they could be fairly closely related. But when you're talking about a four-wheel vehicle, I think in most people's minds that's not a motorcycle. It's something -- it's something else.**

**But I think, again, it's -- these vehicles can be very closely related.**

Q. What about in your mind, Mr. Rake? Is a 4x4 a motorcycle?

**A. I probably wouldn't -- just offhand, I probably wouldn't call it that. But I've never really thought about that.**

Q. What is an electric motorcycle?

**A. I think an electric motorcycle is gonna be probably mostly two-, maybe three-wheel vehicle that is -- like we would say, motorcycle is a motor-powered cycle. An electric motorcycle would be an electric motor-powered cycle.**

Q. In your mind, is there a difference between an electric motorcycle and an electric bicycle?

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**A. Yeah. In my mind, yes.**

Q. How? How are they different?

**A. I always -- I think of a bicycle as being -- of having that pedal, either pedal-powered or pedal-assisted thing. So we got pedals involved, so there's also the human engagement.**

Q. Anything else?

**A. Well, there could be. I mean, it kind of depends on the scale of what we're talking about for a motorcycle, if it's a street-capable thing or a smaller, lighter thing.**

**But a lightweight off-road electric motorcycle would be different from an e-bike even though, you know, the scale gets closer.**

Q. You just used the term "e-bike."

Would you please describe what you mean by that term "e-bike"?

**A. I used the word "e-bike" to describe electric bicycles. So, yeah.**

Q. And it's your testimony today that, in your opinion, e-bikes are different from lightweight off-road electric motorcycles?

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**A. Yeah. They're different, but they're similar, yeah. But an e-bike has pedals and can be human powered, yeah, or human assisted.**

Q. Is that the only difference that comes to mind between those two concepts?

**A. Well, if you're trying to compare designs, I think it would be -- like, you would have to know the category, what their intended use was. But I'm assuming that the e-bike we're talking about is something more like an e-mountain bike.**

**And that would -- that would come closer to, you know, comparing to the lightweight electric motorcycle, off-road motorcycle. But, you know, there's still that difference in pedal power or not.**

Q. Using your definition of the term "motorcycle," have you ever designed a motorcycle?

**A. Yes. I was -- I've been part of a team that designed a motorcycle. But,**

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**yeah, and I did a lot of the design work, yes.**

Q. What team was that?

**A. I was working at Stan Johnson Design in Brookfield, Wisconsin.**

Q. What year was this approximately?

**A. Approximately, like, late '70s, yeah.**

Q. What was your role on this team working on the design of a motorcycle?

**A. Well, the project was for Harley-Davidson. Their interest at the time -- which is a Milwaukee company, and their design office was there.**

**The project was to design -- design the -- design a motorcycle that would compete with Japanese motorcycles that were in the kind of municipal market. So, like, the motorcycles that are purchased by police departments or something.**

**And the regular Harley-Davidsons were not -- were not competing with them. So they were looking to change their design from a -- from a two-cylinder to a**

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**four-cylinder motorcycle. And they had -- I believe at the time, they had, like -- you know, it was some engineering out of -- out of Germany to work on the engine.**

**But the people at Harley didn't like the idea of putting a radiator in the front of the bike. They just thought it was ugly. So our firm was proposing different designs for the bike to kind of -- we'll say hide that radiator in different places in the bike.**

**So that involved designing it so you could -- you could move that -- move that thing, but also prototyping it and testing it. So there were three prototypes that were -- excuse me, designed and prototyped, and I think ultimately wind-tunnel tested to see if they could actually cool a radiator.**

**So they were pretty -- you know, so there was only maybe four of us that were working there on all three of these prototypes, and I think, you know, we were sketching them. We were mocking them up. We ultimately prototyped them.**

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**It was -- it was definitely a collaborative effort, and I think we were all engaged in everything from -- from sketching to -- to model building.**

Q. Did the work involve the design of the entire motorbike, or was it just the radiator portion of the motorcycle?

**A. Well, it was -- it was the entire motor -- it was the entire bike. Because, say, some of the -- some of the ideas were, say, put the radiator underneath the seat.**

**So if you were going to do that, where were you going to draw in air? Where are you going to exhaust air? And then just working on all throughout from a -- from a fabrication standpoint, from a -- yeah.**

**You know, just trying to get -- trying to get that to work out. But by putting it in different places on the bike, we weren't really redesigning the radiator so much. We had to redesign the bike to put the radiator someplace else.**

Q. What aspects -- what aspects of the motorcycle design were -- were your

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responsibility?

**A. I did some of all of that. I definitely was, you know, sketching, drawing up parts, building -- building pieces of body work and fairing. And then -- and then -- yeah, getting involved in working with the Harley-Davidson people on what their needs were and what they wanted to modify.**

**And so I think I was in meetings. I was drawing. I was building. But I wasn't responsible for just one part of that.**

Q. How large was the team you were working on at the time?

**A. I think four.**

Q. And what was --

**A. Could have been another person or two. But Stan Johnson, who was the principal.**

Q. What was your job title at this design company?

**A. I don't -- I don't remember. I don't know if I was a senior designer. I'd been out of school four, five -- maybe four**

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**years, five years.**
Q. Do you know if any of the designs you worked on -- or any of the designs that you worked on, did those become end products that Harley-Davidson sold?
**A. Well, in the end -- in the end, that -- that model became the V-Rod. But much later. Like, I think it would -- you know, that might -- it got kind of -- it got kind of shelved for a while for marketing reasons.**
**I think what -- the guy that was the head of design at Harley-Davidson was Willie G. Davidson at the time. He was kind of a legend in this motorcycle world.**
**And he kind of made the judgment that, yeah, this is a -- this is a cool looking bike and it performs the way we want, but I don't think it's a Harley-Davidson. It's four cylinder, it doesn't sound the same. I don't think our -- our market is ready for it.**
**But eventually the market kind of changed, you know. By the -- by the '90s, certainly late '80s, '90, the kind of**

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**people that bought Harley-Davidsons were different and maybe a little -- you know, and a little more open to some of the changes that this was.**
**But, you know, he -- I remember him, you know, having, you know, discussions about whether the market would be ready for this bike.**
**But it didn't have really anything -- our design I think was fine. To say there were three options -- I don't think we ever -- I never heard that there was one of them chosen or not chosen.**
Q. Sitting here today, do you take credit for the design of the Harley-Davidson V-Rod?
**A. No. No, not at all.**
Q. Since this work in the late '70s, have you designed any more motorcycles?
**A. No. I can't -- I think it was also with Stan Johnson -- and surprisingly close product, although it doesn't sound like it, but designed some snowmobiles for Polaris back then.**
**And in a weird way, a Polaris**

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**snowmobile or any kind of snowmobile, but especially the kind that I was working on is a lot -- a lot like a -- a lot like what the lightweight electric motorcycle might be.**
**They were -- they were meant for trail riding. They were -- they were kind of fun, fast, exhilarating, sporty. Different, of course, because you're on the snow. But you're on pretty similar trails.**
**And I think -- probably a really similar -- similar -- in some ways, or at least on the sport machines that I was working on, I think they would be a similar sort of person that would like to ride them.**
**But I've done -- but I haven't done motorcycles, per se, but I've done a lot of bicycles and e-bikes since then.**
Q. All right. So break that down a little bit. You mentioned the Polaris snowmobile.
Approximately what timeframe were you working on the --
**A. It was similar. It was at Stan**

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**Johnson still.**
Q. Okay. So would it be fair to say late '70s?
**A. Yeah.**
Q. And what was the scope of your work on the design of the Polaris snowmobile?
**A. It would be quite similar. I would either go to Roseau, Minnesota, where their plant was or we would have sometimes chassis -- a chassis would be sent to -- to where our shop was, and I would -- you know, they would have, like, a motor and a working -- a working track.**
**But they wouldn't have, like, the seating. They wouldn't have, like, the shape of the tank. They wouldn't have what all the fairing and stuff would look like.**
**So -- and I think I did -- I don't remember even Stan working on these so much. I think I did most of the design work on that. That would be, like, drawing them up. Usually mocking them up and building a fiberglass fairing so you could -- you could put together and test**

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**your design on them.**
**So there would be help in the shop on building some stuff. But I think from a design standpoint, I think it was mostly me.**
Q. So do you take credit for the design of the Polaris snowmobile?
**A. Well, of -- of a certain model at the time. I mean, there was -- there were -- they had several models. And the one I was working on was a specific type of cross-country trail-type machine. So it was kind of meant for racing.**
Q. Do you remember the name of that snowmobile?
**A. I don't.**
Q. And then since your work for Stan Johnson, would you say that you have worked on the design of a motorcycle?
**A. I don't think so. Like, yeah, some of these things that I mentioned earlier that get similar, like I worked on a 4x4, at least a little bit. And bicycles and e-bikes. But not on a motorcycle.**
Q. Other than the work that we've

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discussed so far, what of your professional experience do you feel applies to this case?
**A. I think the design of e-bikes would be the most relevant. But some bicycles too.**
Q. Other than the design of e-bikes and the design of some bicycles, is there anything else that comes to mind as professional experience that you've relied upon or you feel is relevant to this case?
**A. I don't -- it's really hard. There are so many things that are involved in, I'll say broadly transportation design. When you're doing -- even -- even some of the heavy equipment that I've worked on, I think, like, the designing, like, business jet -- mostly business jet interiors, the cockpits and stuff.**
**I think the cockpit gets -- I don't know, it just reminds me a lot of this type of work. I think transportation designers are pretty fluid about, you know, being able to work on different types of vehicles and bringing their general sense**

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**of transportation to it.**
**I don't think you have to, you know, be a -- be that focused or have -- just kind of singular experience in -- in, you know, lightweight off-road electric motorcycles to have relevant experience.**
Q. So we've discussed -- we've discussed your work at University of Kansas, your work at Stan Johnson. You've mentioned e-bikes and bicycle design and now aircraft interior and aircraft cockpit design and then some heavy machinery design.
Is there anything else that comes to mind that -- in your professional experience that you feel you applied to this case?
**A. Yeah, I think some of what, you know, the projects that I've worked on with students, and I mentioned the ones with the students at IIT in India I thought was pretty relevant when I was teaching transportation design -- or they call it mobility design there.**
**I taught graduate students at a**

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**school in Sweden where we were working on e-bikes and folding bikes and, you know, like, kind of -- just kind of different ways of looking at cycling. I think sometimes the teaching experience in -- in these related things are important.**
**I did -- working on cargo bike design, I taught a class in Melbourne, Australia, where, again, the students would -- were designing and prototyping cargo bikes that could be motorized.**
**There's also -- you know, and there's -- yeah. So I think some of that experience is also just, you know, important to me, and I think it helps -- yeah, I think it helps my -- I don't know. I think it helps broaden the possibilities in my mind or when I'm working as a -- as a designer on -- on, say, an e-bike. I'm sorry.**
Q. Have you ever designed what you would call an electric motorcycle?
**A. No.**
Q. Have you ever designed what you would call a dirt bike?

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**A. I don't think so, no.**
Q. When did you stop working at Stan Johnson or for Stan Johnson? Was it a place or was it a person?
**A. It's a place -- well, it's a -- it's a person that named his firm after himself.**
Q. When did you stop working for Stan Johnson?
**A. Yeah. It had to be -- yeah, it was late '70s, early '80s. I think I went to -- went to work in Milwaukee for another consulting firm, but not very long, maybe a year or something. And then I started teaching.**
Q. Why did you start teaching?
**A. Just an opportunity came. I think one of the -- one of the assistant professors that I learned from at KU became the chair of the industrial design program at Auburn.**
**And they had a -- they had a need for somebody with design experience to come teach. But it was, like, for a short-term thing. I think somebody got sick over the**

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**summer or something. So it was me taking a one-year appointment at Auburn.**
Q. And then you started teaching at the University of Kansas in 1987; is that right?
**A. Yeah. Yes. I had -- I was teaching at Auburn, I think, until '84 or '5, maybe. And then I taught for a couple of years in New Zealand, and then I came here.**
Q. While teaching at the University of Kansas, have you done any product design consulting work?
**A. I have, yes.**
Q. Have you done any product design consulting work directed towards motorcycles?
**A. Not towards motorcycles. I've done a lot of -- a lot of the work that I did do doing business jet interiors, that was during that time. I designed an electric lawnmower, a company called Hustler in Kansas that -- we won an award for something on it.**
**But it was, like, a zero turn**

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**commercial-type lawnmower. That was electric.**
**I -- there I designed a lot of boats for Ranger Boats, mostly bass scale fishing boats. I designed -- there are a couple other boat projects I did including, like, bigger scale yachts, sailing yachts.**
**I think it's -- I think they're all listed on my CV. But I worked for a while -- so there's a company called Infusion Design that's in Kansas that I was a consultant for.**
**So -- so for 15 or 16 years maybe I -- I did work there. So I would come in from -- from where I am here and work for a day or two or three a week. It depends. I would work maybe all summer there as a consultant.**
**But I was full-time teaching here. And part of my teaching is you're supposed to be doing 40 percent of your time doing creative work or research, and there was basically my creative work and research component of my job here.**
**So it worked out pretty nicely**

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**for -- for several years, yeah.**
Q. So is that a yes to my question; none of the consulting work you've done since starting work at the University of Kansas has been -- or product consulting work has been directed towards motorcycles; is that right?
**A. No. I guess I -- you know, I said there's a lot of transportation design involved, but not a motorcycle.**
Q. Are you an engineer?
**A. No.**
Q. In your mind, what's the difference between a designer and an engineer?
**A. Well, I think -- I think sometimes, like, all of these kind of professional definitions and boundaries and stuff, I think the border can get pretty blurry.**
**I think industrial designers -- you know, I think in most people's mind, it was probably a fair place to start is to -- is to say industrial designers are making things look good, and the engineers are**

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**trying to make things work.**
**In -- in reality, most of the people I know that are industrial designers are mechanical enough that they can work with engineers. You know, why work in the same programs that engineers do?**
**I work with engineers. We collaborate with engineers on virtually every project you do. And some of it, you know, working out a simple mechanism or something like that, I'm certainly able to do. I can do all of the engineering for bicycles that I work on.**
**But I think -- but I wouldn't call myself an engineer. And I think some designers are way on the side of, you know, being -- we'll just say sort of artistic, and then some of them are way more kind of nuts and bolts, you know, and like to solve a lot of the problems that are mechanical.**
**But, you know, we -- we tend to be problem solvers of kind of different things. But most of the time you put industrial designers on the -- on the styling side and engineers on the**

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**mechanical side -- or electrical side. But the kind of operational side.**
Q. Do you have any experience with electrical engineering?
**A. Not electrical engineering, no.**
Q. Are you familiar with the company Trek Bicycles?
**A. Yes.**
Q. You list Trek Bicycles under your list of professional design -- design projects/client list in Exhibit 1 to your report, don't you?
**A. Yes.**
Q. What design work did you do for Trek Bicycles?
**A. That was, like, the first job I had when I got out of school in Racine, Wisconsin. I don't know if I remember the firm.**
**But Trek, at the time, was changing over their graphics. They used to have a graphic that was, like, a -- it was a T, but it looked a lot like -- the problem they had is that it looked a lot like the graphic logo for -- I want to say**

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**it was, like, for Continental Airlines or something.**
**It was kind of like this multilinear T, and they wanted to change it and move away to a different identity. So the firm, you know, made proposals for new logos for -- for Trek.**
**At the time too, like, they were -- Trek was just a small company. I think in Waterloo, Wisconsin, maybe. Tiny.**
**And they made almost -- the bicycles were almost -- they were beautiful, but they were, like, one by one, not -- not a big production thing like they are now. Much smaller kind of higher end in a way. But it was a graphic project.**
Q. So what was your role on this Trek graphic re-brand project?
**A. I just worked on alternative designs and, you know, like, would draw up a lot of options. And we presented all of them. I don't remember what happened with the project.**
Q. Were you working with examples of physical Trek Bicycles and -- as part of

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your -- part of your work there?
**A. I don't remember if we had their bikes there. I was familiar with their bikes, but I don't remember if we had -- if that was the thing. But our -- our role was really very graphic. I mean, I was working 2D.**
Q. As part of your -- as part of your project, though, the Trek logo was gonna go on the bicycle, right?
**A. Yeah, I mean, it was initially thought of as -- as mostly a head badge. So --**
Q. What's a head badge?
**A. That's the -- that's the -- usually it's, like, a 3D, at the time of them were actually even die-cast and stuff that fit on the head tube on the front of a bike.**
**So there -- that was really a very prominent way of featuring your identity back then. A little less graphic on the tubes and stuff themselves, but really the head badge graphic was important.**

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Q. Why was it important?
**A. Because I think it was primary place that they would show the maker.**
Q. And people would look to that to figure out which maker made the bicycle that they saw?
**A. That -- that and other things. But it was -- you know, that was one place where you would -- you would identify. Most of the time on graphics, you know, on bicycles, you know, the bicycle frames might not change, especially -- especially back at that time, you know, like in the '70s they didn't change very much from year to year.**
**But the colors might change the -- you know, sometimes they'll be -- they'll be other, like, stripes and applied -- applied graphics that might change.**
**But we weren't doing any of the things -- we were really just working on that and how that logo would -- would be. And -- and in the end, I don't think they chose the one that we worked on. But we**

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**were one of the firms that were working on it.**
Q. How long did you spend working on that project?
**A. Probably -- I have -- I really don't know. Not very long.**
Q. What is Hero Bikes?
**A. Hero Bikes is a not-for-profit company in Greensboro, Alabama.**
Q. Have you done consulting work for Hero Bikes?
**A. Yes. They're not active anymore, but like I said, it's a not-for-profit, and I designed -- after visiting the Greensboro -- I saw they had, like, a lot of bamboo that grow -- that grows in and around Greensboro.**
**And I was kind of familiar with the idea of bamboo bikes, but I didn't -- I didn't really like them that much. I thought -- you know, I guess I didn't like the aesthetic.**
**There was something about a bamboo bike that looked kind of like -- I always called them Gilligan's Island bikes.**

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**They kind of looked like that.**
**And when I saw all the bamboo, I thought, you know, what they should do here -- because they were trying to create jobs and training for kids and stuff and -- with this not-for-profit. And they had workshop space.**
**I thought, oh, we should make stuff out of bamboo. Let's try making furniture out of bamboo. Let's make other things out of bamboo. I designed a lot of things.**
**But I also designed a bicycle frame that I thought could be made out of bamboo. But instead of -- instead of doing it like the Gilligan's Island bike, I did it more like a bamboo fly rod.**
**So it was, like, plain down and hexagonal tubes so it could have, you know, more of a finish that was contemporary and maybe even more sort of engineered, more consistent than what a tube of bamboo might be.**
**So -- so I worked on that for a while, and then I came up with some designs**

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**that would -- that would work. And then we kick-started it and produced the Semester Bike. It was, like, a single speed bicycle that was -- yeah, had some of the steel components.**
**I drew everything up. It had the steel parts made by a company in Taiwan. And everything was assembled in Greensboro. And it worked pretty good for a while.**
**But then, like, you know, the person that was running the shop left. Ultimately the person that started Hero left, and it all sort of went under.**
**But for a while I was designing a lot of bikes that they could build and sell through Hero Bikes.**
Q. Approximately what timeframe were you doing this consulting work for Hero Bikes?
**A. I'm going to say, like, 2010 through maybe 2018 or somewhere. I don't know. It was -- in that -- in that era. I think it was around 2010 that I started.**
THE WITNESS: Hey, we've been at this for about an hour. Would it be

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all right to take a quick break?
ATTORNEY MAAS: Yeah, just a couple more questions.
THE WITNESS: All right.
ATTORNEY MAAS: I'll wrap up quickly.
BY ATTORNEY MAAS:
Q. Did you design anything that you would call a motorcycle for Hero Bikes?
**A. No. I designed a couple of e-bikes for them, but not a motorcycle.**
ATTORNEY MAAS: Okay. We can take break now.
THE WITNESS: All right.
THE VIDEOGRAPHER: Stand by.
Going off the record --
THE WITNESS: I'm just thinking five minutes or --
THE STENOGRAPHER: Please wait to go off the record.
THE VIDEOGRAPHER: Going off the video record.
The time is 10:08 a.m.
(Whereupon, a recess was taken at 10:08 a.m.)

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THE VIDEOGRAPHER: We are back on the video record.
The time is 10:15 a.m.
BY ATTORNEY MAAS:
Q. Welcome back from the break, Mr. Rake.
**A. Thank you.**
Q. During the break, did you speak with anyone about the substance of your testimony?
**A. No.**
Q. When were you retained by Surron?
**A. I don't remember. It was probably a year ago. Maybe -- I'm just approximating, if that's close enough.**
Q. What did they ask you to do?
**A. At the time I just -- I think they were working on -- you know, I don't even know what -- what procedure at the time, so -- but they were doing something, and they were just asking -- I didn't -- I didn't write, like, a declaration or report, but just --**
ATTORNEY LYNCH: Mr. Rake --
THE WITNESS: Yes.

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ATTORNEY LYNCH: -- I'm going to interrupt and instruct you not to answer anything that would involve work product privilege.
THE WITNESS: Yeah, yeah, so I -- yeah, so I shouldn't comment.
BY ATTORNEY MAAS:
Q. I mean, what you were asked to do is definitely something you can -- you can answer. That's not -- I don't think that's work product privilege.
ATTORNEY LYNCH: I disagree. I'm going to object and instruct the witness not to answer.
BY ATTORNEY MAAS:
Q. Were you asked by -- were you asked to provide opinions and testimony regarding Surron's complaint for infringement of U.S. Design Patent Number D854,456 by Tanli and Talaria?
**A. I just don't remember specifically. I think it was something -- it was something prior to this. I don't -- I don't know what proceeding it was, like, an IPR-ish thing. I don't remember.**

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Q. By "prior to this," you mean prior to what exactly?
**A. Prior to me being engaged to write an opening report about infringement.**
Q. Okay. So just to be clear, when you were retained about a year ago, it was for something different than your opening report; is that right?
**A. Yes.**
Q. When were you retained for your opening report?
**A. I don't remember. It was the spring. April, maybe.**
Q. How many hours of work did you do for Surron before you were retained to begin work on your opening report?
**A. I don't remember.**
Q. Was it on the border of 10 hours?
**A. I would say that's the ballpark, yeah.**
Q. So between about a year ago and spring of this year when you began work on your opening report, you spent about 10 hours doing work for Surron?
**A. Yeah. That's approximate, but,**

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**yes, something like that.**
Q. What did you do for Surron?
ATTORNEY LYNCH: I'll caution the witness not to reveal any work product privileged information.
But you can answer.
THE WITNESS: I don't -- I don't remember exactly. I know that I was -- I was kind of -- I remember at some point describing the stance of the Surron motor -- motorcycle, how I thought it was kind of -- it was distinctive and reminded me of --
ATTORNEY LYNCH: Mr. Rake, I'm going to remind you not to reveal any work product privileged information.
THE WITNESS: Okay. So it was just -- just about the overall look of the Surron motorcycle.
ATTORNEY MAAS: I'll note I disagree with counsel's objection. This is a testifying expert witness, and this is all fair game for what he should, you know -- what he should be telling us at his deposition.

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BY ATTORNEY MAAS:
Q. But when you -- when did you begin work drafting your opening report?
**A. So I just kind of remember it being in the spring of this year. There was -- yeah.**
Q. Did you personally draft your report?
**A. I did. I worked with -- I collaborated with counsel on --**
ATTORNEY LYNCH: Mr. Rake, I'm going to interrupt you here and object to the extent that this requests information that's covered by work product privilege.
To the extent you can answer without revealing that information, you can go ahead.
THE WITNESS: Yeah, like I say, it was collaborative.
BY ATTORNEY MAAS:
Q. Did you write every paragraph of your report?
ATTORNEY LYNCH: Same objection.
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BY ATTORNEY MAAS:
Q. Do you have an answer, Mr. Rake?
**A. I'm --**
ATTORNEY LYNCH: I'm going to instruct the witness not to answer.
BY ATTORNEY MAAS:
Q. Other than counsel, did anybody provide any input for your report?
**A. No.**
Q. When did you finish work drafting your expert report?
**A. I guess when it was due. It was the end of June or the 1st of July.**
Q. How many hours did you spend on your report?
**A. I don't know exactly, but probably 40 to 50, something in there.**
Q. Who did you talk to at Surron, if anyone, in preparation for your report?
**A. I don't think I spoke directly to anybody there.**
Q. Have you ever spoke directly to anybody at Surron?
**A. I don't believe so.**
Q. You understand you're working

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with the Benesch firm, right?
**A. Yes.**
Q. Have you worked with anyone at the Benesch firm before this case?
**A. I don't think so.**
Q. Have you previously worked with Surron at all before this case?
**A. No.**
Q. You said you've been deposed about 12 times, right?
**A. Yeah. Something like that.**
Q. And that you've been an expert in a design patent case about 30 times.
Do I have that right?
**A. At least, yeah. Maybe something more than that.**
Q. In any of those cases, has anybody ever challenged any of your expert opinions by filing a motion to strike or a motion to exclude or a Daubert motion?
**A. I can -- I can recall one time, yes.**
Q. Was anybody ever successful?
**A. I think -- I think successful striking part of it, not the design stuff,**

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**but there was some other opinions that --**
Q. When was someone --
**A. -- that were not --**
Q. When was someone successful in striking part of your opinions?
**A. It was -- I did a ceiling fan project a couple of years ago, a few years ago. Maybe it was during COVID. Anyway, it was a while ago.**
**And, yeah, I think there was some part of it that was about lost revenues maybe that I just took as sort of a mathematical thing, like, they sold this many units at this money that -- the total was that.**
**I really didn't think it was something that needed maybe to have a proper economist or accountant to do that.**
**But, anyway, they didn't want me to make that opinion. And I also said I thought that the accused products infringed the patent, in my opinion.**
**But that being a legal conclusion, they didn't want me to offer that either. So those are the two -- the**

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**two parts that they wanted to strike and did strike.**
Q. Are you offering any -- do you have -- strike that.
Are you offering any opinion as to economic damages in this case?
**A. No.**
Q. Would you please explain what you understand to be the standard for design patent infringement?
**A. I believe that's in my report. I have a -- I have a copy of my report with me, if that's okay.**
Q. Other than the copy of your report, do you have any other documents in front of you?
**A. I have a copy of the patent. And that's it.**
Q. So other than the copy of your opening report and the patent, you don't have anything else in front of you?
**A. No.**
Q. Okay. So please go ahead and explain what you understand the patent -- the standard for design patent infringement

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to be?
**A. In paragraph 46 of my report, I say, "I understand that the proper standard for establishing design patent infringement is the ordinary observer test. Under the ordinary observer test, design patent infringement can be found if an ordinary observer familiar with the prior art designs would be deceived into believing that the accused product is the same as the patented design."**
Q. What does the word "deceived" mean in that standard to you?
**A. To me, it would mean that the design of the accused product is so similar in design to the design claim in the patent, that an ordinary observer would -- would kind of confuse where it came from and would assume that they were buying one when they were actually purchasing the other.**
Q. Well, hold on. You used the word "confused," right? You just said "confused"? You just used the word "confused," right, Mr. Rake?

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**A. Yeah.**
Q. Wouldn't you agree with me that "deceived" -- it's a more -- more severe word than "confused," right?
**A. It's a different word, but I don't see it as severe.**
Q. Well, you would agree that "deceived" is a different word than "confused," right?
**A. Yes.**
Q. If somebody is confused, that means something different than if somebody is deceived, right?
**A. Yeah, it's not the same. But it depends on what you're talking about, yeah.**
Q. What's your understanding of the term "ordinary observer" legally? We're not -- we're not getting into what it means in this case quite yet, so I'm sorry. I'll ask the question again.
Generally, what do you understand the term "ordinary observer" to mean?
**A. So in my report in paragraph 50, I say, "I also understand that the ordinary observer is assumed to be familiar with the**

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**relevant -- with relevant prior art. Furthermore, the ordinary observer is assumed to be a person who is either a purchaser of or sufficiently interested in the item that displays the patented design."**

Q. Do you have anything to add to that definition?

**A. Yeah. So it -- "I also understand that when applying the ordinary observer test, the observer is assumed to be comparing the accused product to the claimed design. The ordinary -- ordinary observer is not assumed to be comparing the accused product to the patent holder's commercial embodiment of that claimed design."**

Q. Anything else with respect to the term "ordinary observer"?

**A. Not that I can think of right now.**

Q. What's your opinion as to the characteristics of the ordinary observer for this case?

ATTORNEY LYNCH: Object to form.

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THE WITNESS: Well, I think the ordinary observer -- I think there's -- there's -- it's always -- let's see. Kind of -- kind of knowing who this person -- might be the person that's purchasing it, unlike some other products, these are largely purchased online.

So it makes it a little bit different than -- than, say, people going to a shop to buy one that could see it and feel it and maybe test ride it or, you know, have -- get other -- other information.

So a lot of the information they get is what's available online. I think the person that's buying this, you know -- yeah, I think -- I think there's a couple of -- the person that -- that would want to use a product like this.

So, you know, certain -- yeah, I'm -- I don't know. I don't know more specifically about what your -- what your question might be.

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BY ATTORNEY MAAS:

Q. Did you do any research to try to find out who the purchaser of a product like this generally is?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yeah, online some YouTube videos, interviews. There were some interviews that were provided by counsel that showed either talking to a shop owner or talking to, you know, customers that would do it.

I saw -- I mean, yeah, so it's, like, that kind of -- that kind of information. Plus, you know, I have, you know, a lot of experience in a lot of different kinds of products about who buys them and how they use them.

And I -- I think even without doing a light, electric off-road motorcycle, I think the kind of people that are -- that are interested in this kind of fun, I think I'm familiar with from other products.

Including, like I was saying, you know, back to the race snowmobile days,

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you know, the kind of people that -- that use this kind of product.

But, you also know it's a -- it's an expensive product. And that -- that has -- that always has implications too. So how they buy it, how much it is, any other kind of factors that might go into it.

But I think that the users for these things would be the kind of people that I would -- I would say that -- it equates a lot like the kind of -- the off-road. The motor bikes that are like -- that are like e-mountain bike stuff, those kind of people, downhill motor -- you know, downhill mountain bike people.

I think a lot of -- it's pretty -- pretty thrilling kind of stuff, I think, the kind of people that like this.

BY ATTORNEY MAAS:

Q. Okay. You mentioned in your answer that you did research, that you looked at YouTube videos; is that right?

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**A. Yeah. I think a lot of the stuff I referred to is -- was an exhibit in my report. And some of it includes, like --**

Q. I was specifically referring to the -- you said you did some research, right?

**A. Yeah.**

Q. Where in your report do you explain what research you did to determine the characteristics of an ordinary observer?

**A. I think it's -- I say, I think the -- all the stuff that I reviewed is in -- is listed. And that's -- that's research, in my mind.**

**So I wasn't engaged in other -- or getting other information. I was -- I was just using what I said I referenced. So that's -- that's it.**

Q. So did you do independent research on the characteristics of the ordinary observer, or did you only use what you were given by counsel?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I used what I was

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given by counsel.

BY ATTORNEY MAAS:

Q. So other than what you were given by counsel, you didn't do any of your own research?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I don't recall any of it. But if I did it, I would have listed it, and it would have been in there. So I don't know if I was provided all of it, but I could have been.

BY ATTORNEY MAAS:

Q. I guess, sir, the question is: Did you do research into whether -- sorry, strike that.

Did you do research into the characteristics of the ordinary observer beyond the information provided to you by counsel, or did you not? Do you know if you did?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I don't know that I did.

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BY ATTORNEY MAAS:

Q. What do you mean you don't know if you did?

**A. I don't remember the -- everything that I looked up. I don't know if it led to other things that I ended up putting on that list. But I think all of the stuff was provided by counsel that I reviewed.**

Q. And just to be clear, you just said you don't know -- you rust referenced looking something up.

Did you look anything up? Like, did you do any searching on your own to find the characteristics of the ordinary observer?

ATTORNEY LYNCH: Object to form.

THE WITNESS: You know, part of what I rely on, and I rely on it a lot, I guess, is that developed sense of -- you know, of customers and different kinds of products.

I say, I've taught, you know, for -- for 40 years, I've been working as a design professional for over that

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and in a lot of different markets in a lot of ways.

And I think some of the -- some of these people probably cross over. I think I got a good feel for a lot of people that buy stuff.

But I think particularly in things like mountain biking, motorcycles -- I mean, yeah, I think there's a lot of that that's maybe more specific.

But I think -- I think I use my experience as well as the materials that were provided by counsel.

BY ATTORNEY MAAS:

Q. Okay. So my question was specifically related to research. So is that a no to my question, that you didn't do any research beyond the info provided by counsel for this case for the ordinary observer?

ATTORNEY LYNCH: Object to form.

BY ATTORNEY MAAS:

Q. Well, let me ask a better question.

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You mentioned a few buckets of information that you're talking about. There's what I'll call your own experience bucket. There's stuff you were provided by counsel.

And the bucket I'm asking about is any information that you went out and sought to try to find characteristics of the ordinary observer. I'm trying to find out if there's anything in that bucket.

So did you do any independent research to determine the characteristics of the ordinary observer for this case?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I can't recall any.

BY ATTORNEY MAAS:

Q. So the next thing you talk about was your own experience. You said, "I think" -- you said you have a developed sense of -- strike that.

You referred to your own experience with products and forming the basis for your -- your opinion as to the ordinary observer, right?

**A. Yes.**

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Q. Referring specifically to mountain bikes, you said, "I think some of these people cross over," right?

**A. Yes.**

Q. What's that conclusion based on?

**A. If you're -- yeah, I ride mountain bikes pretty regularly. I run in a -- you know, and occasionally there's electric mountain bike people.**

**But there's always people mountain biking or downhill mountain biking that really are into the kind of the thrill of it and really enjoy the -- the speed and the handling and the -- yeah, there's kind of an intensity that I think I understand.**

**And I could see in the videos, again, that were the YouTube kind of things that were provided by counsel.**

**You're saying, like, yeah, that's the guy, you know, that's the person that -- that does that. And I could see it. I think there's a -- yeah, so I think it -- that is that experience.**

**But, you know, people that -- yeah, I just think there's a lot of**

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**similarities that I could see from that or just the -- yeah, just the kind of environment that, like, trails and kind of -- yeah, kind of that experience of being out and going fast and jumping high and all that.**

**I think I can -- I can definitely see that when I see the people being interviewed on YouTube and -- and they spoke the same language.**

Q. So your personal experience with people you meet while mountain biking, it's your testimony that that informs your understanding of the ordinary observer for this case?

**A. Well, it's a -- it's a really small part of it. I think designing bikes, you know, knowing people that ride, knowing people that do other things outdoors, knowing people that are motorcycle enthusiasts, BMX-type bike guys.**

**I think there's -- there's a lot of -- the experience, you know, goes over years with probably hundreds of people.**

**But after a while, I think you**

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**get a good feel for customers in a lot of different products in a lot of different categories.**

Q. Did you talk to any of those hundreds of people in preparation for your work on this case?

**A. I don't think so, no.**

Q. Would you consider yourself an ordinary observer for the products and designs at issue in this case?

**A. Not really, no.**

Q. Why not?

**A. I think I know the -- there's a lot of things that I know that are kind of, again, maybe tangents to this sort of thing. I do -- you know, I -- I think I've -- I think it's not the stuff that I do or a product that I would buy.**

**But it's a product that I sort of -- I think I understand, and I think I understand the customer.**

Q. You said you think you understand the customer.

Please describe the customer for this product.

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ATTORNEY LYNCH: I'm going to object as outside the scope of the expert report.
ATTORNEY MAAS: He just said it as part --
ATTORNEY LYNCH: He can answer it.
THE WITNESS: No. But it isn't -- it isn't a thing that I offer an opinion on in my -- in my report.
BY ATTORNEY MAAS:
Q. So when you used the word "customer," you weren't referring to the ordinary observer?
**A. I guess -- I guess that's why I said "customer." I don't know.**
Q. So it's your testimony today you did not offer an opinion on who the customer would be for the products at issue in this case?
**A. I think the -- my understanding on the specifics of the customer would probably come more from, again, the stuff -- information provided by counsel including, like, the YouTube stuff. If**

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**somebody that owns a shop talks about, you know, the people that come in to buy, and I've read some things about that.**
**And I think that just, like, confirms a sense of who that would be, but I didn't break it down, like, a certain demographic, age group, person. I didn't -- I didn't feel like I needed to do that.**
Q. Do you have an opinion as to how much attention an ordinary purchaser would pay to the products at issue in this case?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I did. I know I have it in my report somewhere.
BY ATTORNEY MAAS:
Q. You can't explain that opinion to me without referring to your report; is that right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. But if I've got it -- a little more thoughtful response to my report, I'd rather -- rather have that.
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BY ATTORNEY MAAS:
Q. Are you not able to provide a description of your opinion without referring to your report, Mr. Rake?
ATTORNEY LYNCH: Object to form.
THE WITNESS: All right. So on paragraph 106 it says, "Also my opinion that the end user would pay a certain amount of care when purchasing either accused product or Surron's embodying product but not a heightened level of care.
"This is informed by my experience with designing bicycles marketed online and online bicycle shopping. A typical end user making an online purchase will notice the overall look and feel of the motorcycle but would likely not pay much attention to the details or differences between the accused products or Surron's embodying product.
"If they're satisfied with the appearance, they may dive deeper into the technical specifications by

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comparing power, weight, battery range, wheel size, wheel base, et cetera, none of which is brand specific.
"It is the overall look of the light electric off-road motorcycle that drives the consumer to first consider Surron's Light Bee product or the accused products.
"So I see the end user's attention being divided between an overall look at the appearance and a much closer scrutiny of the technical specification. Even for expensive models priced in the thousands of dollars, online buyers typically can only pay so much attention to minor differences and design elements when comparing options.
"As a result, in my opinion, the ordinary observer in this case would pay attention to designs when selecting either the electric off-road bike but is unlikely to notice minor differences between options."
///

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BY ATTORNEY MAAS:
Q. So your testimony is that this conclusion is informed by your experience with designing bicycles marketed online and online bicycle shopping; is that right?
**A. In part, yes.**
Q. In part, or in whole?
**A. In part.**
Q. What are the other parts of what that opinion is based on?
**A. What I mentioned before, I think my general experience with -- with consumers of a lot of different types of products and with people purchasing things in a lot of different ways including online.**
**So I think the specific experience on the -- on the bicycle thing was important, but I think the other experience that I have is also important and probably too long a list to mention.**
Q. You said it's too long a list to mention.
Is it mentioned anywhere in your expert report?

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**A. I don't think the -- I think the -- in the experience or my background section up front, there's some relevant experience. In my CV, there's a lot of different clients and people over time.**
**I think you get an idea that from -- from that. Other things that would be important but not as directly associated as the -- as the bicycle reference I use.**
Q. When you say "my experience with designing bicycles marketed online," what experience are you referring to?
**A. The biggest one is probably the Semester Bike that was the Hero bike.**
Q. What was the price point of that bike?
**A. Maybe $900.**
Q. What was that bike made out of?
**A. It's composite and steel. So the composite parts were -- had bamboo fibers, but they also had carbon fiber and fiberglass.**
Q. Where were those bikes sold online?
**A. Through Hero Bike.**

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Q. Did you participate in the marketing of those products?
**A. Not really. I think we had some graphic design students at KU that helped put that together. And I think there were people at Hero that did that, but I -- I didn't get involved specifically with the marketing.**
Q. So what specifically about your experience with designing bicycles marketed online taught you about what an ordinary purchaser of an electric off-road motorcycle would consider when purchasing --
**A. Yeah, I think -- I think the biggest thing --**
(Simultaneous unreportable crosstalk occurs among parties.)
(Stenographer requests clarification and colloquy will not be captured on the written record.)
BY ATTORNEY MAAS:
Q. -- when making a purchasing decision?

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**A. Could you just repeat the question?**
Q. Sure.
So what specifically about your experience with designing bicycles marketed online taught you about what an ordinary purchaser of an electric off-road motorcycle would consider when making a purchasing decision?
**A. Yeah, so the -- the biggest thing I think from initially the Kickstarter campaign that got it going, there's a lot of feedback from people that were interested in the bike.**
**What I think I took away from that is people are buying a bicycle, and they don't get -- but they're buying it based on the images on a screen and not riding it or looking at it up close.**
**But they got to like the look of it, and they liked -- they liked the Semester Bike because it's cool looking, you know. And that's important. Because if it's not, they're not gonna go any further.**

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**But if it is -- and in this case, you know, people would ask questions. But they -- the questions they would ask would have, of course, what's the price, how much does it weigh, what -- you know, like, maybe specifics about the gear train and the components that were being used.**

**There were some other -- there were a lot of questions about the technical side. But I don't -- I'm -- in my mind, I don't think that people would ask those questions until they first buy into the look.**

**And so once they liked the look of it, then they want to go a little bit further. And I think that is the sort of process -- but I also -- doing a composite thing made skateboards like the ones you can see behind me.**

**And those also sold through Hero. And same type of thing, like, if they thought it was a good looking board, then they would ask you questions about the technical stuff.**

**But they wouldn't ask, like --**

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**they weren't asking further questions about the design. They would ask further questions about the technology and about pricing. You know, sometimes about materials.**

**But I think that information -- and you're dealing with a market that could -- you know, they're very critical and -- in their way. But they're critical in a lot of -- a lot of the focus of their critique was technical and price.**

Q. You said that the technical specifications: power, weight, battery range, wheel size, wheel base, et cetera, are not brand specific, right?

**A. Right.**

Q. What do you mean the technical specifications are not specific to each brand?

**A. Well, they don't -- they can be specific to -- they're not, like -- it's, like, weight is weight. And it doesn't necessarily -- and it does -- they will compare the brands in that way where the weight from this brand is such and the**

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**weight from this other brand is such.**

**But the -- the spec is not a -- is not in itself tied to the brand. That's what I was trying to say.**

Q. So you recognize that, for example, the Talaria bike and the Surron bike, they can have different technical specifications, right?

**A. Yes.**

Q. And you'd agree that those would be considerations that an ordinary observer would consider when looking at these designs, right?

**A. Yes.**

ATTORNEY LYNCH: Object to form.

BY ATTORNEY MAAS:

Q. Would you agree that an ordinary observer of the products at issue here might -- might come to the conclusion that the Tanli bike is -- has higher technical performance than the Surron product?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I don't know what they -- I don't want to speculate in what their decisions would be on

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that. But, yeah, I'm just saying that the -- a lot of the -- a lot of the concerns and a lot of the talk later on, a lot of the investigation that will go on when they're trying to consider it is not going to be time spent comparing design features as much as it might be time spent comparing the technical side.

BY ATTORNEY MAAS:

Q. So in the materials you reviewed for this case, you saw evidence of consumers investigating the technical specifications of both products at issue?

**A. There was -- there was evidence of that.**

ATTORNEY MAAS: Want to take another break?

THE WITNESS: Yeah, it's fine with me.

ATTORNEY MAAS: Cool.

THE WITNESS: Just a short one.

ATTORNEY MAAS: Yeah, it's been --

THE WITNESS: Or you want to go

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longer?
ATTORNEY MAAS: Let's go off the record, and we'll...
THE VIDEOGRAPHER: Stand by.
Going off the video record. The time is 11:15 a.m.
(Whereupon, a recess was taken at 11:15 a.m.)
THE VIDEOGRAPHER: We are back on the video record. The time is 11:22 a.m.
BY ATTORNEY MAAS:
Q. Welcome back, Mr. Rake. During the break, did you speak to your counsel about the substance of your testimony?
**A. No.**
Q. Have you ever bought a motorcycle?
**A. Yes.**
Q. What motorcycle did you buy?
**A. A Honda 350.**
Q. When?
**A. That was somewhere in the '80s. I've -- and I have a vintage Vespa. I don't know if that counts as a -- as a**

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**motorcycle. That was more of a recent purchase. It was a barn find that I had to restore; so...**
Q. You said before the break that your -- your conclusion with respect to the attention and -- strike that. Strike that.
You testified that part of your conclusion with respect to the ordinary observer is based on your experience online bicycle shopping; is that right?
**A. Yes.**
Q. What kind of bicycles were you shopping for online?
**A. Oh, for me purchasing or -- is that what the question is?**
Q. The experience with online bicycle shopping, what bicycles were you shopping for online?
**A. Oh, well, I don't know. I've recently bought a -- an e-bike -- a cargo bike, but -- so I did the -- I did the shopping online, but I was able to get it delivered to a dealer. It's a little bit different.**
Q. When did you purchase this e-bike

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online?
**A. Maybe three months ago.**
Q. And that experience informed your conclusion in this case?
**A. I think -- no, I think -- yeah, I say, you know, somewhat, I guess, you know. Buying a $4,000 e-bike where a lot of the -- the research I did was online. So I think that part of it is -- has some similarities, I think.**
Q. How much research did you do?
**A. A fair amount. I have no idea in terms of hours or something, but it was a lot. Again, it's not -- not a small amount of money. And I was also -- I had an idea of what I was looking for, but I really needed to look around and see what was available.**
Q. Did you compare different -- strike that.
Did you compare e-bikes from different e-bike manufacturers?
**A. Yes.**
Q. Did you compare their designs?
**A. Yeah. In a similar way. And as**

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**I say, one of the things that I think was helpful is that it kind of works the same way.**
**Like, I get this first checkbox that has to get checked, which is I got to like the way it looks. And if I looked at some things I just don't like the appearance, I'm not gonna go any further.**
**If I like the way it looked, which could be a whole bunch of different factors, I don't know, if it looks strong enough, if it looked fast, it just looked cool, I don't know. I think there was -- I just wanted to like the way it looked.**
**And once I did that, then I was comparing cost, I was comparing range. I was comparing wheel size, some other things. But I -- I wouldn't get that far into it if I didn't like the way it looked.**
**And once I liked the way it looked, then it was just really -- like I say, it was really kind of diving down into the more technical side.**
Q. Would you say -- would you say you really dove into the technical side

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on -- when you were considering this purchase?
**A. That might be a little strong. I don't know. I did -- I did spend a fair amount of time trying to find something that had -- again, not only the look that I wanted, but had some of the -- like, the range that I wanted and maybe carrying capacity that I wanted. That sort of thing.**
Q. And did you say that the bike you ended up purchasing was about $4,000?
**A. Yes.**
Q. Would you characterize it as an impulse purchase?
**A. No. But I -- I think from the -- again, from the design standpoint, I couldn't tell you that I scrutinized the look of the frame to the other ones. I just liked it.**
**But I did -- it's easier, because if you're just dealing with numbers, too, you can just compare numbers. So once you got into stuff like the -- the wattage of the motor or something, that's -- that's a**

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**thing you can compare.**
**The other one, it just -- it's kind of, like, the look of it was more nonnegotiable.**
Q. So just to be clear, you would not characterize your purchase of a $4,000 e-bike as an impulse purchase, right?
**A. No, not as an impulse, no.**
Q. And you would agree with me that for your purchase of a $4,000 e-bike, you spent a significant amount of time researching the technical specifications, right?
**A. Yeah, on the technical specifications, yes.**
Q. Why are the technical specifications important to you when you're making that kind of purchase?
**A. Well, I would say that the appearances in a -- in a lot of ways most important, because that's really -- that's a qualifier.**
Q. Sir, hold on. Hold on. I asked you about the technical specifications.
In your purchase of the $4,000

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e-bike, why were the technical specifications important to you when you were making that purchase?
**A. Well, it kind of -- it kind of assumes that, but I got to say that the steps are important. You know, the first step is buying into the look.**
**Once I did that, then, you know, if I found two bikes that I liked the look of, then I might -- then I'm gonna go into seeing the other stuff. Then I can compare the power and the range and the, you know, components and stuff like that.**
**But if I spend a lot of time on it -- I didn't spend a lot of time on the -- comparing the appearances. I spent a lot of time comparing the technical part.**
Q. So we've talked a lot about how -- we spent a lot of time -- sorry. Strike all that.
We've spent a lot of time talking about how you approached your purchase of the e-bike that you bought.
Is it your testimony today that the steps that you took that we were just

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talking about, those are the same steps that an ordinary purchaser of the products in question here would take?
**A. Yeah. I think that's what I articulated in that paragraph I read before we got into it.**
Q. So going back to the power and the range, why were those things important when you were making your purchasing decision?
**A. Because I think there's functional aspects of the product that need to fit my needs.**
Q. Is that why those things are important to the ordinary observer of the products in question here?
**A. Yes.**
Q. You say that, "For even expensive models priced in the thousands of dollars, online buyers can only pay so much attention to minor differences in design elements when comparing options."
That's one of your conclusions, right?
**A. Yes.**

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Q. What's that based on?
**A. Well, I mean, one of the things being what we talked about, that experience in the bicycle thing, not that the bicycle thing was thousands of dollars.**
**But if somebody's paying $800 for a single-speed bike, that's still a fair amount of money. You know, so people are gonna -- are gonna want to make a smart choice.**
**But I found that it started with they, like -- they just liked the look of the bike, and that was the single -- the single thing that brought them in, and then they would be -- then it was all questions about price, delivery, components, some other things --**
Q. You said --
**A. -- but I don't think the design part is the part that gets the same kind of scrutiny. But it's still -- but that doesn't minimize it. It's still, like, the thing that draws you in. It's still Step 1 that has to be satisfied.**
Q. You said you found that it

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started with that they liked the look of the bike.
How did you find that out? What was -- did somebody tell you that? Did you read that? What was -- what was the basis of you saying that?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, I -- you know, I don't -- I don't have the -- I don't have the comments in front of me. But, yeah, it was based on what they said about it, and it was -- you know, I also had that -- yeah, I had that experience of, you know, people seeing you riding one around, they thought it was cool looking.
If somebody is gonna be interested in getting one, it's gonna probably start there. And I think -- I think that -- that experience was really pretty important.
But it's -- it's not completely unique to this field or this product. Industrial designers and a lot of things -- you know, footwear design,

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other things like the -- the appearance has to be there or it's a non-starter.
And then it gets more and more about -- about other aspects. But it's the overall look and the overall feel of it that has to -- has to bring you in.
BY ATTORNEY MAAS:
Q. So the basis of you saying that it started with people liking the look of the bike, that was based on your recollection of comments that you received and your experience riding the bike; is that right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, I don't -- I mean, some of this happened a while ago, so I don't have the specific things. But I do remember, you know, reading things that people liked it, talking to people about it. Eventually the bike was shown at trade shows, and people would like it.
They liked the overall look of the bike, and that's -- and that's

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what -- that's what brings them in.
And again, you know, I'm a professor of design. So I tell students this all the time. Like, it's so important to get the look right, because -- because that's it. I mean, it's important that obviously there's lots of other considerations in a product, successful product.
But in competitive industries, that appearance is so important. And without it, you just -- it's just a non-starter.
BY ATTORNEY MAAS:
Q. Would you agree that the products at issue in this case are expensive?
**A. Yeah. But within their -- in their category, yeah.**
Q. In your opinion -- strike that.
In your opinion, you used the -- sorry, strike that again.
In your opinion, you used the phrase "minor differences in design elements."
What do you mean by that phrase?

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**A. That it can be as -- you know, yeah, minor difference. It could be in a bicycle, we might be talking about the thickness of tubing or it might be a little notch on one end of something or, you know, just -- just, again, small -- small changes, possibly, in the geometry but possibly in -- possibly in, you know, other parts of the form.**

**But if they are -- if you like the overall look, you probably aren't gonna, like, be comparing -- if I'm comparing a couple of the bikes that I like, I'm probably -- once I like kind of the look of both of them, let's say, I -- I'm gonna start comparing all of the technical stuff before I would compare some minor differences in the -- in the appearance.**

Q. So what's the difference between a minor difference and a major difference in design elements?

**A. Yeah, matter of degree.**

Q. So is it all subjective?

**A. No. I mean, we're -- appearance,**

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**I like the look of this, and I don't like the look of that. What was the difference in it?**

**But as I say, I like two -- yeah, I don't know. Is -- is aesthetics -- is there a subjective component to --**

Q. So, Mr. Rake, if I like two designs --

**A. Yeah.**

Q. -- or if you like two designs, is any difference between those two designs minor because you like them both?

ATTORNEY LYNCH: Object to form.

THE WITNESS: If they're similar particularly -- right? -- if they're -- if we're comparing two running shoes and they have a similar profile and they have a similar top line and they have similar other appearance features, if one of them has a different stitch pattern or a different thing, it's probably not gonna be a deal-breaker.

But if one of them is a lot heavier than the other one or it's using a compound that I don't

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particularly like for a sole, that would make a difference.

So that's, like, why the technical side of it is more important in the sense -- at that stage is more important than the differences visually.

BY ATTORNEY MAAS:

Q. Right. So we're staying on the design side for right now.

But it sounds like what you're saying is that if you have two products and you like the design of both products, any difference between those products you would characterize as minor in the design?

**A. No.**

ATTORNEY LYNCH: Object -- object to form.

THE WITNESS: Oh, I'm sorry.

BY ATTORNEY MAAS:

Q. So then what's the difference between a minor design difference and a major design difference?

**A. For me, I don't -- it's gonna -- it's gonna depend on the product and the**

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**time and the person, the market. If it -- if it appeals and it's -- and they're -- but one of them, I like the look of this one but I -- and I like the look of that one, but maybe this one is -- is a mountain bike and this other one's a road bike, and I still like the design of both of them, but they're, like, different things.**

**But what if they're both the same and they're in the same market and they're supposed to be doing the same task, and I like them both? They're probably -- visually they're probably similar.**

Q. So in your expert opinion, if they are both the same products in the same market, supposed to do the same task, and you like them both in terms of their design, you would characterize any difference between them as a minor difference in terms of the design?

ATTORNEY LYNCH: Object to form.

THE WITNESS: That's speculating. I -- I'd have to see what you're talking about, and then I could -- I could tell you.

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BY ATTORNEY MAAS:
Q. Sir, I'm asking you what you just said.
That's what you're telling me, right?
**A. I don't know what you're telling -- I don't know what you're asking. I don't know these two products that you're holding up that are hypothetical speculative products. Show me what you're talking about. Not verbally, but the images.**
Q. You agree with me that you use the term "minor differences in design elements" in your expert report, right?
**A. Yes.**
Q. Does that phrase have any meaning whatsoever?
ATTORNEY LYNCH: Objection. Argumentative.
THE WITNESS: Yes, it does.
BY ATTORNEY MAAS:
Q. So then what is the difference between a minor difference in a design element and a non-minor difference in a

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design element?
**A. Well, the biggest thing you could say is does it -- a minor design element wouldn't change the overall appearance, wouldn't change the overall visual impression of the product, and a major difference probably would. So that's why it would be minor or not.**
**But you're talking about -- you have to -- you have to be talking about it -- about the whole, the overall design. And so did some change in that -- in an element, did it affect the overall design?**
**If it did, I think it's substantial. If it doesn't change it, then it's minor.**
Q. Previously we were talking about your opinion that once an ordinary observer of the products in question decides whether or not they like a design, they probably won't compare the design.
Do you remember that?
**A. Well, I hope I didn't say that, because I was saying that there is -- I was just saying that in the -- if we just look**

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**at the amount of time an ordinary observer might spend trying to make a purchase decision, the amount of time that they spend considering the design is gonna be probably less than the amount of time that they're gonna spend considering other things including, like, technical and performance specs.**
Q. And your opinion is that the amount of time they spent considering the design is directed more towards whether or not they like the design, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, it's a pretty broad word saying "like," you know, because there could be different -- different things in there. But -- but that's what it -- what it is.
Do I like it? I just -- I like it. It looks the way I want it to look.
BY ATTORNEY MAAS:
Q. Would you agree with me that a consumer could like two products in the same segment -- strike that.

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Would you agree with me -- would you agree with me that a consumer can like the designs of two products in the same segment that have significant design differences from each other?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I don't -- I would like to see what you're talking about, but, you know, it's hypothetical. But I think -- I think you -- you could -- it could be, as you say, that you could like --
BY ATTORNEY MAAS:
Q. Well --
**A. -- like, you have -- if you could show me what we're talking about, I would be glad to give you my opinion.**
Q. We're not talking about any product in particular right now. We're talking about your conclusion as to the ordinary observer.
Could a -- could a consumer like two different motorcycles, say, a Honda and a Yamaha?
**A. Of course. You're talking about,**

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**like, what kind of Honda, what kind of Yamaha, what are we talking about and what for and who is buying it.**
**I don't know, it's such a -- such a broad question. I would like to see something just a little more -- I don't know. Well, go ahead.**
Q. Well, you owned a Honda motorcycle, right?
**A. Yes.**
Q. You're aware that Yamaha also makes motorcycle, right?
**A. Yes.**
Q. Honda and Yamaha make motorcycle that compete in the same class, engine displacement, considerations like that, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. A consumer could like the design of both the Honda and the Yamaha motorcycles that have the same engine displacement, similar -- similar classes, similar wheel bases -- right? -- the

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consumer could still like the design of both products?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Again, you're -- I don't know what we're talking about specifically. If they're -- if they were -- when you say you like the design, I like -- I like the design of, yeah, you have two different motorcycles.
But if there's one design that I really like, it might be different. Like, I want to -- you know what I mean?
I don't know what we're talking about here from a -- without just speculating what these -- what these supposed motorcycles are.
BY ATTORNEY MAAS:
Q. But you'd agree with me that a consumer could like the designs of two different motorcycles, right? That is something that could happen?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah.

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BY ATTORNEY MAAS:
Q. And those two different motorcycles could have major design differences between the two of them, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think they could, yes.
BY ATTORNEY MAAS:
Q. And those two different motorcycles, say they're from two different manufacturers, they could compete in the same market segment, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, I could like two different designs, but they could be different, and they could compete in the same category.
BY ATTORNEY MAAS:
Q. You're aware that Surron and -- you understand that Tanli and Talaria are two separate companies, right?
**A. Yes. I'm more familiar with them as Surron and Talaria, but, yeah.**
Q. Right. And for the purposes of this litigation, the -- Talaria and Tanli

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are defendants, and Surron is the plaintiff, right?
**A. Yes.**
Q. And referring to the defendants collectively as Talaria, you're aware that Surron and Talaria are two different companies, right?
**A. Yes.**
Q. Would you agree with me that things break on dirt bikes sometimes?
**A. Yeah. They do.**
Q. Since you're jumping over things?
**A. Yes. If that's a question, yeah.**
Q. Do you think the ordinary consumer would want to fix their 4- to $5,000 motorbike, electric motorbike when it breaks?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Whether they'd want to fix it personally or whether they would just want to get it fixed, like, take it to a shop and get it fixed or fix it themselves?
BY ATTORNEY MAAS:
Q. Get it fixed generally.

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**A. Yeah. Yeah, they probably want to get it fixed.**
Q. And you're aware that -- strike that.
And you'd agree that the customer service departments for Talaria and Surron are likely separate, right?
**A. You mean as inside their company having -- yeah, I would assume they're separate.**
ATTORNEY MAAS: All right. I'm going to drop a file in the chat. I'm going to mark it Rake 1.
(Whereupon, Exhibit 1 is marked for identification.)
BY ATTORNEY MAAS:
Q. Mr. Rake, do you see it there in the chat?
**A. I just got there. I haven't opened it yet.**
Q. I'll go ahead and share it on the screen.
Can you see my screen, Mr. Rake?
**A. Yes.**
Q. What is on the screen?

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**A. The cover page of my opening report.**
Q. You can go ahead and pop open the document I dropped in the chat, please.
**A. Okay. Give me a minute.**
**It's not -- why doesn't...**
**It doesn't come up in my downloads.**
THE STENOGRAPHER: Mr. Rake, after you download it, you can just retrieve it from the chat.
ATTORNEY MAAS: Yeah, if you just click the PDF button, it should open it.
THE WITNESS: Okay.
BY ATTORNEY MAAS:
Q. Mr. Rake, this is a copy of your expert report, right?
**A. Yes.**
Q. And if you look at the last page, that's your signature?
**A. Yes.**
Q. And all 87 pages appear to be here, right?
**A. Yes.**

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Q. Mr. Rake, where in your report do you identify any differences between the accused Tanli product -- or Tanli or Talaria product and the design of the '456 design patent?
(Pause for reading/reviewing.)
ATTORNEY LYNCH: Counsel, just so you know, we can see your screen, your --
ATTORNEY MAAS: Great.
ATTORNEY LYNCH: Yeah.
ATTORNEY MAAS: Good thing it's just the realtime, right?
ATTORNEY LYNCH: Yeah, right.
(Pause for reading/reviewing.)
THE WITNESS: Yeah, I don't see any -- any references to, you know, calling out specific differences.
BY ATTORNEY MAAS:
Q. You don't identify a single difference between the accused Talaria product and the patented design of the '456 design patent in your report?
**A. No.**
Q. Why did you choose not to

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identify any differences between the design claimed in the '456 design patent and the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think when I -- in my comparison, my analysis, I didn't see -- I didn't see any substantial differences or nothing that would -- I think I was talking about minor design variations earlier where you could have -- you could have differences without affecting the overall appearance of the overall look of a product.
So I think what I'm -- what I'm looking at when I'm comparing the two, I'm seeing similarities. And if there are any differences, I don't think there's anything that contributes to making the product look substantially different from what the patent claim is.
BY ATTORNEY MAAS:
Q. So your testimony is if you saw any differences between the accused product

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and the claimed design, you disregarded those differences?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, I didn't disregard them.
BY ATTORNEY MAAS:
Q. Then why didn't you note them in your report?
**A. It's not disregarding them. I just didn't consider them to -- to change the overall appearance of the product in a way that would make it in some way different -- different in appearance from the patent claim. They were considered.**
Q. So it's your testimony that you considered differences, but that you didn't put them in your report?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Because my -- you know, my analysis is really on the overall appearance of -- of the claim, the patent claim, and the overall appearance of the accused.
And I didn't see any differences in the overall appearance or any --

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any -- any differences that would make the overall appearance of the accused in any way different or substantially different from what -- what the claim of the patent is.
BY ATTORNEY MAAS:
Q. Well, Mr. Rake, you're telling us that now, but you didn't -- you didn't explain your analysis of any of the differences that you saw between the claimed design and the accused product in your report, did you?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. Because I was looking at the overall -- the overall appearance in every view and not -- and not in any minor differences in any particular component.
Is it almost time for a break for lunch?
ATTORNEY MAAS: Almost. A few more questions.
BY ATTORNEY MAAS:
Q. So is it your testimony today that any difference between the claimed

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design and the patented design is a minor difference?
ATTORNEY LYNCH: Object to form.
BY ATTORNEY MAAS:
Q. Strike that.
Is it your testimony today that any difference between the accused Talaria product and the patented design is a minor difference?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I don't know that I called it minor differences. I was saying that the -- any -- if there is any difference in -- in the two designs, I don't think they were -- that they changed the overall look or the overall appearance.
And so I was really -- what I was comparing was not component to component, feature to feature. I was comparing overall appearance to overall appearance of -- of the Talaria.
BY ATTORNEY MAAS:
Q. Wouldn't you agree that differences in design are relevant to

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determining whether or not the overall appearance of two items is the same?
ATTORNEY LYNCH: Object to form.
THE WITNESS: They can be. But when they -- when they changed the overall look, yes.
BY ATTORNEY MAAS:
Q. But you chose not to mention any of the differences that you may or may not have noticed between the accused product and the patent design -- patented design in your report, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: That's correct.
BY ATTORNEY MAAS:
Q. But you're telling us now that you considered those differences?
**A. Yeah, I did.**
Q. So you didn't put the differences that you considered in your report; is that right?
**A. I didn't -- I didn't see any differences -- that changed the overall look of the Talaria to the point that it looked different -- substantially different**

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**from the patent claim. So you --**
Q. So you analyzed --
**A. No -- it's --**
Q. So you analyzed the differences, concluded that they did not change the overall appearance and then omitted that analysis from your report?
**A. No.**
ATTORNEY LYNCH: Object to form.
THE WITNESS: Could you -- could you repeat the question you just asked?
BY ATTORNEY MAAS:
Q. So you analyzed the differences that you identified between the Talaria product and the patented design, concluded that those differences did not affect your conclusion as to the overall appearance and then omitted that analysis from your report?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Now, you're -- now you're describing a process that's really different. What I did was -- was analyze the overall appearance of the patent, and the overall appearance

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of the Talaria.
I wasn't looking for anything other than the overall look in both cases. I -- just comparing that the overall look to the overall look. Whether there were similarities there or difference there -- and I highlighted a lot of similarities into my report, because I -- I found them.
But what I analyzed was the overall appearance of one against the overall appearance of the other.
BY ATTORNEY MAAS:
Q. So you highlighted similarities in your report, because you found them, right? That's your testimony?
**A. My report is my report. So what I put down -- if I didn't have anything where I highlighted differences, it's because that wasn't what I found when I -- when I analyzed the one design.**
**Several -- you know, the 10 view -- excuse me, like the 10 views of one design versus the other design, and I reported on what I saw.**

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Q. So my question is: Your testimony earlier was you highlighted a lot of -- you highlighted a lot of similarities in your report, because you said you found similarities, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: "Highlighted" is probably not a -- not a great word, but I found similarities, and I documented them.
BY ATTORNEY MAAS:
Q. But you did not document a single difference between the accused product and the patented design, did you?
**A. No. Because they didn't affect that overall appearance, and that's what I was looking for. That's why I used things like the gestalt and other things to compare. So it wasn't just my -- yeah, so that's what I -- that's what the whole analysis was about, overall look.**
**Just like the patent is about overall appearance. It's got everything there. There's not a seat drawing or another component to compare components.**

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**It's overall appearance.**
**So any consideration on part of it is consideration on how it affects the overall thing, the biggest and -- and so I'm comparing the overall look to the overall look.**
Q. Is your analysis based on the photographs and the 10 different views in the photographs, or did you examine the physical -- I'm sorry, strike that.
Is your analysis here based on the photographs and the 10 different views of the patented design, or did you examine a physical product of the accused product to make your analysis?
**A. I wanted to. I went to Chicago to -- to photograph and look firsthand at the Talaria product, but there were some kind of shipping problems or delays or something, so it didn't arrive while I was there.**
**So when it was unboxed, I kind of supervised photographing the bike, but I wasn't there to physically see it, but I tried.**

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ATTORNEY MAAS: All right. I think we're ready for lunch.
THE WITNESS: Okay.
THE VIDEOGRAPHER: Stand by.
Going off the video record. The time is 12:22 p.m.
(Whereupon, a recess was taken for lunch from 12:22 p.m. to 12:47 p.m.)
THE VIDEOGRAPHER: We are back on the video record.
The time is 12:47 p.m.
BY ATTORNEY MAAS:
Q. Welcome back from the break, Mr. Rake.
During the break, did you speak with counsel about the substance of your testimony?
**A. No.**
Q. Before the break, you said that you did not inspect the physical accused product before submitting your report, right?
ATTORNEY LYNCH: Objection. Work product privilege.

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THE WITNESS: No. It's -- as I said, I -- I didn't inspect that, no.
BY ATTORNEY MAAS:
Q. So your analysis in your report, was it based on the photographs that were captured by counsel?
**A. Yes. I mean, I was -- I did a video for unboxing the product to talk them through assembly of the product and then, you know, getting shots that were -- the comparable angles for the report.**
Q. When you say "comparable angles," do you mean comparable to the views present in the '456 design patent?
**A. Yes.**
Q. And when you say you did a video for the unboxing of the product, did you do a video call to do that?
**A. I don't remember if it was a video call or, like, a FaceTime something. I don't remember which one.**
Q. Okay. So was that on your -- would that have been on your iPhone?
**A. That would -- yes.**
Q. And then how did you view the

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images captured by counsel and sent to you to conduct your analysis?
**A. I just -- I don't remember the -- the whole procedure, but I think, like, test shots were taken and sent.**
Q. What sort of a device did you view these pictures on?
**A. I would have viewed them on my computer.**
Q. Is that a laptop computer?
**A. I have a laptop, yes.**
Q. What kind of laptop?
**A. It's a Dell something. Like -- like, roughly 17-inch monitor. It's something that I can do a lot of graphic work on and 3D modeling and that sort of thing.**
Q. After viewing the first round of pictures that you were sent by your counsel, did you ask your counsel to send any close-up shots of any particular area of the accused product?
**A. I don't remember. I don't think so.**
Q. Approximately how many pictures

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captured by counsel of the accused product did you use in your analysis?
**A. Well, ultimately I wanted to get down to this, you know, one picture for the -- for each figure in the patent. Probably -- or probably, like, 25 or 30 pictures that I had to choose from.**
Q. Those 25 or 30 pictures, did any of them show close-up views of the accused products, or were they all full-frame pictures that contain an entire view of the accused product?
**A. I believe they were all overall shots.**
Q. All right. Let's look at a particular -- go back to Exhibit Rake 1, and we'll go to page 40 of Rake 1. I'll share my screen.
And I've zoomed in on paragraph 114 -- or the table following paragraph 114 of Rake 1. So this is a side-by-side comparison of Figure 1 of the claimed design of the '456 design patent and a side view of the Talaria R MX4, which is accused in this case, right?

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**A. Yes.**
Q. Sir, do you see any differences between the design of the accused product on the right and the claimed design on the left?
**A. Yes. There are differences.**
Q. What are those differences?
**A. Well, as I was saying previously, or at least before, I think, the overall appearance I find to be very similar. But it's not to say that they're identical to each other. But there are some differences.**
**And -- but none of those differences. Like, let's say the frame support underneath the seat on the Talaria that goes down more towards the motor casing, that's -- that's a little bit different. But the gesture is -- is quite like the support bracket for the patent.**
**So, again, it's a -- it's a difference that doesn't change the overall appearance.**
Q. Sir, just to clarify. Are you referring to -- I'm using the cursor on my

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screen to indicate the frame element that goes from the -- right behind the motor to under the seat that's -- proceeds backwards from the vertical line.
**A. Right.**
ATTORNEY LYNCH: Object to form.
BY ATTORNEY MAAS:
Q. How would you describe this element, sir?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I didn't describe the element. It was not part of my analysis. I still look at that overall look and the frame and say that these look similar.
So even though there are portions that you can point to, we were talking before about the differences that might be minor, that wouldn't affect the overall look.
That's what I'm -- that's what I'm finding with that. I don't -- it didn't -- it isn't something that changed the overall appearance to me.
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BY ATTORNEY MAAS:
Q. Would you agree that the element under the seat of the accused product that goes down towards the motor, would you agree that it's welded to other elements in the frame of the bike?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I don't know that for sure.
BY ATTORNEY MAAS:
Q. Why don't you know that for sure?
**A. Well, I didn't inspect the physical thing. I'm just looking at it. And there's a bolt-on part -- it came assembled with that on it, but I don't know if it was welded on.**
Q. Well, let's try and zoom in. That picture is not very high resolution in this image.
But anyway, would you agree with me that the element of the accused -- the design element of the accused product that goes from under the seat down towards the motor and also attaches to the swing arm, would you agree that that element leans

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backward on the bike?
ATTORNEY LYNCH: Object to form.
THE WITNESS: A little bit. You know, again, the one in the -- like, one of the supports for the seat on the patent that kind of leans backwards as well, part of the reason that -- again, you don't want to just compare component to component.
You want to compare overall look of the bike to the overall look of the patent. And the overall look is similar, substantially similar.
BY ATTORNEY MAAS:
Q. So, sir, if you're saying now that you think this -- that the component under the seat, the frame component under the seat of the accused product looks like -- looks to you like the support for the seat in the '456 patent, why didn't you put that in your report?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think everything in my report refers to the overall look always. I was trying to take gestalt.

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I would draw outlines around things, the importance of the silhouette.
I wasn't isolating any component or any feature for analysis for similarity or for differences. Because I was always looking at the overall appearance.
BY ATTORNEY MAAS:
Q. But your decision that this particular component we're talking about doesn't change the overall appearance, you didn't explain your analysis that led you to that conclusion in your report, did you?
**A. No. But I think I did. I did compare the overall look to the overall look. That was my analysis.**
**And if that component was part of the overall look, it was part of the analysis too. But it wasn't isolated for -- you know, like, hacked apart from the rest of the design for study on its own independently.**
Q. Well, would you agree that that's a difference between the patented design and the accused product?

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**A. I said it was a difference initially, but I also said that it's not a difference that affect -- affects the overall look. So it still has an overall appearance, has an overall stance that I found to be similar.**
**And without calling out any particular thing there that would be isolated as different.**
Q. Do you see the front fender of the accused Talaria product above the front wheel?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. You would agree with me that no front fender appears in the patented design, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, that's correct.
BY ATTORNEY MAAS:
Q. Why did you omit that difference between the patented design and the accused product from the analysis in your report?
ATTORNEY LYNCH: Object to form.

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THE WITNESS: Because I was -- I was comparing the claim of the patent to the Talaria. The claim of the patent is the patent claim --
BY ATTORNEY MAAS:
Q. Sorry. Apologies.
**A. The patent claim is what's shown in solid line in that figure. And that's -- that's the part that I compared in my analysis.**
Q. So you'd agree with me that the '456 design patent doesn't claim a front fender as part of the electric motorcycle design, does it?
ATTORNEY LYNCH: Object to form.
THE WITNESS: It's not -- it's not part of the claim, no.
BY ATTORNEY MAAS:
Q. Do you think the ordinary observer would notice that the Talaria motorcycle has a front fender?
**A. I imagine so, yeah.**
Q. Going back to the rearward-facing design element on the -- sorry. Apologies. Strike that.

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Going back to the rearward-leaning frame element of the accused motorbike, do you think the ordinary observer would notice this rearward-facing frame element of the accused motorbike?
ATTORNEY LYNCH: Object to form.
THE WITNESS: They might, but they wouldn't notice it as -- you know, when I was doing the analysis and I was taking -- like, doing silhouettes of the two and you see that the silhouette is remarkably similar, whether that piece is the same or not, the overall silhouette, the overall gestalt is similar.
So would they notice it? I don't know. Would they notice that they look similar? I'm saying, yes, they would. Because -- because of that, the importance of the gestalt, the importance of the overall appearance. And they're going to notice that, yeah.
BY ATTORNEY MAAS:
Q. You say in your report that the

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frame shapes are both trapezoids in the '456 design patent and the accused product?
**A. And where did I say that?**
Q. That's referring to the 120 -- paragraph 122, you refer to the frame as a trapezoidal frame.
**A. Yes.**
Q. Sir, what is a trapezoid?
**A. Four-sided figure.**
Q. Are there any other characteristics of a trapezoid that you're aware of?
**A. I don't remember off -- off the top of my head. There's some parallel lines involved, but I can't remember that.**
Q. Where are the parallel lines in the frame of the '456 design patent?
**A. Well, I think you're looking at two sets that if they're not -- if they're not perfect -- perfectly parallel, they -- they're pretty close. So there's -- there's two forward-leaning vertical frame elements.**
Q. Sir, you would agree with me that the -- the four-sided shape created by the

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frame of the claimed design of the '456 design patent is not the same shape as that's found that's created by the frame of the accused product, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: It's a similar shape.
BY ATTORNEY MAAS:
Q. You would agree with me it's not the same shape, wouldn't you, sir?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I would -- I would agree that it's not the same. But it has an appearance that to an ordinary observer would be the same.
Maybe not to a design expert, but to an ordinary observer, they might -- I would think they would see it as being the same.
BY ATTORNEY MAAS:
Q. It's your testimony that the ordinary observer would look at these two shapes and think they're the same?
**A. Or at least similar, yeah. But I think they might see them as the same.**

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Q. Despite the fact that the design claimed in the '456 patent is taller than the shape that's found in the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes. But what's the overall impression?
BY ATTORNEY MAAS:
Q. You would agree with me that there's a -- what appears to be a plastic faux gas tank on top of the battery in the accused Talaria product, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah.
BY ATTORNEY MAAS:
Q. You would agree --
**A. Again, take it in context with the overall look.**
Q. Well, Mr. Rake -- that's the yes to my question, right, Mr. Rake?
**A. Could you ask it again?**
Q. You would agree with me that there appears to be a plastic faux gas tank on top of the battery on the accused Talaria product, right?

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ATTORNEY LYNCH: Object to form.
THE WITNESS: I didn't -- I didn't look at it as a faux gas tank, but there was a shape there, yes.
BY ATTORNEY MAAS:
Q. A similar shape is not found in the '456 design patent, is it?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, I think if you're looking at the top line and comparing them, you're seeing a very similar top line that you get an important part of the silhouette.
And actually that from the top line to the top of the frame, you're starting to describe a form that's -- that's not very different from the form of -- that we were just talking about.
BY ATTORNEY MAAS:
Q. Do you see the rear fender -- strike that.
Do you think the ordinary observer may notice the difference between the patented design and the accused product with respect to the element that appears

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above the battery in the two designs?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah. Could you ask it again, please?
BY ATTORNEY MAAS:
Q. Do you think the ordinary observer may notice the difference between the patented design and the accused product with respect to the element that sits above the battery?
ATTORNEY LYNCH: Same objection.
THE WITNESS: I think the ordinary observer would -- would notice that the profile of which that part is part of looks substantially similar in both of them.
BY ATTORNEY MAAS:
Q. Would you agree that the top of the battery appears not enclosed on the design claimed in the '456 design patent?
ATTORNEY LYNCH: Object to form.
THE WITNESS: It's -- yeah, you can -- you can -- it's not -- you know, it's -- again, those drawings don't show anything in isolation, like, what

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that cover really is like as an individual part. But we see it in context with everything else.
And so I think that that's how I viewed it and that's how I see the ordinary observer viewing it. Would they notice that there was something open or not open? I'm gonna say, you know, eventually maybe.
But I think the -- I think they're gonna notice how similar the lines are.
BY ATTORNEY MAAS:
Q. So is that a yes to my question? That the -- at the top of -- that the top of the battery in the claimed design of the '456 design patent appears to be open?
**A. Yeah, it appears to be open to me as a design expert looking at it. Not necessarily to an ordinary observer looking at it.**
Q. And you'd agree that the accused product, the top of the battery appears closed?
ATTORNEY LYNCH: Object to form.

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THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. I'll take this down for a moment.
Sir, you'd agree with me that a motorcycle is a three-dimensional product, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. The ordinary observer would see depth as well as lines, right?
**A. Well, we are talking about how the ordinary observer would see these, and there's a good chance that the ordinary observer, prior to making a purchase, is gonna look at images. They're looking online, and they're not looking at it in a shop.**
**They're not really seeing the 3D of it.**
Q. So is it your opinion that the ordinary observer for the purposes of this case does not look at a three-dimensional product?
ATTORNEY LYNCH: Objection.

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Mischaracterization.
THE WITNESS: In what context would they not look at a 3D product? They might not, no. I don't know -- I don't understand the question as phrased.
BY ATTORNEY MAAS:
Q. Go back to the same image.
Mr. Rake, can you see my screen again?
**A. Yes.**
Q. We're back at the chart that immediately follows paragraph 114 of your report.
Do you see the rear fender that appears above the swing arm in the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. You would agree with me that the asserted design, the claimed design does not show a similar rear fender, does it?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No.

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BY ATTORNEY MAAS:
Q. In your opinion, would an ordinary observer notice that difference?
**A. Probably -- probably notice the front fender more than the rear fender just given its proximity to the tire and all. But, again, it's outside the claim of the '456. So I was -- I was just comparing the design that was claimed in the '456 to the Talaria. So it didn't include the rear fender.**
Q. Well, sir, no rear fender was claimed in the '456 design patent, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Right.
BY ATTORNEY MAAS:
Q. And looking now at the triangular swing arm, do you see the chain guard that sits on top of the triangular swing arm on the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: It's pretty obscure, so, again, if you're asking me as a design expert, if I look at all that stuff, I do see it.

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Would an ordinary observer looking at the overall impact see that and see that as some distinguishing difference that's gonna stand out in their head? No.
BY ATTORNEY MAAS:
Q. Well, sir, do you see a triangular shape that sits above the triangular swing arm?
**A. Yeah, kind of -- I do. But, again, I didn't -- when I was comparing the '456 to the Talaria, I was just comparing what was claimed on the '456 to the -- what was claimed -- or what is -- what the design is on the Talaria, which includes other things -- right? -- that aren't claims, wheels, more --**
Q. No triangular chain guard appears on the '456 design patent claim, does it?
**A. No.**
ATTORNEY LYNCH: Object to form.
THE WITNESS: But it doesn't change the overall appearance of the design.
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BY ATTORNEY MAAS:
Q. Do you think the ordinary observer may have noticed the presence of a triangular chain guard on the accused product?
**A. No. Not -- not -- not when they're looking at -- initially looking at the design online, I don't think they would -- that would be part of their attention.**
Q. I'll stop sharing for a moment. Now, sir, you would agree with me you talked a lot about silhouettes and how important silhouettes are -- right? -- in our conversation today?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I don't know if we talked a lot about it, but we did talk about it.
BY ATTORNEY MAAS:
Q. And you heavily discussed silhouettes in your expert report, didn't you?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I did, yes.

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BY ATTORNEY MAAS:
Q. All right. I'm going to share my screen. We're going to the chart that immediately follows paragraph 117 in Rake 1, the Rake report on page 41. Sir, do you see the image on your screen?
**A. Yes.**
Q. Who drew the red marks on the this image?
**A. I did.**
Q. So you made the decisions about what to include and what not to include within the red marks that you drew on this?
**A. Yes.**
Q. So it was your decision to exclude the front fender from the silhouette of this bike of the accused product?
**A. Yes, yes.**
Q. Is it your opinion that the front fender does not form part of the silhouette of the accused product?
**A. I was comparing the claimed design to the Talaria, so I was just in**

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**that way comparing the same part of the bike to the same part of the bike. I wasn't -- so it didn't get into wheels and stuff even though they're there in broken line and on the patent.**

**I -- I outlined the design as it was claimed in the patent. And --**

Q. Sir, we're not talking about the wheels.

We're talking about the front fender of this bike.

**A. Right.**

Q. And is it your opinion that the front fender doesn't form part of the silhouette, or does it form part of the silhouette?

ATTORNEY LYNCH: Object to form.

THE WITNESS: It doesn't -- it doesn't -- it doesn't correspond to the claim of the '456 as part of -- that the part -- the design as it's claimed didn't include the fork and the wheels. It didn't include a fender.

So I didn't -- I didn't put those in.

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BY ATTORNEY MAAS:

Q. Well, sir, is there a front fender in broken lines on the '456 design patent?

**A. No.**

Q. It's not mentioned at all in the '456 design patent, is it?

**A. No.**

ATTORNEY LYNCH: Object to form.

BY ATTORNEY MAAS:

Q. And you say here in paragraph 117, "Below is a comparison of the silhouettes between the asserted patent and the accused products. For purposes of the side-by-side comparisons, the silhouettes inform a noticeable overall visual effect on the claimed and accused designs," right?

That's what it says?

**A. Yes.**

Q. It doesn't say, I'm comparing the silhouettes excluding some of the elements of the accused product, right?

**A. No.**

Q. So you chose to exclude the front

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fender from the silhouette of the accused product?

**A. Sure.**

Q. You chose to exclude the rear fender from the silhouette of the accused product?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yes. Again, they weren't -- they weren't part of the patent, and so I -- I chose to exclude those.

BY ATTORNEY MAAS:

Q. You excluded the chain guard from the silhouette of the accused product, didn't you?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yes. Same reason.

BY ATTORNEY MAAS:

Q. Because the claimed design doesn't include all of those things, any of those things, right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Right.

BY ATTORNEY MAAS:

Q. Sir, you'd agree with me the

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front fender, it changes the overall impression of the accused product, doesn't it?

ATTORNEY LYNCH: Object to form.

THE WITNESS: It's just not a comparable comparison. That's all. I was just comparing the -- the claim of the patent and then really all of the same parts of the bike on the Talaria.

And I didn't include things that weren't in the claim.

BY ATTORNEY MAAS:

Q. So what you're saying, sir, is that if you -- if you exclude the things that are different, they look the same?

ATTORNEY LYNCH: Object to form.

THE WITNESS: No.

BY ATTORNEY MAAS:

Q. You'd agree with me that the front fender is different, right?

**A. We -- we agree that there's a fender on that, and there's not a fender on the other one --**

Q. Right.

**A. -- on the patent --**

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Q. The asserted patent shows the wheels in dashed lines, right?
**A. Yes.**
Q. It shows the front suspension in dashed lines, right?
**A. Yes.**
Q. It shows the handlebars in dashed lines, right?
**A. Yes.**
Q. But it doesn't show a front fender in dashed lines, does it?
**A. No.**
Q. It doesn't show a rear fender in dashed lines either, does it?
**A. It doesn't show --**
ATTORNEY LYNCH: Object to form.
THE WITNESS: -- it in solid lines either.
BY ATTORNEY MAAS:
Q. It doesn't show a rear chain guard in dashed lines, does it?
**A. No --**
ATTORNEY LYNCH: Object to form.
THE WITNESS: -- and, again, it doesn't show them in solid line either.

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It's not claiming them. It's not part of the design.
BY ATTORNEY MAAS:
Q. Right. Those things aren't part of the claimed design, are they?
**A. No.**
Q. I'll take this down.
Okay. Have you received a copy of Mr. Delman's rebuttal report?
**A. I did. I didn't have much of a chance to look it over. Of course, that was just a little while ago.**
Q. That's fine.
Sir, would you agree with me that Surron did not invent motorcycles?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes. We're talking about motorcycles, every kind, yeah.
BY ATTORNEY MAAS:
Q. That's correct, sir.
**A. They didn't -- they didn't do that.**
Q. Surron did not invent the electric motorcycle either, right?
ATTORNEY LYNCH: Object to form.

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THE WITNESS: That's correct.
BY ATTORNEY MAAS:
Q. Surron did not invent electric dirt bikes, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. They -- the -- the real kind of lightweight version is different, but there are dirt bikes that are a little bit more robust.
BY ATTORNEY MAAS:
Q. I'd like to go to paragraph 116 of your report, the chart immediately following it. You reference the -- a Y shape that you contend the -- is similar between the asserted patent and the accused product, right?
**A. Yes.**
Q. Could you describe to me what this -- what this Y shape is?
**A. The Y shape kind of -- a lot of it kind of shows this -- well, this has a lot to do with the stance that I talked about before and how there's almost kind of a couple directions that are going on that are a little bit of tension.**

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**So the -- there's forward part where the -- and the center of the bike going up, but then going forward into what -- we'll say to the right on this image on the screen there's -- there's -- the form moves in that direction.**
**And then there's a part of the form that pulls and kind of does, like -- like, a counter that goes back and to the left.**
**So this kind of heavier part weighted forward and leaning is that kind of -- the Y -- the right side of the Y. And then the seat sort of, like, pulls back, and it's a little bit lighter. But it's -- it's, like, a counterbalance.**
**But that's a big part of the gesture of the thing. That's kind of the -- the stance of it.**
Q. Would you agree that this Y shape is commonly seen in dirt bikes and has been commonly seen in dirt bikes for decades?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah. Not quite like -- not quite like this, and not,

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again, on this specific type of bike, the real lightweight ones.
But -- but the -- yeah, it's -- it's not -- it's not completely different. It's just one -- it's just one design. We're kind of comparing part of the gesture and stance.
BY ATTORNEY MAAS:
Q. So it's a design that's been done before, this Y-shaped, I guess, configuration that you're referring to?
**A. Yeah. And various iterations. This one, like, they pretty much overlay. If you take the same Y and go on both of them, this is kind of what it looks like.**
Q. So is that how you -- going back, did you -- did you put the Ys on this -- on these images?
**A. Yes.**
Q. Which one did you start with?
**A. I don't remember.**
Q. So did you create the Y on one of these images and then copy it to the other one?
**A. Yeah.**

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Q. Well, when you do that, wouldn't you agree that it highlights that the seat on the accused product is longer than the seat on the claimed design?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I mean, you could -- again, if you just -- if you just want to -- yeah, you could -- you can see that the seat is longer, but the important thing is that they have the same -- the direction to it, the same gesture to it.
And whether the seat's a little bit longer or shorter is not the thing that you notice as much as you notice the gesture.
BY ATTORNEY MAAS:
Q. Well, hold on, sir.
What's -- what is the seat for on a motorcycle?
**A. Well, it -- it kind of -- kind of depends on different bikes. On these, you're not sitting on them as much as on other types of motorcycles. A lot of your riding is on the pegs and shifting your**

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**weight where needed, and the seat in a certain way just kind of, like, centers your body better.**
**And same thing in, like, downhill mountain biking or something like that. Sometimes -- sometimes on these things you sit on the seat, and sometimes it's just kind of -- kind of guides your body.**
**This is definitely more of the guide-your-body type of machine.**
Q. Do dirt bike riders tend to slide back and forth from one end to the other of their seats as they're riding?
**A. Their body moves forward and back. I don't -- you know, like, gliding on the seat, I think, could be a matter of style. But I think -- I think your weight needs to shift forward and back, side to side.**
**So I don't think -- I don't think your, let's say, contact with the seat is -- it depends on the kind of trail you're riding or the type of riding you're doing or what -- what's going on. But I think for the most part, you're not, like,**

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**in the seat that much.**
Q. What about somebody who's, I guess, riding this thing down the road? Do you think they'd be in the seat primarily?
**A. Yeah. I don't know which one of these is actually road legal. But if you were riding it down a -- down a road, you would probably be more sitting in the seat.**
Q. Do you think the seat is something an ordinary observer would notice about these bikes?
**A. Yeah. As, again, as part of that overall look and the seat being there, yeah, that's noticed.**
Q. But you didn't discuss how the additional length of the seat in the accused product in your report, did you?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, I didn't.
BY ATTORNEY MAAS:
Q. I'll stop sharing this for now.
Go back to 114, the chart following 114.
Sir, do you see the -- do you see my screen?

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**A. Yes.**
Q. Do you see the tail fairing that extends beyond the seat on the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I do, yes.
BY ATTORNEY MAAS:
Q. The '456 design patent, the claimed design does not have a similar fairing, does it?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, it does.
BY ATTORNEY MAAS:
Q. Do you think the additional fairing extending beyond the seat of the accused product is something the ordinary observer might notice?
**A. Again, I notice it. I think as an expert, I'd notice it. As a thing that substantially changes the overall look of the bike? No, it doesn't do that. It's not gonna -- it's -- it's a minor feature that doesn't impact the overall look.**
Q. So you said you noticed it, but it didn't end up in your expert report, did

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it, that difference?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. My comparison is, again, on the overall look, which is -- I understand is the test, the overall appearance.
And that's -- that's what I -- that's what I did.
ATTORNEY MAAS: All right. I think it's been about an hour. Do you want to take another break?
THE WITNESS: We can do it.
ATTORNEY MAAS: All right.
THE VIDEOGRAPHER: Stand by.
We are going off the video record.
The time is 1:43 p.m.
(Whereupon, a recess was taken at 1:43 p.m.)
THE VIDEOGRAPHER: We are back on the video record.
The time is 1:51 p.m.
BY ATTORNEY MAAS:
Q. Welcome back, Mr. Rake. During the break, did you discuss the substance of

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your testimony with your counsel?
**A. No.**
Q. Mr. Rake, would you agree that the overall look of a three-dimensional object is comprised of many things?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes. It's kind of a general thing, but I think I can agree with that.
BY ATTORNEY MAAS:
Q. Those things are not limited to the outline of the object, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. They're not limited to that, but it is -- it's an -- it's important to understand it and the importance of contour and silhouette for understanding the whole of a thing so you're not looking at parts and components which makes Gestalt theory, I think, particularly relevant here in -- in design patent.
ATTORNEY MAAS: I'm going to drop a document marked Exhibit 2, Rake Exhibit 2 into the chat.

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(Whereupon, Exhibit 2 is marked for identification.)
BY ATTORNEY MAAS:
Q. I'm now going to share my screen of the same.
Mr. Rake, can you see my screen?
**A. Get rid of this one.**
**Yes.**
Q. On my screen, do you see a document that you've seen before?
**A. Yeah, I'm just looking at that Figure 1 from the replacement images.**
Q. Right. Are you familiar with the -- with the SCORE database that the USPTO keeps with higher resolution drawings of design patent claims?
**A. Not -- not specifically, no.**
Q. Did you view high-resolution -- a higher resolution version of the claims of the '456 design patent in preparation for your work today?
**A. I did, yes.**
Q. Does this look to be those higher resolution drawings?
**A. Yes. I think that's the ones I**

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**used in my report.**
Q. You'd agree with me that design elements that are depicted in solid lines are claimed, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. And elements depicted in dashed lines, they form the environment, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: That's my understanding, yes.
BY ATTORNEY MAAS:
Q. But are not claimed by a patent as part of the scope of the claim, right?
**A. Yeah, that's --**
ATTORNEY LYNCH: Object to form.
THE WITNESS: -- that's my understanding.
BY ATTORNEY MAAS:
Q. So taking the '456 -- the claim of the '456 design patent, for example, there are solid lines that are within the outline of the claimed design, right?
ATTORNEY LYNCH: Object to form.

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THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. And those interior solid lines also form part of the overall appearance of an item, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. And you would agree with me that they should all be considered as part of the analysis of design patent infringement, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes. As part of the analysis, yes.
BY ATTORNEY MAAS:
Q. Did you look at all of the views of the '456 design patent?
**A. Yes, I did.**
THE WITNESS: Just a second. I have to close the door of my office. There's somebody walking by.
ATTORNEY MAAS: It's all good.
(Pause in testimony.)
THE WITNESS: Sorry about that.

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ATTORNEY MAAS: No worries.
BY ATTORNEY MAAS:
Q. Did you take a look at Figure 7 and 8 of the '456 design patent?
**A. I did, yes.**
Q. How would you describe the angle -- or the view portrayed in Figure 7 and 8?
**A. I guess on Figure 7, I think I describe that as maybe a right front perspective, and Figure 8 would be a left front perspective.**
Q. All right. Zooming in on Figure 8.
What would you call the element featured at the front of the frame of the '456 design patent in Figure 8 that I'm highlighting with my cursor right now?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Definitely an element. And I'm assuming it's the motor control unit.
But from a design perspective, it's, you know, just, you know, part of the overall look.

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BY ATTORNEY MAAS:
Q. If -- I'll represent to you that it -- that that has been described as the motor control unit.
So if I refer to it as the motor control unit, can we agree that that element is what I'm referring to?
**A. Fine with me.**
Q. Okay. At the front of the motor control unit, do you see the letter S depicted at the top?
**A. I do, yes.**
Q. And you see it's in solid line?
**A. Yes.**
Q. You see the letter U below it?
**A. I do.**
Q. Also in solid line?
**A. Correct.**
Q. The letter R below the letter U?
**A. Yes.**
Q. Also in solid line?
**A. Yes.**
Q. A hyphen?
**A. We assume that's a hyphen, I guess. Vertically stacked, yeah.**

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Q. Sounds good.
And R below that?
**A. Yes.**
Q. Also in solid line?
**A. Yes, it is.**
Q. And O below that?
**A. Yes.**
Q. Also in solid line?
**A. Yes.**
Q. And N below that?
**A. Yes.**
Q. Also in solid line?
**A. Yep.**
Q. Would you agree that spells Surron?
**A. Yes.**
Q. And Surron is the plaintiff in this case, right?
**A. Yes.**
Q. This is Surron's design patent?
**A. Yes.**
Q. Or this is a figure from Surron's design patent?
**A. Yes, it is.**
Q. Sir, taking a look at the

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remainder of Exhibit 2, other than Figure 7, which shows the other side of this same view, do you see the words "Surron" appearing anywhere else on the claimed design?
And if you would like, you can take a look at the file that I dropped in the chat, which is the same file.
**A. Okay.**
(Pause for reading/reviewing.)
THE WITNESS: No, I don't see it anywhere else.
BY ATTORNEY MAAS:
Q. Actually, I'm going to pull it back up. Just a moment. There we go.
Sir, do you see Figure 10 depicted on the screen in front of you?
**A. Yes.**
Q. And that's Figure 10 of Exhibit 2, the higher resolution version of the drawings of the '456 design patent?
**A. Yes.**
Q. Remember when we were talking about the faux gas tank on the accused product a little earlier?

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**A. Yeah. Yes.**
Q. And we were talking about the shape that's depicted on -- on the claimed design, the '456 design patent?
**A. Yes.**
Q. Looking from -- what would you call this view, sir, Figure 10?
**A. Left rear perspective.**
Q. And do you see the element of the '456 design patent that is in the same place that the -- what we're calling the faux gas tank of the accused product is?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. Do you see in this perspective how the -- that element appears to -- it appears to be concave?
ATTORNEY LYNCH: Object to form.
BY ATTORNEY MAAS:
Q. I'll zoom in on it for you.
**A. So I guess you could call it concave. It's kind of a frame with a -- I don't know. It's not like -- it's not like a bowl or anything. It's different.**

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Q. But it looks like it -- I want to say it looks like a ramp that goes down into the element itself as opposed to something that bulges out, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. You'd agree that it's not a smooth shape, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, that's correct.
But if you -- you know, if you compared this view to the comparable, like, in my report, the comparable view of the Talaria, you still -- the overall -- the overall impression is that the designs are similar.
So whether you notice that there's a ramp or sides or something like that in a one-component part, when you look at the overall -- the overall design, the overall view, I think that's when it -- it looks similar.
So I think it's important not to, you know, chop out individual

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components and try to, you know, compare them piece by piece, because I think the analysis is supposed to be what the overall appearance is.

BY ATTORNEY MAAS:

Q. So is it your position that if nearly every component is different between the -- between the patented design and the accused product, the overall appearance can still be the same?

**A. I don't know. You know, it's kind of a -- it's a pretty open question. But I think it's possible for most of the -- for a lot of the components to be different.**

**But if their relationship to each other and their relationship to the overall is the same, they could look the same even with differences in design and the components themselves.**

ATTORNEY MAAS: All right. Go ahead and mark Exhibit 3.

(Whereupon, Exhibit 3 is marked for identification.)

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BY ATTORNEY MAAS:

Q. Exhibit 3 is a document bearing Bates number SURRON_01_0003693. And this will be Rake 3.

I'll go ahead and share my screen and display Exhibit 3 to the witness.

BY ATTORNEY MAAS:

Q. Mr. Rake, have you seen this image before?

**A. Yes.**

Q. What is Exhibit 3?

**A. This is a photograph of the Talaria bike that was sent to Chicago.**

Q. How do you know it's a Talaria bike?

**A. Because I remember supervising shooting this.**

Q. So zooming in on the MCU location on the Talaria bike in Exhibit 3, what do you see on the front of the MCU?

**A. The word "sting R."**

Q. Do you see the words --

**A. On it.**

(Simultaneous unreportable crosstalk occurs among parties.)

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(Stenographer requests one speaker at a time.)

THE WITNESS: Did you not hear me or did you not hear...

THE STENOGRAPHER: I couldn't hear the full question.

BY ATTORNEY MAAS:

Q. Okay. Do you see the words "Surron" on the front of the MCU controller in Exhibit 3?

**A. No.**

Q. Would you agree with me that the absence of the letters S-u-r-r-o-n on the front of the MCU controller of the Talaria product is a difference between the accused product and the asserted design?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yes. It's a difference, again, I don't think change the overall appearance of the design. But it's a difference.

BY ATTORNEY MAAS:

Q. Well, and you would agree with me it's claimed in the '456 design patent, isn't it, the letters S-u-r-r-o-n?

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ATTORNEY LYNCH: Object to form.

THE WITNESS: Yes.

BY ATTORNEY MAAS:

Q. And a claimed feature of the '456 design patent is not present in the accused product?

**A. Yes.**

Q. Now, we discussed that the letters S-u-r-r-o-n don't appear anywhere else in the '456 design patent -- right? -- other than the MCU controller?

**A. Yes.**

Q. If you zoom in on the side of the motor, can you see that circular item on the side of the motor for Exhibit 3?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yes.

BY ATTORNEY MAAS:

Q. Do you know what's in that circular portion that I'm displaying on the screen right now?

**A. From that image, no. But I --**

Q. Do you know what's in that circle?

**A. Yeah, I think it's some kind of**

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**product marking, but I can't remember. I don't know if it's the logo or a model number or something. But it's a low contrast kind of feature, I guess, gray on black.**

Q. You'd agree with me that no logo appears in the same place on the '456 design patent, right?

**A. Yes.**

ATTORNEY LYNCH: Object to form.

BY ATTORNEY MAAS:

Q. Let me see if I can find a better image for you, Mr. Rake.

ATTORNEY MAAS: Take a look at this one. Dropping a document in the chat bearing Bates number SURRON_01_0003718. We're going to mark this one Rake 4.

(Whereupon, Exhibit 4 is marked for identification.)

BY ATTORNEY MAAS:

Q. Sir, do you see Exhibit 4 on your screen?

**A. Yes.**

Q. What's Exhibit 4?

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**A. It's the -- it's a top view of the Talaria accused product.**

Q. Is this one of the pictures you had taken by counsel?

**A. Yes.**

Q. Zooming in on the seat here, do you see a logo on the back -- at the back of the seat?

**A. Yes.**

Q. Do you know what that logo says?

**A. Yeah. It's a T that says "Talaria." But this is, like, embossed on the seat. Super low contrast. You know, not necessarily an item that you're gonna notice, certainly not immediately.**

Q. Well, this is a photograph, right?

**A. Yes.**

Q. Do you know what -- before you submitted your report, did you know what this Talaria logo looked like in person?

**A. I don't -- I don't know. I can't remember if I've seen it in other things or advertising or website or something.**

Q. But you have -- you didn't see

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how it appeared on the seat of the accused product when you submitted your report, right?

**A. As a -- no. I think -- again, I think a lot of these things that are -- if there are features or elements or something that -- that doesn't change or impact the overall visual impression, then I didn't comment on it.**

Q. Well, my question was: You didn't actually see the physical product itself before you submitted your report, right?

**A. No. That's right.**

Q. You just saw these pictures?

**A. Yes.**

Q. And so you haven't seen how this logo looks in person at the rear edge of the seat of the Talaria motorbike, right?

**A. No.**

Q. And you'd agree with me on the '456 design patent, no logo is claimed at the back end of the top of the seat in that -- in that design, right?

**A. Yes.**

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Q. Moving forward. Do you see the Talaria Sting that appears at the front of the seat?

**A. Yes.**

Q. No logo appears in a similar place on the '456 design patent, right?

**A. No.**

Q. Is that a yes that no logo appears?

**A. It's a yes that no logo appears.**

Q. Sorry. I just had to clear up the double negative. That's my fault.

**A. Yeah.**

ATTORNEY MAAS: All right. I'll stop sharing this one. I'll drop Exhibit 5 in the chat.

(Whereupon, Exhibit 5 is marked for identification.)

ATTORNEY MAAS: Just a moment. Exhibit 5 is a document bearing Bates number SURRON_01_0003666. I'll pull it up on my screen. I'm now displaying Exhibit 5 to the witness.

BY ATTORNEY MAAS:

Q. Mr. Rake, what is Exhibit 5?

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**A. Just a minute.**
**Exhibit 5 is a left-side view of the accused product.**
Q. And I don't know if that's any clearer on the side of the motor housing, but you stated before that your understanding that that is a -- a marking that indicates the brand?
**A. I guess. It looks like a guitar pick with wings right now. I don't know if that's the impression.**
Q. Have you seen a high resolution picture of what's located here?
**A. I think I have, but...**
Q. Did you ask counsel to take a higher resolution picture of this for you?
**A. No.**
Q. Why not?
**A. Again, my -- my concern all along has been the overall appearance, and if -- and things like this or any kind of, you know, embossing on the seat or something like that, if I don't think that it is significant enough to change the overall appearance.**

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**In other words, kind of a -- kind of a minor thing, then I probably didn't need to see a higher res picture of that feature, because I'm not looking -- comparing features to features. I'm comparing overall design to overall design.**
Q. Do you think the ordinary observer -- strike that.
Is it your opinion that the ordinary observer -- strike that too.
Do you believe that the ordinary observer would recognize logos?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, that's a pretty broad question. What kind of logos? Where? What kind of products?
BY ATTORNEY MAAS:
Q. Do you think the ordinary observer in this case of electric motorbikes would recognize logos on bikes?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think the important thing is the ordinary observer that's looking at the overall -- the overall design would a

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logo change that or affect that? I don't know how outlandish it might have to be to do it or if it's -- I don't -- I don't know.
But it didn't change it as -- as I was -- from images that I've seen and the bikes that I've seen.
I don't think that we're talking about a feature that is -- is -- like, this graphic feature here, it's not something that an ordinary observer would notice ahead of gathering that impression that they get on what the overall design is.
That's -- it would have to -- it would have to come much later.
BY ATTORNEY MAAS:
Q. Well, you would agree with me that the '456 design patent does claim a logo, right?
**A. It does, yes.**
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes, it does.
BY ATTORNEY MAAS:
Q. And since the '456 design patent

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claims a logo, the logo forms part of the overall visual impression that the '456 design is going to create, right?
**A. There's -- there's a lot of lines that are part of that drawing or those drawings. But it's the kind of combination of everything, the aggregate of everything, what kind of impression is that?**
**Does the logo make a difference in that overall visual impression even on the claimed thing? I don't think so. I think a lot of the other -- there's a lot of things there that are part of the claim that -- that the claim is the overall design.**
**And so what, you know, any one particular feature -- I don't think we -- or I would look at that in isolation and use that as part of my analysis, because I don't think that's the right analysis.**
**It's supposed to be the overall visual impression. And that's another good reason why, you know, using something like gestalt as a -- as a theoretical model or as a model for how people perceive things**

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**is pretty important, which says, you know, that what the eye does is wants to perceive wholes. Not little isolated elements.**

**It's trying to pull all of those things together and perceive a whole. So all of those things could be part of it, but -- but what they -- but what you're trying to get and what the ordinary observer would get is the overall impression.**

**It's made up of everything. But you don't want to, like, chop out any of the features and just -- and hold those up in isolation or compare one little, you know, aspect of it to another aspect of something else.**

**I don't think that's -- that's not the test that I'm familiar with, and it's not the process that I used or the test that I used when I did my report.**

Q. So, sir, did you disregard the logo that was claimed by the inventors of the '456 design patent when you were conducting your analysis of potential infringement?

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ATTORNEY LYNCH: Object --

THE WITNESS: No.

ATTORNEY LYNCH: -- to form.

THE WITNESS: No, I didn't. I used it as part of everything else that's on that line drawing -- or all those drawings and put them all together and get an overall view and not disregarding everything -- anything, including all of it to get that kind of overall impression.

BY ATTORNEY MAAS:

Q. Why didn't you discuss, acknowledge or otherwise mention the claimed logo of the '456 design patent in your report?

**A. If my -- if my analysis is on the overall thing, I didn't -- it's not -- I didn't have to acknowledge, point out every line in it, every little feature in it, because what I wanted -- what I wanted to get a handle on is what the ordinary observer would see and what their impression would be on the overall visuals.**

**So why would I -- why would I bring out the Surron logo more than anything else? I included everything.**

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Q. So you're saying you included everything, but the Surron logo that's claimed by the patent-in-suit just doesn't appear anywhere in your report?

**A. I -- everything -- how -- how is the overall appearance, which includes every line, everything that's there.**

Q. Well, sir, you're telling us you considered the Surron logo in your analysis, but you didn't include it in your report.

Why is that?

**A. Because I wrote to the overall on every -- my report is all about what the overall visual impression is and all of the different views. And not -- I don't think that there's anything that's, like, pulled out, isolated like the Surron logo.**

**It's part of the overall design. It's part of the claim.**

Q. It's part of the claim, and it's not present in the accused product, is it, sir?

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**A. It's -- it's -- the overall impression of the one -- of the claim of the patent is similar, substantially similar to the overall -- the accused product, the design of the accused product.**

**So if -- if we're talking about Surron logo or not Surron logo, that's not -- that's not the test. That's not the point. It didn't -- if it doesn't -- if the overall impression of one -- that's what we're concerned with.**

**So it's kind of -- it's important to have that -- that kind of understanding of the whole partly because that's the test, as I understand it for patent infringement anyway, and not the -- not a comparison component by component, but a comparison of the overall.**

**And -- and that's where I like to use gestalt where I can, because I think that is -- that's a good way to get at it and why the importance of things, like -- like silhouette matter.**

**Because that figure-ground that somebody sees to gather that impression of**

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**stance and design, it's, like, super important. It's, like -- it's part -- it was what I tried to have as my analysis through the report.**

**But I'm always trying to look at the overall and comparing overall visuals and not component to component.**

Q. So bringing you back to my question. My question was: The Surron logo is part of the claim, and it's not part of the accused product, is it?

Is the answer to that question yes?

ATTORNEY LYNCH: Object --

THE WITNESS: Yes.

ATTORNEY LYNCH: -- to form.

BY ATTORNEY MAAS:

Q. Now, you mentioned a few times this Gestalt theory.

Are you a psychologist, sir?

**A. No. I'm a designer and a design professor.**

Q. Do you consider yourself an expert in human visual perception, sir?

**A. No. But I -- I've taught gestalt**

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**principles in my -- in design classes. But I've also talked a lot in -- in some things as kind of basic as -- as, like, drawing classes and you're saying, hey, we're -- if we're doing a drawing and we want the viewer to look at a certain area of a drawing, how do we do that?**

**How do we get the eye to go here and not someplace else?**

**Or if they're making a website doing an app, how do we -- how do we know what the viewer is going to look at and how do we, like, steer -- steer them through consistently and reliably?**

**And a lot of what -- the principles that allow that to happen, allow -- inform you in the way that you can make decisions about that kind of stuff are still based on -- they're not specifically gestalt. They're the gestalt principle.**

**So those things are really important in teaching design, because we're trying to get all kinds of products that people are gonna want to look at, and you're trying to get them to -- to sort of**

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**be attracted to the overall shape.**

**But you're also in some cases trying to, you know, direct attention in some ways. And gestalt is perfect for that as a -- as a tool.**

Q. Sir, what does gestalt have to say about how the purchasing context affects human perception?

**A. You know, it would depend a lot, of course, on what the purchasing context was. So I think it would -- for instance, if what we're doing in purchasing a product like this and we're going to a website, it could -- it could do a lot to say, like, how you want to organize that website and what the images are that you put up and where they are and -- because now we're not -- we're not going to a showroom and looking at it.**

**We're looking at -- at images on a screen. So I think it's really important to be, you know, aware of -- of the principles. Because it isn't just one person's opinion, I think this is gonna be where people look.**

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**It's a kind of a thing that reliably predicts, you know, what people are going to at least notice and then maybe even, like, sequence, how they might go through something.**

**So it's very important kind of stuff to design education. And even though I don't write papers on gestalt, I've talked about it in presentations. But I mostly teach the principles in 3D design and in 2D design.**

**And I think others do at this university. And I'm associated with universities all around the world. It's not unknown to -- you know, as a principle. It's been around a long time, but it's also widely used.**

Q. Sir, please explain exactly how the Gestalt theory includes issues about purchasing products? Like, where can -- where is that in the theory? Like --

ATTORNEY LYNCH: Objection.

(Audio distortion; stenographer asks for clarification.)

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BY ATTORNEY MAAS:
Q. Let's see.
Sir, where exactly in Gestalt theory is it taught how that theory affects humans in the purchasing context, not in the abstract?
ATTORNEY LYNCH: Objection. Vague.
THE WITNESS: If the attraction to form is part of the purchasing, purchase -- purchase decision that you're talking about, then it's important.
BY ATTORNEY MAAS:
Q. Where exactly in this theory is that taught?
ATTORNEY LYNCH: Objection. Vague.
THE WITNESS: If we say, for instance, the importance of contour or profile in a product, that if you, if you don't have -- if you've got something that's boring as an outline, not interesting as a -- as an overall, people aren't gonna buy it.

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If you want to attract people, you know, that's one of the things that matters is that -- is that profile, that contour.
That's what's gonna distinguish it, but it's also a thing that you can -- yeah, you can work on, you know, as -- to improve your design and to get people to like it and look at it and want to buy it.
I would have a really -- I would want to have a really strong gestalt. It's just that way. So that's true in all products, not just these, but people in transportation, people in footwear, some of those that are really competitive, visually based or design-driven kind of fields, you know, they know that.
BY ATTORNEY MAAS:
Q. How does the price of a product influence Gestalt theory?
**A. I don't think the price of it does. That purchasing process that I talked about earlier where somebody first**

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**has to be attracted to the product and then they'll probably want to check out, like, I like it, and then they're gonna check out specs including pricing afterward.**
**So I don't think we're gonna start off with price. But the gestalt would get somebody interested in the form, and it might -- it might lead to a little bit more investigation and maybe purchasing.**
Q. So you think the consumer -- so you think the consumer considers price after the Gestalt theory of perception takes place; is that true?
**A. I don't think --**
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, I don't know if the gestalt ever completely disappears. But, yeah, I think they gonna get -- especially in something like this, we're talking about people looking -- kind of shopping online, as it were.
And I think that the overall appearance -- they have to be attracted

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to that, and then they're gonna find out that they can't afford it and go away. But they might find out that, you know, it's -- it's something that's important, obviously, in the decision -- buying decision.
But I don't think it's the leader.
BY ATTORNEY MAAS:
Q. Sir, how does the Gestalt theory address the particular question that is proposed by the Egyptian Goddess test?
ATTORNEY LYNCH: Objection. Vague.
THE WITNESS: Yeah, I don't know which particular question you're talking about.
BY ATTORNEY MAAS:
Q. Sir, you would agree with me that the standard for patent infringement -- or design patent infringement is whether an ordinary observer dealing with the prior art would be deceived into believing that two products are the same, right?
**A. Yes. That's -- part of it is my**

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**understanding, yes.**
Q. So how does Gestalt theory factor into that, if at all?
**A. It would -- it factors into -- it's the overall impression of something, and would another product give you the same overall visual impression?**
**Gestalt would -- would figure out -- would figure in heavily on that. Whether this one design looks like another design or another product.**
**So gestalt would -- would be the kind of thing we can use to kind of -- in a way, say why. Because we can -- we can say that the person's gonna see -- let's say we -- we can -- can show what a silhouette is, for instance, and we're saying, like, the overall form, the importance of contour, the importance of figure-ground.**
**So if we say that that's important, and this has a certain kind of figure-ground relationship, this one product, and then this other one has a very similar if not the same figure-ground, could that lead to confusion in the**

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**marketplace? Sure.**
**Because they have that -- they have that same -- if we go back to the word of "gestalt," because they have that same or similar gestalt, that would -- that would make sense that that -- that confusion could happen.**
Q. Wouldn't you agree that the ordinary observer in the Egyptian Goddess test is assumed to apply the degree of attention that they would to the purchase of the products at issue?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, could you repeat that, please.
BY ATTORNEY MAAS:
Q. Right.
The ordinary observer in the Egyptian Goddess test is assumed to apply the -- apply the degree of attention that they ordinarily would to the purchase of the products at issue?
**A. Yes.**
ATTORNEY LYNCH: Object to the inclusion of "Egyptian Goddess." He's

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not an attorney.
ATTORNEY MAAS: Counsel, please constrain your objections to the ones that are allowed under the local rules as -- yeah. And stop coaching the witness.
BY ATTORNEY MAAS:
Q. How does the -- how does the Gestalt theory address the level of attention issue? How does it address the level of attention that the ordinary observer applies to the -- applies to these products at issue?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think it's gonna -- it's gonna depend, of course, on the products. It's gonna depend on, you know, the -- the marketplace.
If it's online or if it's in person. It could depend on a few things.
BY ATTORNEY MAAS:
Q. Sir, Gestalt theory, it doesn't address whether a consumer would pay more attention when they're shopping for certain

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products or less attention when they're shopping or other products; it has nothing to say about it, does it?
ATTORNEY LYNCH: Object to form.
THE WITNESS: It has a lot to say about what that overall visual impression is. So if -- and with Egyptian Goddess, sorry to -- if the test is -- is about the overall visual impression, whether that -- not the little components, not the graphics, not the other stuff, the overall visual impression, is that substantially similar and would that similarity, you know, cause confusion in the marketplace.
I think that always applies, yeah.
BY ATTORNEY MAAS:
Q. Gestalt --
**A. Gestalt is -- is important to understand how an ordinary observer -- what an ordinary observer might see when they're -- and how they -- what they would see when they look at a product, a thing.**

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**And so that's always relevant, whether they see it in one context or another, what are they gonna see. What's -- how do they get the overall visual impression.**

Q. Well, sir, you would agree that the ordinary observer test contemplates that for some purchases, the ordinary observer applies more attention, right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: You know, yeah. And -- yes. But then --

BY ATTORNEY MAAS:

Q. For the purpose --

**A. -- what they -- what they visualize and what their overall impression is, that doesn't necessarily -- that's -- the important thing with -- with gestalt is -- is finding out, like, not only, of course, the contours and the profiles and stuff, but really importance of other things, like -- yeah, I guess it's contrast, figure-ground contrast is probably the biggest one to concern with. But there are several other ones that are**

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**part of Gestalt theory, like, what people perceive and how they perceive it.**

**And so the length of time, I don't know if that's specifically any part of gestalt, but the overall visual impression is.**

THE WITNESS: So we've had another hour, can we take a break?

ATTORNEY MAAS: Not quite yet. Almost.

BY ATTORNEY MAAS:

Q. Bringing you back to my question, you would agree that the ordinary observer test contemplates that for some purchases, the ordinary observer applies more attention to the design, right?

ATTORNEY LYNCH: Object to form.

BY ATTORNEY MAAS:

Q. That's a yes-or-no question, sir.

**A. I'm not gonna give you a yes or no on that.**

Q. Seems like a straightforward question to me.

**A. I don't think it's put quite that way, though. I'm trying to remember what**

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**the test was. I think it's given the attention a purchaser usually gives, which implies that it could vary.**

**But it doesn't say how or how much or what else, what's gonna happen if you look at it in 3D compared to 2D or something like that.**

**It's just saying, it's a very vague thing. It matters, but it's saying, you know, given -- given the attention that a purchaser usually gives.**

Q. And you'd agree with me for some purchases, the purchaser is gonna get more attention, right?

**A. Yeah. But they're gonna bring different backgrounds to it and all kinds of stuff, yeah.**

Q. And for some purchases, the purchaser will pay less attention, right?

**A. Yeah.**

Q. Does Gestalt theory have anything to say about how a purchaser decides whether to give a purchase more attention or less attention?

ATTORNEY LYNCH: Object to form.

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THE WITNESS: No. It talks about what -- what they're going to see, and that's it.

BY ATTORNEY MAAS:

Q. So, sir, you would agree with me that Gestalt theory talks about what the purchaser is going to see, but completely out of the context of the purchasing decision; is that right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: It's not a marketing theory. It's a visual theory.

BY ATTORNEY MAAS:

Q. So that's a -- that's a yes, Gestalt theory doesn't take into account the context supplied by the fact that it's a purchasing decision, right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: I don't know. I don't know. I see where it could. Like, if we're talking about, like, figure-ground and all that, where is this object? Am I looking at -- how am I looking at it? What am I gonna see?

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It's -- it's not completely independent of that. But it's not -- yeah, I don't think it's quite -- it's not quite the way you were -- the way you were putting it.
BY ATTORNEY MAAS:
Q. I guess the upshot is you would agree with me that Gestalt theory is a theory of visual perception, right?
**A. Yes.**
Q. But Gestalt theory doesn't take into account how that perception is influenced by the fact that the person is in a purchasing context?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I guess not. I say I don't think it's a -- it's a -- you want to look at it as a theory of perception and not -- it's not a marketing theory. But we're not in a vacuum.
BY ATTORNEY MAAS:
Q. But the literature on Gestalt theory, it doesn't describe how -- that you're familiar with, of course, it doesn't

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describe how the theory -- strike that.
The literature on Gestalt theory that you're familiar with, it does not describe how the fact that the individual is making a purchasing decision would affect how that theory is applied -- strike that.
Never mind. I'll withdraw the question.
ATTORNEY MAAS: Let's take a break.
THE WITNESS: All right. Thank you.
THE VIDEOGRAPHER: Going off the video record.
The time is 2:55 p.m.
(Whereupon, a recess was taken at 2:56 p.m.)
THE VIDEOGRAPHER: We are back on the video record.
The time is 3:03 p.m.
BY ATTORNEY MAAS:
Q. Good afternoon, Mr. Rake. During the break, did you speak to your counsel about the substance of your testimony?

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**A. No.**
Q. Mr. Rake, yes or no, would you please tell the members of the jury whether or not Gestalt theory addresses how a purchaser would look at an item as opposed to somebody who is just seeing something on the street without any further context?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think it's -- an ordinary observer would be in that way just like anybody else as far as that -- the application of gestalt.
So I don't think there's -- you know, a purchaser doesn't see differently than an ordinary observer or as a regular person. They don't -- they don't see different.
BY ATTORNEY MAAS:
Q. So, sir, yes or no, Gestalt theory does not take into account how an individual's interest in purchasing an item affects how they see it, right?
**A. That's right.**
Q. I'd like to turn now to your opinion with respect to the article of

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manufacture in this case.
Now, you'd agree there's a four-factor test for what should be considered the article of manufacture, right?
**A. Yes. But let me --**
Q. Just for -- the test, I think it begins on page 16 of your report, just for your reference.
**A. Yes.**
Q. One factor is the scope of the design, right?
**A. Yes.**
Q. The second factor is design prominence, right?
**A. Sorry, there was something outside my window. Can you ask that again, please.**
Q. Of course.
The second factor you consider when you're deciding the article of manufacture is design prominence, right?
**A. Yes.**
Q. The third factor is conceptual distinction, right?

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**A. Yes.**
Q. And the fourth factor is physical relationship, right?
**A. Yes. Yes.**
Q. And for that fourth factor, the fiscal relationship, you understand that Courts consider whether the product integrating the patented design is manufactured separately from the rest of the product, right?
**A. Yes.**
Q. Created to function on its own apart from the rest of the product?
**A. Yes.**
Q. Or, three, sold separately as a component part that's distinct from the entire product, right?
**A. Yes.**
Q. Now, it's your expert opinion that the article of manufacture in this case should be the entire accused product, right?
**A. Yes.**
Q. Sir, in your report you mention you signed on to an amicus brief, right?

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**A. Yes, I did.**
Q. And that was in the Apple vs. Samsung matter before the United States Supreme Court?
**A. Yes.**
Q. What were -- what was that amicus brief arguing in favor of?
**A. It was arguing in favor of -- well, it's relative to this article manufacture thing that the design patent -- the design patent could apply to the entire product saying, like, instead of saying the patent -- well, let's see.**
**Like the article of manufacturing -- article of manufacture wouldn't just be the part of the design that was claimed in the patent. It could be the whole product that it was designed for.**
**And that -- I think historically that was like that. And the Samsung-Apple case, I think -- I think that's when the Courts weighed in and said that the article of manufacture in that case should only -- should only be the part that was claimed in**

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**the patent -- I don't remember the specifics of it.**
**But it was kind of a narrower view on what it was. And a lot of design people and design -- design -- prominent design professionals, but also a lot of design educators signed on to this that was supporting the idea that we, you know, want to have strong design patents that -- that there's value in design in a product that some -- you know, can often extend beyond maybe the part of a design that was claimed in the patent.**
**But it's hugely important in certain products in certain ways. So I think it -- yeah, so a lot of people signed on. I was happy to do it.**
Q. Why did you sign this brief?
**A. Because I think basically -- again, I'm a -- I'm a -- as a designer but also, like, as an educator, I thought it was, like, kind of an important thing. So --**
Q. Why did you think it was important?

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**A. To me, I think that design patents having as strong an interpretation as it can is kind of useful for our profession; so...**
Q. Why is it useful for your profession?
**A. It shows the value of design that can kind of go beyond what I think in this case, you know, they were trying to diminish the value of it saying, well, if -- if the only part that was claimed is this little -- little isolated piece.**
**And, you know, that little isolated piece may have contributed to all of the interest in the product that, like, the Apple case is kind of a good one in a way just showing the value of design that a -- people bought iPhones because of the design.**
**And, yeah, there's technology involved and there's other things that are in the product for sure that are all important, but the real difference was the design and the distinguishing thing.**
**So I think that design patents**

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**need to be as strong as possible to protect that.**

Q. And that includes the '456 design patent?

**A. Sure. Yeah.**

Q. So you agree that the amicus brief you signed on to was arguing for the proposition that the article of manufacture should be the entirety of the accused product and not just the claimed components of that accused product, right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yeah. I haven't read it recently, but that's my -- that's my memory of it.

BY ATTORNEY MAAS:

Q. And do you understand how the article of manufacture question, not asking you to form any conclusions today about damages or anything like that, but you understand that the article of manufacture question plays into and implicates damages, right?

**A. Yeah. I understand that, yes. I'm not a damages guy, though.**

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Q. Of course. I'm not asking you to make a damages opinion.

**A. Okay.**

Q. You understand that it factors --

**A. Yeah.**

Q. -- into damages, right --

**A. Yeah.**

Q. -- factors into how much an accused infringer has to pay if they're found to infringe?

**A. Yes.**

Q. As we discussed before, you're not an engineer, right?

**A. Yes.**

Q. Not an electrical engineer?

**A. No.**

Q. Not a mechanical engineer?

**A. No. Like I say, I can engineer a bicycle frame. I can -- I can weld and repair things, but I'm not -- I'm not a -- I'm not an engineer. I'm kind of a garage -- a garage engineer -- no, I don't know what that is. Tinkerer.**

Q. But when it comes to designing the circuit board for a -- for the motor control unit, you as a designer, you wouldn't really know how to do that, right?

**A. No.**

Q. When it comes to selecting the right voltage and wattage for a battery, you as the designer wouldn't necessarily know how to do that, right?

**A. No. That's why we almost always work in teams, you know, with people that do know those things.**

**So you get involved in the specs. You can talk about what you want it to do. But how they do it, you know, I'm not -- I'm not the person to make those decisions.**

Q. A lot of the technical specifications of -- speaking in the abstract here.

A lot of technical specifications of a product, those would be the responsibility on your teams of the more engineering-focused folks, right?

**A. Yeah. Like I say, what can happen is a designer might say how they want something to work, what they want a thing to do. So it's not like you didn't have any input into it.**

**But then, you know, the nuts and bolts or, you know, the circuit board, no, that's not what we do typically.**

Q. You would agree with me that for a circuit board, for example, the visual design of the circuit board rarely, if ever, is going to be something that you're concerned with, right?

ATTORNEY LYNCH: Object to form.

THE WITNESS: Yeah, oddly Apple is one of the one -- one of the few companies I know that really had the designers look at the design of their circuit boards just for the appearance.

BY ATTORNEY MAAS:

Q. Now, looking to Factor 1 of the article of manufacture test, the scope of the design -- here, I'll put back on the screen to aid our discussion Exhibit 2.

ATTORNEY MAAS: I'm sharing Exhibit 2 for Mr. Rake.

BY ATTORNEY MAAS:

Q. Can you see that on your -- can you see Exhibit 2 on your screen, Mr. Rake?

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**A. Yes.**
Q. Now, Exhibit 2 -- we're looking at Figure 1. That's the right side view of the claimed design, right?
**A. Yes.**
Q. Now, you agree with me, though, that the wheels are excluded from the scope of the claim of the '456 design patent, right?
**A. Yeah. The wheels are not claimed, right.**
Q. But you'd agree with me that the wheels are important to making it -- making the bike move, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes, yes.
BY ATTORNEY MAAS:
Q. Do you agree with me that the brake system is not claimed in the '456 design patent, right?
**A. No, that's not claimed either.**
Q. You'd agree that the suspension system or at least the front -- the front shock absorber is not claimed in the '456 design patent, right?

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**A. That's right.**
Q. And you -- you're familiar with the Court's claim construction order, right?
**A. I am, yes.**
Q. And do you understand that the rear -- the parties agreed that the rear shock absorber is functional, right?
**A. Yes.**
Q. And will be -- and the parties agreed that it could be excluded from the analysis of infringement specifically?
**A. That's my understanding, yes.**
Q. You'd agree with me that the handlebars are also excluded from the scope of the '456 patent, right?
**A. Yes.**
Q. You agree with me that the wheels on a motorbike, they cost money, right?
**A. They do, yes.**
Q. And tires as well?
**A. They do.**
Q. The shock absorption system?
**A. Yes.**
Q. The handlebars?

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**A. Yes.**
Q. The headlight?
**A. Yes.**
Q. And you're aware that the accused product ships disassembled, right?
**A. Partly disassembled, yes.**
Q. You're aware that the product has to be assembled by the end user once it arrives, right?
**A. Partly, yes.**
Q. You watched the video on the -- on the assembly, right?
**A. Yeah. And I kind of -- I supervised assembling of the one we got.**
Q. So as a -- strike that.
So you'd agree with me since the -- strike that.
You'd agree with me that Surron is not claiming the ornamental design of the features in dashed lines on the '456 patent, right?
**A. Well, not really. I mean, part of the claim, as I understand it, includes written description as well as what's shown in dashed lines. So the title of the**

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**patent and the description of the patent, I think, is relevant to that understanding, or at least my understanding.**
**So even though the part that was claimed might look at as -- as part of a motorcycle, what's actually claimed as a motorcycle, the specifics, like, it's -- the title is light, electric off-road motorcycle.**
**And the description -- or the claim is ornamental design for a light electric off-road motorcycle as shown and described.**
Q. So you --
**A. So I think they could have called it, like, a portion of a motorcycle or, you know, something like that. But the written part is pretty specific about the whole thing.**
Q. Well, so this isn't a utility patent, right?
**A. No. It's a design patent.**
Q. So Surron, in this patent, is not claiming to have invented the apparatus of a light electric off-road motorcycle,

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right?
**A. It's the ornamental design of a motorcycle.**
Q. And the ornamental design they claim says nothing or is silent as to the wheels, right?
**A. Right. And this is, again, maybe my understanding or my reading of what the article manufacture is. Because I see, like -- like, there's two different things. I think the design as it's claimed is one thing.**
**But it's applied to the article manufacture, which is the motorcycle. So I think those -- the two things are -- can be separate -- and, yeah, so that the claim -- yeah, that's why the claim to me is for a motorcycle and not for a frame of a motorcycle, or, you know, something like that.**
**Which they could have done too. I thought it was important that it was written the way it was written as well as how it was drawn.**
Q. You agree with me also that

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features or elements of a product or a design that are purely functional are not entitled to design patent protection, right?
**A. If they -- if by "purely functional," you mean they're dictated by function, that basically they can only look one way and function the way they are, that's -- that's one thing.**
**But it also could be the way they are maybe relative to the rest of the design. So the relationship of that to the design.**
**So, anyway, I think that, you know, what -- what I see these things can be different and are different. There are different wheel designs. There's different -- yeah, it can done. Those things could be done differently and still function as wheels and headlights and handlebars and all of that kind of stuff.**
**So I don't think any of those -- those pieces are solely dictated by function.**
Q. But you also --

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**A. They're all -- they're all functional, but they're not dictated by function.**
Q. But you'd also agree those components you described, they're not within the scope of the '456 design patent's claim, right?
**A. That's right. They're to me, like -- that's where I say the distinction I have between the design and the article of manufacture.**
Q. I'd like to direct your attention to page -- let's see. Page 28 of your report.
**A. Okay.**
Q. You see the heading labeled, "B. Visual Perception of the Design That Evokes the Form of a Bee."
**A. Yes.**
Q. Do you see that?
**A. Yes.**
Q. So it's your opinion that the design of the '456 design patent looks like a bee?
**A. There's a -- it has a kind of a**

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**presence like a bee. It's not a -- it's not a literal -- you know, the form of the patent is the same as the form of the bee, but the kind of gesture or stance of the patent is similar to that of a bee.**
Q. Sir, is it your opinion that any motorbike that to your eyes evokes the form of a bee would infringe the '456 design patent?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I didn't say that. I wouldn't say that.
BY ATTORNEY MAAS:
Q. So you wouldn't -- you wouldn't say that's your conclusion?
**A. Right.**
Q. In your opening report, you did not address at all any comparison prior art, did you?
**A. I listed a lot of the prior art that I did compare to, but I didn't show any images of that.**
Q. You didn't -- you didn't show -- you didn't -- strike that.
In your report, you did not

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conduct the sort of three-way comparison that -- at all, do you?
ATTORNEY LYNCH: Object -- Lance, hold on.
Object to form.
THE WITNESS: Could you say that one more time?
BY ATTORNEY MAAS:
Q. Sure.
In your report, you do not conduct a three-way comparison with the asserted design, the accused product and prior art at all, do you?
**A. I did. But I did it, you know, when I looked at all of the prior art that was provided, which I didn't at the time have anything, like, comparison prior art from Talaria, so I think I was just looking at all of the samples of prior art.**
**And that's why I -- I grouped them visually in certain ways or mechanically in certain ways. I looked at a lot of prior art references that were, say, motorcycles that were gas-powered motorcycles.**

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**So kind of a different product.**
**Or e-bikes is kind of a different product.**
**Or air-powered vehicles, which is kind of a different product.**
**But there would be all these things so I could look at -- I could look at all of the prior art, and I didn't find any that I thought were -- were actual prior art that would be in the same -- of the same category that could be analogous prior art. I didn't find that.**
**So I didn't have anything there that's a -- that's a chart. Because if I did a three-wheel -- three-way test, I would want to have that -- that third one be whatever was the closest prior art.**
**But in that -- in that investigation, when you don't find anything and you're saying, like, you do a three-way comparison, you do consider that the ordinary observer has knowledge of the prior art, but knowledge of the prior art that was provided would lead you to conclude that -- that it's not -- it's not at the -- it's not the -- not analogous.**

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**So you would find the -- the patent and the Talaria products on one hand and all of the prior art is just -- is just different. So it made it -- it made it hard to do a chart. I could probably do it now or it depends on what kind of prior art was provided.**
**I saw a couple of those pieces that were in Delman's report that I wasn't provided. But -- but in order to do that, it would be best to have what the closest prior art was to do that three-way test.**
ATTORNEY MAAS: We're on Exhibit 6, right?
THE WITNESS: Yes.
(Whereupon, Exhibit 6 is marked for identification.)
BY ATTORNEY MAAS:
Q. I am dropping a document marked Exhibit 6 into the chat. It's an image of an electric bike. I will represent to you that it is an electric bike from 2014.
Sir, do you see what I've dropped in the chat?
**A. Yes.**

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ATTORNEY MAAS: I'll share my screen momentarily with Exhibit 6.
ATTORNEY LYNCH: Counsel, is there a Bates number on this?
ATTORNEY MAAS: There's no Bates number on this.
ATTORNEY LYNCH: Was it produced, Counsel?
ATTORNEY MAAS: It was in Mr. Delman's report.
BY ATTORNEY MAAS:
Q. Sir, have you seen this image before?
**A. Like I say, I did get the Delman report, whatever that was, yesterday, and I saw this then. But not a part of my analysis. I didn't really have time to do that or do a real comparison side by side in that kind of way, no, I haven't done that.**
**But I've seen it.**
Q. So the first time you saw this was when you received the Delman report?
**A. Correct.**
Q. Do you think this -- the bike

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depicted in Exhibit 6 looks similar to the design claim in the '456 design patent?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I'd want to do a better analysis than that. I don't want to -- I don't want to speculate there.
BY ATTORNEY MAAS:
Q. Well, you can see the silhouette of it, right?
**A. I can. I didn't -- I didn't compare it the way I would want to compare it, side by side, maybe other views, other things. But I'm not -- I'm not prepared to, you know, do a seat-of-the-pants, off-the-cuff, instant evaluation.**
**So I wouldn't --**
Q. You --
**A. -- I wouldn't do that, so I'm not gonna comment on that.**
Q. As you sit here today, you have no comment on whether this image is analogous to the '456 design patent?
**A. No. I don't -- I don't have an opinion of that. I'd want to have more**

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**time to study it.**
Q. And you have no opinion as to whether this image is analogous to the accused product?
**A. No.**
Q. Okay. You provided an opinion that the accused product is a copy of Surron's Light Bee, right?
**A. Yes.**
Q. Other than what's in your report, is there anything else you base your opinion that the accused product is a copy of the Surron Light Bee on anything else?
**A. I don't think so, no.**
Q. So your opinion that the Talaria accused products are a copy of the Surron Light Bee is based on your opinion that they look the same and press releases, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. I had the photographs that were taken of the Talaria and photographs that were taken of the Light Bee. I had -- had those.
///

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BY ATTORNEY MAAS:
Q. Have you seen a physical sample of the Surron Light Bee?
**A. Yes.**
Q. But you have not seen a physical sample of the Talaria Sting, right?
**A. Correct.**
Q. You're not aware of any statements by Talaria or Tanli that impact your conclusion that the accused product is a copy of the Light Bee, right?
**A. Well, I mentioned in the report in paragraph 170 where I reviewed YouTube video, interview with founder Eric Hicks that talked about -- he notes it's not difficult to make a bike like Surron's and states, "Talaria came out with one that's an exact copy." And that's the founder of Luna Cycle.**
**So I think -- I think that he acknowledges that making a bike that has different functional features is more difficult than making a copy, which I -- I took that he was referring to the design of the Light Bee when he -- when he said the**

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**product is an exact copy.**
Q. Did you talk --
**A. And there were other industry -- I didn't talk to him, no.**
Q. Just for -- just for a clear record, did you talk to Mr. Hicks in preparing your report?
**A. No, I didn't.**
Q. In paragraph 170, you acknowledge that Mr. Hicks is the founder of Luna Cycle, right?
**A. That's my understanding, yes.**
Q. Do you know that Luna Cycle is not a defendant in this lawsuit?
**A. I'm not aware of that.**
Q. You know that Luna Cycle is not Tanli or Talaria, right?
**A. I don't have any basis to have an opinion about that.**
Q. Right. Mr. Hicks, he didn't claim that he was saying on behalf of Talaria or Tanli, right?
**A. Not that I remember from the video.**
Q. And then paragraph 171, you refer

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to industry publications?
**A. Yes.**
Q. So just bringing you back to the overall question, in your report, you don't reference any statements by Tanli or Talaria that affect your conclusion that -- as to copying, right?
**A. That's correct.**
ATTORNEY MAAS: How long have we been going?
THE VIDEOGRAPHER: We're currently going at 40 minutes this round. Current time on the record is 5:47.
BY ATTORNEY MAAS:
Q. Going back to your article of manufacture opinion, taking a look at Factor 2, design prominence, you'd agree with me that -- you'd agree with me that many components of the -- many components of a motorcycle are not included in the scope of the claimed design, right?
**A. Yes.**
Q. You'd agree with me that wheels are essential to a motorcycle, right?

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ATTORNEY LYNCH: Object to form.
THE WITNESS: Yes.
BY ATTORNEY MAAS:
Q. You'd agree with me that a motorcycle has to have a motor, right?
**A. Yes, it does.**
Q. You'd agree with me that motorcycles often have prominent handlebars, right?
**A. Yes.**
Q. But the wheels are excluded from the scope of the asserted design, right?
**A. They're not part of the claim, right.**
Q. You'd agree with me that the handlebars are not part of the claimed design?
**A. Yes. But, again, it's my understanding that the claim of the design includes the verbal description as well as the drawings.**
Q. Wouldn't you agree with me that design choices can be made with respect to the motorcycle's wheels?
ATTORNEY LYNCH: Object to form.

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THE WITNESS: Yes, yes.
BY ATTORNEY MAAS:
Q. Whether the -- whether there's a thicker rim or a thinner rim, those are design choices that could be made, right?
**A. Yes.**
Q. And often, those designs are featured prominently on various motorcycles, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Yeah, they can be, but they don't have to be. So -- but that's -- that's another thing where we're, like, they're functional. The wheels are functional. But the function doesn't dictate -- completely dictate the form.
You can have different form.
BY ATTORNEY MAAS:
Q. Right. The designer could choose to have a larger rim with a thinner tire -- right? -- if they thought that looked better?
**A. Yeah, they could.**
Q. Many motorcycles have cast wheels

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instead of spoke wheels, and those look completely different, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I think motorcycles do. I don't know if lightweight off-road motorcycles would. It's kind of a heavier choice, so I don't know. But I haven't seen a cast wheel on -- on a lightweight electric off-road.
BY ATTORNEY MAAS:
Q. Could happen, though, right?
**A. Could happen. Maybe. We can play designer here and do it.**
Q. We could. But if a designer made that choice, that choice would be outside the scope of the '456 design patent, right?
**A. So the scope of the patent, as I understand it, is, you know, what's claimed in solid line and unbroken line and, again, in the verbal description. So it's those two things.**
**And so I don't think the wheel thing is drawn as broken line. But if the claim is for a motorcycle, it would include wheels. But not a specific design of a**

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**wheel that I'm aware of. I don't know what that means.**
Q. Let's jump now to Factor Number 4, the physical relationship between the patented design and the rest of the product.
Now, are you familiar with how Surron manufactures the alleged embodying product?
**A. Not specifically, no.**
Q. Do you know where the product's manufactured?
**A. I don't. I'm assuming a lot of the parts are -- I don't know -- I don't know the specifics of where it's manufactured. It's not domestic.**
Q. Does it sound right that these parts would be manufactured in China?
**A. That sounds likely.**
Q. But you never asked anybody at Surron about their, I guess, sourcing practices, right?
**A. Right.**
Q. Did you ask to speak with anyone at Surron about their, I guess, supply

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chain or sources practices?
**A. No, I didn't.**
Q. Did you ask to speak with any -- anybody at Surron about anything in your report?
**A. I didn't interview or talk directly to anybody there.**
Q. Did you ask to?
**A. I don't think so, but I don't remember specifically.**
Q. So as you sit here today, you don't remember ever doing that?
**A. Right.**
Q. Would it surprise you to find out that many components of the -- the Surron bike -- or the Surron motorcycle are manufactured at numerous individual suppliers at numerous different factories?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, not at all.
BY ATTORNEY MAAS:
Q. Would it surprise you if the same was true for the accused product?
ATTORNEY LYNCH: Object to form.
THE WITNESS: That would not

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surprise me.
BY ATTORNEY MAAS:
Q. For example, would it surprise you that the batteries are manufactured somewhere different than the MCU?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No. But the way design typically works is that if I'm designing something or I'm on a team of people designing stuff, we will do the design, we'll make the specifications, we'll do all of the 3D modeling. And parts could get made to our specifications at other places.
So this has been going on forever with most products. But they're not just random parts that we assemble off the shelf. They would be parts that were designed specifically for our product.
So they could be made anywhere, and they will -- hopefully if they are made to the specs, they will fit.
BY ATTORNEY MAAS:
Q. Are you aware that the battery

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packs for the Surron Light Bee and the Talaria Sting are somewhat interchangeable?
**A. No. But I'm curious about the "somewhat" part.**
Q. They require an adapter, but with the adapter, are you aware that they're interchangeable?
**A. No. But that's really different with an adapter. And then we're talking about the housing of the battery specifically, as far as a design patent goes, and the look of that.**
**So if it had -- so if it fit the -- the kind of dimensional parameters, it could have a kind of a different look to it. It could be made out of different material. I suppose battery -- I think a lot of products have sort of upgradeable batteries, different sort of things.**
**But on these kind of -- on these kind of products, there's, like, a certain angle. There's a certain look. There's a certain design that is shown not in the design patent, but also, you know, like -- says -- got kind of a different -- a**

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**different case.**
**So you can't put a -- like, a square battery in -- if you know what I mean, or a circular battery or something in it. Wouldn't -- it wouldn't necessarily fit even if it had the right output.**
**So I don't know. I think I'm not shocked by it, but I don't think it means that they're, like, interchangeable batteries, especially if they require an adapter to work.**
Q. Would learning that all of the components of the accused motorcycles are manufactured separately from each other influence your analysis of Factor 4?
**A. No. Again, because I think all of the parts were designed specifically -- I'm thinking all the parts were designed specifically for this bike and not made just off-the-shelf generic parts.**
Q. If certain parts were generic off-the-shelf parts, would that affect your analysis?
**A. Yeah, it depends on how minor they were, where they fit what they did,**

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**how it might impact the overall visual impression. I think maybe then.**
**But I think, for the most part, the product -- I assume some things will be standard. But I -- from what I see, a lot of the parts that we see in the -- that are claimed in the patent are -- look to me to be pretty specific.**
Q. You would agree that whether a component is manufactured separately from the rest of the product is a factor, a subfactor of Factor 4, right?
**A. I think in my report on paragraph 178, 179, I talk about, "The visual features defining the claimed design; frame architecture, proportion, line continuity and spatial relationship between major components are only fully expressed in the assembled vehicle where all core components, including the wheels and battery, are integrated into their intended position.**
**"The design is not limited to any one of those parts, instead, it is reflected in the composition, balance and**

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**total form. While it's true that some components can be detached, either for shipping, repair or replacement, this detachability does not render them conceptually or physically distinct for purposes of this factor.**
**"What matters is whether the design pertains to a physically distinct and separately sold component as such, not whether the product can be disassembled.**
**"Here the design is embodied in the fully assembled product, the form of -- the form, the consumer experiences during typical use."**
Q. So --
**A. So I think -- so from all of the -- the fact that components can be made in separate factories, even in separate countries, they still comply to the design intent of the company and reflect it now in our -- in the patent.**
Q. So hold on. Let's go back to paragraph 62 of your report. That's where you set out the legal standard here -- or your understanding of the legal standard

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here.
**A. Okay.**
Q. So the first one you look at is, "Whether the portion of the accused product that integrates the patented design is: 1, manufactured separately from the rest of the product," right?
**A. Yes.**
Q. And as we discussed, you know, it is certainly within the realm of possibility from your perspective of an -- I'll represent to you that the components of the accused products are manufactured at various locations, at various factories, okay?
**A. Okay.**
Q. Based on the legal principle that you set out here, that would lean towards -- that would lean towards finding that this is a multicomponent product, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Well, yeah, so if you continue reading in that paragraph where "1, manufactured separately from

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the rest of the product."
But, "2, created to function on its own apart from the rest of the product." Or, "3, sold separately as a component part distinct from the entire product."
So the kind of products that we're talking about, they might be manufactured in different places, but they're not meant to be assembled in different bikes in different ways to different specs. It's not -- they're not sold as -- as separate parts.
They're not generic enough to be installed on a variety of different frames in a variety of different ways. It's very -- it's a very specific design.
So even though it is -- it is manufactured separately, but I think those other two parts are important to the understanding of my -- my paragraph there.
Hey, I think we've done another hour. Can we -- can we have a break?

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ATTORNEY MAAS: Just a moment. Just a couple more questions on this, and then absolutely.
BY ATTORNEY MAAS:
Q. Are you aware that the batteries for the accused products are sold separately as a component part? Are you aware of that?
**A. No. I'm aware that you can buy, you know, as a replacement part, they would be sold. But I don't think -- you know, what I'm talking about in this thing was that it would be some -- a design that's intended for a lot of different applications, a lot of different manufacturers' motorcycles.**
**So I'm not aware of that. I'm just aware of it being a replacement part, which is different.**
Q. So it's your testimony today that a replacement part is different than in the abstract of a component part being sold separately as a component part?
**A. Well, separately -- you got to read the whole sentence.**

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**"Separately as a component part distinct from the entire product." So that's what I'm saying. It's not -- it's not done like that. It's not distinct from the entire product.**
ATTORNEY MAAS: All right. Why don't we take a break.
ATTORNEY LYNCH: Thank you.
ATTORNEY MAAS: Stand by.
Going off the video record. The time is 4:06 p.m.
(Whereupon, a recess was taken at 4:06 p.m.)
THE VIDEOGRAPHER: We are back on the video record.
The time is 4:14 p.m.
BY ATTORNEY MAAS:
Q. Welcome back from the break, Mr. Rake.
While we were gone, did you speak with your counsel about the substance of your testimony?
**A. No.**
Q. All right. Please go to page 28 in your report.

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**A. Okay.**
Q. All right. So this is the bee section again. In the bee section, there are nine paragraphs which discuss at length that the -- your view that the '456 design patent evokes the form of a bee.
Why did you put this section in your report?
ATTORNEY LYNCH: I'll caution the witness not to reveal any work product privilege.
But you can answer the question.
THE WITNESS: You know, I think the -- looking at the design of the patent, and I think because I know that the -- the commercial embodiment was the Surron Light Bee, and it kind of -- like, oh, yeah, there's -- I can kind of see the similarities in gesture and stance from the product to the bee.
I kind of -- like, I just thought it was interesting and it was used sort of as a background thing before we got into really an analysis for -- and certainly not a -- looking at, like, an

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infringement analysis.
It was just kind of a -- to me kind of a -- a different understanding that I had of -- of -- of the design and in this kind of comparison to a bee.
I have no idea if that's what they intended it to be like when they named it a Light Bee. I didn't ask them. But I -- I kind of for myself, I thought it was interesting.
We do that a lot in design projects where we're kind of sometimes pulling the character of a product with a -- with maybe an animal or an insect or something. So it's just kind of a -- kind of an interesting exercise.
BY ATTORNEY MAAS:
Q. Do you believe that your section on your belief that the design evokes the form of a bee, do you believe that's relevant to infringement at all?
ATTORNEY LYNCH: Object to form.
THE WITNESS: No, not really. I didn't have it in the infringement

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part. It just -- it's a -- it's a way to understand even the concept of gesture and stance as it applies to vehicle design.
BY ATTORNEY MAAS:
Q. Do you intend to describe to the members of the jury that -- your view that the asserted design evokes the form of a bee?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Not at this time.
BY ATTORNEY MAAS:
Q. What do you mean "not at this time"?
**A. Well, I --**
ATTORNEY LYNCH: Also, Lance, I'll caution the witness not to reveal any work product privileged information.
THE WITNESS: No, I -- I haven't thought about a presentation at that -- at this point to a jury and what would -- what would help describe the design or help my -- help clarify and focus my opinion.

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So I don't think I would use it, but I don't know.
BY ATTORNEY MAAS:
Q. How many hours did you spend drafting this portion of your report?
**A. Not very many. Two or three, if that.**
Q. Do you believe that your comparison of the asserted design to a bee is a good description of the design claim in the '456 design patent?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Not necessarily. I thought it was just -- like I say, I think it was helpful to me thinking about stance and geometry and how in some ways that -- how products can kind of take on some of the -- a kind of a -- of a character in this way.
So that's really it. That was the whole point.
BY ATTORNEY MAAS:
Q. So do you plan to testify to the jury about the fact that you think it looks like a bee?

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ATTORNEY LYNCH: Object. Work product privilege. And I'll instruct the witness not to answer.
ATTORNEY MAAS: Counsel, this witness's plan is not work product.
ATTORNEY LYNCH: Trial preparation is work product.
ATTORNEY MAAS: It's verbal -- if it's verbal and if it's in his head, it's not work product.
ATTORNEY LYNCH: I disagree.
BY ATTORNEY MAAS:
Q. Mr. Rake, do you want to answer the question or no?
**A. I don't think --**
ATTORNEY LYNCH: I instruct the witness not to answer.
BY ATTORNEY MAAS:
Q. So the section beginning on page 28, "Visual Perception of the Design That Evokes the Form of a Bee," which extends to page 30, paragraphs 84 to 92, does not form part of your analysis of infringement; is that right?
**A. Yeah, I think that's right.**

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Q. It doesn't form the basis for any of your opinions in this report, right?
**A. I think the basis for the opinions were all from gestalt and -- and experience there. But not from this.**
Q. So your conclusion, you would not say that your conclusion is -- hold on. Strike that.
You would not try to say that the accused product infringes the asserted design, because you think they both look like a bee, right?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I mean, I didn't say that in the report anywhere so, no.
BY ATTORNEY MAAS:
Q. That's fine. I'm just trying to clarify what this section means. And if it mean -- what you're telling me sounds like this section is something you found interesting.
Do I have that right?
**A. I think that's basically correct, yes.**
Q. Okay. Yeah, I just -- you know,

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I've got you here. Got to figure out what you meant by all this stuff.
But, you know, if you're telling me this is a section that you found interesting and it doesn't factor into your infringement conclusion, then if that's the -- if that's the case, just let me know.
**A. Well, it wasn't part of my report in infringement, my infringement analysis.**
Q. Okay. If -- so it would be fair to say your section on the visual perception of the design evoking the form of a bee does not factor into your infringement analysis?
Would that be fair to say?
**A. I think that would be fair to say, yeah.**
Q. Cool.
ATTORNEY MAAS: Let's throw Exhibit 7 into the chat.
(Whereupon, Exhibit 7 is marked for identification.)
ATTORNEY MAAS: Give me one second. All right. I have uploaded

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Exhibit 7 into the chat. Exhibit 7 is a document bearing Bates number SURRON_01_0001410. I will now share my screen.
BY ATTORNEY MAAS:
Q. Mr. Rake, can you see Exhibit 7 on the screen in front of you?
**A. I can. Let me get...**
Q. I don't think I can hear you...
**A. Oh. Yes. Can you hear me?**
Q. Yeah, I can hear you now.
I want to zoom out a little bit. This was a cover page. This was one of the documents referenced in your report.
I'll scroll down. Do you -- do you see this -- this image here on the screen?
**A. I do, yes.**
Q. Have you seen this image before?
**A. I believe so, yes. It looks familiar.**
Q. Yeah. This may have been -- may not have been referenced in your report, but it was part of your materials considered, that exhibit that you served --

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or that was served with your expert report.
So do you see on the side of this motorbike the graphics?
**A. Yeah. I mean, I don't know specifically what graphics you're talking about, but there are graphics on the side, yeah.**
Q. So it says "Sting" across the midline of the motorbike across the battery back and across the frame, right?
**A. Yes.**
Q. On the faux gas cap we were talking about earlier, it says "Talaria"?
**A. Yes.**
Q. Did you consider how an ordinary observer would perceive an example of the accused product that had these graphics on the side?
**A. Well, although my -- my -- I was mostly looking at form. And the graphics can -- I don't know.**
**The one thing, like, from a design patent, if you had different graphics on it, is it a different design? The same -- the same product just put a**

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**different label on it, is it a different design?**
**I'm -- say I don't think it is a different design. But sometimes graphic or color is certainly gonna influence perception so you can get high contrast areas, would draw attention.**
**But it also, like I say, I think just having a different color on a form doesn't necessarily make it a different design. So color is in that way less of a factor for me.**
Q. So your opinion is that just color on the design -- just color on the -- on a design does not make that necessarily a different design; is that right?
**A. Color or -- you know, or even that the logo kind of stuff. Unless it was part of the -- yeah, I don't think -- sometimes color is a part of the design claim in a patent, but it wasn't in this one.**
Q. You'd agree with me that an ordinary observer looking at this view of the accused product -- you'd agree with me

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the ordinary observer would see the graphics, right?
**A. Yes.**
Q. But the presence of graphics on some accused products, that's not something that went into your analysis, right?
**A. Well, particularly when I don't think it alters the form or alters the perception of the form, if it kind of -- yeah, I don't think in this case, I don't think that the graphics alter the perception of the form.**
Q. In your opinion, would the graphics on the accused product alter the ordinary observer's perception of the design?
**A. In my opinion, it wouldn't alter the ordinary observer's perception.**
Q. So the -- as we've discussed before, the test is whether the ordinary observer would be deceived, right?
**A. Yes.**
Q. Whether the ordinary observer would be deceived into thinking they had purchased one product but they had really

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purchased the other, right?
**A. Yes.**
Q. Does a large Sting logo on the side, do you think that would affect the likelihood that an ordinary observer would be deceived?
**A. Not necessarily. It doesn't -- I don't -- I don't know what -- how much meaning Sting would have. And it could be if it's -- if they're considering a Light Bee, it might be something that would make sense that Surron would do it.**
**The Talaria part a little bit different. But it's much less prominent.**
**But the -- but the big thing is that the form of the bike, the design of the bike is so similar that it's hard to think that they don't have -- you know, they didn't come from the same place.**
**I think that's -- that's where the deception could be. No matter what graphics are on it. Graphics could be applied aftermarket, but the design is -- is more fundamental.**
Q. But if they aren't applied

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aftermarket, does that change the ordinary observer's perception?
**A. What if they're not applied at all? You know, what if -- like I -- like the product that we got from Talaria had graphics, but they were separate. They weren't applied to the bike.**
**They could -- the user could put them on. Or I guess not put them on or put on whatever they wanted to. I mean, they could put a Chicago Bears logo on their bike if they want. It doesn't -- that doesn't change the design.**
Q. Sir, is it your testimony that the bike that was received by defense counsel -- or by plaintiff's counsel had included graphics?
**A. It included, like, decals as a separate thing. They could be applied or not.**
Q. Did the decals look kind of like this except --
**A. I don't remember. I didn't -- I didn't have them apply them.**
Q. So you chose to not have counsel

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apply the decals to the sample accused product that was received by plaintiff's counsel?
**A. Yes.**
Q. Why did you not have plaintiff's counsel fully assemble the bike including the decals?
**A. I didn't think it was necessary. And partly because I don't -- I don't look at the decals as being -- I think the decals are something that can change a lot that maybe they're -- maybe the company decides to do different ones.**
**It's such an easy thing to change, I don't think it's a fundamental part of the design in that way. The form is way more critical, everything that was -- that -- in that way, the -- the form would matter way more.**
**And I don't -- I don't think the -- adding the decals would have -- would have changed the form. It wouldn't.**
Q. So you unilaterally decided to omit a component, a part of the accused product that was shipped with the accused

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product from the assembly?
ATTORNEY LYNCH: Object to form.
THE WITNESS: I mean, you could -- you could say that. I also know in a lot of these types of products, and if I thought the bicycle thing was any example, a lot of the people don't like to put the -- I'm assuming that the graphics weren't applied at the factory, because they wanted the customer to either put them on or not put them on.
And most -- I think a lot of customers don't like to put them on. They don't like the graphics all over. They keep it -- keep it clean or they can add their own graphics and stickers from various things.
But the factor-supplied, I think -- I think most customers would probably be happy that they weren't applied.
BY ATTORNEY MAAS:
Q. What is that opinion based on?
**A. Based on just, again, a lot of**

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**experience with -- with customers of products that are maybe like this or similar to this, bicycles and -- even go back to, like, the snowmobiles and stuff.**
**But people I know that are motorcycle enthusiasts, a lot of them don't like to have the -- not all of the graphics. They want to be selective about what they put on. It's kind of personal thing.**
**The Harley-Davidson guys, absolutely. A lot of them don't like to do the stock graphics. And this is their chance to really personalize a product like this. And people do value that kind of personalization.**
Q. So is this based on your experience in life, or is it based on your training and experience as an industrial designer whether people like graphics?
**A. Yeah, both.**
Q. What parts are related to your life experience?
**A. I -- I think -- I'm gonna -- I'm gonna just say that -- that -- well, for**

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**instance, we -- our -- I designed other products that -- outdoor things, like, again, the skateboards behind me.**
**The graphic part on it, everybody wants to do their own. They put stickers on -- on -- on a skateboard. They don't want -- they don't want factory graphics on it, and I think the market might be surprisingly similar of skateboarders and people riding these -- these machines.**
**So -- and the bicycle guys, yeah, I don't think -- I think it's meant to be a personal customization thing.**
Q. But you never talked to Surron or anybody at Surron about what their customers like; is that right?
**A. No. No, but I would -- and, again, it's -- it might be informative that they didn't put the stickers on. Wouldn't have been that hard for them to do.**
Q. Who's "they"?
**A. The -- Talaria, when they were...**
Q. The one that was shipped to counsel?
**A. Yeah.**

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Q. To be clear, you don't know why the stickers weren't on, right?
**A. No. But they weren't on.**
Q. All right.
ATTORNEY MAAS: I'm going to drop Exhibit 8 in the chat. Exhibit 8 is Exhibit 3 to your opening report.
(Whereupon, Exhibit 8 is marked for identification.)
ATTORNEY MAAS: I'll share my screen.
BY ATTORNEY MAAS:
Q. All right. Mr. Rake, do you recognize this document?
**A. Yeah, it looks like my CV.**
Q. Does this look like a list of --
**A. Oh, no. I'm sorry. This looks like -- like case history for --**
Q. Correct.
**A. -- yeah.**
Q. We're gonna go through these. I'm gonna ask you a series of questions about these cases. Just -- yeah, so we'll proceed that way.
///

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For Dynamite Marketing vs. Wowline, which party did you represent?
**A. Dynamite Marketing.**
Q. So the plaintiff?
**A. I -- yeah. I can't remember if there was anything sort of tricky on that. I don't think so. I think they were just the straight up --**
Q. Was that --
**A. -- they were the patent holder.**
Q. Was that a design patent lawsuit?
**A. Yes.**
Q. Did you render an opinion on article of manufacture in the Dynamite Marketing vs. Wowline?
**A. I don't believe so.**
Q. Why not?
**A. I don't -- I don't remember. I don't know. It was -- I wrote a report. I wasn't deposed, and then I testified at trial. And it was just a -- yeah, a straight up patent infringement case.**
Q. All right. Going down to Pavo Solutions vs. Kingston Technology Incorporated, which party did you represent

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in this case?
**A. Kingston.**
Q. Was that the defendant in that case?
**A. Yes.**
Q. Was that the -- was that the -- were they accused infringer or patent holder?
**A. Accused infringer, yeah.**
Q. Did you render an opinion about article of manufacture in that case?
**A. It was a utility patent that was mostly design -- let's say a -- a kind of a low-tech utility patent.**
Q. Understood.
For Gavirelli Brands vs. Soto Massini, which party did you represent?
**A. Gavirelli.**
Q. Was it a design patent lawsuit?
**A. Yes.**
Q. Did you render an opinion regarding article of manufacture in this lawsuit?
**A. No. I don't remember the -- it was a footwear project, like ballet flats.**

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**I can't remember what the patent figures were specifically, but it might have been all -- like, all claimed. I don't remember.**
Q. How many times have you rendered an opinion as to the scope of the article of manufacture?
**A. I know the Columbia one, which was -- which I was deposed on recently, that -- that was. And I was with Seirus, the defendant.**
Q. So let's go to that one then.
So you represented -- in the Columbia Sportswear vs. Seirus Innovative Accessories, you worked on behalf of Seirus Innovative Accessories?
**A. Yes.**
Q. Is that the accused infringer?
**A. Yes.**
Q. Is this a design patent lawsuit?
**A. It is, correct.**
Q. And did you render an opinion on article of manufacture in that lawsuit?
**A. I did. I don't remember it specifically. And it's ongoing. I was**

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**deposed, but it could still go to trial.**
Q. Did you -- was your opinion about article of manufacture, that it is the whole product or some part less than the whole product?
**A. It -- my opinion was that it was the whole product.**
Q. For Willow Innovations vs. Chiaro Technology Limited, is that a design patent case?
**A. That is. Again, I've been deposed in it. I don't know if that settled.**
Q. Which party did you represent in that case?
**A. The patent holder, Willow.**
Q. Willow.
And did you render an opinion as to the article of manufacture for that case?
**A. I don't remember.**
Q. For --
**A. I mean, it was mostly about -- it was about infringement, but I -- there could have been a section that was article**

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**of manufacture, but I don't remember.**
Q. So your -- you don't recall whether or not you opined as to the extent of the article of manufacture in that case?
**A. Right.**
Q. For Valentino SPA vs. Mario Valentino SPA, which party did you represent in that case?
**A. Valentino.**
Q. Is that --
**A. The patent holder.**
Q. And is that a design patent case?
**A. Yes.**
Q. Did you render an opinion as to article of manufacture on behalf of the patent holder in that case?
**A. I don't believe so.**
Q. Do you know why not?
**A. Again, as I recall, it was just -- you know, it was straight-up infringement kind of case. And I think the -- the patent was -- I think the patent was, like, all in unbroken line. And I don't think there was any confusion about that.**

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Q. In the Chanel v. Molo Design case, which case -- that looks like an IPR --
**A. Yeah.**
Q. -- so let's skip that one.
For Hangzhou Chic Intelligent Partnerships, who do you represent in that case?
**A. I don't -- I don't know. That doesn't have, like, both parties.**
Q. Is that a design patent case?
**A. It was a design patent case on, like, hoverboard designs.**
Q. Did you work for the patent owner?
**A. No. I don't -- I don't believe so.**
Q. Okay. Did you render an opinion on article of manufacture?
**A. I don't think so, no.**
Q. For JPT Group vs. Tapestry, did you render an opinion for article of manufacture in that case?
**A. I don't think so. It was a footwear design thing. I don't remember.**

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Q. Johns Manville Corp. vs. Knauf Insulation, did you offer an opinion on article of manufacture in that case?
**A. Yeah. That case lasted a long time and just recently settled. And I don't remember. Because the patent -- this is, like, insulation, like, insulation you would have in your home. And it was very specific about the coloring.**
**So the patent was a single photographic image of insulation. So what did that apply to? I'm assuming it applied to the insulation as -- you know, not just a little square. But I can't remember how that was handled in terms of article of manufacture.**
Q. So you don't remember rendering an opinion for article of manufacture in that case?
**A. No.**
Q. All right. How about Liagre vs. California Furniture Collection? Do you remember rendering an article of manufacture in that case?
**A. I don't think so. That was**

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**actually a little weird. It was, like, a -- it wasn't design patent. It was, like, a -- not like a trade dress. I don't know. It was something like a trademark.**

Q. For Herman Miller v. Blumenthal, do you remember offering an article of manufacture opinion in that case?

**A. No. I worked for the defendant there too, but I don't remember. Oh, and this is the Knauf again.**

Q. Yeah, for Acrox Technology vs. Belkin, do you remember rendering an article of manufacture opinion in that case?

**A. I don't remember that.**

**But now some of these are kind of older.**

Q. Probably not the ITC. Yeah, probably not the ITC.

Were any of these three cases design patent cases?

**A. Let's see. Barker was -- that was, like -- yeah.**

Q. There's -- did you render an article of manufacture opinion in Barker?

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**A. I don't think so, no.**

Q. Lumber Liquidators?

**A. No. Trade dress thing.**

Q. Crocs?

**A. I don't think so. Again, that was a long time ago.**

Q. How about Deckers v. Walmart? Did you render an article of manufacture opinion in that case?

**A. I don't remember. I worked for the defendant. I don't remember that. And that was kind of recent too; so...**

Q. For Car Freshener v. Meta, do you remember rendering an article of manufacture opinion in that case?

**A. No.**

Q. Blenderbottle V. Hydra Cup?

**A. I don't think so. That's still ongoing. And I don't think that one settled yet.**

Q. And Blenderbottle v. Hydra Cup?

**A. Oh, yeah. That -- that's the one I thought we were talking about --**

Q. Oh.

**A. -- but I -- I don't think that's settled, but I don't know.**

Q. And then Simplehuman v. Volume Distributors?

**A. No. I don't think so. I think that's just straight-up infringement.**

Q. All right. Do you recall ever offering an expert opinion that the relevant article of manufacture for design patent is anything -- anything less than the entire product?

**A. I can't remember any.**

Q. So you have rendered the opinion that it is -- that the article of manufacture is the entire product, right? In some --

**A. I have done that, yes.**

Q. And you don't recall ever finding that it was some subpart of the whole product, right?

**A. I don't recall that, yes.**

ATTORNEY MAAS: Okay. If we want to do a quick break, I'll check my notes and see if we can wrap it up.

THE VIDEOGRAPHER: Stand by. Going off the video record.

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The time is 4:51 p.m.

(Whereupon, a recess was taken at 4:51 p.m.)

THE VIDEOGRAPHER: We are back on the video record.

The time is 4:58 p.m.

BY ATTORNEY MAAS:

Q. Good afternoon, Mr. Rake. Did you speak about the substance of your testimony with your counsel during the break?

**A. No.**

ATTORNEY MAAS: All right. Then I have no further questions. I'll note that this was the infringement deposition for Mr. Rake's infringement report and that next week we'll be doing the invalidity report.

And I'll reserve all the time that I did not use today, which is 15 minutes, for my deposition of Mr. Rake with respect to invalidity.

Pass the witness.

ATTORNEY LYNCH: We agree. Thank you, Counsel.

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EXAMINATION
BY ATTORNEY LYNCH:
Q. Good afternoon, Mr. Rake. I just have a few questions for you.
Do you recall counsel for defendants asking you a number of questions this morning about defining various types of vehicles?
**A. Yes, I do.**
Q. Okay. If you give me one minute, I am going to put in the chat, I believe we are on 8.
ATTORNEY MAAS: We're on 9.
ATTORNEY LYNCH: Oh, thank you.
(Whereupon, Exhibit 9 is marked for identification.)
ATTORNEY LYNCH: That would have made a mess. Okay. Not that one. Sorry. Pardon me. Don't open that one, Mr. Rake. See if this will work.
BY ATTORNEY LYNCH:
Q. Okay. I dropped in the chat with REV in front of it, just so we're on the same page, but this is Exhibit 9. If you could please open that. I'm also going to

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open it and share it on my screen.
All right. Mr. Rake, can you see my screen?
**A. I can, yes.**
Q. And do you recognize this document?
**A. I do, yes.**
Q. All right. I'm just going to scroll through it.
And what is this document, Mr. Rake?
**A. This is the '456 design patent.**
Q. And if we focus on the claim here on the cover page, could you please read this section that's labeled "Claim" into the record?
**A. "Claim. The ornamental design for a light electric off-road motorcycle as shown and described."**
Q. Thank you.
And then if you look under the next section that's labeled "Description," if you could read the final sentence following Figure 10.
What does that say?

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**A. "The broken lines in the drawings illustrate portions of the light electric off-road motorcycle that form no part of the claimed design."**
Q. And you reviewed all of the figures in this asserted patent, correct?
**A. Yes.**
Q. So within this context, what is your understanding of the type of vehicle that this design is intended to cover?
**A. It's very specifically intended to cover a light electric off-road motorcycle.**
Q. [Unintelligible].
(Audio distortion; stenographer asks for clarification.)
BY ATTORNEY LYNCH:
Q. Do you believe that the D '456 patent covers pedal-powered bicycles?
**A. No.**
Q. Do you believe that the D '456 patent covers pedal-assisted bicycles?
**A. No.**
Q. And do you believe the D '456 patent covers gas-powered motorcycles?

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**A. No.**
Q. And do you believe that the D '456 patent covers gas-powered dirt bikes?
**A. No.**
Q. Thank you. I'm going to take this down.
Mr. Rake, do you recall defendants' counsel asking you about your review of photographs of the accused products when you were forming your opinion?
**A. Yeah, there were questions around that, yes.**
Q. And do you recall defendants' counsel asking whether you had viewed the accused products in person?
**A. Yes.**
Q. When consumers view and purchase the defendants' products online, would they have the benefit of seeing them in person?
**A. No.**
Q. How much would a potential purchaser rely on photographs when making a decision to purchase an accused product?

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**A. They rely very heavily on it.**
Q. So why do you believe examining photographs in your expert report was sufficient for you to provide your opinions?
ATTORNEY LYNCH: Object to form.
THE WITNESS: Because the typical way an ordinary observer would go through the process of -- of researching and -- and buying a motorcycle -- or a -- in this case, the light electric off-road motorcycle.
BY ATTORNEY LYNCH:
Q. Great. Now, Mr. Rake, do you recall defendants' counsel asking you some questions about gestalt and figure-ground perception?
**A. Yes.**
Q. I'm going to ask you to reopen Rake Exhibit 1, which I will share on my screen as well.
Can you see that, Mr. Rake?
**A. Yes.**
Q. And could you remind us what Rake Exhibit 1 is?

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**A. That's my opening expert report.**
Q. I'm going to direct you to the paragraph numbered 32, which begins on page 9 of your report.
Do you see this?
**A. Yes.**
Q. I'm going to scroll into the next page, which is page Number 10 of your report. And in the bottom half of this paragraph, do you see where you wrote, "However, it is important to note that figure-ground perception is the most central and widely recognized principle of visual processing one that stands on its own and is commonly applied in design education and practice without any reliance on the broader gestalt framework.
"It is one of the most widely taught perceptions of shape perception and is included in many, if not all academic texts."
Do you see that?
**A. Yes.**
Q. And why did you write that?
**A. Because I think it emphasizes the importance of gestalt or understanding Gestalt theory, how that applies to human visual perception, how do we perceive things, how do we understand the world around us.**
Q. So I just want to redirect you to what you wrote in this paragraph, Mr. Rake. And you can review it, and then I'm gonna ask you that question.
(Pause for reading/reviewing.)
ATTORNEY MAAS: Object to form.
ATTORNEY LYNCH: No pending question. If there was, my apologies.
BY ATTORNEY LYNCH:
Q. Could you let me know when you're finished reviewing, Mr. Rake.
**A. Yes, I'm finished.**
Q. What led you to include this concluding section in this paragraph?
**A. Because that -- that figure-ground relationship -- the figure-ground principle of Gestalt, when I say it's the most central and widely recognized stands on its own, it's -- it's important to understand it as a way to understand how -- what people -- what people see when they look at something.**
**And so that's the importance of, for instance, when we say figure-ground, the importance of the silhouette is that that's the -- the boundary, as it were, between the figure and the ground in that particular -- you know, understanding that form because we understand that silhouette is kind of -- kind of key to understanding what Gestalt's about.**
Q. So I understand that.
My question is: When you talked about the figure-ground and you specifically said that it stands on its own and it's used without reliance on the broader gestalt framework, what does that mean?
ATTORNEY MAAS: Object to form.
THE WITNESS: Right. Like, I think I mentioned figure-ground being -- one of the examples in the report even was saying how we can look at a letter form and we can read it because we see contrast between the

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figure, which might be the letter and the ground, which might be the paper.
And that -- that contrast setting up that figure-ground relationship, that -- that is a -- yeah, that's not necessarily a -- you don't have to understand all of gestalt principles to understand that, right?
It kind of is a principle that I was saying kind of stands on its own.
BY ATTORNEY LYNCH:
Q. And did you apply that figure-ground principle in your infringement analysis?
**A. Yes, I did.**
Q. Do you recall that counsel for defendants asked you some questions about comparison prior art?
**A. Yes.**
Q. I'm going to direct you to paragraph 95 of your report, which begins -- or it's contained on page 31. Could you please take a minute to review that and let me know when you're ready to proceed.

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(Pause for reading/reviewing.)
THE WITNESS: Okay.
BY ATTORNEY LYNCH:
Q. You mentioned purported prior art in this paragraph, correct?
**A. Yes.**
Q. And where did these purported prior art references that you mentioned come from?
**A. They were all -- I mentioned in that paragraph that they were, you know, included in the preliminary invalidity contentions, supplemental preliminary invalidity contentions, and also in this presentation raised in the deposition of Surron witnesses. All of those things were provided to me from counsel.**
**So that's -- that's what I -- yeah, that's where I got the purported prior art.**
Q. And you mentioned preliminary invalidity contentions and supplemental preliminary invalidity contentions.
What is your understanding of which party would provide those?

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ATTORNEY MAAS: Object to form.
THE WITNESS: The defendants.
BY ATTORNEY LYNCH:
Q. And how did these purported prior art references that you're discussing in this paragraph impact your three-way comparison analysis?
**A. I reviewed them all as -- as images, and as far as finding what could be analogous art or something that would be what I would consider prior art, that was in the same category as -- as in a light electric off-road motorcycle.**
**So I didn't find any examples in -- in all of those references.**
Q. But you considered those references --
**A. Yes --**
Q. -- is that what you're saying?
**A. -- yes.**
Q. Okay. I'm going to keep moving. I'm still in your report, which is Rake Exhibit 1. On page 52, which I'll have on the screen, there's a section labeled B, "Prominence of the Trapezoidal Frame With

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Hollow and Vertical Stripe Core."
Do you see that?
**A. Yes.**
Q. So I'm going to keep scrolling on to the next page. And in paragraph 139, do you see it starts with the sentence, "In design perception, vertical stripes tend to emphasize height, segmentation and structure. Here the vertical stripes also carry an evocative quality recalling nature forms such as the striped abdomen of a bee"?
Do you see that?
**A. Yes.**
Q. So, in your opinion, how does the presence of what you've labeled a bee-like feature on a prominent structure influence the attention of an ordinary observer when comparing the accused product to the patented design?
**A. Could you -- could you ask that again, please?**
Q. Sure. So you agree that we're in a section that's labeled "The Prominence of the Trapezoidal Frame" --

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**A. Yes.**
Q. -- so that's the part of the bike we're talking about?
**A. Yes.**
Q. Apologies for speaking over.
So then in this section in paragraph 139, you make reference to the striped abdomen of a bee, correct?
**A. Yes.**
Q. So agreeing that we're talking about a prominent feature and then you describe it with this bee-like structure, my question is: How does that influence the attention of an ordinary observer?
ATTORNEY MAAS: Object to form.
THE WITNESS: I think it would -- oops.
You know, again, there's kind of a figure-ground thing going on with that. There's a -- in this case now the inside of the frame becomes kind of the figure, and the outside of the frame or the -- yeah, the kind of trapezoidal structure becomes -- yeah, so we're seeing a contrast between the

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two.
And the contrast has, you know, the form of the frame but also then contrasting with this striped -- vertically striped inside portion, which I guess -- I was saying in this thing that it could be -- that kind of deal could be evocative of the forms in nature including like the bee thing that I referenced earlier.
BY ATTORNEY LYNCH:
Q. So I'm going to turn to the next page, which is page 54. This -- I'm looking at Section D labeled "Three-Way Comparison."
Do you see that?
**A. Yes.**
Q. So I'm now in this section scrolling down to page 56. And I'm looking at paragraph 146.
Could you read aloud the first -- it's three sentences of this paragraph, if you keep going. That's okay. But if you could please read those three sentences.
**A. "While certain prior designs**

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**incorporate surface striping, for example, Reference Number 3, Reference Number 8, Reference Number 30, those treatments generally differ in orientation, spacing and contextual integration and do not appear within a similarly framed or -- or exposed structural setting.**
**"By contrast" -- let me get that.**
**"By contrast, the claimed design features evenly spaced vertical striping centrally positioned within an open trapezoidal frame. This configuration contributes to a more elongated, segmented and organic appearance.**
**"The vertical alignment of the stripes read in conjunction with the open frame geometry bears a visual resemblance to the natural striping of a bee's abdomen reinforcing the design's distinctive identity."**
Q. Thank you.
Do you recall your testimony earlier today that this bee analogy you discuss impacts your understanding of the geometry and stance but not infringement?

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ATTORNEY MAAS: Object to form.
THE WITNESS: Yes.
BY ATTORNEY LYNCH:
Q. Outside the context of the comparison analysis you did for infringement, did the bee analogy impact your analysis at all in this report?
**A. Could you ask that again, please?**
Q. Sure. So outside of that context of the comparison for infringement analysis, did your discussion and your analogy of the bee inform any other opinions in your report?
**A. No, I don't think so.**
Q. One second. Apologies.
Okay. Just so that we're clear, your testimony earlier, did you mean that the bee has no impact on your infringement comparison, or that it has no effect whatsoever on how an ordinary observer perceives and attends to these designs?
ATTORNEY MAAS: Object to form.
THE WITNESS: In infringement, I was comparing the claimed design of the patent to the accused product kind of

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straight up in that way without -- without a bee analogy.

I used the bee references almost in a way of my own understanding or my own description of the form.

Whether -- there might be -- what I really was looking at in the infringement was just the comparison of the form, the lines in the patent to the form of -- of the accused product.

BY ATTORNEY LYNCH:

Q. How do these bee-like features you reference in this section impact an ordinary observer?

ATTORNEY MAAS: Object to form.

THE WITNESS: You know, if it's something that evokes, like, a sense of nature or something that's familiar, there could be something like that that -- that, you know, could -- could influence a person's perception.

But I'm -- I'm mostly just comparing form to form and just the overall form to overall form.

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BY ATTORNEY LYNCH:

Q. So could you please describe, Mr. Rake, the part of your experience or background that gives you confidence in testifying about ornamental designs of the patents and products involved in this case?

ATTORNEY MAAS: Object to form.

THE WITNESS: One more time.

Could you ask -- could you ask that again, please?

BY ATTORNEY LYNCH:

Q. Yeah. Could you please describe your experience that gives you confidence that you're able to testify about ornamental designs of the patents and products at issue in this case?

**A. Yeah, well, you know, 50 years of experience as a designer, I think, is helpful. I think over 40 years of designer -- or experience as an educator.**

**Having worked and taught in several countries in England and Australia and New Zealand, in Sweden, I think all of those experiences help me do that.**

**I think I get a lot -- I think there's a lot of experience in doing the work as well as trying to explain the work and explain how design is perceived to different groups, students and professionals.**

**I think that's where -- I think that's where -- that's what I draw on. I hope that answers your question.**

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Q. It does. Thank you.

ATTORNEY LYNCH: For the record, the witness reserves his rights under Rule 30(E) to read, review and sign the transcript and submit any errata as necessary.

But with that, no further questions from Plaintiff. Thank you, Mr. Rake.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Stand by to go off the video record.

This marks the end of the video deposition of Lance Rake. The time is 5:22 p.m.

(Time noted: 5:22 p.m.)

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REPORTER CERTIFICATE

I, the undersigned, do hereby certify:

That LANCE RAKE was by me duly sworn in the within-entitled cause; that said deposition was taken at the time and place herein named; and that the deposition is a true record of the witness's testimony as reported by me, a disinterested person, and thereafter was transcribed.

I further certify that I am not interested in the outcome of the said action, nor connected with, nor related to any of the parties in said action, nor to their respective counsel.

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

Signature: _X_Requested__Waived__Not Requested

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You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

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DECLARATION UNDER PENALTY OF PERJURY
Chongqing Qiulong -v- Tanli Power Tech
Date of Deposition: August 1, 2025

I, LANCE RAKE, hereby certify under penalty of perjury under the laws of the State of _____ that the foregoing is true and correct.

Executed this____ day of , 2025, at _____.

_____
LANCE RAKE

SUBSCRIBED AND SWORN BEFORE ME
THIS __ DAY OF _____, 20
_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:_____

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ERRATA SHEET
Chongqing Qiulong -v- Tanli Power Tech
WITNESS: LANCE RAKE
Date of Deposition: August 1, 2025

Reason Codes:1. Clarify the record
2. Conform to the facts
3. Correct transcription errors

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