

EXHIBIT 2014

Transcript of May 7, 2026
Deposition of J. Michael McCarthy,
Ph.D.

Meridian Exhibit 2014
Toughbuilt v. Meridian
IPR2025-01462

ToughBuilt EX1051
ToughBuilt v. Meridian
IPR2025-01461



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Transcript of John Michael McCarthy, Ph.D.

Date: May 7, 2026

Case: ToughBuilt Industries, Inc. -v- Meridian International Co., LTD (PTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 -----

5 TOUGHBUILT INDUSTRIES, INC.,

6 Petitioner

7
8 V.

9 MERIDIAN INTERNATIONAL CO., LTD.,

10 Patent Owner.

11 -----

12 Case IPRIPR2025-01462

13 Patent 11,192,689

14 -----

15 Videotaped Virtual Deposition of

16 JOHN MICHAEL MCCARTHY, Ph.D.

17 Thursday, May 7, 2026

18 10:58 a.m. CST

19 Job No.: 631805

20 Pages: 1 - 105

21 Reported Stenographically by:

22 Tiffany M. Pietrzyk, CSR RPR CRR

Transcript of John Michael McCarthy, Ph.D.
Conducted on May 7, 2026

2

1 Videotaped virtual deposition of JOHN
2 MICHAEL MCCARTHY, Ph.D., pursuant to notice, before
3 Tiffany M. Pietrzyk, a Certified Shorthand Reporter
4 in the States of Illinois, Texas, and California,
5 Registered Professional Reporter, Certified Realtime
6 Reporter, and a Notary Public in and for the State
7 of Illinois.

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Meridian Exhibit 2014
Toughbuilt v. Meridian
IPR2025-01462

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E X H I B I T S

(Attached to transcript.)

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P R O C E E D I N G S

1		
2	THE VIDEOGRAPHER: Here begins Media	10:58:07
3	Number 1 in the videotaped deposition of Professor	10:58:22
4	J. Michael McCarthy, in the matter of ToughBuilt	10:58:25
5	Industries, Inc. versus Meridian International Co.,	10:58:28
6	Ltd. (PTAB), in the United States Patent and	10:58:32
7	Trademark Office, Patent Trial and Appeal Board.	10:58:39
8	Case Number IPR2025-01462.	10:58:41
9	Today's date is May 7, 2026. The time on	10:58:46
10	the video monitor is 10:58 a.m.	10:58:52
11	The videographer today is Lawrence Wallace,	10:58:56
12	representing Planet Depos. We're located at	10:58:59
13	451 Hungerford Drive, Suite 400, in Rockville	10:59:03
14	Maryland 20850. All parties of this video	10:59:07
15	deposition are attending remotely.	10:59:10
16	Would counsel please voice-identify	10:59:11
17	themselves and state whom they represent.	10:59:13
18	MS. HALSEY: I'm Anna Halsey. I am counsel	10:59:16
19	for the patent owner, Meridian. And I am joined by	10:59:18
20	my colleague Lindsay Kriz, as well as by our expert	10:59:23
21	Dr. Glenn Vallee.	10:59:27
22	MR. BEMBEN: My name is Richard Bemben, of	10:59:29

Transcript of John Michael McCarthy, Ph.D.
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1 the law firm Sterne Kessler, representing the
2 petitioner, ToughBuilt. With me is Melissa Haapala,
3 also of the law firm Sterne Kessler, and
4 Dr. McCarthy.

5 THE VIDEOGRAPHER: The court reporter today
6 is Tiffany Pietrzyk, representing Planet Depos.

7 The witness will now be sworn.

8 (Witness sworn.)

9 WHEREUPON:

10 JOHN MICHAEL MCCARTHY, Ph.D.,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 BY MS. HALSEY:

15 Q. Good morning, Dr. McCarthy.

16 A. Good morning.

17 Q. Can you please state your full name for the
18 record.

19 A. John Michael McCarthy.

20 Q. Thank you.

21 Is it your understanding that you've been
22 asked to testify today subject to a Notice of

10:59:35

10:59:37

10:59:41

10:59:47

10:59:47

10:59:50

10:59:52

11:00:07

11:00:07

11:00:11

11:00:13

11:00:14

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11:00:19

11:00:22

11:00:23

1	Deposition in this IPR?	11:00:26
2	A. Yes.	11:00:28
3	Q. And what's your understanding about what	11:00:28
4	today's deposition is about?	11:00:32
5	A. It's my understanding that in the context of	11:00:32
6	an IPR, I have given direct testimony in the form of	11:00:41
7	a declaration to the patent trademarks and review	11:00:44
8	board and that this deposition is actually the	11:00:49
9	opportunity for cross-examination by the patent	11:00:53
10	owner of the opinions that I gave in that	11:00:56
11	declaration.	11:01:01
12	Q. Excellent. Thank you.	11:01:01
13	So based on your CV, it's my understanding	11:01:03
14	that you've been deposed before?	11:01:06
15	A. I have.	11:01:08
16	Q. About how many times?	11:01:08
17	A. I don't have a good number. It's in --	11:01:12
18	it's -- I'm sorry. I can't offer you --	11:01:16
19	Q. That's okay.	11:01:19
20	More than 25?	11:01:20
21	A. Yes.	11:01:21
22	Q. Okay. You're a pro at this. You probably	11:01:22

1 don't need to hear any of this, but just to walk 11:01:28
2 through, we want to make everything as easy as 11:01:31
3 possible for the court reporter today. So if we can 11:01:34
4 try and just give verbal responses as much as 11:01:38
5 possible. I personally tend to be a little bit of a 11:01:41
6 head nodder and shaker, so to the extent that you're 11:01:43
7 doing that, if you can also give a verbal, that will 11:01:48
8 be helpful for the court reporter to accurately 11:01:51
9 transcribe things. 11:01:53

10 The other thing which is always a bit of a 11:01:55
11 challenge when we're doing these remote depositions 11:01:57
12 is to try and let each other finish speaking so we 11:02:00
13 can try and avoid talking over one another. We will 11:02:03
14 all -- I will do my best to avoid speaking over you, 11:02:06
15 and I apologize in advance if it happens, but it 11:02:09
16 just makes it easier for the court reporter to the 11:02:13
17 extent we can try and avoid doing that. 11:02:15

18 A. I understand. Thank you. 11:02:18

19 Q. I'll be asking you questions today and I'm 11:02:20
20 going to be perfectly candid that sometimes when I 11:02:22
21 ask a question, I do not phrase it perfectly. So if 11:02:24
22 I ask you a question and it isn't clear to you or if 11:02:28

1 you have -- if you need clarification, please just 11:02:34
2 let me know and I'll try and ask the question in a 11:02:36
3 better way or clarify it for you. 11:02:39

4 If you don't ask for clarification, I will 11:02:41
5 assume that you understood the question that I 11:02:45
6 asked. 11:02:47

7 I typically like to do a break around every 11:02:48
8 hour, give or take, depending on where we are in the 11:02:53
9 testimony. Sometimes a little bit shorter, 11:02:56
10 sometimes a little bit longer depending on where a 11:02:59
11 breaking point is. If you feel like you need a 11:03:02
12 break at any point in time, just please let me know 11:03:04
13 and we'll find a good stopping point so that you can 11:03:09
14 get that break in. 11:03:12

15 I guess I should ask counsel this as well. 11:03:13

16 MS. HALSEY: Do you anticipate needing a 11:03:17
17 break for meals? And if so, since we're in three 11:03:20
18 different time zones, when would that be? 11:03:25

19 Q. Dr. McCarthy, do you have a preference for a 11:03:32
20 meal break? 11:03:36

21 A. I don't. 11:03:36

22 Q. Okay. So we'll just -- if we hit a point 11:03:37

1 where you need to take a break and eat something, 11:03:41
2 we'll take a longer break and just give me a 11:03:45
3 heads-up in that event. 11:03:48

4 A. My preference is to soldier through, if 11:03:49
5 possible. 11:03:53

6 Q. Okay. Happy to do that. I start getting a 11:03:54
7 little bit hungry as we approach noon, usually. 11:03:59

8 A. Well, that's fine. 11:04:02

9 Q. Well, we're past noon here. So we're good. 11:04:04

10 A. I see. 11:04:07

11 Q. We're all fine here, but I wanted to make 11:04:08
12 sure that you get the opportunity to have a break 11:04:10
13 and that we don't forget the time change on you and 11:04:12
14 leave you stranded and hungry. 11:04:16

15 Is there any reason that you think you might 11:04:18
16 not be able to testify truthfully today? 11:04:20

17 A. No. 11:04:22

18 Q. Okay. So let's talk a little bit about your 11:04:23
19 preparation for today. 11:04:28

20 What did you do to prepare for your 11:04:29
21 testimony today? 11:04:31

22 A. I went through all of the exhibits for this 11:04:31

Transcript of John Michael McCarthy, Ph.D.
Conducted on May 7, 2026

12

1	IPR and -- well, most of them, anyway, and then read	11:04:39
2	my report. And I had a meeting with the lawyers,	11:04:43
3	Ms. Haapala and Mr. Bemben, yesterday.	11:04:51
4	Q. Perfect.	11:05:01
5	Did you review any materials outside of the	11:05:02
6	exhibits and other materials that have already been	11:05:05
7	produced in this IPR?	11:05:07
8	A. Not that I recall, no.	11:05:10
9	Q. And did you speak to anybody besides counsel	11:05:11
10	in your preparation for your testimony today?	11:05:14
11	A. Yes. I'm sorry. I forget, Tobin Hobbs who	11:05:16
12	is with ToughBuilt. He was at the -- he was with us	11:05:21
13	yesterday also.	11:05:24
14	Q. Perfect.	11:05:28
15	About how much time did you spend preparing	11:05:36
16	to testify today?	11:05:39
17	A. Let's see. Just getting organized before	11:05:40
18	yesterday, about six hours going through the	11:05:48
19	documents. And then yesterday was almost six hours	11:05:51
20	also.	11:05:54
21	Q. Excellent. All right.	11:05:58
22	I'd like to talk to you a little bit about	11:06:03

1 your background. Can you talk me through your
2 professional background?

3 A. Sure.

4 I'm a professor at the University of
5 California, Irvine. I started there in 1986. I'm
6 currently at a rank known as a distinguished
7 professor.

8 Before that, I was at the University of
9 Pennsylvania, and before that at Loyola Marymount
10 University. I got my Ph.D. from Stanford University
11 in 1979 and went to work for FMC Corporation before
12 moving to teach at Loyola Marymount.

13 While at University of California, Irvine, I
14 pursued teaching and research in the area of machine
15 design. My particular expertise is in articulated
16 devices. I have a book on that topic. And I began
17 getting involved in expert witness activities in the
18 early '90s. I testified in a case in 1995 and then
19 have done it relatively infrequently, couple times a
20 year, since that time.

21 Q. That was a very good summary. Thank you.
22 You've eliminated a lot of questions that I was

1 going to have to ask you.

11:07:40

2 You said that you focus on articulated
3 devices.

11:07:41

11:07:45

4 Can you tell me what that means?

11:07:46

5 A. In the area of mechanical design, we try
6 to -- the basic principle is we transform power and
7 energy into movement with what we call a machine.
8 And there are mechanical components that do that.
9 Gears, cams, and linkages are sort of the
10 traditional names. But now today we have much more
11 complicated systems such as robots, drones, walking
12 machines. And it's that more general area that we
13 call articulated systems, and that's the area in
14 which I work.

11:07:48

11:07:56

11:08:00

11:08:04

11:08:09

11:08:13

11:08:17

11:08:23

11:08:27

11:08:31

15 Q. It looks like you have a fair amount of
16 robotics in your CV when I looked at it; is that
17 accurate?

11:08:36

11:08:38

11:08:41

18 A. That's correct. But I come at it from the
19 mechanical design side, which means I worry more
20 about the skeleton of the robot than its computer
21 control.

11:08:41

11:08:44

11:08:47

11:08:50

22 Q. Do you have a professional engineering

11:09:03

Transcript of John Michael McCarthy, Ph.D.
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15

1	license?	11:09:05
2	A. I do not.	11:09:06
3	Q. Okay. Are there -- does not having your PE	11:09:07
4	license limit you in any way in terms of the types	11:09:13
5	of work that you're able to perform?	11:09:15
6	A. Not that I know of.	11:09:18
7	MS. HALSEY: So I'd like to go ahead and	11:09:34
8	introduce what was previously marked as	11:09:36
9	Exhibit 1004, which is Dr. McCarthy's CV.	11:09:39
10	(Exhibit 1004 was marked for	11:09:39
11	identification and is attached to the	11:09:39
12	transcript.)	11:09:44
13	REMOTE TECHNICIAN: Stand by.	11:09:44
14	MR. BEMBEN: Dr. McCarthy, you can get your	11:10:02
15	hard copy out when she introduces the exhibits.	11:10:04
16	BY MS. HALSEY:	11:10:11
17	Q. So Dr. McCarthy, my first question about	11:10:11
18	this exhibit is probably going to be the easiest	11:10:13
19	question you're asked all day. But I notice that	11:10:16
20	when I look at your CV, it looks like there are,	11:10:19
21	perhaps, different color fonts used on it. We're	11:10:24
22	looking at it in black-and-white, but it looks like	11:10:28

1 the entries from November 2024 to present through 11:10:31
2 the 2017 to 2022 entry are kind of a lighter font 11:10:37
3 than the rest, which I assume is a different color. 11:10:41

4 Can you tell me what the different colors 11:10:45
5 would represent? 11:10:48

6 A. Certainly. 11:10:49

7 The University of California system requires 11:10:50
8 all the faculty to be reviewed periodically, much 11:10:55
9 more often than faculty at other universities. And 11:11:00
10 for convenience, when I come up for review, I 11:11:05
11 highlight the elements in one color that were -- 11:11:08
12 occurred during the review period. 11:11:15

13 Q. That makes a lot of sense. 11:11:22

14 So you mentioned when you were talking about 11:11:35
15 your background that you had worked for FMC Corp. 11:11:37
16 in, I think, 1979; is that correct? 11:11:43

17 A. That's correct. 11:11:46

18 Q. What did you do there? 11:11:46

19 A. I was -- I worked with their consulting 11:11:47
20 engineering division, and we would be called out to 11:11:52
21 various manufacturing units to help troubleshoot 11:11:55
22 their machines. And the primary way that I did it 11:12:03

1 was using vibration signature analysis. 11:12:07

2 Q. And what is vibration signal [sic] analysis? 11:12:19

3 A. Well, you run the machine and you attach an 11:12:23
4 accelerometer to it and then you read the signals 11:12:27
5 into what's known as a spectrum analyzer and assess 11:12:33
6 where the vibration is coming from. The goal is to 11:12:36
7 reduce the level of vibrations. 11:12:39

8 Q. So your work was not focused on any 11:12:45
9 particular type of product; correct? It was just 11:12:58
10 focused on the machinery that created products; is 11:13:01
11 that right? 11:13:03

12 A. No, no. These were actual products, yeah. 11:13:03

13 Q. Okay. So what are the products then that 11:13:06
14 you were dealing with? 11:13:08

15 A. Well, I worked on -- let's see. I think I 11:13:09
16 worked on the Bradley Fighting Vehicle at the time. 11:13:14

17 Q. Okay. 11:13:16

18 A. I worked on the, what was known as a 11:13:16
19 floating bridge, amphibious bridge. And then 11:13:22
20 another one I remember working on was a coal 11:13:28
21 dewatering screen. 11:13:34

22 Q. Okay. 11:13:35

1 A. And I also worked on a grape harvester. It
2 was different machines at different units that had
3 concerns about vibration, that they would have to --
4 they'd have to reduce or control the vibration
5 before the product was released.

6 Q. Okay. So largely weapons of war and then
7 grape harvesters, it sounds like?

8 A. Well, FMC Corporation was a large company at
9 the time. They did construction equipment. They
10 did mining equipment, conveyors, cranes. And in
11 addition to that, they did -- they had a military
12 division. So I would work -- I would go wherever
13 the -- wherever their current problem with vibration
14 was identified.

15 Q. Okay. Very interesting.

16 Have you worked in industry since then?

17 A. No. I've primarily served as a consultant,
18 except for a period of time when I was chief
19 technical officer for a medical robotics company,
20 Accuray.

21 Q. And were you teaching the entire time that
22 you were doing your consulting work and serving as

1 CTO?

11:15:08

2 A. For the time I was doing the consulting
3 work, I was teaching. During the time as chief
4 technical officer, I reduced my teaching, but I did
5 keep teaching during that time.

11:15:09

11:15:11

11:15:15

11:15:20

6 Q. What types of courses do you teach?

11:15:27

7 A. Primarily topics associated with machine
8 design. The machine theory is probably the primary
9 course I was responsible for, for the entire career.
10 But I also teach robotics and the design of robotic
11 systems. Currently I'm teaching a course in walking
12 machine design.

11:15:29

11:15:33

11:15:39

11:15:44

11:15:50

11:15:54

13 Q. So let's skip ahead to your deposition and
14 trial testimony, which starts on page 52 of this
15 document.

11:16:00

11:16:11

11:16:14

16 Are all of the matters that you've worked on
17 listed in your CV?

11:16:30

11:16:36

18 A. Those are all of the matters in which I've
19 given testimony. Because my expertise in machine
20 design, the type of cases that come to me are one of
21 two types: Product liability where someone has been
22 injured via machine, and then intellectual property

11:16:37

11:16:40

11:16:42

11:16:46

11:16:50

1 where there are questions about infringement and
2 invalidity.

3 I would say in the context of product
4 liability, it's fairly common for lawyers to contact
5 me, have me investigate the machine, and then have
6 it resolved without deposition testimony. So I did
7 not list those activities because I generally don't
8 know what happened.

9 Q. During the time that you've served as an
10 expert witness, have you ever had a board or another
11 authority like the PTAB exclude your testimony?

12 A. There was a case many years ago where there
13 was a -- what was known as a Daubert hearing, I
14 believe.

15 Q. Uh-huh, yeah.

16 A. And I had a phrase that I had used excluded
17 from my testimony. I don't remember the details.
18 It was quite a while ago.

19 Q. And is that the only time your testimony has
20 been limited?

21 A. That's exactly right, yeah.

22 Q. Perfect.

1 So I'd like to talk through some of your
2 intellectual property testimony and just walk
3 through some of these cases so I can get a feel a
4 little bit for what types of cases these are.

5 We obviously know what the first one on your
6 list is because it's this case. The second case
7 that's listed is the Frameless Hardware Co. case,
8 which is another IPR.

9 What technology was that dealing with?

10 A. I'm sorry. Can I ask your colleague to put
11 that list up on the screen?

12 Q. Yes.

13 MS. HALSEY: That's on page 54, please.

14 Perfect. And we'll start with number 2.

15 A. That was a -- let's see. That was a case of
16 a window, maybe even a sliding glass window that had
17 these sort of frames that were made -- that were
18 patented that made it efficient for assembly of the
19 window. And the -- I believe I was defending the
20 patent.

21 Q. So you represented the patent owner on that
22 one?

1 A. I believe I was, yes. 11:19:54

2 No, no, I'm sorry. I was defending the -- I 11:19:56

3 was defending the equipment because they were -- 11:20:02

4 well, this was an inter partes review, so I'm a 11:20:11

5 little bit backwards. The company that I was 11:20:14

6 working with was being sued for infringement, and, 11:20:17

7 therefore, they initiated an inter partes review, as 11:20:19

8 I understand it. 11:20:24

9 Q. Okay. 11:20:24

10 A. But it's a little bit vague. I'm sorry. 11:20:25

11 Q. I totally understand. I find myself 11:20:28

12 slipping into calling people defendants and 11:20:32

13 plaintiffs all the time when I'm working with IPRs. 11:20:35

14 So here, it sounds like you represented the 11:20:38

15 petitioner who is the person that was seeking to 11:20:40

16 invalidate the patents? 11:20:43

17 A. I represented Frameless Hardware. That part 11:20:44

18 I can assure you. 11:20:48

19 Q. Excellent. 11:20:49

20 So the next one down is the Midwest 11:20:53

21 Athletics and Sports Alliance case. 11:20:56

22 What kind of technology did that relate to? 11:20:58

1 A. Well, that was an interesting case. They --
2 the Midwest Athletics and Sports Alliance had been
3 granted a collection of patents, a whole portfolio
4 of patents, by -- let's see, I think it was Kodak,
5 and they were attempting to assert those patents
6 against various copier manufacturers. And so they
7 would go through the various patents and ask if this
8 one could be asserted against this equipment, and I
9 would give an evaluation as to whether it could or
10 it couldn't. And I think in this particular case,
11 we came up with one that we could. And I gave
12 deposition -- that I thought they could, and I gave
13 deposition testimony for them.

14 Q. So you represented which party here?

15 A. Midwest Athletics --

16 Q. Okay.

17 A. -- and Sports Alliance.

18 Q. And then the next case down is the ZAP
19 Surgical.

20 What kind of technology was that involved
21 in?

22 A. Well, that's -- ZAP Surgical is an X-ray

11:21:00

11:21:04

11:21:09

11:21:15

11:21:27

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11:21:35

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11:21:46

11:21:51

11:21:57

11:22:02

11:22:04

11:22:09

11:22:11

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11:22:14

11:22:24

11:22:28

11:22:28

11:22:30

11:22:31

1 treatment system. It's a self-contained X-ray 11:22:38
2 treatment system that -- it was very similar. In 11:22:44
3 fact, it was actually founded by the same individual 11:22:51
4 who founded Accuray where I was a chief technical 11:22:54
5 officer. And they were being sued for infringement 11:22:58
6 by Elekta, and they instituted -- they initiated an 11:23:04
7 IPR and I gave a -- I provided a declaration and 11:23:12
8 then testimony for that case. 11:23:17

9 Q. And you worked for ZAP Surgical in that one? 11:23:22

10 A. I worked for ZAP Surgical, that's correct. 11:23:26

11 Q. And so you were the petitioner again? 11:23:28

12 A. In the IPR, that's correct. 11:23:30

13 Q. Have you ever represented or worked for the 11:23:32
14 patent owner on an IPR? 11:23:36

15 A. No. I think these are the only IPRs that 11:23:43
16 I've given deposition testimony in. 11:23:46

17 Q. Have you ever worked on a case that dealt 11:23:49
18 with a latching mechanism before? 11:24:09

19 MR. BEMBEN: Objection to form. 11:24:12

20 A. I believe the Bracketron case would qualify 11:24:23
21 as a latching mechanism. I believe I was defending 11:24:30
22 Bracketron in that case, as I remember. 11:24:36

1	Q. And is that entry number 9?	11:24:44
2	A. Yes.	11:24:47
3	Q. Piao Shang?	11:24:48
4	A. No, that's entry number 5. But it could	11:24:53
5	also be -- let's see. Megdal was a -- I was -- I	11:24:56
6	was working for Megdal in that case. That was a	11:25:08
7	La-Z-Boy recliner case.	11:25:11
8	Oh, Piao Shang, yeah, I actually was	11:25:23
9	defending Bracketron in that case as well.	11:25:26
10	Q. And what kind of technology was involved in	11:25:29
11	the National Products Inc. versus Bracketron case?	11:25:33
12	A. Well, that was a system that would hold your	11:25:35
13	cell phone and then you would attach it to the	11:25:37
14	dashboard of your car. It was a very successful	11:25:42
15	product and they were sued several times for	11:25:48
16	infringement.	11:25:58
17	Q. And is that the same technology that was at	11:25:58
18	issue in case number 9, the Piao Shang case?	11:26:02
19	A. Yes.	11:26:05
20	Q. And then did the Megdal Associates case have	11:26:09
21	anything to do with latching mechanisms?	11:26:13
22	MR. BEMBEN: Objection to form and	11:26:16

1 foundation.

11:26:17

2 A. The Megdal case had to do with the
3 mechanical design of the drive system for a La-Z-Boy
4 recliner that would make it automatic -- so it would
5 turn it into motor powered. And there was a
6 contract between Megdal and La-Z-Boy that
7 characterized that, the design of that equipment,
8 and there was a disagreement between the two of them
9 as to whether the later products that were
10 motor-driven fell under that categorization. And so
11 I was the expert for Megdal in that case that
12 explained to them that the later designs do, in
13 fact, fall under that characterization in that
14 contract. So it wasn't exactly a patent case. It
15 was more of a business contract case, but part of it
16 was how you described the machine system.

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17 Q. So I don't want to drag you through your
18 whole CV, but I did want to follow up. Number 7,
19 Nelson Products, Inc., it looks like that was
20 another IPR.

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21 Who did you represent in that IPR?

11:27:46

22 A. I represented Bal Seal.

11:27:48

1 Q. And in that case, was Bal Seal the
2 petitioner or the patent owner?

3 A. I don't know. I don't recall.

4 Q. And then number 8, the Intri-Plex
5 Technologies case, who did you represent in that
6 matter?

7 A. Sorry. I thought it would be obvious from
8 this. I don't -- I don't recall exactly. I think I
9 represented Intri-Plex in that case.

10 Q. Okay. Were there any other IPRs that you
11 were involved in?

12 A. Not that I know of.

13 Q. Okay. Do you --

14 A. If I gave a deposition, they're here. Yeah,
15 so ...

16 Q. Perfect.

17 Were there any other litigations that you've
18 been involved in that relate in any way to a
19 latching system?

20 MR. BEMBEN: Objection to form and
21 foundation.

22 A. Maybe you could scroll up just a little bit.

1 Oh, I'm sorry. Up -- I guess the other way, yeah,
2 so I can --

3 All of these involve articulated systems in
4 some way. Applied Medical had an interesting system
5 of articulation and sealing. It was a trocar that
6 you would use for -- it was the cannula or a trocar
7 cannula system that you would use for non-invasive
8 surgery in the abdomen.

9 Yeah, all of these involve articulated
10 devices. That turns out to be my specialty.

11 Q. Understood.

12 Have you ever personally designed a consumer
13 product?

14 A. I'm not sure what you mean by that.

15 Q. So by consumer product, I mean any sort of
16 product that is sold to the general public to use.

17 Have you ever --

18 A. I understand what you mean by consumer
19 product. I'm sorry I wasn't clear.

20 I am a professor. I have not worked for a
21 company that marketed a product except for FMC
22 Corporation and Accuray. And in both cases, I was

1 involved in working with and guiding a spectrum of 11:31:13
2 people who were attempting to complete a product for 11:31:22
3 sale. So the word that I'm -- could help with a 11:31:28
4 little clarification on is what you mean by 11:31:37
5 personal. Have I initiated, completed, you know, 11:31:45
6 manufactured, tested, and market a product on my 11:31:47
7 own? And the answer is no. 11:31:50

8 Q. Have you been involved in the development of 11:31:54
9 such products? 11:31:57

10 A. Yes. 11:31:58

11 Q. And what is your role in the development of 11:32:00
12 those products? 11:32:01

13 A. Well, in the case of chief technical 11:32:02
14 officer, I guided the teams that formed the 11:32:05
15 mechanical design of the robotic system, a team that 11:32:13
16 formed the software system for the robotic system, 11:32:20
17 and a team that would do the fabrication and 11:32:25
18 testing, and then a team that would do the 11:32:32
19 installation. 11:32:34

20 Q. And that was in the commercial -- that was a 11:32:39
21 commercial product, though, right, not a consumer 11:32:42
22 product? 11:32:45

1 A. I'm sorry. I guess I didn't understand. I
2 didn't understand the distinction, but you're right.
3 It's a product that was offered for sale.

4 Q. And it would be sold to hospitals and other
5 organizations, correct, if it's not being marketed
6 to consumers?

7 A. What I listed for you was my activities.
8 The one activity that was missing in that was
9 marketing and sales.

10 Q. Okay.

11 A. I was not involved in marketing and sales.
12 But you are correct, they would be sold to -- I
13 couldn't even tell you. They were complicated
14 arrangements. They were \$2 million to \$10 million
15 systems that would be purchased by consortia, either
16 of doctors or investors or hospitals.

17 Q. And I think you referenced a second product
18 that you were involved in the design and development
19 of?

20 A. Well, no, that's what we described earlier
21 and discussed earlier, was my role as a consultant
22 to reduce vibration problems with various products

1 that were being manufactured for sale by

11:34:05

2 FMC Corporation.

11:34:07

3 Q. And who were the FMC Corporation products
4 being sold to? Were they being sold within the
5 industry, or were they being sold to individual
6 consumers?

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7 A. They would not -- they were not the types of
8 systems that were sold to individual consumers.
9 They were sold to manufacturing organizations. In
10 fact, I worked on a machine that would sterilize
11 cans in the canning industry. I worked -- and then
12 there are other ones that I listed. So the coal
13 dewatering screen would be used by, you know, a
14 mining operation. So they were not something that
15 individual consumers would purchase.

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16 Q. Have you ever been involved in the design of
17 a latching mechanism?

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11:35:00

18 MR. BEMBEN: Objection to form and
19 foundation.

11:35:02

11:35:04

20 A. My entire activity has been involved in
21 articulated systems that appear in latches.

11:35:06

11:35:11

22 Q. What do you mean by "articulated systems

11:35:19

1 that appear in latches"?

11:35:21

2 A. I'm having a bit of trouble with what an
3 answer to that question would be. Latches are
4 articulated systems that are designed to move under
5 the actuation of a person or machine to engage two
6 components so that they're connected together. That
7 is the description of an articulated system. Am
8 I --

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11:36:04

9 Q. So when we talked about articulated devices
10 earlier, you talked about gears and robots and
11 drones. But you didn't talk about latches.

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12 What percentage of your work with
13 articulated devices relates to latches specifically?

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11:36:19

14 A. That's not -- I guess I gave you the wrong
15 impression. I'm very sorry. My particular
16 expertise is on the elements that appear in devices
17 such as robots and drones and walking machines.
18 Those elements can be characterized as gears, cams,
19 and linkages in a very simple way -- simplified way.
20 Latches typically consist of components that may be
21 gears, cams, or linkages, commonly referred to as
22 articulated.

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1 Q. Have you specifically worked with latches in 11:37:13
2 those systems, or are you saying that latches are 11:37:16
3 comparable to the features of those systems? 11:37:21

4 MR. BEMBEN: Objection to form. 11:37:26

5 A. Latches are a -- okay. Let me begin again. 11:37:30

6 I teach, and therefore I attempt to explain 11:37:36
7 to students the mechanical elements that are 11:37:41
8 important to mechanical engineering. And I do that 11:37:45
9 with what's known as machine theory and -- with 11:37:49
10 examples in which they will be asked to analyze 11:37:55
11 various machine elements. And examples that are 11:38:01
12 very common are articulated systems that form 11:38:05
13 latches. 11:38:09

14 Is that an answer? I'm struggling to ... 11:38:13

15 Q. Yes. I think that's an answer. It's tricky 11:38:20
16 because you know what you've worked on and I have a 11:38:23
17 very limited slice of what you've worked on, so I'm 11:38:27
18 just trying to fully understand exactly how 11:38:31
19 everything connects up. That's all. 11:38:34

20 A. No, no, and I understand that. I'm trying 11:38:36
21 to be careful. 11:38:40

22 Q. Understood. 11:38:42

1 Have you ever personally designed a latch
2 itself?

11:38:47

11:38:49

3 A. The examples that I present in class are
4 often created by me. But when you say "designed a
5 latch itself," do you mean that then went on to be
6 manufactured and delivered as a product? And the
7 answer to that is no. I've described all the
8 products that I've worked on.

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9 Q. I guess my specific question is whether or
10 not you've designed a latch, whether it was
11 commercialized or not, but whether or not you
12 physically have created a latch.

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13 MR. BEMBEN: Objection to form.

11:39:32

14 A. Physically -- I'm sorry.

11:39:32

15 Physically created a latch. I -- it's only
16 been recent, in recent years that I have moved my
17 research from theory to software to an actual
18 fabrication. So most all of my work with students
19 has been with regard to the theory and software
20 presentation or description of the devices. It's
21 only been recently, thanks to sort of the new
22 technology of 3D printing, that I've been turning

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1 those devices into physical products. Most of those
2 have focused on the skeletons for robotic systems in
3 some way. Not -- I don't recall doing this --
4 making a physical example of a latch.

5 Q. Okay. If someone were to ask you to design
6 a latching mechanism that would connect two
7 containers, what are the things that you, as an
8 engineer, would consider?

9 MR. BEMBEN: Objection --

10 A. I'm sorry.

11 MR. BEMBEN: The objection was incomplete
12 hypothetical.

13 A. Well, there's a design process that we teach
14 our students. The number one thing that you have to
15 do is you have to understand the requirements for
16 the product. Then you have to assess what the
17 stakeholders want, you know, how it is expected to
18 perform. And once you've done all that, then you do
19 a survey of existing technology, come up with
20 alternatives, and then develop prototypes to assess
21 their performance and compare how they perform
22 against what the goals are that you set for the

1 device. This is what I do. I teach students to do 11:41:48
2 this in a whole range of applications of articulated 11:41:51
3 systems. It's exactly what you would do for a new 11:41:58
4 latch as well. 11:42:03

5 Q. Are there specific manufacturing 11:42:06
6 considerations that you would want to keep in mind 11:42:09
7 if you were manufacturing a latching mechanism that 11:42:12
8 would connect two containers? 11:42:15

9 MR. BEMBEN: Objection to form. Foundation. 11:42:16
10 And incomplete hypothetical. 11:42:18

11 A. Manufacturing considerations are absolutely 11:42:21
12 a critical issue in moving design into the 11:42:25
13 marketplace. But they generally come after the, 11:42:32
14 sort of, form and -- the form of the product, the 11:42:41
15 size of the product, the way the parts are going to 11:42:46
16 interact. Generally that's determined early on in 11:42:51
17 the process. Then you start -- then you consider 11:42:54
18 the various manufacturing processes, how expensive 11:42:59
19 they might be, and then reflect back on the design 11:43:03
20 and perhaps change the design to make it easier to 11:43:07
21 manufacture, enhance performance. So it's kind of 11:43:14
22 hand in hand, but generally characterizing the 11:43:19

1 overall design and what you would expect -- how you
2 expect it to perform comes first.

3 Q. What types of manufacturing methods are
4 typically used to create a latch?

5 A. Well, it depends on the application and it
6 depends on the materials that you're going to use
7 for the latch.

8 Q. For a latch that's going to be used to
9 connect two containers, what types of materials
10 would you be considering using?

11 A. Well, the latch could be -- the latch could
12 be exactly the same in a range of applications, but
13 you would change the materials based on cost and
14 forces that you would expect the latch to withstand.
15 But its overall design could be identical.

16 Q. If you understood that this was going to be
17 a latching mechanism to connect two containers that
18 were used to carry hardware and equipment, what
19 types of materials would you consider and -- I'll
20 stop the question there. Sorry.

21 A. Well, I mean, the sort of standard materials
22 that are used in mechanical engineering are metal

1 and plastic. We typically don't -- well, we
2 actually do make some of our robots out of wood
3 because it's easy to generate the structure -- cut
4 and generate -- articulate the skeleton out of wood,
5 but that's not typically what you would use. So
6 metal and plastic are typically the two general
7 materials that you would apply.

8 Q. If you were using plastic, what types of
9 manufacturing methods might you use to form the
10 latch?

11 A. I think the sort of standard for large scale
12 manufacturing, sort of the standard is injection
13 molding. But I'm not a manufacturing engineer so
14 I'm not fully aware of all the latest capabilities.

15 Q. And if you were designing and making a
16 latching mechanism that was made out of metal, what
17 types of methods would you use to manufacture that
18 part?

19 MR. BEMBEN: Objection to form.

20 A. I'm sorry. Could you repeat the question?
21 I was thinking of something else. Sorry.

22 Q. Of course.

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1 If instead of using plastic, you were using
2 metal to design and create a latching mechanism,
3 what types of manufacturing methodology would you
4 use to create the metal latching mechanism?

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5 MR. BEMBEN: Objection to form and
6 foundation.

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7 A. I have -- I have -- there's a range of
8 manufacturing procedures you could use with metal.
9 Stamping, cutting, machining, whatever makes sense
10 for the performance that you want out of the latch.

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11 Q. Do you have injection molding experience?

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12 A. No.

11:46:59

13 Q. Do you have experience doing die casting?

11:47:03

14 A. Oh, that's another good choice, would be die
15 casting. No.

11:47:08

11:47:12

16 By "experience," you mean have I actually
17 done it personally? I assume that's what you mean
18 by "experience."

11:47:13

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11:47:19

19 Q. Correct.

11:47:20

20 A. I have not personally performed injection
21 molding. I have toured facilities and seen the
22 machines and see how they operate, and I've seen how

11:47:20

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1 die casting operates, and I've seen how stamping
2 operates and forging. But I have not personally
3 done it.

4 Q. Is durability a consideration when you're
5 designing a latching mechanism used to connect two
6 containers?

7 MR. BEMBEN: Objection to form and
8 foundation.

9 A. By "durability," I assume you mean wear
10 resistance? Or do you mean resistance to
11 deformation under loads?

12 Q. I mean all sorts of durability issues.
13 You've highlighted two issues, at least, there.

14 A. Well, those are the two primary ones. In
15 any -- in any engineering application, you want to
16 reduce wear resistance and you want to increase --
17 or you want to -- I'm sorry. I said it backwards.

18 In any application, you want to be resistant
19 to wear, and you also want to be -- reduce
20 deformation under loads to the level that is
21 required for the performance of your device. That's
22 generally what we mean by "durability."

1	Q. Okay.	11:49:05
2	A. Unless you have some others that you're	11:49:07
3	thinking of. I might have -- I might not be	11:49:09
4	completely comprehensive.	11:49:13
5	Q. I don't have anything in mind. I just want	11:49:15
6	to understand your thought process on what would go	11:49:17
7	into this.	11:49:20
8	A. My thought process? That's not my thought	11:49:22
9	process. I'm just describing for you what	11:49:26
10	durability is.	11:49:28
11	Q. Well --	11:49:29
12	A. In terms of my thought process, you're	11:49:30
13	asking if I were to design a latch, would I be	11:49:33
14	concerned with durability? I would absolutely be	11:49:36
15	concerned with wear resistance and deflection under	11:49:40
16	loading. For example, I mean, you know, you think	11:49:45
17	about the latch on your door. You know, when you	11:49:50
18	close a door, you have a latch that engages the door	11:49:53
19	frame, and you want to be able to use that door over	11:50:00
20	and over and over again and you don't want it to	11:50:03
21	bend or deflect under loading so that at some point	11:50:06
22	it fails. And you certainly want the movement in	11:50:10

1 and out of the door latch to not wear to the extent
2 that it fails to perform, fails to latch. So those
3 are common considerations in the use or the
4 performance of a latch.

5 Q. Thank you.

6 So my last question about this is whether
7 cost would be a consideration in decisions that
8 might be made in designing a latching mechanism to
9 connect two containers for consumer use.

10 MR. BEMBEN: Objection to form and
11 foundation.

12 A. I'm only hesitating because I thought I
13 answered this question, and I'm trying to reframe it
14 in a way that maybe makes it clearer.

15 Once you have decide -- worked on the goal
16 of the product and identified its requirements and
17 what the stakeholders need out of it, you have to
18 consider the manufacturing processes and the
19 ultimate cost of the device because, in the end, you
20 have to sell it. And if no one will buy it, it's
21 not a successful product. So in that context, you
22 absolutely have to consider cost.

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1 Q. And what are the specific things that would 11:51:37
2 impact the cost of the product? 11:51:38

3 A. Again, I'm trying to think how to make it 11:51:53
4 easy. The materials affect the cost. The 11:52:01
5 manufacturing processes affect the cost. The 11:52:06
6 complexity of the design of -- the complexity of the 11:52:09
7 shape of the components and how they interact affect 11:52:13
8 the cost. The precision that's required in 11:52:16
9 elements, such as bearing gears, levers, affect the 11:52:22
10 cost. 11:52:30

11 Is that helpful? 11:52:31

12 Q. That is helpful. 11:52:33

13 I am at a good breaking point right now, and 11:52:34
14 we're just under an hour. 11:52:36

15 MS. HALSEY: Is everybody on board with 11:52:40
16 taking a short ten-minute break? 11:52:41

17 MR. BEMBEN: Dr. McCarthy? 11:52:46

18 THE WITNESS: Sure. 11:52:47

19 MR. BEMBEN: Okay. Ten minutes? 11:52:48

20 MS. HALSEY: Ten minutes. 11:52:50

21 THE VIDEOGRAPHER: The time is 11:52 a.m. 11:52:52
22 We are going off the record. 11:52:54

Transcript of John Michael McCarthy, Ph.D.
Conducted on May 7, 2026

44

1	(A short break was had.)	11:52:56
2	THE VIDEOGRAPHER: The time is 2:03 p.m. We	12:03:09
3	are back on the record.	12:03:13
4	BY MS. HALSEY:	12:03:14
5	Q. Just to clarify, what time do you have?	12:03:17
6	THE VIDEOGRAPHER: My mistake. I said 2:03.	12:03:23
7	I meant to say 12:03. I'm sorry.	12:03:26
8	MS. HALSEY: Perfect. Thank you.	12:03:29
9	BY MS. HALSEY:	12:03:34
10	Q. Dr. McCarthy, are you familiar with the	12:03:35
11	materials that were submitted with the petition in	12:03:36
12	this matter?	12:03:37
13	A. I have a stack of documents that was	12:03:42
14	provided to me in preparation for the deposition.	12:03:45
15	That's all I really am aware of.	12:03:49
16	Q. You have exhibits that were cited in your	12:03:54
17	report; correct?	12:03:57
18	A. That's correct.	12:03:58
19	Q. And who collected those exhibits? Did you	12:03:59
20	collect them, or were they provided to you?	12:04:03
21	A. I collected some, but the example patents	12:04:06
22	were collected by the lawyers working with me.	12:04:15

1 Q. Okay. Are there any materials that you
2 considered when you were preparing your report in
3 this matter that weren't included as exhibits to the
4 petition?

12:04:20

12:04:23

12:04:26

12:04:29

5 A. Not that I know of.

12:04:29

6 MS. HALSEY: So I'd like to go ahead and
7 introduce what was previously marked as
8 Exhibit 1003, which is the declaration of
9 Dr. McCarthy.

12:04:41

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10 REMOTE TECHNICIAN: Stand by, please.

12:04:52

11 (Exhibit 1003 was marked for
12 identification and is attached to the
13 transcript.)

12:04:52

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12:05:20

14 BY MS. HALSEY:

12:05:20

15 Q. Dr. McCarthy, have you seen this before?

12:05:20

16 A. Yes.

12:05:22

17 Q. And what is it?

12:05:22

18 A. That's the declaration I prepared in support
19 of the petition for an inter partes review.

12:05:24

12:05:31

20 Q. If we can flip to page 1 of the document.

12:05:38

21 Following the table of contents, there will be a
22 number 1.

12:05:47

12:05:50

1	There we go. Right there?	12:05:51
2	In paragraph 1, you say that you're being	12:05:52
3	compensated for your time at your standard	12:05:55
4	consulting rate.	12:05:57
5	What is your standard consulting rate?	12:05:58
6	A. 350 an hour for review of documents in	12:06:00
7	preparation of reports and 550 an hour for	12:06:05
8	deposition and trial testimony.	12:06:09
9	Q. So your report includes a number of	12:06:35
10	references. In fact, there are I think 29 exhibits.	12:06:37
11	Is that consistent with your understanding?	12:06:43
12	A. Yes.	12:06:45
13	Q. And the majority of those exhibits are	12:06:46
14	patents; correct?	12:06:49
15	A. Yes.	12:06:50
16	Q. Only eight of those references were included	12:06:50
17	in your chart on page 5 as grounds of	12:06:56
18	unpatentability; is that correct?	12:07:03
19	A. That is correct.	12:07:04
20	Q. How did you decide which references to	12:07:05
21	include as grounds of unpatentability?	12:07:08
22	A. The challenge in the -- in preparing this	12:07:12

1 report was to identify elements that would be easy 12:07:21
2 to communicate that their function was the same as 12:07:23
3 what was recited in the claims of the patent and 12:07:32
4 that they were standard elements that could be used 12:07:34
5 and assembled in the usual ways to achieve the 12:07:40
6 performance that's described in the patents. And so 12:07:45
7 there's a large number of examples, and these were 12:07:51
8 determined to be the ones that would be the simplest 12:07:56
9 for use to illustrate that the elements of the 12:08:00
10 patent existed in the prior art and that a person of 12:08:04
11 ordinary skill in the art could use those elements 12:08:07
12 to assemble a system that was equivalent to each of 12:08:10
13 the inventions recited in the patent. 12:08:20

14 Q. I'm going to flip ahead to page 54. 12:08:32

15 MR. BEMBEN: Dr. McCarthy, do you have your 12:08:39
16 hard copy of it? 12:08:41

17 THE WITNESS: I can actually see it on the 12:08:42
18 screen reasonably well, and I would like to try to 12:08:44
19 do that until it's not possible. 12:08:48

20 I'm sorry. To answer to your question, yes, 12:08:52
21 I have the hard copy. It's right here. 12:08:54

22 ///

1 BY MS. HALSEY:

12:08:57

2 Q. And I can promise you I'm not going to ask
3 you anything super deep right now.

12:08:58

12:09:01

4 On page 54, the header states that, "Sliding
5 Latch Mechanisms Coplanar with a Container Side
6 Surface Were Well Known."

12:09:04

12:09:11

12:09:15

7 Do you see that?

12:09:15

8 A. Yes.

12:09:16

9 Q. What do you understand to be the plain and
10 ordinary meaning of the word "coplanar"?

12:09:17

12:09:19

11 A. Coplanar would refer to two separate planes
12 that were aligned.

12:09:20

12:09:23

13 Q. And what do you mean by aligned?

12:09:27

14 A. Where the surfaces of each of the planes are
15 oriented and assembled so they lie in the same
16 plane.

12:09:32

12:09:45

12:09:50

17 Q. Just to try and put a concrete example with
18 this, if I have a box and its walls are oriented
19 with a compass so that there's a north-facing,
20 south-facing, east and west-facing wall to the box,
21 are the north-facing and south-facing walls of the
22 box coplanar with one another?

12:10:05

12:10:08

12:10:13

12:10:17

12:10:20

12:10:25

1	A. North facing --	12:10:26
2	MR. BEMBEN: Let me have an opportunity to	12:10:27
3	object.	12:10:29
4	Objection to incomplete hypothetical.	12:10:30
5	A. So I have a box, and the box I assume forms,	12:10:32
6	you know, what we would call a parallelepiped, so	12:10:43
7	there would be a front side, a back side, a left	12:10:51
8	side, and a right side. Those sides are not	12:10:55
9	coplanar, uh-uh.	12:10:57
10	Q. Okay. Now, if I were to take a small box	12:11:01
11	and put it dead center on top of the larger box and	12:11:08
12	it's aligned exactly the same way so that the front	12:11:11
13	walls are lined up with -- are -- each have a front	12:11:16
14	wall that are oriented the same way, each has a back	12:11:20
15	wall that are oriented the same way but the smaller	12:11:24
16	box is sitting in the middle of the larger box,	12:11:27
17	would the north-facing wall of the small box be	12:11:30
18	coplanar with the north-facing wall of the larger	12:11:33
19	box?	12:11:36
20	MR. BEMBEN: Objection to form and	12:11:37
21	incomplete hypothetical.	12:11:38
22	A. That's not my understanding of the use of	12:11:40

1 the word "coplanar." They would be in parallel
2 planes, but it's my understanding when you say
3 "coplanar," it means that they are aligned in the
4 same plane.

5 Q. If we turn to page 56, paragraph 104, you
6 say that "While Meier is describing recessed
7 closures, these benefits would evidently apply to
8 coplanar closures as well."

9 Do you see that?

10 A. I do. Maybe you could just zoom in
11 slightly.

12 Q. Absolutely.

13 A. There we go. Perfect.

14 That's correct.

15 Q. Can you explain to me what the difference is
16 between a recessed closure and a coplanar closure?

17 A. In the context of the Meier patent, they
18 show the latch indented and -- but they sort of
19 explain what the value is of having that in that
20 form because it won't get caught by -- in the use of
21 the box in arbitrary ways. You know, you could
22 imagine it getting caught on the side of the shelf

1 if it were extending beyond the side. So by having
2 it recessed, it won't happen.

3 Well, it turns out that's also true if the
4 face of that latch is parallel or coplanar with the
5 side of the box. So that advantage carries over to
6 the coplanar feature of the patent.

7 Q. So am I correct in understanding that a
8 recessed closure is going to be somewhat indented
9 from the wall while a coplanar latch is going to be
10 aligned with the wall?

11 A. It depends on how you -- what you're talking
12 about with the wall. The general principle is true,
13 yes.

14 Q. Okay. Why do you believe that a coplanar
15 latch would have the same advantages as a recessed
16 latch?

17 A. Well, because the -- what I believe is the
18 hazard that would damage the latch is that if it
19 had -- in the closed configuration, it had a portion
20 of it extending beyond the side of the container,
21 which would make it vulnerable to be -- as you move
22 the container around, it could get caught on other

1 objects.

12:14:54

2 Q. Okay.

12:15:07

3 MS. HALSEY: So, Ken, I'd like to introduce
4 what was previously marked as Exhibit 1012.

12:15:07

5 (Exhibit 1012 was marked for
6 identification and is attached to the
7 transcript.)

12:15:09

12:15:09

12:15:46

8 BY MS. HALSEY:

12:15:46

9 Q. Dr. McCarthy, have you seen this document
10 before?

12:15:46

12:15:48

11 A. Yes.

12:15:48

12 Q. And what is it?

12:15:49

13 A. It's what we call the -- what I've gotten
14 used to calling the Niles patent.

12:15:50

12:15:54

15 Q. And the Niles patent is cited in your
16 report; correct?

12:15:57

12:16:00

17 A. Yes.

12:16:00

18 Q. I'd like to turn to the claims of Niles,
19 which start on column 8.

12:16:01

12:16:14

20 Dr. McCarthy, am I correct that the claims
21 of Niles are directed to a closure assembly?

12:16:39

12:16:42

22 MR. BEMBEN: Objection to scope.

12:16:45

1 A. Yes. The -- Claim 1 describes a closure
2 assembly comprising, and then it has a list of
3 elements.

4 MS. HALSEY: And, Ken, would you mind
5 scrolling just so that Dr. McCarthy can confirm that
6 that's the case for all of the claims.

7 A. That was too fast. Exactly what is it that
8 you want me to confirm?

9 Q. Just that Niles was focused on closure
10 assemblies.

11 A. I would believe that the first claim would
12 confirm that, yeah. It's not necessary to go
13 through it in detail I don't believe.

14 Q. Does Niles disclose a means of connecting
15 two containers?

16 A. No, it describes a latch. And it shows the
17 configuration of a latch that is an element of the
18 Meridian patent, the Cai patent. And that's why we
19 use the Niles patent. It's another example of those
20 elements that is -- at least I believe, would be
21 well known to be a designer, a person of ordinary
22 skill in the art. And they would then be able to

1 use it in exactly the same way in the -- in

12:18:20

2 combination with other patents that we describe to

12:18:27

3 recite all the elements of the claims in the

12:18:34

4 '689 patent.

12:18:41

5 MS. HALSEY: Ken, we're going to introduce

12:18:46

6 what's been previously marked as Exhibit 1008.

12:18:48

7 (Exhibit 1008 was marked for

12:18:48

8 identification and is attached to the

12:18:48

9 transcript.)

12:19:19

10 BY MS. HALSEY:

12:19:19

11 Q. Have you seen this before?

12:19:19

12 A. Yes.

12:19:20

13 Q. And what is it?

12:19:21

14 A. That's what we refer to as the Morel patent.

12:19:22

15 Q. And that is cited in your report?

12:19:25

16 A. Yes, it is.

12:19:27

17 Q. What -- sorry. Strike that.

12:19:28

18 Am I correct that the Morel patent is

12:19:39

19 directed to a storage compartment for a vehicle that

12:19:42

20 has a moveable partition?

12:19:45

21 A. That's correct.

12:19:47

22 Q. Does Morel disclose a means of connecting

12:19:47

1	two containers?	12:19:52
2	A. No, it does not. Again, it's like the Niles	12:19:54
3	patent. It's describing an element that has the	12:20:00
4	features of elements of the Cai patent or the	12:20:05
5	Meridian patent that we use to show that a person of	12:20:09
6	ordinary skill in the art could combine these	12:20:16
7	elements and -- in the usual way to obtain a	12:20:17
8	predictable result.	12:20:23
9	MS. HALSEY: Ken, can you put up what's been	12:20:26
10	previously marked as Exhibit 1009.	12:20:29
11	(Exhibit 1009 was marked for	12:20:29
12	identification and is attached to the	12:20:29
13	transcript.)	12:20:36
14	BY MS. HALSEY:	12:20:57
15	Q. Dr. McCarthy, have you seen this document	12:20:58
16	before?	12:20:59
17	A. Yes.	12:20:59
18	Q. And what is it?	12:21:00
19	A. This is the Weng patent.	12:21:02
20	Q. And this is one of the references that you	12:21:05
21	refer to in your report?	12:21:08
22	A. Yes, it is.	12:21:09

1 Q. And Weng is directed to a sliding track
2 assembly for drawers; is that correct?

3 A. That's correct.

4 Q. Does Weng disclose a means of connecting two
5 containers?

6 A. No. But, again, it has an element that is
7 common to latches and it illustrates well an element
8 that's described in the Meridian patent that could
9 be implemented in combination with other prior art
10 to achieve the performance described in the Meridian
11 patent.

12 MS. HALSEY: Ken, can we put up what was
13 previously marked as Exhibit 1006.

14 (Exhibit 1006 was marked for
15 identification and is attached to the
16 transcript.)

17 BY MS. HALSEY:

18 Q. Dr. McCarthy, have you seen this document
19 before?

20 A. I have.

21 Q. And what is it?

22 A. This is the Heinrichs patent.

1 Q. And you cite to the Heinrichs patent in your
2 report; correct?

3 A. I do.

4 Q. Am I correct that Heinrichs is directed to
5 automatically interlocking pallets?

6 A. That's correct.

7 Q. Does Heinrichs disclose a means of
8 connecting two containers?

9 A. These pallets are actually form containers,
10 so yes, it does, but that's not how we use it. We
11 focus on the latching assembly that occurs to
12 connect one pallet to another -- that is used to
13 connect one pallet to the other. And, again, this
14 is an element that we believe illustrates that prior
15 art, that there is prior art that a person of
16 ordinary skill in the art could use to combine with
17 other patents to meet the specific claims of the
18 Meridian patent.

19 Q. When you say that it does disclose a means
20 of connecting two containers, are you referring to
21 two fully enclosed containers or are you referring
22 to, like, two shelving units?

1	MR. BEMBEN: Objection to form.	12:23:50
2	A. I think it would be easier to see if we	12:23:51
3	looked at some of the other images in the --	12:23:53
4	Q. Sure.	12:23:56
5	MS. HALSEY: Ken, would you mind scrolling	12:23:56
6	so we can look at the images? You can keep going.	12:23:58
7	A. I think maybe you want to stop there. So	12:24:21
8	that's what I was referring to.	12:24:36
9	Q. I'm still flipping on my own copy, but do	12:24:38
10	you understand all six sides of this cube to be	12:24:46
11	enclosed?	12:24:51
12	A. I don't have an understanding of that in	12:24:54
13	particular because I'm not using it in that format.	12:24:57
14	I'm just saying that it has the characteristics of a	12:25:01
15	container.	12:25:04
16	Q. Okay.	12:25:05
17	MS. HALSEY: Ken, I'd like to put up what	12:25:06
18	was previously marked as Exhibit 1001.	12:25:09
19	(Exhibit 1001 was marked for	12:25:09
20	identification and is attached to the	12:25:09
21	transcript.)	12:25:28
22	///	

1	BY MS. HALSEY:	12:25:28
2	Q. Dr. McCarthy, have you seen this document	12:25:29
3	before?	12:25:31
4	A. Yes.	12:25:31
5	Q. And what is it?	12:25:31
6	A. This is what I have called the Cai patent,	12:25:32
7	but I think you've been referring to it as the	12:25:36
8	Meridian patent. And I'm comfortable with that.	12:25:39
9	Q. We can also refer to it as the '689 patent.	12:25:43
10	A. Or the '689. It's fine with me. All three	12:25:50
11	of them are fine with me.	12:25:53
12	Q. Okay. And you obviously refer to this in	12:25:54
13	your report?	12:25:56
14	A. Yes.	12:25:57
15	MS. HALSEY: Ken, can we turn to column 6,	12:26:00
16	which should be the next-to-last page of this	12:26:02
17	document? I think page 12.	12:26:04
18	Q. So I just want to look at the claims a	12:26:14
19	little bit and talk about some of the language	12:26:16
20	that's used in them.	12:26:18
21	Can we start by looking at Claim 1?	12:26:22
22	MS. HALSEY: Can you blow that up, Ken?	12:26:24

1 Q. So in the claim there's language that says,
2 "the first storage container comprises of at least
3 one locking groove and the second container
4 comprises a sliding mechanism for selectively
5 engaging the locking groove to connect and hold the
6 first storage container to the second storage
7 container."

12:26:35

12:26:38

12:26:43

12:26:45

12:26:48

12:26:51

12:26:54

8 Do you see that?

12:26:55

9 A. I do.

12:26:56

10 Q. Based on the plain and ordinary meaning of
11 the claim language, the first container has the
12 locking groove and the second container includes the
13 sliding mechanism; is that correct?

12:26:56

12:27:00

12:27:02

12:27:05

14 A. That's my understanding.

12:27:07

15 Q. Do you understand the claims to require a
16 container to have opposing side walls and a bottom?

12:27:08

12:27:16

17 MR. BEMBEN: Objection to form and
18 foundation.

12:27:20

12:27:21

19 A. The -- in this context, we're talking simply
20 about Claim 1. My responsibility is in terms of
21 understanding the claim from -- claim language from
22 the point of view of a person of ordinary skill in

12:27:29

12:27:34

12:27:41

12:27:45

1 the art is I would read the language of the claim to 12:27:47
2 give it its ordinary meaning, then refer to the 12:27:50
3 specification to understand how the patent owner 12:27:55
4 described the claim element in their preferred 12:28:01
5 embodiment. So I would look to the specification to 12:28:10
6 answer that question. 12:28:13

7 MS. HALSEY: Ken, would you go back one page 12:28:14
8 to page 11? And I want to look at column 3, lines 1 12:28:16
9 through 4. So next page down. There you go. And 12:28:26
10 we're going to want to look at the first four lines 12:28:38
11 of that column. Perfect. 12:28:41

12 Q. Can you read that, Dr. McCarthy, or do you 12:28:45
13 need it a little bigger? 12:28:47

14 A. I think that's fine, yeah. 12:28:48

15 Q. When you read those first four lines, does 12:28:50
16 that give you a better understanding as to what 12:29:00
17 elements a container must have? 12:29:02

18 A. Yes, uh-huh. 12:29:04

19 Q. And what elements must a container have? 12:29:05

20 A. Well, it has opposing side walls and a 12:29:08
21 bottom portion and I assume a top portion. I don't 12:29:12
22 see that specifically. 12:29:14

1	Q. Perfect. Thank you.	12:29:16
2	MS. HALSEY: All right. Ken, can we go back	12:29:20
3	to the claim listing on the next page.	12:29:23
4	Q. And I'd like to look at Claim 4.	12:29:35
5	So Dr. McCarthy, Claim 4 includes the	12:29:41
6	language, "a support arm extending across the slot."	12:29:43
7	Do you see that?	12:29:49
8	A. I do.	12:29:49
9	Q. What do you understand to be the plain and	12:29:50
10	ordinary meaning of the word "across"?	12:29:54
11	A. That it goes from one side to the other.	12:29:58
12	Q. In the context of this claim then, would you	12:30:04
13	understand it to mean that the support arm would	12:30:06
14	need to extend from one side of the slot to the	12:30:08
15	other?	12:30:12
16	A. Yes, but in our analysis of this, to use the	12:30:12
17	Duvigneau patent to show an equivalent to this claim	12:30:20
18	element, we interpreted the support arm to run from	12:30:31
19	the front side to the backside of the slot.	12:30:37
20	Q. Would running from the front side to the	12:30:43
21	back side be running across the slot?	12:30:45
22	A. Yes.	12:30:49

1 Q. So let's scroll down to Claim 12. 12:31:00

2 And Dr. McCarthy, Claim 12 states that "the 12:31:10

3 support arm is located across the slot between the 12:31:13

4 two laterally spaced apart side surfaces and above 12:31:16

5 the bottom surface and spaced apart from the second 12:31:20

6 side surface." 12:31:24

7 Do you see that? 12:31:25

8 A. I do. 12:31:26

9 Q. What do you understand to be the plain and 12:31:26

10 ordinary meaning of the phrase "spaced apart"? 12:31:32

11 A. I'm sorry. I was distracted for a minute. 12:31:35

12 Could you ask that question again? 12:31:49

13 Q. What do you understand to be the plain and 12:31:50

14 ordinary meaning of the phrase "spaced apart"? 12:31:53

15 A. Well, it's not spaced apart. It's the two 12:31:57

16 laterally spaced apart side surfaces of the slot; 12:32:02

17 isn't that correct? 12:32:11

18 Q. The phrase "spaced apart" is used twice. So 12:32:14

19 there it says, "the two laterally spaced apart side 12:32:18

20 surfaces," and then it says, "above the bottom 12:32:21

21 surface and," again, "spaced apart from the second 12:32:25

22 side surface." 12:32:28

1	A. Correct.	12:32:31
2	Q. So what do you understand "spaced apart" to	12:32:32
3	mean in that context, given its ordinary meaning?	12:32:36
4	A. It's characterizing the fact that those two	12:32:38
5	side surfaces are separated from each other and that	12:32:41
6	the other "spaced apart" is used from the bottom	12:32:44
7	saying that it's separated from the second side	12:32:51
8	surface.	12:32:55
9	Q. If two items are touching, would you	12:33:00
10	consider them to be spaced apart?	12:33:02
11	A. It depends on the situation. I -- I'm	12:33:08
12	having trouble putting that in the context of this	12:33:18
13	claim.	12:33:24
14	Q. Would you understand the phrase "spaced	12:33:24
15	apart" to mean that there is a distance between the	12:33:26
16	two items?	12:33:30
17	A. Yes.	12:33:31
18	Q. And if the two items are touching, then	12:33:32
19	there is no distance between them; correct?	12:33:37
20	A. Depends on the parts. I think that you can	12:33:39
21	imagine parts being spaced apart where they had a	12:33:43
22	component touching.	12:33:47

1 Q. Could you explain that to me in more detail,
2 what you're --

3 A. I'm having trouble with the -- I can't
4 explain it in more detail because I'm having trouble
5 with the distinction and the sort of generality of
6 the statement.

7 There could be components that can
8 interleave and that when you pull them apart, they
9 could be touching but they now are separated and
10 considered spaced apart.

11 Do you understand what I'm saying? No, you
12 don't understand.

13 So it's a -- there are many contexts to
14 this. It would help if we just stayed in the
15 context of this claim. If the two sides, for
16 example, were the same side, then they wouldn't be
17 spaced apart. I think we can agree on that.

18 Q. Right.

19 MS. HALSEY: Ken, let's go back to
20 Exhibit 1003, which is Dr. McCarthy's declaration.

21 Q. I'm actually going to ask you something that
22 doesn't require us to look at a specific part of

12:33:54

12:33:57

12:33:58

12:34:01

12:34:04

12:34:10

12:34:10

12:34:13

12:34:17

12:34:20

12:34:22

12:34:24

12:34:25

12:34:29

12:34:31

12:34:35

12:34:38

12:34:40

12:34:48

12:34:51

12:35:11

12:35:14

1 your declaration just yet.

12:35:17

2 What to you understand to be the difference
3 between a claim being anticipated and a claim being
4 rendered obvious?

12:35:19

12:35:21

12:35:26

5 A. It's my understanding that if all of the
6 elements of the claim can be found in a single prior
7 art reference, it's referred to as being
8 anticipated. If a claim -- if all the elements of a
9 claim are obtained by the combination of more than
10 one piece of prior art, then it's referred to as
11 being obvious.

12:35:26

12:35:28

12:35:31

12:35:34

12:35:42

12:35:47

12:35:53

12 I think there probably are some more
13 technicalities there, but that's my general
14 understanding.

12:35:56

12:36:00

12:36:04

15 Q. Can a single piece of art render a claim
16 art?

12:36:04

12:36:08

17 A. Yes, it can.

12:36:08

18 Q. And in what circumstances could it do that?

12:36:10

19 A. Well, if the claim element is not
20 represented explicitly but that it relies on the
21 knowledge and experience of a person of ordinary
22 skill in the art to recognize the equivalence

12:36:13

12:36:18

12:36:23

12:36:27

1 between an element of that single piece of prior art 12:36:36
2 and the claim, then it's referred to as being 12:36:38
3 obvious rather than anticipated. 12:36:42

4 Q. If a piece of art merely suggests that 12:36:46
5 certain elements are present, would it render the 12:36:49
6 claim obvious or would it anticipate it? 12:36:53

7 MR. BEMBEN: Objection. Calls for a legal 12:36:56
8 conclusion. 12:36:58

9 A. I don't believe suggestion in and of itself 12:37:09
10 is enough. I believe we have to show that the 12:37:12
11 element, as it exists and as it performs, can be 12:37:14
12 combined with the elements of the other -- in one 12:37:19
13 patent can be combined with the elements of another 12:37:23
14 patent in the usual ways to obtain an expected 12:37:26
15 result that is the same as the claim that we're 12:37:30
16 attempting to render obvious. 12:37:35

17 Q. Thank you. 12:37:37

18 MS. HALSEY: Ken, let's turn to page 84. 12:37:42

19 Q. So in paragraph 157, you state that the 12:37:57
20 sliding latch 246 of Duvigneau is a sliding 12:38:02
21 mechanism. 12:38:10

22 Do you see that? 12:38:11

1	A. Correct.	12:38:12
2	MS. HALSEY: And then, Ken, if we flip to	12:38:14
3	page 88, paragraph 162.	12:38:17
4	Q. There you state that "Duvigneau	12:38:19
5	discloses ... 'a sliding latch 246' ... which	12:38:27
6	comprises 'a slider.'"	12:38:31
7	Do you see that?	12:38:32
8	A. I do.	12:38:33
9	Q. What do you understand to be the difference	12:38:33
10	between a sliding mechanism and a slider?	12:38:37
11	A. Well, a sliding mechanism would be all the	12:38:41
12	structure that holds the slider and achieve -- in	12:38:43
13	order to achieve its performance. Now, the sliding	12:38:53
14	mechanism in Duvigneau is very simple. It's simply	12:39:02
15	the slider supported by the support arms. So in	12:39:06
16	that context, the sliding mechanism and the slider	12:39:10
17	are the same. But in other contexts, the slider	12:39:13
18	would have, you know, separate -- a variety of	12:39:16
19	separate components.	12:39:19
20	MS. HALSEY: Tiffany, would you mind reading	12:39:31
21	back that answer to me.	12:39:32
22	(Record read as requested.)	12:40:09

1 THE WITNESS: Oh, thank you. That is a
2 mistake on my part.

3 A. The support arm together with the slider
4 forms the sliding mechanism. I did not mean to
5 restrict it to the slider itself.

6 Thank you for that -- giving me the
7 opportunity to make that clarification.

8 BY MS. HALSEY:

9 Q. Of course. I also just wanted to make sure
10 that I fully -- I wasn't writing fast enough. I
11 wanted to make sure I fully got your definition.

12 I'm going to turn to page 100, paragraph
13 185.

14 Here, you make the statement, It would have
15 been obvious to make a portion of the sliding
16 mechanism coplanar in order to avoid accidental
17 disengagement and damage.

18 Do you see that?

19 A. Yes.

20 Q. If the goal was to avoid accidental
21 disengagement and damage, wouldn't the solution be
22 to make the mechanism recessed and not coplanar?

1	A. That would be --	12:41:25
2	MR. BEMBEN: Objection. Incomplete	12:41:26
3	hypothetical and form.	12:41:28
4	A. That would be a choice, but I think the	12:41:29
5	designer would value the easy access to the slider	12:41:33
6	that is available when it's placed as coplanar. Or	12:41:40
7	easy access to the latching mechanism that's	12:41:46
8	achieved when it's coplanar.	12:41:51
9	Q. In your opinion, would a recessed latch or a	12:41:56
10	coplanar latch be superior?	12:41:59
11	A. I don't --	12:42:03
12	MR. BEMBEN: Objection to scope.	12:42:03
13	A. I don't have an opinion on that.	12:42:05
14	Q. I want to flip ahead to page 107.	12:42:15
15	And here in heading C and beyond, you	12:42:28
16	discuss the combination of Duvigneau and Niles.	12:42:34
17	Do you see that?	12:42:38
18	A. Yes.	12:42:38
19	Q. What problem would one be seeking to solve	12:42:39
20	that would cause them to arrive at a combination of	12:42:46
21	these references?	12:42:49
22	MR. BEMBEN: Objection to form. Incomplete	12:42:50

1 hypothetical and scope. 12:42:52

2 A. The -- this particular ground is addressing 12:42:55
3 Claim 5 of the Meridian patent. Claim 5 of the 12:43:02
4 Meridian patent is a dependent claim, so it includes 12:43:06
5 Claims 4, 3, 2, and 1, as I recall. And the 12:43:10
6 Duvigneau patent discloses the two containers with 12:43:19
7 the latch that moves in and out and engages a 12:43:23
8 locking groove. But in the case of Claim 5, it 12:43:29
9 refers to grooves that -- where the latch engages. 12:43:32
10 It has an elastic element that engages grooves. 12:43:38

11 The Duvigneau patent alone doesn't have 12:43:42
12 that. So the question to the person of ordinary 12:43:45
13 skill in the art is, are there obvious -- are there 12:43:49
14 existing elements that could be used in Duvigneau to 12:43:53
15 provide that feature? And the answers to me 12:43:59
16 seems -- is yes. Niles illustrates an elastic latch 12:44:05
17 with a protrusion that engages the groove that could 12:44:10
18 be used -- could be made part of the slider of 12:44:13
19 Duvigneau to provide all of the elements in Claim 5. 12:44:18
20 And because those elements are known and they 12:44:25
21 perform in exactly the way recited in Claim 5, I 12:44:29
22 believe a person of ordinary skill in the art could 12:44:35

1 assemble them together to achieve the invention in 12:44:40
2 Claim 5, which renders it, in my understanding, 12:44:45
3 obvious. 12:44:49

4 Q. So let's take this from a different angle. 12:44:51
5 I'm going to give you another of my incomplete 12:44:58
6 hypotheticals I'm sure here. But if we were to 12:45:01
7 exist in a universe where the '689 patent does not 12:45:07
8 exist and you are Duvigneau, why would you seek to 12:45:11
9 add the teachings of Niles to your product? 12:45:21

10 A. Well, if my patent were allowed without it, 12:45:27
11 then to a certain extent, my -- as I understand it, 12:45:34
12 my patent is stronger because it has less elements 12:45:39
13 that -- or less familiar elements that could be used 12:45:45
14 to invalidate it. That's just a strategic point of 12:45:48
15 view in terms of preparing a patent, as I understand 12:45:57
16 it. The use of elastic elements that engage grooves 12:45:59
17 to lock sliders into place are very well known. 12:46:05
18 They're common in a lot of items, and, therefore, 12:46:12
19 Duvigneau may not have considered it an element that 12:46:19
20 needed to be patented. 12:46:24

21 Q. Functionally speaking, how would one 12:46:29
22 implement the Niles device in combination with the 12:46:36

1 Duvigneau?

12:46:39

2 A. You would put the grooves in the support
3 arms, and you would put the elastic member in the
4 slider.

12:46:42

12:46:44

12:46:50

5 Q. What types of manufacturing methods would be
6 used to do that?

12:46:54

12:46:57

7 A. You could -- injection molding would work
8 fine if it were made out of plastic. I assume it's
9 made out of plastic. Weight is a consideration in
10 these devices so to the extent that you can keep the
11 density down and reduce the weight, we would tend to
12 use plastic.

12:46:58

12:47:05

12:47:09

12:47:13

12:47:16

12:47:19

13 Q. If you used plastic to do this, would the
14 product be sufficiently robust to support connecting
15 two containers or --

12:47:20

12:47:23

12:47:26

16 MR. BEMBEN: Objection to form. Foundation.
17 Incomplete hypothetical.

12:47:30

12:47:32

18 A. I mean, that's, of course, a concern. But
19 that's exactly the kinds of engineering that you do
20 when you develop a prototype to have a final product
21 to market. It is not a condition of a patent that
22 you guarantee the strength of any of the components.

12:47:33

12:47:36

12:47:39

12:47:45

12:47:49

1	Q. How would the grooves go into the arms?	12:47:58
2	A. Well --	12:48:01
3	MR. BEMBEN: Objection to form. Foundation.	12:48:02
4	Q. And I'll rephrase.	12:48:07
5	If you are implementing the Niles device in	12:48:08
6	combination with Duvigneau, how would the grooves go	12:48:11
7	into the arms?	12:48:14
8	A. Well, you understand --	12:48:15
9	MR. BEMBEN: Objection to the form and	12:48:17
10	foundation.	12:48:18
11	A. Maybe you should ask the question again.	12:48:20
12	Q. If one is implementing the Niles device in	12:48:26
13	combination with Duvigneau, you earlier said that	12:48:30
14	the grooves could be put in the arms.	12:48:35
15	How would the grooves go into the arms?	12:48:37
16	A. The support arms in Duvigneau that I believe	12:48:45
17	are equivalent to the support arms recited in the	12:48:54
18	Claim 5 run the longitudinal length of the slot.	12:48:59
19	Those sort -- those support arms can be manufactured	12:49:06
20	to have grooves that are perpendicular to the	12:49:10
21	longitudinal movement of the slider. And the	12:49:14
22	flexible latch of Niles could be inserted into the	12:49:21

1	slider so that it can engage those grooves.	12:49:29
2	Q. So just to clarify, you're saying that the	12:49:37
3	elastic arms of Niles would engage with the plastic	12:49:40
4	slider of Duvigneau; is that correct?	12:49:44
5	A. No, I'm not saying that.	12:49:45
6	Q. Okay. Can you clarify for me?	12:49:46
7	A. The plastic arms of Niles would be	12:49:48
8	manufactured as part of the slider of Duvigneau.	12:49:52
9	Q. Niles also teaches elastic arms; correct?	12:49:59
10	A. Yes.	12:50:03
11	Q. And what would those elastic arms engage	12:50:03
12	with?	12:50:07
13	A. I thought that's what we were talking about.	12:50:07
14	The elastic arms of the latch in Duvigneau engages	12:50:13
15	with -- I mean of Niles engages with grooves.	12:50:17
16	That's what's shown in the Niles patent. That's the	12:50:20
17	element I'm talking about.	12:50:23
18	Q. Okay. I'm sorry. I think that in one of	12:50:24
19	your answers, you may have said plastic instead of	12:50:26
20	elastic so I wanted to clarify.	12:50:30
21	A. I'm sorry. Yeah.	12:50:33
22	Q. All right. And let's flip to page 116.	12:50:35

1 And here in header D, you discuss the 12:50:50
2 combination of Duvigneau and Morel; is that correct? 12:50:52

3 A. That's correct. 12:50:54

4 Q. What problem would one be seeking to solve 12:50:55
5 that would cause them to combine Duvigneau and 12:51:02
6 Morel? 12:51:05

7 MR. BEMBEN: Objection to form and 12:51:06
8 foundation. 12:51:08

9 A. It's -- the context of this is exactly the 12:51:11
10 same, that we have the elements of Claim 5 that we 12:51:16
11 can reproduce using already known elements in 12:51:22
12 Duvigneau and Morel to provide the engagement of 12:51:29
13 groove -- of elements in a groove to provide all of 12:51:39
14 the performance described in Claim 5. 12:51:46

15 Q. And going back to the question that we asked 12:51:51
16 previously, how would adding the teachings of Morel 12:51:56
17 to the Duvigneau product improve the Duvigneau 12:52:05
18 product? 12:52:08

19 MR. BEMBEN: Objection to form and 12:52:10
20 foundation. Scope. 12:52:11

21 A. It's not my understanding that the Duvigneau 12:52:17
22 product needs to be improved. But to the extent 12:52:20

1 that Duvigneau, in combination with Morel, are the
2 combination of known elements to achieve the same
3 performance as the invention of Claim 5, I believe
4 that shows that Claim 5 is obvious to a person of
5 ordinary skill in the art.

6 Q. Do either Morel or Duvigneau teach a first
7 engaging groove for holding the slider in an
8 unlocked position and a second engaging groove for
9 holding the slider in a locked position?

10 MR. BEMBEN: Objection to form and
11 foundation.

12 A. In combination with the slider of the
13 Duvigneau patent, they would teach exactly that.

14 Q. And how would they do that?

15 A. Well, you can see the grooves in Niles. You
16 can see a first engaging groove and a second
17 engaging groove. And if you attach that latch to a
18 slider that you understand that the first engaging
19 groove is unlocked and the second engaging groove is
20 locked, then you have Claim 5. And you can do the
21 same thing with Morel.

22 You've got plenty of grooves shown there.

12:52:25

12:52:31

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12:52:58

12:53:00

12:53:01

12:53:02

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12:53:10

12:53:11

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12:53:26

12:53:31

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12:53:39

12:53:42

12:53:43

1 You just have to choose two and choose one as your
2 first engaging groove and your second engaging
3 groove. And then in the same sense, when it's
4 unlocked, you align it with the first engaging
5 groove and when it's locked -- and then you attach
6 the slider to Duvigneau. And then in the same
7 sense, it's unlocked when it's in the first engaging
8 groove and it's locked, it enters the locking groove
9 when it's in the second groove. And so again, you
10 have the -- you have Claim 5.

12:53:46

12:53:50

12:53:53

12:53:56

12:54:00

12:54:03

12:54:05

12:54:08

12:54:12

12:54:17

11 Q. Let's turn -- hang on one second.

12:54:20

12 What would the advantages of a combination
13 of Niles and Morel be?

12:54:25

12:54:29

14 MR. BEMBEN: Objection to -- objection to
15 foundation and scope.

12:54:35

12:54:37

16 A. I don't believe I recommended the
17 combination of Niles and Morel.

12:54:40

12:54:45

18 Q. My apologies.

12:54:50

19 What advantages would the combination of
20 Duvigneau with Niles and Morel be?

12:54:51

12:54:53

21 MR. BEMBEN: Objection. Same objections.
22 Foundation. Scope.

12:54:57

12:55:00

1 A. Well, I believe I separately considered 12:55:00
2 Duvigneau and Niles and then Duvigneau and Morel. 12:55:05
3 So those are two different and distinct ways of 12:55:09
4 trying to show that combination of known elements. 12:55:13
5 In other words, elements that consist of elastic 12:55:18
6 parts that engage grooves to provide a latching 12:55:25
7 movement in combined with a slider, there's two 12:55:29
8 different ways you can do it. You can do it -- and 12:55:34
9 there's many others ways. But I understand the 12:55:37
10 preferences that we use examples from the patent 12:55:41
11 literature. Those are two different ways to show 12:55:43
12 that we can take known elements from the patent 12:55:48
13 literature and combine them in usual ways to obtain 12:55:52
14 a predictable result, that is -- that matches the 12:56:00
15 elements of Claim 5. 12:56:04

16 Q. Let's go ahead and turn to page 125. And 12:56:05
17 here you discuss the combination of Duvigneau, 12:56:29
18 Morel, and Weng; is that correct? 12:56:31

19 A. That's correct. 12:56:33

20 Q. How is Duvigneau improved by the addition of 12:56:33
21 the teachings of Morel and Weng? 12:56:38

22 MR. BEMBEN: Objection to form and scope. 12:56:40

1 A. Duvigneau is not improved by the addition of
2 elements from Morel and from Weng. What happens is
3 that elements that Duvigneau is missing that are
4 recited in Claim 5 are -- appear in Morel and appear
5 in -- and another element that is missing in
6 Duvigneau and Morel appears in Weng. And in this
7 specific case, it's Claim 8, recitation of a block
8 with a bevel that acts as a stop. Claim 8 is
9 dependent on -- I can't quite remember the sequence,
10 but it's dependent on at least, I guess, 7, 8 --
11 no --

12 Q. Claim 8 does depend from Claim 7.

13 A. And 6 and 5 and 4.

14 Q. Yes.

15 A. And 3, 2, 1. So I'm sorry. I've not quite
16 got it.

17 So in order to fully capture the elements of
18 Claim 8, I need all of the things that we've been
19 talking about, all of the elements of Duvigneau and
20 Morel, which is the grooves and the elastic member
21 with the protrusion, in addition to a block with a
22 slope that provides -- that acts as a stop. And

1 that's what's recited in Weng.

12:58:20

2 Q. How would you implement a device that
3 combines the teachings of Duvigneau, Morel, and
4 Weng?

12:58:24

12:58:27

12:58:30

5 A. Very simply, into the slider, you know, the
6 component -- the part of the slider that sits on the
7 support arm could also have parallel to it a block
8 structure and a recess that is shown -- or the sort
9 of block and the elastic element that's shown in
10 Weng so that when you, you know, push it forward,
11 the -- assemble it, essentially, for the first time,
12 the slider rides over the block, deflects upwards
13 and then springs back down. And then when you pull
14 it out, that element that springs down hits the
15 block and is locked in place. And that's exactly
16 what's recited in Weng and that's also what's
17 recited in Claim 8.

12:58:30

12:58:38

12:58:40

12:58:48

12:58:53

12:58:58

12:59:01

12:59:06

12:59:10

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12:59:16

12:59:19

12:59:23

18 So Claim 8 now is seen, because it consists
19 of all the elements of the claims before it, you
20 know, has with the elements of Duvigneau, Morel, and
21 Weng, we have a combination of all of the elements
22 that are in Claim 8. And in their -- in their

12:59:25

12:59:30

12:59:34

12:59:42

12:59:46

1 ordinary form, assembled in standard ways to achieve 12:59:53
2 the same result as in -- as recited in Claim 8. 13:00:00

3 Q. Thank you. 13:00:12

4 MS. HALSEY: I'm looking at the clock. We 13:00:15
5 are right about an hour again. I'd like to take a 13:00:17
6 ten-minute break if that's okay with everybody. 13:00:21

7 THE WITNESS: That would be great. Thank 13:00:23
8 you. 13:00:25

9 MS. HALSEY: Perfect. 13:00:25

10 THE VIDEOGRAPHER: The time is 13:00:26
11 1 o'clock p.m. We are going off the record. 13:00:28

12 (A short break was had.) 13:00:31

13 THE VIDEOGRAPHER: The time is 1:12 p.m. We 13:12:06
14 are back on the record. 13:12:11

15 MS. HALSEY: Ken, I'd like to go to 13:12:22
16 page 133, please, paragraph 243. 13:12:24

17 BY MS. HALSEY: 13:12:53

18 Q. In paragraph 243, Claim 9 discusses using a 13:12:54
19 cooperating guide to constrain lateral movement of 13:12:58
20 the slider with respect to the support arm. 13:13:01

21 And Claim 10 discusses, again, constraining 13:13:05
22 lateral movement of the slider with respect to the 13:13:09

1	support arm.	13:13:12
2	Do you see that?	13:13:12
3	A. I do.	13:13:13
4	Q. Does Duvigneau have an issue with lateral	13:13:14
5	displacement of the slider?	13:13:19
6	MR. BEMBEN: Objection to form.	13:13:24
7	A. I don't know whether it does or it doesn't.	13:13:33
8	But in order to sort of meet the elements recited in	13:13:35
9	Claims 9 and 10, I identified the structure in	13:13:41
10	Frydenberg as an element that is essentially	13:13:55
11	identical to what is described in the specification	13:13:57
12	of the Meridian patent. I lost the number all of a	13:14:06
13	sudden.	13:14:15
14	Q. '689?	13:14:15
15	A. '689 patent. And therefore adding that to	13:14:17
16	Duvigneau, which looks like it can be done directly	13:14:22
17	with usual methods to achieve the result recited in	13:14:27
18	9, shows that 9 -- it could be done by a person of	13:14:33
19	ordinary skill in the art shows that 9 is obvious.	13:14:40
20	Q. Is it your opinion that Frydenberg teaches a	13:14:52
21	cavity and rail to restrict lateral movement?	13:14:59
22	A. It teaches a T-shaped slot that engages the	13:15:01

1 two sides and forms a closure, which prevents their
2 opening, which is equivalent to lateral movement.
3 So it meets -- it describes -- it achieves what is
4 described in Claim 9.

5 Q. In paragraph 249 you state that it would
6 have been obvious to place Frydenberg's cavity (a
7 "guiding slot") on Duvigneau's "slider" because
8 Frydenberg discloses a slide that includes a cavity;
9 and (ii) Frydenberg's rail (the "guiding rib") on
10 Duvigneau's "support arm" because Frydenberg
11 discloses that the rail could be "attached to the
12 edge of most any kind of structure."

13 Do you see that?

14 A. Yes.

15 Q. How would the guiding rib or the cooperating
16 guide of Frydenberg be implemented on the support
17 arm of Duvigneau?

18 A. It would be attached to the support arm and
19 extend longitudinally along the support arm.

20 Q. And how would the reciprocal guide slot be
21 implemented on the slider?

22 A. It would be attached to the slider above the

1 rail or the -- and it would also extend along the 13:16:45
2 length of the slider. 13:16:51

3 Q. Okay. 13:16:52

4 MS. HALSEY: Can we turn to page 144? 13:17:25

5 Q. And here you discuss the combination of 13:17:38
6 Duvigneau, Morel, Weng, and Frydenberg; is that 13:17:40
7 correct? 13:17:43

8 A. That's correct. 13:17:43

9 Q. And in paragraph 272, you state that the 13:17:44
10 combination of Duvigneau, Morel, and Weng renders 13:17:53
11 obvious Claim 8. And that the Duvigneau-Frydenberg 13:17:56
12 combination renders obvious limitations recited in 13:18:00
13 Claim 18. 13:18:03

14 Do you see that? 13:18:03

15 A. Yes, uh-huh. 13:18:04

16 Q. What is the motivation to combine all four 13:18:05
17 of these pieces of art together? 13:18:12

18 A. Well, when you -- when Claim 18 is -- 13:18:15
19 Claim 18 is, again, a dependent patent -- dependent 13:18:21
20 claim. When you combine it with its previous 13:18:26
21 claims, you get pretty much every element that's 13:18:31
22 recited for the latching mechanism of the Meridian 13:18:38

1 patent. So I had to find all of those elements. 13:18:43

2 Clearly the ones that we've already discussed, 13:18:49

3 together with the addition of the Frydenberg T slots 13:18:52

4 and grooves -- or T slots and rails to get all of 13:18:57

5 those -- to show that all of those pieces are well 13:19:04

6 known and can be combined in the usual ways to 13:19:08

7 achieve what is recited in Claim 18 by a person -- 13:19:13

8 someone of ordinary skill in the art could achieve 13:19:20

9 them. And that the result operates in the 13:19:22

10 predictable way. 13:19:28

11 Q. What would a combination of the teachings of 13:19:29
12 those four references look like? 13:19:32

13 A. It would simply -- 13:19:36

14 MR. BEMBEN: Objection to form. 13:19:38

15 A. It would simply be the Duvigneau patent with 13:19:40

16 its support arms containing the elastic arm that 13:19:44

17 engages the grooves, the T slot that engages the 13:19:52

18 rails, as well as the block that provides the stop 13:19:57

19 for the outward movement of the -- of the slider. 13:20:02

20 It would contain all of the components that are 13:20:11

21 recited in all of these -- of Claim 8. 13:20:14

22 I'm sorry. Claim 18. And its previous 13:20:26

1 claims.

13:20:30

2 Q. I made it confusing. I also discussed
3 Claim 8. My apologies.

13:20:31

13:20:35

4 If we turn to page 146, there you discuss
5 the combination of Brocket and Heinrichs; is that
6 correct?

13:20:38

13:20:45

13:20:49

7 A. That's correct.

13:20:49

8 Q. And you state in paragraph 277 that it's
9 your opinion that the Brocket-Heinrichs combination
10 teaches or renders obvious, element 1.B; is that
11 correct?

13:20:49

13:20:56

13:20:59

13:21:05

12 A. That's correct.

13:21:05

13 Q. And you state in paragraph 285 that, in your
14 opinion, the Brocket-Heinrichs combination teaches
15 or renders obvious claim element 1.C; is that
16 correct?

13:21:06

13:21:21

13:21:24

13:21:27

17 A. That's correct.

13:21:27

18 Q. What's the motivation to combine Brocket and
19 Heinrichs?

13:21:27

13:21:37

20 A. The -- Brocket provides the stacking
21 containers feature of the Meridian patent.
22 Heinrichs provides an alternate description of a

13:21:41

13:21:49

13:21:58

1 latching mechanism that has all the same 13:22:04
2 characteristics of the latching mechanism of the 13:22:07
3 Meridian patent but -- and all the same 13:22:09
4 characteristics of the latching mechanisms of the 13:22:13
5 Duvigneau patent but illustrated in a different way. 13:22:16
6 And the point of this is to show that latching 13:22:21
7 mechanisms come in all forms, they are familiar 13:22:26
8 elements to persons of ordinary skill in the art, 13:22:32
9 and that the elements of the Meridian patent can be 13:22:35
10 constructed in at least one other way using Bocket 13:22:40
11 and Heinrichs. 13:22:46

12 Q. Is there anything wrong with the latching 13:22:49
13 mechanism that is taught by Bocket? 13:22:51

14 A. Anything wrong? No. 13:22:54

15 Q. How would one implement the teachings of 13:22:57
16 Bocket and Heinrichs into a single device? 13:23:02

17 A. The -- the hook element of Heinrichs, the 13:23:05
18 sliding cylinder under operation of the swing arm, 13:23:19
19 and the -- sort of the space that forms the slot in 13:23:26
20 which that's all assembled could all be mounted on 13:23:29
21 Bocket almost directly. 13:23:35

22 MS. HALSEY: Ken, I'd like to turn to what 13:23:43

1 was previously marked as Exhibit 1007.

13:23:46

2 (Exhibit 1007 was marked for
3 identification and is attached to the
4 transcript.)

13:23:46

13:23:46

13:24:16

5 BY MS. HALSEY:

13:24:16

6 Q. Dr. McCarthy, have you seen this before?

13:24:16

7 A. Yes.

13:24:18

8 Q. What is it?

13:24:19

9 A. This is the Duvigneau patent.

13:24:19

10 Q. And am I correct that you reference the
11 Duvigneau patent throughout your report?

13:24:23

13:24:26

12 A. Yes.

13:24:28

13 MS. HALSEY: I'd like to turn to figure 5 of
14 the patent.

13:24:32

13:24:35

15 And if we can make it as big as responsible
16 without losing anything, that would be great.

13:24:43

13:24:46

17 Perfect.

13:24:52

18 Q. Can you identify the slider in this image?

13:24:53

19 A. The slider is that -- is in the center of
20 that top cover. The number 216 is pointing in its
21 direction.

13:25:00

13:25:07

13:25:14

22 Q. Okay. And in figure 5, can you identify the

13:25:21

1	side walls of the slot.	13:25:24
2	A. The side walls of the slot.	13:25:34
3	Q. Actually, strike that. Let's start easier.	13:25:36
4	Can you identify the slot.	13:25:39
5	A. Yes.	13:25:40
6	Q. And where is that?	13:25:41
7	A. It is what that sliding latch fits into.	13:25:42
8	Q. Does that have a number here?	13:25:45
9	A. It doesn't have a number there as far as I	13:25:48
10	can see.	13:25:50
11	Q. So that we have a clear record, is it in the	13:25:50
12	top piece, the middle piece, or the bottom piece?	13:25:58
13	A. It's in the top piece.	13:26:03
14	Q. And where is it located in the top piece?	13:26:05
15	Is it in the front, the side, or the back?	13:26:08
16	MR. BEMBEN: Objection to form.	13:26:12
17	A. I think I identified the slider of the latch	13:26:14
18	as what 216 is pointing to. So that question	13:26:21
19	doesn't make sense to me. What I can say is what	13:26:26
20	216 is pointing to fits in a slot. Does that help?	13:26:31
21	Q. So are you able to see the slot in this	13:26:37
22	image?	13:26:44

1 A. Well, I can see what that slider fits into,
2 and that would be the slot.

3 Q. Okay. Can you identify where the side walls
4 on that slot would be located.

5 A. Well, the side walls are covered up by the
6 presence of the slider, but they would form the
7 sides of the slot.

8 Q. Where is the support arm in this image?

9 A. You can't see it, but the support arm runs
10 the length of the slider and is engaged with a
11 groove in that slider to support it.

12 Q. Does the support arm reach across the slot?

13 A. Across being from the front to the back,
14 yes, it does.

15 Q. What if across is from side to side?

16 A. Well, the support arm only goes partially
17 from one side to the other because it has to allow
18 the slider to move longitudinally.

19 Q. Are the side walls -- strike that.

20 Which sides comprise the side walls in this
21 image?

22 MR. BEMBEN: Objection.

1 A. Well, it would be -- 13:28:34

2 Q. And just to be clear here because we're 13:28:36
3 obviously dealing with a very small picture that is 13:28:38
4 largely covered up, assuming that it would have a 13:28:41
5 front -- that the portion facing us in this image 13:28:47
6 would be the front, anything parallel to, like, 180 13:28:54
7 and the opposite side would be the sides, and 13:29:00
8 anything parallel to where 186 is would be the back, 13:29:05
9 are the side walls on the sides, the front, the 13:29:11
10 back, or what combination of those? 13:29:15

11 MR. BEMBEN: Objection to form. 13:29:16

12 A. I apologize. I didn't follow what you were 13:29:17
13 saying. But I think I can help if you want me to 13:29:21
14 just volunteer. 13:29:28

15 Q. Absolutely. I would appreciate that. 13:29:29

16 A. I think if you want to say that 216 is 13:29:31
17 pointing to the -- say the front of the slider, then 13:29:35
18 the opposite side of the slider would be the back. 13:29:43
19 That would also be the direction that I would call 13:29:48
20 the longitudinal direction of the slider, and that 13:29:51
21 is the direction in which it moves. 13:29:55

22 The support arms that we've been talking 13:29:59

1	about run parallel to that longitudinal direction.	13:30:01
2	They start at the front, which is pointed to by 216,	13:30:04
3	and run to the back of the slider on the left side	13:30:09
4	and the right side of the slot. And I believe those	13:30:16
5	are the two sides that you are trying to describe.	13:30:21
6	Q. So to confirm, the side walls would be the	13:30:29
7	left and the right sides?	13:30:32
8	A. Of the slot.	13:30:33
9	Q. Of the slot. Okay?	13:30:34
10	A. Looking at it from the direction of 216.	13:30:35
11	Q. Perfect.	13:30:40
12	MS. HALSEY: I don't think we have any	13:30:46
13	further questions for you at this time,	13:30:47
14	Dr. McCarthy.	13:30:51
15	MR. BEMBEN: Okay. We are going to take	13:30:55
16	probably about a half hour. We may do some	13:30:58
17	redirect. And, Dr. McCarthy, we may contact you by	13:31:02
18	email, so just be on the lookout for your email.	13:31:07
19	Okay?	13:31:10
20	THE WITNESS: All right.	13:31:11
21	MR. BEMBEN: Okay.	13:31:11
22	MS. HALSEY: All right. So we'll be back at	13:31:12

1 3:00.

13:31:15

2 THE VIDEOGRAPHER: The time is 1:31 p.m. We
3 are going off the record.

13:31:17

13:31:20

4 (A short break was had.)

13:31:23

5 THE VIDEOGRAPHER: The time is 2:02 p.m. We
6 are back on the record.

14:02:11

14:02:17

7 EXAMINATION

14:02:20

8 BY MR. BEMBEN:

14:02:21

9 Q. Dr. McCarthy, earlier today you were asked
10 about some questions with respect to Claim 5. I'd
11 like you to pull out the hard copy of your
12 declaration that we provided to you, and let me know
13 when you have it.

14:02:21

14:02:23

14:02:26

14:02:29

14:02:32

14 A. Is that Exhibit 1003?

14:03:24

15 Q. Correct.

14:03:27

16 A. Yes, I have it.

14:03:29

17 Q. Okay. Can you turn to page 116.

14:03:30

18 A. I have it.

14:03:45

19 Q. Okay. You see section D, it says,
20 "Ground 1D: The combination of Duvigneau and Morel
21 renders obvious Claims 5-7 and 16."

14:03:46

14:03:51

14:03:54

22 Do you see that?

14:03:57

1	A. I do.	14:03:58
2	Q. Okay. And you were asked some questions	14:03:58
3	earlier today about whether combining some of the	14:04:01
4	teachings of Morel would improve Duvigneau.	14:04:05
5	Can you please read and review paragraphs	14:04:08
6	213 through 218 of your declaration, and let me know	14:04:11
7	when you're finished? Take your time.	14:04:16
8	A. I'm sorry. What numbers again?	14:04:51
9	Q. So paragraphs 213 through 218, please.	14:04:53
10	A. 18. All right.	14:04:56
11	Got it. Thank you.	14:05:55
12	Q. Okay. And can you turn to paragraph 217.	14:05:56
13	(Unreportable crosstalk.)	14:05:59
14	A. All right.	14:06:00
15	Q. And can you explain why a person of skill in	14:06:01
16	the art would have been motivated to include Morel's	14:06:03
17	engaging grooves on Duvigneau's support arm?	14:06:06
18	A. Well, for the same reason that they exist on	14:06:15
19	Claim 5, which is described in the Meridian patent.	14:06:17
20	It provides a mechanism that holds the latch either	14:06:25
21	in the engaged or disengaged positions.	14:06:31
22	Q. And that is something that Duvigneau's	14:06:37

1	sliding latch would have benefited from; is that	14:06:40
2	your opinion?	14:06:43
3	A. Yes.	14:06:44
4	Q. Okay. Can you turn to paragraph 229. It's	14:06:53
5	on page 125 of your declaration.	14:07:04
6	A. Yeah, I think I've got it.	14:07:21
7	Q. Okay. And subsection E here, "Ground 1E,"	14:07:22
8	this is where you talk about the combination of	14:07:26
9	Duvigneau, Morel, and Weng; correct?	14:07:29
10	A. Correct.	14:07:31
11	Q. Okay. Can you just review and let me know	14:07:31
12	after you've had a chance to review Claim 8, the	14:07:34
13	analysis that you provided for Claim 8?	14:07:37
14	A. I'm sorry. What paragraphs are you asking	14:08:16
15	me to read?	14:08:18
16	Q. Paragraphs -- the paragraphs for Claim 8	14:08:19
17	just to refresh your recollection on your analysis	14:08:22
18	for Claim 8. So I think they span 229 to 240.	14:08:24
19	A. Is there something specific you want me to	14:08:39
20	look at?	14:08:45
21	Q. First, why don't you take a look at	14:08:45
22	paragraph 231.	14:08:50

1	A. Paragraph 231.	14:08:51
2	231. Yes. Got it.	14:08:58
3	Q. Okay. And in the last sentence, you	14:08:59
4	identify a problem, potential problem in Duvigneau.	14:09:03
5	Can you explain what that problem is?	14:09:06
6	A. This describes the fact that you could slide	14:09:09
7	the slider all the way out of that groove and that	14:09:24
8	by putting that -- the engaging groove and the	14:09:29
9	components of Weng, you could stop -- you could	14:09:34
10	provide a stop.	14:09:39
11	Q. Okay. So it's your opinion that Weng would	14:09:42
12	solve that potential problem.	14:09:45
13	A. Yes.	14:09:46
14	Q. Okay. Can you go to paragraph 243 of your	14:09:47
15	declaration? That's on page 133.	14:09:52
16	A. Got it.	14:10:02
17	Q. Okay. And this is with respect to	14:10:03
18	"Ground 1F: The combination of Duvigneau and	14:10:07
19	Frydenberg."	14:10:10
20	A. Yes.	14:10:11
21	Q. Okay. And can you review paragraph 245?	14:10:11
22	A. All right. Got it.	14:10:53

1 Q. Okay. And at paragraph 245, you talk about
2 this potential problem of Duvigneau's slider
3 becoming laterally displaced, particularly in the
4 construction environment.

5 Can you explain that issue a little bit
6 more?

7 A. In Duvigneau, it is constrained by the
8 support arm and the fact that it wraps around the
9 support arm. If it had been hit from the side, that
10 would cause it to displace.

11 Q. And how does Frydenberg's teachings help to
12 solve that problem?

13 A. It adds additional support in the form of
14 that T slot and rail.

15 Q. Okay. Can you turn to page 92 of your
16 declaration, please?

17 A. Got it.

18 Q. Do you recall earlier today you were asked
19 questions about figure 5 of Duvigneau, and you were
20 shown figure 5?

21 A. Yes.

22 Q. Okay. In the middle of page 92 of your

14:10:55

14:10:58

14:11:01

14:11:04

14:11:05

14:11:07

14:11:08

14:11:12

14:11:16

14:11:20

14:11:24

14:11:29

14:11:29

14:11:32

14:11:40

14:11:44

14:12:01

14:12:01

14:12:04

14:12:09

14:12:09

14:12:10

1 declaration, you have a cropped view of figure 5 --

14:12:15

2 of the cover of figure 5 and it's annotated.

14:12:21

3 Can you explain what that figure in your
4 declaration shows?

14:12:25

14:12:27

5 A. It shows the slider on one side of the top
6 of the container and the slider removed on the other
7 side.

14:12:27

14:12:33

14:12:38

8 Q. And can you turn to page 94 now of your
9 declaration?

14:12:41

14:12:44

10 And here you have two images. I'm going to
11 start with the top image. So it appears that the
12 top image is showing the -- is a blown-up version of
13 the side with the slider removed; is that right?

14:12:51

14:12:54

14:12:56

14:13:03

14 A. That's correct.

14:13:06

15 Q. Can you explain what is shown in that top
16 image on page 94 of your declaration?

14:13:07

14:13:10

17 A. Well, with the slider removed, you can see
18 the support arms that extend longitudinally along
19 the slot and that the slot is pointed out in that
20 figure.

14:13:12

14:13:15

14:13:19

14:13:25

21 Q. Okay. And can you explain to me what the
22 figure below it shows on page 94 of your

14:13:26

14:13:28

1	declaration?	14:13:33
2	A. It shows the slider in position engaged with	14:13:33
3	the locking groove and the location of the two	14:13:39
4	support arms.	14:13:42
5	Q. Okay.	14:13:44
6	MR. BEMBEN: Thank you very much,	14:13:46
7	Dr. McCarthy. I have no further questions at this	14:13:47
8	time.	14:13:49
9	FURTHER EXAMINATION	14:13:52
10	BY MS. HALSEY:	14:13:53
11	Q. Dr. McCarthy, I have just a few questions on	14:13:53
12	recross.	14:13:56
13	So earlier during your redirect, you	14:14:00
14	testified that in paragraph 217 of your	14:14:06
15	declaration --	14:14:15
16	A. Are you going to show it to me or do you	14:14:22
17	want me to look it up in the document I'm holding?	14:14:25
18	Q. We can show it to you.	14:14:28
19	So here you stated on redirect that there	14:14:43
20	was a motivation to combine because the combination	14:14:55
21	would provide a mechanism to hold a latch; is that	14:14:58
22	correct?	14:15:01

1	A. That's correct.	14:15:01
2	Q. Why would Duvigneau benefit from having a	14:15:02
3	mechanism to hold a latch?	14:15:10
4	A. When we were discussing this, I did not take	14:15:14
5	the perspective that Duvigneau needed to be	14:15:22
6	improved. I took the perspective that the inventor	14:15:25
7	wanted to provide various features and that those	14:15:30
8	features -- and I used the Meridian claims and its	14:15:36
9	specification as the description of why those	14:15:42
10	features are beneficial. And what I was showing is	14:15:44
11	that those features and the benefits of those	14:15:48
12	features can be obtained by combining it with	14:15:52
13	Duvigneau.	14:15:56
14	The direction of, at least the way I view	14:16:00
15	this, is not how to improve Duvigneau, it's how to	14:16:05
16	achieve a final product that has the benefits of	14:16:09
17	these features. And I'm sorry if that's confusing.	14:16:12
18	Q. No, understood.	14:16:16
19	Was there a known shortcoming with Duvigneau	14:16:17
20	that would require a mechanism to hold the latch?	14:16:21
21	A. I don't know.	14:16:24
22	Q. Let's turn to paragraph 229.	14:16:29

1 When we were discussing this section during
2 redirect, am I correct that you testified that this
3 combination would prevent the complete removal of
4 the slider of Duvigneau?

14:16:41

14:16:44

14:16:51

14:16:54

5 A. That's correct.

14:16:56

6 Q. Why would Duvigneau benefit from this?

14:16:59

7 A. Well, if these sliders can be completely
8 removed -- and what I have to say is that I haven't
9 analyzed Duvigneau so carefully that it would, in
10 fact, be able to be removed. I believe a person of
11 ordinary skill in the art would know that complete
12 removal of a slider in the application of this
13 device would be a severe liability because you could
14 simply lose it. It's like losing a key or losing a
15 latch. There's got to be some way that its
16 completely removable, is blocked, and in my opinion,
17 it wasn't recited in Duvigneau. But it would
18 certainly be something necessary for its
19 implementation.

14:17:01

14:17:07

14:17:14

14:17:17

14:17:20

14:17:22

14:17:26

14:17:30

14:17:34

14:17:37

14:17:41

14:17:46

14:17:48

20 Q. And then I'd like to turn to paragraph 245,
21 which is on page 133 of your declaration.

14:17:50

14:17:54

22 And am I correct that during redirect, you

14:18:11

1 testified that the benefit of this combination was 14:18:14
2 to prevent lateral displacement of the support arm? 14:18:17

3 A. Yes. 14:18:22

4 Q. Am I also correct that when you testified 14:18:22
5 during our original cross, you stated that this was 14:18:27
6 not an issue in Duvigneau due to the structure? 14:18:30

7 A. Again, I don't view the -- I didn't view the 14:18:33
8 goal of my analysis as to improve Duvigneau, as more 14:18:38
9 to obtain a device that has features that are 14:18:46
10 described in the specification of the Meridian 14:18:52
11 patent. And that would be obtained by adding these 14:18:56
12 characteristics to Duvigneau. 14:18:59

13 Q. Okay. 14:19:03

14 MS. HALSEY: That's all that I have for 14:19:03
15 right now. Thank you. 14:19:05

16 MR. BEMBEN: Okay. I think that's it. 14:19:14

17 THE VIDEOGRAPHER: This ends today's 14:19:18
18 deposition of Professor McCarthy. The time on the 14:19:20
19 video monitor is 2:19 p.m. 14:19:24

20 (Off the record at 2:19 p.m.)
21
22

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

2
3 I, TIFFANY M. PIETRZYK, Certified Shorthand
4 Reporter No. 084-004371, CSR, RPR, CRR, and a Notary
5 Public within and for the State of Illinois, do
6 hereby certify:

7
8 That JOHN MICHAEL MCCARTHY, Ph.D., the
9 witness whose deposition is hereinbefore set forth,
10 was duly sworn by me before the commencement of such
11 deposition and that such deposition was taken before
12 me and is a true record of the testimony given by
13 such witness.

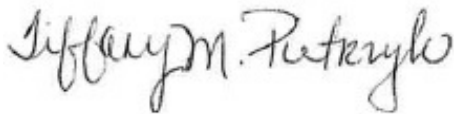
14
15 I further certify that the adverse party,
16 TOUGHBUILT INDUSTRIES, INC., was represented by
17 counsel at the deposition.

18
19 I further certify that the deposition of
20 JOHN MICHAEL MCCARTHY, Ph.D. occurred virtually, via
21 Zoom videoconference, on Thursday May 7, 2026,
22 commencing at 10:58 a.m. CST to 2:19 p.m. CST.

1 I further certify that I am not related to
2 any of the parties to this action by blood or
3 marriage, I am not employed by or an attorney to any
4 of the parties to this action, and that I am in no
5 way interested, financially or otherwise, in the
6 outcome of this matter.

7 IN WITNESS WHEREOF, I have hereunto set my
8 hand and affixed my notarial seal this 11th day of
9 May, 2026.

10
11
12
13 My commission expires: February 28th, 2028

14
15 
16 _____

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18 STATE OF ILLINOIS
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A			
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