IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MAGNOLIA MEDICAL TECHNOLOGIES, INC.,	)	
Plaintiff,	)	C.A. No. 24-1124 (CFC)
v.	)	
KURIN, INC.,	)	Volume 1
Defendant.	)	

Monday, December 8, 2025
8:30 a.m.
Jury Trial

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY
United States District Court Judge

APPEARANCES:

MORRIS NICHOLS ARSHT & TUNNELL
BY: RODGER D. SMITH, II, ESQ.
BY: ANTHONY D. RAUCCI, ESQ.

-and-

APPEARANCES CONTINUED:

DAVIS POLK & WARDWELL LLP
BY: ASHOK RAMANI, ESQ.
BY: MICAH G. BLOCK, ESQ.
BY: SERGE A. VORONOV, ESQ.
BY: KEON ZEMOUDEH, ESQ.
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RICHARDS, LAYTON & FINGER
BY: KELLY FARNAN, ESQ.
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BY: MATTHEW J. MCINTEE, ESQ.
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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 8:30 a.m.)

THE COURT: Good morning. Please be seated.

MR. RAMANI: Good morning, Your Honor.

THE COURT: Good morning. I think we have... well, actually, let's have introductions. Sorry. I guess, Mr. Smith.

MR. SMITH: Good morning, Your Honor.

THE COURT: Good morning.

MR. SMITH: Rodger Smith from Morris Nichols on behalf of the plaintiff, Magnolia. With me at counsel table, Ashok Ramani, Micah Block from Davis Polk, and our client, Greg Bullington. In the second row, Natalie Stoecklein and Serge Voronov.

THE COURT: All right. Good morning, everybody.

Ms. Farnan.

MS. FARNAN: Good morning. Kelly Farnan from Richards, Layton & Finger on behalf of the defendant, Kurin. At counsel table I have Gregg LoCascio from Kirkland & Ellis; Joe Hillier, who is going to be helping us with jury selection; Sean McEldowney; our client Bob Rogers. And then we have Ashley Cade from Kirkland & Ellis in the back.

THE COURT: All right. You've got to raise your hand. Who was up at 2:30 when that letter came in? I really need to know.

Folks in the back who weren't even introduced. Oh, no, some were introduced. All right. Quickly, so we're waiting on the jury, right? It's Monday. We have two jury trials and one bench trial, at least. We might have more stuff going on.

With the jury pool, we lost a few people. What we're going to do, if Judge Andrews excuses people, we are going to tell them to stay, just to increase our jury pool. I think we should be fine anyway but just in case, just so you'll know.

And if we ever had to resort to those people, we will obviously get you the information for those people. All right?

So let's deal with the issue. And it's funny because I knew I had not resolved Motion In Limine Number 3, but I guess this kind of relates to that; is that right?

MR. RAMANI: Good morning, Your Honor. Ashok Ramani.

I think there's some relation to it, but it does go a little bit broader than that.

THE COURT: Okay.

MR. RAMANI: I guess it depends on what exactly you mean "this" is because we have a few different disputes to take up with Your Honor.

THE COURT: And I am not sure what I meant by "this." Just one of my clerks said she thought it related, in part at least, to the motion in limine. What I did is, I read the letter.

I am trying to get an opinion out in another case, so that's what I was working on earlier this morning. So I haven't read the transcript citations yet. I thought we would just walk through those since I think it will just be more efficient, rather than me staying back there and doing so by myself.

All right. So the first designation is Page 51, Lines 2 through 8. All right. So this is Kurin's counter-designation, and Magnolia doesn't want it in.

MR. RAMANI: Other way around, Your Honor. It's Magnolia's designation.

THE COURT: Oh.

MR. RAMANI: Kurin doesn't want it in.

THE COURT: Wait. Maybe I am doing the wrong thing here. Oh, I'm looking at 7 through 14. Sorry. Okay.

So 7 through 14 is in. Actually, you just tell me. These are highlighted, Page 51, Lines 7 through 14.

MR. RAMANI: That's not what we have, Your Honor.

Are you looking at Mr. Rogers' testimony?

THE COURT: Oh. Sorry. Okay. That's coincidental that they both are on Page 53. No, I wasn't. I was looking at the other one. Okay. Sorry.

All right. So let's go to Bob Rogers. Okay.

MR. RAMANI: Your Honor, there is one higher-level issue that actually pertains to openings --

THE COURT: Okay.

MR. RAMANI: -- that I think we should probably raise. I think we both --

THE COURT: All right.

MR. LoCASCIO: I think we both thought, as -- we want to get to this, but there's probably -- on the tiering, this probably isn't the first issue we should take up.

THE COURT: That sounds good. All right. Go ahead.

MR. RAMANI: Okay. Good. There's -- we worked out all of our other issues last night, Your Honor.

THE COURT: All right.

MR. RAMANI: Mr. LoCascio and I did. So that was very productive and cooperative. There's only one issue remaining. It's on Magnolia Medical's slides.

THE COURT: Okay.

MR. RAMANI: And it pertains to claim language that Your Honor construed back in November, which is, on

the Magnolia patents, a pressure differential between a movable plug or valve and the outlet.

THE COURT: Wait. This is the thing we had the hearing on later. I mean --

MR. RAMANI: It is. It's the thing that we had the hearing on.

THE COURT: I thought I said I thought I wasn't going to construe. I thought it was plain and ordinary meaning.

MR. RAMANI: You said you were giving it plain and ordinary meaning.

THE COURT: Right.

MR. RAMANI: And you explained why and your reasoning.

THE COURT: Yep.

MR. RAMANI: But then, at the end of your order, you included a table that said plain and ordinary meaning, "i.e."

THE COURT: You're right. I did.

MR. RAMANI: And we just want to use the "i.e." and we want to put that in the juror notebook, and they don't want it.

THE COURT: Okay. And it's fair, I understand why you had the dispute. And I remember at the time, because it's one of these peculiarities of patent law

construction that we say we're not construing the term... rather, if we're not construing it, we give it its plain and ordinary meaning, right? So that's the issue.

So the way I looked at it, and I apologize for the ambiguity in my order, that we had left the hearing, or I should say, more importantly, I had left the hearing with the understanding that I was not going to construe it. That I was going to give the term its plain and ordinary meaning. Which is what you wanted, right?

MR. RAMANI: That's what we wanted, Your Honor.

THE COURT: Okay. And then, though, I was leaving open the possibility that there may, at trial, develop an *O2 Micro* situation, that I would have to construe the term, but that I was content not to construe it now and let's let it unfold.

And I believe I even remarked that I had recently done this in a July trial. The parties went into it, much the same way the parties went into this trial, thinking and arguing that they had a dispute on the plain and ordinary meaning. And so I did exactly what I'm proposing here, which is I said, I'm not so sure, let's go to trial, and if we need to construe it, I will.

There's some risk to the parties if they have an expert use an understanding of the term that I later say that's not the correct understanding, that the plain

and ordinary meaning should be A, B, or C. That's what I thought we had done.

Now, I've already telegraphed that I think what I understand you to articulate as the plain and ordinary meaning is the plain and ordinary meaning.

So there's going to be some risk if they come in at trial with something different.

But the way I look at it is I don't have to construe it. But you should feel comfortable, of course, I can always change my mind, right, but you should feel comfortable that if your expert gets on the stand and says it's plain and ordinary meaning and explains, you know, whatever that is, they're not going to get contradicted.

Now, look, if their expert comes in and takes a very, very different view, and all of the sudden we have to go into a *Markman* hearing outside the presence of the jury, and I'm persuaded by whatever that testimony is, there is some risk to you, I guess, to be fair.

And, you see, the thing is, I think there's a fine line between articulating what the plain and ordinary meaning is and applying a plain and ordinary meaning to the facts. I think it's sometimes very difficult to parse that.

And what happened in the last case was, although both sides thought they needed an articulation of

plain and ordinary meaning, in the end they actually both withdrew that and said I did not need to construe the term, and it went to the jury.

That's what I am hoping to accomplish here. Is that okay with you?

MR. RAMANI: Can I take a shot at explaining -- because I -- first off, I appreciate the explanation, Your Honor. It is quite helpful.

Can I just take a shot at explaining why I think the "i.e." that you added at the end of your order actually does make sense and leaves open the main dispute between the parties?

THE COURT: You can, but here's the dilemma. I mean, the reason why I can't do it, all right, I'm just telling you, is because although I haven't looked at the final instructions, I'm confident that there's an instruction in there that says if the Court has not construed the term, the jury is to apply the plain and ordinary meaning as understood in the art in the context of this patent.

Is that not right? I'm pretty sure that's going to be there, right?

MR. RAMANI: That's going to be there. I think it is already there.

THE COURT: Yeah. So then, I cannot give that

instruction and at the same time tell the jury "apply the plain and ordinary meaning; 'i.e.'" That to me is a... you can't do it.

MR. RAMANI: Okay. Understood, Your Honor. And I appreciate the guidance.

THE COURT: Now, like I said, I think you're in the driver's seat on this issue. They have to be really careful. And if their expert starts engaging in what you say is claim construction, I'm sure there will be an objection and then we'll have to deal with it.

MR. RAMANI: That sounds good, Your Honor.

THE COURT: Okay.

MR. RAMANI: Well, maybe I can just explain to Your Honor exactly where this is going to go.

THE COURT: Yeah.

MR. RAMANI: So the "i.e." said you measure at two points, you measure at the outlet and you measure at the moveable plug or valve. And the dispute between the parties is does "at the movable plug or valve" mean the bottom of it or the top of it.

THE COURT: Right.

MR. RAMANI: That's going to be the fight.

THE COURT: Right. And, you see, I think that's applying plain and ordinary meaning.

MR. RAMANI: That's fine, Your Honor. With the

clarification --

THE COURT: Now, it may not be. It may not be after the trial, stuff comes in. And, you see, a lot of this is I felt, I remembered this at the time, that you've already stipulated to certain constructions and certain understandings.

And by the time I'm asked to construe this term, that's all in the background and it's too late for me to start from scratch. And I also think, frankly, part of the problem here is inadequacies, or I'll call it inadequacies in a lot of language in the patent, so...

MR. RAMANI: Okay. We take the guidance, Your Honor.

THE COURT: Okay.

Is that good?

MR. LoCASCIO: It is, Your Honor. The issue that was at hand was around whether for terms that you had said you were not going to construe, give them the plain and ordinary meaning, and I believe there are two: Whether the "i.e." or other language from your order would end up in the jury notebook. Our position was no. I think that's where we have landed.

THE COURT: Right.

MR. LoCASCIO: Okay. And then with respect to the objection on the slides, I think there was one, but

you may have changed it after we agreed, the versions came back out that had sort of replaced the language of the claim with the "i.e." language and that's what we had objected to.

And provided that won't happen, because it's not in the claim language, if the commentary or argument is "you're going to hear an expert who's going to tell you this is the place to measure," I'm not going to -- doubtful I would pop up at that because that's the case.

THE COURT: Yeah. I mean, look, I also think, but I should hear from you both on this. See, I also think that if Mr. Ramani, during his opening, said this is the term. And then he said he substituted the "i.e." in discussing the term. I mean, I'm like, that seems okay.

MR. LoCASCIO: I think if he said "that's what you're going to hear it means is the plain and ordinary meaning," I would be fine with that. If he said, "the judge has said this is what it means, i.e.," we would have a much different reaction.

THE COURT: I agree. I agree with that. But this is the kind of thing, it's like, I don't think Mr. Ramani has to go, "And an expert will say." I mean, I think in the ordinary course of describing or talking about something, we use interchangeably words, and he's free to do that.

MR. LoCASCIO: And that's fine. And that's --

THE COURT: Okay.

MR. LoCASCIO: And I expect it's a two-way street on that.

THE COURT: Right. But I think you have to be careful. That's what I'm getting at. That's why I say I think he's in the driver's seat. You have to be very careful, you may end up getting in claim construction. It depends. I just don't know what you're going to say.

MR. LoCASCIO: Well, I think -- I don't think we have to resolve this today. It will come up when an expert's going to come. But ultimately, to cross-examine -- each side crossing the other side's expert as to what's the plain and ordinary meaning and where are you measuring versus where am I measuring and let's look at the actual patent claim, I think that's going to happen, and I think that's fair game.

THE COURT: It is. And at that point, if either side thinks at some point we absolutely have *O2 Micro*, come to sidebar or get a break, and we will address it.

MR. LoCASCIO: Okay.

THE COURT: All right.

MR. LoCASCIO: Thank you, Your Honor.

MR. RAMANI: Thank you, Your Honor.

THE COURT: All right. Then you want anything else on that or should we go to the deposition stuff?

MR. RAMANI: I think we can go right to the depositions.

MR. LoCASCIO: That's fine. No, that's probably the best way.

THE COURT: Okay. All right. So you want to start with Exhibit 1 to the letter; is that right? That's that Rogers testimony.

MR. RAMANI: Yes, Your Honor.

THE COURT: Okay. And then you want to go to Page 51, I believe, is the first issue?

MR. RAMANI: Yes.

MR. LoCASCIO: I believe that Rogers transcript is Exhibit 3 to the letter, Your Honor.

THE COURT: See, that's what... No, not in mine.

Just so you all know, I have Exhibit 3 is, and that's what I was looking at, is Kevin Nason designations.

MR. LoCASCIO: Oh, I apologize. I've got a copy with Exhibit 3, and it says Rogers. If that happened -- then if you have Rogers, and that's --

THE COURT: That's in the hard copy. I don't know.

Is that what you have?

Yeah, that's what we have.

MR. LoCASCIO: Apologies.

THE COURT: So just for the record, I'm looking at Exhibit 3 to the filing, which is the... Sorry, I'm looking at Exhibit 1 to the filing, which is Bob Rogers designations, okay. And now I'm looking at Page 51 of that transcript, Lines 2 through 8.

All right. Let me read it.

So I guess the objection here is to this particular exhibit, which is a letter from Greg Bullington to Bob Rogers; is that right?

MR. LoCASCIO: It is.

MR. RAMANI: Correct, Your Honor.

THE COURT: Now, let me just see.

Sorry, then there's follow-up on Page 53, Lines 20 to 24; Page 54, Line 24 to... Well, there's a bunch. I'm not going to read them all, then.

MR. LoCASCIO: The counter -- if I could just cut through this for a second, Your Honor.

The objection is to the exhibit and the testimony, which is Page 53, 20 to 24, and then part of the reason you will see as to why we think it shouldn't come in in the first place is the counter that follows in red on Pages 54 and 55 would be necessary because, otherwise, it's a counterfactual issue that they are

attempting to put in front of the jury.

MR. RAMANI: I'm happy to provide context.

THE COURT: I will give you the chance. Let me just...

MR. RAMANI: Thank you, Your Honor.

THE COURT: So on Page 53 to 55, there is orange highlighted text, which appears to be what's designated as Kurin's counter; is that right?

MR. RAMANI: That's correct.

THE COURT: And then part of it, but not all of it, is boxed.

MR. RAMANI: That designates an objection from Magnolia to just that portion of the counter.

THE COURT: Okay. Is Magnolia objecting to what's not boxed?

MR. RAMANI: No.

THE COURT: No? Sorry. If you are not... Wait, Magnolia. Sorry. Now, I got confused with the sides here. You keep suing each other.

So this is your objection just to the boxed testimony; is that right?

MR. LoCASCIO: It actually comes out the other way. The objection was Kurin's objection to the blue designated portions and the exhibit, and then if that objection was not sustained, then we have a counter, which

is in red.

THE COURT: Okay.

MR. LoCASCIO: I gather on the Magnolia side they're -- say, "Okay, well, all the better. Let's have some more conversation about the prior litigation, why these guys are suing each other," except for the very end, which they don't want.

THE COURT: All right. So then what I really need to focus on are the boxed purple text? Okay. Thank you.

So the boxed purple text, then, let's start with the first one. It's this letter.

Do I have a copy of the letter, by the way? No.

MR. LoCASCIO: I have one.

MR. RAMANI: I thought you did, Your Honor. PTX-136.

THE COURT: Sorry, what?

MR. RAMANI: It's PTX-136. We may not have attached it.

THE COURT: It's not attached, so can I have a copy of it? Thanks.

MR. RAMANI: May I approach?

THE COURT: Please. Okay.

Let me step back. So I've got PTX-136 and it's

referenced in the transcript.

Is the objection... And this is coming from, Mr. Ramani, your client, to the other side?

MR. RAMANI: Other way around, Your Honor.

THE COURT: Wait, no.

MR. RAMANI: We are Magnolia Medical.

THE COURT: Yeah. So you signed the letter.

So it's coming from your client to the other side?

MR. RAMANI: Oh, I'm sorry. I thought you meant the objection.

Yes, coming from our CEO to the other side.

THE COURT: All right. And you want to introduce this letter?

MR. RAMANI: We do.

THE COURT: Are you objecting to the letter coming in?

MR. LoCASCIO: We are, Your Honor.

THE COURT: So that's the first question.

All right. I will hear argument. I am inclined to not let the letter in, but go ahead.

I am telling you upfront because you have to make a good argument. Not that you don't normally make a good argument, but go.

And my concern... Let me just tell you this:

My concern is he's attached all the patents. Like, he didn't say, "Here's patent A and I think the Jet"... He doesn't say that at all. He's like, "You are a jerk, you are infringing. By the way, here's a list of, quote, 'all currently publicly-available and published Magnolia patents.'" and pending patent applications.

So you have an uphill climb. Go ahead.

MR. RAMANI: Understood, Your Honor. Let me see if I can make it.

So the reason that it's pertinent from a legal perspective is that we have an inducement claim, and we have strong evidence of at least willful blindness in this case, and I think I need to lay out that evidence fully to give you the full context here.

THE COURT: Okay.

MR. RAMANI: So Kurin launches this new product in February of 2023. Magnolia is taken by surprise. This is while the prior litigation is pending, post-trial motions are with Your Honor.

Kurin, in their press release, describes the new product as a ventless design and not subject to the current litigation.

So Magnolia learns about it. Within a week or so, this letter comes out. And they say, "Hey, you know we have all these patents. We don't know anything about

this product. Give us some samples. We're concerned that, because we know the field that you're in, that you are using our intellectual property. Here it is."

Kurin doesn't do anything with the information, as you can see from the designations, and Mr. Rogers didn't do anything with it, nor did anybody else.

Two months later, a third party e-mails Kurin, e-mails Kurin's vice president of business development, and ultimately the e-mail goes to Mr. Rogers, saying, "Hey, listen, I have this IP. You should take a look at buying it. It will get you around the problem you have with Magnolia's '081 patent because you have a problem with that movable plug patent of Magnolia's."

So he has, with the letter, more specific identification, just a single patent of one of the three patents that we have asserted.

Mr. Rogers, Kurin again, they do nothing. They don't even send it to their lawyers and ask for their lawyers' viewpoints on this.

So there's some additional conduct as well. There's some board slides where Kurin's vice president of R&D sees what he describes as the Dakota concept, which is the Kurin Jet, being described in a Magnolia pending patent application that was just published. Mr. Rogers tells him, "You are not a lawyer. Take that out. I don't

want the board to see that."

So we have the combination of all of these different pieces of evidence that, cumulatively, we would say meet the standard of *Global-Tech vs. SEB* in making out a case for at least willful blindness, where there were repetitive identifications of pertinent Magnolia intellectual property and sworn testimony from Kurin's CEO, Kurin's vice president of research and development, and Kurin's vice president of business development that when they saw these things, they didn't do anything.

And if it would be helpful to Your Honor on this topic -- Your Honor may very well be familiar with the case law -- overnight my team prepared a short bench brief, which I would be happy to hand up.

THE COURT: Yeah, please.

By the way, just for the record, I didn't look, but there's a ton of patents listed here.

I assume the '081 patent is in this list.

MR. RAMANI: It is, Your Honor.

May I approach?

THE COURT: And the list I'm referring to is attached to the letter designated as PTX-136.

MR. RAMANI: And there's one other point, Your Honor.

THE COURT: Hold on. Let me look at your bench

brief.

Do you have any other evidence that they, "they," i.e., Kurin, I shouldn't use "they" but I did, that Kurin was aware of the '081 patent?

MR. RAMANI: You mean other than Mr. Bullington's letter and that follow-on e-mail from a third party?

THE COURT: Yes.

MR. RAMANI: We don't, except for -- and this is the other point I wanted to make -- Kurin has agreed in the stipulation of undisputed facts --

THE COURT: That they knew about it?

MR. RAMANI: -- that they knew about it as of the date of Mr. Bullington's letter.

THE COURT: Okay. Thank you. Hold on.

All right. It was a good argument. All right.

MR. RAMANI: Can I just add one more thing, Your Honor?

THE COURT: Yes.

MR. RAMANI: As Your Honor is going to see, Kurin's approach in opening is going to be to throw open the doors on evidence in this case. They are going to bring up lots of stuff from 2015, how the parties met. It's going to open the door to lunch at the fish market.

All this willfulness stuff is coming in, and so

if Your Honor's concern is that --

THE COURT: No. So, actually, you know, again, I will just reveal, transparency, if you don't know, you do, how I work, you know, I react, let you know, and then... but I change my mind throughout, and then I come to a final decision.

So, like I said, you've made progress. I mean, where I am right now, and I want to hear Mr. LoCascio, is either, you know, why not let it all in? But, then I see you object to certain things. And, you know, for instance, about the vindictiveness. I am inclined, well, if you want Mr. Ramani to open up this door, the other stuff is coming in.

Because I've got to tell you, a big part of the way I approached this case from the very beginning, if you recall, on the telephone, I thought we're better off, let's let a jury hear everything.

That's why I wanted to have both sides launching their patents at each other and have a jury. And as a general rule, consistent with the overall philosophy of the Rules of Evidence, I'm like, let it all in. Right? If it's relevant and it's not any of the other 403 factors, substantially outweigh the relevance, you let it in.

So let me hear from him, and then I'll get back

to you because you, obviously if I'm going to let it in, as I say, I'm inclined to let in what you object to, and I will have to hear you on that.

MR. RAMANI: Thank you, Your Honor.

THE COURT: Mr. LoCascio.

MR. LoCASCIO: Thank you, Your Honor.

And I think I can pierce through the argument pretty quick, because there was a comment Mr. Ramani made that said they didn't even send it to the lawyers.

Essentially, like, the willful blindness theory was all premised on he gets this letters, he sticks it in his desk drawer and doesn't even tell his lawyers. You have the transcript in front of you. Look at Page 51, 12 to 18.

THE COURT: Yes, that's a problem.

MR. LoCASCIO: The whole argument is premised on willfully blind because Rogers buries this. It's factually not true. And what they really are trying to do here -- you see it is in the bench brief, which I just saw at the same time you did, that says, "Well, he didn't get a freedom to operate opinion." We have a separate discussion and objection around that.

35 U.S.C. 298 says you can't make that argument, not just for willfulness, which isn't in this phase, but for inducement either in the statute.

So I could go on about the problems -- and to your point, Your Honor, we have tried, and I think both sides have a tenuous agreement that the first trial, having that in this case creates a sideshow. It's not a mini trial, it's like a whole other major trial in here. And to accomplish -- but we're -- to be fair, neither side MIL-ed it.

THE COURT: Neither side what?

MR. LoCASCIO: Neither side filed a motion in limine on it .

THE COURT: Oh, MIL-ed it.

MR. LoCASCIO: You're right, that is a practitioner's term that is probably helpful. Thank you for the clarification.

So just to be blunt, we are sort of all dancing around this. And our view -- and we've had conversations about this -- is, okay, this is Kurin -- by saying, "When you got the letter, you didn't think you needed to respond," they want that. And we said, "He didn't respond because you had sued us."

The letter, the parts that are redacted that they took out, say, "There is a jury verdict against you," okay?

That's why the letter, even unredacted, because they want to put it in, says "willful infringement," which

should never be in front of the jury either. That part of the exhibit would have to come out. They want to have the whole list of patents, the thing you saw first in this case, to wave that around.

But the answer would be, "We didn't respond because we had outside counsel. We are referenced in here. We are in the middle of a lawsuit. And I think you are now suing me again because you're a vindictive guy."

And if we go there, we've thrown the door wide open on this, and then we'd say, "Yeah, you sued me once and you lost." And they will say, "Well, it's on appeal." Okay. "And then you sued me again."

And we've debated. Like, I actually think that is a fact that would be -- inure to our benefit, but because of the --

THE COURT: The judge sitting in front of you overturned the verdict.

MR. LoCASCIO: Correct.

THE COURT: I mean, that would not be --

MR. LoCASCIO: So if we go there, we will be here an extra two days, we'll deal with a lot. We are willing to try this case without that. But they, on Day 1, are bringing it to the fore.

So that's where we are, Your Honor.

THE COURT: Before we go on, I have just been

handed a note. We have a juror who cannot speak English. That's never happened to me before. And so the jury coordinator is concerned that the person won't be able to even read the voir dire.

Does anyone object, I will just tell the jury coordinator to strike that person?

MR. RAMANI: No objection.

MR. LoCASCIO: No objection.

THE COURT: All right. Now, get back to the argument.

Mr. Ramani.

MR. RAMANI: Your Honor, so the thing that was not forwarded to counsel was not this letter. The thing that was not forwarded -- because there was obviously testimony that says that he sent it to his lawyers. The thing that was not forwarded to counsel was the follow-on, which was the e-mail -- if you look in our bench brief, from Jeremy --

THE COURT: Right, but I mean, I would have go with the transcript, not with what you say.

The transcript, it says the letter, right?

MR. RAMANI: Oh, no, no, no. I'm not disagreeing with that, Your Honor. I'm not disagreeing that this letter that you have before you was forwarded to counsel. Of course it was. That's not my point.

My point is that if we just -- let me put it this way: If we just had this letter, we wouldn't be arguing willful blindness. That's not enough, is our judgment.

So we have this letter, he gets it, he sends it to his counsel. He never responds to it, doesn't think he has to do anything, fine. Two months later -- and it's excerpted in the bench brief we handed up -- he received an e-mail from Jeremy Hammer, a different third party who is in the field, has his own company. And he e-mails Kurin and says, "You have a problem with this '081 movable plug patent for Magnolia."

And so it's the combination that creates a willful blindness problem for them.

THE COURT: All right. How would you propose getting into evidence the Jeremy Hammer letter? What witness? How is that coming in?

MR. RAMANI: Through Bob Rogers or through Matt Heindel, who is the person who received it. Matt Heindel was a VP of business development.

THE COURT: These are Kurin people? You are saying you would get this Jeremy Hammer letter in through a Kurin witness?

MR. RAMANI: Correct.

THE COURT: All right. Now, is Jeremy Hammer

testifying?

MR. RAMANI: He's not.

THE COURT: How are you going to establish to the jury that Jeremy Hammer has any idea what he's talking about versus Jeremy Hammer is looking at an opportunity to make money for Jeremy Hammer?

MR. RAMANI: That sounds like weight, not admissibility, Your Honor. There is not a hearsay problem here because --

THE COURT: I didn't say there was a hearsay problem, but, you know, it would be one thing if Jeremy Hammer were a retired federal circuit judge, who just for the good of the patent system, decided to educate Kurin. It's another thing if Jeremy Hammer is looking to profit.

MR. RAMANI: He most undoubtedly was. But Jeremy Hammer had his own company named High Peak Medical. He was an inventor of a patent in this very space.

THE COURT: Right.

MR. RAMANI: And so that, itself, is sufficient indicia of credibility. And ultimately, it should be a fact question for the jury to decide.

Again, the letter does attach a lot of patents and applications. And if Your Honor wants, we don't need to show the attachment. That's fine.

The point, however, is that the letter is the predicate for Kurin having admitted, in our statement of undisputed facts, that it learned of two of the three patents-in-suit as of the date of the letter.

So that gets knowledge of the patents, and then we get willful blindness because of this Jeremy Hammer e-mail and the failure by Kurin to act. And it's a repetitive failure of Kurin to act.

THE COURT: Well, repetitive? Wait. Mr. Heindel didn't do anything or Mr. Rogers didn't do anything?

MR. LoCASCIO: Mr. Rogers didn't -- when he received the information from Jeremy Hammer, he didn't think he should...

THE COURT: I get that. So that's Mr. Rogers, who is the CEO?

MR. RAMANI: Correct.

THE COURT: What is the second situation?

MR. RAMANI: Mr. Heindel, who was also involved, and he was the vice president of business development, another Kurin executive.

THE COURT: Right. And he also had an outreach from Mr. Hammer?

MR. RAMANI: It came to him first.

THE COURT: Oh, I see. The same letter?

MR. RAMANI: Same letter, he forwarded it to Mr. Rogers, they had some back-and-forth. They had a second outreach from Mr. Hammer a month and a half later, where they had further back-and-forth. Again, they didn't do anything in terms of patent diligence, et cetera.

THE COURT: All right.

MR. RAMANI: Look, if Your Honor's ultimate decision -- I mean, in terms of our objection to the counters, we would be okay withdrawing that objection, apart from the very last Q and A.

So if they want to say, "In what example? He keeps suing me," fine. But the rest is where we get the door very widely opened into a sideshow.

THE COURT: All right.

MR. RAMANI: Look, I took his deposition. Maybe I shouldn't have asked that question. Here we find ourselves.

THE COURT: There's really two objections. One is just to the letter, and then the other is to the designated testimony.

MR. RAMANI: Correct.

THE COURT: All right. They are all tied, though, when I say "all," all of the testimony and the letter is tied to me being willing to allow into evidence the Hammer outreach to Kurin to serve as the basis for the

willful blindness, correct?

MR. RAMANI: Agreed.

THE COURT: All right.

MR. RAMANI: And the first e-mail from Mr. Hammer is excerpted in the bench brief we handed up, and I said there is another e-mail about six weeks later of similar kind.

THE COURT: All right. I'm not willing to let into evidence documents or testimony about the Hammer outreach to Kurin because it's only probative, in my mind, if it could be established what were the motives of Mr. Hammer and, more importantly, why his assessment of whether or not Kurin infringed a Magnolia patent was worthy of credence, should have prompted Kurin to act. And it sounds like there's nothing to establish that.

And it seems to me to let it in, then, has really no, or certainly minimal probative value, and yet it would, it seems to me, create unfair prejudice and result in a mini trial about who is Mr. Hammer, why should Kurin respond to what he says. And that, it seems to me, would substantially outweigh that unfair prejudice and potential confusion. And the time it would take to address that would outweigh, as I say, the minimal, if any, probative value that the letter would have.

And because the letter is, its admission is

essentially a predicate by which Magnolia seeks to admit PTX-136 and the testimony from the Rogers deposition that we're discussing, I think it follows that it's not admissible under Rule 403.

And, by the way, I would say the letter itself, for the reason I kind of began the argument, my initial reaction is it opens the door and would cause the jury to have questions about the background to the letter, which leads us on a slippery road to potentially having to reference the prior litigation, and that definitely, it seems to me, raises serious 403 concerns.

And it's undisputed that Kurin had knowledge of the '081 patent, and so I just, again, think that the letter would lead to jury confusion and questions and open the door in an unfair way to Kurin, but in a way I think it ultimately could be unfair to Magnolia about the other litigation that I oversaw.

Okay? So I am going to not allow either PTX-136 or the testimony about it to be introduced.

MR. RAMANI: Understood, Your Honor.

THE COURT: All right. Thank you.

MR. RAMANI: May I ask Your Honor that after Your Honor sees Kurin's opening and the evidence in the case starts coming in, if you would be receptive to revisiting this question?

THE COURT: Yeah, I mean, I would. I think why I enjoy so much cases with you and Mr. LoCascio is you press the envelope, but you don't do it by violating the rules. And now sometimes, as perhaps implied in one of my recent memorandums dealing with a discovery dispute, you know, I thought, although not unethical or unprofessional, I thought Mr. LoCascio was taking advantage of the fact that I just don't know patent law that well and wasn't fully, you know, seeing the forest. So although I am entertained by it, you know, I'm going to draw lines. But what I'm referring to here is the dispute regarding --

MR. RAMANI: The Flow.

THE COURT: Yeah. With the Flow. And I put in my order, a paragraph dealing with Magnolia, too, which is like, you know, you say you're not going to try to introduce something at trial, but then you put it in your pretrial order and you don't back off.

So, anyway, my point is that you can raise it again. Let's see. And, you know, I think the way you both handle yourselves, I enjoy it and, you know, you haven't crossed the line yet.

MR. RAMANI: Thank you, Your Honor.

MR. LoCASCIO: Given the comment you just made, I do want to make one point, Your Honor, because I had to look up the word that you used.

THE COURT: What word.

MR. LoCASCIO: It was "legerdemain." I probably pronounced it wrong.

THE COURT: Legerdemain.

MR. LoCASCIO: Thank you. I am an engineer, not a... So I looked it up. And I do want to just say, because you just raised that point, Your Honor, we pointed to the contentions, and, yes, they are infringement contentions. Because under those contentions and under the rules, practicing products were to be identified. And that's -- so it was not some attempt at sleight of hand, Your Honor.

THE COURT: No. Well, look, I think it kind of was, but I don't mean it in an unethical way. And the reason why it was, I think, sleight of hand was you were dealing with a scheduling provision that applied to infringement contentions, and whether their product reads off of...

Their product can't infringe because it reads on their patent. That's not infringement. So an infringement contention would only require a disclosure of what somebody other than Magnolia does to read on the patents. By definition, right?

If you have the patent, then it can infringe. So I just thought it was clever, you know. And, by the

way, I understand why you might want to raise it because it looked like they weren't willing to just stand down and say, I'm never bringing this in.

MR. LoCASCIO: And I'm not asking you to readdress the issue. But the order in that, with respect to those contentions --

THE COURT: Wait. With respect to what?

MR. LoCASCIO: With respect to the infringement contentions.

THE COURT: My order?

MR. LoCASCIO: Yes.

THE COURT: My order, that paragraph deals with when they start the case off, "they" the plaintiffs, they have to say, "Here's why we believe your," the defendants, "your products infringe."

MR. LoCASCIO: But the requirement for what needs to be in that disclosure is more than just infringement, Your Honor, and that was the point we were making. It also requires the disclosure of any claim by the patentee that they have a product practicing those claims, and that was the point, Your Honor.

THE COURT: Okay. And they didn't have a product at that time.

MR. LoCASCIO: And that's the part, Your Honor -- I understand the debate over what "product"

means.

THE COURT: Right. So then, hold on.

Then the argument is not that they violated my order. Then the argument is they are obligated under Rule 26 to amend, right? That's the argument.

MR. LoCASCIO: The argument was they should have then sought leave to amend the contentions which require the disclosure. I understand.

THE COURT: Yeah. Yeah. But this is where the legerdemain comes in. They didn't violate my scheduling order. Now, they may have violated Rule 26, where they have an obligation to amend, but you didn't make that argument. Right? So that's all I'm getting at.

But anyway, we don't need to go there. I hear you. I thought you pushed the envelope in an appropriate way. I made a point to my clerks back in chambers, to distinguish that kind of conduct versus some things I've just seen in the last two weeks that I've had to address in other cases from attorneys.

So I didn't think you crossed the line, but you ended up making me spend like an hour and a half or something at the pretrial conference trying to deal with this issue when it was actually, when I stepped back and thought about it over the weekend and wrote my opinion, it was pretty easy. It was pretty easy to resolve. But it

was made difficult, in fairness to you, because they are putting in the pretrial order and in various places, statements that make you think like they are going to bring this up.

So I get it. I get both sides. I actually mean this as a complimentary thing. So, you know, continue to do what you do, and if you ever do cross the line, well, then, I will, you know, take suitable action, but I'm not worried about that.

All right. That's a long way to say, you know, let's see what comes up in trial. Mr. Ramani, if you think you want to raise it, you can raise it.

MR. LoCASCIO: Thank you, Your Honor.

THE COURT: All right. Anything else? We still don't have a jury.

MR. RAMANI: Would Your Honor like to keep going through other designation objections?

THE COURT: Oh, I thought that was all of them. It's not all of them? No. We better, very quickly, let's go. Sorry.

MR. RAMANI: I think Your Honor's ruling is going to speed this up.

THE COURT: Yeah. Okay. What's next?

MR. RAMANI: It's Kurin objection to board slides. This is what I had mentioned. Kevin Nason, VP of

R&D, prepared board slides.

THE COURT: Right.

MR. RAMANI: Did it in December 2020. Said in one of the board slides "Magnolia just published a patent application, looks like the Dakota concept."

Mr. Rogers made him take that out. The testimony from Mr. Rogers was, "You're not a lawyer; it's not your job to make that determination."

And so that was never presented to the board. That goes to its willful blindness as well, is our argument.

THE COURT: Let me see the exact testimony.

MR. RAMANI: Yep.

143 through 147, Your Honor.

And then there's a counter, and then a proposed counter-counter. It's all of the piece.

THE COURT: All right. So I'm reading from 143 through --

MR. RAMANI: 148.

THE COURT: -- 148. Okay. Let me look at it.

MR. LoCASCIO: This also has an exhibit objection, if it would be helpful.

THE COURT: Yeah, why don't you hand me the exhibit.

MR. LoCASCIO: I have one. May I approach?

Do you have one?

THE COURT: Please.

MR. LoCASCIO: I have one.

MR. RAMANI: Thanks for doing that.

THE COURT: All right. And the Dakota --

MR. RAMANI: It's the Kurin Jet.

THE COURT: Right. I mean, is that the word that Kurin used to describe the Kurin Jet?

MR. RAMANI: Correct.

THE COURT: Okay. And Kevin is --

MR. RAMANI: Vice president of research and development. He was the engineer primarily responsible for the Jet's development.

THE COURT: Does he have any patents?

MR. RAMANI: I'm not sure.

MR. LoCASCIO: I don't know if he does. I don't know of any.

THE COURT: Is he a witness?

MR. RAMANI: He is. Kurin has listed him as a live witness.

MR. LoCASCIO: If it would be helpful, also, Your Honor, they have also designated Nason testimony on this same issue, and that's also in the objections, if it would be useful to read that at the same time.

MR. RAMANI: That's right, Your Honor. We

designated the two sides of the interaction.

THE COURT: Where is the other testimony, is exhibit what? What's Nason? That's Exhibit 3. What page is it of Nason's?

MR. LoCASCIO: 144, Your Honor. I believe it's the only objection on Nason, which is in the letter also. 144 starts at Line 4.

THE COURT: In the PowerPoint, it refers to a patent application that was published December 5.

You are shaking your head, Mr. LoCascio.

MR. LoCASCIO: I'm shaking my head because the next question is, is it one of the patent applications in this case, and the answer is no.

MR. RAMANI: That's right, Your Honor, it's not. The context is the base application for the three in this case were filed in 2018 and published in 2019.

What he pulled was a patent application which shares significant content, so a lot of the same figures, a lot of the same disclosure, et cetera.

THE COURT: And that patent application was made public December 5. When was it filed?

MR. RAMANI: That, I don't know offhand. I can check with my team.

THE COURT: Do you know if it was before or after the Kurin Jet?

MR. RAMANI: It was well before. The Kurin Jet launched publicly in February of 2023. The first sales, booked sales of the Kurin Jet were December 2021.

THE COURT: Was it before or after the Kurin Lock?

MR. RAMANI: It was after. And as Your Honor will hear, those two products use completely different technology, per Kurin's own launch press release of the Jet.

THE COURT: Yeah, okay.

MR. LoCASCIO: I have some helpful context that might address this issue.

THE COURT: All right. Hold on.

MR. RAMANI: We have the answer to your question in the deposition, actually.

THE COURT: I'm sorry?

MR. RAMANI: We have the answer to your question. It was filed in December of 2019.

THE COURT: All right. Now, that patent application, it has a written description with it?

MR. RAMANI: It does.

THE COURT: Is it the same written description for the '081 patent?

MR. RAMANI: It's not identical there's substantial overlap.

THE COURT: All right. Anything else you want to say?

MR. RAMANI: No, Your Honor.

THE COURT: All right. Mr. LoCascio?

MR. LoCASCIO: It also had claims, Your Honor, and those claims were rejected over the Rogers -- in light of the Rogers '445 work, and it never issued. And so the application that's in this slide deck that's being discussed, ultimately, if you take -- put aside who's looking at it and the basis to look at it and the FTO 35 U.S.C. 298 issue, you just say, okay, if we get this in front of the jury, what happens?

Well, now we will have: What was the reason for that? What happened? What happened to that application?

The answer was, actually, it was rejected over our own prior work, and it didn't issue. And again --

THE COURT: All right. Just stop for a second.

Do you dispute that?

MR. RAMANI: No, I don't have a problem if all that comes in.

THE COURT: Well, right, but the problem is it has to come in to be fair, and we're talking about a complete mini trial.

MR. RAMANI: Can I just --

THE COURT: Hold on. Hold on.

In a way, Mr. LoCascio, why wouldn't you just want that all to come in?

MR. LoCASCIO: Because willfulness is not in this trial. Essentially, this is --

THE COURT: Willfulness is not, but inducement is.

MR. LoCASCIO: I agree.

THE COURT: And willful blindness is a mens rea for inducement. There is just no question under the law. In fact, I haven't looked at your jury instructions, but what I've been doing in cases, and I've been telling counsel, I think Ms. Farnan and Mr. Smith have been in cases, where I think you should do for willfulness what we do in criminal cases, which is you have a separate instruction for what willfulness is and what willful blindness is. That's the way I think you should do it.

Anyway, so it comes in for inducement.

MR. LoCASCIO: And I don't believe this -- if this was this patent, one of the patents in the case, and the question would be what's it relevant to versus the 402, 403 balance. And we've already disclosed that we knew about the patents before this. Okay.

This isn't about notice. This would be, on their side, they're arguing this shows you have a

disregard for it, except counsel was involved. It went to counsel --

THE COURT: I'm with you on... I'm leaning towards it doesn't come in. But, also, I'm trying to understand the idea that they would try to get a patent and they didn't get a patent, and they didn't get it because your client had a piece of prior art that the Patent Office said... I mean, in a way I'm just curious, I was just thinking you might like that.

MR. LoCASCIO: If this comes in, we will put all that on. And do I agree that that could have benefits here? But the goal is help the jury, not make it harder for the jury.

THE COURT: Okay. Mr. Ramani, do you agree that the patent application that's referenced in the PowerPoint was for a patent that's not in the case?

MR. RAMANI: Yes.

THE COURT: Okay. And you agree that the only issue when it comes to infringement is whether the claims cover the accused device?

MR. RAMANI: For direct infringement, I agree with that. I don't agree with that for inducement.

THE COURT: Yeah. Well, okay, have you got any case you can show me real quick that... let me step back.

To prove inducement, the mens rea is knowledge

of the patent, correct?

MR. RAMANI: Correct.

THE COURT: And knowledge that the accused device reads on the patent, correct?

MR. RAMANI: That's close. Knowledge that if the other person or other entity that you are inducing to act --

THE COURT: Yep.

MR. RAMANI: -- commits the acts you are inducing, they will infringe.

THE COURT: Okay. Let me put it this way. So Number 1 is knowledge of the patents. 2 is knowledge that the direct infringer has a device that infringes the patent claims.

MR. RAMANI: Correct. And that knowledge can be shown --

THE COURT: Through willful blindness.

MR. RAMANI: -- directly or through willful blindness.

THE COURT: I agree. But ultimately, it has to be knowledge that there's direct infringement by the entity that's being induced.

MR. RAMANI: And the reason I didn't answer just flat yes to Your Honor, yes, that's true, but the standard is broader because direct infringement is a

strict liability offense. Knowledge is irrelevant to that, as we all know, right? But for inducement, because there is a mens rea component to it, there should be greater latitude for admission of evidence to show mens rea because, of course, it's impossible to ever get into anybody's mind.

THE COURT: Yeah. Okay. Well, I'm going to not let it in and here's why. I think because the claims differ, and so we have a different patent, effectively. And, in fact, it never became a patent. And then, for all the reasons Mr. LoCascio articulated about having a mini trial to address that, that that's just going to waste the jury's time and breed jury confusion which is going to substantially outweigh the probative value of this PowerPoint. So it's not coming in.

All right. Next.

MR. RAMANI: Can I just also clarify one thing, Your Honor?

THE COURT: Yep.

MR. RAMANI: On these rulings that Your Honor is making, I take it they only apply to Phase I. Phase II is a different story?

THE COURT: I don't know, but I am applying to Phase I.

MR. RAMANI: Okay.

THE COURT: And I'm just mindful of the time, although we still don't have... the jury is not ready, so keep going.

What's next?

MR. RAMANI: Okay. I think the next designation, and Mr. --

THE COURT: How many more do we have? Sorry.

MR. RAMANI: Not many more. We are just about done.

THE COURT: All right. Give me one second.

All right. Go ahead, next.

MR. RAMANI: So the next is a -- there are basically two other bunches, Your Honor, in Mr. Heindel.

THE COURT: All right.

MR. RAMANI: The second bunch I think we can take first, starting at 161.

THE COURT: Of what? Whose deposition?

MR. RAMANI: Matt Heindel, which might be Number 2.

THE COURT: Okay. I'm there, 161.

MR. RAMANI: Yep.

THE COURT: All right.

MR. RAMANI: But I think your prior ruling addressed this. This was -- this is the Jeremy Hammer, High Peak Medical.

THE COURT: Yeah, it can't come in.

MR. RAMANI: Yep.

THE COURT: Based on the proffer, it can't come in.

MR. RAMANI: Yes. So that's already ruled on.

Then the only other objection is related to some financial information --

THE COURT: All right.

MR. RAMANI: -- from Mr. Heindel, which is at 16, 17, and 25.

THE COURT: Page 16?

MR. RAMANI: Yes. And if Your Honor would like argument on that, I would ask --

THE COURT: Hold on. Let me just see.

MR. RAMANI: Yep. Okay. I would ask my colleague Serge Voronov to address that.

THE COURT: Sure.

MR. RAMANI: Thank you.

THE COURT: All right. Good morning.

MR. VORONOV: Good morning, Your Honor. Serge Voronov on behalf of Magnolia Medical.

Mr. Heindel was Kurin's 30(b)(6) designee on the first sale of the Jet, and he was testifying that he was familiar with the product numbers for the Jet. That was in this financial spreadsheet that he was discussing.

This testimony is about revenue-generating sales of the Jet and we think that he has firsthand knowledge of it.

THE COURT: Why are revenues coming in in Phase I? Why is it relevant to Phase I?

MR. LoCASCIO: Damages.

MR. VORONOV: Well, damages. And it --

(Speaking simultaneously.)

MR. LoCASCIO: Your Honor. Sorry.

THE COURT: Oh, I forgot. Yeah, yeah, no. I'm sorry. Yeah, I forgot. Yep, okay. My bad. I forgot about how we're phasing this case. Okay.

MR. VORONOV: Of course.

THE COURT: All right. Anything else?

MR. VORONOV: That's all. Thank you, Your Honor.

THE COURT: All right. And you're objecting?

MR. LoCASCIO: I am objecting, Your Honor.

THE COURT: All right. Do you want to come forward and tell me why?

MR. LoCASCIO: Yeah. If you -- well, so the core issue here --

THE COURT: Yes.

MR. LoCASCIO: -- is when is the first sale of a Jet. When is the Jet first sold.

THE COURT: Yep.

MR. LoCASCIO: And there were some small sales in 2021 and that was the evidence provided. And there's -- what the question here is to say, well, this document only shows revenues in 2023, but the witness was asked on Page 16: "Is this the spreadsheet you're familiar with?"

He says: "No, I'm not."

Our objection to this is, okay, this witness doesn't know what this sheet is, and counsel attempts to then elicit the testimony on Page 25 that basically says no revenue of the Jet until September 2023. Page 25, Lines 5 to 9.

But if you look right above that, what we had countered to this, if it does come in, is, okay, looking at this information for '21 to '23, there is no revenue of the Jet until 2023. Essentially, arguing there's no 2021 sale.

And the witness says: "I understand that's what the spreadsheet says. That's not my recollection."

So he was the 30(b)(6) on when was the product sold for the first time and he testified 2021.

A different witness, a different 30(b)(6) witness was the designee on financials. That's not Mr. Heindel. And the question is to try to use the

financials to sort of undermine the fact factually that there were products sold in 2021. And he's not -- they want to use the document -- I'm sorry. I've clearly lost you.

THE COURT: No.

MR. LoCASCIO: Okay.

THE COURT: I mean, so he's a 30(b)(6) witness for what? This particular --

MR. LoCASCIO: Not --

THE COURT: Mr. Heindel.

MR. LoCASCIO: Mr. Heindel is a 30(b)(6) witness on date the product was first sold. A different 30(b)(6) was designated on the financials and spreadsheets and revenues.

THE COURT: Anything else?

MR. LoCASCIO: No.

THE COURT: Why do you want this witness to introduce this exhibit?

MR. VORONOV: So Mr. Heindel is -- was the vice president of business development at Kurin. He is very knowledgeable as to the Kurin Jet, and he testified -- he provides testimony about that product in the course of his deposition that -- to which Kurin does not object.

With respect to this exhibit in particular, Kurin launches -- has a commercial launch of the Kurin Jet

in 2023. And we don't dispute that the very first sale of the Kurin Jet occurred in 2021. The point of the spreadsheet is to show that the sales were so negligible that Kurin wasn't even tracking this information, and he identifies that he's familiar with the rows of the product numbers of the Kurin Jet, and he testifies -- he confirms that there's no sales there.

THE COURT: Why are you trying to show that they had negligible sales?

MR. VORONOV: I beg your pardon?

THE COURT: You are trying to prove that they infringe and get damages, so why are you trying to undermine that by saying, "By the way, they had such few sales in 2021, they didn't even keep track of it"? Seems to be against what you want to prove at a trial. You are trying to win as much as you can.

MR. VORONOV: Well, we are trying to get a reasonable royalty on the basis of their sales, but it's also relevant as to when they commercially launched the Kurin Jet, which the jury will hear is in 2023, and this is in support of the background around that.

THE COURT: So let me see if I get this right. First of all, what's being proffered is an exhibit, correct?

MR. VORONOV: That's correct.

THE COURT: You are trying to get the exhibit introduced through the deposition testimony of Mr. Heindel; is that right?

MR. VORONOV: That's right.

THE COURT: Okay. And the exhibit is going to be used solely for damages, correct?

MR. VORONOV: Correct.

THE COURT: Mr. Heindel was not a 30(b)(6) witness for damages, correct?

MR. VORONOV: Well, he was the 30(b)(6) witness for the first sale of the Kurin Jet.

THE COURT: Okay. For the first sale.

Was he prepared to testify in his deposition about when the first sale was?

MR. VORONOV: He did.

THE COURT: When did he testify the first sale was?

MR. VORONOV: He -- he testified that it was -- if I could just refresh my recollection.

THE COURT: I'm going to guess it's in 2021, is what he testified.

MR. LoCASCIO: If I can direct the Court and Counsel, it is on Page 10 of the transcript. It's Page 10, Line 14 to 25. And...

MR. VORONOV: We have a very small amount.

This is not counter-designated by Kurin. They could have counter-designated.

THE COURT: That's what he testified to?

MR. VORONOV: Yeah. We're not disputing that, just to be clear.

THE COURT: Okay. So you are getting him to introduce a spreadsheet, which, I think it's undisputed from just looking at the text, he was not familiar with?

MR. VORONOV: Well, he says in the next question, and this is on Page 17 at Lines 1 to 6, that, "I'd like to ask you just about a few rows of this document. You are familiar with the product numbers of the Kurin Jet?" And that's the only part of the spreadsheet that we're seeking to use in the deposition.

THE COURT: So you only want to introduce this spreadsheet in front of the jury to identify product numbers?

MR. VORONOV: Well, it's going to show product numbers and it's going to show revenue sales.

THE COURT: Right. You just said to me you want to bring it in to show product numbers, so why do you want it to use to show revenue sales?

MR. VORONOV: It shows -- there is a table and --

THE COURT: Why do you want this document in

front of the jury to show revenue sales for these product numbers in 2023?

MR. VORONOV: It's consistent with the fact that it was commercially launched in 2023, the Kurin Jet.

THE COURT: You want to argue that it's not commercially launched in 2023, what, because you get a higher reasonable royalty? Because if it was launched in 2021, is it lower? Is that what's going on?

MR. VORONOV: No. There was some trials that were done in 2021, but we're trying to tell the jury about when the actual commercial launch of the Jet was in 2023. It was later than that.

THE COURT: And then you don't want it in because, tell me again, it's going to undermine something else?

MR. LoCASCIO: I want to provide the context here.

If what they wanted was what we just heard, they would have designated Page 10, Line 14 to 25, where the witness says -- the question was asked first started selling in '23. He disputes that. He says, "We first commercialized in 2021. Now, we might be talking a very small amount, but it was. We did get a purchase order earlier than '23."

And then the question, "So you say you received

a purchase order in 2021, but you announced the Jet to the world in 2023?" The witness says, "Yes."

That was what we sort of heard is the purpose. Okay. You would have designated that. Instead, I think if you really think what's going on is, they want the spreadsheet in. I don't know why they have -- everybody has everybody's financials, so you don't need this spreadsheet to do that.

But if you look at the question on 25 that triggers this, the reason they put it in is to then ask this question, Page 5, Line 25, "Okay. But the document that's identified in Exhibit 3," which will now have the weight of admitted spreadsheet that the witness didn't know anything about, "shows no revenue sales of the Jet until September 2023." So it would be used to impeach or debate or dispute the idea that there was any of that activity in 2021.

Why, to your point, would anyone care about this in a damages context? I actually don't think that's what's going on. I think what's going on is they want to be able to say either we didn't know about the Jet until 2023, and when the Kurin side says, "Well, we were putting it out in 2021," they will say, "Well, no, no. Look at this testimony. It says there's no revenue of the Jet," from a guy who had just said, pages earlier, not

designated, that there were sales in '21.

So it is an attempt to create dispute or credibility issue on a counterfactual from a witness without foundation about the document. That's why this is happening. That's my assessment of what's really going on here.

The testimony shouldn't come in from a witness without foundation of the doc, and the doc doesn't come in through that, and the purpose stated to me isn't really what the testimony is. And it's pretty notable that they haven't chosen to designate the part that disclosed it from the actual witness who was designated.

MR. VORONOV: I don't think that we are disputing the data for sale. That information is going to come out. I don't know why my friend on the other side is suggesting that we're trying to mislead the jury in this.

Our damages expert is going to -- you know, has said that the first sale is in 2021. So that's not -- that's not what is at issue here.

What's at issue is the fact that it was commercially launched in 2023, and that's when --

THE COURT: See, I guess when you say "commercially launched," you are making it sound like it is a legal term or something.

If it's sold in 2021, why isn't that a

commercial launch?

MR. VORONOV: Well, announced to the world as a commercial launch, right? There was no announcement, there was no description of how the Jet worked until 2023.

THE COURT: Why does that matter?

MR. VORONOV: Well, I mean, we have to tell the jury about the product itself and how the rest --

THE COURT: Why does it matter that it was put on the market in 2021 without an announcement or minimal sales, and then there was an announcement in 2023 and all of the sudden you have a lot more commercial sales? Why does that matter to your case?

MR. VORONOV: Well, I think that it's relevant to the kind of -- I think it's relevant to the damages that we are seeking because the majority of them will, of course, start when sales start to pick up in 2023. Our damages expert is entitled to explain that information to the jury, and provide that context for them.

THE COURT: Why do you need this testimony to do it? Your damages expert, as you said, he has got access to the document. Is it going to be debated about his revenue figures?

MR. VORONOV: I mean, if they are not going to debate the fact that they had a commercial launch in 2023, and that's when the --

THE COURT: But you just did it again. See, that's what I meant. You keep on saying, like, it is a commercial launch. I mean, they were selling it in commerce in 2021. So when you say they are not going to debate, that's where you lose me. I really lose it.

MR. VORONOV: The -- I mean, we are going to explain to the jury when the Kurin Jet was actually commercially launched, and that is different --

THE COURT: It seems like it is undisputed it was commercially launched in 2021.

MR. VORONOV: As far as announcing the Kurin Jet to -- as a product that they are selling, ramping up --

THE COURT: Well, how do they sell it in 2021 without announcing it to someone?

MR. VORONOV: Well, they had -- it was a secret sale at that point, which is different from the sales that they were having in 2023.

THE COURT: They literally had like an NDA? They sold something to somebody and said, "You can't tell anybody"?

MR. VORONOV: Well, I'm not aware of an NDA. It was a secret sale, and that they didn't announce it as a product. It wasn't -- they had a press release in 2023.

THE COURT: Did they bar whoever they sold it

to from making it public?

MR. VORONOV: I'm not aware of that. I don't think there's testimony that -- on that either way.

THE COURT: I'm just really... I've got to tell you, I don't know what's going on and I feel... I kind of feel for the defense because it sounds like there's something coming that I don't really understand, and I'm trying to -- Pretend I am a student in law school taking my first patent class and trying to understand what you are trying to accomplish here, because I'm not getting it.

MR. VORONOV: Well, we're simply trying to tell the jury about the launch of the Kurin Jet and --

THE COURT: So if you were doing it, why don't you bring up the testimony on Page 10 where the guy says, "Well, we sold it in 2021," and then you can bring up, "And by the way, the first press announcement is in 2023." You can do that.

MR. VORONOV: If they want us to put in the designation on Page 10 to provide additional context to it, we can certainly add that in.

THE COURT: Right. So, then, why do you need the spreadsheet?

MR. VORONOV: Well, the spreadsheet provides financial data that our damages expert then relies on. It can also come in through our damages expert.

THE COURT: But you didn't want it that way. That's why I'm wondering. There's something going on here that you guys think this is important enough that you wrote a letter at 2:30 in the morning and you are asking me to address it. Frankly, I don't really understand it.

MR. VORONOV: Your Honor, I think that I attempted to explain it, but if Your Honor feels like it is better to come in through our damages expert, we are happy to let it in through that way.

THE COURT: Do you object to that? Do you object to it coming through their damages expert?

MR. LoCASCIO: What I would say on this was the actual financials that the damages experts relied on, I don't have any objection to those coming in. I have not done a comparison of this exhibit, Exhibit 16, to those to be able to answer that at this moment in time to just agree it can come into evidence, Your Honor, because I don't know what the differences are.

Ms. Farnan is handling the damages witnesses. I don't believe this exhibit -- was it cited by their expert? I can't speak one way or the other.

I don't think this is the basis -- this is not the lynchpin of them being able to put on a damages case.

THE COURT: What is the real prejudice here for you if we get a document in that shows what the figures

are from 2023?

MR. LoCASCIO: Other than -- I don't know -- the document I have in front of me, I can't -- I cannot identify it in any way, and so there's the answer.

THE COURT: So if it's not prejudicial, then I should just let it in.

MR. LoCASCIO: But the testimony is how this really came up. I think if it is a question of the document, this isn't the right sponsoring witness.

THE COURT: So why don't you just stipulate that they can introduce the document, then maybe I don't have a dispute.

MR. LoCASCIO: What I would like to say is on this video, I would like to see the document before I stipulate to it, but I think I will agree, Your Honor, that the document doesn't need a sponsoring witness if it's -- unless there's some reason that we have a real problem with this document.

THE COURT: Okay. Well, would it be acceptable to you to just introduce the document per a stipulation?

MR. VORONOV: If they are willing to stipulate to the document and we can introduce it, I think that's acceptable.

THE COURT: And then you wouldn't need the testimony?

MR. VORONOV: We would withdraw the testimony.

THE COURT: Okay. Why don't you guys confer about that and we'll decide it. You don't need to know this before the opening, right?

MR. VORONOV: No.

THE COURT: Okay. Good. Decide that and come back to me at lunch.

MR. LoCASCIO: Can I put one other point of reference? There is a series of objections to deposition testimony. Mr. Ramani said I think a lot of them have been subsumed by your first ruling with respect to Rogers.

THE COURT: Yeah.

MR. LoCASCIO: I just want, for the record, we had objected to portions of the Rogers deposition on Page 54 and 56, and I agree. I think Your Honor's ruling sustains those objections, but they were sort of moved past by Mr. Ramani. So I just want the record to be clear as to the -- essentially, at this point, everything that was objected to on what we ultimately submitted, Your Honor has sustained those objections, but I just want that to be clear for the record.

THE COURT: Okay.

Mr. Ramani, do you want to address that?

MR. RAMANI: No, I agree.

THE COURT: Okay. So you agree, everybody

agrees that I've got this letter, which was filed at 2:30 in the morning by Magnolia, but it's setting forth Kurin's objections, but everybody agrees that I have ruled on all of Kurin's objections.

MR. RAMANI: Agreed.

THE COURT: And you agree?

MR. LoCASCIO: Agreed.

THE COURT: Okay. Great. All right. That takes care of that. Hold on.

So the jury is ready. Do you want to take a five-minute break and we'll start sending them up?

MR. RAMANI: That will be great, Your Honor.

THE COURT: Be careful. They will be walking in the hallway coming up and everybody needs to clear the courtroom.

Do you know how we do the jury? We are going to line them up in order, numeric order, starting over here on the left, right? And then we will hand them the questions and then they'll -- if they circle an answer, we bring them back individually. We'll have no more than three people from each side in the back in the jury room.

MR. LoCASCIO: I have two questions.

THE COURT: Yeah.

MR. LoCASCIO: One is across both sides of the --

THE COURT: Yes.

MR. LoCASCIO: Thank you.

Second question is, they are in a randomized order?

THE COURT: They are not. So what happened is, they came in the building today, and then everybody who showed up and was checked in is randomized. By that, a computer program puts those people in a random order, right, if that makes sense. I guess it doesn't. It randomly puts them in an order is the way I would phrase it. So they now have a number.

You will be given a sheet that has their number and they will be seated, beginning over there on the first row on the left, usually it's 1 through 7, and then 8 through 14, et cetera. And then when they get to the back, then they come back up to the front.

So, for instance, the people that are in the courtroom, you can sit in, let's say, the back row of the right over there, unless we overflow and you'll be asked to step out into the hallway because we need to make room for the jurors.

MR. LoCASCIO: And the timing of the list that's now in the order of the jurors sitting in --

THE COURT: Should be up here any minute.

MR. LoCASCIO: Thank you, Your Honor, that was

the only question.

MR. RAMANI: One follow-on, Your Honor. Is it Your Honor's practice that Juror Number 1 is the foreperson?

THE COURT: Yes.

MR. RAMANI: Thank you.

MR. LoCASCIO: While we're on the jury questions, if I may.

THE COURT: Yeah.

MR. LoCASCIO: Is your practice, eight is the number, to sit four and four or to go across the front and then the back? Do you have a view or a preference? And the reason why I ask is because today I thought, okay, I think Mr. Ramani and I are probably going to stand around here at some point. And if it's four and four, I'm a lot less worried about the screen being blocked by my head then these seats --

THE COURT: It is a great question. It's a great question. It's never been asked.

MR. RAMANI: Could I suggest four and four, but they sit closer to the witness.

THE COURT: They always do. Now that I look at it, that's what we do, we do four and four. And we think this is spilling over to next week?

MR. RAMANI: Uh-huh.

THE COURT: Eight is enough, right?

MR. LoCASCIO: Eight is enough.

THE COURT: Right. So we'll do that, four and four. Now, by the way when we're in the back room, right, or let's say Number 1 doesn't answer "yes" to any question, they're in the box. They're Number 1. And then we sit the 14 in the box. And then you each get the three picks. Once we have 14, we're done.

MR. LoCASCIO: When you seat them in the box for challenges, 1 is here and we run to 7 and then 8 to 14.

THE COURT: Yes, we put 1 through 7 in the front row. And then after we excuse the six, we have everybody reconfigure so that they are 1 through 8, which is 1 through 4, 5 through 8.

MR. LoCASCIO: Thank you, Your Honor.

THE COURT: Okay. We should probably take...

Now they are coming up. Let's take a ten -- well, we should try to hustle. I would hustle. Use the restroom, though, because, you know, we will take a little bit of time. You're going to be given the sheets right now with the randomized order.

Thank you.

(Whereupon, a recess was taken.)

THE COURT: Please be seated.

Good morning, everyone.

PROSPECTIVE JURORS: Good morning.

THE COURT: I know it's a Monday, but you've got to do better than that, please.

Good morning.

PROSPECTIVE JURORS: Good morning.

THE COURT: All right. Good. Thank you.

I appreciate you being here, and I say that personally, but I also say it on behalf of the Court.

My name is Colm Connolly, and I'm the chief judge of this Court right now. So on behalf of the Court, I really do say thank you. You are performing a service for our community, our state, for our country, and for our Court, and we are grateful for that.

There are only three things that your federal government mandates that you do. Right? The government, generally, is telling you what you can't do through laws, but there's three occasions when a citizen is affirmatively required to do something. So one is to pay your taxes; two is to serve in the armed forces if you're conscripted; and three is to serve on a jury.

The right to a jury is enshrined in our constitution. It's very important. And it can be burdensome, and I know that. And I'm going to do everything I can to move this trial as fast as I can to

minimize the burden on you. And I'll talk about that more to the people that are selected to serve.

Now, the good news is people who actually serve on the juries, without exception in my experience as a judge, they enjoy it. And I know that sounds crazy to you probably, or at least a lot of you sitting there right now. You're thinking to yourself this is not going to be an interesting experience. And I am telling you it is. I have had hostile jurors sit in this box at the beginning of a trial only to tell me afterwards just how much they enjoyed the experience.

And this case is about patents. Both sides are suing each other for patent infringement. And you might say to yourself same thing, patents, how can that possibly be interesting, but I'm telling you it is. You would be really, really surprised, and I think the folks that are ultimately selected will, I'm confident, have that experience here.

So this case is captioned Magnolia Medical Technologies against Kurin. It's actually Magnolia Medical Technologies, Inc. against Kurin, Inc., and it's a patent infringement case filed by Magnolia against Kurin, and then there's a counterclaim, which is an allegation of patent infringement as well filed by Kurin against Magnolia.

All right. Now, this involves medical devices, medical devices that are used to reduce contamination in hospital blood draws. All right. I mentioned the plaintiff, and what we call the counterclaim defendant is Magnolia. And then the defendant, and what we also call the counterclaim plaintiff, is Kurin. All right?

And Magnolia contends that Kurin's product, which is called the Kurin Jet, infringes three of Magnolia's patents. Kurin contends that Magnolia's product, the Magnolia Steripath Micro, infringes one of Kurin's patents. All right?

I expect the trial to spill over into next week. I time trials. I give each side a certain amount of time. And the trial could last potentially, I guess, up to ten days, because the jury will be deliberating and I let the jury decide, once it deliberates, how long it takes.

I think it's more likely than not the case is probably over by Tuesday, maybe Wednesday next week. But you should plan that it could be up to two weeks. And we typically start at 8:30 in the morning and we end at 5:00. We have a lunch break. But, again, you will see I defer to the jury on a lot of this. We bring in lunches, and the juries, usually they only want 30 minutes for lunch because they want to get through it, and I will do that.

You will see that's what I do. And so I largely defer to the jury about when to start and when to take breaks.

All right. Now, what I'm going to do now is we're going to give out questionnaires to you. Oh, you've already got them? All right. Great.

You all have pens? Great.

Okay. Now, what we are going to do is, we try to move through jury selection really fast. So you have all been randomized by a computer and randomly put in an order. All right? And that's critical. You have got to keep your number. You have probably been told that.

All right. We are going to fill out these questionnaires. To make sure you answer them truthfully, I am going to have you sworn under oath and then I am going to read through the questions and if you answer yes to any question, you just circle it. All right?

And then privately we'll bring you back into the jury room, which is over there, individually and ask some follow-up questions to you. Okay? If you answer yes to any questions. If you don't answer yes, you know, I'm not going to bring you back. All right?

So, at this point, let's have the oath be administered. Would you all please rise.

(Jury panel sworn.)

THE COURT: All right. Please be seated.

All right. Now, one other thing. Do you all have your phones with you? Yes? Do people have phones?

PROSPECTIVE JUROR: Yes.

THE COURT: Oh, okay. So you can't use them. All right? And that's really, really important. I will tell you why at the end. But you cannot use your phones while we go through this process. So put them away and there will be some waiting while we bring the individual folks back to question them. So, you know, make small talk with your people next to you. It will kind of be like living in the world 20 years ago. You can't resort to the phone. You have got to talk to somebody. It's actually also an enjoyable experience, believe it or not. And we just can't have you doing any kind of research or communication with people on the phone. All right? That's really, really critical.

All right. So ready?

Question Number 1: Does the schedule that I described present any significant difficulties for you?

Two: Do you have any personal knowledge of this case or have you read or heard anything about this case other than what I've told you today?

Three: Have you or a member of your immediate family, such as a spouse, child, parent, or sibling, or a close friend -- and by close friend I mean really close

friend, like somebody like a family member -- ever worked for, owned stock in, or had a business relationship with any of the following: Magnolia Medical Technologies, Inc.; Kurin, Inc.; Ivera Medical Corp.; Bridge Medical, Inc.; Mission Medical Devices, Inc.?

Four: Have you or a member of your immediate family or a close friend had any experience with the products of any of those companies or otherwise had any strong feelings about any of these companies?

All right. Next I'm going to read you a list of the lawyers involved in the litigation. Wait until you see this list. All right, ready?

Davis Polk & Wardell LLP; Kirkland & Ellis LLP; Morris, Nichols, Arsht & Tunnell LLP; Richards, Layton & Finger, P.A.; X-Patents, APC; Elaine Andersen; Stuart Babcock; Sam Blake; Micah Block; Socrates Boutsikaris; Houston Brown; Ashley Cade; Katie Chang; Elazar Chertow; Kelly Farnan; Johnathan Hangartner; Ian Hogg; David Jiang; Gregg LoCascio; Joseph Lorenzini; Sean McEldowney; Matthew McIntee; Sara Metzler; Ashok Ramani; Anthony Raucci; Rodger Smith; Natalie Stoecklein; Kelly Tripathi; Serge Voronov; Keon Zemoudeh.

Do you know any of those attorneys or lawyers or law firms?

All right. Next: Have you, your immediate

family members, or any people close to you had any business dealings with or been employed by any of those attorneys or law firms?

I'm going to read you now a list of people who might appear as witnesses in the case. Again, same thing, see if you recognize any of these people. "Yes" if you do: Erik Antonsson, Kathryn Beal, Karen Becker, Joseph Bishop, Greg Bullington, Don Canal, Christine Chen, Charles Covington, Michael DelVacchio, Carrie Distler, Shan Gaw, Robert Gerberich, Matt Heindel, Tamara Johnson, Carl Meinhart, Jay Miazga, Brian Napper, Kevin Nason, Bradley Nelson, Abby Norfleet, Richard Patton, Timothy Ramsey, Bob Rogers, Matthew Stuckert.

All right. So if you know any of those people, put a check next to them.

All right. Next: Have you ever been educated, employed, trained, or had any experience in any of the following fields: Nursing, healthcare, medicine, medical or surgical devices or products, manufacturing, engineering, law, patents, accounting, or economics?

Next: Does any member of your immediate family or anyone else close to you work in the legal profession in any capacity?

Next: Do you have any strong beliefs or feelings about companies that manufacture medical devices?

Next: Have you or a member of your immediate family or a close friend ever been tested for or diagnosed with a blood infection such as sepsis?

Next: During this trial you may be shown images or videos of blood being drawn. Would seeing such images or videos make you anxious or uncomfortable?

Next: Do you have any strong opinions about patents, patent rights, or the United States Patent and Trademark Office?

Next: Have you or a member of your immediate family or a close friend ever had any experience with patents, patent law, patent license, or a dispute about patent rights?

Next: Have you or a member of your immediate family or a close friend ever been employed by or had any experience with the United States Patent and Trademark Office?

Do you believe that patents discourage innovation and technology development?

Have you ever been involved in the development or invention of a new product or process at a company?

Have you ever been a plaintiff, a defendant, or a witness in a civil lawsuit?

Have you ever served as a juror in a lawsuit?

Have you ever served as the foreperson on a

jury?

Do you have any strong opinions or feelings about companies that bring lawsuits against competing companies in the same market?

Do you believe that there should be few or no limitations on what companies can do to compete with other companies in the same market?

Do you believe generally that there are too many civil lawsuits these days?

Do you have any strong opinions or feelings about the amount of monetary damages that juries award in lawsuits?

Do you have any strong opinions or feelings about whether there should be a cap or limit on the amount of monetary damages that juries are allowed to award in lawsuits?

Have you or a member of your immediate family or a close friend ever had any experience with the legal system that might keep you from being a fair and impartial juror?

Do you have any health conditions such as poor vision or difficulty hearing, or other reasons such as difficulty understanding spoken or written English that would make it difficult for you to serve on this jury?

Do you know any other jurors sitting next to

you today?

If you are selected as a juror, are you aware of any reason why you would not be able to follow the law as I give you?

And are you aware of any reason why you would be unable to render a verdict based solely on the evidence presented at trial?

Do you know of any other matter which you believe should be called to the Court's attention as having some bearing on your qualifications or ability to sit as a juror or which you think may prevent you from rendering a fair and impartial verdict based solely on the evidence and my instructions as to the law?

All right. So now we're going to leave the room. You are going to be here. Again, no phones, and please, just if you could be patient, I will go through this as fast as I can so that I can excuse you, those who are not selected, so that you can be on your way. All right? I'll talk to you briefly then when we get back.

Again, don't talk about the case, talk about the great weather we have outside, and then we'll come back and we'll meet you soon. Thank you.

(The following takes place in the conference room:

THE COURT: While we're waiting, a couple of

jury notebook questions...

All right. We will deal with them at the next break. Let's bring them in.

Go ahead, Katie.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 3.

THE COURT: Okay. Thank you.

Hi, good morning. How are you?

PROSPECTIVE JUROR: I'm good. How are you?

THE COURT: Good, thanks. Where did you drive in from?

PROSPECTIVE JUROR: I was dropped off.

THE COURT: Oh. But, I mean, whereabouts?

PROSPECTIVE JUROR: Wilmington.

THE COURT: Wilmington? Okay. So not that bad of a drive.

PROSPECTIVE JUROR: No.

THE COURT: All right. Good. Well, you answered "yes" to a question.

PROSPECTIVE JUROR: Yes.

THE COURT: At least one question.

PROSPECTIVE JUROR: Number 11.

THE COURT: Okay. All right. I don't want to go into too many details, but do you want to give me -- I guess, is there any reason that being tested might affect

you in terms of evaluating the evidence here in this case?

PROSPECTIVE JUROR: No.

THE COURT: No?

PROSPECTIVE JUROR: No.

THE COURT: Can you tell me this? And by the way, my wife was septic and almost died so I have been through it.

PROSPECTIVE JUROR: Yes.

THE COURT: Was it that kind of serious thing?

PROSPECTIVE JUROR: Yeah, it was my aunt.

THE COURT: Your aunt. Okay.

And so was she hospitalized for instance?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Yeah, okay.

PROSPECTIVE JUROR: And she lost her job.

THE COURT: Oh, I'm sorry. Okay.

Were there any other questions you answered "yes" to?

PROSPECTIVE JUROR: Fourteen, my uncle has several patents.

THE COURT: Okay. What does he do?

PROSPECTIVE JUROR: Works for DuPont.

THE COURT: Oh, that's pretty neat. Do you know in what field?

PROSPECTIVE JUROR: No.

THE COURT: No? Have you ever talked to him about it?

PROSPECTIVE JUROR: Not really.

THE COURT: No? Is he still with DuPont?

PROSPECTIVE JUROR: He's trying to retire.

THE COURT: Oh, okay.

Was he an engineer or a scientist or something?

PROSPECTIVE JUROR: Something like that.

THE COURT: Yeah.

PROSPECTIVE JUROR: And he worked just like between here and Alabama. He was always back and forth, so not really sure --

THE COURT: Oh, okay.

PROSPECTIVE JUROR: -- exactly what he does.

THE COURT: Was he ever involved in a patent suit or, like, an infringement case or anything like that?

PROSPECTIVE JUROR: Not that I am aware of.

THE COURT: No? Okay. Did you answer "yes" to anything else?

PROSPECTIVE JUROR: Just saying has your member been employed or had experience with the patent clerk, so I just said "yes" since he has patents, so I figured he had experience with that, that's all.

THE COURT: Got you.

PROSPECTIVE JUROR: But that's all.

THE COURT: That's it?

PROSPECTIVE JUROR: Uh-huh.

THE COURT: Any of you all have any questions?

MR. RAMANI: None here, Your Honor.

THE COURT: No?

MR. LoCASCIO: No, Your Honor.

THE COURT: Thanks very much.

PROSPECTIVE JUROR: You're welcome.

THE COURT: Do you want to just step outside for a second?

PROSPECTIVE JUROR: Okay.

THE COURT: Thank you.

(The prospective juror exits the conference room.)

THE COURT: Any objections?

MR. RAMANI: No.

MR. LoCASCIO: No.

THE COURT: Okay.

Jury books, the witness individual pictures, I would not like to put them in right now, and then what I would propose is at the end of the case, you just do an array of witnesses as opposed to a book, we have individual pictures.

Will that work?

MR. RAMANI: It's fine with us, Your Honor.

MR. LoCASCIO: It's fine with us.

So those blank papers are notes submitted at the end.

We'll just give a photo set of every one?

THE COURT: If you want. I think they generally like that.

MR. RAMANI: No objection. We can work on that.

MR. LoCASCIO: That's fine.

THE COURT: Then the last thing is the claim construction, which I think we just pulled the two sheets that I have the "i.e.s," right?

THE CLERK: Juror Number 4.

(The prospective juror enters conference room.)

THE COURT: Good morning. Have a seat. Thank you.

How are you?

PROSPECTIVE JUROR: Good.

THE COURT: Where did you drive in from today?

PROSPECTIVE JUROR: A little bit north of Rehoboth.

THE COURT: How was the drive in?

PROSPECTIVE JUROR: It was fine. I left early enough, two hours.

THE COURT: That's pretty good.

So you answered "yes" to at least one question?

PROSPECTIVE JUROR: Yes.

THE COURT: Tell me about it.

PROSPECTIVE JUROR: The -- I have a background in medicine. So I have my doctorate in physical therapy. I worked in the hospital system.

THE COURT: That's great.

Where did you get that?

PROSPECTIVE JUROR: University of the Sciences in Philadelphia. And my best friend is a district attorney in Maryland.

THE COURT: Okay.

Anybody have any follow-up questions?

MR. RAMANI: Not from us, Your Honor.

MR. LoCASCIO: No.

THE COURT: Okay.

Anything? Then you are good. There is nothing about being, with that background, PhD, that would make you unable to be fair and impartial, right?

PROSPECTIVE JUROR: Right.

THE COURT: Thank you very much.

PROSPECTIVE JUROR: That's it.

(The prospective juror exits the conference room.)

THE COURT: Off the record.

(A discussion was held off the record.)

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 5.

THE COURT: Come on in.

How are you?

PROSPECTIVE JUROR: Good morning.

THE COURT: Where did you drive in from?

PROSPECTIVE JUROR: Lewes.

THE COURT: How was it?

PROSPECTIVE JUROR: It was good. Wasn't bad.

THE COURT: That's good.

What did you answer "yes" to?

PROSPECTIVE JUROR: We have a trip planned for the end of this week, on Friday.

THE COURT: Where are you going?

PROSPECTIVE JUROR: We are going to Kiawah in South Carolina.

THE COURT: Have you been there before?

PROSPECTIVE JUROR: Yes, we have.

THE COURT: My brother has a place there. It's pretty nice.

PROSPECTIVE JUROR: It is pretty nice.

THE COURT: Is it the kind of place -- like, do you own a place and you may have a little bit of flexibility or is this like a vacation?

PROSPECTIVE JUROR: So it is a vacation. My husband is running a marathon down there.

THE COURT: Okay. All right. Well, we will excuse you.

So just do me a favor. Go back to where you were sitting. Don't say anything yet about why. Good luck in the marathon.

PROSPECTIVE JUROR: Thank you so much. Appreciate it. Best of luck in the suit.

THE COURT: Thank you very much.

(The prospective juror exits the conference room.)

THE COURT: Go off.

(A discussion was held off the record.)

THE CLERK: Juror Number 6.

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: Good.

How are you doing?

THE COURT: All right.

Where did you drive in from?

PROSPECTIVE JUROR: Newark, Delaware.

THE COURT: Traffic good, bad?

PROSPECTIVE JUROR: It was good.

THE COURT: That's good. Well, you answered "yes" to something.

PROSPECTIVE JUROR: Yes.

THE COURT: Tell me.

PROSPECTIVE JUROR: I am a single person with a single income, so it is an extreme financial hardship for me to not be at work.

THE COURT: What do you do?

PROSPECTIVE JUROR: Drive a school bus.

THE COURT: You don't get paid if you don't drive?

PROSPECTIVE JUROR: That's right. No paid time off.

THE COURT: None?

PROSPECTIVE JUROR: None.

THE COURT: Where do you drive? What district?

PROSPECTIVE JUROR: I drive for multiple districts. Mainly field trips and sports, mainly out of Salesianum, Delaware Military Academy.

THE COURT: Here's what I'm going to do -- anything else you answered "yes" to?

PROSPECTIVE JUROR: Yes.

THE COURT: What else?

PROSPECTIVE JUROR: I've been -- myself and my mother have been personally represented by Richards, Layton & Finger.

THE COURT: Oh, really? What kind of case?

PROSPECTIVE JUROR: Civil lawsuits.

THE COURT: You were represented by them?

PROSPECTIVE JUROR: Yes.

THE COURT: You happy with their representation?

PROSPECTIVE JUROR: Yes.

THE COURT: Did you recognize any of the lawyers in the room?

PROSPECTIVE JUROR: No.

THE COURT: Okay. All right. Well, look, I'm going to try to excuse you. I'm pretty confident I will be able to, but I have to see what else everybody else does.

Any other questions?

PROSPECTIVE JUROR: Yeah.

THE COURT: Sorry about that. Go ahead.

Did you circle every question?

PROSPECTIVE JUROR: Quite a few.

I have criminal justice major from the University of Delaware.

THE COURT: Okay.

PROSPECTIVE JUROR: I have been in a civil lawsuit.

THE COURT: In what way? Suing somebody?

Oh, you said you were represented by Richards.

Did it go to trial?

PROSPECTIVE JUROR: Mine didn't. I don't think my mother's did either. Both settled. Too many civil lawsuits.

THE COURT: You think so?

PROSPECTIVE JUROR: Yes.

THE COURT: Really? You serious?

PROSPECTIVE JUROR: Dead serious.

Way too many high, like, monetary damages and awards, kind of thing.

THE COURT: Right.

PROSPECTIVE JUROR: Limiting monetary damages.

THE COURT: You'd like to see that?

PROSPECTIVE JUROR: Yeah.

I think I'm, you know, influenced by the representation of a law firm being represented in the case.

THE COURT: You think you'd give, what, more credit to the side represented by Richards?

PROSPECTIVE JUROR: Yeah, yeah.

THE COURT: Really? All right.

PROSPECTIVE JUROR: That's it.

THE COURT: I am just going to have you have a seat. I am pretty sure you will be excused, but we just need to go through everybody else. Thanks very much.

You can go back to your seat in the audience.

(The prospective juror exits the conference room.)

THE COURT: I am going to excuse the witness -- or the juror, rather.

MS. FARNAN: I wish you asked what kind of lawsuit.

THE COURT: If he had said he hated Richards.

MR. LoCASCIO: It didn't seem like -- my hunch was we shouldn't spend the time on it because you were going to excuse him, and I did have the same question. I was curious as to what the civil lawsuits were. That would typically be the followup on that.

THE COURT: I know I was curious. He is a school bus driver.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 7.

THE COURT: Good morning.

Where did you drive in from?

PROSPECTIVE JUROR: Bethany Beach.

THE COURT: How was the traffic?

PROSPECTIVE JUROR: I came up last night.

THE COURT: Thank you for doing that.

You answered "yes" to at least one question?

PROSPECTIVE JUROR: I did.

THE COURT: Tell me about that.

PROSPECTIVE JUROR: My son worked for Richards,

Layton & Finger for about a year after law school.

THE COURT: Really? As a lawyer?

PROSPECTIVE JUROR: Well, he didn't pass the bar in Delaware, so he's a Maryland lawyer working for legal aid.

THE COURT: Oh. Anything about that experience that would make you view Richards in either a good or positive light, or negative light, even?

PROSPECTIVE JUROR: No, no. I mean, they were very good to him.

THE COURT: Did you recognize any of the lawyers in the room?

PROSPECTIVE JUROR: I did not.

I also worked for about five years for DuPont in their legal department.

THE COURT: Okay. Who did you work with?

PROSPECTIVE JUROR: We're talking late '90s, early 2000s, but I remember looking up patent information for them as a records analyst.

THE COURT: Okay.

PROSPECTIVE JUROR: So. I think that -- I'm trying to remember any other yeses I had. I am also a grandmother providing transportation for my grandchildren down state, so this is bit of a problem.

THE COURT: Well, let me look after that. I

get that, right? But, I mean, on the other hand, we really need people to serve.

PROSPECTIVE JUROR: They can work around it.

THE COURT: They can work for a week and a half, right?

PROSPECTIVE JUROR: They can work around it.

THE COURT: That would be great.

Anything else?

PROSPECTIVE JUROR: I don't think so.

THE COURT: You think can you be fair and impartial?

PROSPECTIVE JUROR: I think I probably could.

THE COURT: Thanks. Want to step outside?

Any questions to follow up?

MR. LoCASCIO: I just had one.

You said you, in your job at DuPont, you were looking up patent information.

If you have any recollection -- so what were you doing with those, if anything?

PROSPECTIVE JUROR: I dealt with their contracts. So, you know, whenever a contract would come in for a product or something, I was looking up patent information for them.

MR. LoCASCIO: Thank you.

MR. RAMANI: No questions, Your Honor.

THE COURT: Thanks very much.

PROSPECTIVE JUROR: Thanks.

(The prospective juror exits the conference room.)

THE COURT: Put her in the box, right?

MR. RAMANI: No objection.

THE COURT: What are we up to?

MR. RAMANI: Eight.

THE COURT: Eight people?

MR. RAMANI: That was seven. Oh, in the box, six.

THE COURT: Six in the box?

MR. LoCASCIO: Five in the box.

THE COURT: Five in the box.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 8.

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: Good.

THE COURT: Good. Where did you drive in from?

PROSPECTIVE JUROR: From work.

THE COURT: I mean, like, how far away?

PROSPECTIVE JUROR: Just down Newark by the hospital.

THE COURT: Okay. What was the traffic like

coming in?

PROSPECTIVE JUROR: It was fine. I mean, I made the mistake of taking 95 when I should have just come up Maryland Avenue.

THE COURT: Oh, I got you.

PROSPECTIVE JUROR: It was fine, just that stupid median that they put in there at the split.

THE COURT: Yes. What did you answer "yes" to?

PROSPECTIVE JUROR: Friend of mine used to work at Richards, Layton & Finger.

THE COURT: Okay. What did your friend do?

MR. LoCASCIO: He was a lawyer there.

THE COURT: What was his name?

PROSPECTIVE JUROR: Steven Ferguson.

THE COURT: Okay. And did --

PROSPECTIVE JUROR: He hasn't been there for a good while.

THE COURT: Anything he said about it would make you think either well or poorly of Richards?

PROSPECTIVE JUROR: No.

THE COURT: All right. Anything else you answered?

PROSPECTIVE JUROR: I mean, in college, I worked in a plastics manufacturing plant.

THE COURT: Okay. All right.

PROSPECTIVE JUROR: They manufactured, like, urinal containers and like mini M&M canisters.

THE COURT: Was it in Delaware?

PROSPECTIVE JUROR: No, this was down in Auburn, Alabama.

THE COURT: Oh, okay. Interesting.

PROSPECTIVE JUROR: Let's see. Yes. My best friend is a lawyer. Different friend.

THE COURT: Okay. With a firm here in Delaware?

PROSPECTIVE JUROR: Yes, he just -- yes. I don't recall the name of it. It's none of the ones named. He was a buyer for a long time.

THE COURT: Is he a patent lawyer or she a patent lawyer?

PROSPECTIVE JUROR: No. He's corporate law.

THE COURT: Okay.

Anything else?

PROSPECTIVE JUROR: To Number 11, sepsis.

THE COURT: Yes.

PROSPECTIVE JUROR: Yes. I had two very close relatives pass away from sepsis in 2022.

THE COURT: Wow.

PROSPECTIVE JUROR: About a week apart.

THE COURT: So my wife was in ICU many days

with it. Terrible thing.

PROSPECTIVE JUROR: Uh-huh. You have to act fast.

THE COURT: Yes. So this case is about both sides are in the business of making devices that withdraw blood and trying to withdraw blood without -- take samples without contamination. Anything about the fact that you had that would make you unable to be fair and impartial or to just sit and hear the evidence?

PROSPECTIVE JUROR: No, I mean, how their sepsis came to be was quite a different situation, not involved to -- not tied to any medical devices or anything like that. Just kind of failing health that didn't go and get attention soon enough.

THE COURT: I see. All right.

PROSPECTIVE JUROR: I believe that was the last one I answered "yes" to.

THE COURT: All right. Any follow-up questions?

MR. RAMANI: No, Your Honor.

MR. LoCASCIO: No, Your Honor.

THE COURT: All right. Thanks very much.

PROSPECTIVE JUROR: Thank you guys.

(The prospective juror exits the conference room.)

THE CLERK: Juror Number 10.

PROSPECTIVE JUROR: Hi.

THE COURT: Good morning. How are you?

PROSPECTIVE JUROR: Good.

THE COURT: How was the drive in?

PROSPECTIVE JUROR: Good.

THE COURT: Where did you come from?

PROSPECTIVE JUROR: Middletown.

THE COURT: Good. No traffic?

PROSPECTIVE JUROR: Well, you know.

THE COURT: Not bad?

PROSPECTIVE JUROR: No.

THE COURT: All right. What did you answer "yes" to.

PROSPECTIVE JUROR: I just am familiar with Richards, Layton & Finger.

THE COURT: Okay.

PROSPECTIVE JUROR: I used to work for a retirement planning firm, so that's the only "yes," I have.

THE COURT: All right. Any feelings, good or bad, about them that would make you unable to be fair and impartial?

PROSPECTIVE JUROR: No.

THE COURT: That's it?

PROSPECTIVE JUROR: Yep.

THE COURT: Any questions?

MR. LoCASCIO: No, Your Honor.

MR. RAMANI: No.

THE COURT: Thanks very much.

PROSPECTIVE JUROR: Thank you.

(The prospective juror exits the conference room.)

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 11.

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: I am well. And yourself?

THE COURT: Actually hanging in there. Doing well.

How was your drive in? Where did you come from?

PROSPECTIVE JUROR: Newark. I'm not far.

THE COURT: Okay. Traffic was all right?

PROSPECTIVE JUROR: Yeah.

THE COURT: Well, good.

PROSPECTIVE JUROR: There's lots of ways to get here from there. That's not a problem.

THE COURT: All right. Is there a problem?

PROSPECTIVE JUROR: Well, I answered "yes" because I am an educator in a Title I school, and it's

difficult to get substitutes to come in, especially in a Title I school. So for two weeks, potentially -- there was no sub for me for today. So, that's one.

THE COURT: Okay.

Where is the school?

PROSPECTIVE JUROR: It is Forest Oak in Wilmington, so part of Red Clay.

THE COURT: Okay.

PROSPECTIVE JUROR: The other one was, yes, I have worked at Minnesota Eye Consultants. It is -- was -- well, still is -- it was about 26 years ago. They were the teaching team of surgeons for the University of Minnesota. And while I was there, Dr. Chew did create and patent a surgical implement. I mean it was a surgical tool. Sorry. It was 26 years ago, but I -- at that time, that's what I did.

THE COURT: Gotcha.

PROSPECTIVE JUROR: Those were the two.

THE COURT: So with this Title I, so, I mean, you're telling me that would really, really be a problem?

PROSPECTIVE JUROR: It's a -- Title I schools are low income and behavior problem schools.

THE COURT: Right.

PROSPECTIVE JUROR: And so substitutes purposely don't go there. So me not being there for

two weeks, I mean, there's potential for there to be an issue with not having enough staff.

THE COURT: Okay. Have you ever served on a jury? You have never served on a jury before?

PROSPECTIVE JUROR: No, I have not.

THE COURT: Yeah. Okay.

PROSPECTIVE JUROR: Most of the time it was because I was serving in the military and was not available.

THE COURT: All right. So I'm virtually positive I can excuse you, but I need to go through everybody else first. So I'd like you to just go back to your seat. Don't say anything about that and let's see what happens.

PROSPECTIVE JUROR: All right.

THE COURT: I'm pretty confident you'll be excused.

PROSPECTIVE JUROR: Okay. Thank you.

(The prospective juror exits the conference room.)

THE COURT: Anything?

MR. LoCASCIO: I mean, I think she should be excused. You forget, too, our conversation about what we see in the news and what we know. The idea that, like, there's a classroom with no teacher in it, like...

THE COURT: The reason why I was a little

surprised is because we got a bunch of requests last week. Normally that is the one you get a request for. And so that was a little different. But, actually, I have a son in Chicago who works in a school like that. I mean, they can't get a teacher full time, let alone a substitute.

THE CLERK: Juror Number 12.

(The prospective juror enters the conference room.)

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: All right.

THE COURT: Where did you drive in from?

PROSPECTIVE JUROR: Wilmington.

THE COURT: Okay. So no traffic?

PROSPECTIVE JUROR: No traffic. I was at work.

THE COURT: Oh, you were at work already? Wow. What kind of work, what do you do?

PROSPECTIVE JUROR: I am a warden at Plummer Community Corrections.

THE COURT: Oh, okay. Interesting.

So what did you answer "yes" to.

PROSPECTIVE JUROR: To law.

THE COURT: Okay.

PROSPECTIVE JUROR: I was a witness about 15 years in a civil suit.

THE COURT: You were a witness to it? What kind of case was it?

PROSPECTIVE JUROR: It was dealing with the state individual.

THE COURT: Okay.

PROSPECTIVE JUROR: That's all. I was a witness. That's it.

THE COURT: Gotcha.

PROSPECTIVE JUROR: Oh, and I do know a juror.

THE COURT: You do? Really?

PROSPECTIVE JUROR: We went to school together, Tanishia Manlove.

THE COURT: Has she been in?

MR. RAMANI: Yes.

THE CLERK: Yes, she's seated.

THE COURT: Okay. So you know somebody. How well do you know them?

PROSPECTIVE JUROR: Not well. I mean, we don't talk every day or nothing like that.

THE COURT: But you recognize her?

PROSPECTIVE JUROR: Yes.

THE COURT: All right. You ever been to her house?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Has she ever been to your

house?

PROSPECTIVE JUROR: No.

THE COURT: Okay. You don't dislike her, do you?

PROSPECTIVE JUROR: No.

THE COURT: Okay. Any follow-up questions?

MR. RAMANI: None here, Your Honor.

MR. LoCASCIO: No, Your Honor.

THE COURT: All right. Thanks very much.

PROSPECTIVE JUROR: Thank you.

(The prospective juror exits the conference room.)

THE COURT: That's a first. Have either of you had that?

MR. LoCASCIO: Had it in the venire. I've never had that somebody said, oh, I know somebody, and they're like Juror Number 46 or something.

THE COURT: Uh-huh.

MR. RAMANI: I just had it last April.

THE COURT: Did you really? And did they end up serving together?

MR. RAMANI: They didn't.

THE COURT: Oh, okay.

MR. RAMANI: Because we struck them.

THE COURT: Both of them?

MR. RAMANI: Yes. For different reasons. And

maybe that's what --

THE COURT: That's a very interesting call for the jury.

MR. LoCASCIO: Yeah, because, I mean, everybody doesn't come to the room sort of new to each other.

THE COURT: Yep. Yeah. That's wild.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 13.

THE COURT: All right. Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: I'm okay.

THE COURT: All right. Just okay?

PROSPECTIVE JUROR: I'm great. I'm good. Happy to be here.

THE COURT: Well, that's good. Where did you drive in from?

PROSPECTIVE JUROR: I have no driver's license.

THE COURT: Okay.

PROSPECTIVE JUROR: I paid a friend to give me a ride here this morning.

THE COURT: Really?

PROSPECTIVE JUROR: Yes.

THE COURT: What was the traffic like?

PROSPECTIVE JUROR: Awful.

THE COURT: Oh, really?

PROSPECTIVE JUROR: Yeah. I got picked up at 7:30, and I came in early because I'd rather be early for federal court than not.

THE COURT: Well, that's a good idea.

PROSPECTIVE JUROR: Yes.

THE COURT: And where were you picked up? Like what town?

PROSPECTIVE JUROR: I got picked up in Christiana.

THE COURT: Okay.

PROSPECTIVE JUROR: By the firehouse is where I live. Like right next to it.

THE COURT: Okay.

PROSPECTIVE JUROR: Yes.

THE COURT: Well, you answered "yes" to a question?

PROSPECTIVE JUROR: I answered "yes" to a couple of questions.

THE COURT: Okay.

PROSPECTIVE JUROR: The first question, because of significant difficulties. I have been accosted on the DART bus, and I ride it with protection. And I don't think I can come to court with pepper spray in my pocket to leave and get back on the DART bus after jury duty.

THE COURT: Yeah, gotcha.

PROSPECTIVE JUROR: And that concerns me because I've been -- like someone's exposed himself to me on the bus. Like I have had experiences.

THE COURT: Right.

PROSPECTIVE JUROR: And I'm grateful I wasn't personally attacked but I like to keep pepper spray on me.

THE COURT: Yeah. Right.

PROSPECTIVE JUROR: And I have problems with the medical industry as a whole. My father was crippled by a doctor and we sued him successfully and got a settlement for that. And I have read -- my father also did 16 years in prison and I read his paperwork after he died because he kept it all and if he didn't take a plea agreement from his lawyer who knew he was dyslexic, he probably could have beat that charge. And he did 16 years for that because he was dyslexic and didn't know what to do. And I dealt with his trauma from that as a child growing up with my father had PTSD from being in prison for 16 years.

THE COURT: Right.

PROSPECTIVE JUROR: And I just have -- I have some issues.

THE COURT: Yeah, no, no.

PROSPECTIVE JUROR: You know what I'm saying?

THE COURT: No, I get it.

PROSPECTIVE JUROR: But I wanted to be -- I want to be fair.

THE COURT: Right.

PROSPECTIVE JUROR: And I generally don't believe I would be a fair juror in this trial specifically.

THE COURT: Okay. All right. So I am going to excuse you. Now, what I'd like you to do is go back to your seat but just don't say anything to anybody about being excused. All right?

PROSPECTIVE JUROR: I won't say nothing to no one, sir.

THE COURT: And I hope you have a good ride home somehow. All right?

PROSPECTIVE JUROR: Thank you very much.

THE COURT: All right.

PROSPECTIVE JUROR: Hopefully -- not hopefully, but I will serve when I can.

THE COURT: That would be good.

All right. Take care.

PROSPECTIVE JUROR: Thank you so much.

THE COURT: Thanks so much. Bye-bye.

(The prospective juror exits the conference room.)

THE COURT: Any objections? I just think that

she's obviously demonstrating anxiety, would not be good for her.

MR. RAMANI: No objection.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: All right.

MR. RAMANI: What is the dark bus? Is it --

THE COURT: DART.

(A discussion was held off the record.)

THE COURT: Why don't we do that. Assuming we've excused all of them, what do we have?

MR. LoCASCIO: We have nine so far.

THE COURT: We have nine so far? So we only need five more. And what number are we on?

MR. RAMANI: Fourteen.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 15.

THE COURT: All right. Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you?

PROSPECTIVE JUROR: Good. How about you?

THE COURT: All right. Doing fine.

PROSPECTIVE JUROR: Good.

THE COURT: How was the drive in?

PROSPECTIVE JUROR: It was good.

THE COURT: Yeah?

PROSPECTIVE JUROR: Coming from DC, actually.

THE COURT: DC?

PROSPECTIVE JUROR: I'm from Bethany, Millville area, so.

THE COURT: I see.

PROSPECTIVE JUROR: Yeah.

THE COURT: Okay. So what, did you take a train up?

PROSPECTIVE JUROR: I drove.

THE COURT: Okay.

PROSPECTIVE JUROR: Yep, a little bit, but it's been good.

THE COURT: All right. Well, that's good.

PROSPECTIVE JUROR: Yeah.

THE COURT: Well, you answered "yes" to a question.

PROSPECTIVE JUROR: Yep.

THE COURT: At least one.

PROSPECTIVE JUROR: Two of them. Just two.

THE COURT: Okay. Tell me them.

PROSPECTIVE JUROR: Number 8, ever been educated, employed, trained, or had any experience in any of the fields. I was employed by a law firm during college.

THE COURT: Okay. Here in Delaware?

PROSPECTIVE JUROR: No. It was -- I went to college in Utah.

THE COURT: Okay.

PROSPECTIVE JUROR: But, yeah, law is obviously a passion of mine. Studying for law school as we speak right now.

THE COURT: Oh, really?

PROSPECTIVE JUROR: Yeah, yeah.

THE COURT: All right. Good for you.

PROSPECTIVE JUROR: But, yeah, I was employed by a law firm.

THE COURT: What was the name of the firm out there?

PROSPECTIVE JUROR: MacArthur, Heder & Metler.

THE COURT: Okay. Was it in Salt Lake? Where was it?

PROSPECTIVE JUROR: It was in Orem.

THE COURT: Okay.

PROSPECTIVE JUROR: Orem, Utah. Just south of Salt Lake.

THE COURT: Good experience? Bad experience?

PROSPECTIVE JUROR: Yeah, great experience. Definitely set me on the path to --

(Speaking simultaneously.)

THE COURT: What you are doing?

What kind of law did they practice? Do they do patent -- particularly, do they do patent stuff?

PROSPECTIVE JUROR: Not that I recall. It was mainly family law, personal injury, estates, wills, things of that nature.

THE COURT: Got you. Okay.

And then you answered a question to something else?

PROSPECTIVE JUROR: Oh, yeah. Number 9. My brother is a lawyer, as well as, you know, I work in Congress. I work for the House of Representatives.

THE COURT: All right. Who do you work for? Do you work for Delaware's representative?

PROSPECTIVE JUROR: No.

THE COURT: No?

PROSPECTIVE JUROR: Scott Fitzgerald, a member of -- from Wisconsin.

THE COURT: Oh, okay.

PROSPECTIVE JUROR: But, so I don't know if you consider that the legal profession. I mean, we write law, or soon-to-be law. And that's what my dad did as well.

THE COURT: I don't think they write law anymore, but anyway. That's an aside.

So, wait, this is wild. You're from -- you're working in Utah, go to college in Utah?

PROSPECTIVE JUROR: I'm from here.

THE COURT: Oh, you are from here?

PROSPECTIVE JUROR: I'm from here, yeah.

THE COURT: You are? Okay. I see.

PROSPECTIVE JUROR: Yeah, yeah. From here. Yeah, Delaware is home, yep.

THE COURT: All right. So are you commuting to DC?

PROSPECTIVE JUROR: I have a weird living situation right now.

THE COURT: Okay.

PROSPECTIVE JUROR: But I just graduated, like, last year.

THE COURT: Oh, I see.

PROSPECTIVE JUROR: So this is my first year out here.

THE COURT: Got you.

PROSPECTIVE JUROR: Yeah, I've been kind of all over the place.

THE COURT: All right. Anything else?

PROSPECTIVE JUROR: That's it.

THE COURT: Any follow-ups?

MR. RAMANI: Would you have to drive back and forth every day from DC to attend?

PROSPECTIVE JUROR: If I was on the jury, I

would probably just go home to Bethany.

THE COURT: They can also get a hotel. Would you stay in a hotel here?

PROSPECTIVE JUROR: Yeah, that could work, you know.

THE COURT: Okay. All right. So we can do that.

PROSPECTIVE JUROR: Perfect.

MR. LoCASCIO: No questions.

THE COURT: All right. Thanks very much.

PROSPECTIVE JUROR: Thank you so much.

THE COURT: Good luck with the law prep.

PROSPECTIVE JUROR: I appreciate it. Thank you.

(The prospective juror exits the conference room.)

(A discussion was held off the record.)

MR. RAMANI: You wanted to excuse Number 11?

MR. LoCASCIO: Yeah. Anybody he said he might --

THE COURT: Yeah. I forget what her --

MR. LoCASCIO: She was the teacher, the Title --

THE COURT: Oh, Title I.

MR. LoCASCIO: Title I school.

THE COURT: Definitely. Oh, yeah, definitely.

I know we excused two jurors already because of that last week.

THE CLERK: Juror Number 16.

(The prospective juror enters the conference room.)

THE COURT: Good morning. How are you?

PROSPECTIVE JUROR: Good. How are you?

THE COURT: I'm good. Have a seat. How was the drive in?

PROSPECTIVE JUROR: Oh, it was not bad.

THE COURT: Yeah? Where did you come from?

PROSPECTIVE JUROR: Milford.

THE COURT: Oh. All right. How long did it take you?

PROSPECTIVE JUROR: About an hour and 15 minutes.

THE COURT: Okay. All right. Well, you answered "yes" to a question?

PROSPECTIVE JUROR: First question. I am the on-call investigator for a division of professional regulation this week, and they've never scheduled anybody else, so that's my only real hangup with scheduling.

THE COURT: This week? It's for the office of what?

PROSPECTIVE JUROR: Professional regulation.

THE COURT: What does that do?

PROSPECTIVE JUROR: For the Department of State. So anybody that's licensed as far as doctors, plumbers, anything, goes through our office, and the investigators, whenever they get a complaint on said individuals, we investigate.

THE COURT: That's interesting. I didn't know about that.

So you are the only one on call this week?

PROSPECTIVE JUROR: I'm on call this week.

THE COURT: You are here today, so what's happening there?

PROSPECTIVE JUROR: My phone is on silent, but...

THE COURT: You didn't talk on the phone, right?

PROSPECTIVE JUROR: No.

THE COURT: I'm teasing you. Okay.

How burdensome is this?

PROSPECTIVE JUROR: I'm going to talk to my supervisor afterwards if I am chosen, and see if there's anything that they can -- if they can move to another investigator or something. As of right now, customers are kind of just waiting to hear an answer, so...

THE COURT: These customers, give me an example of a customer.

PROSPECTIVE JUROR: So before I got into your quarters, there was a message -- we get invoices from our call center. One of them is trying to figure out what is going on with an investigation that is currently pending for about two months. It's a nursing case, and they filed a complaint against the nurse so they want to know what's going on. But those are those little things.

THE COURT: You are doing an investigation, whether it is a nurse or a plumber or a doctor? Would you do it for doctors, too?

PROSPECTIVE JUROR: Yes.

THE COURT: How about have you ever done it for any Christiana stuff, anything down in Christiana hospital?

PROSPECTIVE JUROR: Yes.

THE COURT: Anything to do with medical devices? You ever have an investigation on that?

PROSPECTIVE JUROR: Yes. My first case was a dual pacemaker, dual-read pacemaker.

THE COURT: What was the result of the investigation?

PROSPECTIVE JUROR: The investigation ended up -- it's at the AG's office currently, so I haven't heard the outcome of it.

THE COURT: Any questions?

MR. RAMANI: No, Your Honor.

MR. LoCASCIO: It's been buzzing -- your phone buzzes? Just as a sense for how many times has it buzzed today?

PROSPECTIVE JUROR: Well, it is on silent.

MR. LoCASCIO: We are not shaming for the phone buzzing. I was more curious as to --

THE COURT: How busy?

MR. LoCASCIO: That's why I asked the buzzing question.

PROSPECTIVE JUROR: I mean, I just had it on silent and vibrate, but I can turn it on complete silence.

THE COURT: Let me have you step outside for a second. Thank you.

(The prospective juror exits the conference room.)

THE COURT: Any thoughts?

MR. RAMANI: I think he's fine.

THE COURT: I feel a little torn here. I've never had this come up. Because the burden is on the State, which only has one investigator, and so nobody contacted me from the State, but that could be because he didn't say anything.

The flip side, and so he personally, I don't think, is in hardship by having to do this. But the argument would be the nurse or the people who have a

complaint against somebody aren't being acted upon.

MR. LoCASCIO: My instinct was to defer to you, but it's not like we are short of jurors. My opinion.

MR. RAMANI: It's not a personal hardship to him. It's more --

THE COURT: Right. I am just going to leave him on and somebody can strike him, if they want.

We will leave him on. So we're up to 12?

MR. RAMANI: Twelve, Your Honor.

MR. LoCASCIO: Uh-huh.

THE CLERK: He has "yes" to other questions.

(The prospective juror enters conference room.)

THE COURT: You answered "yes" to other questions?

PROSPECTIVE JUROR: But I didn't know how far, like, it would -- number 8 was, "Have you ever been educated, employed, or trained in any of the following fields." I didn't know if EMT and firefighting was in healthcare or medicine, so I just --

THE COURT: You were an EMT?

PROSPECTIVE JUROR: I was an EMT for five years, firefighter for eight.

THE COURT: Also a firefighter?

PROSPECTIVE JUROR: Yes.

THE COURT: Where?

PROSPECTIVE JUROR: Little Creek, over by Dover.

THE COURT: Yeah.

PROSPECTIVE JUROR: Then, "Do any of you" -- "or any member of immediate family or anyone close work in the legal profession." I don't know how corrections, if you guys held that as legal.

THE COURT: You have a relative in corrections?

PROSPECTIVE JUROR: I was in corrections for 18 years. Most of my friends and family are correction officers.

THE COURT: Where were you for 18 years?

PROSPECTIVE JUROR: Vaughn.

THE COURT: I get a lot of cases out of Vaughn.

PROSPECTIVE JUROR: Yeah, it's a lot of people.

THE COURT: Were you there for the riots?

PROSPECTIVE JUROR: Yes, sir.

THE COURT: Thanks for your service.

What else?

PROSPECTIVE JUROR: There was -- that was the last "yes."

THE COURT: Let me ask you this: Anything about those experiences that would make you unable to be a fair and impartial person?

PROSPECTIVE JUROR: Not genuinely, no. I try

to be, I mean, just like corrections, fair, firm, and consistent. I mean, I don't see getting too emotional over what had happened with patents, but I don't know. I'm human, so...

THE COURT: Bottom line, in terms of you being the only investigator, it may impose a burden on the department, but not you, right?

PROSPECTIVE JUROR: Not really, no. I mean, it won't be a burden towards me.

THE COURT: So you'll get paid, but you felt obliged to tell us?

PROSPECTIVE JUROR: Yes.

THE COURT: I appreciate that, too. Thank you very much.

PROSPECTIVE JUROR: Thank you, sir.

(The prospective juror exits the conference room.)

THE COURT: Eleven.

PROSPECTIVE JUROR: Twelve, I think.

MR. RAMANI: Twelve. He was 12.

(A discussion was held off the record.)

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 17.

THE COURT: Good morning.

How are you?

PROSPECTIVE JUROR: Good.

THE COURT: Have a seat.

How was the drive in?

PROSPECTIVE JUROR: Great.

THE COURT: Where did you come from?

PROSPECTIVE JUROR: North Wilmington. It's only ten minutes.

THE COURT: You answered "yes" to a question?

PROSPECTIVE JUROR: I did.

THE COURT: Go ahead.

PROSPECTIVE JUROR: I am a former employee of Morris, Nichols.

THE COURT: What did do you there?

PROSPECTIVE JUROR: I was a litigation paralegal. It was a long time ago, about 15 years ago or so.

THE COURT: Were you there in '99?

PROSPECTIVE JUROR: No, it was after.

THE COURT: Not that old.

Do you know anybody still there?

PROSPECTIVE JUROR: No, I don't.

THE COURT: Anything good or bad about it that you have feelings, either way?

PROSPECTIVE JUROR: No. I was only there about a year.

THE COURT: Anything else?

PROSPECTIVE JUROR: I'm still in the legal field.

THE COURT: What do you do?

PROSPECTIVE JUROR: I'm executive assistant to general counsel at a chemical company in Pennsylvania.

THE COURT: Now, they probably have patents and stuff?

PROSPECTIVE JUROR: They do, yes.

I don't work with -- I'm just the executive assistant. I am not the paralegal that works on the patents.

THE COURT: What is the name of the company?

PROSPECTIVE JUROR: Trinseo.

THE COURT: Just even if you had minimal exposure to patents, anything about whatever you know or do related to patent that would make you unable to be fair and impartial?

PROSPECTIVE JUROR: No. I was also a previous juror for a patent trial.

THE COURT: Really? Here, in this court?

PROSPECTIVE JUROR: I think it was district court, yeah.

THE COURT: Do you remember the judge?

PROSPECTIVE JUROR: No, I don't. It was 24 years ago.

THE COURT: What was it about?

PROSPECTIVE JUROR: Artificial heart.

THE COURT: Actually, was it an interesting experience?

PROSPECTIVE JUROR: It was interesting.

THE COURT: So I was right, right?

PROSPECTIVE JUROR: I didn't even know there was an artificial heart out 24 years ago. It was cool.

THE COURT: Anything else?

PROSPECTIVE JUROR: That was it.

THE COURT: Any questions?

MR. RAMANI: No, Your Honor.

MR. LoCASCIO: In that case, were you the foreperson?

PROSPECTIVE JUROR: I was not.

MR. LoCASCIO: Can you tell us the outcome?

PROSPECTIVE JUROR: It was so long ago. I think we found them guilty, the plaintiff, or -- well, defendant guilty.

MR. LoCASCIO: Thank you.

THE COURT: Thanks very much.

(The prospective juror exits the conference room.)

THE COURT: So we need one more.

MR. RAMANI: Have you ever considered permitting attorney voir dire, Your Honor?

THE COURT: Well, you are. I tell you if you want to ask questions, I give you the opportunity.

You mean like Texas? Never.

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 18.

THE COURT: Good morning.

How are you?

PROSPECTIVE JUROR: Good.

How are you?

THE COURT: Good. Have a seat.

How was the drive in?

PROSPECTIVE JUROR: It was a long one.

THE COURT: Where did you come from?

PROSPECTIVE JUROR: Hartly.

THE COURT: You can be put up in a hotel here.

What did you answer "yes" to?

PROSPECTIVE JUROR: The first one, the schedule.

THE COURT: Yeah?

PROSPECTIVE JUROR: Only because me and my wife have a small business, and it's me, my wife, and my son, and that's it. And two weeks off, that's a lot of lost work if I can't do that.

THE COURT: What do you do?

PROSPECTIVE JUROR: Mike's Professional Drain

Services. So I actually have contracts with the State for court buildings, stuff like this. I go around and clean out all the septic and storm drains and stuff like that.

THE COURT: Yeah. So this is would be a hardship.

PROSPECTIVE JUROR: Yes, because it's just me and my son working. And the equipment that we use, generally you want two people there running it, and my wife does the paperwork side.

THE COURT: All right. So I'm virtually positive I can excuse you.

PROSPECTIVE JUROR: Okay.

THE COURT: But I'd like you to just go back to your seat.

PROSPECTIVE JUROR: Yes, sir.

THE COURT: And then I just want to make sure I'm okay. I'm pretty -- virtually positive you will be excused. All right?

PROSPECTIVE JUROR: That's great. Thank you.

THE COURT: Thanks a lot. Good luck.

(The prospective juror exits the conference room.)

(A discussion was held off the record.)

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 19.

THE COURT: Good morning. How are you?

PROSPECTIVE JUROR: Very well.

THE COURT: Good. Have a seat.

How was the drive in?

PROSPECTIVE JUROR: Drive in was fine.

THE COURT: Where did you come from?

PROSPECTIVE JUROR: I'm close. I'm in New Castle.

THE COURT: All right. That's good.

PROSPECTIVE JUROR: Down by the canal.

THE COURT: Great. So what did you answer "yes" to?

PROSPECTIVE JUROR: A number of things.

THE COURT: All right.

PROSPECTIVE JUROR: So the first one, just scheduling.

THE COURT: Yeah.

PROSPECTIVE JUROR: I'm independently employed, so I work for myself. I do training for installation teams. We have trainings coming up in the next two weeks, starting at the end of this week, in the New York Metro area.

THE COURT: Installation for what?

PROSPECTIVE JUROR: So all retail. So in this particular case, it's retail cosmetic lines going into a drug store. They fly in regional guys to learn how to put

the system into the store. So it's not just like a display, it's a 24-foot wall system with probably 4- or 500 components.

THE COURT: Gotcha.

PROSPECTIVE JUROR: I help design those components, and then through that process, when we bring these regional teams in, I show them the correct way that the system is supposed to go up.

THE COURT: When is the next one you have?

PROSPECTIVE JUROR: Thursday.

THE COURT: Where is that?

PROSPECTIVE JUROR: New York Metro. Mount Vernon, New York.

THE COURT: All right. I mean, how bad is it? Like, you miss one, I mean --

PROSPECTIVE JUROR: Well, they don't have anyone else to do it. And the problem is we've got -- the regional teams fly in for that. So these aren't people that are just in the New York Metro area. They send their lead installers in to do this. And usually it's a one- or two-day sequence.

THE COURT: Gotcha.

PROSPECTIVE JUROR: So for me, I just drive up.

THE COURT: It's for everybody coming in.

PROSPECTIVE JUROR: It's for everybody else

coming in. Yes, sir.

THE COURT: Gotcha. Anything else?

PROSPECTIVE JURORS: Yes, sir. So on Number 8, so I'm a manufacturing consultant as well. I help people design systems, primarily for retail.

THE COURT: Uh-huh.

PROSPECTIVE JUROR: And then I oversee the engineers. So I work very closely with the engineers in trying to develop the systems. So that's one of them.

THE COURT: Okay.

PROSPECTIVE JUROR: If I was ever tested or diagnosed with a blood infection, such as sepsis. My mother-in-law was tested for that a number of years ago. She has since passed.

THE COURT: She passed because of that?

PROSPECTIVE JUROR: She did not.

THE COURT: Okay.

PROSPECTIVE JUROR: She had a number of complications, but that was one of the elements within it.

The patent -- patent law, yes. When I work with engineers, a lot of the systems, I don't personally do it, but I work with them on gathering all the data for patents so that they can apply. And the groups I've worked with have had a number of patents. Again, all for retail. Nothing to do with medical. Just, you know,

retail.

And then experience with United States Patent and Trademark Office. I've had to answer questions from them based on the specifics of the submission.

THE COURT: Okay.

PROSPECTIVE JUROR: So nothing glorious.

Development of a new product or process, yes. That's kind of my job.

THE COURT: Right.

PROSPECTIVE JUROR: Have I ever served as a juror? Not in federal. In the state, yes.

THE COURT: Where, Delaware?

PROSPECTIVE JUROR: Yes.

THE COURT: How was it?

PROSPECTIVE JUROR: As you said, it's an interesting experience.

THE COURT: Yeah? What kind of case was it?

PROSPECTIVE JUROR: It was a criminal case.

THE COURT: Oh, okay. Guilty or not guilty?

PROSPECTIVE JUROR: Guilty.

THE COURT: What kind of crime?

PROSPECTIVE JUROR: Drug trafficking. Drug -- I shouldn't say trafficking. Sale of drugs.

THE COURT: Okay. Guilty on all charges?

PROSPECTIVE JUROR: I think there were only

two, and they were guilty of both charges. Yes, sir.

THE COURT: Okay. Gotcha.

PROSPECTIVE JUROR: That was it.

THE COURT: Who was the foreperson? Were you the foreperson?

PROSPECTIVE JUROR: I was not.

THE COURT: Okay. All right. Any questions.

MR. RAMANI: When was your jury service, if you remember?

PROSPECTIVE JUROR: Several years ago. Yes.

MR. RAMANI: Thank you.

THE COURT: Any questions?

MR. LoCASCIO: No.

THE COURT: Let me have you step out for a second.

PROSPECTIVE JUROR: Absolutely.

THE COURT: Thank you.

(The prospective juror exits the conference room.)

THE COURT: Question is whether I excuse for burden, is really what it boils down to. I'm inclined to, unless anybody thinks otherwise.

MR. LoCASCIO: Defer to the Court.

MR. RAMANI: We don't have any objection.

THE COURT: All right. Just bring him in

again.

(The prospective juror enters the conference room.)

THE COURT: I'm virtually positive I can excuse you, but I'm just going to have you go back to your seat and I'll just make sure I have enough jurors. All right. If you can just keep that to yourself.

PROSPECTIVE JUROR: Absolutely.

THE COURT: I'm almost positive. Thank you.

PROSPECTIVE JUROR: Thank you, sir.

(The prospective juror exits the conference room.)

(The prospective juror enters the conference room.)

THE CLERK: Juror Number 20.

THE COURT: Good morning.

PROSPECTIVE JUROR: Good morning.

THE COURT: How are you? Have a seat.

Lot of people here.

THE COURT: How was the drive in?

PROSPECTIVE JUROR: It was fine.

THE COURT: Yeah? Where did you come from?

PROSPECTIVE JUROR: South Smyrna, like Dover.

THE COURT: Okay. Traffic okay?

PROSPECTIVE JUROR: Yes. I drive in every day so it's not a big deal.

THE COURT: What did you answer "yes" to?

PROSPECTIVE JUROR: 1.

THE COURT: Tell me about 1.

PROSPECTIVE JUROR: 1 is just work, workload-wise, it would be devastating.

THE COURT: Devastating. Really?

PROSPECTIVE JUROR: Devastating, yes.

THE COURT: What do you do?

PROSPECTIVE JUROR: I am regional controller.

THE COURT: Okay. For?

PROSPECTIVE JUROR: For a car dealership group.

THE COURT: Okay. And just --

PROSPECTIVE JUROR: Just workload. I can't miss a day without it being -- they're blowing up my phone now. I can feel it vibrating.

THE COURT: Do you get paid if you're on a jury?

PROSPECTIVE JUROR: I don't know. I know our hourly employees do not. I didn't even look to see if I did.

THE COURT: Okay. How big is the dealership? Which one is it?

PROSPECTIVE JUROR: Hertrich.

THE COURT: Okay. All right. What else did you answer "yes" to?

Have you ever been on a jury before?

PROSPECTIVE JUROR: I have.

THE COURT: Oh. I should have asked you that.

PROSPECTIVE JUROR: That was one of the "yes."

THE COURT: Tell me about that.

PROSPECTIVE JUROR: I did, and it was five years ago or six years ago at state court.

THE COURT: State court?

PROSPECTIVE JUROR: Yeah.

THE COURT: Criminal or civil?

PROSPECTIVE JUROR: Civil.

THE COURT: What kind of case?

PROSPECTIVE JUROR: It was a car accident.

THE COURT: And who did the jury find for, the plaintiff or the defendant?

PROSPECTIVE JUROR: The defendant.

THE COURT: The defendant. Okay. And was it two cars, essentially?

PROSPECTIVE JUROR: Uh-huh. Yes.

THE COURT: Okay. Anything else you answered "yes" to?

PROSPECTIVE JUROR: Uh-huh. Number 8.

THE COURT: Which is that?

PROSPECTIVE JUROR: Have you ever been educated, employed. Obviously I do accounting.

THE COURT: Right.

PROSPECTIVE JUROR: Number 19 is the juror; 23,

"Do you generally believe that there are too many civil lawsuits?"

THE COURT: You do?

PROSPECTIVE JUROR: Yeah. Generally, yeah.

THE COURT: Okay.

PROSPECTIVE JUROR: And, yes, I know another juror at selection today.

THE COURT: No kidding?

PROSPECTIVE JUROR: It's Delaware.

THE COURT: Well, actually, we were just commenting. So you're not the first, but it's not something I've only seen once before, I believe, ever. So is that person, where is that person right now?

PROSPECTIVE JUROR: She is in the other courtroom.

THE COURT: Oh, she's for the other trial.

PROSPECTIVE JUROR: Yeah.

THE COURT: Oh, I see. Okay.

PROSPECTIVE JUROR: She was in the --

THE COURT: In the pool downstairs?

PROSPECTIVE JUROR: In the pool downstairs. Yes.

THE COURT: All right. Any questions?

MR. RAMANI: No, Your Honor.

MR. LoCASCIO: No, Your Honor.

THE COURT: All right. Want to step out for a second?

PROSPECTIVE JUROR: Sure.

(The prospective juror exits the conference room.)

THE COURT: What number is she?

MR. LoCASCIO: She's 14.

THE COURT: Well, then, we should just...

No, no. But what number is she in terms of --

MR. RAMANI: Twenty.

THE COURT: Then probably excuse for cause and let's get somebody else.

MR. RAMANI: We agree, Your Honor.

MR. LoCASCIO: It felt a little like not that different from 16.

THE COURT: Well, wait. What was 16? Oh, wait.

MR. LoCASCIO: He was the guy who --

THE COURT: Oh, you know what? Yeah, yeah. Actually, let's just put her on. Let's put her on and we're done. All right? So she's in the box.

MR. RAMANI: Okay.

MR. LoCASCIO: So can we finish the conversation --

THE COURT: Yeah, yeah, we can go off.

(A discussion was held off the record.)

(The following occurs in the courtroom:

THE COURT: Please be seated.

All right. Thank you for being patient. We're almost done. So what's just happened, you all participated in what we call striking for cause. So, in other words, a lot of you had burdens and I tried to accommodate you to the extent I could, or you had a conflict or something like that.

Now, out of these 14, now the parties get to exercise what are all peremptories. And it's a tradition that goes way back into the common law hundreds of years ago in England, and for any reason they want, they can strike one of these people who are in this box. So it's secret, what they do. We are going to pass back a clipboard, they're going to do it. They don't have to strike anybody. And then we are going to have our final eight. All right. And then I am going to let all of you go except for the final eight.

All right. So if you will just be patient a little bit more and we're almost done. All right? Thank you.

THE CLERK: Juror Number 2, Juror Number 3, Juror Number 12, Juror Number 16, Juror Number 17, Juror Number 20, if you could please return to the pews.

THE COURT: Okay. So for all the folks in the

room, you are excused now and I want to, again, thank you for showing up. Your participation in this process was very important. Even if you didn't end up being questioned, it was really important.

And the good news for you, too, is, although you don't get to experience what I told you was an interesting experience, you are off the hook for two years for jury service. And in Delaware, that applies to the state courts as well. So if you get a jury notice, you should call up and say there must be some kind of mistake. Or you can just go ahead and get the interesting experience. All right. I hope you have a great day. You are all excused. Thank you very much.

All right. So congratulations. And also thanks again, because you have been selected to serve. All right?

Let me tell you a little bit about what we are going to do. The first thing we are going to do is get you sworn in because you're going to take an oath to be a juror, to apply the law, and we are going to go over what your duties are, to the facts. And, ultimately, you are going to decide the facts in this case.

All right. And like I said, I do appreciate your service and I'm going to move the case as fast as I can so that your burden is as minimal as possible. All

right.

Now, so to that end, we've already ordered lunch in, it's here, so I'm going to read you some preliminary instructions. We are going to play... after you get sworn in, then we're going to play a short video for you which will describe the patent system, so give you some background information. It's about a 17-minute-long video. And then we're going to excuse you for lunch.

And you are going to be given first probably about a 10- to 15-minute orientation back there just about how to get in the building, passes, that kind of thing, how to get into chambers each morning. And we typically start at 8:30 in the morning. Sometimes jurors want to start earlier and I will try to accomplish that.

The building opens at 8:00. I would encourage you, even for an 8:30 start, get here early, you know, before that. And then we typically take a short break in the middle of the morning. Again, I will kind of defer to you, and then lunch. And we bring in lunch for you. You don't get to order it today, but starting tomorrow, we'll take your orders later this evening for tomorrow. And then, but I defer to you about generally how much time you want.

Now, having said I defer to you, there's going to be times where I need to speak with the lawyers about

some legal issues and almost always that makes the case go quicker in the end, but it would be irritating to me if I were the juror saying, well, you know, why... I will turn on white noise like this, so that you don't hear that, but it's to move the case. That's why I'm doing it. Like deal with legal issues. Okay?

All right. And then, we typically go to 5:00. If that's a problem for somebody, again, sometimes the jurors are like let's just go a little bit longer because we will shorten the number of days we have to be here.

When we get to the end of the case, by the way, and you deliberate, you control the clock when it comes to deliberations. Okay? So, and we are going to try the case in phases. So I'm going to give you instructions about Phase I. And then when we finish Phase I, you will deliberate, and then we'll just take it from there. Okay?

We've handed out the instructions so let's have you all rise and take the oath, please.

THE CLERK: Please raise your right hand.

(Jury sworn.)

THE COURT: All right. Have a seat.

All right. Now, take out the instructions. I don't read them verbatim. So it's not going to be like the questioning when we went through the voir dire. And I won't read them that rapidly either because I'm going to

probably deviate a little bit. And it's most important that you listen to what I have to say. But follow along, it will help you.

You get to bring the written instructions back with you and you will get final instructions, much more detailed, at the end of each phase. And they go with you too. All right?

And I'm going to forewarn you, what happens in any kind of trial, but particularly a patent trial, the language, some of the stuff is new to you. All right? Don't be worried when you read it and you're like, oh, I forgot to memorize that. You are going to hear stuff and I'm very confident that by the time you start deliberating, you will know everything you need to know in terms of the terminology and how things work. Okay?

All right. So this is a civil action for patent infringement arising under the patent laws of the United States. I'm on Page 1, but, again, you know, I'll probably deviate a little bit.

Now, the parties in the case are Magnolia Medical Technologies, Inc., and Kurin, Inc. All right. I'll probably refer to Magnolia Medical Technologies as Magnolia. It says here Magnolia Medical. I am going to guess I call it Magnolia more often than not. And then same thing with Kurin, I'll probably just call it Kurin.

All right? And you will hear the lawyers and they will use various names to refer to these two parties like that.

All right. Now, Magnolia owns three US patents at issue in this case and they are, and you see the three numbers. I won't read them because let me tell you what happens in patent law, everybody refers to the last three numbers. So you're going to hear a lot of talk about the '081 patent, the '863, and the '709 patent. All right?

And I will refer to those patents in the instructions as the Magnolia Medical asserted patents. All right. These patents relate to medical devices used in blood draws. And Magnolia contends that Kurin infringes these patents by making, using, selling, and offering for sale in the United States the Kurin Jet. All right? And by inducing others to use the Kurin Jet.

Kurin denies that it infringes those patents and further contends that the asserted claims of the patents are invalid. If you find that Kurin infringes any valid claim of one of these patents, you will need to decide any monetary damages to be awarded to Magnolia to compensate it for Kurin's infringement.

Now, Kurin also owns a US patent that's at issue in this case and that is, and you can see the number there. I am going to call it the '052 patent. All right? Sometimes we call patents, by the way, as "the asserted

patents." They are being asserted in this case.

So the Kurin asserted patent relates to, it also relates to medical devices used in blood draws. Kurin contends that Magnolia infringes its asserted patent by making, importing, using, selling, or offering for sale in the United States Magnolia Medical's Steripath Micro by inducing others to use it and by contributing to the infringement of the '052 patent by others.

Magnolia denies that it infringes the Kurin asserted patent, and it contends that the asserted claims of that patent are invalid. If you find that Magnolia infringes any valid claim of the Kurin asserted patent, you will need to decide any monetary damages to be awarded to Kurin to compensate it for that infringement.

Now, infringement is assessed on a claim-by-claim basis. You are going to hear shortly about a patent. At the end of every patent are claims. All right?

And infringement, the question is: Are the claims infringement? And to determine the infringement of the Magnolia patents, you must compare the Kurin Jet with each asserted claim of those Magnolia asserted patents. Similarly, to determine infringement of the Kurin asserted patent, you must compare the Magnolia Medical Steripath Micro with each asserted claim of the Kurin asserted

patent. And there may be infringement as to one claim but not to... There's no infringement as to the another. That's for to you decide.

Now, you are going to hear reference to certain terms and phrases in these asserted claims throughout the trial, and for some of those, I will give you definitions at the end of the case, all right? And you must use the definitions that I give you. They will be in the written instructions that I give you, all right? Any other terms and phrases that are not included in the list that I give you are to be given their plain and ordinary meaning in the context of the field of the patent, all right?

Now, any definition of the language of the claims should not be taken as an indication that I have a view regarding either infringement or invalidity. I have no views in this case. You are going to decide this case, all right?

Let's talk about the role of the jury, and you, and my role. So we are going to hear evidence in this case, and you will decide what the facts are and then... based on that evidence, and then you will apply the facts to the law that I give you. You and only you will be the judges of facts. You will have to decide what happened. I play no role in judging the facts. You should not take anything that I do or say as indicating what I think of

the evidence or what your verdict should be. My role is to be the judge of the law. I will make whatever legal decisions have to be made during the course of the trial, and I will explain to you the legal principles that must guide your decisions. You are... or guide you in making those decisions, I should say. Now, you are bound by the oath you just took to follow these instructions and all other instructions that I give you, even if you personally disagree with them. All the instructions are important, and you should consider them together as a whole.

You are to perform your duties fairly. Do not let any bias or sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. Nothing I say or do during the trial is intended to indicate what your verdict should be.

Evidence. So you have to make up your decision based solely on the evidence that you heard in the courtroom. So you remember when I said you couldn't use phones, right? There was a reason. So the reason is because we can't have you doing research on the Internet to try to learn about this case. I'm going to tell you every night before you go home don't do that. You are to base your verdict solely on what's the evidence that is introduced at trial.

Now, evidence comes in the these forms. So the

first thing is it comes out of a witnesses mouth. Witnesses who get on that stand, they are under oath. They take an oath to tell the truth, and they testify. And you will also hear what we call deposition testimony, and that's usually by videotape. Sometimes it's not, it's just in writing and it is taken down. And that's also witness testimony, though, all right? So that's one form of evidence. Then we have documents or exhibits that are introduced into evidence, assuming I introduce them.

And so that is what you are to decide the case on. There are also... Sometimes the parties will stipulate to certain things, and you can take that as evidence.

Nothing else is evidence. What I say is not evidence. What the lawyers say is not evidence. The questions the lawyer ask, not evidence. Opening statements, closing arguments that the lawyers make, not evidence. It's just what I told you is evidence, all right? None of my rulings, nothing I say is evidence.

There's even... Sometimes you will see PowerPoint slides and what we call demonstrative exhibits, they are not evidence. It's just the testimony and exhibits that I introduce, I allow to be introduced into trial, all right?

Now, at times, it's possible I might...

Something might come out of a witness's mouth. I could tell you to disregard it, to strike it. You have to do that. You have to treat it like it never happened, it was never said, you never heard it, all right?

By the way, the lawyers will make objections. They are supposed to do that. That's part of their job. And I rule on the objections. Don't let any of that, my rulings, influence you. Again, don't interpret it like I have an opinion as to who should win or lose. But the effect of me ruling on the objections and what I tell you, you do have to follow. So if I tell you to ignore something, you have to ignore it.

Next page, direct and circumstantial evidence. So there's two types of evidence under the law, and the law does not distinct between the two. And, basically, it is the jurors who decide what weight to give these two types of evidence.

So they are called direct and circumstantial evidence. Direct evidence would be, an example: Witness says something that the witness says he or she observed, right? That's direct evidence. So witness comes in, takes the stand and says, "I just came from outside and it's raining out there." That's direct evidence that it's raining outside.

But we can have circumstantial evidence, which

asks you to draw inferences from what you are told or see or read, and that's circumstantial evidence, and if you give it weight, you can give it as much weight, even more weight than direct evidence. Let's say we have a witness come in, and they are in hurried breath, they are wearing a raincoat, they are soaking wet, and that would be circumstantial evidence that it's raining outside.

And, again, the law does not make a distinction between direct and circumstantial evidence. Ultimately, you decide what weight to give any weight in this case.

Next, credibility of witnesses. I mentioned witness testimony is evidence. It's your job as jurors to weigh the credibility of each witness, to decide if the witness is telling the truth, if the witness is accurately or correctly explaining what they claim to have observed.

So you should consider each witness's means of knowledge, the strength of the witness's memory, how reasonable or unreasonable the witness's testimony is, whether that testimony is consistent or inconsistent, whether it's consistent or inconsistent with other evidence that you found to be credible or not credible, whether the testimony has been contradicted, whether the witness has any biases or prejudice or interests that might shape or influence that witness's testimony, the witness's manner and demeanor on the stand, and then all

the circumstances according to the evidence that you saw that you think could affect the witness's testimony.

By the way, since you need to determine a witness's credibility, you need to pay attention to the witness and look at the witness's demeanor and listen to how the witness responds to questions. Is the witness fighting the lawyer; you know, not answering directly questions; all those things you should factor when you think about is the witness's testimony credible or not, all right?

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses to testify. What is more important is how believable the witnesses were and how much weight you think their testimony deserves.

Next, deposition testimony. I mentioned this. So we have a thing called discovery. That's when after the case is filed, between that and today, the parties conduct discovery to find out evidence or, you know, to discover evidence. And part of that is to take testimony during depositions. The witness is placed under oath. It's often videotaped. That is testimony and you can accept it the way you would accept testimony here in the courtroom.

Expert witnesses. You are going to hear from

experts in this case. These are people who have technical subject matter that might be helpful to you, special training or experience in a technical field, and those people are permitted to give opinions about certain technical matters. You are not required to accept their opinions. As with any witness, you decide whether the expert witness's testimony is credible and deserving of giving it weight. And you decide whether or not to rely on that expert's testimony.

Now, how do you do that? Same way you do it for fact witnesses, for everyday witnesses. You might also, though, consider the expert's qualifications, the reasons for their opinion, and the reliability of the information that they say supports their opinion. And, again, you give it what weight you think it deserves.

Next, exhibits and demonstratives. I already mentioned this. We have demonstratives. You will see them. They don't go back in the room with you, but they might help you in understanding the evidence.

Now, this is important. Let's talk about burdens of proof. So in any legal action, facts have to be proven to your satisfaction by what we call the about burden of proof.

Now, there are two different kinds of burdens at play in this case, all right? The first is what we

call preponderance of the evidence, and the second is what we call clear and convincing evidence.

Now, when it comes to proving infringement, you have to prove that to the jury's satisfaction by a preponderance of the evidence. The way to think about preponderance of the evidence is if you had a scale, right, with two sides of the scale, to prove by a preponderance of the evidence a fact, you have to prove that it's more likely than not. So you have to tilt the scales just slightly, right, just a little bit more than 50 percent. That's preponderance of the evidence, right?

And so that means that for Magnolia to prove it's infringement case against Kurin, it has to persuade you that is it's proven that case, it's proven infringement by a preponderance of the evidence.

For Kurin to prove it's counterclaim of infringement, it has to prove that case to your satisfaction by a preponderance of the evidence.

Now, in addition, both sides are challenging the validity of the patents.

By the way, what you are going to hear is both sides are making what we call validity arguments. You will hear in a minute how patents are issued, and they are issued by the executive branch of the government.

But if a person is accused of infringement,

they can challenge the validity of the patent, and unlike what goes on in the executive branch, where you have one side getting a patent, this is a courtroom where we have two sides. So it's an adversarial proceeding, where evidence is presented that's not presented to the Patent Office, right?

Now, the standard to prove invalidity of a patent is by clear and convincing evidence, all right? And that means that it's evidence that makes it highly probable that a fact is true. Clear and convincing evidence involves a higher degree of persuasion than is necessary to meet the preponderance of the evidence standard.

Now, by the way, it is not beyond a reasonable doubt. That's in a criminal case. That's the highest burden of proof that we have in our judicial system. So clear and convincing evidence is somewhere in between by a preponderance of the evidence and beyond a reasonable doubt.

Now, Magnolia contends that Kurin owes it damages for infringement. And Kurin contends that Magnolia owes it damages for infringement. To prove damages, you have to prove it by a preponderance of the evidence. It's like infringement, all right?

Okay. Now let's go to Page 13, Number 10,

conduct of the jury.

Now, I'm going to tell you a lot of times, every day at the end of the case, that you are not to discuss the case until you begin deliberations. That means you can't discuss it with anybody outside of the courtroom, but it also means you cannot discuss it among yourselves. So you don't discuss the merits of the case until you start your deliberations, okay.

Now, it also means that if someone tries to walk up to you to talk about the case, you need to tell me right away. Obviously you need not to talk to them about the case. All right? And the reason why we do this is for you to keep an open mind throughout the presentation of the evidence. All right.

I talked about the use of phones, but let me also say about laptops, any other kind of electronic device that you might access the Internet or have communications with other people. You must not use them to communicate in any way with anyone about this case or to do any research. So no e-mails, no messaging, no Facebook or any kind of social media. No website access or blogging or Internet chat rooms. You need to stay away from all of that, and all social media.

Then when the case is over, by the way, you can do all the research you want and you can do all the

communication you want about the case and your experience.

Now, you may run into one of the lawyers or one of the witnesses in the building. And don't be offended that they don't talk to you because they know they are not supposed to be communicating with you about the case. All right?

You've got your juror badge on, right? That's a good thing because that should warn everybody stay away from you. There are some other juries going on and other patent cases in the building. Don't talk to them either about the case.

And, by the way, that means, also, don't listen to the radio, don't watch TV about the case. If you happen to be driving home and something comes on the case on the radio, turn it off right away and please let me know first thing in the morning when you come back. All right?

All right. Note taking. You're going to be given notebooks. It's going to have a lot of stuff in it, including paper. Maybe we will have a pad separate from the notebook. You can take notes during the case, but you need to be careful about that. We have a court reporter and it's her job to take down a transcript for the Court to use and for the lawyers. We don't have a transcript that goes back with you every night or anything like that.

So you can take notes if you want to remind you of, let's say, key points. But what you have to be careful about is you need to pay attention and you need to listen. And so if you end up trying to get it down verbatim, every word that's said, you're not going to be able to serve what you need to do in terms of assessing the credibility of witnesses and listening to the evidence. So to the extent it's helpful to you, jot down a few notes.

Now, when you go back to the jury room to deliberate, remember none of you are stenographers. I just instructed you not to be trying to write down every word that's said. So do not place weight on what another juror put in a note. All right?

I'm going to tell you later on when you deliberate you do need to listen to your fellow jurors and to be open to what they say and so you should be listening to that. But you should not take what a particular juror wrote down as evidence. It's not. And you should be mindful of that. I've already told you to be limited in your note taking.

At the end of the day, you need to make up your own decision about this case. But you must do so after having listened to your fellow jurors and carefully consider what they said during the deliberations.

Now, if you do take notes, you leave them in the jury room at night. We'll take them from you. By the way, when the case is over, we will take your notes and we will shred them. They will be destroyed. They will never see the light of day. And neither I, nor the lawyers, will ever be able to read what's in your notes.

Bench conferences. This is just, I told you, at times I will put that white noise on and I will have the lawyers come back over here. We're talking about legal issues, and we don't want to influence you about my rulings or their objections about that. That's why we do it this way.

All right. Next are the parts of the patent. So now we're going to play this video. That will give you some background information about what patents are and the role of the Patent Office, why we have patents, and why disputes over patents arise.

Are we ready to play the video? Okay. Thank you.

(Patent video played as follows:

Hello, I'm Jeremy Fogel.

I've been a United States District Judge since 1998, and I am now the Director of the Federal Judicial Center.

As you probably know by now, this is a patent

case, so you may be wondering, how can I sit in judgment on a case like this when I'm not entirely sure what a patent is?

We hope to answer that concern with this brief video, which will give you some of the background needed to do your job.

This case will involve some special issues that the judge and lawyers will explain to you, but all patent cases involve some basics that you will learn about.

This video will discuss what patents are, why we have them, how people get them, and why there are disputes that require us to call in a jury like you. We'll also show you what patents look like.

The United States Constitution gives Congress the power to pass laws relating to patents.

Article I, Section 8, Clause 8 allows congress to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

A patent, then, is an official grant by the United States Government that gives its owner certain rights to an invention. Those include the right to stop others from making, using, selling, or offering for sale the invention that is claimed in the patent.

A patent lasts for a specific period of time, usually 20 years from the date that the application is filed by the inventor. But because it takes an average of 3 years for the Patent and Trademark Office to act on the application, the effective life of the patent is closer to 17 years. A patent represents a bargain made between the government and the inventor.

In return for the right to prevent others from using the invention, the inventor must enhance the public knowledge, or what we sometimes call the state of the art, by adding something new and useful to it. A famous example is Thomas Edison's invention of the lightbulb. Harnessing electrical power for illumination transformed society and led to many other important breakthroughs.

During the lifetime of the patent, its disclosure may inspire new inventions, and after it expires, the invention is free for anyone to use. It is this combination of something new and valuable to the public that justifies granting time-limited patent protection to the inventor. A patent is in many ways like a deed to a piece of property. It grants the owner the right to keep people off the property or to charge them a fee, like rent, for using it. And just as a deed indicates boundaries defining the landowner's property, a patent claim defines the patentee's domain. The patent system

works because the inventor is required to describe the invention in clear and specific terms, so that the public knows what the boundaries of the invention are.

Once a patent is issued by the government, it becomes available for public inspection. In that way, anyone who learns of the patent can read it and understand exactly what the inventor invented and the limits of the patent set forth in the claims.

Now that we understand what a patent is, let's take a closer look at the term "invention." An invention is a new way of solving a problem or a useful new machine, manufacture, or composition of matter. The patent process begins in the mind of the inventor, and in particular when the invention is formulated in the mind of the inventor. Patent lawyers call this "conception."

This is when the idea occurs to the inventor clearly enough that he or she can write it down and explain it to someone. To qualify for a patent, the invention needs to be new and useful. Also, it must not be obvious to one of ordinary skill in the field. If the inventor believes these requirements are met, he or she will prepare an application for filing with the Patent and Trademark Office, whose headquarters are in Alexandra, Virginia, just outside of Washington, D.C.

The patent and trademark office--often called

the "PTO"-- is the agency of the federal government whose job it is to examine patent applications to make sure they are in proper form and comply with the requirements of the law.

The inventor can prepare an application for filing with the PTO, but usually it is drafted by a patent attorney or a patent agent who specializes in what is called "prosecuting" patent applications; that is, the process by which they are evaluated.

The attorney or agent works with the inventor to be sure the invention is described and claimed in a way that complies with the law and the regulations of the PTO. 98% of patent applications are made online using the PTO's electronic filing system, although a few paper applications are still made.

When the PTO receives the inventor's application, it is first checked to see if it is complete and complies with all the PTO's application requirements. It then assigns the submission to a patent examiner--a staff person with a background in the field or "art" the invention falls within--to evaluate the application and decide whether a patent can be granted.

You've been given a sample patent to refer to as you watch this video, so you already have a sense of what a patent looks like. But now, let's take a closer

look at the three main parts of a patent.

To begin with, there is some basic identifying information on the first page. This material is highlighted in your handout. On the upper right side of the page is the number assigned to the patent by the PTO. And on the left side is a title that describes the invention, and the names of the inventors and sometimes the company to whom they have assigned the patent. Also on the left is the date when the patent application was filed, and back on the right, the date when the patent issued.

There also is more detailed information on the first page including a list of numbers following the caption "field of search." These numbers identify previously issued patents the examiner looked at or "searched" to make sure the applicant's claimed invention really is something new, not obvious, and thus patentable. Also listed on the first page are what we call "references"; that is, previous patents or articles that describe the technology or "prior art" known at the time the application was filed.

It may seem strange to you that we call this pre-existing technology "prior art," even though it has nothing to do with artists. We use the word "art" in its historical sense, to include inventions and other subject

matter reasonably related to the claimed invention. We also refer to the latest technology as "state of the art," and we say of someone who can understand and apply the technology that he or she is "skilled in the art."

The second major part of the patent is what we call the "specification" or "written description." As is the case in your sample, it is usually the longest part of the patent. It includes an abstract, which is a brief summary of the invention; a background section that describes the nature of the problem the invention is supposed to solve; one or more drawings, called "figures," that illustrate various aspects of the application; and a detailed description of one or more "embodiments" of the invention.

An embodiment is a specific device or method that uses the invention, such as a particular form of lightbulb.

The third and most important part of the patent is the claims. These are the numbered paragraphs that appear at the end. The claims are what give the public notice of the boundaries of the invention.

They are similar to the description of property you may have seen in a deed, referring to precise measurements taken on the ground. The judge will instruct you further on how any technical or ambiguous terms in the

patent claims should be understood.

Now that we've discussed the main parts of a patent, let's look at how the PTO processes patent applications, what we referred to earlier as "prosecution" of the patent application. This process begins when the inventor's application arrives at the PTO.

There, it receives a filing date. Under the America Invents Act of 2011, filing dates will determine who is awarded the patent if there are competing valid applications. In 2012, the PTO received nearly 600,000 patent applications and issued more than 270,000 patents.

After determining that the application is complete, the receiving branch also decides what field of technology an application relates to and assigns it to the appropriate examining group.

In order to make that decision, the patent examiner usually looks at patents that have been issued previously, in the same or closely related fields of art. The examiner has computer databases that contain information used to accomplish this task. Another part of the job is to decide if the inventor's description of the invention is complete and clear enough to meet the requirements for a patent, including the requirement that the description enables someone of ordinary skill in the field to actually make and use it.

However, because the job of examining so many applications is challenging, the law requires the applicant to tell the examiner whatever he or she knows about the prior art that might be important to the examiner's decision on whether to allow the patent.

We call this the applicant's duty of candor. One way the applicant can satisfy this duty is by bringing pertinent prior art to the attention of the examiner, either in the original application or in other submissions called "information disclosure statements."

In this way, the decisions of the examiner are based on both the information provided by the applicant, and on the information the examiner finds during his or her prior art search.

Sometimes the examiner concludes that the application meets all the requirements we've discussed and allows the patent to issue at this first stage.

But more frequently, the examiner will reject the application as deficient in some respect. This decision will be communicated by the examiner in what is called an "office action," which is a preliminary notice to the applicant of what the examiner finds insufficient or unpatentable.

For example the examiner may reject certain claims as being unpatentable because a journal article,

written and published by another person prior to the effective filing date of the patent application, disclosed what the applicant was currently claiming.

At that point, the applicant prepares a written response, either agreeing or disagreeing with the examiner. An applicant who agrees with the examiner can suggest amendments to the application designed to overcome the examiner's rejection.

Alternatively, an applicant who disagrees with the examiner's office action can explain the reasons for the disagreement. This exchange of office actions and responses goes on until the examiner issues a "final office action," which may reject or allow some or all of the applicant's claims.

The overall process is referred to as the "prosecution history" of the application. The written incoming and outgoing correspondence between the PTO examiner and the applicant is also called the "file wrapper."

In the past, these file wrappers were all in paper form, as were the submitted applications.

Now they are most often electronic and may occasionally be paper as well. Most patent applications filed on or after November 29, 2000 are published by the PTO 18 months after the inventor has filed his or her

application, so that the public may inspect it.

Once a final PTO office action has occurred, and one or more claims have been allowed, the applicant is required to pay an issuance fee, and the patent is printed. Then, on the date shown on the upper right-hand corner of the first page of the patent, it is "issued" by the PTO, and the inventor receives all the rights of a patent. That date is highlighted on your sample.

Once a patent has issued, the inventor, or the person or company the inventor has assigned a patent to, can enforce the patent against anyone who uses the invention without permission. We call such unlawful use "infringement."

But the PTO and its examiners have no jurisdiction over questions relating to infringement of patents. If there is a dispute about infringement, it is brought to the court to decide.

Sometimes in a court case, you are also asked to decide about "validity." That is whether the patent should have been allowed at all by the PTO. A party accused of infringement is entitled to challenge whether the asserted patent claims are sufficiently new or non-obvious in light of the prior art, or whether other requirements of patentability have been met. In other words, a defense to an infringement lawsuit is that the

patent in question is invalid.

You may wonder why it is that you would be asked to consider such things when the patent has already been reviewed by a government examiner. There are several reasons for this.

First, there may be facts or arguments that the examiner did not consider, such as prior art that was not located by the PTO or provided by the applicant.

In addition, there is, of course, the possibility that mistakes were made or important information overlooked. Examiners have a lot of work to do, and no process is perfect. Also, unlike a court proceeding, prosecution of a patent application takes place without input from people who might later be accused of infringement, so it is important that we provide a chance for someone who is accused of infringement to challenge the patent in court. In deciding issues of infringement and validity, it is your job to decide the facts of the case.

The judge will instruct you about the law, which may include the meaning of certain words or phrases contained in the patent.

So it is your primary duty as jurors to resolve any factual disputes and--in some cases, such as infringement and validity--to apply the law to those

facts.

To prove infringement, the patent holder must persuade you, by what is called "a preponderance of the evidence" relating to the facts of the case, that the patent has been infringed.

To prove invalidity, the alleged infringer must persuade you by what is called "clear and convincing evidence" that the patent is invalid. The judge in your case will explain these and other terms and provide additional specific instructions at the appropriate time.

Good luck with your task, and thank you for your service.

(End of video.)

THE COURT: Okay. Thank you. Now, I've got about two minutes left. Does anybody have to use the restroom? Should we break two minutes or should I finish up?

JURY PANEL: Finish up.

THE COURT: Finish up. All right.

Last instruction is the outline of the trial. All right. So what's going to happen? When you come out after lunch and your orientation back there, we are going to start Phase I, and each side may make an opening statement. All right? Magnolia will present its opening statement and then Kurin will present an opening

statement.

Now, remember, that's statements by lawyers and what lawyers say is not evidence. It's your recollection of the evidence, not what a lawyer says the evidence is, that controls. All right? And the purpose of an opening statement is basically a road map of what the lawyer expects will come into evidence. It is not even supposed to be argument. Okay?

Now, after opening statements, we start with the evidence. And then Magnolia Medical will go first and it will have the opportunity to present evidence regarding the infringement of its asserted patents and damages for infringement of its asserted patents.

Next, Kurin will have the opportunity to present evidence regarding non-infringement of Magnolia's patents and invalidity, its arguments about invalidity of Magnolia Medical asserted patents. And to respond as well to Magnolia's evidence regarding damages for infringement of the Magnolia asserted patents.

Kurin will also have the opportunity to present evidence regarding infringement of the Kurin asserted patent and damages for the infringement of the Kurin asserted patent.

Next, and I'll remind you of all this, you don't have to memorize it. But then Magnolia Medical have

the opportunity to respond to Kurin's evidence regarding the Magnolia asserted patents. That's called rebuttal, basically, to respond to Kurin's response to Magnolia's asserted patents, right.

Now, at that point, Magnolia will also have the opportunity to present evidence regarding non-infringement of the Kurin asserted patent and invalidity of the Kurin asserted patent, all right, and to respond to Kurin's evidence regarding damages for infringement of the Kurin asserted patent.

And then, finally, Kurin will have the opportunity to respond to Magnolia's evidence regarding the Kurin asserted patent. In other words, rebuttal there.

After all of that evidence has been presented, then we have closing arguments. Magnolia will present its closing argument, and then Kurin will respond and we are going to have rebuttal there, and I will explain it at that time. And then when that's done, I will give you the final instructions. They will be in writing. You will take them back and you will begin deliberations.

That's it for right now. So we are going to have you go back. You can use the restroom, have your orientation, and have lunch. As I say, most jurors want to just do the 30 minutes. Does that sound...

Yeah, all right. But you are going to have orientation, so we'll plan on coming back...

Well, we'll check in with you at 1:00 just to make sure because you might want to go a little bit longer. You can decide, just let us know.

All right. So you are excused for right now. Thank you.

(The jury exits the courtroom at 12:22 p.m.)

THE COURT: Please be seated.

Any objections?

MR. RAMANI: None from Magnolia Medical, Your Honor.

MR. LoCASCIO: None, Your Honor.

THE COURT: Okay. So you want to break. We'll plan on 1:00. It might be a little bit longer. That should give you enough time. You all having lunch brought in, I assume?

MR. RAMANI: Yes, Your Honor. That sounds great.

THE COURT: Anything else we need to attend to?

MR. RAMANI: Not from Magnolia.

MR. LoCASCIO: Not from Kurin.

THE COURT: All right. I'll see you at 1:00. Thank you.

(Whereupon, a recess was taken.)

THE COURT: Ready to go?

MR. RAMANI: Ready to go, Your Honor.

THE COURT: Bring the jury in.

(Jury enters the courtroom at 1:02 p.m.)

THE COURT: Please be seated. I see you're -- good, you are wearing layers. Did they tell you that? It is extreme, okay? It will be 85 degrees and it will be 60 degrees, so get ready for it.

A couple of other things. I have a monitor. A lot of stuff is going to be shown up there for you. It's showing down here for me. You will see me kind of doing this. I also get the transcript live, so you will see me do that. So that's just in case you were curious.

Mr. Ramani.

MR. RAMANI: Thank you, Your Honor.

Good afternoon. My name is Ashok Ramani, and I represent Magnolia Medical. I think I speak for both sides here when I begin by thanking you all for your time today. We know you all have busy lives, especially around the holidays, so thank you for your service.

It is important for people in the community to serve on juries. As we saw in the video, it's in our constitution, so our founders, almost 250 years ago, when they were writing the document that was going to set the path for this new country, thought that patent protection

was worthy of inclusion.

It's also important for Magnolia Medical because for three years Kurin has used Magnolia's technology without permission, to compete with Magnolia unfairly in the market.

What this case will show you is two companies. One led, the other followed. One innovated, the other imitated. One invented, the other infringed. Magnolia Medical is the leader, the innovator, the inventor. Kurin, this table over here, is the follower, the imitator, the infringer.

Before we turn to the specifics of the evidence you are going to hear from the witnesses and the documents that you are going to see, please allow me to introduce you to the rest of the team that you might hear from over the course of the trial. There's Micah Block, there's Rodger Smith, Natalie Stoecklein, and Serge Voronov. You might hear from different folks during different times over the next week and a half or so.

But we commit to you that we are going to prove three things over the course of this case. The first is that Magnolia Medical is a pioneer. You are going to hear that from the first witness who is going to testify in the trial, and that's Greg Bullington, who is the cofounder of Magnolia Medical.

The second thing we'll prove to you is that Kurin used Magnolia Medical's three patents without permission.

And the third is that Magnolia Medical doesn't use Kurin's patent. You will hear that Kurin obtained its patent, went to the Patent Office and filed for it, and countersued Magnolia months after Magnolia filed this case and sued Kurin.

Taking those one at a time. To understand Magnolia Medical, we have to go back to the 1940s and a small town called Wahoo in Nebraska. The boy who would become Dr. Richard Patton one day was born there. I'm sorry it's a little bit jittery right now, but he was born on a farm. They didn't have that much, but they had community.

And one thing that Richie Patton, as he was known then, saw from a young age is that when someone in their community had a problem, when they got sick, someone would drive in from the big city, in Lincoln, Nebraska, and help them. That person was a doctor.

And so Richie Patton, as a young boy, decided that's what he wanted to do. He wanted to devote his life to helping other people. And he did it. He was the first in his family to go to college and medical school, both at the University of Nebraska. And then he moved out to

Seattle for his residency in what's called pathology. Some of you may be familiar with this. A pathologist is sometimes called the doctor's doctor, so when a patient is really sick, other doctors will take a tissue sample, maybe some blood or some fluid, and send it to a pathologist to help figure out what's going on with the illness.

And so Dr. Patton went to the University of Washington for his pathology residency and never left. He practiced in a clinical practice there for 40 years. He also taught as an assistant professor of pathology at the University of Washington Medical School.

Now, Dr. Patton saw the problem that we're going to talk about in a moment early in his career, in the 1980s. That problem is sepsis, which is a blood infection, is a way to think of it. And it's very dangerous. It's the Number 1 killer of patients in U.S. hospitals. When someone has sepsis, you have got to act fast. And so there's a test to try and see if someone has sepsis, and that's called a blood culture.

So the problem that Dr. Patton saw was that even though most people who get tested for sepsis don't have it, they come out with what's called the negative test. You see it's in blue there. Of the people that test positive, the test says that they have sepsis, about

half the time the test is wrong. The test would report something called a false positive, which says the patient has sepsis when they don't.

You might ask yourself: Is that really a big deal? Well, it is because people who have sepsis are usually very ill to begin with, and often fairly weak. And to treat it, medical providers have to give them a strong battery of drugs. Those drugs can, themselves, harm or even kill the patient.

Dr. Patton saw this as a pathologist. There were cases where, after someone passed, he would analyze their tissue and see, in fact, they didn't have sepsis.

This isn't just a small problem. There are over 1.5 million false positive test results each year in the United States, and that number can get up to 2 million when you look at some data.

The reason this is happening is because when you draw blood, there's a skin plug and fragments that sometimes get taken --

We'll probably get that back up in a minute. I can keep going.

There is a skin plug and fragments that sometimes come into the blood when it's drawn. Also, there are things that live on the surface of all of our skin, no matter how much you rub with antibiotic wipes,

you will not be able to get rid of. And then sometimes people just make mistakes when they are involved in the blood drawing process.

And so you often have dirty blood that you can see -- if you could see the vial -- in the bottom of the vial mixed with a cleaner blood.

THE COURT: Mr. Ramani, do you want me to see if it's a court issue?

MR. RAMANI: We could take a pause, Your Honor, and maybe check if it's a court issue. Otherwise, I'm happy to just proceed with the document camera and do it on paper, if that's -- that would be acceptable.

THE COURT: I mean, I'll defer to you, but I wanted to offer it. If you wanted to break, I can get the court reporter... It's up to you.

MR. RAMANI: It looks like it settled down, Your Honor. I really appreciate it. Maybe we can go forward, and if it recurs, we can pick it up. Thank you very much.

So Dr. Patton saw this problem in the '80s, and he put his head down, he ran his pathology lab, had a family. And then as his career was winding down in the mid 2000s, he saw that no one had solved it.

So he decided, you know, as the end of my career, as the cap of my career, I'm going to take a shot

at it.

Yeah, Your Honor, if we would take a break just to see if we can get it fixed.

THE COURT: Sorry.

MR. RAMANI: Thank you.

THE COURT: Well, do you want to stay in your chairs? Do you want to go outside? I'm going to get an IT person up here.

What happens is the lawyers, law firms, all connect into our system, and we need to figure out if it is the lawyers or our system.

You want to go back to the room for a couple of minutes? You want to just wait?

Do you want to check the plug underneath to make sure it's actually plugged in?

The last time I did have somebody come up and it was the problem, it wasn't plugged in right.

Go ahead and call him just in case.

(Whereupon, a recess was taken.)

THE COURT: Go ahead.

MR. RAMANI: Thank you, Your Honor.

Well, I was a boy scout for a long time. They always said, "Be prepared," so we have paper copies if we need them. Let's hope that we don't.

So picking up our story back where we were. As

Dr. Patton ran his pathology lab, had his family, in around 2005, as his career was winding down, he realized that nobody had solved this problem he had seen so many years ago. So he said, "For the last piece of my career, let me see if I can do something about it."

So he studied what's called diversion. And so what that is, is you take the dirty blood that first comes out when you needlestick a patient. You can see here -- it's Number 7 -- you put it in a waste tube, and it's as it sounds, a tube that you just throw away. And then you add the collection canister in, and you should get cleaner blood. That was at least the thinking.

Now, you still have a lot of things that people have to do, and despite all of our best efforts, we have a lot of steps people have to do. Mistakes can be made, dirt can get introduced, and that kind of thing. But he thought maybe this would be an improvement.

As he was doing these studies, he met Mr. Bullington. Mr. Bullington heard what Dr. Patton was doing. Mr. Bullington was from the business world, but he had been working in the medical field. And they decided to found Magnolia Medical together. And from 2008 forward, the company has continued innovating.

As you are going to hear, one of the first things they did was to file for patent protection. They

have done it consistently since.

Magnolia is on a mission to zero. That's the company's motto. They want to eliminate false positives for sepsis. They got off on the right track because Dr. Patton, a couple years later, showed that diversion worked.

This was a paper that he co-published, co-wrote and published, in the Journal of Clinical Microbiology, and the paper showed, using something called the initial specimen diversion technique that we just discussed, using those two canisters, you could eliminate false positives by 50 percent. That's what the highlighted entry in the table is. So that's good. That's progress.

But it wasn't quite enough for Dr. Patton and Magnolia Medical. So what they did was have the idea that you need to have this diversion done in one single unit, in one device. And they created a new category, something called an ISDD, Initial Specimen Diversion Device. So you get rid of the problem of having people swapping tubes, and you reduce the possibility of contamination.

You are going to hear that from 2011, Magnolia had come up with 50 different concepts, and prototyped a handful of them. Here are just some examples. Mr. Bullington will walk you through these and explain what they are when he testifies shortly.

This work continued, the patenting continued, and ultimately led to the first ISDD on the market called the Steripath, which Magnolia introduced in June 2014.

Their work continued from that point forward. You are going to see that the engineers at Magnolia worked on a number of different concepts. They worked on something called low flow. They worked on something called active pressure differential.

And you will see technical documents from the company that shows you in around the 2017 time frame, they really focused on one new concept, something that is called a movable plug or valve that is moved by a pressure differential. We will talk about what that means shortly when we get to the patents.

But their innovation continued and brought a second product to the market, the Steripath Gen2, in December of 2017. In September of 2018, Magnolia filed for the patents that are at issue in this case. And by "filed for them," what I mean is they came up with the inventions. Think of it like putting a flag in the ground, where you stake out what it is that you've come up with, and then you have the ability to apply for patents from that point forward. And that's what Magnolia did.

In October 2020, they brought out their third product, the Steripath Micro. In this case, you are going

to hear about the Steripath Gen2 and the Steripath Micro in more detail.

Magnolia has, over time, sold to over 700 different hospitals and hospital systems, and their products have allowed over 7.67 million cleaner blood draws.

Let's briefly talk about Kurin. Kurin, as I said, is the follower. Kurin came seven years after Magnolia to the market. They introduced their first product called the Kurin Lock in 2017.

One thing that the evidence will show you is that these two Steripath products, the Gen2 and Micro, they work with something called active pressure to bring the first bit of dirty blood into the device so it's captured.

The Kurin Lock did not do that. It operated in a different way. You would stick the patient, and the blood would just flow in, and only then would they apply the collection canister.

So Kurin's first device that worked with active pressure to pull the dirtier blood into the device was announced in February of 2023. That's the Kurin Jet. That's the product that Magnolia is suing over in this case.

The second thing we are going to show you, that

Kurin used Magnolia Medical's three patents without permission. We are going to compress this timeline a little bit. So I mentioned, you can see that Magnolia, as you're going to see, did work in 2017, put its flag in the ground September 2018, and filed for two patents in October of 2022.

One of those patents is '081, issued in December of 2022. They filed for the third patent in April 2023, the second patent issued, the '863, in May 2023. And the third patent, the '709, issued in February of 2024.

You are going to hear from Mr. Bullington that when Kurin announced the Jet, Magnolia -- it was a limited commercial release. Magnolia asked Kurin to provide it with some samples so it could test them to see if Kurin was using Magnolia's IP. Kurin didn't respond.

So Magnolia ultimately had to wait to get the samples on the market itself, and it concluded then that Kurin was, in fact, using its three patents in its Jet and filed suit in March of 2024.

Again, here are the three patents. You can think of these two patents, the '081 patent and the '863 patent, as the movable plug pressure differential patents, as I mentioned. We will talk a little more -- you will hear more in the course of the case what that means.

The '709 patent you can think of as the valve pressure differential patent. One thing you might focus on as both sides present their case to you -- you should, of course, keep an open mind and listen to what Kurin has to say, too -- is watch for when it is that each side started working in an engineering sense with the movable plug.

I told you that you're going to see that Magnolia did it in 2017. Watch for when it is that Kurin started working with one.

So the Kurin Jet is the Kurin product, as I mentioned, that Magnolia says infringes. Here's an example of one of the Magnolia patent claims. It's a lot, I know. As you saw in the video, all of this language sets out the intellectual property that the U.S. Patent Office said Magnolia invented. This is one patent claim; it's Claim 12.

We have to show that everything in Claim 11 is done, as well as what's listed in Claim 12, to prove that Kurin is using Magnolia's patent, Claim 12. We're going to do that. There are 12 total of these claims across the three patents that Magnolia Medical is asserting here.

When I see a claim language like this, the way that sometimes helps to think about it is to think about a recipe.

So during the pandemic, our teenage daughter, she got into baking. And so this is her chocolate chip cookie recipe. Now, I took out all the weights and volume to make it a little bit easier. But it's all-purpose flour, baking soda, salt, butter, sugar, eggs, vanilla extract, and chocolate chips.

If you use those ingredients, you're making Anya's chocolate chip cookies. You might ask yourself, well, vanilla extract is a small thing. Maybe you don't have any. So you're going to follow this recipe, but you're not going to put in the vanilla extract. If you do that, you're not making Anya's cookies.

Similarly, if we fail to show you that Kurin is not doing anything in our patent claims, they don't infringe.

Another concept that can be helpful, well, what if you like these chocolate chip cookies, but you want a little nutty flavor, so you add some walnuts in as well. Is that something different? It's not. You are still using Anya's recipe. If you do everything in the recipe, even if you do other stuff, add other ingredients to it, it doesn't matter, you're still using it.

So we're not going to leave you to puzzle through the claim language on your own. We have one of the world's leading experts in the field of fluid

mechanics, which studies how it is that gases and liquids move through space.

Professor Meinhart, would you please stand up?

This is Professor Carl Meinhart. He is a professor of mechanical engineering at the University of California Santa Barbara. And so what Professor Meinhart has done is he has studied all 12 of the Magnolia patent claims and he's broken them down. And he will show you, by looking at testimony, Kurin documents, and his own testing, that Kurin, in fact, is, using Magnolia's patent claims.

Let's take a look at the Kurin Jet. This is an instructional video from Kurin's website.

(Video plays, PDX-01.034)

MR. RAMANI: That video alone showed, if you saw some of the highlighted words in the claims, that Kurin is doing what Magnolia Medical's patent claims require. Professor Meinhart will explain all of that.

Now, part of what he did in his testing is to do some pressure tests. So here's a side view, a cross-section of the Kurin Jet. And Professor Meinhart will talk you through what he did to analyze the pressures inside of it.

This language that's highlighted here, this is across all of the Magnolia patent claims, or language like

it, in response to an increase in a pressure differential between the movable plug and the outlet.

Let's talk about that. So the Kurin Jet inlet is right here. And the outlet is right here. As you may have seen, when you put a needle in a patient, then you attach a vacuum source here at the outlet, blood gets drawn in here and the dirtier blood goes and fills up this channel.

And when that blood hits the top here, pressure starts to build throughout this channel and ultimately that pressure, along with the pull from the vacuum here, causes this plug to pop. It pops up. And then the cleaner blood flows up and out this way.

Now, Professor Meinhart will explain to you that what this language means to him and others who are skilled in this field, is that this all happens in response to an increase in a difference between a pressure at the movable plug and a pressure at the outlet.

Now, Kurin has their own expert, and both experts are going to agree about what the pressure is at the outlet. The main disagreement that you are going to hear is that Magnolia and Professor Meinhart say that you measure the pressure here, right at the bottom of the plug, when you measure at the plug, because, of course, we all know that to get a plug or a valve to move or open,

you need that pressure at the bottom.

Kurin's expert is going to say you measure at the top. That's the big difference of opinion you are going to hear in this case. You will have to decide which one makes sense to you and bring your own common sense to bear on that question.

Let's take a look at one of Professor Meinhart's pressure tests. This is going to move a little bit fast. So it's going to start with a spike as the pressure source is attached, and then you'll see blood simulant flow in here along the bottom. And then as you watch this graph, you will see the pressure start to build. And then just keep your eye focused right here. You will see a pop. And then the blood simulant will flow out.

There's the first spike. Simulant starts coming in, the containment channel, it's called, is filling up and there a pop, moves up and out. That's just some of the evidence you'll see that the Kurin Jet operates in response to an increase in difference between a pressure at the movable plug and pressure at the outlet.

Now, we're not quite sure what Kurin is going to say. I suppose we will hear shortly from their lawyer. One thing they might tell you is that, well, no, we at Kurin, we came up with this first. Magnolia -- sure,

Magnolia maybe was in the market eight years ahead of us but, in fact, we are the true inventors here. They might even say that Magnolia was watching us and Magnolia was trying to get IP protection over what we were actually doing.

Listen with an open mind, but the evidence is going to show you, when you really look at it, that what Kurin did was something totally different. In its own patent application -- and you'll see that Kurin isn't able to say that everything that Magnolia did was in one place. They are going to pick and choose from different places to try and put things together like a puzzle. We'll have the chance to come back and talk to you about that later in the case.

So that brings us to what Magnolia will ask you for. Magnolia will ask you for lost profits, which is the amount of profits Magnolia Medical would have made if Kurin had not been using Magnolia's IP. Then Magnolia will ask you for a reasonable royalty, which is a payment that Magnolia and Kurin would have agreed to in something you will hear about called a "hypothetical negotiation" that will be explained, for Kurin's use of Magnolia's three patents.

Mr. Napper, will you please stand.

Brian Napper, who is a senior managing director

at an economic analysis firm called Ocean Tomo, is the expert who conducted this analysis and will explain to you how he did it.

Thank you, sir.

And through September 30 of 2025, Magnolia will ask you for just under $5 million in lost profits and just over $2 million in reasonable royalty. So about $7.1 million all told.

That brings us to our third point that we'll prove to you, which is that Magnolia Medical doesn't use Kurin's patent. I mentioned earlier this is a retaliatory patent. What do I mean by that? I mean you can see that Kurin filed for it in July of 2024, it issued in November of 2024, but it has an early application date.

So Kurin will tell you, well, look, listen, we put our flag in the ground for this thing back in 2016. We don't deny that. However, looking in context here, Kurin is going to have two problems, as the evidence will show you.

The first is that in 2016, when they filed with the Patent Office, they told the Patent Office "this is what we invented." After Magnolia sued, they went back and said "this is what we invented." You can't do that. We'll explain why, as you hear from the evidence in the case.

The second issue, and this is, by the way, Kurin's patent claim. You see it's comparatively simple compared to the language you saw in Magnolia's patents. The second thing is Magnolia doesn't use what it is that Kurin has in its patent for two specific reasons that we will discuss.

Let's first look at the product that Kurin is saying uses its patent, the Steripath Micro, which, again, came out in 2020. Kurin got its patent November of 2024.

(Video plays, PDX-01.044)

MR. RAMANI: So that's a brief introduction to Magnolia's Steripath Micro.

Back to Kurin's patent claim, Claim 1. Magnolia Steripath Micro doesn't do these two things, 1C and 1E. We'll briefly talk about each in turn.

1C, the key language here is that their patent requires that when you pull the dirty blood, a first portion of blood sample went under a drawing force applied from the outlet port. It's got to be something attached to the outlet port that draws in that dirty blood. That's not how the Steripath Micro works.

We have an animation here on the left that's going to show you how it works and it's going to track this technical document, the one that's on the right, which both sides' experts use.

So you start off in an initial state and there's a bladder that's full of air, and you attach a canister at the outlet. The bladder flips, and only then enters the diversion state. You see here Magnolia's technical documents, created before Kurin's patent came out, say the bladder flips, creating negative pressure that draws diverted blood into its chamber. So it's the bladder that does the drawing, not something attached to the outlet port.

Professor Meinhart conducted some tests. He will show them to you, that prove this.

Secondly, there's a housing that defines limitation, and the key here is it's a housing that defines a sampling channel. And so what we've highlighted here in yellow is what Kurin has identified as the housing of the Steripath Micro, which is a white plastic, it's a white plastic outer casing.

The parties agree that the housing that defines means a casing that fixes or marks the limits of the sampling channel. So that's what is required, a casing that fixes or marks the limits of the sampling channel.

This red button, both sides agree, not part of the housing. And you'll see, maybe you saw it in the video, is the sampling channel, when you first bring the -- connect a vacuum here and then you flip the bladder

and then the bladder starts pulling the dirty blood in, it fills up this C. And we just have a ghost image of it here so you can see the rest of the housing. Only when you click this button does the sampling channel exist. If you don't click the button, sampling channel is never going to exist. It's never going to be able to collect clean blood.

And so since you need the button to create the sampling channel, you can't say that without it, you have a casing that fixes or marks the limits of it. And that's what Professor Meinhart will explain to you.

Again, the three points that we commit to proving to you over this trial is that Magnolia Medical is a pioneer. Kurin uses Magnolia Medical's three patents without permission. And Magnolia Medical does not use Kurin's patent.

Again, we thank you very much for your time and your attention. We'll have the opportunity to speak with you again in closing at the end of the case.

THE COURT: Mr. LoCascio.

MR. LoCASCIO: Thank you, Your Honor. May I have a moment to adjust some things here in the courtroom?

THE COURT: Sure.

MR. LoCASCIO: Thank you.

May I proceed, Your Honor?

THE COURT: Please.

MR. LoCASCIO: Thank you.

Good afternoon. This case is a perfect example of why we have a jury system in this country. All eight of you came here this morning knowing the difference between right and wrong. You have known it your whole lives. If you have children, you've taught your children. Pretty basic tenet: Don't take credit for other people's work.

That's exactly what Magnolia is trying to do here. But it's worse. It's not only taking credit for work they didn't do and someone else did, Magnolia is trying to prevent Kurin from using its own invention.

In this case you'll see Kurin hasn't done anything wrong. Kurin doesn't infringe any actual Magnolia invention. Kurin didn't copy Magnolia. In fact, you'll see something that looks quite like the opposite of who the follower and the leader is here. Kurin is using its own technology that it developed first.

Magnolia is not entitled to anything in this case. So you might be thinking, well, why are we here? Well, we're here because Magnolia's business was losing money for more than a decade. And so unable -- you will see the products, you will see what people think of the products that compete with each other. Unable to compete

in the marketplace, Magnolia decided to try its hand at the courthouse.

Maybe they thought litigation takes a long time. It does. Maybe they thought litigation is quite expensive. It is. Maybe they thought Kurin would just fold up its tent and go home. They miscalculated. Because when you haven't done anything wrong, you stand up for yourself.

Kurin has been waiting two years for this day, for you to see through Magnolia's tactics and say, after you've heard all the evidence and deliberate, loud and clear: Stop taking credit for Kurin's work.

My name is Gregg LoCascio and, with my colleagues, we are proud to represent Kurin and look forward to presenting the evidence to you over the next few days.

So let me introduce Kurin. On the left are two products and over the course of the case you'll see them. You will probably at some point get to handle them in the jury box.

This is Kurin's Jet. Pardon me. The Lock right here. This thing between my fingers, this is Kurin's Jet. You will see they look a lot alike in some ways. They have features in common.

The Lock on the top -- back to the slide -- was

the first generation product. It's partially automatic. Over the course of the case, you'll come to understand what that means from a nursing perspective.

The newer product, the Jet, is fully automatic. And that's the -- one of the improvements of that. The Jet -- as well as the Lock -- but the Jet reduces false positives, which you heard a lot from my colleague, without the need for an ER nurse to do anything more than he or she did in a normal blood draw. And over this case you'll see how important that is. Because with everything going on in the emergency room, there's a protocol on how to draw blood, and the Kurin Jet is seamless in that process.

You will see the Magnolia products weren't well-accepted, have folks criticizing them because it added steps. When you add steps, that reduces what's called compliance, because now it's not done according to the protocol, or the nurse says, I don't want to use this device because it's taking more time or it's causing more difficulty.

And compliance -- because this is an important area. Both companies compete in this space, blood diversion devices. You want hospitals and nurses to use the product and use it correctly.

On the right are three Kurin employees. You're

going to hear from three people who work today at Kurin. Let me introduce them to you. The first is Bob Rogers. He's sitting here at the table.

Can you stand up, Mr. Rogers.

Bob Rogers -- thank you, Mr. Rogers -- isn't just the CEO, he cofounded the company. You are going to hear that this wasn't Mr. Rogers' first medical device company. He's been focused on solving problems with simple solutions faced by nurses for decades. He'll explain to you that when he first -- he's the first to invent a diversion device that automatically sidelines that first bit of blood, that contaminated portion or potentially contaminated portion. And the innovations he came up with to make a device capable of doing that.

Second, Abby Norfleet.

Ms. Norfleet, can you stand up for me. Thank you very much.

Ms. Norfleet is a regional Kurin vice president of sales. She's been at the company since 2017. But earlier in her career, she was a nurse in a critical care unit. She's going to tell you about the Jet and how nurses prefer the Jet because it works without requiring them to change their procedures and practices.

And then last, next to Ms. Norfleet -- can you stand up, please, sir -- is Kevin Nason. Kevin is Kurin's

vice president of research and development. And you will hear how Mr. Nason took Mr. Rogers', Bob Rogers' ideas from the Kurin Lock and from Kurin's own patents and disclosures and used them to make the Jet, the automatic version.

So let's talk about Magnolia. Magnolia has three products. The one in the middle, the Gen2, is this device. It's not automatic. As my colleague explained, you sort of have to pump the blood out by using your hand while you're also tending to the patient and doing the venipuncture.

It's obviously not as small, and this is an important issue because certainly for pediatrics, but also for folks in the hospital who are getting multiple blood draws, you don't want to waste people's blood. Blood is sometimes called precious blood because you want to use only what you need.

Except this concept of blood diversion devices takes some of it and doesn't put it into the measuring area, it takes it and puts in what's called a waste tube. Because you want to make sure it's not used in the sample.

Kurin's devices, both of them, the two devices we looked, at the Lock and the Jet, you will hear, use .15 milliliters of blood in the waste portion.

Magnolia, when they started their business, the

first product in the Gen2 used 1 1/2 to 2 milliliters, which is ten times -- do I have this right? Yeah -- the amount of blood wasted from the Lock or the Jet.

And then we heard about leaders and followers. You are going to get to see the Micro, which we have one too. The Micro at some point, the Micro -- and it's micro compared to the Gen1 and Gen2, but it is a half to 1 milliliter of wasted blood.

And you heard a story or an introduction about Mr. Patton or Dr. Patton. I don't know if you recall that. Richie Patton grew up in Nebraska. You are going to see that Dr. Patton is not an inventor on any of the patents Magnolia is suing over. Okay?

Dr. Patton, the suggestion was this idea of diverting blood, just take a waste tube was something he came up with in the Magnolia story that you heard about. The benefit of a trial like this is we'll see and hear evidence, and that's the evidence you are going to rely on, which you'll ask, okay, was what I was told accurate or not at the end of this case.

Mr. Urban, can you pull up Page 80 of the transcript of Mr. Bullington.

You are going to see deposition testimony and hear witnesses on the stand.

Highlight Line 7 to 23 for me.

And you'll hear Mr. Bullington admit, on video, a very different story than you heard in opening from my colleague because this question, the evidence, what will the evidence be of who came up with this idea?

"QUESTION: By 2005, the whole industry knew that false positives in blood culture collection resulting from contaminants was a problem."

Mr. Bullington sitting right here: "That's a fair statement.

"It's not something Dr. Patton was the first to recognize?"

Mr. Bullington: "Certainly not."

And there had been people, including Mr. Stone -- you will hear about another competitor, Stone Medical, that came before Magnolia and came before Kurin -- they had been proposing ways to solve that problem.

Mr. Bullington: "That's fair.

"QUESTION: Before Dr. Patton?

"ANSWER: This specification," and you will hear that's talking about a patent that Mr. Stone had, "was written before Dr. Patton, Magnolia's specification, so I would agree with that."

So as the course of this case goes on -- thank you, Mr. Urban -- you are going to hear allegations that

we're the follower. We compete with each other. That's what this country is all about. Businesses compete with each other. We compete fairly and they have products and we have products. And others, Stone Medical, has a product.

And in 2015, this was on the website. You will see this is testimony in a document. You will hear it in the course of the case. Gino Kang was an engineer working at Kurin. He looked at what was on the website of Magnolia, the first version, Gen1. It's even bigger than Gen2. And he says, "As I watched the video, the one thought that entered my mind was how complex the device was for doing something so simple. My thought is there are lots of moving parts to do a simple segregation of flow or stream. You can try to do this with a valve or gate using fluid pressure."

Now, we'll see in the course of this case, you heard my colleague say their patent, I guess, now later on is through a valve.

In 2015, Kurin already thought you could do this a lot easier. You could do it with a valve or fluid pressure.

And Mr. Rogers responds. You will hear him testify about this. He looked at that and he said, "It's a pretty simple problem that's getting the Rube Goldberg

touch via Magnolia."

And you may not know -- you may know. You've heard this phrase, "Rube Goldberg." Rube Goldberg was an American cartoonist and he made really simple stuff complicated. This is an example. I think it's the self-operating napkin. And it's, you know, the gentleman drinks his soup and then it pulls a string and a cracker flops up to a bird then it tilts a scale and rocket goes off and an alarm clock wipes the guy's mouth.

You can make stuff hard and complicated. Or you can make stuff simple solutions.

You will see other -- the story here of how did this come up? Who is the leader, who is the follower? You will see other Kurin folks.

2015, well, they looked at Stone's medical site and said they think you need 4 to 6 milliliters. That's even more blood that would be wasted as optimal diversion. That seems like a lot.

Mr. Rogers: "There's no clinical reason for that much blood."

So he crafted a business plan in 2015. The Kurin blood culture collection device. The company was originally called Calliope, then it was renamed Kurin. That's why on the left you'll see the document says Calliope. And you will hear testimony about how in his

business plan in 2015, Mr. Rogers said, "Key to our approach" -- this is highlighted portion -- "is its use of the patient's own blood pressure to drive the diversion sample. First is Magnolia's model where you had to sort of pump it out. This passive approach reduces the potential for vein collapse and the clinician from having to actively perform new steps, the point I've raised about compliance. It's seamless. This automatic feature will greatly improve compliance and outcomes."

So they also talked about the competition. The folks who originally came up with this that predate everybody is -- use a waste vial. If you've gotten a blood draw, you may have had more than one vial sometimes. So they put first vial in the Vacutainer, they disconnect it, then another vial goes in.

Essentially, the concept is the first one is small and you discard it. That's the concept of using the waste vial. That approach has largely failed. People don't do it because it's extra steps. It's hard in a busy environment. And it just wastes blood.

So for this space, when they came up with the ideas and started launching -- thinking about building a business with Kurin, they said, well, Magnolia is a competitor. We said that then, we say it now. Their product suffers from many shortcomings, you will hear,

including poor design, high cost, expensive products for the end user, adding steps and thus changing the practice of the nurse or clinician.

Kurin is far simpler, far less expensive, virtually transparent to the end user, and they don't have to learn anything new. And that's how these companies have competed.

The patent in this case that Kurin has, it's DTX-1. I believe in your juror binders you have a couple of exhibits, one which is DTX-1, the Kurin patent. The Kurin patent, three inventors: Mr. Rogers; Mr. Kang, who we saw earlier; and Mr. Detloff. And it has a priority date, and you heard about this from my colleague, this idea of sort of planting the flag.

In the question of what came first in patent law, there are things -- you saw in the video from the patent center something called prior art. Prior art, you can't patent the prior art, it already exists. It's part of the bargain of the patent system. It's been put out there for everyone to see.

The priority date is the date that matters for the question of is something prior art or not, which comes first. And the priority date for the Kurin patent, meaning when did they first disclose an application that contains the inventions in this patent, is in 2016.

And what is the patent disclosure? First disclosed in 2016, and now the '052 patent we talked about, it's the same thing as Mr. Rogers had in his business plan. Let's waste less blood because you see, it's the volume of the patient needle.

If you think about that video we saw, the contaminants end up in the needle. It goes through your skin, and there is bacteria and things on your skin.

So the volume of the needle times 20, which sounds like a lot. That's about this much. The Jet or the Lock. Something this size -- do you have the Micro? This is three or four times bigger? It's sealed up. I don't think I am supposed to unseal an exhibit, so I am going to leave it in there. It's three to four times the amount of blood.

But the claims of the '052 patent, see, it says -- there's Claim 12 at the bottom of this. It's one of the asserted claims in this case. It's the volume of less than 1.5 cubic centimeters, less than they were using and thought was the answer to how to solve this problem, and that falls inside that. You will hear testimony of how it infringes.

It also has to be in one housing. It shouldn't then be a multicomponent, multipiece tool with separate areas. It has to be in one housing, and it needs to be

vacuum powered.

That was the original idea in 2016 when Kurin put the flag down, and that invention not only was what Kurin has done, but it's what Magnolia has tried to take credit for.

So let me show you the video of the lock so you can see how that works, to understand the timeline.

(Video plays, DTX-0015.)

MR. LoCASCIO: The Kurin Lock was on the market and sold in January of 2017. You'll see, when we look at the timeline, that's prior art. It's before the flag-planting date you heard about from Magnolia, but it's not the only thing that was.

Because Mr. Rogers, Mr. Kang, and Mr. Detloff filed another patent application. The '682 patent was issued. That means it was granted as a United States patent November of 2017. And that makes the same disclosures, less blood wasted, all in one housing, vacuum powered, that we've seen in the two other documents. That was for the world to know at this point. Kurin could get a patent on it, but it certainly wasn't an invention of someone who came later since it was already out in the prior art.

And then in 2018, Mr. Rogers continues with now a bigger team, and they publish, in June of 2018, even

more. Specifically Figure 24B, in that what's called the Rogers '445 publication, which that's the design that turns into and leads to the Jet.

And it describes it here. This is from the disclosure in that patent application. "Further blood samples will automatically flow through the inlet port, through the blood sampling channel, and ultimately to the outlet port."

The automatic Jet and the features and claims of the patent that now they are trying to claim they own was also disclosed in 2018.

Now, in the state of the marketplace, what's the state of the art in 2017? On the Kurin side, you have the Lock. And on the Magnolia side, you have the Gen2. That's the choice nurses are being asked to make or hospitals are being asked to make. Partially automatic, not automatic at all. Uses one and a half to 2-milliliter of blood, .15.

So who follows, who leads? You will see what the evidence shows. January 2017, in litigation like this -- part of the reason it takes a long time, part of the reason it costs a lot is because all sorts of documents, e-mails, PowerPoints, all the things companies have, they all get collected up and turned over. The lawyers on each side can see the other side's documents to

see what people were saying, what they actually were doing at the time.

These documents come from Magnolia. These weren't available. These are kept in their files or their e-mails during the course of this. Because they started this fight, these get turned over.

Here's one. On the right, you see something. You will hear -- their witnesses will admit it -- it doesn't just look a lot like the Kurin Lock. They created SLA, the stereolithograph. They basically were trying to scan and make their own version of this product to assess it. Well, why? Did they even know how to make it work? Could they come up with this when they had this? Well, how did they get there?

They started analyzing the Kurin product. April 2017, folks at Kurin -- their senior product engineer, "We're working on a new design effort," not this evolution of the work they had been doing, "to come up with a response to our friends at Kurin."

We talked about the patent applications that Kurin had that were public, that showed this idea and this invention, and we know that Magnolia had those, too. Not only did they have them, but in May 2017, Mr. Miazga, who purports to be an inventor of their patents in this case, said, "I was heads down going through the Kurin

application. I'll scan and send along my notes from a read through of the application."

You will decide who is the leader and who is the follower.

The reality was -- you'll hear Magnolia realized, "Our approach was wrong," so they needed a response to Kurin's approach, .15-milliliter less blood being wasted, and they, in their own internal documents of Magnolia, said, "If we don't have a commercial adult response, that would be a significant strategic failure on their part."

And in 2019, they had a board of directors meeting at Magnolia. They have slides that tell you exactly what they were thinking. You'll see it says, "We have lower than forecasted sales." Well, why? "Our sales are slower primarily, too" -- and there are several bullets, but the bullets I've highlighted. "In love with our offering and so blinded by its challenges."

They have come up with a version of product of their own, as they are entitled to. It wasn't as well received, it wasn't as competitive, and unfortunately, they were apparently blinded by its challenges. They underestimated competition at Kurin.

In that same board of directors meeting, they said, "Let's look at the world through Kurin's eyes, and

therefore, their customers' eyes, the people who use these products."

Well, the first thing they said is, "They have a better product." Then they said, "Why?" Well, it requires only .15-milliliter of precious blood to accomplish a 35 times washout. That means the amount of volume in the needle gets turned over 35 times before you even start collecting the blood. The wasted blood is 35 times the needle volume.

They said it's sensitive to blood wastage. It can be used by pediatric patients. And it's, as you will surmise at some point, an elegant, easy-to-use solution. They described their own as a Heath Robinson contraption. I had never heard of Heath Robinson. At some point, you will learn during the course of this case, it is the British Rube Goldberg. It's a British guy who made stuff really complicated when it could be much simpler. They themselves understood that.

Let's look at the timing of what happened next. They didn't launch the Micro, which uses less blood than their Gen1, Gen2, but still uses a lot more than the Kurin products, but is now within the disclosures of Kurin's invention. They launched this in October 2020. It's three years and a half after the Kurin Lock is on the market.

And you will hear from Dr. Erik Antonsson, who is an expert for Kurin.

Can you stand up, Dr. Antonsson? Thank you.

Dr. Antonsson, he has over 25 years of experience. He's a professor of mechanical engineering as a professor at the California Institute of Technology, Caltech is what they go by sometimes. But he also has experience at the NASA Jet Propulsion Laboratory, Mass General Hospital, and the Harvard Medical School.

He analyzes the claim elements and limitations of -- and he compares the Micro to the patent claims of Kurin's patent, DTX-1. This is some of their own documents that he uses to say this. It uses the low blood volume, it uses negative pressure, and it has a housing.

And on this one, this is an example of what he'll walk you through. He will show you all the elements of the invention, which came first in time. It has got the flag planted long before any flag planted on that side. You will see meets the limitations of the claim.

Now, part of the reason we have trials is because they are telling you it doesn't do this. What are you going to see? What's the evidence that you are going to hear on that? You were shown this slide by my colleague, Slide 46.

Mr. Urban, can you pull that up?

So this is -- I don't know which direction I aim it. That way? Sorry. Sorry, this is on me.

Can you go back to the -- thank you. I will use the correct button this time.

So during the course of the case, you are going to see evidence and you are going to hear witnesses. And the Court has instructed, you have got to figure out who's credible, and you will go through that analysis. You are going to see documents like this.

And their theory -- you will hear the expert say their theory is the bladder applies the force, not anything from the outlet port. You are going to get into all this and see schematics. But at a simple level, if you and I held on to a rope and I pulled that rope really hard and it pulled you over, the claim says, okay, did the force come from the outlet? Did I pull you over?

Their defense you will hear to this is no, no, I didn't pull you over, the rope pulled you over because the rope applied the force on your hands, except the rope was being pulled by me.

And if you look at the document, even the one they pointed to in their opening, you will hear that, okay, the part that's highlighted here, bladder flips. Well, what pulls down the bladder?

Right above that, circle that or highlight that

for me.

It is pulled by a syringe, which pulls down the bladder. And it was emphasized to you that, well, the bladder isn't connected to the outlet port. You know what is connected to the outlet port? You'll hear -- can you get that legible for us, right there in the middle of that section?

We will get a better version, but it says outlet accessory -- thank you. Syringe is connected to the backside of the bladder of the outlet. So you are going to see the actual evidence and you'll make your determinations, but you are going to hear people make arguments and you are going to hear their expert say, "Well, no, no. The bladder does the force." Except their own documents, their own witnesses say the syringe and the force pulled on the outlet port is how it makes it all work, and you will see they infringe this claim.

Thank you, Mr. Urban. If you can go back.

You are also going to hear from Carrie Distler.

Ms. Distler, can you stand up for me? Thank you.

Ms. Distler holds a master's in economics. She's got over 20 years of experience in valuing intellectual property -- patents are a form of what's called intellectual property -- and assessing damages.

She will walk you through parties' financials and their sales and how these products compete with each other, and ultimately, for infringing Kurin's patent, Magnolia owes Kurin $9.9 million.

Magnolia started this fight, and Magnolia says we infringe their patents. Well, let's look at the flag dates and let's look at the prior art. Because you heard in the video, to get a patent, it has to be new, novel, and non-obvious. That means you've got to invent something. You have to understand how it works. You have to come up with an idea that's patentable.

Their flag date is September 2018. And over on the right, only in 2022, 2023, they filed the applications that -- they get the priority back to 2018, if it meets some requirements. They actually had an invention and they disclosed it. 2018 is their date.

All the things above that, from 2017 to 2018, the Lock, Mr. Rogers' patent, '682 patent, and Mr. Rogers '445 application published, they all show the invention that ultimately Magnolia tries to claim later.

They tried in '22 and '23 to file applications to take credit for our work. Why? Because they needed some tool to compete, we contend.

There's no dispute, the parties don't disagree about those flag dates that our patent on the Kurin side

is entitled to priority in 2016 and that Magnolia's not entitled to priority until 2018. And they also don't dispute those three prior art references, what was disclosed to the world, and you can't patent unless you are the guy who has the date before it, in 2016, 2017, and 2017.

Dr. Antonsson goes through the claims of the Magnolia patents, and he identifies where the features that they claimed, invention they claim is actually in all that earlier Kurin work.

So what happens next? Well, the Jet comes on the market in 2021. It's now an automatic product. Its' even easier for nurses to use. Let's see how that product works.

(Video plays, DTX-0079.)

MR. LoCASCIO: You will hear from multiple witnesses that the Jet is better received. It's automatic, it's easier to use, and it's preferred by nurses. And we saw, and you'll hear, that it took Magnolia years of following to get their first Micro on the market. Micro has a button; it's not automatic. And they have three patents they say they invented. Of all their products, the Gen1, the Gen2, and the Micro that we saw on the slides, none of those products use what they claim they invented. None at all.

If they had invented what they claim they have in these patents, well, you'd think they wouldn't have to spend so much time figuring out how our products work at Kurin, looking at the prior art, because they didn't actually possess the invention because they didn't come up with it themselves.

So what's the reaction on the Kurin side -- pardon me, the Magnolia side? Well, they saw that very same video that we just saw. And then they create another board of directors update.

Well, the Jet launch is underway and it's getting new interest. How about our Micro, their new product that we heard about? You weren't shown it. This guy, the Micro, the users view the additional step, having to press the button, it's not automatic, is less desirable than the automatic architecture. They are losing in the marketplace. So what do they do? Well, they file this lawsuit in March of 2024.

Before I finish, I want to introduce the rest of my trial team, so some folks you will hear and see from -- with other witnesses. Sean McEldowney, Kelly Farnan, Kelly Tripathi, and Matt McIntee. I will add our paralegals, Connor Doran and Ry Yates in the front row. And then to make everything run on all these screens, we both have the folks. Josh Urban is right there. He's our

tech expert, we call him.

So I do have one other point to make. Because Magnolia was the one to start this fight, they get to go first. So it's the way the system works. We won't get to put on our witnesses until after they finish. I ask that you listen, of course, to all of the witnesses on both sides and look at all the documents and all the evidence because that's the only way you can do your job of reaching a fair and just verdict, which is what we want.

Thank you very much for your time and attention. Kurin looks forward to presenting to you the evidence in this case and showing you that Kurin should win this case because Kurin came first. Thank you.

THE COURT: All right. We have a juror in the back. Sir, you good? Okay. All right. So now, Magnolia is the plaintiff, so it goes first to present its evidence.

Mr. Ramani.

MR. RAMANI: Your Honor, thank you. May we approach briefly?

THE COURT: Sure.

All right. So this is our first sidebar. If you will stand by.

(Discussion off the record.)

(The jury exits the courtroom at 2:21 p.m.)

THE COURT: Have a seat.

Mr. Ramani, you may go ahead.

MR. RAMANI: Just two things. One, I just wanted to confirm, I believe the parties have agreed on rule of exclusion for fact witnesses. I wanted to make sure the fact witnesses were out.

THE COURT: Okay.

MR. LoCASCIO: After opening, we agreed that they will be out.

THE COURT: All right.

MR. LoCASCIO: Pursuant to the -- except for corporate reps, as per the pretrial order.

THE COURT: Okay.

MR. RAMANI: So Mr. Bullington on our side, Mr. Rogers on their side.

THE COURT: Sounds good.

MR. RAMANI: Second, and the reason I wanted to approach, Your Honor, is I want to make sure that I read this correctly. "You will hear that it took Magnolia years of following to get their first Micro on the market. Micro has a button that's not automatic. They have three patents they say they invented of all their products. The Gen1, Gen2, and Micro. We saw on the slides none of those products use what they claim they invented."

Sounds like that opens the door to the Flow

product.

THE COURT: I apologize, but I can't even remember what we're talking about, the Flow product.

MR. RAMANI: I'm sorry, Your Honor.

THE COURT: You have to understand, like, I spent the weekend writing an opinion that will probably come out today or tomorrow on a preliminary injunction. We just move from case to case.

If you start to refresh my recollection, I will remember it, but I just don't.

MR. RAMANI: I would be delighted to.

So Magnolia has three products on the market, as both sides presented in opening, currently.

THE COURT: Correct.

MR. RAMANI: There also is a fourth product, the Magnolia Flow.

THE COURT: Right.

MR. RAMANI: Which is now out on the market. It's being used in a hospital as of last week. And so --

THE COURT: This is the product that just was approved by the FDA in August?

MR. RAMANI: Correct.

THE COURT: Okay.

MR. RAMANI: This was the one that we said we don't want -- we're not intending to introduce it in the

case, but if the other side tries to present a counterfactual, then that would open the door, and we would come ask Your Honor for permission to present it.

So that was the quote I was just reading, if the transcript -- it is on Page 64.

MR. LoCASCIO: Your Honor, I specifically said -- thank you for the transcript -- I specifically said the three products. The three products that are both sides' slides, Gen1, Gen2, and Micro. And the only products in this case.

The transcript is rough, but it's Bonnie, so it's probably spot on. It says the -- all the products, "the Gen1, Gen2, and Micro we saw on the slides. None of those products use what they claim they invented."

MR. RAMANI: It's not the right spot, Your Honor.

THE COURT: Yeah. Tell me the time.

MR. RAMANI: Looks like we are starting at 2:18 or 2:17:58.

THE COURT: Okay. Give me a second.

I have playing the video at 2:17.

MR. RAMANI: Can I approach and just hand this up, Your Honor?

THE COURT: Yes. Why don't you approach.

Is it possible we are on different clocks?

(Discussion off the record.)

THE COURT: All right. When do you need a decision?

MR. RAMANI: By the end of Mr. Bullington's testimony.

THE COURT: Which is? He's the first witness?

MR. RAMANI: My guess is the direct exam is going to take about 75 or 80 minutes.

THE COURT: All right. Let's take a break.

Hold on a second.

(Whereupon, a recess was taken.)

THE COURT: Please be seated.

All right. Well, consistent with my earlier comments, Mr. LoCascio likes to get as close to that line as he can. But I don't think he's crossed it, but, boy, are you close.

And I'm going to read the words and, of course, there are a couple problems. This is real time. And although I have the best court reporter you could have and, I mean, I say that from a lot of experience and having read her transcripts, every one, this is still real time, and I haven't talked with her, and they don't have the punctuation, you know, it's not finalized. And, also, the words you don't get is the gap between words. In other words, dealing with microseconds anyway, three

milliseconds, or was it two milliseconds, or six milliseconds, so should there be a comma there or should there not be if you were trying to reflect the timing. Very hard to parse.

Here are the words that are captured here that are objected to that are at issue. And I'll read them in robotic manner first to explain my point:

"They have three patents they say they invented of all their products, the Gen1, Gen2, and Micro we saw on the slides none of those products use what they claim they invented."

My longest pause was between Gen1 and Gen2 because there is a comma in the transcript. I think, depending on where I put the spacing or the timing and the emphasis on words, I could read this sentence in a way that suggests that: All of the products that Magnolia had invented, their universe, was Gen1, Gen2, and Micro, they happen to be featured on the slides, but all of their products were those three and none of them read on the patents.

In other words, what Mr. Ramani wants to say, which is that somebody is going to infer from this that crosses the line, Mr. LoCascio, and you said that basically they don't have a product that doesn't read on the patent.

However, I think the words can also be read, depending on where you put the emphasis, and the pauses, that: Of all the products on the slide, the three products, none of those three products read.

But, boy, I've got to tell you, it's close. What I would say is you are really playing with fire. I'm not going to let it open the door right now, but I am -- if there's another occasion where something like that happens, I think the door will be opened, and then who knows where we're going.

And I don't think it was improper. Just because I said dancing on a line, I've danced on the line as a lawyer. I think it's okay. But you have to understand there are risks associated with it. And this is a very close call. I don't think I danced that close. Maybe I did. I'm just saying, we're getting real close.

MR. LoCASCIO: Thank you, Your Honor.

Just for the record, the specific reference to the three products and saying none of those products was designed to prevent the sort of allegation or assertion that we were saying they've never created or never -- it was those products from the slides, none of those products, Your Honor.

THE COURT: Okay. Again, you can say it for the record. Now I'm going to say something for the

record. Okay. The way you just said that is different than it was presented to the jury. So I'm not debating what your intent was.

But if you want to start making a record like that, I am going to make a record for the Court of Appeals, too. So I just wanted to hear -- that's fine, you can push it. But it depends on where the emphasis was. And I looked at the words and put it on the record, and I don't want any more said about it. You can try the case the way you want to try the case.

MR. LoCASCIO: My comment was by no means record preservation, Your Honor, that was -- I meant -- to the extent it was received that way, I apologize right now.

THE COURT: You don't have to apologize. Okay. Fine. All right.

MR. RAMANI: May I approach, Your Honor?

THE COURT: Yes.

MR. RAMANI: Thank you.

THE COURT: All right. Ready? The door is not opened, but the --

MR. LoCASCIO: I think we have one objection to one Bullington exhibit still.

THE COURT: Oh, okay.

MR. LoCASCIO: Your Honor, on the list of

exhibits for Mr. Bullington, there were three objections. We worked out two. There's one that remains. It is a patent application that is not one of the patents in this case. And how this came up, this was actually addressed in MIL 3, which the Court has --

THE COURT: Oh, and I never ruled on MIL 3 because I was hoping it would go away, and it sounds like it didn't.

MR. LoCASCIO: So it's a copying narrative. And you may recall, I could just pull the slides back up, but essentially, in their Interrogatory responses they never alleged any copying, which is only alleged as an objective indicia for non-obviousness. They didn't allege that with respect to the Bullington patents. It was nowhere in the Interrogatory responses.

And then in the MIL, motion in limine opposition, they identified this patent for the first time as saying, no, no, there's a March 2019 patent -- it's PTX-305 for the record. They identified that and said, well, the temporal correlation between that and the work Mr. Rogers was doing suggests there can be copying.

And our answer to that was, well, it's a little late. We had -- your expert laid out the basis for objective indicia and that's not in there. Interrogatory, it's not in there. And even if it was, like, this could

never be enough evidence of copying.

And then the last point would be, okay, if they want to use this exhibit, like, we now have an application that isn't one in the case that's now in the mix with the jury.

But there's one other thing just procedurally. The only relevance of this, as we've asked, is, like, it goes to copying, they said, which is objective indicia. They are not even supposed to be, under the structure we all agreed on, putting in objective indicia evidence of non-obviousness.

THE COURT: Right. In this part of the case, right. So again, like, I didn't rule on it because I was hoping that I'd never have to rule on it. So are you going to try to do this right now?

MR. RAMANI: I am going to try to do it right now, Your Honor.

THE COURT: Why?

MR. RAMANI: Because we just want to call Mr. Bullington once.

THE COURT: Yeah. All right. He is a corporate guy, right?

MR. RAMANI: He is a corporate rep.

THE COURT: Well, that's easy. I am not letting you bring it in right now because it's out of

order, and then we will deal with it if we have to in invalidity. All right?

MR. RAMANI: Okay. May I just say one thing?

THE COURT: Yep.

MR. RAMANI: Which is that --

THE COURT: Unless you think you are going to try to say it's relevant to infringement.

MR. RAMANI: It's not relevant to infringement.

THE COURT: Okay.

MR. RAMANI: All right.

THE COURT: Then yeah.

MR. RAMANI: But I will say that I am a bit startled to hear this argument from my colleague because we just saw an entire opening presentation from Kurin predicated on the premise of trying to show copying by Magnolia of Kurin patent applications. We have a sauce for the goose, sauce for the gander situation.

THE COURT: No, no. Counsel, this is a Rule 26 issue, it seems to me. That's Number 1.

And then Number 2, look, I let you guys get away with a lot more than I do normally, okay? Just so you understand. In fact, you've seen me. I mean, I was tempted to say to the jury when I read them the instructions, the very beginning, that very important sentence at the end of, I think it's the second

instruction: Do not let sympathy, bias, or prejudice influence you in any way.

And I literally thought about this this morning when I was walking the dog. It's like, you know, I think what I am going to do is preempt both of you and say, by the way, if the lawyers bring up anything about somebody's grandchildren or that it's a grandfather or that he grew up on a farm, that's a play to sympathy. It's a play to bias.

I sat there, I listened to the Nebraska Patton story. You know, not patent, P-A-T-T-O-N. You know, both sides think this really, really helps. By the way, I do think the jury largely ignores it. I let you go. It extended both openings by a lot. You both do the same thing.

At some point, even with you, I will finally come in to rescue the jury. So just be mindful. The Delaware lawyers have heard me. You know, if I hear the expert talking about how he's a grandfather, I am probably interrupting and I'm like, why is that relevant, right?

And it just -- and even with the inventors or the alleged inventors or these business guys who come in and pair with an inventor to start a company, at some point I've got to interject and protect the jury. Keep it in mind. I've let you get away with a lot more than I

normally would in that opening, both of you. Okay?

MR. RAMANI: Okay. Thank you, Your Honor.

THE COURT: So let's go. Let's bring in the jury.

While you are here, if you decide to change your strategies and somebody stands up and objects, and you don't have to say why, somebody is asked: Tell me what farm you grew up on, and an objection, I will probably sustain it.

(The jury enters the courtroom at 2:52 p.m.)

THE COURT: Please be seated.

All right. Thank you for being patient. Now, that was longer than we thought for the bathroom break but I promise you that I had to go over some legal issues that ultimately will shorten the trial. Okay? Thank you.

Mr. Ramani.

MR. RAMANI: Thank you, Your Honor. Magnolia Medical calls Greg Bullington.

Your Honor, may my colleague Angela Quach, who is the best paralegal anywhere, please approach.

THE COURT: Yes, please.

MR. RAMANI: Thank you.

THE CLERK: Please remain standing and raise your hand. Please state and spell your name for the record.

THE WITNESS: Greg Bullington. G-R-E-G-O-R-Y, B-U-L-L-I-N-G-T-O-N.

GREGORY BULLINGTON, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MR. RAMANI:

Q. Good afternoon, Mr. Bullington. Would you please introduce yourself to the jury.

A. Good afternoon. My name is Greg Bullington, and I am the cofounder of Magnolia Medical Technologies.

Q. Could you move the microphone a little bit closer to you, Mr. Bullington.

A. Is that better?

Q. Yes, thank you.

Before we get into Magnolia Medical, can you please tell us a little bit about your background just briefly?

A. I was born in the Seattle area. I went to the University of Washington for college. And I've spent most of my career in the healthcare space working on advanced cancer therapy, working on childhood obesity, and many other healthcare programs before I cofounded Magnolia with Dr. Patton.

Q. What is Magnolia Medical?

A. So Magnolia is a medical technology company that we founded with the mission to eliminate false positive diagnoses of serious blood infections that constitute the leading cause of death in hospitals nationwide.

Q. You said that you cofounded Magnolia with Dr. Patton. Please tell us a little bit about Dr. Patton.

A. So Dr. Patton was a leading pathologist and a physician at the University of Washington for over 40 years. He was also a professor of pathology at the University of Washington medical school. He has spent his career really in two areas, one was managing the clinical laboratories of one of the University of Washington hospitals, and the other was participating nationally as a volunteer for the organization that tries to manage quality standards and improve laboratory medicine quality.

Q. Will Dr. Patton be testifying live in this trial?

A. Unfortunately, Dr. Patton over the last several years has faced failing health and he passed away over the summer. And we had a wonderful celebration of life, but he's no longer with us.

Q. You mentioned that he was a pathologist. Could you please explain what that means?

A. So oftentimes a pathologist can be referred to as a doctor's doctor. So you have frontline physicians, whether that's a surgeon or an oncologist or a family

doctor that would work with the patients. And when they need to take a blood sample or take a tissue sample or a tumor sample, they wold send those to a lab.

The pathologist that works in the lab would analyze the results and then they would get back to the physician that's actually interfacing with the patient. So that's what Dr. Patton spent more than 40 years of his life doing, really was consulting physicians on how to best come up with treatment plans for the patients that they were treating.

Q. What was Dr. Patton's role with Magnolia Medical from the time of founding to more recent times?

A. So when I first met Dr. Patton, he described to me what he had seen over the course of decades in his practice as a pathologist. One of the roles a pathologist also plays is oftentimes in autopsies, if there is an effort to diagnose a cause of death, that the pathologist will be involved in that analysis. And Dr. Patton had seen many times where patients ultimately died or had a mortality event because of antibiotics they were receiving due to these false positives, so his role really was having conceived of a solution and he had gathered some early data before we first met.

Q. When did you and Dr. Patton found Magnolia Medical?

A. So I initially met Dr. Patton back in 2008. He had

spent several years prior to that gathering initial data in the hospital in which he worked at the time.

Q. Why did you both name it Magnolia Medical?

A. Well, we had a lot of different ideas and we ultimately spent months really mapping out what we thought was a compelling opportunity to solve this problem for the world based on the early clinical data Dr. Patton had gathered. And when Dr. Patton moved from Nebraska to become the chief resident at the University of Washington, there's a small neighborhood just up north of downtown Seattle called Magnolia. So at that kitchen table in his home where we spent all of those months, we ultimately decided that was an appropriate namesake for the company. So it's the neighborhood in Seattle, rather, where we founded the company.

Q. Let's talk about the problem that Magnolia Medical set out to solve. We've heard already in this trial this word "sepsis." Can you please explain more about it?

A. So most typically, this is a condition that affects folks that have other health issues that they are challenged with. So oftentimes, it could be a cancer patient or a kidney failure patient or an elderly patient. They have other things going on that suppresses their immune system and gives rise to a potential infection. When you have an infection in your blood, meaning you have

germs or bacteria, yeast, fungus, the toxins that those excrete cause inflammation, and ultimately, the inflammation causes organ failure. So your heart stops working, your kidneys stop working, your liver stops working. That's the ultimate cause of death, most typically, in sepsis cases.

Q. Where does sepsis rank, to your knowledge, amongst the leading of causes of death in U.S. hospitals?

A. Sepsis is the Number 1 leading cause of death, and the Number 1 driver of costs in U.S. hospitals today.

Q. Come back to that cost question.

How do doctors check for sepsis?

A. So there are a number of standard and physiologic symptoms and protocols that are utilized, but there is just one real standard of care blood test, and that's called the blood culture. We saw pictures of that earlier where what we do is take blood from the patient, put it into a specialized bottle, send it back to a special machine in the lab, and that lab machine determines if there is the presence of organisms in the blood that was put into the bottle.

Q. You were here for the opening statements and you heard mention of a false positive.

Can you describe what that means in this context?

A. So it's really important to ensure we avoid false

positives. If we're trying to determine if that blood that goes into the special bottle is representative of what's happening in the patient, the only thing we want in this bottle is the patient's pure blood. We don't want blood and potential contaminants or organisms from the skin. We don't want blood coupled with what could come from a nurse's finger when they are trying to find a vein. In the emergency department, it's dirty, it's chaotic. There are lots of ways that different bugs can get into the bottle. So when we have bugs that are not in the patient's blood that get into the bottle and grow in the lab, that's what is referred to as a false positive.

Q. Why does this issue with false positives and sepsis tests matter?

A. Well, it is a really significant problem. As we saw in some of the opening slides, in many hospitals, half or sometimes even more than half of the positive results are wrong. Unfortunately, we can't just take another quick blood sample to figure out it is a false positive. It takes several days to figure that out. And because sepsis is so deadly, most frequently, if you have a positive result, as a patient, you will be treated presumptively as if you are positive for several days while we continue to try to determine if it was a true positive or false positive.

Q. Can you provide a sense of the scale of this problem with false positives in sepsis tests in terms of how many we're talking about and the impact on hospitals?

A. So in a typical day in the U.S., there are about 5,500 patients that are misdiagnosed. So today, 5,500 patients will have a positive blood test when they don't have sepsis. They will be admitted to the hospital because these antibiotics and drugs need to be delivered through an IV that has to be administered in the hospital. On average, typically, the patients will end up in the hospital two to two-and-a-half extra days, and it will cost $5,000 in incremental costs.

So take 5,500 people a day, that means 2 million Americans every year, and then we take $5,000 and we multiply that times the 2 million instances, and that's $10 billion a year of completely avoidable waste to the U.S. healthcare system.

Q. Now that you've explained the problem with the false positives, let's turn our attention back to Magnolia Medical.

What did Magnolia Medical do back in 2008 to try and solve this problem?

A. So when I met Dr. Patton, the efforts that he had undertaken earlier in his career, as you saw in some of the slides, he had actually started to conceive of some

individual devices that might solve this problem. This idea or notion of taking a little bit of blood and setting that aside was not a novel concept. That was something that was well understood in whole blood donation, for instance.

But what Dr. Patton had done was actually structured, for the first time, a rigorous clinical trial to determine how well that process to take that initial little bit of blood away worked. And so at that point in 2008, he had initial data, and we continued to go collect more data using that manual process.

Q. How did Magnolia Medical describe the technique you just mentioned that it was studying at this time in 2008?

A. So a little bit of a technical term, but it was referred to as the Initial Specimen Diversion Technique, or ISDT. And, again, that was the first formal study that was conducted on that process and procedure to quantify the efficacy.

Q. Mr. Bullington, my colleague, Ms. Quach, gave you a binder. Would you turn to the tab labeled PTX-14. I'm going to ask you a question or two about it, but we're not going to show it to the jury until the Court admits it.

Roughly speaking, what is this document?

A. These are the clinical trial results from that initial effort of using a manual process that were

published in a leading peer-reviewed medical journal.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-14.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: It's admitted.

(Exhibit PTX-14 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, feel free to follow along in paper copy or it will be shown on the screen, as you like.

Take a look at Page 1.

Can you tell us who the lead author is on this paper?

A. Yep. It's Dr. Richard G. Patton, who is the cofounder of Magnolia.

Q. What is the title of the paper?

A. It was called, "An Innovation For Reducing Blood Culture Contamination, the Initial Specimen Diversion Technique." Again, as I mentioned, this was the first time this data had been captured, obviously highlighted by the title of the study in the leading medical journal.

Q. Can you remind us of the date, please?

A. This was published in the December 2010 issue of the Journal of Clinical Microbiology.

Q. Take a look, if you would, at the two figures at the top of Page 2 of PTX-14.

Please describe what these two figures are showing.

A. So we saw these earlier, but just to recap, the left side of the slide will show the use of the initial specimen diversion tube. There we go. And so after we gain vascular access or after we poke the patient, blood flows through. We take an initial aliquot of blood. When we did this initial study, we looked at varying volumes. So we started at higher volumes, and then we continued to reduce the volumes to determine if we could have the same efficacy with lower and lower volumes.

And then once we took that tube out so we have the contaminants set aside, then you see the specialized blood culture bottle on the right side, this is where the blood would be collected into four separate bottles and then sent into the lab into the special machine to determine if there were bugs, effectively, in the blood that went into the bottle.

Q. What were you comparing this technique, this ISDT, to during this research study?

MR. LoCASCIO: Objection, form. Pardon me, Your Honor. Foundation on this. I don't know if Mr. Ramani misspoke. He said, "What were you comparing this to during the study?" It's not this witness's study.

MR. RAMANI: Happy to rephrase, if you like, Your Honor.

THE COURT: All right.

BY MR. RAMANI:

Q. What was Magnolia Medical comparing this technique to at the time of the study?

A. So in this particular hospital, specialized personnel were used to collect all these blood samples, and that group was called the phlebotomy group. So specialized phlebotomists that only collect blood. So the comparison was those patients that had best practices used by a phlebotomist compared to those that had best practices plus the addition of the diversion tube.

Q. Would you take a look at the table at the top of Page 3 of the PTX-14, please.

Please describe what this table is showing.

A. So this captures two separate time periods. You can see here there was the first nine months, and then the second nine months. In the first nine months, the control group was that group that had their blood cultures collected with best practice and without the diversion technique, and then the second group had the collection done with the diversion technique.

You can see over here when we compared the false positive rates, it was 2.8 percent for the patients that did not have diversion, and 1.4 percent for those that did. So we demonstrated a 50 percent reduction with that

technique.

And then for the second nine month period, we implemented that across the board, and you can see the rate even further reduced down to 1 percent. So a very significant initial reduction.

Q. Other than participation by Dr. Patton in conducting and writing this paper, is there any indication that Magnolia Medical was involved?

A. Yeah. If you look at the acknowledgments section, there was a specific disclosure that we were involved in the data collection, analysis, and that Dr. Patton was an equity interest holder in the company.

Q. Did you yourself play any role in any of what you just described?

A. I did, yes.

Q. What did you do?

A. I was involved with several elements of the data collection in the actual hospital environment, the data analysis, and then ultimately, with the manuscript drafting and the process that's used to submit for a peer-reviewed evaluation process.

Q. But you are not a doctor. Why were you participating?

A. I spent several years working very closely with Dr. Patton following our initial meeting in 2008, and this

really was a kind of small project at the time, so it was an all-hands-on-deck effort and I helped drive the elements I just mentioned.

Q. You can set that document aside, Mr. Bullington. Thank you.

So Dr. Patton showed this, and Magnolia showed this 2010 study that manual diversion could reduce false positives by 50 percent or more.

What did Magnolia Medical do next with that information?

A. We were really encouraged by the initial results, but the problem with the 50 percent reduction is that 50 percent of the patients still were subjected to false positive results, even with the diversion technique out of that initial nine-month period.

So we really spent much effort around some of the previous ideas Dr. Patton had conceived, as well as those that I had working in the hospital environment, to identify what was causing some of those additional residual false positives, even when we were using diversion. And that's where we started to work on developing devices to try to solve this problem to see if we could get down to zero or eliminate the false positive results.

Q. Did Magnolia come up with a name to describe these

devices targeted to reduce false positives?

A. We did. Recognizing that a lot of the potential failure points were associated with having multiple steps, multiple interfaces, multiple touch points, the idea of having one all-enclosed sterile device to do both parts of the procedure, we referred to as the Initial Specimen Diversion Device, as opposed to the technique, which we had proven the efficacy of with the manual process.

Q. What steps, if any, did Magnolia Medical take to protect that name, ISDD?

A. Well, it was a completely new medical device category. There was no such thing as an Initial Specimen Diversion Device before we invented it. So we applied for trademark protection from the United States trademark -- Patent and Trademark Office, and we were granted that protection.

Q. Please describe how Magnolia Medical implemented this new idea that it came up with of the ISDD?

A. Well, by the time we made a determination to really see if we could get dramatically better results, it was about a year after that paper had published. And so we went and hired a whole series of expert medical device engineers, provided them with the manual components that we had utilized, and we began a very collaborative brainstorming effort to come up with all enclosed

single-use sterile devices to achieve this diversion step, ultimately to determine if we could get better results.

Q. When did that ISDD design process start?

A. 2011.

Q. How many different concepts did you all discuss in that time frame?

A. In the very early days, I would venture to guess somewhere in the range of 50. Fairly quickly beyond that, we ended up with 100-plus. And over the course of time, we've continued to innovate, and 4- or 500 different device embodiments and integrated diagnostic technologies have been incorporated in our overall portfolio.

Q. Of that 50 or so concepts that the Magnolia Medical team came up with in that 2011 time frame, how many did you go on to make prototypes of?

A. We pushed forward with physical prototyping of 10 or 15 of those initial concepts to determine which we thought would have the best probability of delivering the best results. We didn't have any clinical data, obviously, with the device at that time, so that was the criteria we prioritized.

Q. Sir, I don't think you told us, what did you major in in college?

A. I was a business major from an undergraduate standpoint.

Q. Okay. So you're not a doctor, not an engineer. So what role did you play in this prototype process in 2011 at Magnolia Medical?

A. So I had spent a lot of time in the hospital environment helping collect the initial data that ultimately ended up included in that publication. I also had come up with a lot of concepts around how I thought we could solve this problem mechanically, although I didn't have the engineering expertise. So I played the role, really, of bringing the teams together and leading with product concepts and ideas that I had come up and translating those into actual full-blown engineering, illustrations and drawings, and then, ultimately, physical prototypes.

Q. Mr. Bullington, would you please turn to the tab in your binder marked PTX-15. Same process. I'll ask you a question or two, and if the Court admits it, we can show it to the jury.

What is this document?

A. This was a presentation that was utilized with the group of engineers and collaborators after we had done our early concept development work.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-15.

MR. LoCASCIO: No objection.

THE COURT: It's admitted.

(Exhibit PTX-15 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, can you please tell us the title and the date of this presentation, PTX-15?

A. The title is "Final Concept Selection Designs for Prototyping," and the date of the meeting and presentation was December 14 of 2011.

Q. Let's take a look at a couple of examples. Again, feel free to follow along in the paper or on the screen. Let's go ahead and go to Page 5, to begin with. This is called "Concept Squeeze."

Can you please describe what's shown here?

A. We can see in the upper left, this would be the fully assembled version of the device but broken down into its subparts. This was the tubing that would come from the patient.

So the initial blood would come down this blood flow channel, and then the user would actually pinch these two sides together, which would create an area for the potentially dirty blood to go into, and then ultimately open a second sterile blood flow path so that we would only be testing the patient's blood, not any of the potential contaminants that would be set aside here in the

top left portion.

Q. Who primarily developed this concept at Magnolia Medical?

A. So it was part of our group collaboration effort, but a specific engineer named Shan Gaw did all of the actual CAD and detailed design work.

Q. Thank you, Mr. Bullington.

Let's look at a second concept. Would you turn to Page 10 in PTX-15, please. This is titled "Concept Vented Diverter."

Would you please describe what's shown here?

A. So this is an example of what we would call an automatic architecture. So the last one, the user would pinch the two sides together. In this particular embodiment, blood would come from the patient down into this top port, and without any user interaction or otherwise, would fill these side cavities. And when it got to the top of the side cavities, it would seal off what was the hydrophobic vent there.

And then there was a little valve you can see. That would then automatically turn the blood flow path this direction, whereby the second or subsequent volume of blood would be collected for testing, absent the potentially contaminated blood that would be in the side reservoir.

Q. Who primarily developed this concept?

A. Again, there was a lot of collaborative input, but a specific engineer named Mike Baum was the primary detail design and CAD developer.

Q. Let's look at a third and final concept, Mr. Bullington. Please turn forward in PTX-15 to Page 31.

This is called "Integrated Diversion Bladder." Would you please describe this concept.

A. So the concept here really utilized absorbative materials. You could think of it almost like the materials that are in a diaper that actually pull in and absorb fluids.

So the initial blood would flow from the patient through the tubing, would come in, and it would saturate that absorbative material so the initial blood would get set aside here and then once that process was complete, the secondary blood flow or subsequent blood would flow down through the transfer adapter to get into the test vial, and none of those potential contaminants would be included in the actual sample that went to the lab.

Q. You mentioned a bladder. Can you elaborate a little more? What is a bladder in this context?

A. So we typically think of a bladder that's used to contain fluids. And so a bladder is initially full of air. As a fluid -- and while the blood comes through the

tubing, it displaces the air that's in the bladder and replaces it with blood. It's a softer process.

And when we thought about designing our Steripath Micro product, for instance, the bladder has some really nice characteristics to it that allow you to be more gentle on patient vasculature to avoid collapsing a patient's vein.

Q. Are you familiar with the terms active and passive diversion?

A. I am.

Q. Can you please describe what those terms are.

A. Generally, when we speak to a passive versus an active process internally, or how a device works, whether it uses an active element or not. In an active context, typically, it would be an end user generating energy or an actual outside energy source, a bottle or a tube.

In a passive context, it would not have any charge or any energy facilitating the functionality. It would be really just off of naturally occurring pressure dynamics, typically the difference in pressure between a patient's blood pressure and the atmospheric pressure.

Q. Of the three concepts we've seen in this 2011 time frame and going forward, did Magnolia Medical decide to move forward with any of them?

A. We did. Not exactly these renderings, but the

foundational architecture for our first Steripath product utilized the architecture from the concept squeeze that we looked at first.

Q. Why did you select that one?

A. Well, obviously we were very encouraged by the clinical results that we had from the nearly 8,000 patients we had collected data from that was published that we looked at previously, and we thought that concept squeeze most closely mimicked the process we had had great clinical results with, so we thought that would be the best and highest probability of success to deliver the best clinical results.

Q. You said that the concept squeeze ultimately became the first Steripath product. When did Magnolia Medical launch that in the marketplace?

A. We initially brought the Gen1 product to market in 2014, and our first customer sale was in 2015.

Q. Let's talk about the Steripath brand. How many different Steripath products has Magnolia sold commercially since 2015?

A. They fall into three families. So we had our Generation 1 product, which was the first ever initial specimen diversion device that demonstrated about ten times better clinical results than our manual process. Then we had our Gen2 product, and then our Micro product.

So three different product families over time.

Q. We'll return to this in more detail later, but can you just say at a high level what Magnolia Medical has achieved to date in the marketplace with its Steripath products in terms of products and hospitals?

A. Yes. There have been over 30 large-scale studies and clinical trials published showing very significant reductions in false positives. Over 700 hospitals and hospital systems have adopted the platform, and we are just over seven and a half million sepsis tests that have dramatically benefited from the technology that we developed.

Q. Let's return to the period after Magnolia Medical launched Steripath in 2015. Please describe any further inventive efforts that Magnolia Medical undertook after that time.

A. Well, fundamentally, we are innovators at heart and that's really built into our DNA. So we've always had a product development and an R&D team that we've invested heavily with. So over the course of time, we've always had several product development and innovative programs underway. As I mentioned, at this point we have developed and included over 500 different device concepts and integrated diagnostic technologies in our overall platform over the last ten years or so.

Q. What role, if any, did you play in further inventive efforts at Magnolia Medical?

A. So we have been very fortunate to have an incredibly talented group of engineers that have spent their careers developing very sophisticated medical devices in cardiac implants, in neuro implants and the like. So I've had the opportunity to lead that team and continue to drive and cultivate our overall product development platform very collaboratively and closely with the team over the last decade.

Q. Mr. Bullington, as part of that work, did you become familiar with the concept of pressure differential?

A. Absolutely. When we think about moving fluid from Point A to Point B, nearly all of the concepts that we've conceived and developed over time require some pressure differential to move fluids. So that's a very standard element of all of these device designs and concepts, for the most part.

Q. When did Magnolia Medical begin experimenting with pressure differentials?

A. Well, really from the outset. If we think about the first 50 or so concepts that we came up with, we then went and prototyped 10 or 15 of them, of course, seeing how fluid flows through and if they functioned the way we thought they would. You know, there was a lot of

experimentation and a lot of data collection done by the engineering team to evaluate those flow dynamics.

Q. Would you please turn in your binder to the tab marked DTX-88.

What is the document at Tab DTX-88, Mr. Bullington?

A. This is a presentation entitled "Suntory status update" from July of 2017.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of DTX-88.

MR. LoCASCIO: No objection.

THE COURT: All right. It's admitted.

(Exhibit DTX-88 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, what is Suntory?

A. Suntory was the internal project name for a new product development program that we had underway.

Q. Would you turn to Page 2 in DTX-88, please. There is a list of attendees here at this July 20, 2017, meeting. Other than yourself, could you please explain who the other five people are?

A. Four of the five are senior mechanical design engineers and one was a project manager that was helping drive the overall program.

Q. Go ahead and turn to Page 6 of DTX-88,

Mr. Bullington.

It's titled "Passive Flow." What's discussed here?

A. So this was a formal effort to characterize how much blood flow you could get in a specific period of time without using an active architecture. So if you just put a needle into a patient's vein and you observed how much blood you could get over time, that was what this particular experiment was directed towards.

Q. If you turn to Page 12. Just take a look at the decisions the group was facing at this time. What's this about?

A. So the results of those experiments suggested it could take well in excess of a minute or even several minutes to get the appropriate clinical volume of blood without having an active architecture. So the determination based upon that research and those experiments was that a passive flow solution was impractical to achieve the clinical efficacy that we were seeking, and so the passive flow solution was abandoned in favor of a vacuum or an active -- active architecture.

Q. And we'll look at one of those in a moment. But what happened to the Suntory project after this?

A. It morphed, if you will, into a really specific solution set that was focused only on an active architecture.

Q. I said we'd look at one of the examples. Why don't you flip to the next slide. This is titled "Vacuum Source Concept." And it's Page 13 of DTX-88. Would you please describe what's shown here.

A. So we look at the image here on the left. This would be a vacuum source, which could be a syringe, this could be a standard blood tube, this could be a blood culture bottle. And then over on the right would be the input. So this would be where the line from the patient is coming.

Because there's a vacuum pulling here and this is gated off, that initial flow would come from the patient, down this channel, and when it comes into contact with the self-sealing vent, it will lock off, back up, and then with the pressure differential will overcome this check valve and this will open a secondary pathway to collect the blood that we're going to test.

So we can see that here, Step 1, blood is drawn up to the self-sealing vent. It's not going down the second path. And then once all that blood is set aside, we now have the second pathway where that blood is collected based upon the pressure buildup, which allows the blood to flow to the collection medium or the culture bottle.

Q. So coming out of this July 2017 meeting where the Magnolia Medical team decided to focus on vacuum source

concepts, what did you do next?

A. We continued to work quite collaboratively with our team in evaluating what we thought the optimal active architecture would be to achieve the clinical results that we were targeting.

Q. Please turn to DTX-89 in your binder. What is this document, Mr. Bullington?

A. This is a presentation entitled "IP Update" from December of 2017.

Q. What is an IP update?

A. At the time, we had our whole engineering team working on a whole host of different device design concepts, so this was an update on the status of all of those different device concepts.

Q. Who participated in that meeting?

A. A series of our engineers. Specifically, John Havard, who was the head of our product development organization at the time, and one of our lead principal engineers, an individual name Tim Ramsey.

Q. Did you participate as well?

A. I did.

MR. RAMANI: Your Honor, Magnolia Medical moves DTX-89 into evidence.

MR. LoCASCIO: No objection.

THE COURT: It's admitted.

(Exhibit DTX-89 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, would you turn to the last page of this IP update, DTX-89. This slide here is called "Trap Door 1." Can you explain what's shown here.

A. So this was a concept we had done quite a bit of work on. And as you can see, there were four distinct steps, so maybe we can walk through those.

So Step 1, the needle is inserted into the patient or a luer is connected to the catheter port. So this is where that initial blood from the patient would come into the device.

Step 2 says the transfer adapter is pressed onto the collection bottle or the collection syringe is drawn back. And that would happen at this end of the device. So this would be the end user would either be pulling on a syringe or would connect a bottle that had a vacuum.

And then what that would do is the Step 3, the vacuum would then draw this initial blood down this flow path where you see the red line and it would come down to the center here and then it would distribute. You can't really see because this is a side cut of the device. But all these channels were connected into the spiral.

So what would happen is that potentially dirty blood

would fill up each of these channels and once it got to the top, this particular material is called a hydrophobic membrane. You can see that on Step 4.

When that's wetted, pressure on the plug builds and then the plug pops. So as that pressure builds, builds, builds, the plug pops, and what that does is it opens the flow path. We see here now, the orange line, and that's where the clean blood would then flow, bypassing this potentially dirty blood that's trapped in the trap door down into the actual collection vessel.

Q. Is this one of the early instances when Magnolia Medical had a product concept using a plug that pops?

A. It was. You can see that there's a -- an elastomer feature. So the plug was actually seated into that elastomer that would hold it in place until the appropriate negative pressure and positive pressure dynamics ultimately popped that plug up.

Q. And just to remind us, what was the date of this document again?

A. This was from December of 2017.

Q. Let's go ahead and go back to Slide 7 of PTX-89, please.

What, if anything, did Magnolia Medical do to protect Trap Door 1 and other inventive pressure differential ideas we discussed?

A. Well, as a startup medical device company, the only way to protect the invention that we were investing all of this time and effort into was through the patent process. We had started very early on and took very seriously our process of handing off all of our product designs to our patent attorneys.

Similarly, with all of these concepts, those were all integrated into our patent filings over the course of time, and that's the primary approach we've taken to protecting the innovation and the inventions we have come up with.

Q. Would you please turn to the tab marked PTX-1 in your binder.

What is that document?

A. This is the '081 patent.

MR. RAMANI: Your Honor, Magnolia moves the admission of PTX-1.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: It's admitted.

(Exhibit PTX-1 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, just looking at the cover page here and starting at the top right, what's the date of the patent, the date it came out?

A. December 20th of 2022.

Q. And who are the inventors?

A. The four named inventors are myself, Jay Miazga, Shan Gaw, and Timothy Ramsey.

Q. Mr. Bullington, would you please turn to Tab PTX-3 in your binder.

What is that document, sir?

A. This is the '863 patent.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-3.

MR. LoCASCIO: No objection.

THE COURT: It's admitted.

(Exhibit PTX-3 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Same questions here, Mr. Bullington. Can you tell us the date the patent came out and who the inventors are?

A. May 23, 2023. The four inventors, myself, Mr. Miazga, Mr. Gaw, and Mr. Ramsey.

Q. Finally, Your Honor -- Mr. Bullington, would you please turn to PTX-5.

What is that document?

A. This is the '709 patent.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-5.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: It's admitted.

(Exhibit PTX-5 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, same questions here. Can you tell us the date the patent came out and who the inventors are?

A. February 20th of 2024, myself, Mr. Miazga, Mr. Gaw, Mr. Ramsey is the four listed inventors.

Q. Mr. Bullington, is there some relation between all three of these Magnolia patents, to your understanding?

A. They all share the common core specification.

Q. To date, has Magnolia Medical licensed any of its patents in its portfolio, including these three?

A. We have not licensed any of our patents, no.

Q. Why not?

A. Well, as I mentioned, fundamentally, we are an innovative organization at heart. We take clinical efficacy very seriously and we want to retain control of all of the inventions that we design and bring products to market. With our own intellectual property, we don't choose to license our intellectual property to others.

MR. RAMANI: We can take down that patent. Thank you, Mr. Smith.

BY MR. RAMANI:

Q. Let's turn our attention back to the Steripath devices, Mr. Bullington.

What is the value proposition that Magnolia Medical offers to hospitals?

A. Well, it's really twofold. Obviously, for patients, this is a really important driver. Nobody would want to be in a position with a loved one being misdiagnosed. They already had health issues and the like. So the significant improvements to patient safety, reduction in unnecessary treatments, and then a reduced length of stay, which also carries with it a risk of getting sicker in the hospital, which is common.

Those are all things that occur to the patient, but all of those are also cost saving for the hospital. So hospitals make decisions about buying products based upon, obviously, clinical benefit, but also the economic benefit, and so that's -- the value proposition is the combination of those two things.

Q. How do you know that the Steripath devices are actually able to deliver that value proposition?

A. Well, as I mentioned previously, there have been exhaustive clinical studies and clinical trials conducted that have looked at the clinical efficacy of our product platforms, as well as the cost savings and the patient

safety improvements.

Q. Let's talk about the Steripath Gen2 and Steripath Micro. When did Magnolia Medical launch each?

A. Gen2 was launched in 2018 and the Micro product was launched in 2020.

Q. Does Magnolia Medical still sell them both today?

A. We do. We're in the process of sunsetting our Gen2 platform, but we -- both products are commercially available today.

Q. Why did Magnolia Medical decide to sunset its Gen2?

A. Over the last several years, the growth and adoption of our Micro platform has been quite significant, so we just, from a business complexity standpoint, we've consolidated to one manufacturer. We've fully automated all of the production of the Micro product. It would be impractical to do that with multiple legacy product lines. So it's -- that's the approach that we've taken is to really focus our go-forward efforts for the near term on Micro.

Q. If Magnolia Medical never introduced Micro, what product would you have sold?

A. Well, Gen2 really demonstrated exceptional clinical efficacy and very strong user adoption and use, as I mentioned previously, across hundreds of hospitals, millions of patients. So we would have just continued to

sell the Gen2 product had we not introduced Micro.

Q. In that scenario, how would Magnolia Medical have manufactured enough Gen2s to make up for all the Micro sales?

A. So the Gen2 product was primarily hand assembled, so we had multiple different production facilities that assembled the product. And so in order to increase production, we could add additional shifts, we could add additional days of the week we were doing production, and then the way the production lines were set up, modularly adding additional production lines was a very simple and straightforward exercise. We had done the analysis to look at what it would take to double, triple, quadruple the capacity and there really was, theoretically, no constraint.

Q. As far as you understand it, how did Magnolia Medical's customers overall find Gen2's ease of use?

A. Overall, the feedback has been quite positive, and the clinical results speak for themselves, as does the commercial success of the product.

Q. Have there been any scientific studies that show the effectiveness of Steripath Gen2?

A. There have, quite a few.

Q. Let's take a look at an example. Would you please turn in your binder to PTX-289.

What is that document, Mr. Bullington?

A. This is an e-mail with an attached presentation that was presented at an educational webinar.

Q. Did Magnolia Medical play any role in that educational webinar and the attached presentation?

A. We did. We organized and sponsored the webinar.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-289, please.

MR. LoCASCIO: No objection.

THE COURT: It's admitted.

(Exhibit PTX-289 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Go ahead, Mr. Bullington. Turn to Page 5, please. Oh, excuse me, we can start on this one. Turn to Page 58. This is a case study.

Who is Lucy Tompkins, MD, PhD?

A. So Dr. Tompkins is a renowned physician with deep expertise in infectious diseases and microbiology. She's been a hospital epidemiologist at Stanford University for over 40 years, and a professor at Stanford medical school in California.

Q. Would you turn to the next slide. The next slide, please.

What is the device that Professor Tompkins used for

her study?

A. The Steripath Gen2 was the device that was utilized in the clinical data collection of her -- that Dr. Tompkins and her team undertook.

Q. And turning to the next slide, which is Page 61 of PTX-289.

What did Dr. Tompkins' study with the Gen2 show?

A. If we look at the graph on the right here, the comparison here was between the standard methods, so that would have been the best practices versus the Steripath Gen2 device. And at this point in time, these were interim results. So there were about 2,400 patient samples that were collected with the standard method, nearly double that with the Gen2 product. You can see here there were 36 false positive patients with the standard method, and zero with the Gen2 product. So that's what we see demonstrated here.

Ultimately, the data collection continued on and there were more than 10,000 patient samples in the Gen2 bucket, and the resulting contamination or false positive rate remained at zero for a year.

Q. You can set that document aside. Thank you.

Let's talk about the Steripath Micro.

Can you please describe the sales growth of the Micro from its introduction in 2020 to today?

A. Yes. It's been quite meaningful. We worked for several years with a whole host of our customers, including several pediatric hospitals, physicians and nurses at pediatric hospitals, to make sure that the requirements that we addressed with that product were met. So we've seen a significant uptake in adoption of that product, which is why we are really focusing our efforts here in the near term moving forward on that platform.

Q. Let's talk about how Micro works.

Would you please turn to page -- excuse me -- tab PTX-124 in your binder.

What is that?

A. This is an overview video that we put together to demonstrate how the Micro device works.

MR. RAMANI: Your Honor, Magnolia Medical moves PTX-124 into evidence.

MR. LoCASCIO: No objection.

THE COURT: All right. It's admitted.

(Exhibit PTX-124 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Let's go ahead and play this, and then we can -- I can ask you a question.

(Video played, PTX-124.)

"Introducing Steripath Micro, the blood culture

collection device designed to reduce false positive sepsis test results for limited blood volume and difficult intravenous access patients. The uncertainty of blood culture results lies within the collection process. During venipuncture, skin fragments containing viable microorganisms are often dislodged and collected within the initial specimen. These once benign organisms contaminate the sample, causing the patient to test false positive for a serious bloodstream infection.

"Steripath Micro addresses contamination right at the source. As the user pulls back on the syringe, negative pressure actively diverts the initial specimen into a chamber, preventing them from entering the culture bottle. Pressing the button sequesters potential contaminants and automatically opens an independent sterile pathway for specimen collection. Improved sepsis testing accuracy by diverting and sequestering the contaminants responsible for false positive blood cultures. Your path to culture confidence begins with Steripath."

(End video.)

BY MR. RAMANI:

Q. Mr. Bullington, did you play any role in creating Steripath Micro?

A. I did, yes.

Q. What was it?

A. I led the teams from the standpoint of looking back through all of the early conception work we had done and continuing to hone and refine that and ultimately land on a final architecture that became the commercial product that we just viewed on the screen.

Q. Why did Magnolia Medical use a bladder in the Steripath Micro?

A. Well, as I mentioned, oftentimes these patients are in a really fragile condition and state. If it's an oncology patient, for instance, oftentimes there has been a lot of damage done to the vasculature. So by using a bladder technology, we can really put just gentle negative pressure as we are drawing blood, which helps to prevent the collapse of veins. And that was one of the primary design considerations.

Q. Do any scientific studies shows the effectiveness of Steripath Micro?

A. They do.

Q. Would you please turn in your binder to PTX-244.

What is that document?

A. This is a clinical dataset from ThedaCare Regional Medical Center evaluating the clinical efficacy of Micro.

MR. RAMANI: Your Honor, Magnolia Medical moves PTX-244 into evidence.

MR. LoCASCIO: No objection.

THE COURT: It's admitted.

(Exhibit PTX-244 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, focusing on the two graphs on the right side, what do these tell us about how Steripath Micro reduced blood culture contamination at ThedaCare Regional Medical Center?

A. As you can see, as a starting point, there was a pretty significant problem they were interested in addressing. This was a phased implementation over time, and so as the Micro device was implemented and training and compliance was strong, as we see here, ultimately they effectively drove their performance down well below 1 percent. You can see there there were -- at the end, a zero percent one. But ultimately, this was a very significant reduction that achieved their target goal of 1 percent or less.

Q. Mr. Bullington --

MR. RAMANI: Mr. Smith, if we could remove the blow ups for a moment. Thank you.

BY MR. RAMANI:

Q. Looking at the far right column where it says implications, there's mention of a reduction in bounce backs.

What does that mean?

A. So one of the issues for patients that maybe have symptoms that they could have an infection but maybe the symptoms are very mild, there's a very rote protocol that dictates when these blood tests are collected. But bounce backs would be an instance of a patient actually going home. So maybe they come to the emergency department, they just don't feel very well, they have a blood culture collected, they go home to rest up, and ultimately they end up getting a call back because they had a positive test result. As we've discussed, oftentimes one in two patients it's wrong. But since we don't know, we admit them to the hospital. We start them on IV antibiotic therapy. It takes several days to figure it out. It's very bad for the patient and it's expensive for the hospital, so they track those bounce backs quite carefully.

Q. Aside from these clinical studies, are you aware of any industry praise for Magnolia Medical and Steripath?

MR. LoCASCIO: Objection, Your Honor.

THE COURT: It's beyond this -- please turn your phone off.

Is it beyond the scope of where we are in the case?

MR. RAMANI: It's just company background, Your

Honor, but if you prefer, we can bring it up later.

THE COURT: Yeah, let's wait. I also don't think it's going to make sense to anybody talking about it right now.

MR. RAMANI: In context. Happy to do that, Your Honor. Thank you.

THE COURT: Remember, we're doing this in order.

BY MR. RAMANI:

Q. Mr. Bullington, is there any kind of institutional standard that applies to blood culture contamination rates?

A. There is. There are several medical societies that govern the rates of contamination that are, quote/unquote, acceptable. And for the last 40 years or so, there's been an established rate that effectively has not changed, and that has been at that about 40 percent of the positives rate. However, of late, over the last 18 or 24 months, all of those rates have been substantially reduced.

MR. RAMANI: Mr. Smith, we can pull that document down. Thank you.

BY MR. RAMANI:

Q. Would you please explain the process of changing that national standard?

A. Well, it's quite significant. Most of these

organizations have large evidence review committees, and they have a very rigorous process by which they go out and look for new technologies, new techniques, new data. They'll bring that in. It goes through several years of review. If there is a proposed change to the standards, that also typically goes through a year or longer comment and evaluation period.

So the major societies that govern these standards over the last, as I said, about 24, maybe a little bit longer, months have all reduced the longstanding acceptable false positive rate by about 66 percent, and have established a new standard of 1 percent or below when best practices are used. And that's all been a function of the rigorous clinical evidence that has been generated and independently published in the literature with the Steripath platform, specifically.

Q. Did Magnolia Medical play any role in that process?

A. We have. We've really collaborated with a coalition. There are many state hospital associations that are very concerned about trying to help hospitals drive quality that saves money, so things can be deployed on things that create value instead of waste. There are a lot of physicians. There are a lot of patient advocacy organizations. So it's been a whole group effort. We've been a leading voice among that group to drive these

national standard changes.

Q. Let's shift topics, Mr. Bullington, to Magnolia Medical's sales and production capacity.

Who at Magnolia Medical handles sales?

A. So we have a team of about 30 people across the country that work directly with our current customers, as well as new hospitals that are evaluating, solving this problem with a product solution. So that's the team primarily that interfaces with customers on a day-to-day basis.

Q. Has Magnolia Medical been able to scale that sales team over time as demand grows?

A. We have. There's a readily available market of expert clinical account managers and folks with that background and expertise.

Q. Please describe Magnolia Medical's national marketing campaigns.

A. So as we think about it, there are about 6,000 hospitals in the United States that are of relevant size that do these types of blood tests and have patients on an inpatient basis. So our national marketing programs are focused on connecting with and engaging with those 6,000 hospitals. And those would be the same 6,000 hospitals that Kurin would target as well.

Q. Let's turn our attention to Magnolia Medical's

manufacturing capacity.

Please describe efforts Magnolia Medical took to scale Steripath Micro manufacturing in recent years.

A. So when we first brought the product to market, we did so with a manual manufacturing and assembly process, which is common in the early days. It's expensive to build automation capabilities and to really drive that higher scale.

Over the last several years, though, we have invested about $4.5 million in a fully automated production capability with a partner that we have based in Wisconsin. So all of the production is done in Wisconsin through a fully automated production line at this point.

Q. Going forward, can Magnolia Medical continue growing that capacity for Steripath Micro, if needed?

A. We can. Similar to what I mentioned earlier, there's opportunities to increase the number of shifts, increase the number of days of the week that we're doing production, and obviously given that we now have a fully validated, fully functional automated production line, those can be replicated to continue to double, triple, quadruple capacity with what we have in place.

Q. If the Kurin Jet sales since 2023 had gone to Magnolia Medical, how would you have met demand?

A. Really through the techniques and tactics that I just

described, by scaling hours, shifts, production timelines, and production lines.

Q. How much could you have scaled Steripath Micro manufacturing capacity in that scenario?

A. Doubling or tripling in a relatively short period of time would have been quite simple. And we had plans of how we could 4, 5, 6x the production capacity, so that was never a concern from a constraint standpoint.

Q. Let's focus on some specific Steripath Micro pricing. Would you turn to PTX-150.

What is that document?

A. This is a production document that breaks down the individual unit costs of the components that go into building one of our initial specimen diversion devices.

MR. RAMANI: Your Honor, Magnolia Medical moves to admit PTX-150.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: All right. It's admitted.

(Exhibit PTX-150 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Focusing on the fourth page, there's a small table there. It's the second table shown. It's been blown up here.

Can you describe what this table is showing?

A. These are the individual components that go into producing the product. And you can see the two columns, there's an Intertech column and an SMC column. Those are two different vendors or suppliers that we have used over time, and you see the resulting pricing for each of them. So these would be the Intertech component prices. They total up to 281, and then on the alternate or other hand, SMC at 91.

Q. Who is the current manufacturer as between these two of the Steripath Micro?

A. We've ramped down the production at Intertech and SMC is the sole primary producer at this point.

Q. When did Intertech stop manufacturing Steripath Micro?

A. It's been a little bit of a process, but over the last 12 or 18 months, we've really ramped that down.

Q. Okay. We're done with all the sales, marketing stuff.

Let's discuss the defendant in this case, Kurin. Do you know Bob Rogers?

A. I do know Mr. Rogers, yes.

Q. How did you come to know Mr. Rogers?

A. Through one of our earliest employees, our head of sales and marketing.

Q. When did you first interact with Mr. Rogers?

A. Well, this individual's father was on the board of directors of the company that Mr. Rogers was running at the time, and he came on board around 2013. So that would have been our initial connection point.

Q. Why was Magnolia Medical interested in speaking with Mr. Rogers in 2013?

A. Well, as I mentioned, our head of sales and marketing was an individual named Ward Sparacio. And Ward's father, Jack, was on the board of directors at the company Mr. Rogers was running at the time. They were also selling products into the hospital market, so Ward thought it would be helpful to get some input and advice based upon things they were seeing in the market.

Q. Did you and Mr. Rogers meet in person in the 2013 time frame?

A. Not in person at that point. We had several calls and e-mail exchanges, but we did not meet in person at that point.

Q. Let's take a look at one of those e-mail exchanges. If you turn in your binder to PTX-21, please.

What is that document?

A. This was an e-mail chain that originated with Ward Sparacio, our head of sales and marketing. It was between, initially, Ward and Mr. Rogers. And you see copied here is myself and Mr. Sparacio, Jack Sparacio, who

would have been Ward's father.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-21.

MR. LoCASCIO: No objection.

THE COURT: All right. It's admitted.

(Exhibit PTX-21 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Why don't we start with the bottom of the second page, Mr. Bullington.

You see there's an e-mail that Ward Sparacio wrote on June 17, 2013. Can you read the second paragraph?

A. It says, "Greg Bullington, Magnolia's CEO, is going to hop on with us tomorrow. I'm still getting my feet under me, so it may be helpful to have him join in."

Q. It says you're Magnolia's CEO. Was there a time you were Magnolia's CEO?

A. There was.

Q. When was that?

A. From 2011 until just recently.

Q. Are you still affiliated with the company today?

A. I am, but I'm no longer in the CEO role.

Q. Did you hop on this call?

A. I did, yes.

Q. So there's a thread, as you mentioned, that you were

added to here. In preparation for that call, had you read the prior page in the e-mail?

A. I did, yes.

Q. Let's take a look at that. So it's here on Page 3 of the PTX-21, and it's an e-mail from Bob Rogers, dated Monday June 17, 2013, to the two Sparacios. I want to focus your attention to Point Number 5.

What is this?

A. This was -- Ward had mentioned in his previous e-mail that his responses were in line here in the e-mail response sent. So this was the original question from Mr. Rogers that asked: Have you reviewed the patents? It looks like this has a venipuncture needle attached. If true, has anyone done an FTO on this.

And Ward's response is captured below, which says: The company has five patents issued with several informal FTOs. The company has invested heavily in IP, and we are sourcing components from those who have IP, where relevant.

Q. Right above Point 4, there is mention of an ISDD. In this time frame, 2013, what is this discussion about, to your understanding?

A. Well, we still had not launched the initial product. So this was the invention of this completely new category, the ISDD category. We still hadn't finalized pricing or

the like, so Mr. Rogers was inquiring on what our expected price of selling the product when we brought it to market was going to be.

Q. What was your understanding of Mr. Rogers' participation with you and others from Magnolia Medical at this time in 2013?

A. Well, given that his -- the father of our head of sales and marketing was on his board of directors, he was acting really as an advisor primarily to Ward at the time and providing us thoughts and input based on the perspective that he had from the market.

Q. Just so the time frame is clear, as was shown in opening statements, Kurin was founded sometime in 2015. What was this company in 2013 that Mr. Rogers was running?

A. It was a company called Ivera.

Q. Did Ivera have anything to do with producing false positives in sepsis testing?

A. To my understanding, their primary focus was on central line infection prevention.

Q. That's something different than sepsis false positive testing?

A. Correct.

Q. You mentioned here that you read an FTO. What does FTO stand for?

A. It's a legal term that stands for freedom to operate.

So it's the process of going to look at all the intellectual property that other companies have before you introduce a new product to make sure you're not using their inventions in whatever new product you intend to bring to market.

Q. Why don't we look at Mr. Rogers' response, which starts at the bottom of Page 1. And he sent it later that same day, on June 17, in response to Mr. Sparacio.

Let me direct your attention to the end of that response, which is in bold underline on Page 2. Can you read that, please?

A. Page 2 or Page 1?

Q. Page 2.

A. Beginning with "My advice"?

MR. RAMANI: Page 2, Mr. Smith. It's my advice, please.

Thank you.

A. So his input was, "My advice, if you have FTO issues, it is far better to get a license in place upfront when there are no revenues than it is to try to do when money is on the table and it is too late. Ferret out the FTO concerns, if any, now and mitigate them early."

MR. RAMANI: You can take that document down, Mr. Smith. Thank you.

BY MR. RAMANI:

Q. Did you have any other discussions with Mr. Rogers in the 2013 time frame?

A. To my recollection, there were several back-and-forths, and Mr. Sparacio continued to solicit input and advice, but that was about the extent of it.

Q. Did there come a time when you met Mr. Rogers in person?

A. I did, yes.

Q. When was that?

A. In the 2015 time frame.

Q. Please tell us how that meeting came about.

A. Well, Mr. Rogers and Mr. Sparacio's father, who was on the board, had sold their company. So at the time we were considering expanding our board of directors, so I reached out to Mr. Rogers to congratulate him on the successful exit and to determine if he might be a candidate to join our board, given the engagement and interaction that we had with him.

Q. Would you turn to PTX-26 in your binder, please.

What is this document?

A. This is the e-mail exchange that reflects what I just mentioned, my initial outreach to him, and then scheduling time for us to get together so we could have lunch.

MR. RAMANI: Your Honor, Magnolia Medical moves

the admission of PTX-26.

MR. LoCASCIO: No objection.

THE COURT: All right. It's admitted.

(Exhibit PTX-26 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Let's start at the first e-mail that you wrote on Page 2. So you wrote on March 16 -- just walk us through what you wrote here.

A. Well, as I mentioned, they had a successful sale of their company, so I was congratulating him on that, and then asked if I could sponsor lunch or dinner or an afternoon coffee to give him an update on what we're doing and also to solicit potential candidacy on our board of directors.

Q. Okay. Let's see what Mr. Rogers said in response by going up to his response e-mail.

MR. RAMANI: Mr. Smith, if you could pull that across two pages, please. Thank you.

BY MR. RAMANI:

Q. You see Mr. Rogers responded later that same afternoon on March 16th. Walk us through his response to you, please.

A. He described the mixed emotions of wrapping up long, difficult projects like he had undertaken and endured.

And then mentioned that he really views himself as an operator and wasn't sure that he was well-suited for board participation, noting specifically that, as we see here at the bottom: "I hope you understand that I am keen on starting another adventure and do not desire to have other commitments impede that objective."

Q. How did you take this response, Mr. Bullington? What did you take it to mean?

A. Well, the next line mentions, you know, "board position or not, I'm always happy to listen and offer my positions and thoughts." He had been quite helpful to us over time. So I understood he didn't want the formal responsibilities of being on a board, but I was encouraged that he was still willing to act as an advisor, given the relationship he had developed with the company.

Q. Okay. Why don't we look at Mr. Rogers' e-mail at the top of this thread.

MR. RAMANI: It's Page 1, Mr. Smith.

BY MR. RAMANI:

Q. What did he write to you there?

A. He said: "I can meet at the -- on 3/26 at the fish market in Delmar. See you at 11:30 to beat the crowd."

Q. Did you actually meet for lunch at the fish market on March 26, 2015?

A. We did, yes.

Q. Please describe that meeting.

A. It was a pleasant discussion. Obviously, he had spent significant efforts to build his prior company and we covered topics around primarily commercially oriented topics. And we also reviewed the physical device that we had developed as the first ISDD to bring to market to determine if it would actually work, because at that point in time, there had never been an ISDD so there was no knowledge of whether an ISDD would deliver superior clinical efficacy or not.

Q. Did you show Mr. Rogers anything at that lunch?

A. I did. I brought the Steripath Gen1 device.

Q. Did you stay in touch with Mr. Rogers after that lunch?

A. He was helpful making several introductions. They had done work with a couple of different consultants. He's out of Washington, D.C., so he made those follow-up introductions, and then that really concluded our formal engagement.

Q. When did you --

MR. RAMANI: Can we scroll down, Mr. Smith. And highlight at the bottom of Page 1 and across Page 2 of Mr. Rogers' e-mail the "next adventure" portion, "I hope you understand that" and so on.

BY MR. RAMANI:

Q. So did a time come when you learned what Mr. Rogers' next adventure actually was?

A. I did.

Q. When was that?

A. We started to hear grumblings over the summer of 2016 time frame that Mr. Rogers was intending to introduce a directly competitive product. And, in fact, that Ward Sparacio's father, who had been on Mr. Rogers' board, was an investor in that company.

Q. So let's get the timeline here. You have lunch at the fish market in San Diego. You fly down, meet Mr. Rogers, show him the device, keep talking. Then you learn, about 15 months or so later in the summer of 2016, that he's going to set up a competing company.

A. That's correct.

MR. RAMANI: Can I get the document camera, please.

BY MR. RAMANI:

Q. You were here for opening statements. Did you see this slide, one of the first slides in Kurin's opening presentation?

A. I did see that slide, yes.

Q. And this is from Gino Kang, who was described as one of the cofounders of Kurin. Did you hear that?

A. I did.

Q. And what's highlighted here?

A. His comments on the product that Mr. Rogers and I had reviewed at lunch.

Q. You see the date in the upper left of this opening slide from Kurin?

A. I do. It's April 5, 2015.

Q. How many days after your lunch with Mr. Rogers at the fish market did Mr. Kang send this e-mail reporting on his analysis of Magnolia?

A. Ten days.

Q. Let's take a look at the -- another slide from that opening presentation.

So the next day, we see Mr. Rogers wrote back: "It's a pretty simple problem that is getting the Rube Goldberg touch via Magnolia," and he showed this cartoon.

Did he ever tell you any of this?

A. No, he did not.

Q. When you sat down with lunch for him 11 days earlier, did he mention anything about Rube Goldberg, too much complexity, let alone I might -- I'm going to be competing with you before you know it?

A. No, he did not.

Q. How did you feel when you learned that that's what happened?

A. Well, we didn't learn about the actual Kurin Lock product until that January when the website was formally launched. That was the first time we saw the product. Disappointed, I would say. Betrayed. We didn't think there was any concerns. Mr. Rogers is very sophisticated when it comes to patents and intellectual property. We had done all the work to protect our inventions. When people behave that way, it's just -- it's disappointing.

Q. I want to make sure that we've got this down. I think you said it, but during these conversations you had directly with Mr. Rogers from 2013 to 2015, did you have any concerns about talking to him about Magnolia Medical's inventions and innovations?

A. I didn't at all. As I mentioned, part of our very robust rigorous process from the very beginning was that we knew the only chance we had as an early stage company competing against very large medical device companies was to anchor our intellectual property and protect our inventions. And so we had provided all of the inputs to our lawyers and they had done, I think, a great job in putting us in a protected position, which Mr. Rogers had been advising us on over time so he very clearly was aware of the intellectual property position we had as a company.

Q. Let's talk about the Steripath Gen2 and Kurin. Now, I want to just briefly show you the timeline that I used

in the opening that shows Magnolia Medical and Kurin products.

You see that the Steripath Gen2 and Kurin both came out in 2017. What impact --

MR. RAMANI: Well, first off, before we go there, let's actually highlight the Gen2 and the Kurin Lock, Mr. Smith. Thank you.

BY MR. RAMANI:

Q. Is there any difference in terms of active or passive functioning between the Steripath Gen2 and the Kurin Lock to your understanding?

A. There is. The Gen2 architecture is active and the Kurin Lock architecture is passive.

Q. Because these two products came out in the same year, would you please explain the Lock's impact, if any, on Gen2's pricing.

A. Well, one of their early strategies and techniques when they brought that product to market was to significantly underprice it. And so very quickly our whole customer base was exposed to a new product that was marketed at 25, 35, 40 percent, depending on the pricing dynamics, cheaper and that created a lot of strife and difficulty in the market.

Q. Looking further over on the timeline, Mr. Bullington, to Steripath Micro in October of 2020.

Against what Kurin products did Steripath Micro compete?

A. At the time, there was only one Kurin product on the market, which was the Kurin Lock.

Q. How about later in time?

A. The Jet was announced in February of '23 but we really didn't see it in the market. The first time I ever actually physically saw one of the Jet devices was in September -- in August or September of '24.

Q. Would you turn in your binder to PTX-134, please.

What is that document?

A. This was a press release from Kurin on February 16th -- or excuse me, February 15th of 2023 announcing the Jet product.

MR. RAMANI: Your Honor, Magnolia Medical moves the admission of PTX-134.

THE COURT: Any objection?

MR. LoCASCIO: No objection, Your Honor.

THE COURT: All right. It's admitted.

(Exhibit PTX-134 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Mr. Bullington, I'd like you to focus on the -- to read the headline first for us, please.

A. "Kurin announces Kurin Jet, a quantum leap forward in

devices designed to address blood culture contamination."

Q. Go ahead and read the next paragraph, please.

A. "Kurin, Inc., the inventor and manufacturer of the Kurin blood culture collection sets, announced today the limited commercial release of Kurin Jet, a significant technological advance over Kurin's own market-leading Kurin Lock."

Q. As someone in the industry, what do you understand "limited commercial release" to mean?

MR. LoCASCIO: Objection. Form, Your Honor. Objection. Foundation, Your Honor.

THE COURT: Overruled.

THE WITNESS: Well, as I mentioned, typically when you bring a new medical device to market, there is a time period where you would be doing low-volume manual production while you're getting larger-scale automated equipment in place. So my impression was that this was reflective of that type of a scenario.

BY MR. RAMANI:

Q. You see the next paragraph is a quote from Bob Rogers. Can you read the first sentence of that, please.

A. "We are excited to introduce" -- excuse me -- "to announce the introduction of Kurin Jet, a fundamentally different product that provides a new level of performance in addressing the blood culture contamination market."

Q. So you said you saw this when it came out. How did you react?

A. Well, unlike a normal product launch where there would be an accompanying website and images of the product and product brochures, this was simply a press release that didn't describe anything about what the device was. We had significant concerns.

Q. So what did you do?

A. We inquired directly from Kurin about getting samples of their product that we could test to determine if our concerns that they were using our inventions and our intellectual property were valid.

Q. Did you ever get a response?

A. No.

Q. Okay. So you asked Kurin for samples, they didn't give you any response. What did you do?

A. Well, as I mentioned, about six or seven months later, one of our sales reps in the field had a customer that had a few samples, so we got several samples from the market. And that was the first time, you know, six months post this announcement that we had actually been able to get our hands on any devices. So that was the -- the first time we actually saw it was in that late August, early September time frame.

Q. Of which year?

A. 2023, I guess it would have been, so six, seven months after this.

Q. Let's go back to the opening timeline for a second.

MR. RAMANI: Actually, Mr. Smith. can we go to the one with the Magnolia patents on it, please. Thank you very much.

BY MR. RAMANI:

Q. Just to get oriented here, you just said the Jet was announced in February of 2023. You asked Kurin for samples. They didn't respond. You got some samples in July or August of 2023.

What was the state of your patents by then that are asserted in this case?

A. All three had been filed, and two of the three had issued before we even had the product in hand.

Q. Has Magnolia Medical lost out on any Steripath Micro sales due to the Kurin Jet?

A. We believe that to be the case.

Q. How come?

A. Well, generally, hospitals are going to choose one vendor or the other. So in the cases where we go head-to-head, oftentimes we win. There are times that we don't. And in those scenarios, those are representative customers that would have been adopting the Micro platform that have made the decision to move forward with the Jet.

Q. To the best of your knowledge, has a hospital customer switched from Steripath Micro to a blood diversion device from a company other than Kurin?

A. There have been several other concepts and ideas that we've seen in the market, nothing really serious, so I would contend that the two commercially viable options are either Magnolia Medical or Kurin.

Q. Now, if Magnolia Medical were able to recoup all the sales that it lost to the Kurin Jet, would that address the ways in which Magnolia Medical has been harmed?

A. It would not, no.

Q. Why not?

A. Well, the harm goes far beyond just recouping sales. Obviously, all of the reputational damage in the market associated with a whole host of things, the cost of litigation, the distraction, the resource consumption, those are all things that are far in excess of the lost sales.

MR. RAMANI: Mr. Smith, can we go to the timeline that includes the Kurin patents as well, please.

BY MR. RAMANI:

Q. Let's briefly turn to the Kurin patent, the '052 patent.

When did you learn of that patent's existence?

MR. LoCASCIO: Objection, Your Honor. Phasing

conversation we had.

THE COURT: Doesn't it go to inducement, which is an infringement?

Let me see you at sidebar.

So you good to go to 5:00? What do you all want to do? I mean, we had an earlier break than normal. You good to go to 5:00? Do you want to go at all after or you want to cut it at 5:00? One person wants to cut it at 5:00.

Have a quick sidebar.

(Whereupon, the following occurred at sidebar:

THE COURT: All right. Yes.

MR. LoCASCIO: Objection is we're now covering discussions of the Kurin patents and when he was on notice of those. It has nothing to do with their case.

THE COURT: I'm sorry. I thought the question was about why is this relevant to infringement. Sorry, it's late in the day.

MR. LoCASCIO: It's okay.

MR. RAMANI: I was just going to ask one question and then move on, Your Honor.

THE COURT: Let's move on.

MR. RAMANI: Move on.

THE COURT: He's going to be in the room.

MR. RAMANI: Thank you.

(Whereupon, the discussion at sidebar concludes.)

- - -

THE COURT: I am a getting tired in the brain. The objection is sustained. Let's move on. We're talking about the Kurin patent. In another part, we'll get to it. Go ahead.

MR. RAMANI: Can you pull that slide down, Mr. Smith. Thank you very much.

BY MR. RAMANI:

Q. Now, Mr. Bullington, you were here for the opening statements. You heard Kurin saying that Magnolia couldn't compete in the marketplace so they had to come running to court.

Is that why you filed this lawsuit?

A. Not at all.

Q. Why did you file it?

A. Well, as I've mentioned, as a small medical device company, it's taken a decade and a half to create a completely new market. We've done all the work. We've done all of the clinical data collection. We've set the new standard of care. We've invented hundreds and hundreds of products, and the only way we can protect our inventions is through the patent system.

And so when others are using our patents and our inventions to compete directly against us, there is no

alternative.

Q. Thank you, sir.

MR. RAMANI: Your Honor, I have no further questions.

THE COURT: All right. Cross-examination.

MR. LoCASCIO: May I approach, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. LoCASCIO:

Q. Good afternoon, sir.

THE COURT: You will get all the exhibits at the end.

MR. LoCASCIO: May I proceed, Your Honor?

THE COURT: Yes.

BY MR. LoCASCIO:

Q. Mr. Bullington, you understand that this is a court of law and you are under oath, correct?

A. I do.

Q. And you came here and you told some information to the jury, and I take it your goal was to be a truthful as you could, right?

A. Indeed.

Q. You covered a lot of topics. I want to go back to some of those, but I want to start with you said you had a meeting with Mr. Rogers.

Do you recall that? Do you recall that, sir?

A. I do.

Q. You were in San Diego and you met with Mr. Rogers, true?

A. Yes, that's true.

Q. And you said that -- let's take it a step back.

You asked for that meeting, correct?

A. I did. That's correct.

Q. Mr. Rogers wasn't chasing you down to say, "Hey, I want to learn more about Magnolia."

You reached out to him to get his input on things like strategy, fair?

A. Yes, that's correct.

Q. And you said --

MR. LoCASCIO: Can I get the document camera, Josh.

BY MR. LoCASCIO:

Q. And out of the transcript, but when you testified about your outreach to Mr. Rogers, you said you -- "I want to give an update," and you wanted to talk to him about a potential board role.

You kind of skipped over this part, right, "solicit your input on our overall strategy," didn't you?

A. That's correct. I did not read that e-mail verbatim.

Q. No, no. When you read that portion of the e-mail,

you skipped referencing that you were asking him input on strategy entirely, correct?

A. Yeah, I agree with that.

Q. And Mr. Rogers was willing to meet with you, fair?

A. That's correct.

Q. And you said, "I showed him our Gen2" -- or your Gen1 product; do you recall?

A. That's correct.

Q. I'm going to show you a slide that was used in opening, sir. This was DDX-1.4.

On the very left of this slide, there's a product that says Steripath, correct?

A. That's correct.

Q. That was the Gen1 product that you showed Mr. Rogers, fair?

A. Could have been a little different by that point, but generally.

Q. Wait, sir. Is your testimony there's a different version of the product beyond the Steripath Gen1 and the Gen2? There's some other iteration than what we're looking at here?

A. There were cosmetic changes made to the Gen1 product, so by 2015, I believe, those had been implemented.

Q. And you said you recall showing him the product, fair?

A. I do.

Q. And then were you shown by your counsel this slide, DDX-1.7.

Remember that?

A. I do.

Q. And you were specifically asked, "Did Mr. Rogers share with you at the meeting that he thought the product was overly complicated or Rube Goldberg?" Do you remember that?

A. Today?

Q. Yes. You were asked that question just a few seconds or minutes ago.

Do you remember that?

A. I do.

Q. You said, "He did not tell me that at the meeting," correct? Do you remember that?

A. Not that I recall.

Q. Well, let's take it in pieces. You testified under oath -- and we can get the transcript. We will have it certainly before we see you tomorrow morning.

But you testified under oath here, to this jury, that hand to God, Mr. Rogers didn't tell you at lunch that the product was overly complicated.

Is that still your testimony, sir?

A. I don't recall that specific discussion.

Q. Okay. So wait a second, sir. The fact of the matter is, you don't have any recollection what you said about the product during the meeting, right?

A. I don't, no.

Q. And you don't have any recollection about what he said at the meeting, do you?

A. I don't recall him being critical of any piece of it.

Q. Sir, I want you to listen to my question.

My question is: You don't have any recollection what Mr. Rogers said one way or the other about the product during the meeting, right?

A. I believe I would recall if he was critical, so I don't recall there being critical comments, no.

Q. Sir, you have given a deposition in this case more than once, correct?

A. I believe that's true.

Q. In fact, you gave one just Friday of this past week, correct?

A. A short one, yes.

Q. You swore an oath in that deposition to tell the truth, correct, sir?

A. I did.

Q. Sir --

MR. LoCASCIO: Can I use the ELMO, Your Honor?

MR. RAMANI: Counsel, I'm sorry, which

deposition?

MR. LoCASCIO: May 13, 2025, Page 226.

MR. RAMANI: Excuse me. Objection, Your Honor. Does the witness have a copy?

THE COURT: Well, it doesn't matter. But you can't put a document up. You have got to lay a foundation. You want to follow the rule. Go ahead, but --

MR. LoCASCIO: Okay. Your Honor, to impeach the witness, can I show the witness his prior testimony?

I've asked him the question. He's just answered it. I am now going to impeach him with the Q and A from his deposition.

Is Your Honor's practice that that can be put on the screen?

THE COURT: My practice is, you know, you can ask him, "Did you testify to," blank, and see what he says.

MR. RAMANI: Your Honor, I would object to any publication of it.

THE COURT: I'm not letting him publicize it. I mean, at some point he might be able to. But the first question is let's see what the witness says.

MR. RAMANI: Thank you.

BY MR. LoCASCIO:

Q. Sir, you testified under oath in your deposition on May 13 that you:

"Question: Do you remember what he, Mr. Rogers, said about it, your product?

"Answer: I do not recall."

You gave that testimony under oath, correct, sir?

A. That's correct.

Q. Okay.

The fact of the matter is, you're not -- you have no recollection, and you're not in any position to remember what Mr. Rogers said about the product at the time, correct?

A. I believe I would recall if there was specific commentary shared. I don't recall that being the case.

Q. So if we go back, sir, to your setup for the meeting. You congratulated Mr. Rogers on his consummation of an outstanding M&A transaction.

Do you see that?

A. I do.

Q. And you knew, because you were, I take it, either tracking the industry or hearing from other people, that Mr. Rogers had started a business, correct?

A. Ivera, you mean?

Q. Correct, sir.

A. I do.

Q. And that business had developed a successful product, correct, sir, Curos?

A. That's correct.

Q. And then companies, and ultimately 3M, decided to buy Mr. Rogers' business Ivera, and you knew that, right?

A. I did. That's what I was referencing in my e-mail.

Q. And you thought, well, this is a successful person. I want to see if I can learn some information from a successful person, fair?

A. I agree with that, yes.

Q. And Mr. Rogers was willing to participate and help you in that process, fair?

A. That was what he indicated.

Q. And he let you know, I don't -- before you even took the meeting, before he even agreed to sit down with you, he said, hey, I don't think I want to be on your board. I think I want to start my own business again, correct?

A. I wouldn't say it that way.

Q. Well, he said --

MR. LoCASCIO: Josh, this might be easier if you -- PTX-26. Can you blow up the bottom of this page and the top of the next so we can see Mr. Rogers' e-mail.

Right there. Thank you.

BY MR. LoCASCIO:

Q. So Mr. Rogers responds to your request to meet, and he says:

"Next week I'm available either day for lunch. Told you it wasn't necessary to travel unless you had another reason to be here."

He said, "Your choice.

"As to board participation, I'm unsure if I'm well-suited for board participation, as I am a hands-on operator and whether or not this is what I want to do at the time."

And then he said:

"I hope you understand that I'm keen on starting another adventure and do not desire to have other commitments impede that objective."

Do you see that?

A. I do.

Q. Do you understand if you're on the board of a company, that could impede your ability to start up your own business in another way, correct, because you might have access to things you can't otherwise get access to.

Do you understand that?

A. I don't think that was my interpretation of that comment at the time.

Q. The question wasn't what did you interpret it to

mean, sir. The question was, you understand that being on the board of one company could have constraints on your ability to do something else.

That was the question. You know that, right?

A. I do understand that.

Q. Okay. So he told you, I don't want to be on your board. And he said "I'm keen on starting another adventure." You understood, sir, that he was -- this was his third business -- well, let me back it up.

You knew that Mr. Rogers had started a successful business before Ivera, correct?

A. I don't believe that I knew that, no.

Q. You're not aware of -- even as you sit here today, that -- of Mr. Rogers' sort of multiple innovations and simple solutions in the healthcare space? That's news to you?

A. I don't know the details about any of that.

Q. Do you know about -- okay. Take that another time.

You know the business that he sold before this meeting related to what's a product called Curos sold by Ivera and acquired by 3M. You know that part, right?

A. As I previously confirmed, yes.

Q. Okay. When he said, "I hope you understand I'm keen on starting another adventure," did you think this guy was going to start another company or did you think maybe he

was going to go on like a Patagonian hike?

A. I don't know what I thought a decade ago about that comment.

Q. You're saying, sir, that you didn't understand him to be telling you in this e-mail he was going to start another business? That's your testimony?

A. I don't recall thinking that ten years ago, no.

Q. You knew, sir, when you got this e-mail, that Mr. Rogers didn't want to be part of Magnolia and was going to start his own business; true or false?

A. I wouldn't say it that way.

Q. My question, sir, was: Is it a true statement or is it a false statement?

A. That I knew he was going to start another business; that's your question?

Q. Sir, you knew when you got this e-mail that Mr. Rogers did not want to be a part of Magnolia and was going to start his own business; true or false?

A. Start his own business?

That's not how I read or interpreted it at the time.

Q. So you then said in response:

"I totally understand, re: distraction associated with potential board positions."

You acknowledged in your e-mail that his concern that if I'm on a board, it would be a distraction from some

other thing I intend to do commercially, correct?

A. I think that's fair, yeah.

Q. And then you met. And then from the comments you said on your direct examination, I gather -- I think you said you were -- you used two words, you said "betrayed" and "disappointed." Those were the words you chose to use, correct?

A. That's correct.

Q. Okay. You showed Mr. Rogers the very same thing that was on your website at the time, right?

A. That wasn't the response to the question.

Q. Sir, I want you to listen to my question. At the time of the meeting, you showed Mr. Rogers a product that was facially on the Internet for the whole world to see at that time, correct?

A. That's correct, yes.

Q. Okay. You didn't show Mr. Rogers at the meeting some secret prototype that nobody had ever seen before, had you?

A. I did not, no.

Q. Because you showed him what you were publicly touting to the world was going to be your product, or was your product, correct?

A. That's correct.

Q. Okay. And you didn't share your documents or

confidential information or anything of the sort with Mr. Rogers at lunch or any other time, did you?

A. We shared a lot of information over the course of the preceding several years, yes.

Q. Sir, my question was, did you share any of your documents with Mr. Rogers ever?

A. I don't know, actually.

Q. So the answer is you don't know of ever sharing a single one of your Magnolia business records or documents with Mr. Rogers, true?

A. That's true. I don't know.

Q. And you also know that if you wanted to have some confidential conversations with some strategic advisor, you would enter an agreement that you know very well has three initials, correct?

A. I do.

Q. What are those initials, sir?

A. NDA.

Q. NDA. What does it stand for?

A. Nondisclosure agreement.

Q. You've been in business; you're a finance guy who then starts this business. I assume you've entered into NDAs with people, correct?

A. Not in the context of things that are protected by our intellectual property, no.

Q. Sir, I want you to please listen to my questions. We are on a time clock here. You have entered into NDAs with people, correct?

A. We have.

Q. And an NDA is a nondisclosure agreement. Can we agree that means once you sign it, the things you share can't be used for any purpose other than the agreed-upon one?

A. Based on the scope of what its covering, I would agree with that, yes.

Q. Can we agree that in these conversations where Mr. Sparacio worked for you and then you reached out to Mr. Rogers to get advice, at no point did you ever ask, suggest, or enter into an NDA or nondisclosure agreement with Mr. Rogers?

A. I agree with that.

Q. You never even suggested that you were going to share something with him sensitive enough that it needed an NDA, true?

A. All of our secrets were protected in our intellectual property.

Q. Sir, can you answer my question, please? Do you need it read back?

A. Sure.

Q. You never even suggested that you were going to share

something with Mr. Rogers sensitive enough that it needed an NDA true?

A. I don't know if that's true.

THE COURT: All right. Why don't we stop here.

MR. LoCASCIO: Perfect, Your Honor.

THE COURT: It's just about 5:00. So I will excuse you for the day. Leave your notebooks in the room. My staff will come out and be with you.

Then if you can try to get here, you know, if it's possible to get here right before 8:00, get in, the guards will know. You will have your juror passes on to get you through.

Typically, in the mornings I try to come in, deal with the lawyers if they have any legal issues before we start. We will do our very best to start right away. And even early, if you're all here, we can look into that.

We will order lunch.

Did you order lunch? So we are good to go on that.

Last rule. When you leave here tonight, don't talk about the case. So when you go home and you're talking to somebody, "How did it go today?" Just say, "It was an incredibly interesting experience and, you know, everybody was so nice. I can't tell you about the substance."

And then don't listen to the radio. And then come back tomorrow. First question I'm going to ask you is if it happened.

Now, if you happen to run into somebody who tells you something or you heard on the radio, please just tell me in the morning and we'll deal with it. Okay? Have a great evening. Thank you.

(The jury exits the courtroom at 4:59 p.m.)

THE COURT: Please be seated.

Sir, you may step down.

Now the jury is about to leave in five or so minutes, but I do think I would like you to leave the courtroom. Do you have a room somewhere?

MR. RAMANI: We do, Your Honor.

THE COURT: Why don't we take the witness to another floor.

The other thing, sir, is you can't speak with your lawyers this evening about the nature of your testimony. I realize you are a corporate representative, but because you are in the middle of cross-examination, you just can't. You can talk about the dinner and whatever. Okay? And we will see you in the morning. Thank you very much.

(The witness exited the courtroom.)

THE COURT: All right. Did you want to say

something?

MR. LoCASCIO: I did. My first question was going to be to ask for that, so thank you.

We already made a request, which had been rebuffed, but Mr. Bullington, I don't know if you caught this, didn't start by saying what his position was. He said a lot of "we" and "our" and about current plans and what they can spin up in the manufacturing realm. Then he was asked a question on another e-mail, hey, CEO.

THE COURT: Right. I get it. I'm curious, too. I'm sure the jury is really curious.

MR. LoCASCIO: Here's what -- we were allowed to ask him -- he was deposed again just the other day. We were allowed to ask three questions.

"Question 1: Are you still the CEO of Magnolia?

"No.

"Question 2: Are you still employed by Magnolia?

"No."

And he said he was still affiliated with Magnolia under oath just now.

"Question 3: Do you have any consulting agreement that governs your work for or with Magnolia as of today?

"Answer: I do."

That document was requested. We have been rebuffed. Particularly given, I think, the way they put his testimony on, I have an absolute right -- it was also covered by the discovery requests. We'd like a separation agreement before we continue his cross.

THE COURT: Okay. Now, I was curious myself about it, but I did not want to interrupt my reading of the live testimony, so I didn't go back, and I cannot recall how he was introduced other than --

MR. LoCASCIO: As a founder, I believe.

THE COURT: Hold up. Can I just finish? Sorry.

MR. LoCASCIO: Of course, Your Honor.

THE COURT: I thought he was introduced as a corporate representative but maybe that's not right. Or during the opening, for instance, did he not stand up?

MR. RAMANI: He didn't stand up, but I described him as a co-founder of Magnolia.

THE COURT: A co-founder. That's it. You did not deem him a corporate representative.

MR. RAMANI: No, I did not.

THE COURT: All right. Well, hold on a second.

What time did he start testifying, approximately?

MR. RAMANI: I think around 3:00, Your Honor, maybe 2:45.

THE COURT: Okay. Thank you.

MR. RAMANI: It's at 2:52, Your Honor, where he began.

THE COURT: All right. Thank you.

Okay. All right. Yes, that's exactly what he stated at the very beginning, he introduced himself, actually, without almost any prompting that he's a co-founder.

Okay. So was there a discovery request for the document?

MR. LoCASCIO: There was a discovery request that -- I think I know them. I had the number the other day when we sent it over to them that would cover an agreement between an employer or witness and compensation, so --

THE COURT: Is that disputed?

MR. RAMANI: That they sent it over to us?

THE COURT: Yeah.

MR. RAMANI: Or that had it occurred during fact discovery? That's not disputed.

The root of the issue, Your Honor, is that this is something that happened after the close of fact discovery. And this deposition that took place on Friday

was a follow-on deposition coming out of the pressure differential dispute that Your Honor handled, I think, two claim construction hearings ago, I think in July.

And so he was deposed, and it was supposed to be focused on pressure differential and he was asked these questions that have nothing to do with pressure differential. I said you can ask these three questions but I'm going to shut down the deposition after that. That's what happened.

So they have the information about bias. We've offered to give financial terms, if that's what they want, to probe that. That should be sufficient. It's not like that there was a period during fact discovery where something was withheld. This is something that occurred after by quite some time.

THE COURT: So this is after fact discovery.

MR. LoCASCIO: Here's what -- whatever the status -- the state of affairs of Mr. Bullington's employ are, the change of his circumstances happened after fact discovery.

THE COURT: Yeah.

MR. LoCASCIO: Fact discovery, there's an obligation to supplement for changed circumstances, Your Honor. Or we supplemented damages -- we -- damages, we had a window. We provide information after that. There's

an agreement entered into between a witness who's testifying and the party. That certainly goes potentially to bias.

THE COURT: Look, it's totally probative. Okay? This is almost like a replay of your argument that I made reference to in the legerdemain. Let's get the right basis for you to get it. All right?

This strikes me as totally probative and that if there's a rule that permits you to get access to it, you ought to get it. Okay.

You somehow, though -- you know, you had a deposition on Friday. I don't know what or why you had a deposition, what the terms of the agreements were. All I'm trying to get about is what's the rule?

In terms of a fairness, it's like absolutely, it strikes me you should get that information. And it strikes me that there probably is a legal theory by which you get it because, for instance, if it came out that one side paid a witness to testify, you would think that there's a rule that would allow you to compel that disclosure.

And I think Mr. Ramani senses there might be such a rule because he just offered to give you the financial terms. So I am just looking for the rule. Okay? And it doesn't strike me that it's Rule 26.

Although it might be, but you are going to have to educate me why. You'd have to show me the specific discovery request.

For instance, it would strike me that if you had an Interrogatory that said: Disclose any financial relationship that Mr. Bullington has with Magnolia, it strikes me that you would get that, that that would have to be supplemented under Rule 26.

So if you want to show me a specific thing, I'm certainly willing to listen. Okay? But I think maybe take five minutes and figure it out before you just start. You know, you are playing to fairness. I get that. And I agree with you, by the way. I think it looks pretty bad anyway, I mean, if he doesn't explain it. But go back and think about the rule and then I can cover a couple of other discovery things. All right?

MR. LoCASCIO: Understood, Your Honor.

THE COURT: All right. So while you guys get your team, you have got a team of I don't know how many lawyers over there, somebody could try to find something, I'm sure, that would show a specific Interrogatory or document request, why it should be supplemented under rule whatever it should be. Okay?

And Mr. Ramani's already offered to give you the financial disclosure terms, although I'm not sure

there's something else here. So --

MR. LoCASCIO: And that proposal -- which had never been made before now, but I appreciate it -- suggests that there's something else in there that they wish we don't see, which is why they are willing to offer partial.

THE COURT: Okay. All right. I want --

MR. RAMANI: Let me just maybe save everyone some time, Your Honor. We don't care about turning over the agreement. We are happy to do it. I don't think it's appropriate, but we're happy to do it.

The main concern is it's an agreement with an individual and I don't want any terms from it disclosed in public. And I know, Your Honor, generally doesn't want to close the courtroom when Your Honor handles matters like this. That's the gist of -- that's the nub of my concern.

I don't know that they have any right to it, but to save everyone time, we are happy to turn it over.

THE COURT: Yeah, but, see, I don't know why it doesn't come out, what's in the -- I mean, if the guy got fired because, you know -- and I'm not saying he got fired. Let's say he got fired because he embezzled money. You know, like, that's very, very probative of his honesty, and if they are entitled to it, then they ought to get it. And if they are entitled to it, they ought to

be able to use it.

But, you know, maybe quickly give them the agreement. If you want, let me see it, we can talk about it. We can talk about it at sidebar and then address it.

But I have no idea what's going on, but it does strike me that they are probably entitled to it. I just don't know the rule at my disposal that says it, and I don't know the document request they made.

MR. RAMANI: So I don't think there is a continuing obligation to supplement document requests. In fact, I know there's not.

THE COURT: Okay.

MR. RAMANI: But, again, I don't have a problem with it if we can work out a way --

THE COURT: In fairness -- wait. Well, okay.

MR. RAMANI: That was an Interrogatory, Your Honor, that we were thinking back that we supplemented.

THE COURT: I agree with what you said if there were an Interrogatory that called for it.

MR. RAMANI: Right.

THE COURT: I don't think there is. But if there is --

MR. RAMANI: Sure.

THE COURT: -- then it wouldn't be an issue.

MR. RAMANI: Right.

THE COURT: Okay. So let's take that under advisement.

MR. RAMANI: Okay.

THE COURT: I want to address two really quick issues. So one is I think you guys should be talking tonight to come up with the list of exhibits that are just stipulated to as far as admission.

I mean, we do not need to have witnesses, you know, being questioned to introduce the asserted patents, right? We would have saved 15 minutes today, and that adds up. And we had a juror start to have a sleep problem. I don't know if you all saw that.

So we do kind of got to pick it up, and the easiest way that we'd save half hour tomorrow is if you guys meet tonight, get the list of exhibits that you agree are coming in.

First thing tomorrow, when the jury comes in, either by stipulation or by motion, you agree the following exhibits are moved without objection. I enter them, then can you show them to the witness, and we can just pick up the pace a lot.

By the way, I've got no problem if there's some question of authenticity or relevance, and you want to preserve an objection. That's great. But, I mean, the patents, right, that's an easy one, Number one.

Number two, I just want to cover how I deal with cross-examination by prior inconsistent statements, okay? They are, under Rule 613 of the Rules of Evidence, all right, when examining a witness about the witness's prior statement, a party need not show or disclose it to the witness.

I'm big on that. You don't have to. But you have to show it to counsel, all right? And then that's at least on a request. But, I mean, it's just easier to show it to them, okay?

This is the key. It's not admissible as extrinsic evidence, right? That's what the next part of the rule says. That's why you can't just show it in public.

Now, I also think we make this unduly complicated. So I just think the way this, you know, the witness is on the stand and you know that he said something different under oath. And you say, "Now, wait a second. Isn't it true," on such and such a date, "under oath, you said," blank. Now if he says "no," then it's admissible. Then it's authenticated prior inconsistent statement. It's going to come in. But if he says "yes," you just move on.

MR. LoCASCIO: Okay.

THE COURT: That's how I do it. Now, I'm

willing to listen, but that seems to me how the Rules of Evidence work.

MR. LoCASCIO: To the last point -- which is what I thought where we were when I had it. If I hadn't gotten it out or made it clear to everybody, if the witness is asked: Question; he gives an answer; let's say answer "yes," and in the deposition the answer had been "no."

THE COURT: Yeah.

MR. LoCASCIO: And the set up to that would be, "Sir, under oath, on this day, you said," here's the question, here's answer.

If he doesn't just agree with that, because that's undeniable, it's a fact, do I understand that, okay, at that point after the exchange, then the prior Q and A could be displayed?

THE COURT: You are saying if he lied, if he says that --

MR. LoCASCIO: He is, at that point, impeached, and what I have, you know, taught it and done it, the standard practice --

THE COURT: Then if he denies it, I don't have a problem with you putting it on the stand, do you? You are going to want to do the same thing.

MR. RAMANI: Yeah, I may want to do the same

thing, Your Honor, but I am not quite sure we are all maybe on the same page. I am not quite sure.

So I understand Your Honor to be saying let's say that I have given testimony in a deposition that a car was red, and then I'm asked at trial, "Didn't you say in your deposition the car was red?" And then I say "no," at that point, I think the proper course is for me to say, "Okay, witness, turn to," this page, this line, and to read Q and A.

THE COURT: Now, that's refreshing recollection. I agree that's how you do refreshing recollection. You don't show it. You are not allowed to display it. You show it to the witness. This is Rule 612. You say read it. You say, "If I showed you something, would it refresh your recollection?"

So, for instance, if the witness says the car was red, all right, and then the lawyer says, "Well, in fact, the car was blue," and the witness says, "No, it wasn't," and then you say, "Well, in fact, you testified under oath last May that the car was blue, correct?" And the witness says, "I don't recall." Then we say, "Well, let me show you something." And you go up there, you hand it to the witness and you say, "You want to read that?" And then you say, "Let me have it back." And then you come back to the podium and say, "In fact, you testified

under oath that the car was blue, right?" That's how I would do refreshing recollection.

Do you have a problem with that?

MR. RAMANI: No, no. I don't have a problem with that at all.

THE COURT: Do you have a problem with that?

MR. LoCASCIO: I don't have a problem with the refreshing recollection approach.

I think where there is daylight, and why -- at least in a lot of other places I've done this, the practice is, set up the question -- ideally it's exactly the exact same question from the dep or close, depending on the language, and then if the witness gives any different answer, okay, if he says, "I don't know," okay, then maybe we are in a different realm. If he gives a different answer, at that point, the witness can be impeached under 613 by saying, "You were under oath, and this is the statement you gave under oath."

And the whole value of impeachment, why does anyone get impeached, is to convey to the jury that this person just said something that was not true. And to do that, they need to understand that there is a place, whether it's the video -- because in some places we roll the clip, in other places we show the transcript. And that's why that was the way I approached it.

THE COURT: I don't think you did approach it that way, though. Because what happened, I think if you go back and look at it, and it's certainly the way I heard it, he didn't give you the exact inconsistent. You didn't get it.

So I will say this: If he says -- let's do the car. He says the car is red. In fact, maybe you say, "No, wait a second. You actually testified in May that the car was blue." He says, "No, I didn't." Then you say, "Well, in fact"... if you want to either review testimony. Normally, the way I'm doing it is I have the transcript in my hand, and I say, "Well, in fact, you testified that the car was blue," you know, and then normally the witness at that point eats it. And if he eats it, then no, I think we're done. But if he says, "No, that's not what I testified to," then you get to play the video and you get to show it.

MR. LoCASCIO: The only reason -- not to belabor this, but that middle step, that "isn't it true," the request -- the second one of, "Hey, didn't you say this on that day," I don't think is necessary under 613. It think at that point, assuming it's proper impeachment --

THE COURT: The reason why, it may not be necessary, but the reason that I don't do it is I see it

all the time. People don't ask. They don't get an inconsistency, and then they throw the deposition up. I saw that for the first three years of a judgeship all the time. That's why let's get it really narrow.

MR. LoCASCIO: Understood, Your Honor. And what we can also do in that situation is tomorrow, with the binder, we'll get Your Honor a copy of the dep transcript, we'll have one in theirs, and in the event there is a situation, I will just say this dep, page, line, and then if there's a question, you can look at it decide if it's inconsistent or not, Your Honor.

THE COURT: That's fine. But don't forget if you are reading it, if you do this and you say, "Well, in fact, on May 5, you said it was, "'Question: Is it a blue car? Answer: Yes. Isn't that right?" I think the guy is going to say, "Oh yeah, I think you got me," but he may not.

MR. LoCASCIO: He may say, "I don't remember." In a lot of witnesses, the reason that middle question is viewed as -- it just prolongs the exercise because the witness says, "I don't really remember that," and now do I -- am I stuck in recollection refreshed when essentially I have impeachment?

THE COURT: Okay. Well, look, I am just going to narrow it down.

One thing, I will say, and I remember Judge Robinson used to say it, and I've been on so many panels, Judge Albright is the one I remember most being on the panel with, is when you go back to juries, prior inconsistent statements, just not a huge deal. I think where they are big is they get the witness to cooperate for the rest of the testimony.

But the statements themselves, there's a reason why they are usually -- well, I guess they are now because they just changed the rule, right? So they are admissible for substantive purposes; is that right?

MR. LoCASCIO: I think so because that was -- typically the question was you could -- you might be able to display the inconsistent statement, but it didn't come into evidence, per se, that way.

THE COURT: Right. So I'm open to the display if you get -- they say, "I did not say that."

MR. LoCASCIO: Understood.

THE COURT: If that's what you want, and that's what you want.

MR. RAMANI: Your Honor, I just want to make sure we all understand what the rules are. I'm fine either way, frankly.

But the way that we did it in your court last time was witness has testified in deposition. "What color

is the car?" "The car is blue." Witness testifies on the stand, "The car is red," on direct. I come up. I say, "Wait a minute, you testified on direct the car is red, but in your deposition, you testified it's blue, right?" And if they say, "Oh yeah, you're right," then we move on. If they say, "No, I disagree," or even if they say, "I don't remember," you allowed us to say, "Okay. Turn to this page and line in your deposition, follow along with me." I read question, answer. "I read that correctly, right," then we move on.

THE COURT: I think I recall that now. This is not that much different.

All I'm saying is if he says, "I don't remember," then you say, "Well, let me show you something." And then you can go up and say, "I'm showing you the deposition." Then he reads it and let's see what he says.

That, to me, is pure refreshing recollection. You actually take the document back from him before you say to the witness, "Now, isn't it true you said it was blue?" But impeachment would be he says, "I didn't say that." And then you would either do it reading -- I think the only difference is I did rein in that case.

I am willing, if it is done right, to let it be put on the screen if you have an absolute prior

inconsistent statement. I just want to be fair.

If he wants to do it, do you want it?

MR. RAMANI: I'm fine doing it, Your Honor, so long as we all get the page and line ahead of time, so if we need to have a discussion about whether, in fact, it's locked, we can have that discussion.

THE COURT: It better be inconsistent. You did not have inconsistent on this, in my opinion.

MR. LoCASCIO: I'm going to presume that you're correct on that. I will check, but that's fine, Your Honor. And I think we'll probably both be of the view that, okay, if you are going to go for the published version, better be pretty clear and spot on.

THE COURT: The only way to assure that is you're looking at the transcript and you're saying, "Well, isn't it true, in response to the question" blank, blank, blank, blank, you said blank.

My guess is the witnesses are going to say "Yeah."

MR. LoCASCIO: If I can move on.

THE COURT: Yes.

MR. LoCASCIO: To circle to the -- the closeout, the separation issue. What I would propose to my colleague's proposal as well, is if they want to provide it to us, look at it, whatever reservations people

want to put on there, and then if we think, okay, we have to have a fight about this in some meaningful way, send something over to the Court, whether it is one-page or we'll come see Your Honor in the morning and --

THE COURT: Send it tonight, then we will meet early in the morning. All right? Will that work?

MR. RAMANI: That works, Your Honor.

THE COURT: Let's do that.

MR. RAMANI: In that regard, can I ask one thing?

THE COURT: Yeah. Sure.

MR. RAMANI: Just -- I know different courts do this in different ways. Would Your Honor be open -- I am guessing Mr. LoCascio would be open to it, too. I know our teams would prosper from this, with setting a deadline by which we have to make the submissions tonight to avoid a 2:30 a.m. deadline. Maybe we can say 10:00, 10:30, something?

THE COURT: How soon are you going to give him the document?

MR. RAMANI: I can give it to him right now.

THE COURT: How soon do you need?

MR. RAMANI: I mean, all submissions, all of these things, depositions, et cetera.

THE COURT: The truth of the matter is this, I

didn't read the thing. I found out about the 2:30 letter at 5:30, and, actually, I was working on something else so I didn't read it this morning. So I came in, and I looked. Well, you saw. I read the letter, but I didn't look at the transcripts until I came into court.

MR. RAMANI: The reason I bring it up, Your Honor, this is not about impugning anyone on the other side. Let me just be clear about that.

This always happens with trials, when you start -- people object to everything. You have a few rounds over the course of the night and all these slight paring back of objections and then suddenly everything is narrowed. I would like to see if we can categorize that so we can avoid --

THE COURT: It's a great idea. What have other judges done as far as deadlines?

MR. RAMANI: 10:00, 10:30, those have worked great.

MR. LoCASCIO: My experience has been a little bit different. And what that has been is the earlier the submission is -- and I agree over time of the case, by Day 7, we kind of know where we think the judge is going to land on this one, you get a much longer submission to you. And then whether there's still enough incentive for the parties to work out stuff, or stream, whatever they

are going to do to get that to the three things of today -- Your Honor essentially had three core issues to deal with. If that submission had gone in X-hours earlier, I just know the process and how it gets there.

What I have actually done with a lot of judges is had the actual submission to the Court be early in the morning. Before you -- some judges say, what's the benefit.

THE COURT: That's what I'm thinking.

MR. LoCASCIO: I am not suggesting we are going to have 4:00 a.m. meet and confers either. I think the plan is the parties narrow down the issues, and whether that's -- the process when we leave here is pretty tight. We leave here, witnesses get disclosed, exhibits get disclosed. I think there is an hour window to figure out -- we've got 60 docs for Bullington. Which are we objecting to, which are we going to drop?

And then we distill that, we have a meet and confer, and then after the meet and confer, both sides have more conversations internally and those lists get smaller. And the earlier that exchange gets -- because then the submission, you remember, will have, "Okay, what's your one sentence position? What's my one sentence position?" But we don't write ours until we see theirs, or vice versa.

And I just think, knowing what happens when we all leave here, that I would love nothing more than everybody to get to bed earlier, and I get to bed, myself included. I think it will not get better, and I worry that we will now have more things on the ledger.

MR. RAMANI: Your Honor, my experience has been that early morning disclosures are a disaster, because fundamentally, lawyers do things at the last possible second. That's just how all of us are wired, if we are honest about it. Maybe not Your Honor.

So I think if we save us from ourselves by forcing an earlier deadline, and miraculously, I assure you, I'm sure, because we have reasonable people on both sides, things are going to get narrowed and get done.

THE COURT: All right. You have to disclose the document. I'm assuming it's some kind of severance or financial package. That must be disclosed within the next ten minutes. You have to meet and confer about if there's a way to work this out no later than 7:30. And then if you want to introduce the letter or you need to file a written submission by 9:00, you need to specifically point out to me why you're entitled to it, because they are giving it to you, so that takes care that you got it. But if you want something else, why you're entitled to it and then -- see, actually, now that I think about it -- that

would have to be filed by 9:00, by the way.

But you're getting it. So, really, the only question, do you get more.

MR. LoCASCIO: I think the only question then would be -- I don't -- the whole point of this is I shouldn't have to just ask him cold, "What's the deal that you have with the company?" It's a bias piece, and I'm not going to walk into something I don't need to. So at this point, if they show it to me, I may say, okay. I have nothing here I want to do anything with, and we move on. I may want to cross examine him on two or three points in there.

THE COURT: I don't need submissions; they're giving it to you. The only question is, you want to stop him from using it?

MR. RAMANI: No, I just don't want it used publicly.

THE COURT: Do you have it right there? Can I see it?

(Speaking simultaneously.)

MR. RAMANI: I will hand it to both of you. We took the liberty of putting Bates stamps on it. I will walk over to hand the document up. And we stamped it "Attorneys' eyes only," Your Honor, for that reason, because we have a confidentiality concerns.

THE COURT: Okay. So the verbal request Mr. LoCascio was making would have gone beyond this document. Are you okay with this document? And we'll just go from there.

MR. LoCASCIO: I think that my request would only go beyond it if there's any other agreement beyond this one, Your Honor. So if this was a side letter to some other agreement or there were two agreements, then I do think my request was broader than this. If this is the only agreement that governs his departure from the company, then I actually don't think my request was broader than that, Your Honor. I might have curiosity around other things, but I don't actually think my request was any broader than that.

THE COURT: Okay.

MR. RAMANI: There's nothing else.

THE COURT: All right. So there's no other agreements. This is the only agreement. Okay.

MR. RAMANI: Your Honor, maybe Mr. LoCascio -- is it LoCascio.

MR. LoCASCIO: Mr. LoCascio.

THE COURT: I was calling him Mr. Ramani.

MR. LoCASCIO: We have kindred spirits.

THE COURT: Thanks to Mr. Smith, who has the easiest name in the world to pronounce.

MR. RAMANI: Your Honor, maybe the way to move forward is this. We've given it to them. This is the only agreement there is. I am happy to make that representation. Maybe Mr. LoCascio --

MR. LoCASCIO: LoCascio, like the calculator Casio, with "Lo" in front of it.

MR. RAMANI: Maybe Mr. LoCascio and I maybe this evening can talk about it, and if they want to use it beyond a certain level, then we talk about confidentiality. But if it's just a couple of questions about payment and whatever, it's a nonissue. We don't have to close the Court or anything.

THE COURT: I'm trying to think, what are you worried about? What don't you want disclosed?

MR. RAMANI: I just haven't talked to Mr. Bullington about it. I told him we'll turn it over and we'll put a designation stamp on it. I could go outside and ask him right now. He might be fine.

THE COURT: We also get into that, but I do think this, if you want to ask him questions about it, I'm going to let them tell him that it was disclosed to you.

MR. LoCASCIO: I think that's fair.

THE COURT: And actually --

MR. RAMANI: That's all he can talk about?

THE COURT: Yes.

MR. RAMANI: That is fine, Your Honor.

MR. LoCASCIO: Although what I would say, I'm happy to tell the witness that if I'm going to ask questions about it, it's been disclosed to me. So there's no need for anyone else to tell him. It is not as if they can prepare him now about it.

THE COURT: The reason why I want him to know is because if he wants to hire a lawyer to come in here tomorrow, not that I am inclined at all, not letting you question him, I want to give him that option.

MR. LoCASCIO: Understood, Your Honor.

THE COURT: All right. Anything else then?

MR. RAMANI: Just --

THE COURT: There should be no filings about this. You got what you want, and we can talk about it tomorrow morning.

MR. LoCASCIO: Each of our teams right now are secretly celebrating inside.

THE COURT: All right. Thank you very much. I will see you in the morning.

(The proceedings concluded at 5:31 p.m.)

CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer, RPR, FCRR
Official Court Reporter

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MAGNOLIA MEDICAL TECHNOLOGIES, INC.,	)	
Plaintiff,	)	C.A. No. 24-1124 (CFC)
v.	)	
KURIN, INC.,	)	
Defendant.	)	Volume 3

Wednesday, December 10, 2025
8:18 a.m.
Jury Trial

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE COLM F. CONNOLLY
United States District Court Judge

APPEARANCES:

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BY: ANTHONY D. RAUCCI, ESQ.

-and-

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P R O C E E D I N G S

(Proceedings commenced in the courtroom beginning at 8:18 a.m.)

THE COURT: Please be seated.

I read the letter. Let's get through the deposition stuff.

MS. FARNAN: I apologize, Your Honor. I think Ms. Cade ran to the restroom. I will go find her right away. I apologize for that.

THE COURT: Oh, I'm sorry.

MS. FARNAN: No, I apologize.

THE COURT: It's all right. No problem.

MR. LoCASCIO: Apologies, Your Honor.

THE COURT: No, no, you don't need to apologize. I was just told everybody was ready so I came in. We're good.

There's a letter.

Do you want to go through it real quick?

MR. RAMANI: Your Honor, do you want me to go, Your Honor, with objections?

THE COURT: I don't care. Who wants... Whatever worked out.

MR. RAMANI: We're objecting. Why don't I start off by explaining our objections.

So for Joe Bishop, he's the COO of Magnolia, and the gist of the objections is that there's testimony of his related to Magnolia's efforts to figure out the design and engineering of the Kurin Lock, which is not an accused product in this case. It's just prior art, so

that's irrelevant. It doesn't go to anything. Obviously, it doesn't go to induced infringement of their patent. It doesn't go to copying. They don't have a copying claim for their patent. So that's the explanation for the first objection.

THE COURT: All right.

MR. LoCASCIO: With respect to Mr. Bishop, Your Honor, the exhibits and the testimony and I think the bulk of the issues in Mr. Bishop's deposition are this one. It responds to this innovator follower narrative that because the core and is the core of the Magnolia theme. But as we look through -- and we'll get the transcripts. I think they are on the way over here.

THE COURT: I have got the transcripts in front of me. I've read them. My hesitation with him is it just seems like there's questions as to his honesty, and you basically are putting him up to impeach him, which isn't allowed under the rules.

MR. LoCASCIO: This issue of testing the Jet and if they had the Jet, as we get through, there's lot of setting up the idea where he basically locks in and says, "We never had this product. We never had it. We didn't get it." And then at the end, he had like a bunch of them in his desk drawer.

And so it shows they had and were tracking and

trying to get and did, in fact, have the Jet. And not only did they have it but -- you know, I agree with you it goes to sort of the fact that he said he didn't have them under oath, and then, in fact, he did. I do think that goes to witness credibility, which the jury is able to decide.

THE COURT: Right, but you don't get to call somebody just to impeach them. So time out. Let's just do this.

Don't you already have evidence that they have had the Jet?

MR. LoCASCIO: On the Jet, we actually don't. There was a lot of back and forth with Mr. Bullington around their efforts to look at the Lock. With respect to the Jet back and forth and the desk drawer all that, we didn't do that --

THE COURT: All right. Show me specifically where you would introduce, assuming you don't get to call him to impeach him. Give me the narrowest clip that shows that they had the Jet.

MR. RAMANI: Your Honor, while he's looking, can I just correct one thing that was just said?

THE COURT: Yeah.

MR. RAMANI: Mr. Bullington was asked and expressly said, "We got" -- "We got the Jet. We obtained

it through a sales rep at a hospital in August or September of 2023." Everything else they're talking about occurred after that.

THE COURT: Okay. And the only issue here is the application for the three patents.

MR. RAMANI: Already on file.

THE COURT: I shouldn't have said... Well, the application, I mean, when the claims of the three patents were introduced, not going back to the priority date, when was that?

MR. RAMANI: Not going back to the priority date, it was before that date. So it was before July and August of 2023.

Your Honor, maybe I can do some --

THE COURT: So the three patents, when were the claims of the three patents filed by Magnolia? What's the date of that?

MR. RAMANI: If Your Honor just gives me one moment.

THE COURT: Yeah, yeah, take your time.

MR. RAMANI: Can I have the document camera? Great. Thank you.

Can you see that okay, Your Honor?

THE COURT: Yes.

MR. RAMANI: Great. So there you can see

October 2022 is when the first two patents were filed, the claims.

THE COURT: The claims, okay.

MR. RAMANI: The claims. And they issued in December 2022 and May 2023, so they were already out in the world.

THE COURT: All right.

MR. RAMANI: All right?

THE COURT: So actually, that really answered my question. So those two patents were actually issued, you're saying, before the testimony that is sought to be introduced as establishing when the Kurin Jet was possessed?

MR. RAMANI: Exactly right. And there has been a mixing of two issues here. The first set of objections I was responding to was on the Lock. It sounds like those are out. So we are just focusing on the Jet, which is the second set of objections. This is all right.

You can also see the '709 patent was filed in April 2023, so the claims were -- the claim set was submitted to the Patent Office. I believe the claims were not modified after, but I can look that up if Your Honor would like.

THE COURT: That's okay for right now.

Mr. LoCascio, the testimony that you seek to

introduce, can you show me where that testimony you believe alleges Magnolia's possession of the Jet before the claims at issue were filed?

MR. LoCASCIO: I would say two points. One, there are documents and discussion in the testimony, and I can get you specific line, where their efforts to get ahold of Magnolia products that predate the filing. That's 2021.

THE COURT: Efforts to. I'm not interested in that.

Just tell me where you have got evidence that they possess the Jet prior to. Which, by the way, isn't even relevant. Actually, I'm not going to go that far because I know that's what Magnolia wants to say. I don't agree it's not relevant. But there's going to be an instruction that says it's lawful to do precisely what Kurin believes Magnolia did. Now, so just show me that.

MR. RAMANI: Can I make one other point, Your Honor, at the same time?

THE COURT: Yeah.

MR. RAMANI: Which is that Your Honor might recall, Your Honor excluded or prevented us from introducing the letter that Mr. Bullington sent to Mr. Rogers.

THE COURT: Yes.

MR. RAMANI: That letter was sent on February 23, 2023. So going back to this timeline, that letter was sent here.

THE COURT: And why is that relevant?

MR. RAMANI: That's relevant because he sent the letter and the letter asks for product samples, and he testified, "We saw this announcement. We hadn't heard of this thing before. We didn't see it in the market, and so I asked Kurin for samples. They didn't respond to me, and so we got them months later."

So I am saying its corroboration that Magnolia did not have the product when he sent that letter in February 2023.

THE COURT: Oh, I see.

MR. RAMANI: If they want to try and argue that we took apart the Jet or his testimony was untruthful, to me that opens the door for us to put in that letter.

THE COURT: Well, but he testified that he asked for product samples, didn't he?

MR. RAMANI: He did, but he didn't say anything else. We didn't show them the letter. All he did was, "I reached out and I asked him for it."

THE COURT: Right, but you got it in that he actually reached out for the letter. I mean, he reached out for the products, okay?

MR. LoCASCIO: Your Honor, plaintiffs have opted to assert the '709 patent, which issues into February 2024. There's testimony it's with respect to DTX-178 called the Jet test plan. It's from December of 2023, before the -- while the patent was in prosecution, before it issued, and that's on Page 275.

THE COURT: Hold up. 275.

So I'm looking at the... Just quickly, what is he saying here?

MR. LoCASCIO: He's talking about a document, DTX-178.

THE COURT: I get that, and it's an e-mail dated December 11, 2023.

What is he asking for?

MR. LoCASCIO: He's -- they are discussing testing the Jet that they have on hand in December of 2023.

THE COURT: Okay. So they have... You've got something that says that in December of 2023, Magnolia had the Jet?

MR. LoCASCIO: Correct, Your Honor.

THE COURT: Okay. Did they amend the claims after December 11, 2023?

MR. LoCASCIO: I'm not in a position to answer that question.

THE COURT: Then it's not coming in. We've got to move. The jury is here. So that's not coming in.

What's the next piece?

MR. RAMANI: I think that takes care of Bishop, Your Honor.

THE COURT: Okay.

Next?

MR. RAMANI: Your Honor, my colleague Mr. Block will address -- if we skip Mr. Miazga for a moment, we'll address Michael Winteritz, who is a prosecuting attorney, because it's related to the topic of discovery.

MR. LoCASCIO: Your Honor, actually, if I might, on this issue, is the last question that you were asking me, these aren't getting played until after lunch.

THE COURT: Oh. Well, then let's get the jury in.

MR. LoCASCIO: What I'd like to do is -- to answer your question, I'd like to have the chance to look. With respect to that witness, the ship may have sailed. We can have that conversation.

THE COURT: All right.

MR. LoCASCIO: Thank you.

THE COURT: Let's go.

Are you ready?

Bring the jury in.

Mr. Block, are you doing the witness?

MR. BLOCK: Yes, Your Honor.

THE COURT: You've got your blue suit on, so I figured that.

(The jury enters the courtroom at 8:31 a.m.)

THE COURT: Good morning, everybody. Have a seat. You all had a good night?

If you would just confirm for me by nodding your heads that you did not speak about the case or hear anything about the case last night. Great. All right.

Mr. Block.

MR. BLOCK: Thank you, Your Honor.

Micah Block for Magnolia Medical. Magnolia Medical calls Brian Napper to the stand.

While Mr. Napper is approaching, we have a motion to admit several exhibits.

Magnolia moves to admit plaintiff's trial Exhibits 42, 54, 64, 73, 88, 108, 112, 113, 123, 127, 162, 168, 169, 198, 202, 203, 206, 209, 217, 219, 229, 248, 291, 293, 295, 297, 298, 300, and 301.

MS. FARNAN: No objection.

THE COURT: Any objection?

All right. They are admitted.

(Exhibits PTX-42, 54, 64, 73, 88, 108, 112, 113, 123, 127, 162, 168, 169, 198, 202, 203, 206, 209, 217, 219,

229, 248, 291, 293, 295, 297, 298, 300, and 301 admitted into evidence.)

THE COURT: You may proceed.

Actually, we have to get the witness sworn.

THE CLERK: Please raise your hand. Please state and spell your name for the record.

THE WITNESS: Brian William Napper. B-R-I-A-N, W-I-L-L-I-A-M, N-A-P-P-E-R.

BRIAN NAPPER, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

THE WITNESS: Thank you.

MR. BLOCK: May I proceed, Your Honor?

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. BLOCK:

Q. Good morning, Mr. Napper.

A. Good morning, Mr. Block.

Q. Would you please introduce yourself to the jury.

A. Good morning. My name is Brian Napper and I am a economic damages expert in intellectual property.

Q. And what is your role in this litigation?

A. I'm been asked to do two types of analyses. The first is looking at Magnolia Medical's asserted patents

and identifying the economic damages, assuming infringement and validity of those asserted patents and of infringement by Kurin, and that those patents are valid.

Q. Okay.

A. And then, secondly, I also was asked to look at Kurin's claim of patent infringement and looking at the damages that Kurin incurred as a result of Magnolia Medical's assumed infringement and that the patents of Kurin are valid.

Q. And what are you testifying about today?

A. Today, I'm testifying about Magnolia Medical's damages as a result of the three asserted patents against Kurin's Jet product.

Q. Did you prepare some slides for your testimony today?

A. I did.

MR. BLOCK: May we publish Mr. Napper's slides to the jury, Your Honor? This is plaintiff's demonstrative Exhibit 3.

THE COURT: Any objections?

MS. FARNAN: No objection.

THE COURT: All right. You may.

BY MR. BLOCK:

Q. Mr. Napper, would you please tell the jury a little bit about -- thank you -- your professional experience.

A. Yes. I'm currently a senior managing director at a

company called Ocean Tomo, which is entirely focused on intellectual property, either doing valuation outside of litigation. We actually do a patent auction as well for companies that want to exchange their patents and put a value on that. And they're owed by JS Held, another consulting firm. I am on the leadership team of that company.

In prior positions, as you see here on the slide, I've been at big companies and small companies. I was at a small consulting group company. I was one of the co-founders of that group. Same way with Stone Turn, I was one of two founders of that company, self-funded. But I've also been large companies. Deloitte & Touche, I was the global head of intellectual property services at Deloitte & Touche. At FTI Consulting, I was the head of the IP there for about 15 years. So I've been both small and big in terms of companies.

Q. Have you been called on to teach in your field?

A. Yes. I've been invited, which I really like, to be a guest lecturer on intellectual property and valuation and damages at various law schools, including George Washington University, as well as NYU, Northwestern, and other venues, and I really enjoy that.

I've also authored probably five or six articles, including the American Institute of Certified Public

Accountants guide for valuing intellectual property.

Q. Where did you study, sir?

A. I went to the University of California Berkeley and got a business degree in accounting and finance. And I subsequently took a technology transfer course and actually taught that course, which is technology transferring from universities to the private sector and helping to value those technologies on behalf of the universities.

Q. What are you showing on this slide, Mr. Napper?

A. Just a little bit more information and background. I speak annually at the Berkeley-Stanford -- as a Berkeley grad, it's hard for me to say Stanford. We very much are evil rivals. But at the Berkeley-Stanford Advanced Patent Law Institute. And I also speak at the telecom conference, which is all about patents, patents for telecom in London annually.

And I'll skip that next one. I have been ranked as one of the top 300 IP strategists by Intellectual Asset Management, which is a publication.

And then you can see, I like to work for both small and big companies, and so while I have some -- you know, Johns Hopkins University happened to do with medical devices, I've also worked on behalf of, for example, Becton -- I'm sorry, B. Braun against Becton Dickinson on

needleless devices. So I have some experience in the medical field as well.

Q. Do you work only for plaintiffs or only for defendants or a mix?

A. No, sometimes I'm retained on behalf of the plaintiff, the patent holder, and sometimes I'm retained on behalf of the defendants.

Q. Mr. Napper, have your previous -- have any of your previous cases been in the medical device space?

A. Yes. Johns Hopkins was one against Intuitive Surgical. ICU Medical. I've done some pharma work as well for Ozempic, for example, and patents related to Ozempic. And then also I had mentioned the needle devices, the needleless devices, with respect to B. Braun against Becton Dickinson.

Q. About how many times have you been called on to offer expert testimony as an intellectual property damages expert at trial?

A. If the question is how many times have I testified at trial --

Q. It is.

A. I would say about 50 times now.

Q. If you don't mind my asking, Mr. Napper, about how long have you been working in this field?

A. I do smile. It's now -- it's approaching 40 years

now.

MR. BLOCK: Your Honor, Magnolia Medical offers Mr. Napper as an expert in the field of intellectual property economics and damages.

MS. FARNAN: No objection.

THE COURT: All right.

BY MR. BLOCK:

Q. Mr. Napper, what did you consider in forming your opinions in this case?

A. There's quite a bit of information exchanged between Kurin and Magnolia Medical. You can see some of the listings here. Obviously, legal filings, the patents that were asserted back and forth. Primarily financial records as well, the level of sales of the Kurin Jet product in this situation, as well as Magnolia Medical's sales of its Micro product and Gen2.

I had discussions with Mr. Bullington, as well as Professor Meinhart and I looked at their expert reports. And I read the deposition transcripts of what I call fact witnesses as well.

Q. Have you been here in the courtroom for trial evidence up until now?

A. I have.

Q. We will get into the details, Mr. Napper, but let me start by asking whether you reached any conclusion about

the appropriate amount of damages to compensate Magnolia Medical for Kurin's infringement in the case?

A. I have.

Q. And what are you showing on this slide?

A. So what I'm providing is my analysis, depending on the facts and circumstances that the jury decides, is the damages for Magnolia Medical for infringement of the three asserted patents would be in the range of $3.8 million to $7.1 million.

Q. Okay. Let's talk about the market in which Magnolia Medical operates. Did you analyze that market?

A. I did. I had access to both Magnolia Medical and Kurin's financial records and income statements and I wanted to get a sense of who -- which company was investing in building this marketplace and building the -- I call it a submarket within the blood culture draw market.

And so you see here that from 2018 to 2023, that Magnolia Medical clearly outspent Kurin by a significant factor in terms of their doing the research and development to bring a product to market.

Q. What are you showing on the footer of this slide about research and development investments, Mr. Napper?

A. I'm sorry. The footer of this slide? The exhibits?

Q. That's right. I'm asking for the record -- and with

apologies to the jury, can you identify the evidence that you are highlighting in relation to this part of your analysis?

A. Yes. So this information of the annual expenditures, the research and development by both parties, is in PTX-042, PTX-054, PTX-073, PTX-088, PTX-108, PTX-112, PTX-113, PTX-123, PTX-127, PTX-168, PTX-169, and PTX-248.

Q. Did you form a view regarding how this market was created?

A. Yes. In looking at this differential and expenditure between Magnolia Medical in the blue level of expenditures versus -- compared to Kurin, it's clear the clear takeaway is that Magnolia Medical has outspent by a factor of almost three to one in terms of research and development to identify a marketplace for these initial specimen diversion devices.

Q. We just looked at research and development. Let's talk about marketing and clinical expenses.

Did you analyze Magnolia Medical's investment in those categories?

A. I did. I did the same type of comparison here for marketing and clinical expenses. And as you can see here as well, that Magnolia Medical has outspent Kurin in every year that I had the data from 2018 to 2023, especially in the earlier years as well.

Q. And what evidence are you highlighting for this part of your analysis, Mr. Napper?

A. PTX-073, PTX-088, PTX-108, PTX-127, PTX-169.

Q. Did you consider any Kurin documents in relation to your analysis of this market?

A. I did. Consistent, essentially, with the spend of R&D and marketing expenses, that, basically, Magnolia Medical had outspent Steripath. Steripath actually acknowledges that Magnolia Medical -- in their own documents Steripath says they've trailblazed a bit and -- this is obviously Steripath speaking -- I wish they had more success as they will be our best targets.

And another important takeaway from this particular Steripath slide is they've, meaning Magnolia Medical, have been almost everywhere preaching the diversion gospel, which is this, I call it a submarket within the blood culture draw. So Kurin that Magnolia Medical has been in the marketplace educating potential hospitals as to the benefits of ISDDs.

Q. And just so the record is clear, are these documents from Magnolia or Kurin?

A. They are from Kurin.

Q. Okay. Let me back up one.

Have you -- did you become familiar in your analysis with the term "initial specimen diversion device"?

A. Yes.

Q. And then what is the acronym in the top of your slide here?

A. That is initial specimen diversion devices, yes.

Q. Okay. Great.

And then moving forward, would you just let us know for the record the exhibit numbers that you relied on in terms of these Kurin documents you've been discussing.

A. PTX-053, PTX-064.

Q. Thank you, Mr. Napper.

Okay. What is your starting point for quantifying the damages that Magnolia Medical is owed for Kurin's infringement in this case?

A. So the objective is to identify appropriate and adequate compensation to Magnolia Medical as a result of Kurin Jet's sales of accused products. In this case, the Jet.

So the starting point is identifying the level of units that Kurin Jet has sold through what we call the damages period, which is December 2022 through September 2025 for now. And that's a total of 1,238,025 units sold of Kurin Jet during this time period.

Q. And that's through when? Sorry.

A. Through September 2025.

Q. And what evidence are you highlighting for this part

of your analysis?

A. PTX-217, PTX-295.

Q. What types of damages can Magnolia Medical recover for each sale of the Kurin Jet?

A. So -- pardon me. The damages, essentially, in this case come in two forms. One form is that because Kurin and Magnolia Medical compete head to head for hospitals in trying to be their single supplier, in addition to the fact that there's evidence in the case that hospitals only work with one vendor at a time for these ISDD devices, they don't buy from both at the same time, typically, that, essentially, lost profits and a study of that, whether that's appropriate -- in other words, whether Magnolia Medical would have lost and did lose sales because Kurin made Jet sales to particular hospitals. That's is one form of damages or compensation.

And the other form is in lieu of that particular lost sale, instead of that, that Kurin Jet and Kurin would owe a royalty to Magnolia Medical for use of Magnolia Medical's asserted patents.

Q. And according to your analysis, would it be appropriate for Magnolia Medical to recover lost profits and a reasonable royalty on the same sale or does it work differently?

A. No, it's one or -- one or the other form of

compensation. You can't double down and get a lost profit of Magnolia Medical and then also add a royalty into that. The royalty rate is supposed to kind of, if you will, pay for that potential of losing a profit.

Q. That's for each individual sale?

A. That's correct.

Q. Okay. We'll talk more about it.

Let's start with lost profits. So can you please explain to the jury a little more what lost profits means in this context?

A. Yes. In this context -- there are others that are not this way, but in this context, it's clear that Magnolia Medical and Kurin are competing head to head. They're really the only two ISDD suppliers, for all intents and purposes, to try to educate the broader blood culture draw marketplace and basically compete against each other, educate the market, and get hospitals to switch over from the traditional blood culture draw mechanisms.

So in this case, I looked at -- I had access to sales by customer for both Magnolia Medical, for their Micro device, as well as Kurin, for their Jet device, and looked in detail at the customer and what customers overlap and what customers were basically taken by one company over the other.

Q. Okay. What are you showing on this Slide 12 of PDX-3, Mr. Napper?

A. So the *Panduit* factors -- pardon me, so sorry -- is named after a former case. But what that basically does is to outline what are the parameters upon which a company might be able to pursue lost profits for infringement of patents. And so we call them the *Panduit* factors. And, essentially, it lays out four different analyses and considerations that one could -- I, somebody like an economic damages expert should consider in order to determine whether lost profits is an appropriate remedy. And so I will go through each of these. I've studied these in detail in this case and I will give you my conclusions.

Q. Okay. Let's start with Number 1. Would you please explain the first *Panduit* factor to the jury?

A. First *Panduit* factor is demand for the infringing and competing products. That's a bit of mouthful, but what that really essentially says is, yes, there's demand for the infringing products, in, this case the Kurin Jet.

And that are those -- is there also demand for the Micro, which competes directly head to head with the Jet. Mr. Bullington said that as well, that Micro and Jet compete head to head in the market.

So, in my opinion, there's demand for the infringing

products, as well as the competing Micro products, in the marketplace. There's a fair amount of sales in here, as reflected here, of over 1.2 million unit sales over this time period.

Q. Did you consider demand in relation to the patents in the case?

A. Yes.

Q. And did you form an understanding?

A. Yes. My understanding, from a general standpoint, that the patents cover -- there's benefits to the asserted patents, which is lower contamination rates, lower false positives, and a decrease in cost, as well, for the hospitals. They don't have to care for patients who come up with sepsis or something like that.

So those are the three primary benefits. Clearly that demand is linked to the asserted patents, so I believe this factor has been met in order to have Magnolia Medical be in a position to capture lost profits.

MR. BLOCK: Mr. Smith, can we come off the slides. Would you pull up PTX-134, please.

This is already in evidence, Your Honor.

BY MR. BLOCK:

Q. Mr. Napper, did you consider this document in relation to your analysis of market and demand?

A. I did.

Q. And how did it inform your analysis?

A. This is the Kurin announcement, I believe it's a press release, before they really started selling the product in February 2023. And Kurin announces the Jet as "a quantum leap forward" in this particular marketplace of the blood culture contamination market, and their devices are a step forward, leap forward, and that the Jet is another key aspect, a significant technological advantage or advance over Kurin's own market-leading Lock product. So that's the former product, the Kurin Lock.

And now Kurin is announcing the Jet, which is the accused product in this case.

Q. Did you reach a conclusion about whether *Panduit* Factor 1 is satisfied in this case?

A. I did. I believe, based upon the information I reviewed, including some of the summary type materials here, that the *Panduit* Factor 1, there is demand for the infringing products, as well as the competing Micro products.

Q. Thank you, Mr. Napper.

MR. BLOCK: Can we return to the slides, please? Thank you.

BY MR. BLOCK:

Q. Okay. What is the next, *Panduit* Factor Number 2, Mr. Napper?

A. So this is also a mouthful, but it's the absence of acceptable non-infringing alternatives. What that really means is that if the Kurin Jet were not being sold in the marketplace because it can't because it's assumed to have infringed the patents, are there other devices out there, other products that would have essentially been available to hospitals that provides the same level of functionality and advantage that the Jet does?

So we look at that and try to determine if that's the case. The Jet's not there, what else might take its place.

Q. Did the Micro arise in your consideration of that factor?

A. It did. The Micro was in the marketplace and the Micro is the primary non-infringing alternative to be able to make those sales of the Jet.

Q. And did you consider whether there would be alternatives to the Micro available to those buyers?

A. Yes, my understanding is this is the blood culture contamination devices that are pulling the blood and testing it, is a fairly broad marketplace. It's about 6,000 hospitals. And I looked at other potential suppliers of devices that had this added functionality, if you will, the added advantage that the Jet and the Micro bring in terms of their performance, and there were a few.

There were the ByPass Syringe, I've seen some stuff on the Collect. There's waste tubes.

But when you look at the marketplace of those other -- that those other products have established, it's almost insignificant. It's almost like 2 percent of the entire ISDD marketplace.

So I did not believe, given 2 percent compared to Kurin Jet and Magnolia Medical Micro products are in the 40 to 60 percent, roughly, that those were not acceptable non-infringing alternatives.

Q. Okay. Let's quickly take the jury through that part of your analysis. What are you showing on Slide 16?

A. As I just touched on, this is just an example, all blood culture draws. So any type of traditional blood culture draws when they're pulling blood and testing it. So that displays this.

Q. Okay. And what are you showing next?

A. Then this is the blood diversion sets. So this is about 5 percent of all blood culture draws that these two products, essentially, have achieved to date.

Q. And then what are you showing here Mr. Napper?

A. And here, 98 percent of those blood diversion sets are made up of Magnolia Medical and Kurin products, and only 2 percent are other types of blood diversion sets, like the ByPass Syringe. So this struck me. This is not

significant, the 2 percent, not significant, doesn't appear to be a competitive player.

Q. And what evidence are you highlighting in relation to this portion of your analysis, sir?

A. Mr. Rogers' deposition, as well as PTX-198.

Q. And did you reach a conclusion regarding *Panduit* Factor 2?

A. I did. Given the landscape I've discussed and that 2 percent figure up there, I believe there is an absence of non-infringing alternatives, that it's either the Kurin Jet or it's the Kurin Lock -- and I will talk about that in a moment, the Magnolia Micro. So I believe that the absence of non-infringing alternatives factor has been met and lost profits would be able to be obtained.

Q. Okay. Let's talk about the Factor Number 3.

A. So factor Number 3 says, well, even if Magnolia Medical has this opportunity to essentially make more sales, do they have the manufacturing -- "they" being Magnolia Medical -- to actually make an increased level of sales, or are they maxed out on their manufacturing? That could be a hindrance, if you will. And same way with marketing capacity. Does Magnolia Medical have the marketing capacity to reach into these hospitals that have shown a penchant or desire to purchase ISDDs versus that old blood culture draw massive marketplace. So I studied

both of these.

Q. What are you showing on Slide 20, Mr. Napper?

A. So I spoke with Mr. Bullington during my work, and he also testified to the fact that Magnolia Medical has invested about $4.5 million in automation of their manufacturing for their Micro devices. And so that's a significant amount. And Mr. Bullington informed me, and I believe he testified to it, they could -- "they" being Magnolia Medical -- could ramp up two, three, four times if an opportunity like Kurin Jet popped into the marketplace, were presented to them.

Q. Just so I understand, did you reach a conclusion regarding whether, in the event more people wanted to buy from Magnolia because Jet wasn't on the market, Magnolia would be able to meet that demand in terms of manufacturing?

A. Yes. Given the evidence, it appears, clearly, that Magnolia Medical would have the manufacturing capacity to make those additional sales.

Q. Okay. So that's manufacturing capacity.

Did you also analyze if they'd have the capacity to do the marketing sales to reach those additional companies?

A. Yes. You saw the marketing spend of Magnolia Medical. They are clearly willing to spend a fair amount

of money, even compared to a benchmark of Kurin spend, to reach targeted hospitals. So, essentially, there's 6,000 targets in this marketplace in total, and Magnolia Medical and Kurin do target the same hospitals. Some hospitals seem to have a predisposition for making more advanced decisions on their products, and so they target the same hospitals. And Magnolia Medical has 30 sales personnel. Mr. Bullington said if they needed more, they could ramp up more.

Having said that, you will see that in my analysis of the quantification of lost profits, I take into account that there are some hospitals that are frequent buyers of ISDDs, and then there's this whole other marketplace that would be harder to reach.

And so that's an important aspect because out of 6,000 hospitals, only roughly 300 of them -- take 5 percent of 6,000, only 300 hospitals so far are actually purchasing these advanced ISDDs.

Q. What evidence are you highlighting for this part of your analysis, Mr. Napper?

A. Mr. Bullington and my discussion with him, although he had some testimony on it, too, I believe. And Mr. Heindel's deposition, as well as PTX-053 and PTX-064.

Q. Did you reach a conclusion as to whether Magnolia Medical satisfies this factor in the *Panduit* test?

A. I did. I believe Magnolia Medical has the ability and the marketing capacity to reach the -- essentially the customers of the Kurin Jet product and is in a position to make those sales.

Q. Okay. What is the fourth and final part of the *Panduit* analysis?

A. So last part is: Can a fair determination of the amount of profit that, in this case Magnolia Medical, would have made -- and we call it the "but-for," but-for the Jet being sold into the marketplace.

Q. Okay.

What are you showing on Slide 23, Mr. Napper?

A. So here I've tried to depict the total universe of Kurin Jet sales, so that's about 1.2 million, a little more than 1.2 million units. And what I've done -- because it's really, ultimately, a decision for the Court to make, but what I've done is provided alternatives of tranches, if you will.

What I mean by that is in my analysis, I looked at the Kurin Jet sales that were made to Magnolia Medical customers. In other words, the Kurin Jet comes out, they are able to, if you will, take away some of the Magnolia Medical customers and have them start buying the Kurin Jet. Recall that they don't go -- they don't do two different vendors at the same time, each hospital. So 11

percent of the sales of -- the infringing sales of Kurin Jet were sold to Magnolia Medical customers. So they basically -- I call those, you know, lost customers, if you will.

And then the second tranche is another tranche that is Kurin Jet sales to Kurin Lock customers. So that's about 44 percent of the infringing Kurin Jet sales. Fairly significant. And what that was an indication, to me -- we will get into probably in a moment -- is, ultimately, if a hospital wants to upgrade their functionality in their ISDD, the Jet has a significantly higher functionality, as touted by Kurin, than the Lock. So those customers have a predisposition to upgrade their ISDDs, but in the but-for world, the Kurin Jet is not available.

So it seems to me it would be logical that Magnolia Medical has an opportunity to make the advanced product of theirs, Micro sales into those hospitals.

Q. So you briefly touched on Kurin's old product, the Lock, when we were talking about non-infringing alternatives, acceptable non-infringing alternatives, and you've just mentioned it again now.

Can you just draw that connection, please?

A. Yes. It's based upon --

MS. FARNAN: Objection, Your Honor, Rule 26.

MR. BLOCK: If I could have just a moment, Your Honor, to find it.

The analysis of this market --

THE COURT: Hold on. We have a question and answer, so why don't you come to sidebar.

MR. BLOCK: Thank you, Your Honor.

(Whereupon, the following occurred at sidebar:)

THE COURT: All right. Because the transcript, it moves fast.

So Ms. Farnan, what was the particular answer that you want to object to?

MS. FARNAN: So he did not testify in *Panduit* Factor 2, and he does not have in his report an opinion the Lock is not an acceptable non-infringing alternative.

THE COURT: For clarity, right, you said... So he's about to testify, or he has, actually, that the Lock is not an infringing... an acceptable non-infringing alternative, or is he testifying that the Lock is an acceptable non-infringing alternative?

MS. FARNAN: I don't believe he gave the testimony. In acceptable non-infringing alternatives, he does not have an opinion that the Lock is not an acceptable non-infringing alternative. He does not exclude that. It's not in his reports.

I think what Mr. Block just asked him was to

make that connection. He said, "You talked about the Lock." He mentioned it once. He did not give any opinion about the Lock on acceptable non-infringing alternatives. And Mr. Block just asked him to make that connection, and that's not in his report.

THE COURT: Okay. Now, I'm just... He definitely made a connection. There's no question. And if he did and it's not in his report, we will deal with that. That's one thing. But I'm also trying to get the lay of the land.

Is he trying to say...

MS. FARNAN: I guess, Your Honor, I don't think he made that connection, so I guess I would have a motion to strike. I don't think he gave an opinion that the Lock --

THE COURT: Is or is not.

MS. FARNAN: Right.

THE COURT: Okay.

MS. FARNAN: He talked about the Jet. He talked about the Micro. He threw the word Lock in there once, but he did not give an opinion to the jury about Lock and non-infringing alternatives.

THE COURT: All right. But I guess the bottom line is he shouldn't be talking about the Lock, period, in the context of non-infringing alternatives. That's your

objection.

MS. FARNAN: Correct.

MR. BLOCK: So I do think it will come out on cross-examination. It came out, and he has affirmative opinions about what are the alternatives, but it is true he does not do the Lock in this report. So I'm happy to move on.

THE COURT: Okay.

MR. BLOCK: However, because it came out and there was no objection, I just wanted it to not sit in the transcript the way it had at this point. So I expect they are going to raise it.

THE COURT: Wait.

MS. FARNAN: I would move to strike that then.

THE COURT: Sorry, because it came out?

MR. BLOCK: Yeah.

THE COURT: But there was an objection after he said it.

MR. BLOCK: No. So there was slight, prior when we doing the *Panduit* Factor, before we get to the quantification, where he said -- I think he misspoke -- said the Jet, the Lock, the Micro -- we will get back to the Lock -- the Micro, because he was expecting to deal any criticism of him for not having done a separate analysis of the Lock. What he said, this is the absence

of non-infringing alternatives later.

So that's the way it came in. I agree he doesn't talk about the Lock in the report. It's now sitting there. I'd like to address it now. If you prefer for us to wait and see if they do it on cross, we can do it then and on redirect.

THE COURT: Okay. The reason... You probably are going to be, in cross, saying, "By the way, you didn't consider the Lock," or are you going to say that?

MS. FARNAN: Right.

THE COURT: Right?

MS. FARNAN: Because it's not part of his opinion.

THE COURT: I just want to make sure. Because Mr. Block, I think, has rightly anticipated that you intend to bring out the fact that he didn't consider the Lock in his analysis.

MS. FARNAN: Correct.

THE COURT: Right? Okay.

So what I would suggest is this: I think the jury has no idea so far because, like, I didn't. I mean, I had to go back and look at it. He definitely mentioned the Lock. I mean, what I would suggest is at this point we move on, and you make sure he doesn't do anything else, starts talking about he has got an opinion about the Lock.

I can strike the testimony if you want.

MS. FARNAN: I do. There was one mention of the Lock.

(Reporter clarification.)

MS. FARNAN: There was one mention of the Lock.

THE COURT: Yes. No question.

MS. FARNAN: But I didn't think the question and answer was him giving an opinion, so I guess I would move to strike that, and then we will move on and then we'll deal with it on cross.

THE COURT: You would move to strike it or you would not?

MS. FARNAN: I would if it's being interpreted as an opinion on a non-infringing alternative.

THE COURT: Okay.

MS. FARNAN: Which he cannot give.

THE COURT: All right. Everybody sit tight for a second. I just want to go back and look at the transcript again.

MR. BLOCK: It's early. So I think what you were looking at is his scenario --

(Reporter clarification.)

MR. BLOCK: I beg your pardon.

I think the relevant part is earlier. I think -- with apologies for looking over your shoulder,

Your Honor.

THE COURT: No, no, not at all.

MR. BLOCK: That you were looking at his scenario one. There's no question that he can testify about sales of the Jet to customers who used to buy the Lock. Earlier, what he was doing -- correct? Sorry.

MS. FARNAN: That's okay. That's part of his opinion.

MR. BLOCK: Earlier --

MS. FARNAN: It's pending on when *Panduit* Factor 2 that it's a problem.

MR. BLOCK: And when he was talking about that factor, I asked him about non-infringing alternatives. That's when the word "Lock" escaped his lips, and whether that was an opinion at that point or not, that's why I wanted to clarify now. Because there was no objection then, and it got seeded for the jury.

THE COURT: Okay. I've reviewed the transcript, and I think the better course at this point is just for me to say move on. I don't... and I think, then, you will be able to bring out on cross, "You never considered the Lock as an alternative." And it is not going to be, I don't believe, contradicted by anything he said in direct.

And what I'll do is in the... I can't imagine

it, but I would just say Magnolia needs to be sure that in their closing argument, they don't pull any transcript cites that I am not aware of right now to suggest he did consider the Lock.

In other words, I'm not going to back and parse the transcript, but it's with the understanding that in the event he somehow did directly say he considered the Lock in his analysis, you can't rely on that for closing.

Is that all right?

MR. BLOCK: I think I understand. I'll just reserve, Your Honor, depending on the way it plays out. He has a fulsome amount --

(Reporter clarification.)

MR. BLOCK: I beg your pardon again.

He says, "I have analyzed the market. Here are examples of things," right? Because remember, this is an affirmative report, then there is a rebuttal. He doesn't get a reply. "Here are examples of things that people might offer as a non-infringing alternative." There's a 'rog response in the case, I believe. They never identified one. So he doesn't know the lay of the land for their arguments, and he said, "Here is what I believe."

I think, Your Honor, in fairness, because we don't do reply reports under your -- he has considered the

rebuttal report and he has opinions about it, and so I think he can fairly respond to the criticisms that Ms. Distler brings because what you will see when she takes the stand is she says, "Here's all these problems." And I think he is allowed to say, "Yes, I read those and here's what I'm doing on" -- "Here's what I think of the criticisms."

MS. FARNAN: Your Honor, we object to that. If they thought there was some reason that Mr. Napper needed to provide opinions in response to the rebuttal report, the correct thing to do was to seek leave to file a reply to have him talk about his deposition. None of that happened. We should not be hearing their opinions on the stand at trial, which I think is what Mr. Block just suggested could happen.

MR. BLOCK: All I'm saying, Your Honor, with respect to argument, I think I'm on the same page where you started, but if it comes out in a way that is unfair, then I will ask you for permission and explain to you why I think it would be unfair, and I think he needs to be able or I need to be able to make the argument that you have suggested shouldn't happen. I hope that won't be the case.

THE COURT: Okay. Well, it may come out on cross. I mean, there is this thing, at some point, right,

we are in the middle of trial and you start getting crossed based on what the other expert said. I think the person who is testifying gets to respond.

MS. FARNAN: I'm not going to be asking about what Ms. Distler said. He was asked about this in his deposition.

THE COURT: Right. You're going to wait til she testifies.

MS. FARNAN: It's his own failure of proof. That's the issue.

THE COURT: Yeah. Okay. And I agree with that. So if it's not brought out in cross, then he is not going to get a chance to do it.

All right. Now, I just want to give the relief here.

So what do you want, Ms. Farnan?

My suggestion is I don't strike anything because I'd have to go back. It's very hard to parse because it wasn't like he, point blank, made a statement, right?

MS. FARNAN: That was my point, he didn't give that opinion. So I think maybe sustain the Kurin objection, and I think we had a conversation about how the other testimony should be dealt with. We will move forward on that basis.

THE COURT: All right. And you get to see the slides from closing anyway, so if there's testimony that Magnolia is going to rely on from his testimony, you will have the opportunity to object before we actually went into closing.

MS. FARNAN: Yep.

THE COURT: Okay. So that's what I'm going to do. I'm going to just, in front of jury, just say, "Well, the objection is sustained. Let's move on," okay?

MS. FARNAN: Thank you, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

- - -

THE COURT: All right. The objection is sustained. Please move on.

MR. BLOCK: Thank you, Your Honor.

BY MR. BLOCK:

Q. I think we've already talked in concept about scenario one.

Let's talk about your calculations, Mr. Napper.

A. Okay.

Q. What are you showing on Slide 25?

A. Here are a lot of numbers. I happen to like numbers. But you have the Kurin Jet sales to Magnolia Medical customers. So these are what I call lost customers of Magnolia that, with the Jet being in the marketplace,

those customers switched over to Kurin for buying Jet products, 138,400 units.

They say, "Well, what would Micro have sold their product for if they had that opportunity because Jet is not on the market?" So the Micro average price $19.30. So Micro's -- Magnolia's Micro lost revenues would be 2,671,664 in revenue. Of course, you have to deduct costs of making the product, so Micro average profit margin is 61.5 percent. So the Micro lost gross profits is 1,643,587.

Then you have other costs to deduct as well. You would sometimes have those sales and marketing costs I talked about before for Micro, if you will, that would be at a higher level because they would have to go and pitch, if you will, those hospitals. Here, you have literally a hospital that has already bought and is familiar with the medical -- Magnolia Medical Micro product. And so therefore, only the commission, because the sales reps would get commission for that, do I deduct here, and that would be lost profits under this scenario of $1,421,801 to Magnolia Medical.

Now, we'll get into this later, the rest of the accused Kurin Jet products would then be subject to a reasonable royalty for damages because each sale has to have some damage component or representation in the

analysis of damages.

Q. So just to tie it up, Mr. Napper, did you reach a conclusion regarding the amount of lost profits that would be owed to Magnolia Medical under your Scenario 1, which considers lost profits for the Kurin Jet sales to former customers of Magnolia Medical?

A. Yes. Just for the lost profits portion of the accused Kurin Jet products, it would be $1,421,801.

Q. And what evidence are you highlighting on this slide in relation to that part of your opinion?

A. PTX-127, PTX-169, PTX-203, PTX-206, PTX-217, PTX-219, PTX-229, PTX-295, PTX-297, PTX-298, PTX-300, PTX-301.

Q. Okay. Let's talk about your Scenario 2 analysis. What are you presenting here, Mr. Napper?

A. So under this scenario, it's looking at the Kurin Jet sales, is the accused product sales that were made to Kurin Lock customers. So those Lock customers who, if you will, upgraded to the Kurin Jet, the Kurin Jet is not available in the but-for marketplace.

So, therefore, those customers, hospitals who have shown a penchant to have additional functionality in their product would be, if you will, at risk and a potential opportunity for a Magnolia Medical Micro sale. So that's Scenario 2. The total of that is 544,387 units out of the roughly 1.2 million units of accused products.

Q. And did you calculate the amount of lost profits that would be owed to Magnolia Medical if the jury awards lost profits on the portion of sales that went to customers who had upgraded to the Jet from the Lock?

A. Yes. For the 544,387 units that fall into that category, average price of Micro, $19.28. So Micro's lost -- Magnolia Medical Micro lost revenues is $10,496,478. Profit margin of Micro is 61.3 percent. Micro lost gross profits, 6,431,461.

Now, here you see Micro sales, marketing, and clinical costs because Magnolia Medical would have to incur costs, even though they may have touched those hospitals before and tried to sell to them, they're going to have to incur additional costs to go back to them with Kurin Jet being out on the market and say, hey, upgrade to, if you will, the Micro. They've shown a penchant to do that. So there's more costs that I deduct from lost profits of Magnolia Medical, so lost profits are 4,992,848 out of this scenario.

Q. And to save us a little time regarding the evidence you are highlighting here, is that the same evidence that you used for the calculations in the previous scenario?

A. Correct. They are primarily the financial statements.

(Reporter clarification.)

A. They're primarily the financial statements of both companies.

BY MR. BLOCK:

Q. Okay. We will come back to these lost profits numbers, but let's now talk about your other category, the reasonable royalty.

Would you remind us the general framework that you are using here?

A. Yes. So, again, if Magnolia Medical would not have made a sale if the Jet were not in the marketplace, Magnolia Medical is still entitled to compensation for, in my world, assumed infringement of the Magnolia Medical patents. So that would be in the form of a reasonable royalty, and there's a structure associated with how do you determine how much Kurin would pay and Magnolia Medical would accept for the use of the asserted patents.

Q. What is that structure, sir?

A. It's called a hypothetical negotiation -- unnatural but hypothetical -- between Magnolia Medical and Kurin at the time that the earliest of the three Magnolia Medical patents asserted in this case issued, and that would be December 20, 2022.

And, essentially, there's a number of assumptions that go into what these two individuals who are negotiating this deal in this hypothetical world need to

assume. And that would be that the patents are valid; that Kurin Jet infringes, actually uses those patents; the parties are willing to license. They can't just say "I'll never license you," they have to come to the table. And all information is known.

So we have a broad spectrum of information that I, for example, can consider, and they as well, as to what would be a reasonable royalty rate, and they must come to an agreement.

Q. How do you assess the outcome of that hypothetical negotiation?

A. Well, I have good news and bad news about this slide. This is -- these are the *Georgia Pacific* factors. What they really are, are factors that licensing people would take into consideration when negotiating the license from an economic or technical standpoint. The bad news is there's a lot of factors that go into this.

The good news is, typically, and in this case in particular as well, you can focus on a few of these that are most relevant to these two negotiating parties of Magnolia Medical and Kurin. But they generally fall into the categories of: Are there any license agreements for these patents or has Kurin licensed patents that are comparable technology. So that's one general category.

Another is the significance of use in accused

products. How contributory is the functionality covered by the Magnolia Medical patents in this case? Is it just a sideshow or is it something more substantive?

The benefits of the patented invention, that's kind of similar to the significance of use. And then other general considerations. And we can -- I'm glad to say we can focus in on a few of these that are more relevant in this particular situation.

Q. Why do we call them "*Georgia Pacific* factors"?

A. That's named after the case back in the day that established this kind of framework with establishing a reasonable royalty rate. And, again, it's not dissimilar to my real-world experience in helping companies to negotiate licenses.

Q. Okay. You explained a concept, what Category A, licensing and comparables, is about but, just briefly, can you explain to the jury what you're analyzing here?

A. Yes. I did touch on it, but has there been any comparable license agreements and comparable patent agreements by either party?

In this case, no. Magnolia Medical has not wanted to license their patents. Kurin has not taken a license to any other patents of other companies. So, essentially, nothing is -- comes out of that particular lack of licensing.

Category 4, licensors, licensing policy for patents-in-suit, I just touched on this. Magnolia Medical is not interested in licensing their patents. So that would be -- and understandably. They want to keep it for competitive advantage, right, in this case. So that's what's reflected here, that Magnolia Medical's position at the hypothetical negotiation would be, well, I'm going to ask for a little bit more because I really don't want to license my inventions. So that may be different in other situations, not different here. So it has a general influence.

Q. Okay. I think you've provided all of this. What evidence did you highlight in relation to your analysis of Factors 1, 2, 4, and 12?

A. Right. The factors are the patents have not been licensed before, so that's a neutral effect. I can't get a valuation data point from anything.

That Magnolia Medical protects its inventions, that is something that would have an upward influence on Magnolia Medical at the hypothetical negotiation would ask for.

Q. I'm sorry, Mr. Napper. I was just asking about the footer. Was there particular evidence you wanted to highlight?

A. I'm sorry about having to repeat myself. Yes,

it's -- some of this is from Mr. Bullington, either his deposition or his testimony as well.

Q. Okay. Let's look at your Category B, which covers *Georgia Pacific* Factors 6, 8, 11, 12, 13, and 14. Would you please explain this category to the jury.

A. Yeah, this comes into play, for example, convoyed sales, not really an issue here. I understand Magnolia Medical has sort of a lot of data they accumulate but they're not charging for that. But if they did charge for that, if Magnolia Medical did charge customers for use of that data, then if they lost a Micro sale, that might be an added upward influence on the royalty rate. That didn't happen here but that's what a convoyed sale is made up of.

And the rest of this product profitability. Are these products really profitable? Are they very narrow profitability? Is there an ability to pay based upon the profits and commercial success earned?

Extent of use of the invention by the licensee is reflected in the number of units that would be royalty-bearing, so we certainly take that into consideration.

And then 12 and 13 are kind of the same. It's the portion of profit customary in the industry for use of the patents. And then the portion of realizable profit

attributable to the invention versus the other contributions, Factor Number 13, which we'll talk about in more detail later. And the opinion testimony of qualified experts is, I guess, just us.

Q. I jumped forward too quickly. How does this category affect the hypothetical negotiation in this case?

A. I just touched on convoyed sales. Factor 6 is neutral because there's no charge for it. The product profitability and commercial success, these are significant profit earned on these devices, 80 percent gross profit, and that's not an insignificant amount. And so that's something to take into consideration in the ability of Kurin to pay and what Magnolia Medical might accept.

The extent of use is reflected in the fact that Kurin Jet started out selling the Lock, their existing product, from 2023 forward. So that's a significant, if you will, economic advantage to Kurin so they might be willing to pay a little bit more, or Magnolia Medical would ask for a higher rate.

And then the portion of selling price, I put a star on that, we'll get back to that in a minute, it actually provides a data point to consider for a reasonable royalty.

Q. Okay. And so you have a -- why do you have a gold

star next to Factor 13?

A. Yeah, we'll come back to that in terms of what's called the analytical approach in just a moment.

Q. Okay. But for now, in relation to the data, the 223 and 2.24 figures, can you explain that analysis to the jury?

A. Yes. So this is also known as the analytical approach. And what we -- what I do in these situations, and what economists do is look at, well, let's look at the Kurin Lock compared to the Kurin Jet. And if the Jet is selling at a higher price and also a higher -- there's a higher gross profit, that is an ability of Kurin in this case to pay a royalty rate and still get a reasonable profit margin on the sale of their accused products, Kurin Jet.

So you look at -- and you also look at this from the standpoint of, gee, Kurin Jet sees that it has advantages over the Kurin Lock and they up their price to the hospitals. It has significant advantages, some of which are tied to -- if not most, to the asserted patents. So you have a premium price and you have a premium gross margin, and this is a pretty significant indicator as to the contribution of the functionality covered by the Magnolia Medical patents.

Q. What evidence did you rely on in connection with this

comparison of the Jet to the Lock?

A. PTX-134, PTX-157, PTX-202, PTX-209, PTX-217, PTX-291, PTX-293, PTX-295, Kevin Nason's deposition transcript, Mr. Bullington, and Professor Meinhart.

Q. What are -- let's look at your next category, C. This covers *Georgia-Pacific* Factors 9 and 10.

Would you please explain this category to the jury?

A. Yes. This category, essentially -- there's a little bit of crossover in categories, you can kind of tell. But this one is the advantages of patented functionality over old mode or devices. That's kind of what we just talked about, right, the Lock versus the Jet.

And then the nature of the patented invention, benefits to those who have used the invention, which is calculated into damage to Kurin as to a higher gross profit.

Q. And have you gained an understanding regarding benefits of the patented invention?

A. Yes. As described by me, the benefits of the patented invention include lower false positives, lower contamination, and, therefore, lower cost to the buyer or hospitals as a result of using this particular functionality that's covered by the patents.

Q. How did you come to that understanding?

A. I spoke with Mr. Bullington, and Professor Meinhart

describing the advantages to me, and then PTX-001, PTX-003, and PTX-005.

Q. Why did your analysis of this factor result in an upward effect on the reasonable royalty that would have resulted from the hypothetical negotiation?

A. Well, as I just described, we've seen quite a bit of documents produced by both sides that false positives in contamination rates are a significant issue for hospitals. And so all things being equal, the functionality that covers that and allows the hospital to avoid 5,000, $8,000 per patient of a false positive would have an upward influence on that, right, that essentially, Kurin would pay to Magnolia Medical.

Q. Okay. Almost there. Let's talk about your Category D, which covers *Georgia Pacific* factors 3, 5, 7, and 15.

What is this category all about?

A. This one's just how long is the license, and the license would run -- the patent license would run through the end of the patents. That's just more factual than anything else.

But it would not be exclusive. In other words, if you give a company exclusive rights to patents, you likely would charge a higher rate. That's not necessarily the case here, so that has no impact.

Skipping to 7, duration of the patent. I already talked about that. And then the hypothetical negotiation is what we've been talking about, 15. So really the only thing to talk about here is the commercial relationship between licensor and licensee.

Q. Okay. And what are you showing on Slide 39?

A. What I'm showing here is the fact that Magnolia Medical and Kurin are the two primary providers of ISDDs in the blood culture draw, and they are clearly head-to-head competitors, and even consistent with Mr. Heindel's deposition we saw earlier, where the Micro competes with the Jet head to head. He was asked what competes with the Micro; he said the Jet. That's his testimony.

So they are head-to-head competing in the marketplace. So all things being equal, Magnolia Medical will say, "Well, I want a little bit more on my royalty rate because you're competing with me, you're taking sales from me, potentially."

Q. Okay. You had a gold star next to *Georgia Pacific* Factor 13 earlier. We see that star again here.

How come?

A. Because this takes a little bit of explanation and it's a little bit of a sidebar. But there's three ways to value patents and, you know, it sounds like -- although

possibly more complicated than it is. But the income approach, how much income can you derive from using the patents; the market approach, which would be license comparables, which we don't have here.

The income approach we kind of already talked about. I'll get back to that. Then there's the cost approach. So think about it as you have a house, you can rent it out, make income from the house. The market, what does it sell for compared to a comparable, and the cost. How much would it cost you to build that house and then what portion of that house is relevant to a patent, for example.

So that's what we have here. What I've looked at here is I looked at the Kurin Jet and I said, okay, let's look at the component parts that go into the Kurin Jet. Not other things, but the actual component parts to make up the product that they sell.

And I have been guided by this by Professor Meinhart, as I note here at the bottom of the slide. That the functionality -- you heard his testimony on this -- rests in what's called the Jet chamber portion of the Kurin Jet and the Jet assembly cost to make that chamber portion.

So the materials that go into it and the cost to assemble it. Those would represent the costs to make the functionality related to the asserted patents.

Then you compare that to the Kurin Jet component costs in total. What other costs go into the Kurin Jet? So it's really the percentage of the "at issue" functionality and cost basis compared to the Kurin Jet component costs. Not other stuff, just the component costs. So it's just a percentage. And I will get to that in a minute.

Q. How did you acquire the inputs to run those calculations?

A. So I started with the PTX-162, which is a document from Kurin, and in talking with Professor Meinhart, he directed me to the two different line items on -- this is an exemplary bill of materials for one of the products that's accused, MJ221 of Kurin. So the Kurin Jet chamber is a little less than 31 cents and the Jet assembly to assemble that chamber is a little less than 2 cents. So those are the two components that relate the accused functionality and that represents my numerator of that calculation I just talked about. That's the cost.

I did not include overhead, because overhead is indirect cost. It really has nothing to do with the actual core functionality. It's just allocating maybe warehouse costs or something like that to manufacturing.

And the BD set, the two ones above, BD set, is something that I understand Kurin uses as a pass-through.

So they actually will sometimes put the needles -- BD is Becton, Dickinson -- and they put the needles in the package they sell or sometimes the hospitals buy the needles themselves and use it with the Kurin Jet product. So that's not a functionality standpoint, so I deduct those from the $4.15 because that doesn't have to do with the actual functionality of the Kurin Jet.

Q. You mentioned that this is for an exemplary product. Is the data the same for every model of the Kurin Jet?

A. It varies a little bit. We did look at a lot of them and it varies, but not significantly. So this is a good example.

Q. Okay. And so how did you account for those differences in your ultimate analysis?

A. The differences in --

Q. Between the different products. Did you weight them in some way?

A. We weighted them with respect to the volume of sales. But at the end of the day, even if I had done it just a direct like this, it would be pretty similar.

Q. What evidence are you highlighting in relation to this portion of your analysis?

A. PTX-162 and my discussion with Professor Meinhart.

Q. Okay. What are you showing on Slide 43 of your analysis?

A. This is a different document, PTX-162. And I discussed this with Professor Meinhart as well. And this is a different bill of materials, but it was not -- the other one was February or September 2023, I believe. These are just estimates. These are forecast costs, and I didn't believe these were as reliable. So I basically, you know, there's --

Q. Sorry. I wasn't asking about the numbers in the top right.

A. Okay.

Q. So let's just focus first on the numbers that you have the box around here.

A. Okay.

Q. What are those figures?

A. Those are giving more detail to the 30 -- .3092 cost, if you will, per unit.

Q. I see. Okay. And then you were mentioning something about the numbers in the top right?

A. Correct. Because the labor was there, too, similar to what we have.

The top right is a forecast of what Magnolia Medical -- I'm sorry, Kurin might be able to do something here on a lower cost. I didn't have any deposition testimony on this. It was -- didn't seem to be reliable. And this first part is very consistent with the document I

just talked about.

So I believe that that data on the left side, combined with the data that we just talked about, is what you should be using to determine the cost value of the asserted patents.

Q. Okay. Having identified that data, what did you do next?

A. So at that point, as I indicated, it's just a ratio of the .3092 cost of the Jet assembly, the actual materials, if you will, plus the labor to put it together of .012, almost 2 cents, as a numerator, compared to the entire bill of materials, which is $1.56. And so that ratio is 21 percent.

So I looked at, generally, it's about a little over one-fifth of the product is related to what I understand captures the -- and has implemented the asserted patents' functionalities of Micro -- Magnolia Medical patents. So that's 21 percent.

Then the next point, the next slide -- I'm sorry. It's the same.

Q. Sorry.

A. That's based on PTX-162, PTX-209, PTX-291, and, again, my discussions with Professor Meinhart.

Q. Okay. What did you do next?

A. So once I have the 21 percent, I say, okay, well --

do you recall the *Georgia Pacific* factor, what's the portion of profit of the Kurin Jet related to the accused functionality, the functionality that's embodied by the asserted patents?

So I multiplied the gross margin average over time of the Kurin Jet is 14.45 per unit. So a portion of that 14.45 is related to the functionality where the cost is for the bill of materials, and that's $3.05 per unit.

Q. To conclude this section, did you reach a conclusion as to the reasonable royalty rate that Magnolia Medical and Kurin would agree to at the hypothetical negotiation in this case for Jet sales subject to a reasonable royalty?

A. Yes. I believe, based upon several upward influences and factors -- there are neutral factors that will play into it, comparing the Kurin Jet to the Kurin Lock comes in at about $2.23 per unit. With the upward influences, I believe that $3.05 per unit would be a reasonable royalty that Kurin would a pay to Magnolia Medical as a portion of what relates to their accused Kurin Jet sales that relates to the accused functionality.

So we've apportioned down to what that part of the product is that relates to the accused functionality, and that's $3.05. That's what Kurin would be willing to pay and Magnolia Medical would be willing to accept to use the

patents.

BY MR. BLOCK:

Q. Okay. So let's stitch it all together. What are you showing on Slide 48, sir?

A. So the -- skipping down to the bottom, the lost profits scenario two, recall that that's a scenario where customers went from the Kurin Lock to the Kurin Jet, and I believe that the Micro would be in a position to take those sales if the Kurin Jet weren't available.

So that would be lost profits of 4,992,848. And then for the approximately 1.5 million unit sales of the Kurin Jet that were not subject to this lost profits, it would be a royalty rate of 2,112,209, so that would be damages of $7,105,057.

Another scenario I've presented based upon the facts and what the jury ultimately decides is this scenario of lost Magnolia customers. You remember that was a lower amount of units. And so the lost profits for those lost customers that used to be Magnolia customers that became Kurin Jet customers is 1,421,801. Of course, that means there's additional units available for reasonable royalty, so that goes -- number goes up to 3,348,487, for a total damages amount of $4,770,288.

That's a lot to go through. I apologize.

The last is reasonable royalty. So should there be a

decision that Magnolia Medical is not entitled to any lost sales of the Kurin Jet in the but-for world, that, of course, would be, then, zero. And it'd be a reasonable royalty applied of $3.05 per unit to the approximately 1.5 million units that are accused, so it's total damages of $3,769,931. That's where I got my range at the beginning.

Q. That's exactly what I was going to ask. Okay.

Thank you, Mr. Napper.

MR. BLOCK: Your Honor, I will pass the witness.

THE COURT: All right. Cross-examination, please.

MS. FARNAN: Your Honor, may we pass up some binders?

THE COURT: Yes.

MR. LoCASCIO: May I approach, Your Honor?

THE COURT: Yes, please.

CROSS EXAMINATION

BY MS. FARNAN:

Q. Mr. Napper, Kelly Farnan. I'm one of the attorneys representing Kurin.

We've met before on Zoom, right?

A. We have. Hello, Ms. Farnan. I hope you're well.

Q. Nice to -- about a year ago. Nice to see you in

person.

I want to start with your opinion about lost profits, and specifically your non-infringing alternative.

You would agree, right, that if there's an acceptable non-infringing alternative that's available, the jury cannot award lost profits, right?

A. I would agree that if it's fully acceptable and a non-infringing alternative, that they can decide that lost profits is not available.

Q. And it's Magnolia's burden to show that there's no acceptable non-infringing alternative, right?

A. I'm not a legal expert, but I think that analysis has been performed, and I think I performed that.

Q. Okay. When you said -- well, you know, also, that you've given us an expert report, so we know what opinions you are going to give here today to the jury, right?

A. Yes.

Q. And in that report you acknowledge that you must show that there is a non-infringing alternative in order for the jury to award lost profits, right?

A. You must show there's not a non-infringing alternative?

Q. Correct.

A. You said show a non-infringing alternative?

Q. Correct. I misspoke.

So you would agree with me, as you said in your report, that it's Magnolia's burden to show the absence of a non-infringing alternative in order for the jury to award lost profits, right?

A. Correct, and I have considered that.

Q. And I don't think you talked about it today in your testimony, but in your report, you actually had an opinion that the Steripath Gen2, another Magnolia product, was a non-infringing alternative, right?

A. For the Magnolia Medical patents?

Q. Yes.

A. I believe I may have said that.

Can you point me to somewhere where I said that?

Q. Sure. If you want to turn in your binder.

MR. BLOCK: Your Honor, objection. It's a phasing objection.

THE COURT: Okay. Hold on a second.

MR. BLOCK: May I approach, Your Honor?

THE COURT: Yes.

(Whereupon, the following occurred at sidebar:)

MR. BLOCK: Let me start with scope, scope of direct. So I think the predicate was he didn't talk about it today, and then the second part of the objection is I think she's asking about not only opinions he didn't give today on direct, but opinions that were in his rebuttal,

which she doesn't get to do until after Ms. Distler testifies.

MS. FARNAN: Your Honor, I was just -- he does give this opinion in his opening report. It's in Paragraph 95. He says, "Considering at least the above evidence, it is my understanding" --

(Reporter clarification.)

MS. FARNAN: "It is my understanding that the accused products and Magnolia competing products serve as the only two acceptable options for customers in the ISDD market."

And I need to find the cite where he defines competing products as including the Steripath Gen2.

MR. BLOCK: I'm sure it does.

THE COURT: Right, but my question is why is the... I mean, at this point he's brought up non-infringing alternatives, so why is it beyond the scope just to ask him what he did and did not consider in that exercise?

MR. BLOCK: Well, I thought she was asking an opinion about -- a question about the opinions on the other patents that he hasn't addressed yet, so he is later going to go respond to Ms. Distler on damages for the Kurin patent.

THE COURT: Well, that is my question. So I

thought your question has to do with there are alternatives to Magnolia's product, which isn't that only relevant when you have the Kurin patent being asserted? Like, why is this relevant to this?

MS. FARNAN: It's relevant because, again, he gave the opinion, which I just cited to, that the Steripath Gen2 is an acceptable non-infringing alternative to the Magnolia patents, and I'm simply pointing out that --

THE COURT: To the Magnolia patents or to the Magnolia products?

MS. FARNAN: Well, it's in the context of the patents that are being asserted. His opinion is in the market. He's saying to the products. He's saying that a customer --

THE COURT: Hold up. I'm sorry. This is where I always feel inept about my knowledge of patent law.

MS. FARNAN: Can I try a different way of explaining it?

THE COURT: Well, let me just try, and I am a probably going to sound really stupid. Please forgive me, Federal Circuit.

Whether Magnolia has a non-infringing alternative is relevant to the Kurin patent, which isn't in the case yet, in my mind.

MS. FARNAN: But it is also relevant. So the analysis in the lost profits world is you look at which products are being sold in the ISDD market, you take the Jet out, what's left that's available to be sold. His opinion is that it's the Micro and the Gen2. Now, he only asked for lost profits based on the Micro, but he has an opinion that the Steripath Gen2 --

THE COURT: Which is also made by Magnolia.

MS. FARNAN: Right. Is a non-infringing alternative.

THE COURT: Oh, I see. Okay, okay. Now --

MS. FARNAN: For whatever reason, he didn't present it today, but that's his opinion in his opening report, and I don't think we've heard that that wasn't his opinion.

THE COURT: And now I get it, sorry, like I said. All right.

So what's the objection, then? Why isn't it relevant to his lost profits analysis?

MR. BLOCK: Well, I'm not sure I understand the relevance as articulated. He's given his analysis and he didn't present an opinion about the Gen2. At best, those are sales that would go to Magnolia.

THE COURT: Well, I don't fully get it, but at least... If they want to pursue it, I guess, what's wrong

with it? I mean, they could say, like, "You didn't consider" -- "You didn't consider, as a non-infringing alternative, hiring a nursing company that would administer..."

MR. BLOCK: Waste tubes.

THE COURT: Yeah. Go back and use waste tubes, right? In other words, I mean, I'm not sure where it goes, but as long as it's within the scope of lost profits, which I think it is. I'm not sure where it's going, which is, I think, what prompted my confusion in the first place, but...

MS. FARNAN: It won't take long, Your Honor.

THE COURT: Yeah. Well, I'm going to overrule. I'm just going to let it go.

I'm going to overrule it, let it go.

(Whereupon, the discussion at sidebar concludes.)

- - -

THE COURT: Overruled.

You may continue.

MR. BLOCK: Thank you, Your Honor.

BY MS. FARNAN:

Q. Mr. Napper, I think you asked for a cite to your report, and I will point you to Paragraph 95 in your opening report. It's on Page 44.

A. Yes, I see that.

Q. So at least as of the time of your report, you were suggesting that the Steripath Gen2 would be an acceptable alternative in the marketplace in the world where the Jet is no longer available, right?

A. I think I would characterize it, Ms. Farnan, as a suggestion. Because if you look elsewhere in my report, I talk about the fact that Kurin, through Mr. Heindel, has said the primary competition for the Kurin Jet is the Micro, so --

Q. Right. But you -- at least in that paragraph, you gave the opinion that in the world where the Jet is off the market, that you believe a customer would buy the Steripath Gen2 as an alternative?

A. I don't think I -- based upon the information I reviewed and my opinion, I don't think the Gen2 is something that would be sold if the Jet were off the marketplace by the way I have calculated this. And that is because the Jet provides increased functionality, and so if that hospital has already operated for increased functionality, the fact of the matter is that it would not be likely that that customer would go to a Gen2.

Q. Okay. But in your -- we'll just agree in your report you made the statement that, at least in Paragraph 95, that the Gen2, which is considered, in your view, one of the Magnolia competing products, would be an acceptable

option for customers in the ISDD market, right?

A. I did, when it came down to calculating the lost profits.

Q. Thank you.

A. Fair enough.

MS. FARNAN: If we could have the ELMO.

BY MS. FARNAN:

Q. This is one of your slides from your direct testimony, Slide 18.

Do you remember that?

A. I do.

Q. And within that 98 percent market that you focused on, right, you said it includes Magnolia and Kurin, right?

A. Yes.

Q. That includes both the Kurin Lock and the Kurin Jet, right? They are both on the market?

A. They are.

Q. And you would agree that the Kurin Lock is an ISDD, right?

A. Yes.

Q. And you know that the Kurin Lock is not accused of infringing the Magnolia patents in this case, right?

A. That's my understanding. And I've considered that in my analysis.

Q. And -- okay. I want to move on to -- you gave two

scenarios to the jury. You gave -- on lost profits.

You gave scenario one and scenario two, right?

A. Yes.

Q. And scenario two is the higher number, right?

A. Yes.

Q. And that's the number that Magnolia put forward in their opening.

You were here for that, right?

A. Yes, I was here and that's the number they put forward.

Q. And the assumption that you make in scenario two is that somebody who purchased a Kurin Lock and then purchased a Kurin Jet would not go back to the Kurin Lock, right?

A. Yes. I believe because they've shown -- those hospitals have shown a penchant for increased functionality in their product, that they would be at risk for Kurin losing them to Magnolia, which would be selling them the advanced Micro.

Q. Okay. And your counsel will have a chance to let you give any explanations you want.

My question is just very simple, yes or no.

Your basis for your scenario two opinion is that someone who purchased a Lock then purchased a Jet would not go back and purchase a Lock again, right?

A. For the reasons I've explained, that's correct.

Q. Now -- but these customers you've identified who would not go from Jet to Lock -- or Lock to Jet to Lock, you didn't talk to any of them, did you?

A. I did not.

Q. And, but your opinion is premised on the notion that those customers would switch vendors, right? They would switch from being a Kurin customer to a Magnolia customer, right?

A. For the reasons you don't want me to explain, but the reasons are the advanced functionality and Mr. Heindel's testimony.

Q. But the question is just simply, your assumption, though, it assumes that someone is going to go from being a customer of Kurin to being a customer of Magnolia, right?

A. Yes, that is correct.

Q. Okay. But you also agree, and I think you said this on direct, that hospitals typically only purchase ISDDs from one vendor at a time, right?

A. That's correct.

Q. But are you aware sitting here today that some of the customers that you've identified and for which you are asking for lost profits actually purchased the Lock, then the Jet, and then the Lock again?

A. Yes, I think there's a handful of customers that did that, based on detailed data.

Q. Well, one of those customers is Bethesda North Hospital, right?

A. I would not go down to that level of memory for that but I will trust you.

Q. Okay. And do you know that Bethesda North Hospital is one of the hospitals that Kurin worked with extensively to test the Jet and had a very close relationship with?

A. I have some recollection of that, yes.

Q. And so despite the relationship that Bethesda had with Kurin testing its products, it's your view that they would suddenly become a Magnolia customer when the Jet is no longer on the market?

A. Well, I could even -- yeah, that would be my view because Bethesda worked with them, likes the Jet, worked extensively with the advanced functionality --

Q. Right, but the reality is Bethesda North went from Lock to Jet to Lock, right?

A. Correct, they did go --

Q. Okay.

A. It was --

Q. And also in your list of customers, do you remember you have something called scat -- scrapped product?

A. My memory is not that good, no.

Q. Okay. Well, we could show you. I have in your binder your schedules. You remember you gave us some schedules that have a lot of backup for what you showed the jury, right? Do you remember that?

A. Yes, I do remember schedules.

Q. Okay. And so if you want to -- there's a -- your schedules are in your binder there. If you could turn to 3.6S. And it's -- at the bottom it will say Page 13 of 15, if that helps you.

A. Okay.

Q. Okay. Do you see the entry there for scrapped product?

A. Scrapped product? Yes. There's 2,629.

Q. Okay. And so it's part of your opinion, in addition to Bethesda North, that the lost profits that Kurin should pay are based on scrapped product, right?

A. Well, in the but-for world, it's reasonable to assume that there's probably going to be some level of scrapped product as well on the Micro side. So, in any event, yes, I mean, it's 2,600 out of one --

Q. Scrap product is not a customer, right? It's product that's thrown out, right?

A. I don't know exactly what scrap product means and whether there is any economic compensation to Kurin of a scrapped product. I don't know.

Q. Isn't the most reasonable assumption that scrap product is product that Kurin takes and has to throw out?

A. I -- I don't know. You would think --

Q. Okay.

A. -- that would be captured in their manufacturing.

Q. But that's part of your lost profits anyway, right?

A. It is a very minor portion of my lost profits, yes.

Q. I want to turn to your reasonable royalty opinion that you have in the alternative.

Well, I guess it's in addition in some parts and in the alternative as well, right?

A. Correct.

Q. Okay. Now, I think you explained to the jury that with a reasonable royalty, the parties are supposed to have a sit-down on the date of first infringement; is that right?

A. That's correct.

Q. And here, the date that you used is December 20, 2022; is that right?

A. I believe so, yes.

Q. Now, that's the date that the '081 patent issued, right?

A. Yes.

Q. Now, do you know that the '863 patent didn't issue until May 23, 2023, and the '709 patent didn't issue until

February 20, 2024?

A. Yes, I've considered that.

Q. Okay. So if the jury finds that Kurin did not infringe the '081 patent or it's invalid, the parties wouldn't be sitting down in December 20, 2022, would they?

A. They would not. They would be sitting down a little bit later, and the question would be do any of the factors --

Q. And but you -- so that was just a yes or no. Sorry.

MR. BLOCK: Your Honor, he's being -- it was not a yes or no, and he's being interrupted mid-answer. If the witness could be allowed to finish his testimony.

BY MS. FARNAN:

Q. You can finish. Go ahead. So I'll ask the question again, and you can give the information.

THE COURT: All right.

BY MS. FARNAN:

Q. If the jury finds that Kurin doesn't infringe the '081 patent or that it is invalid, the parties aren't going to sit down on December 20, 2022, right?

A. They would sit down at a later date, yes.

Q. But you didn't perform an analysis as of either of those later dates; is that right?

A. I did not.

Q. And I think it was when you got to Factor 13, and we

can pull up some of your slides, but you would agree that in a reasonable royalty analysis, the royalty needs to be tied to only the incremental improvements of the asserted patents, right?

A. Where the -- yes, the contribution of the functionality within a product and how that relates to various economic factors.

Q. Well, I just want to make sure we are not disagreeing on language here. So would you agree that your reasonable royalty needs to be tied to the incremental improvements of the patents that are in this case?

A. It should generally reflect the patented invention, yes.

Q. Right. So whatever incremental improvement that patent makes over the prior art, that's the only piece that you're allowed or that Kurin should be required to pay a royalty for, right?

A. That's the construct, that is correct.

Q. Okay.

A. It's to the -- to the footprint of the invention is --

(Reporter clarification.)

THE WITNESS: Sorry. The footprint of the invention is how we characterize that.

BY MS. FARNAN:

Q. And so I think you said in your analysis, you -- I will show you...

This is the Kurin Jet, right?

A. Yes.

Q. Okay. Had you seen this before coming to trial this week?

A. I have.

Q. In person? You saw the sample?

A. Yes.

Q. And it's your opinion that everything that's here in this chamber is tied to the incremental value of the invention, right?

A. It's Professor Meinhart's observation -- observation -- I'm sorry. I thought somebody interrupted me.

It's Professor Meinhart's observation that that is -- that that chamber is where the accused functionality resides and its primary existence is to execute the invention.

Q. Okay. So you don't have an opinion on that? You relied on whatever Professor Meinhart said to use this entire assembly as part of your damages analysis, right?

A. Yes, he directed me to that.

Q. Okay. In fact, you didn't read the patent claims in

this case; is that right?

A. I never read a patent claim in any case I work on. I'm not a technical expert. I rely upon the technical experts for that.

Q. Okay. And so I want to show --

MS. FARNAN: If we can have -- I guess we still have the ELMO.

BY MS. FARNAN:

Q. So this is your Slide 47. Do you remember that?

A. Yes.

Q. And you have three different actual potential royalty rates here, right? You have $2.23, $2.24, and $3.05, right?

A. Yes. I would say that the $2.23 and $2.24 are so close that you could consider them one. And then with upward influences, I decided the 3.05 unit is appropriate.

Q. Well, you would agree, though, and I think you said in your report, that the 2.23 to 3.05, that represents an acceptable range of royalties that the jury could award, right?

A. Yes, I agree with that.

Q. And you had three of those and the one that you picked is the highest, right?

A. For the reasons I just described.

Q. And so I want to look, though, at those two lower

numbers, the 2.24 and the 2.25. And we can look at your Slide 35.

Now, this is based on the difference in price between the Lock and the Jet, right?

A. Difference in price and difference in gross profit, yes.

Q. Okay. Well, let's focus on the difference in price on the left.

Now, you know the Lock was introduced many years before the Jet, right?

A. Yes.

Q. Okay. And so you have a time frame there 2017 to 2025, but the Jet hasn't been for sale for that entire time period, right?

A. I agree.

Q. Okay. So is there a point in time where the Lock and the Jet have been on the market at the same time where the price differential was 2.24?

A. I believe so. I'd have to look at the detail, but I believe so. I mean, I recall that -- I only take that Kurin Jet's only been in the marketplace since 2023, I want to say. So for the Kurin Jet, that label down at the bottom would not cover that time frame because, obviously, it hadn't been introduced.

Q. Right. So you compared Kurin Lock prices from 2017,

you included those even though the Jet wasn't on the market, right?

A. Correct.

Q. And so there was no price differential between the Lock and the Jet in 2017 because the Jet wasn't on the market, right?

A. Yes, you are correct. The -- the price differential starts in 2023 to be identified. And I wanted to use as much data as I had for the Kurin Lock to see what the prices and margins were.

Q. Okay. Let's look at how you calculated your royalty. Do you remember this slide?

A. I do.

Q. 3.46.

So this is the calculation that you did to get to the 3.05, right?

A. Correct.

Q. Now, would you agree with me, if we look at the -- at this top calculation here, if that number, we'll call that the numerator, right? If that goes down, this percentage number will go down, right?

A. Correct. That's the math.

Q. And if that percentage number goes down, this royalty number will go down, right?

A. Correct.

Q. And this 156, the denominator, if that number goes up, this percentage will go down, right?

A. Correct. That would be the math.

Q. Right. And if the percentage goes down, the royalty rate goes down, right?

A. Correct.

Q. This -- the $1.56 number, that's the total cost, but you excluded a couple costs from that, right?

A. I did.

Q. And if we look at your Slide 3.42, the two costs you excluded were the BD set, the $1.50, and the overhead at $1.20, right?

A. Correct.

Q. Those are the two highest numbers in this list in your Slide 42, right?

A. I never noticed, but yes, that is correct.

Q. Okay. So you took the two highest numbers out, and that's how you got to your 156, right?

A. For the reasons I explained, correct.

Q. But if you added those back in, based on the math that we just discussed, the royalty would go down, right?

A. The math would be different, but that would be inconsistent with the footprint of the invention.

Q. And then I think you talked about the 31 cents, right? This is what you relied on to get to that number,

right?

A. Yes.

Q. This is your Slide 43, and this is based on PTX-162, right?

A. Correct. I think it's consistent with the other one we saw, too.

Q. Okay. Now, you didn't include, you said, the numbers in the top right; is that correct?

A. The far upper right, correct.

Q. And now, with those numbers -- well, there is a number that says "Unit cost full automation 250K part quantity."

Do you see that?

A. I see that.

Q. So what that is reflecting is when Kurin is going to begin manufacturing, but the point at which they get to full automation, they expect their unit costs to be 15 cents, right?

A. That's what it appears, yes.

Q. So that 15 cents, they expect, is going to replace the approximately 31 cents that you used in your analysis, right?

A. I'm not sure that's right. I don't know if that's -- in other words, it's not lined up on the same line. So I would have to study this in more detail. There's a reason

why I did not use these, but...

Q. Okay. Well, you can't say one way or another, but you do know that the 15 cents is referring to a point at which Kurin hopefully is going to get to full automation of its manufacturing, right?

A. I really don't know exactly the basis. I would say that's a fair takeaway given one terminology in the upper right, which is full automation.

Q. Okay. It's fair takeaway that they would get to 15 cents when they get to full automation, right? I think that's what you just said.

A. That's an estimate or projection.

Q. Well, and you know at the -- in a reasonable royalty analysis at the hypothetical negotiation, you assume that you might know things that are going to happen in the future, right?

A. You take those into consideration.

Q. Right.

A. But there was no testimony on that document, and so --

Q. So if we just look at your calculation here, $3 royalty -- so the 30 cents, if -- if Kurin gets to full automation, that number could become 15 cents, right?

A. Don't know. But I believe the document you showed me reflects what you're saying it does, which there's no

testimony on the document, and you want me to plug in 15 cents for the math, I'm happy to do that.

Q. Okay. If you plug in 15 cents on the math, your royalty is going to about cut in half, isn't it?

A. Not necessarily, no.

Q. Okay. Let's do the math, then.

MR. BLOCK: Your Honor, if the witness could just be allowed to finish his answer.

THE COURT: Well, he did. He said "no."

MR. BLOCK: I think he said "not necessarily."

THE COURT: Okay. Sorry. He did say "not necessarily." All right.

THE WITNESS: May I continue, Your Honor? I'm sorry.

THE COURT: Well, I think you answered the question "not necessarily." You can do it on redirect. That's the whole point.

THE WITNESS: Thank you, Your Honor.

THE COURT: Okay. Go ahead. Sorry.

BY MS. FARNAN:

Q. I'll put my calculator up here so we can all see it. So if you have .15 plus .0182, that becomes .1682.

Do you agree?

A. I agree with that math.

Q. Okay. And if you divide that, per your equation, by

156, that becomes -- that would be 10.78 percent, right?

A. Correct.

Q. So this would cut in half?

A. Technically, 10.8, because I am a numbers nerd.

Q. Make it 10.8. So it cuts your percentage there in half, right?

A. Roughly half, correct.

Q. So then we would put 10.8 percent here, right?

A. Correct.

Q. So if you take 14.45 times -- that's wrong -- your royalty becomes $1.56, right?

A. The cost approach taken to determine a royalty rate based upon these assumptions would be $1.56. That's correct.

Q. Right. So if the 15 cents, if full automation is used, the royalty becomes a $1.56, right?

A. Just so we're clear, the outcome from the cost approach, which suggests a $1.56 royalty rate, there are other indicators of a royalty rate which I discussed.

Q. Right. But in your -- this is the opinion, you're asking the jury to award $3.05 as a royalty, right?

A. I believe, based upon the upward influences of the *Georgia Pacific* factors, yes, in comparison --

Q. And so if we --

A. Just to finish --

Q. You can answer that on redirect.

THE COURT: Hold up.

THE WITNESS: I'm sorry.

THE COURT: Now, you're both talking over each other. So just both, please, try to give each other a chance to answer and respond. All right?

BY MS. FARNAN:

Q. It's a simple question, which is that you've asked the jury to award -- your opinion is that they should award a royalty rate of $3.05?

A. Yes.

Q. Okay. And as we've just done the math, if you substitute 15 cents from the full automation, that royalty becomes $1.56, right?

A. Just on flawed math. That's correct.

MS. FARNAN: No further questions.

THE COURT: All right. Redirect.

MR. BLOCK: Just very briefly.

MS. FARNAN: Your Honor, I guess if Mr. Block is going to write on this, I'll mark this as a new DDX. We can get a number maybe at the break.

THE COURT: All right. So let's mark the exhibit, the demonstrative, and then, Mr. Block, you wanted to put it up?

MR. BLOCK: I may, Your Honor.

THE COURT: Okay. I don't think you should write on it. I think you have to get your own for that, but you are welcome to use it.

MR. BLOCK: Thank you.

REDIRECT EXAMINATION

BY MR. BLOCK:

Q. Mr. Napper, you were asked some questions regarding the availability of Gen2, Magnolia Medical's Gen2 as an alternative.

Did you hear Mr. Bullington's testimony that that's no longer manufactured?

A. Correct. It's my understanding that has been -- the manufacturing of the Gen2 has been wound down and all-in on the Micro.

Q. Okay. You were asked about your lost profits opinions, and one of your analyses was as to the subset of Jet customers who previously bought the Lock and then switched to the Jet.

The but-for world, why would those customers choose the Micro instead of the Lock, in your opinion?

A. Based on the information I looked at, those hospitals would want the advanced functionality of a Micro versus going and sticking with the Lock.

I can only interpret their decision, those hospitals' decisions, that they went from the Lock to the Jet because

they wanted the advanced technology.

Why do I assume that? Because they are paying more money for it. It's like a 10 or 20 percent differential in pricing. Why would you pay for something you didn't want?

Q. Okay.

A. Those folks would go to the Micro.

Q. And then Ms. Farnan asked you to make some assumptions about the impact of automation and do some math. Do you recall that?

A. I do.

Q. Did she suggest any assumption about what would happen to the total costs in the denominator in the event of full automation?

A. She did not.

Q. Could that have an impact on the math?

A. Of course.

Q. Okay.

Finally, Mr. Napper, did anything you were asked on cross cause you to change any of your opinions?

A. No.

MR. BLOCK: No more questions, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Next witness?

MR. RAMANI: Your Honor, we have a joint product stipulation.

THE COURT: Okay.

MR. LoCASCIO: Can we have a moment to confer on this?

THE COURT: Yes.

Do you want to take a break now?

MR. LoCASCIO: Sounds good.

THE COURT: You want to do that? Sounds good.

(The jury exits the courtroom at 10:18 a.m.)

THE COURT: Please be seated. If you want to take the break, you can do it during break. You want to do that? What's left?

MR. RAMANI: We have no more witnesses, Your Honor.

THE COURT: Okay. So you will do the product stipulation. Then you are going to rest?

MR. RAMANI: It's already been filed, and so I'm trying to see whether we can avoid reading it to the jury.

MR. LoCASCIO: Just to respond, I think the simplest thing is two sentences -- four sentences, two for each product, that can be read to the jury or just put in the charge, which would probably be easier so they will have it, that essentially says: For purposes of

infringement, invalidity, and damages for each of the products, matching paragraphs, the device was made, used, offered, sold, is identical. The models differ only with respect to needle gauge number. So there's no difference between any products. So we can put those into the charge. I think that's the easiest.

MR. RAMANI: That's okay with me.

So I think what we're saying, Your Honor, I think what we're putting on the record is both sides are agreeing that we can include the representative products' information that Mr. LoCascio has marked on his copy of the joint product stipulation, and there's no reason to burden the jury with reading it.

THE COURT: Oh, okay. All right.

MR. LoCASCIO: Just so we're clear, there's a -- I don't think we need this, do you? With all of the numbers. My inclination is that these are needless, it's just this and this.

MR. RAMANI: That's completely fine.

MR. LoCASCIO: All right. We will provide the Court for the charge what are two sentences each from Paragraph 1 and Paragraph 2 of what was Docket Number 134.

THE COURT: Okay. All right. So then, when they come in, Mr. Ramani, you want to say something like since we took care of whatever you said, then you will

rest.

All right. So then, there's probably...

Is there a motion?

MR. LoCASCIO: There is a motion, Your Honor, but I believe there was a proffer. Is that still on the table?

MR. RAMANI: No, Your Honor. We considered it overnight, and we're not going to make a proffer.

THE COURT: Okay.

What do you want to do about the motion? Because, you know, we're going to bring them in, and I don't want to send them out for motions.

MR. LoCASCIO: Well, we intend to make a motion.

THE COURT: Right.

MR. LoCASCIO: Inquiry if --

MR. RAMANI: We can shortcut this, Your Honor. We are planning on resting. If he's concerned about raising something and then we say we are not going to rest or respond to it, we're not going to do that.

MR. LoCASCIO: I'd still like at the first break. And what I would suggest is -- I'm not sure what -- and I didn't hear, apologies, what you just told the jury, if they were stepping out for a minute or they were taking a full break?

THE COURT: I'm sorry, what?

MR. LoCASCIO: Was the jury just directed that they are taking a full break?

THE COURT: They are taking mid-morning break right now.

MR. LoCASCIO: Okay. Thank you.

We could -- since they haven't rested, can't do it now at this break. So I'd suggest -- we want to make it. If Your Honor doesn't want to take another break, which I understand, we could start our case, and then at the first break after that, we could make the motion.

THE COURT: I mean, we could bring them in, do it, and then we could have a quick sidebar.

Do you want to do that?

MR. LoCASCIO: I'm happy to do it there, Your Honor. It's -- you know, I want to put some points on the record. It's probably less than five minutes, for sure.

THE COURT: All right. Or we could just wait to the lunch break. You could start, and then when we excuse them for lunch, you can do it then.

You content with that?

MR. LoCASCIO: I am content with that, as long as the representations have been made that --

THE COURT: I think it's already been made.

MR. LoCASCIO: Then, yes, Your Honor.

THE COURT: Let's just do that. So we'll take our break. Come back at, like, 25 of, give you about 12 minutes.

Is that enough?

MR. LoCASCIO: Yeah. If they are going to rest immediately, I am going to put Mr. Rogers on and I need a minute for myself. If we could say 20 to, I'd appreciate that.

THE COURT: 20 of?

MR. LoCASCIO: Sure. Thank you.

THE COURT: Okay. And then we will start right then. That sounds great. Thank you very much.

Oh, I just realized we didn't resolve the deposition issue.

Can that wait until lunch?

MR. LoCASCIO: That can also wait until lunch.

THE COURT: Okay. Great.

(Whereupon, a recess was taken.)

THE COURT: Ready to bring them in?

MR. RAMANI: All set, Your Honor.

THE COURT: By the way, if this goes to Thursday, we will be late because I'm going to the doctor 7:45 Thursday morning.

MR. RAMANI: Your Honor, we can talk about it. I think we might even rest on Friday.

MR. LoCASCIO: Next Thursday?

THE COURT: Next Thursday.

MR. LoCASCIO: Let's hope.

(The jury enters the courtroom at 10:42 a.m.)

THE COURT: All right. Thank you. Please be seated.

Mr. Ramani.

MR. RAMANI: Your Honor, thank you. Magnolia Medical rests.

THE COURT: All right. Thank you.

All right. So now we're going to have... Remember, I told you at this point Kurin gets to put on its case to respond to Magnolia Medical's infringement case and to put on its challenges to the validity of the Magnolia patents, all right?

MR. LoCASCIO: Motion, Your Honor.

THE COURT: Yes. And then we are going to take a quick sidebar to handle some legal issues.

(Whereupon, the following occurred at sidebar:

THE COURT: Okay.

MR. LoCASCIO: Per the discussion that preceded the break, the more fulsome version of this oral motion I am going to make at the full lunch break.

THE COURT: Okay.

MR. LoCASCIO: But with respect to one issue

particularly, I would like it now because it could impact the scope of the testimony for Mr. Rogers because it is an issue on which we think Your Honor should rule and rule now.

Specifically, we don't believe a reasonable jury, under Rule 50(a), could find for Magnolia on the issue of direct infringement, specifically because missing elements --

(Reporter clarification.)

MR. LoCASCIO: Missing claim elements were not identified during the -- Magnolia's case, specifically with respect to the temporarily locked limitation. And just to be clear for preservation, with respect to the pressure differential, I will be addressing that after lunch, but with respect to temporarily locked, Magnolia failed to put forward sufficient evidence from which a reasonable jury could conclude the movable plug in the accused product was configured to be at least temporarily locked in the second position.

Claim 18 of the '081 patent and Claim 28 of the '863 patent require the movable plug be temporarily locked. Dr. Meinhart is the only testimony on this issue, and he said a closed door was temporarily locked. He said a bottle standing on a table is temporarily locked because it's simply not moving at that moment. That testimony is

inconsistent with the plain meaning of temporarily locked such that no reasonable juror could find for an infringement.

Homeland Housewares is one case among others from the Federal Circuit, "Court must disregard the testimony of an expert that is plainly inconsistent with an understanding of a claim term."

Temporarily locked, Your Honor, there's no sufficient evidence upon which a reasonable jury could find infringement for the two claims that have that limitation.

The only other issue I have is with respect to inducement.

THE COURT: Do you mean, when you say "the only other issue," the only other issue for right now at the sidebar?

MR. LoCASCIO: Thank you for clarifying it, Your Honor.

THE COURT: Okay.

MR. LoCASCIO: For sidebar, the other point I'd like to make is with respect to the inducement claim, and any other mental state requirement.

There's no evidence in the record to support the finding of intent, of knowledge of direct infringement by Kurin, and specific intent to cause direct infringement

by others. During the trial, the suggestion was made and a bench brief was filed by Magnolia identifying that their case was based on willful blindness. The willful blindness evidence they pointed to in that bench brief was excluded and did not come into evidence. There is not sufficient evidence upon which a reasonable jury could find that Kurin's -- Kurin had knowledge there was direct infringement and a specific intent to cause direct infringement.

For that reason, at this point, we're also raising that indirect infringement allegations -- just judgment on Rule 50(a).

(Reporter clarification.)

MR. LoCASCIO: 50(a). And the remainder I'll raise at the lunch break.

THE COURT: And the reason why you are doing this now is because you say this would affect the scope of Mr. Rogers' testimony.

MR. LoCASCIO: I believe both Rogers' testimony and cross because these issues will fall out of the case.

THE COURT: Okay. All right. I'm not going to rule on the temporarily lock right now.

Now, inducement, you want to address that because that may actually really get rid of a lot of testimony and issues in this case.

MR. RAMANI: I don't think so, Your Honor.

THE COURT: No?

MR. RAMANI: No. I think it is a handful of questions in my cross, at most.

THE COURT: I'm not thinking about your cross. I'm thinking about his direct.

MR. RAMANI: Oh, I don't think so. I think it is highly doubtful. The direct, I obviously haven't seen it, but based on the opening statement that we heard, his direct is going to start back from 2015 and he's going to march all the way forward, irrespective of what the issues are in the case. The doors have been thrown wide open by both parties.

THE COURT: Yeah. They have, believe me. Yes, when the first prong of the three points you are going to prove and the first prong is innovation, yes, that door was thrust open and both sides have been running through it.

I'm going to deny the motion. I mean, rather, I'm not going to rule on the motion right now and I will wait to hear about it at lunch time, okay? But you've preserved it.

Frankly, just to be clear, you've preserved the right to articulate your 50(a) motion and the basis for it at lunch, all right? So there's been no waiver at this

point, okay?

MR. LoCASCIO: Thank you, Your Honor.

MR. RAMANI: Thank you very much.

(Whereupon, the discussion at sidebar concludes.)

- - -

THE COURT: Mr. LoCascio.

MR. LoCASCIO: Thank you, Your Honor.

At this point, Kurin calls its first witness, Bob Rogers.

THE COURT: All right.

MR. LoCASCIO: May I approach, Your Honor?

THE COURT: Yes.

THE CLERK: Please remain standing and raise your hand. Please state and spell your name for the record.

THE WITNESS: My name is Bob Rogers. B-O-B, R-O-G-E-R-S.

BOB ROGERS, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

MR. LoCASCIO: As a matter of housekeeping and in an effort to expedite things, I have a list of exhibits that have been agreed to move into evidence. Those exhibits are DTX-1, DTX-2, DTX-7, DTX-11, DTX-15, DTX-296,

and four physical exhibits, DPTX-8, DPTX-16, DPTX-17, and PTX-271.

MR. RAMANI: No objection, Your Honor.

THE COURT: All right. They are admitted.

(Exhibit DTX-1, DTX-2, DTX-7, DTX-11, DTX-15, DTX-296, DPTX-8, DPTX-16, DPTX-17, and PTX-271 admitted into evidence.)

DIRECT EXAMINATION

BY MR. LoCASCIO:

Q. Good morning, sir.

Even though you've been in the courtroom this week and Magnolia played, I think, 10, 15 minutes of a videotape from your deposition, can you take a second to actually introduce yourself to the jury?

A. Yes. My name is Bob Rogers. I'm the chairman and CEO of Kurin, Inc.

Q. And, sir, before we get into the details about Kurin, can you tell the jury if you had other experience with medical devices before you founded Kurin?

A. So I've been in the medical device industry since 1980, and initially I worked on arterial pressure monitoring kits, the waveform you see when you watch TV and they say 120 over 80. And I then went into intravenous fluid delivery, fluid management, IVs that go into patients. And then I began innovating and designing

new devices.

Q. And is there a trend or theme line through how you approach innovating on new devices?

A. So my approach is, essentially, I want to look at the nurse. I believe nurses have an important role and we as companies -- I experience this myself -- we put products out there and we train the nurse, but we don't recognize that there are a thousand different things that nurse needs to do to manage that patient. And we as companies, we know precisely what they should do, but sometimes it's very complicated. And so what I wanted is I developed ideas that were very obvious and intuitive to use.

Q. Right prior to Kurin, what company did you work for?

A. I formed a company called Ivera Medical Corporation.

Q. And was there a particular problem or need nurses had that Ivera sought to solve?

A. So there was a problem with blood stream infections. It actually still exists, just to a lesser degree. 25 percent of people that get a blood stream infection die, right? And so I learned a lot of about disinfection. You know, you can't sterilize skin, but you can disinfect it. You can't sterilize other objects with isopropyl alcohol, you can only disinfect that. And all means is the bacterial load is dramatically reduced.

So to properly do disinfection, you're supposed to

scrub for 30 seconds and then wait 30 seconds. I don't know of anyone that does this. So I looked for a different way to help nurses disinfect, because that's a lot of time to be doing that kind of stuff. And so I invented a device that would take care of that.

Q. And what was that device called, sir?

A. It was called the Curos Core Protector. It was generally known in the industry as the green disinfection cap.

Q. Did you patent it?

A. I did.

Q. You've been in the trial the whole time. There was some testimony during -- from Mr. Bullington and he was asked if your Curos work had anything to do with false positives and he said no.

Was that accurate?

A. So it wasn't.

Q. Why not?

A. So in 2011, I saw a poster presentation from West Virginia University Hospital. It was the first study on our green caps and their effectiveness. And in the study, they cited that they saw a dramatic decrease in blood stream infections, but they also saw a huge increase in false positive blood cultures. Decrease, sorry.

Q. And so did these Curos products reduce infections or

false positives?

A. Our focus was on infections.

Q. And did they?

A. They did.

Q. What happened to Ivera and the Curos product?

A. So in March of 2015, Ivera was acquired by 3M.

Q. There was a suggestion yesterday during Mr. Bullington's testimony where he and Mr. Ramani had a back-and-forth, and it was that Ivera was sold for 180 million and you got maybe 100 million of that. That was the question that was asked.

Is that true, sir?

A. No.

Q. Are either of those numbers correct?

A. No, they are not.

Q. What percent of Ivera did you own?

A. I actually don't know the precise number, but I did own 25 to 30 percent.

Q. How many years of your life did you spend building the Ivera business?

A. It was nine to ten years.

Q. What was your title there?

A. I was chairman and CEO of Ivera Medical Corporation.

Q. And had you invested your own money in that business?

A. I took a lot of risks. I was the single largest

investor in that company.

Q. And I want to turn to some of the conversation that happened yesterday with Mr. Bullington where he talked about two encounters you had in the 2010s. And then on his redirect examination, where he couldn't get asked any more follow-up questions, he said you were a trusted advisor for years.

Do you recall that testimony?

A. I do.

Q. Is that testimony true?

A. No.

Q. Let's take this in pieces. Other than an e-mail sent to you in 2013, and the lunch invitation the jury has heard about, did you have any other meetings or conversations that you can remember with Mr. Bullington that weren't otherwise in this courtroom or related to litigation?

A. I can't recall of a single one.

Q. Well, while we've been here for now this is the third day, have you seen any documents or other information from Magnolia that show that you received any piece of paper or materials from Mr. Bullington or Magnolia in the 2013, '14, '15, '16, or '17 windows?

A. No, I have not.

MR. LoCASCIO: Mr. Urban, can we pull up

DTX-156.

Can we go to -- this is the e-mail exchange we saw. Just we'll leave this one on the screen.

BY MR. LoCASCIO:

Q. This is the first exchange that's been shown to the jury that exists between you and Mr. Bullington. Did this come about because Magnolia reached out to you or because you reached out to engage with Magnolia?

A. It's because they reached out to me.

Q. And who reached out to you?

A. It was Ward Sparacio.

Q. And why did you respond to his inquiry?

A. Well, you'll notice in the CC there's Jack Sparacio, and along with Greg Bullington. Jack was -- is a dear friend and -- he was a dear friend of mine. He's passed away. But he was also a board member of Ivera Medical Corporation.

Q. And so did he reach out to you or ask you to do a him a solid or favor and talk to his son?

A. Jack did.

Q. So the first thing you said in this e-mail is: "With Curos we have seen some dramatic reductions in false positives." And then it says: "See attached article."

What article did you send the Sparacios and Mr. Bullington in 2013?

A. I sent them the West Virginia University article that was published in the American Journal of Infection Control in 2012.

Q. If we could go to the bottom of this e-mail, it says: "I look forward to talking to you both tomorrow."

At this point, prior to this e-mail, had you ever talked to Mr. Bullington before in your entire life?

A. No.

Q. Do you recall if you had a conversation at this point with Mr. Bullington?

A. I don't recall actually having that call.

Q. Did you hear Mr. Bullington during his testimony give any specifics about such a conversation occurring?

A. No.

Q. So this is 2013. When is the next time you had any engagement whatsoever with Magnolia?

A. I believe it was about two weeks after I sold Ivera to 3M, I was -- I received an e-mail from Greg Bullington.

Q. Before we get to that e-mail, so is this in -- we can take that down, sir.

Is that in 2015?

A. Late March 2015.

Q. And in that instance, who reached out to whom?

A. Mr. Bullington e-mailed me.

Q. Before we look at his e-mail, after the announcement

of Ivera's acquisition by 3M, did you get a lot of e-mails from people?

A. I did.

Q. People started to come out of the woodwork?

A. They did.

Q. And what were most of them asking?

A. They wanted my involvement. They wanted me to invest. Generally, those things.

Q. So let's pull up PTX-26.

And we saw this during Mr. Bullington's testimony. And if we could, could we go to the bottom e-mail, which is Mr. Bullington's e-mail to you.

And it might need to carry -- oh, I apologize. That's actually your response. Can we go below that.

MR. LoCASCIO: All the way to the bottom, Mr. Urban. Thank you.

BY MR. LoCASCIO:

Q. Okay. So what was your understanding from this e-mail why Mr. Bullington was reaching out to you?

A. Well, he had certainly heard about the sale of Ivera and he was reaching out to ask me if I'd be interested in their Series B or becoming a board member.

Q. What's a Series B?

A. It's a capital -- they are raising money is essentially what that is.

Q. When you have a start-up, is there something called Series A?

A. Usually. There may be Bs, Cs, Ds.

Q. And those are phases where people are raising money?

A. Correct.

Q. And so when -- this e-mail says: "Additionally, when we raise our Series B, likely Q4, I anticipate expansion of our board so it would be good to understand if you ever consider those types of roles."

What did you interpret that to mean?

A. I think he was asking if I come in on his Series B, would I be interested in also taking a board position.

Q. So asking for money to invest and then potentially joining the board?

A. Yes.

Q. He also congratulated you on the sale of Ivera in the first sentence. And then in the middle it says: "I am going to in be San Diego next week so wanted to see if I could sponsor lunch, dinner, or an afternoon coffee."

There was some back-and-forth yesterday, again between Mr. Ramani and Mr. Bullington, about how as part of this alleged advisor relationship, you know, he flew down there to see you.

Per his e-mail, was he coming down just to see you?

A. On this e-mail, I didn't know if he was or not.

Q. Did he indicate he's going to be in San Diego next week?

A. He did.

Q. And what did you say in response? We can go up to the response e-mail.

MR. LoCASCIO: Pull that part, Mr. Urban. Thank you. And grab the next part if you're able.

BY MR. LoCASCIO:

Q. All right. Go ahead, sir.

A. I believe I shared with him that selling a company that you've been involved with for nine, ten years, there's some emotions involved with that. Yes, there was a successful sale, good for all my shareholders, but I was no longer part of this any longer. I was basically out of work. And so it was a mixed bag of emotions.

I did tell him though that I wasn't interested -- well, I wasn't well-suited for a board seat because I'm a hands-on kind of guy. I need to be involved more directly. Board members tend to fly in once every quarter and then they fly out, and that just didn't feel right for me.

Q. Did you tell him at that point that you weren't interested in being on the board of Magnolia?

A. I said I was unsure.

Q. Okay. And did you suggest he didn't even need to

come down?

A. I did.

Q. What did you say?

A. I said, "If you're coming down just to see me, perhaps we should just save you the trip and we just have a phone call."

Q. And then how did he respond?

MR. LoCASCIO: Mr. Urban, if you could blow up the top.

THE WITNESS: So he still wanted me to give him my thoughts on commercialization strategy. He said he was coming down anyway -- I assumed for a different reason, I didn't know -- and he asked me to select a place to meet.

BY MR. LoCASCIO:

Q. And did you, in fact, meet with Mr. Bullington?

A. I did.

Q. I want to hand up --

MR. LoCASCIO: May I approach, Your Honor?

THE COURT: Yes.

BY MR. LoCASCIO:

Q. A couple things that may also come up during your examination. If you need to open them up, obviously, you can. I probably shouldn't have put that on the microphone, so you should probably relocate that.

So during the lunch meeting, did Mr. Bullington show

you a version of their Steripath product?

A. He did.

Q. And do you have a Steripath Gen2 up there with you?

A. Right here.

Q. PTX-271, for the record. It's in evidence.

Did Mr. Bullington show you a version of that Steripath product during the meeting?

A. He did.

Q. Before we get to what he said or you said about that product, did Mr. Bullington show you -- other than the device, did he give you any other Magnolia information, any documents, any presentations, anything like that?

A. He did not.

Q. So when you saw Magnolia's device, what did you think?

A. My instant thought was, wow, this is complicated. And I thought he was going to have problems manufacturing it, keeping the cost down. Healthcare is being squeezed on costs. And I thought it would be very difficult for a nurse to do.

Q. Why?

A. It's a completely new approach. I mean, the essence of it isn't, it's using a vacuum that normally is the bottom, but this one cuts off the bottom. So you actually have to compress these parts together to create a vacuum,

and then the initial specimen does go into the side chamber. Then you have to press it again to open up the pathway to the bottle.

Q. So as you understood it, to use that product, you sort of squeeze it like one of those hand flexors they made in like the '70s or '80s to work on your grip strength? Is that sort of how you used it?

A. Yes.

Q. Did you tell Mr. Bullington at that meeting that you thought the device looked complicated?

A. I asked him, "Why does this need to be so complicated?"

Q. And what did he say?

A. What he said was, "It's because that's what our patents say."

Q. What did you think he meant?

MR. RAMANI: Objection. Speculation, Your Honor.

THE COURT: Sustained.

BY MR. LoCASCIO:

Q. What did you understand him to mean?

A. My understanding of that statement is that this device -- their patents describe this device.

Q. And what did you think of his response, substantively?

A. I thought it was a terrible response.

Q. Why?

A. Well, whenever I develop something, I'm always looking at how I can make it better. Because if I don't do it, someone else will do it to me, especially if you're actually solving a problem and making it. So I always want to think of the alternative ways to do this and not be just locked into a particular design.

Q. After the meeting with Mr. Bullington and seeing this device, were you interested in joining Magnolia?

A. No.

Q. Were you interested in investing in Magnolia?

A. I was not.

Q. Were you interested in being on the board of directors of Magnolia?

A. No.

Q. Following the meeting, did you have any other exchanges or interactions with Mr. Bullington or Magnolia that have not been related to litigation or activities in this courtroom?

A. No.

Q. Did you immediately start working on a competing business?

A. I did not.

Q. What were you looking at or working on at the time,

sir?

A. So after the -- couple weeks after the sale of the company, I kind of -- I started wondering what I was going to do next. So I like looking at problems in healthcare, specifically problems that I believe that a simple solution might be able to solve. And so I started focusing on the next big problem at hospitals, and that was urinary tract infections, specifically catheter-associated.

Q. And why were you focused on urinary tract infections?

A. It is a huge problem in hospitals. People die from it.

Q. There was some back-and-forth with Mr. Ramani and Mr. Bullington suggesting you started trying to compete with Magnolia within days.

Do you recall that?

A. I recall the testimony.

Q. And their reference was to an e-mail exchange between you and Mr. Kang, correct?

A. Correct.

Q. Pull up PTX-27, please. And you have these in your binder. It will be on the screen. But if you need to, obviously, you can turn to them in your binder, but don't feel obligated to, sir.

A. Okay.

Q. PTX-27 is an e-mail exchange between you and Mr. Kang. Let's set the table here.

How often at the time did you talk to Mr. Kang?

A. I talked to Mr. Kang probably three times a week. Maybe it even was more after the sale.

Q. Was he someone you were familiar with from your prior work?

A. So Mr. Kang and I have worked together since 1996.

Q. And do you know how -- if you look at the bottom, the first e-mail, Mr. Kang says, "Checked out their website" at the top.

Let me just ask you this. Do you know how it came to be that you got this e-mail from Mr. Kang?

A. Well, I would think from this e-mail that I must have spoken to Mr. Kang and mentioned that I had this meeting and I saw this device.

Q. And let's see what Mr. Kang said after reviewing Magnolia's website. What did he convey to you about his reactions to the Magnolia device?

A. He said it was very complex for doing something so simple.

Q. And that's in the second paragraph is what you're referring to?

A. It is.

Q. And then in the third paragraph, what did Mr. Kang

say?

A. He said, you know, if you were going to do this, he'd probably just use a valve for managing the fluid pressure.

Q. And did you respond to Mr. Kang?

A. I did.

Q. What did you say to him?

A. I responded to his comment that it's pretty complex and saying, yes, this is getting the Rube Goldberg touch. And I started speculating on what a device might actually cost to make.

Q. I know it came up during opening statement, but I don't believe any witness specifically has spoken to this. Just for the benefit of the jury and the record, what did you mean by the "Rube Goldberg" approach?

A. So Rube Goldberg was an artist in the '20s or '30s, and he would draw overly-complex line drawings to do something simple. I saw toasters that had balls rolling down ramps and elevator shafts going on. But it's used generally now to describe something that's just overly complicated.

Q. In this e-mail you also said, "I'm going to get some research done to see how big this is."

Let me ask you a couple of questions about that. At the time, had you done that research?

A. I had not.

Q. Did you immediately start building a business around this exchange?

A. No.

Q. When do you believe or -- withdrawn.

When did you begin having discussions about actually starting the business that became Kurin?

A. Well, once I got -- basically, the point that a urinary tract infection problem was maybe a little bit too complex for me, there's too many things going on, I started looking for other problems I could solve, and I remembered the WVU article, and I said, "I don't really understand this false positive blood culture thing." I had to do some research. I didn't know if it was a problem big enough that was worth solving.

Q. And you said you needed to do some research. Where did you start that research?

Where did you look?

A. I actually didn't do it.

Q. Did you, at some point, talk to folks that ended up at Kurin about starting a business?

A. I did.

Q. When did that happen?

A. So the first conversation was, I believe, in late July 2015.

Q. Who was it with?

A. It was with Mr. Kang, Mr. Heindel, and Mr. David Lloyd.

Q. And were they folks you had worked with before at Ivera?

A. They were all at Ivera.

Q. Around that time, did you come up with an idea for a type of diversion device that would ultimately become the Kurin Lock?

A. So before I embarked on even setting up a call, I had reviewed videos of how a blood culture was actually taken, and I didn't see something -- I remember distinctly, I was watching it, saying, huh, something is not here that I would expect to see.

And then the lightbulb went off. And I went out in my garage, got some parts, Superglued some things together, and I said, "This would work," and set up a call and said, "I might have an idea."

Q. Let me unpack that a bit.

You said you watched some videos and you didn't see something you expected to see. What were you referring to? Can you explain that to the jury?

A. So if I -- I'll just take the tube. Well, I'll first show you this. At the bottom of this is a needle, and it's got a rubber boot over it. So what that does is it seals that in so that you can just put it in the bottle,

it opens up the pathway to the needle, compresses the boot, and then when you take it off, the boot closes.

So because of that -- that was on the end of a long piece of tubing. Maybe it had a needle attached to it, maybe it had one of these Luer connectors. That's what we call them. So when I put the needle in the patient, I didn't see something that I expected to see. And that would be the patient's blood pressure pushing blood to compress the air so I could see a little bit of it here. It would just creep up. We call that "flash."

Q. So when you were watching blood culture videos before you came up with the idea for the Kurin Lock, when a nurse, before the vacutainer was attached to the Lock, when the needle goes in, does blood come out or not until they put the vacutainer on?

A. On the Lock, that was the invention.

Q. And I'm asking about what you saw in the videos.

A. What I saw in the video was there was no place for the air to go. So it just got compressed, and we didn't see the flash.

So I wanted to create a way that the air could escape so that the patient's blood pressure could push the blood up that channel.

Q. And it sounded like you said you made a prototype?

A. I did.

Q. And did you show that to anybody?

A. Eventually I did.

Q. And the Ivera folks you mentioned earlier, yourself, Mr. Heindel, Mr. Lloyd, and Mr. Kang, was there a point where you met with them about this idea?

A. I did, in August of 2015. I believe late August.

Q. You said 2014, August?

A. 15. Sorry.

Q. Where did you -- did you meet with these folks in person?

A. No. We flew down to San Antonio, to Matt Heindel's house to meet him there.

Q. So you met in person at Mr. Heindel's house?

A. I did.

Q. Did you show the prototype?

A. I remember that I brought a bag of solution to emulate a patient's blood pressure. I hung it from his chandelier and I put my prototype in there, and I said, "See, this is how it works."

Q. At that point, in that meeting in San Antonio, did you make a decision to move forward with the business?

A. Absolutely not.

Q. At some point, the business was created and it was originally known as Calliope; is that right?

A. That's correct.

Q. Why was it called Calliope?

A. So Matt Heindel is a world-renowned birder. He writes for National Geographic and others things. And we were looking for a name and he said, "The product can be small. Let's call it" -- "There's a hummingbird, actually a beautiful one called a Calliope." I didn't know this. And so that's how we got the name.

Q. At some point, did you show the prototype to any researchers?

A. I did. I believe later that year I did.

Q. Who?

A. So Michael Sweet at West Virginia University, the author of the article, he was a friendly audience and I wanted the truth to -- him to tell me what's wrong with this idea, so we met with him to get his feedback.

Q. Did -- is it Dr. Sweet?

A. Dr. Sweet.

Q. Did Dr. Sweet indicate that he thought your idea had legs?

Or maybe I should put that less common speak. Withdrawn.

Did Dr. Sweet indicate he thought your idea was potentially valuable or useful or would work?

MR. RAMANI: Objection, hearsay.

THE COURT: Yeah. I mean, what is --

MR. LoCASCIO: Goes to his mental impression so I think it subject to hearsay exception for that.

THE COURT: Sustained.

BY MR. LoCASCIO:

Q. What was your reaction -- or, withdrawn.

What did you take away from the meeting with Dr. Sweet?

A. Based on the comments he made, there were no show-stoppers on the idea. We still had to do a lot more development and get it to a more commercially viable form, but he didn't see a problem with it.

Q. Did you also show him a Magnolia device that was publicly available?

A. I think we did. I'm not really clear on that.

Q. Was there any discussion during the meeting about using the patient's blood pressure, which was your idea?

A. Sorry. Yes. He and the microbiologists that were in the meeting said, "Well, what happens if there's no blood pressure?" My response was, "I think you have bigger problems."

MR. LoCASCIO: Can we pull up DTX-296.

BY MR. LoCASCIO:

Q. What's DTX-296, sir?

A. I believe this was the first business plan we had put together.

Q. For Calliope, which -- did that ultimately become known as Kurin?

A. It did.

Q. What's the date of the business plan, sir?

A. November 1, 2015.

Q. If I could first direct you to --

MR. LoCASCIO: Let's go to Page 9, please, Mr. Urban.

BY MR. LoCASCIO:

Q. There is a page called "product Kurin blood culture collection device," and at the bottom of the first paragraph --

MR. LoCASCIO: If you could just blow up the first big paragraph, Mr. Urban.

BY MR. LoCASCIO:

Q. The last four lines, as of November 2015, you described an invention.

Can you tell the jury what your business plan identified as your invention at Kurin?

A. So it's critical that the device be simple. And they were using butterfly sets already to do blood collection so I wanted to not change that. I wanted to work within that paradigm. And I just needed to develop something that would divert the initial aliquot of blood.

Q. Can I pause you for a second.

What is an aliquot?

A. So if you think about -- it's a term that I've heard, but apparently it is not widely used. But if you take an eyedropper, that drop is an aliquot.

Q. Okay. Sorry I interrupted you.

You said the invention was to divert the initial aliquot of blood prior to what?

A. Prior to the vacuum being applied to the system.

Q. And what's a vacutainer?

A. That's the blood culture bottle. Generally, when you have -- collect -- you are collecting blood, you use a vacuum to pull, whether it is a syringe or a bottle.

Q. So I go in for my physical and they draw blood, are the vacutainers, essentially, those tubes that the nurse or doctor pushes onto the --

A. Yes.

Q. -- covered needle?

A. Yes.

Q. Then you identified in this idea, "the contaminants below the outer layer of skin will have been safely kept out of the testing sample."

Was that part of your invention as of 2015?

A. Well, the contaminants being separated, yes. The idea of a skin plug being cored had been well documented.

Q. Let's turn to the next page, which is on -- under the

competition section.

MR. LoCASCIO: If you could blow up the top paragraph, Mr. Urban. Actually the first two, just blow up the first two. Great.

Blow the first two up larger, please, Mr. Urban.

BY MR. LoCASCIO:

Q. The competition description right before this says, "The biggest competitor is current practice."

What did you mean by that?

It's actually -- so maybe Mr. Urban was a step ahead of me.

MR. LoCASCIO: If you back up a page, one page back, blow up the bottom portion of the competition. Thank you.

MR. RAMANI: Your Honor, may I -- apologize to interrupt. May we just briefly approach?

THE COURT: Yes.

MR. RAMANI: Thank you.

(Whereupon, the following occurred at sidebar:)

MR. RAMANI: So a note was just handed to me that there may be a Kurin fact witness in the audience. I couldn't tell. I just wanted to make sure.

MR. LoCASCIO: Hold on.

So I can't see great back there.

(A discussion was held off the record.)

MR. RAMANI: Sorry, I just wanted to make sure.

Thank you, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

\- - -

BY MR. LoCASCIO:

Q. Okay. Sir, so in terms of the competition, the first sentence of your business plan for Kurin said, "the current process of collecting blood for cultures, status quo is our competition."

What did you mean?

A. Change is hard, especially in hospitals. You are asking them to change their practice. It can be a challenge.

MR. LoCASCIO: And now if we go to the next page, Mr. Urban.

BY MR. LoCASCIO:

Q. The top part of this section refers to a waste vial.

What's that?

A. So that's the waste tubes that we were talking about to attach. They are basically vacutainers to discard the first portion of blood.

Q. Was that something -- withdrawn.

Were you in court during Mr. Bullington's discussion of a protocol used by a Dr. Patton and some videotape

testimony -- pardon me -- some reading of the deposition from the Dr. Patton.

Do you remember that?

A. I was.

Q. And in the protocol that they were discussing, did that involve waste vials?

A. It was about waste tubes.

Q. Was there a product in the market that used waste tubes?

A. The Clean Collect by Stone Medical was waste tubes.

Q. Now, with respect to the waste tubes or the Patton article, do you recall how much blood they typically would waste or remove?

A. So the Patton article itself said they experimented with 1 to 2 mLs, milliliters, of blood, and they also commented right after that, "more would be better." And then if I look at the Stone Medical website, I think there's some reference to that somewhere, they said 4 to 6 milliliters of blood should be wasted.

Q. And in terms of the amount of blood you wanted to use for this initial aliquot, was it in that direction or was it different?

A. So blood is a precious things for all of us, and I didn't understand why you had to waste so much blood. If we're talking about the needle coring the skin, that's all

I had to deal with.

Q. Now, your business plan also refers to Magnolia.

And did your business plan document, in the middle of the second paragraph, your views at the time of Magnolia's product offerings?

A. It did.

Q. What did it say?

A. It says, "The product suffers from many shortcomings, including poor design, high manufacturing costs, expensive products for the end user, adding steps, and thus changing the practice of the clinician."

Q. And at the end of this paragraph, in the second to last sentence, did you contrast that with what you saw as your solution to this problem?

A. I did.

Q. What did you say?

A. Well, Kurin is far simpler, far less expensive, and virtually transparent to the end user. They don't have to learn a new practice.

Q. And is that the business that became Kurin today?

A. It did.

Q. Okay.

MR. LoCASCIO: Thank you, Mr. Urban.

BY MR. LoCASCIO:

Q. I want to talk now about the Kurin-asserted patent in

this case. It's PTX -- pardon me -- DTX-1. I believe it's in the jury binders. But it's, for the record, U.S. Patent Number 12138052, which we have called throughout the case the '052 or '052 patent.

Do you have DTX-1 there, sir?

A. I do.

Q. Mr. Urban can also pull that up for us.

Are you one of the inventors, sir, of the '052 patent?

A. I am.

Q. Who else is an inventor on the '052 patent?

A. So it lists Gino Kang and John Detloff.

Q. Were you all affiliated with Kurin?

A. John actually worked for a third party, but they were friends of the Ivera company and, I guess, by extension, with me.

Q. And did you and Mr. Kang and Mr. Detloff sign assignments and assign your rights and -- this invention to Kurin?

A. Yes, we did.

Q. Is Kurin listed as the assignee, or owner, of this patent?

A. It is.

Q. And what's the title of the '052 patent, sir?

A. It is "blood sample optimization device."

Q. What are the key features of your invention, sir?

A. So this patent describes, really, three elements of the invention. One is extremely low volumes, auto fill of that chamber using the patient's blood pressure, and my prototype would not be commercially viable. It's too many various things. So it had to be integrated into a housing.

Q. Sir, you were here for opening statements. Let me show you a slide that Mr. Ramani put up. And it's PDX-1.042.

Do you recall that from opening statements, sir?

A. I do.

Q. And you will see, he has three Magnolia patents, the '081, '863, and the '709. And it has an issuance date and a filing date for each of those, correct?

A. It does.

Q. And it has a flag. So there's a flag at the back, September 2018 invention date.

Do you recall that?

A. I do.

Q. And there was a whole story from Magnolia about somebody being a leader and somebody being a follower and planting a flag first.

Is the flag shown for the '052 patent, for your patent, on his demonstrative?

A. It is not.

Q. And you have DTX-1 in front of you, but if you know, when, sir, was the priority date for the '052 patent?

A. April 4, 2016.

Q. And so when did Kurin and you plant the flag for the Kurin '052 patent?

A. April 4, 2016.

Q. Can't even put that on his demonstrative. It only starts in 2018. So let me just...

We had 2017 there and 2016 there. Would the priority date and Kurin flag that it planted for the '052 patent be back in 2016, two years earlier?

A. Yes, it would.

MR. LoCASCIO: I am going to mark this, Your Honor, as a DDX number to be put in the record when I am given the next number. Thank you.

THE COURT: All right.

BY MR. LoCASCIO:

Q. When had you done -- well, let me ask this question. With that same slide up, Mr. Ramani suggested that you only got this patent to retaliate against Magnolia, suggesting it wasn't your invention because it wasn't filed until 2024 for these particular claims.

When had you done the work that became the patent claims of the '052 patent?

A. In April of 2016.

Q. And did the Patent Office grant you this '052 patent?

A. I believe they did.

Q. With prior -- well, with priority all the way back to 2016?

A. I believe they did.

Q. And was the disclosure, everything in the sort of description part of DTX-1, all the text and the -- that's in there, sir, was that all in the disclosure you filed in the Patent Office back in 2016?

A. Yes, it was.

Q. Okay. I'd like to talk now, sir, about Kurin's products.

Do you have, sir, with you a Kurin Lock product up there?

A. I do not.

Q. I gave --

A. Is it in the --

Q. So I gave you a folder, I just didn't tell you what was in it. So can you look in the folder and see if there's a Kurin Lock in there?

A. Yes, I have one.

Q. The Kurin Lock is DPTX, for defense physical trial exhibit, 17. Do you have that in your hand, sir?

A. I do.

MR. LoCASCIO: DPTX17, Your Honor, is in evidence. Can I pass it around the jury box?

THE COURT: Sure.

MR. RAMANI: No objection, Your Honor.

MR. LoCASCIO: It has no needle on it.

BY MR. LoCASCIO:

Q. Okay. While the jury is looking at the Kurin Lock product, when was the Kurin Lock released?

A. I believe our first sale was sometime in the first half of 2017.

Q. And if you have yours up there, can you hold up yours for a second?

A. Yes.

Q. So there's the end that the vacutainer goes on, there's the end that would connect to something else.

Where is the Lock on that actual device?

A. The Lock, the invention, is this little rectangular thing. I basically get an existing blood culture set, cut it, and glue my invention in there.

MR. LoCASCIO: Mr. Urban, can we pull up the four images from DTX-15.

BY MR. LoCASCIO:

Q. So DTX-15 is in evidence. It's a video of the Kurin Lock. The jury has seen it, I think, two or three times so we are not going to play it again. But these are

pictures from that video.

Can you describe for the jury at a high level what the Lock's features are, how it worked?

A. So the Lock, as you see in the upper left there, has two channels -- the second one is a little hard to see but it's all the way to the left of the white plug -- coming down through the outlet.

There's a U-shaped channel that terminates with a white plug. You can see it right there in the center. That white plug allows the air to escape. So the patient's blood pressure, when I put the needle into the patient, the blood pressure will push the blood around the U-shaped channel, it will hit the white plug, and the white plug seals. So now it's -- it's the same as if you had a soda pop cup and you had your straw in there, and we've all done this, you put your finger over the end of the straw, you can pull it out, you can see the fluid there. So it kept it in there.

Q. And so the patient's blood pressure filled the chamber. What happened next in the process?

A. So the upper right is the chamber filled. And then what happens is because the patient does have blood pressure, it will continue to compress the air and a little bit will come down past the U-shaped channel, down the sampling channel.

Q. And then the video said watch for the blood to stop. What was the next step that the nurse would need to do after what I'll call the bottom left video in this demonstrative?

A. So then they simply attach their vacuum bottle, collect -- or syringe and collect their sample.

Q. Now, how much blood -- well, let me -- before I ask you that. At the time the Lock was released in 2017, what were the other options in the marketplace for hospitals for -- to perform this function?

A. So beyond the existing practice, there were waste tubes, and I believe there was Clean Collect, the Steripath Gen2. There may have been others but that's what I recall.

Q. How much blood did the Lock waste?

A. It was .15 milliliters.

Q. And how much blood, at the time in the marketplace, did the Gen2 from Magnolia waste?

A. So that wasted 1.5 to 2 milliliters of blood.

Q. How much more is that?

A. Roughly 10X.

Q. Ten times more?

A. Correct. Sorry.

Q. Can you just give the jury a concept of what 1 milliliter of blood, much less .15 milliliters of blood

is?

A. So we're all familiar with liter bottles. This is a half-liter bottle, so 500 milliliters in here. So 1 milliliter would be 1/500 of what's in this bottle.

Q. How much -- what's the volume of a needle, sir?

A. So we did some studies and we found that the volume of the needle is generally around 5 thousandths of a milliliter. So if I use the same example, if it's 1 in 5 -- out of 500 is 1 milliliter, .005 would be 1/200 of that 1 milliliter, so roughly it's 1/10,000 of this bottle.

Q. So do I understand correctly that in a half liter, there are approximately 10,000 needles' worth of liquid?

A. Yes.

Q. And you said the Lock used .15 milliliters worth of blood in the waste channel. How many needles of blood is that?

A. So it's roughly 30X. And the reason for that is, theoretically, if you just moved the blood that's in the needle, you'd be fine. But you want a safety factor, so we decided that 20 to 30 times rinsing of that needle would be sufficient.

Q. Was there any magic between making it 20 or 25 or 30 or was that just arbitrary, you picked that because you thought that's plenty of needles' worth?

A. It was arbitrary.

Q. You have, I think, one other -- in your materials in the folder, there's a -- another physical exhibit, DPTX16. It's the Micro.

Are you familiar with the Micro from Magnolia?

A. I am.

Q. How much blood does the newer Magnolia product, the Micro waste?

A. So the Micro wastes .5 to 1.0 mL. Milliliters.

Q. Is that on par with the amount of blood wasted in the Kurin Lock or Jet?

A. No, no.

Q. We're talking about the Lock and you indicated there has to be a second step taken by a nurse, meaning to put the vacutainer on after we get to the bottom left. We'll talk about it in a minute but is the Kurin Jet automatic?

A. It is fully automatic.

Q. The Micro automatic?

A. No.

Q. Why not?

A. Because once the user, they first attach the bottle, the vacuum, and then the blood will flow in and fill a C-shaped channel. Once that's complete, you've got to press a blue button and it changes the pathway so now you can fill the bottle.

Q. And what happens if the button is pressed too soon or accidentally?

A. It just goes straight to the bottle and there is no diversion.

MR. LoCASCIO: Okay. You can take that down, Mr. Urban.

BY MR. LoCASCIO:

Q. I want to turn to something called the '682 patent. And the '682 patent is one of the prior art references that the jury's heard something about. Let's look at the timeline, sir.

During opening statements, which you were here for, the timeline references used in my opening statement, November 2017, the '682 patent issued. Can you tell the jury what the '682 patent is.

And for the record, '682 patent is DTX-11 and it's in evidence.

A. So this is --

Q. Go ahead and tell us about the '682 patent, sir.

A. So this is the patent that issued from our April 2016 disclosures.

Q. And when did this patent issue?

A. November 21, 2017.

Q. And who are the inventors of it?

A. It's myself, Mr. Kang, and John Detloff.

Q. The disclosures you talked about earlier with respect to the '052 patent about less blood wasted, all-in-one housing, vacuum powered, were those disclosed to the public in 2017 in this '682 patent?

A. So the low volume, the single package or housing, it wasn't vacuum powered, though -- well, there was a disclosure in there. I forgot. There was a disclosure of a vacuum-powered device.

Q. Is the disclosure of the '682 patent the same as the disclosure of the '052 patent, sir?

A. Yes, it is.

Q. Okay. Following the release of the Kurin Lock, did Kurin continue to innovate?

A. Yes, we did.

Q. And why is that?

A. Well, frankly, if I put our Lock out there, and I see that it's got some challenges -- well, the way it turned out was waiting for the blood to fill the channel was not a new concept for nurses, but it was new for blood cultures. So the fact that they had to wait three seconds for the side chamber to fill was an extra step and I had not anticipated that.

Q. And did you solve for that, sir?

A. I did.

Q. And did that idea become the Kurin Jet?

A. It did.

Q. Do you have a Kurin Jet up at the -- on the stand, sir?

A. Yes, I do.

MR. LoCASCIO: This is DPTX8 for the record. May I pass this around the jury box, Your Honor?

THE COURT: Yes.

BY MR. LoCASCIO:

Q. Okay. So you have the Kurin Jet in your hand up there. Can you show us again where in the system the Jet fits?

A. Well, it's the exact same place as where the Kurin Lock was.

Q. And you were here a minute ago for some back-and-forth with Mr. Napper so I want to ask you about the Jet for a second.

Was the -- is the Jet production fully automated?

A. Yes, it is.

Q. Approximately when was it fully automated?

A. I believe in early 2023.

Q. And so were you here when Mr. Napper decided not to use the cost number from the automated production of the Jet and he used a different cost number?

A. I was.

Q. And he said, "Well, that would be flawed to use the

automated cost number" because he didn't know for sure whether it ever actually happened. The actual facts, sir, is it fully automated?

MR. RAMANI: Your Honor, I'm going to object as leading and also misdescribing the testimony.

THE COURT: Well, the leading is sustained.

MR. RAMANI: Thank you, Your Honor.

THE COURT: Re-ask the question.

BY MR. LoCASCIO:

Q. Sir, with respect to Mr. Napper's analysis that he laid out a moment ago, that ignored the cost of a fully-automated Jet?

THE COURT: All right. So he's standing up. Sustained.

MR. RAMANI: Thank you, Your Honor.

BY MR. LoCASCIO:

Q. Mr. Rogers, in the real world, is the cost of a Jet the fully-automated cost or the not fully-automated cost?

A. It's the fully-automated cost.

Q. Did Kurin achieve its anticipated cost reductions from full automation?

A. I believe we did.

Q. So we're looking at the Jet, and I want to ask you about what's called the Rogers 445 application, which is another one of the pieces of prior art in this case.

And can you turn to -- we'll pull up DTX-7, the Rogers 445 publication. And DTX-7 the Rogers 445 application, when was that filed by Kurin?

A. It was filed December 27, 2017.

Q. And when was it published to the world?

A. June 28, 2018.

Q. And did the Rogers 445 publication include disclosure of your continued innovation that became the Jet?

A. It did.

Q. Can we go to DTX-7?

And, sir, are there any figures in DTX-7, the Rogers 445 application, that show the idea behind making the blood diversion device automatic?

A. Figures 24, I believe do that.

MR. LoCASCIO: Can we go, Mr. Urban, to Figure -- before we get to 24, can you show me -- keep it up on the screen, please. Just go to 23 for a second.

One more back. Can you rotate it? Thank you. Okay.

BY MR. LoCASCIO:

Q. So Figure 23B of the Rogers 445 application, is this figure in the earlier disclosure as well?

A. Yes, it is.

Q. Can you tell the jury what Figure 23B is?

A. So on the left side of the T is a needle. On the

right side you will see the word "vacuum." And then there's a junction that goes across with some more tubing and a clamp on it.

The key to this is you would just do the exact same thing as you do with current practice. You hook up a vacuum source and the hydrophobic plug allows the air to evacuate the system so blood will follow it into that segment of tubing. And then after that -- this is the reason I don't call it automatic -- it required the user to actuate the clamp or a valve or something of that nature to allow the fluid, the clean sample, to go into the vacuum bottle.

Q. So there's a Valve 2308 that also looks like a bit of a clip. How would this device be used -- withdrawn.

Would the nurse have to take some action with Figure 23B to have the second flow go down to the collection tube?

A. Yes.

Q. And what would that action be?

A. It's virtually the same action as you see in the Micro. You push the button or you release the valve.

Q. Now, you mentioned Figure 24.

Did Figure 24 include your innovation to automate that further?

A. It did.

MR. LoCASCIO: Can we see the side view of Figure 24. One more. If you could just leave it like this is fine, Mr. Urban.

BY MR. LoCASCIO:

Q. So what does Figure 24 show in the Rogers 445 prior art public disclosure?

A. Well, so in this one -- so if we go back to Figure 23, the left side is where the needle or a catheter is. The right side is where the vacuum is. The blood would come in and would hit -- I don't see -- I guess, 2421.

MR. LoCASCIO: Go back one more slide. Thank you.

THE WITNESS: I believe in the top -- I can't see where the tail goes. Well, anyway, the inside of 2419 is an internal cylinder. And at the base of it, the crosshatch that goes left to right downward is --

MR. LoCASCIO: Hang on one second. We might be able to get a laser pointer.

I know you guys have the brightest laser pointer.

MR. RAMANI: Sure. You can borrow it.

MR. LoCASCIO: Can we borrow it? Thank you. Thank you.

MR. RAMANI: Anytime.

MR. LoCASCIO: May I approach?

THE COURT: Yes.

Don't put it near anyone's eyes.

MR. LoCASCIO: Particularly this direction, keep it high.

THE WITNESS: So as I explained, this is a cylinder inside of the outer housing.

BY MR. LoCASCIO:

Q. Okay.

A. At the base of the cylinder is the plug that allows air out, but not the blood. So what happens is the blood -- once I apply a vacuum, the blood will come in from the left, fill the central area. Why? Because this top part is plugging the hole. There's holes in here. So it will fill this chamber. And then as the pressure builds, this whole thing slides forward and opens the aperture there and the blood can flow like this and out through the bottom.

Q. And was your idea to now make it fully automatic reflected in Figures 24, and the disclosure of the Rogers 445 application?

A. This solved the problem that I had in Figure 23. It is fully automatic.

Q. And is that how the Jet -- not this very specific particular arrangement, but conceptually works?

A. Yes.

Q. And when was this publicly disclosed, sir?

A. I believe June of 2018.

Q. So --

MR. LoCASCIO: Can I get the ELMO? Thank you.

BY MR. LoCASCIO:

Q. Sir, all of these disclosures that we've looked at, the Kurin Lock, 2017, the Rogers '682 patent issuance in 2017, and the Rogers 445 application in June of 2018, were those all before or after Magnolia planted its flag in September of 2018 for the three patents they are asserting in this case?

A. They were before.

Q. Were your inventions for the Lock and the Jet disclosed before or after Magnolia's priority date?

A. Before.

MR. LoCASCIO: Your Honor, we pass the witness.

THE COURT: All right.

Cross-examination.

Now, your lunches are here. You kind of control the calendar. Do you want to keep going for a little bit and then have lunch or do you want to break now? You guys decide. Why don't you just quickly confer among yourselves and then just let me know if you want to keep going or break for lunch now.

THE JURY: Around 12:30.

THE COURT: All right. We'll keep going. We will go till around 12:30. Have that in mind.

MR. RAMANI: I have that in mind, Your Honor.

THE COURT: All right.

MR. LoCASCIO: I am going to retrieve this.

THE COURT: Please. By the way, again, the documents and the exhibits will go back with you. All right?

MR. RAMANI: Your Honor, may my colleague, Ms. Quach, approach?

THE COURT: Please.

MR. RAMANI: Thank you.

THE COURT: I assume we're going to remove the needles. How does that work?

MR. LoCASCIO: So the ones that are in the Kurin -- for the record, DPTX-8 and 17 do not have needles. Inside the vacutainer is a rubber covered one. There is not a needle on the end.

The Micro has a needle, but is sealed and will stay sealed. We have not opened it. And PTX-270 is a Gen2 Magnolia product. It does have a needle, and we will seal that envelope as well.

THE COURT: Okay. Well, we'll talk about how to handle exhibits, then, about the needles. I'd like to

hear Mr. Ramani's thoughts about that, too.

All right. So we'll deal with that.

Mr. Ramani, cross-examination.

MR. RAMANI: Thank you very much, Your Honor.

CROSS EXAMINATION

BY MR. RAMANI:

Q. Mr. Rogers, it's not quite noon, so good morning, good afternoon, as you prefer.

Let's talk about the Kurin Jet. The Kurin Jet was launched and Kurin announced it February 2023, right?

A. We were in the market December of '21 or January of '22.

Q. We'll get there. I understand that there were trial sales. You know what trials are, right? Trials are when you first bring out a product and you want to test it and make sure it's functioning.

So you started some trial sales at one location in December 2021, right?

A. Yes.

Q. So back to my question. The Kurin Jet was launched not just in one location with a trial, but was launched when Kurin announced it in February 2023, true?

A. Yes.

Q. Now, you were here for opening statements, of course, as we have heard.

Of course your counsel just showed you this slide, made some modifications to it. We'll come back to that later. But you saw when I put this slide up, right?

A. I did.

Q. And so we have right down here the date that the Kurin Jet was launched, as you just testified to, February 2023, right?

A. Well, it says "Kurin Jet was announced."

Q. Yes. What you just said, it was a launch.

A. We were in a few hospitals before then. I consider if we were selling them, that it was launched, just on a limited basis.

Q. I guess we have to go back to the prior Q and A, Mr. Rogers. Please listen carefully.

The Kurin Jet was launched when Kurin announced it in February of 2023, true?

A. True.

Q. Okay. So we have that date on here. And you can, of course, see on the timeline that Magnolia had already filed for two of its patents-in-suit before the Kurin Jet launched, right, in October of 2022?

A. Yes.

Q. You also see that the first of those patents, the '081 patent, had already issued before Kurin launched the Jet, right?

A. It did.

Q. And you can see short in time after that launch, Magnolia got its second patent, right?

A. Yes.

Q. And then you see Magnolia filed for and got its third patent that's asserted here, right?

A. Yes.

Q. I'd like you to focus on the first two patents, the '081 and '863 patents.

Now, Kurin and you knew about those patents at least as early as February 23, 2023, right?

A. What was the question?

Q. Kurin and you, as the CEO of Kurin, knew of these '081 and '863 patents at least as early as February 23, 2023?

A. I'm not sure that's true.

Q. Well, the parties -- and you can see in your binder, there's a tab at the very top. You have that white binder there. Go ahead and turn it. You see the very first tab is a Joint Statement of Undisputed Facts.

Do you see that?

A. I do.

Q. Okay. And you understand what that is, is coming into a trial to try and streamline issues, the parties will agree to certain things, right? You get that?

A. Yes.

Q. Sir?

A. Yes.

Q. Great. So I'd like you to turn to Paragraph 11 of that statement. Follow along as I read, "Kurin learned of the '081 patent at least as early as February 23, 2023."

A. Sorry. I don't see that. I see Number 11, "Magnolia asserts infringement."

MR. RAMANI: Do you have the wrong document, perhaps, Mr. Rogers?

THE WITNESS: You said the first tab, right?

MR. RAMANI: Your Honor, may I approach?

THE COURT: Sure.

MR. RAMANI: I want to make sure his binder is okay.

THE COURT: I've got the same problem.

MR. RAMANI: Let me just check.

BY MR. RAMANI:

Q. May I see yours?

A. Sure.

Q. Thank you very much.

MR. RAMANI: Great. Thank you.

BY MR. RAMANI:

Q. I stand corrected. I will read -- why don't you go to the Paragraph Number 5 in that same document. And that

says Kurin learned of the '081 patent at least as early as February 23, 2023.

Do you see that?

A. I do.

Q. And then if you go down to Paragraph 8, it says that Kurin learned of the '863 patent at least as early as February 23, 2023.

Do you see that?

A. I do.

Q. Now, you were here yesterday and the day before for Mr. Bullington's testimony, correct?

A. I was.

Q. Do you remember Mr. Bullington testified that shortly after the Kurin launch, he reached out to Kurin, to you, and asked for samples? Remember that?

A. After which Kurin launch?

Q. The Kurin Jet launch in February 2023.

A. I do recall receiving a letter.

Q. Yeah. You received a letter, right? And that letter from Mr. Bullington you received on February 23, 2023, right?

A. I don't recall the specific date, but that sounds generally right.

Q. And in that letter, he identified those two patents to you, the '081 and '863 patents that are at issue in

this case?

A. I don't recall that, but there was, like, 50 or 60 patents listed.

Q. We can talk about that. Because Mr. Bullington sent you his letter about eight days after you put up on the website the limited commercial release of the Kurin Jet. It's a document that the jury has seen a bunch of times right now.

Eight days after that you got the letter from him, right?

A. Sure.

Q. In that letter, he told you that Magnolia was concerned about this Kurin Jet, asked you for samples, and identified several patents, right?

A. He did.

Q. And two of those patents were the '081 and the '863, right?

A. I think so.

Q. You are aware -- you said there were several, 50 or 60 patents.

You know Magnolia's portfolio is well over 100 patents at this point, right?

A. I haven't counted, but I wouldn't think that that's not true.

Q. Now, that wasn't the only time that you learned of

the '081 patent before Magnolia filed this lawsuit, true?

A. I don't know if that's a true statement.

Q. You know a Jeremy Hammer from High Peak Medical, don't you?

MR. LoCASCIO: Objection, Your Honor.

From our sidebar, we had prior discussion on this.

THE COURT: Let's go to a sidebar on this.

(Whereupon, the following occurred at sidebar:)

THE COURT: Okay. So what's the follow-up question you want to ask because he hasn't answered this yet? So let's suppose he answers, "Yes, I know Jeremy Hammer."

MR. RAMANI: I'm going to say, "You understand Jeremy Hammer contacted Kurin, and after that contact you, again, learned of the '081 patent." That's all I'm going to say.

THE COURT: Okay. I'm not sure to what end, though. It's undisputed. In fact, I mean, you have got a little bit of hay because the witness didn't remember... He should have said he knows the patent and then you were able to show it is actually undisputed. So I'm just curious what this gets you.

MR. RAMANI: It's more evidence, Your Honor, of -- towards willful blindness, ultimately.

THE COURT: But it's undisputed.

MR. RAMANI: It's not simply knowledge. It's actually that the patent was repetitively identified to them in a very short period of time and they failed to take any action. That is the epitome of willful blindness.

THE COURT: Okay. Well, we can debate that, but --

MR. RAMANI: It certainly goes to weight.

THE COURT: Hold up. It... okay, you can get it. I'm just going to ask because here's the thing: I look at it, there's two questions, knowledge of the patent, knowledge of the infringement, i.e. knowledge that the Jet infringes the patent, all right? Both can be satisfied with a showing of willful blindness. This question, it seems to me, goes solely, right now, to knowledge of the patent. And I'm not going to let you bring in that Jeremy Hammer believes the patent is infringed.

MR. RAMANI: I will not go there.

MR. LoCASCIO: I'm not sure where it's going to get him, given that it is stipulated to on knowledge of the patent, and Mr. Ramani did a nice job indicating that in their view, we didn't even begin infringing until we launched the product in 2023, after our notice date that

we already stipulated to. So it is 402, 403, and a sideshow and further irrelevant.

THE COURT: Yeah.

MR. RAMANI: Your Honor, I'm not going to get into Jeremy Hammer. I understood --

THE COURT: Put it this way, I think it's going to be you can ask. The question is there. I think if he answers, "Do you know who Jeremy Hammer is," "yes," and then we move on, it's just going to raise... You know, nobody is going to know what it means.

MR. LoCASCIO: If the witness says he doesn't remember, my suggestion would be he should move on and not have some recollection refreshed with the exhibit that he wasn't allowed to use.

THE COURT: No, no. There will be nothing refreshed. You can ask the question. Let's see if he knows him or not, and then we're moving on.

MR. RAMANI: If he says that, Your Honor, I would want to ask those other two questions that I posed.

THE COURT: If he says what?

MR. RAMANI: If he says that he does know who Jeremy Hammer, which is that he reached out to Kurin, "and after that reach out, you were, again, notified of the '081 patent."

(Reporter clarification.)

MR. RAMANI: Of the '081.

THE COURT: Actually, I'm not. I'm not going to let it. In fact, you can decide whether you want to withdraw the question because I am not going to let further questioning on it. I've already explained at the pretrial, or not the pretrial, but one morning why I think the Jeremy Hammer stuff just doesn't come in. If we had that he was this neutral expert who was a professor of patent law and determined that there was infringement and as a pro bono service he was alerting him, I might let it in, but we don't have any of that.

MR. RAMANI: Understood, Your Honor.

MR. LoCASCIO: Thank you, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

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THE COURT: Go ahead, counsel.

MR. RAMANI: Thank you, Your Honor.

Your Honor, I will withdraw that question.

BY MR. RAMANI:

Q. Mr. Rogers, you are familiar with the term "freedom to operate analysis," right?

A. I am.

Q. Shorthand for freedom to operate is FTO?

A. Is that a question?

Q. That's a question.

A. Yes.

Q. That means looking at the landscape.

You look at existing patents to see if your approach would possibly infringe on those patents, true?

A. I think of it a little bit differently.

Q. Okay. Well, however you think of it, you personally have done a freedom to operate analysis before launching a product, right? You've done that before in your career?

A. I do informal ones.

Q. Yeah.

And you did one of those in 2015 before you launched Kurin's first product, the Kurin Lock, right?

A. I believe I did.

Q. And you were able to do that because you're familiar with patents, you are an inventor, as we saw, right?

A. I'm certainly not a patent attorney, but I've read them. They are quite convenient for going to sleep.

Q. Well, you've certainly been doing prior art searching since 1987, right?

A. It was whenever the Internet started and the U.S. PTO put online the ability to search. I don't remember the precise year.

Q. Suffice to say decades you've been doing prior art searches for patents, true?

A. Sure, yes.

Q. So in contrast with what you did before launching the Kurin Lock, you, Bob Rogers -- I'm asking you -- did not run a freedom to operate analysis before launching the Kurin Jet?

MR. LoCASCIO: Objection, Your Honor, 35 U.S.C. 298.

MR. RAMANI: I asked him individually, Your Honor. He is not a lawyer --

THE COURT: Time out. You want to ask him did he search for... Did he use an Internet search. I will let that one question. I mean, I think the FTO opens up potential doors and questions.

Want to rephrase the question?

MR. RAMANI: I'm happy to, Your Honor. Thank you.

BY MR. RAMANI:

Q. So in contrast to what you did before you launched the Kurin Lock, when you did that prior art searching you described, you did not do that prior art searching before you launched the Kurin Jet, right?

MR. LoCASCIO: Same objection, Your Honor. The question is him personally versus you, being you, Kurin. I understood that to be Your Honor's guidance.

THE COURT: I think that's what the question was.

MR. RAMANI: That was the question.

THE COURT: The question was, "When you"... "So in contrast to what you did before you launched the Kurin Lock, when you did that prior art searching you described and you did not do that prior art searching before you launched the Kurin Jet." That sounds directly personally to him. That's the way I read the question and it must only be read that way, you personally.

Go ahead.

Do you understand the question?

BY MR. RAMANI:

Q. Would you like me to restate the question for you, sir?

A. If you would.

Q. I'm happy to.

So we heard you say that you, personally, did some prior art searching before you launched the Kurin Lock.

You did not personally do any prior art searching before you launched the Kurin Jet, true?

A. I did not personally do it.

Q. And the reason you didn't do that is because you knew about the '081 patent, and you knew that your Kurin Jet infringed it, right? You didn't have to do searching; you already knew you infringed, true?

A. I have legal counsel reviewing these things

constantly.

Q. You testified yesterday by video.

Remember you played up here on the screen for maybe seven or eight minutes?

A. Yes.

Q. Let's make sure that everybody caught that testimony.

So I highlighted here. We see this was your testimony and this was testimony taken under oath, so we can get oriented.

Do you want me to zoom in a little bit, Mr. Rogers?

A. Please.

Q. Happy to.

So let's talk about this a little bit. I know there has been lots of mentions of depositions and I think everyone has got it.

But in brief, you came to a conference room in your lawyers' offices, you took an oath --

THE COURT: Hold on. He's standing.

Objection?

MR. LoCASCIO: I'm not sure if this is -- it's not impeachment, so we can look at the trial transcript, but then under rule of completeness, if the purpose of this being used -- we've noticeably omitted the question and answer right below this, Your Honor -- and so is it impeachment?

THE COURT: Okay. Well, you could always do that on cross.

So just to be clear, this is already in evidence. And yesterday, I noticed you used a transcript from the prior... By the way, they are rough transcripts, okay? I mean, think about our court reporter. She's here all day, and then she's working on a transcript in the middle of the night. I mean, God bless her, right?

With that caveat, it's already in evidence, questioning can proceed.

MR. RAMANI: Thank you very much, Your Honor.

BY MR. RAMANI:

Q. So, Mr. Rogers, I took your deposition in your lawyers' conference room.

You took the same oath you took today to tell the truth, the whole truth, and nothing but the truth, and so on, true?

A. I did.

Q. Okay. So let's see the testimony that you gave here, which is:

"Why do you say that it looks like this '081 patent is attempting to cover the Jet?"

"Answer: I just look at the claims.

"Question: Doesn't that suggest to you that the Jet infringes the '081 patent?

"Answer: The third element is a movable plug disposed in the housing. Yes, that suggests the Jet."

Those were two questions, and you gave those two answers.

We all saw that yesterday, right?

A. Yes.

Q. Okay. Now, your lawyer anticipated where I was going to go, which is: Let's look at what you said in the transcript right after that. We can talk about it.

So then I followed up and I asked you:

"So it's your understanding, again, as a layperson but as CEO of Kurin, that this '081 patent covers the Jet?

"Answer: I disagree. I think it's trying to patent something that already existed.

"Question: But looking at this patent today, in this deposition, under oath, your first reaction was it covers the Jet, right?

"Answer: Yeah. My reaction was that it looks like it's trying to cover something that's already publicly available."

And it goes on.

"That's the Kurin Jet, here at the top?

"Answer: Right."

So that was the testimony that's in evidence that the jury heard yesterday, that when you looked at the '081

patent claims, you thought it covered the Kurin Jet, which means it infringes, and your response was the Jet came earlier.

That's what we just saw, right?

A. We saw that testimony, but the fact that it covers the Jet doesn't mean it infringes. I had already invented it.

Q. Well, let's take a look. Let's unpack your testimony a little bit and see if it makes sense.

So here we go. We have the same slide that we looked at earlier. And we also had some testimony yesterday from Kevin Nason, and I think we are going to hear from him live later.

He is the VP of R&D at Kurin, right?

A. I actually don't know his title, but he is in R&D.

Q. Okay. Well, Mr. Nason can tell us his title shortly when he takes the stand.

But when he testified yesterday, here's what he said in orange:

"When did Kurin begin designing its Jet product?"

"Initial development work for the Jet started in March of 2019."

Do you see that?

A. I do.

Q. Okay. So March of 2019, initial Jet. I'll just

write "devel" for shorthand for Mr. Nason's testimony.

So you and I were just talking at the start of your testimony about the Kurin Jet launch date, and we agreed that's February 23. It's already on here.

But then you also said your first sales were part of this limited trial in December 2021, right? That's what you said?

A. Yes.

Q. Okay. So let's put 12/21, Jet trial.

Okay. And your testimony was the Kurin Jet came first.

Looking at this timeline, you see that the flag for Magnolia's patents, the invention date, came before when Kurin even started initially developing the Jet and, of course, before your first trial and your launch, right?

A. So there's a little more context to when the initial Jet development started that Kevin Nason spoke to. He didn't start with us until, I think, the middle of 2018.

Q. Okay. Well, we can go there. I'm happy to have that conversation with you.

But can I first get an answer to my question, which is: From the Nason testimony, we saw that the initial Jet development started on March of 2019, then there was a Jet trial, then the Jet was announced, all of that stuff comes after Magnolia's September 2018 invention date for all

three of its patents?

A. That would be correct.

Q. Okay.

So you were suggesting just now that Mr. Nason joined you later and so there was some work that was done earlier in relation to the Jet; is that right?

A. There was.

Q. Now, ultimately, when you started working on the Jet, you experimented with several different types of stoppers as you called them, right?

A. I didn't think of them as stoppers.

Q. Well, there are four materials you used to impede the flow of blood, right? You agree with that?

A. I don't recall that specific number.

Q. Ultimately, you ended up selecting an elastomeric plug. Remember that?

A. Yes. After Kevin had been hired.

Q. That's right. After Mr. Nason joined the company.

A. Correct.

Q. So that was in March of 2019 when he started working on the Jet. Only after that time did the Jet end up with the movable plug that it uses today, right?

A. That is true.

Q. So, Mr. Rogers, let's discuss --

MR. RAMANI: Just mindful of the time, Your

Honor, but I'll keep going until 12:30.

THE COURT: Well, I mean, is this a good time to break? Is that what you're thinking?

MR. RAMANI: It's a good time to break, but I'm happy to keep going if the jury likes.

THE COURT: Let's do that. All right. Take about half hour ago. We'll aim for that, in case I have issues. I do have to take a phone call. So, all right. Thank you very much. Have a break. Enjoy the lunch. Don't talk about the case, please.

(The jury exits the courtroom at 12:22 p.m.)

THE COURT: All right. You may be seated. And, Mr. Rogers, you can step down. And then you are not allowed to speak about the case with counsel. All right? Because you are in the middle of cross-examination. Mr. Rogers, did you hear?

THE WITNESS: I understand.

THE COURT: Okay. Good.

MR. LoCASCIO: We will get a sandwich and put him somewhere else.

THE COURT: That's fine. And you can just leave if you want.

Are there any issues? There is, right? We need to talk about depositions?

MR. LoCASCIO: We can do --

THE COURT: And you have the motion.

MR. LoCASCIO: I can do the motion. Thank you, Your Honor.

Do you want to come back early and do that or do you just want to bust through right now?

You said you have a phone call.

THE COURT: What would you prefer?

MR. RAMANI: I'd rather do it now.

THE COURT: Okay. Let's do it know. I kind of would, too. Let's go ahead.

MR. LoCASCIO: Thank you, your Honor.

Your Honor, at this point, Kurin respectfully moves for judgment as a matter of law under Rule 50(a) with respect to Magnolia infringement claims, both direct and indirect, as well as damages.

First, with respect to direct infringement, no reasonable jury could find for Magnolia on direct infringement, the asserted claims of the Bullington patents, with respect to two limitations:

First, there's no pressure differential between the movable plug valve and the outlet in the accused Jet. All asserted claims require a pressure differential. Magnolia failed to put forward substantial evidence from which a jury could find there's pressure differential between the movable plug valve and the outlet. The proper

infringement analysis requires measuring pressure differential at the outlet and at the point that the plug or valve that is in the portion of the sampling channel between the plug or valve and the outlet.

Magnolia's expert, Dr. Meinhart, failed to put forward substantial evidence from which a jury could conclude there's a pressure differential at the outlet at a point at the plug or valve. He admitted there's no pressure differential in the portion of the sampling channel that would move the plug or valve.

As a result, finding non-infringement is appropriate. For additional reasons set forth -- let me just withdraw that sentence.

Additionally, Claim 18 of the '081 and Claim 28 of the '863 patent require the movable plug be temporarily locked. Under the plain meaning --

THE COURT: I think you covered temporarily locked, right.

MR. LoCASCIO: I did at sidebar. If your Honor's view is these two join together --

THE COURT: They do join together.

MR. LoCASCIO: Thank you.

Second: No reasonable jury could find Kurin indirectly infringed. Covered this at sidebar, but just briefly, for completeness. Based on the evidence

presented, JMOL, no indirect infringement based on active inducement of the asserted claims is warranted because Magnolia has failed to put forth any evidence that -- from which a reasonable jury can conclude that there was an underlying act of direct infringement in the first instance or that Kurin had knowledge that there was direct infringement of the asserted patents and had the specific intent to cause direct infringement by others.

THE COURT: All right. Can I stop you there?

MR. LoCASCIO: Yes.

THE COURT: As a practical matter, why does inducement matter? I don't understand. Right? There's no dispute that Kurin sells these products. And can you conceive of a situation where they induced infringement but they didn't commit direct infringement?

MR. LoCASCIO: I believe, Your Honor, that there is -- and we can get the specifics. I think there's a claim or two that requires, for instance, a vacutainer that isn't sold with the products and that's, I will say, facially, the basis for the need, if that was the only claim -- which, of course, it is not -- to have pursued an indirect infringement claim.

I will say that --

THE COURT: So let me just say. So then as a practical matter, and I haven't looked at the verdict

sheet, are you all breaking down the verdict? And more importantly, was there any breaking down in the damages separating that claims that are... That infringement is contingent on a showing of inducement versus claims that are direct?

MR. LoCASCIO: There was not a showing. The third part of my motion on damages includes that point. But on the verdict form --

THE COURT: Hold on. So as a practical matter, why don't you want inducement to go to the jury? Because their case is completely screwed up if they win, right, it sounds to me, under your theory. Because then their damages are gone. They have never distinguished between induced claims and direct claims. And why don't you want that?

MR. LoCASCIO: I don't disagree that these are strategic calls as to what the jury will do with different causes of action in the case. And there's a route on the flow chart, to Your Honor's practical question, where that might be advantageous to us. The only reason --

THE COURT: Right. In other words, just to be clear, it might advantageous, in fact, it sounds like it would be advantageous, for you to have both claims go to the jury because if they were to win, they would be... If they were to win, who knows, right? And then it gets

overturned because there's no induced, no evidence of knowledge of infringement, and then their problem is they've got damages and nobody will ever be able to figure out to what extent they were contingent on an inducement.

MR. LoCASCIO: And I don't disagree with that, but there's no reason that evidence of alleged willful blindness and intent has, in this case -- willfulness is bifurcated. We've raised that issue with Your Honor, that it should not even be at trial. And I would say the practical reality in many cases of why someone includes an inducement claim or a contributory claim is solely, or at least driven often by the then availability of evidence of intent that would otherwise have no place in the case.

And that part of the reason, one, they have not proven it, and so, as a practical matter, JMOL should be granted on inducement. But from a -- maybe that -- that was the legal matter. From a practical matter, the reason that we care is because the closing argument and the remainder of this case is different if indirect infringement with an intent component that we think is --

THE COURT: And, by the way, I'm sorry. You said it at sidebar too. I know there's a couple cases from the Federal Circuit that talk about it but no one specifically intends to cause infringement. And that's not the test, right? It's what they do is they

specifically intend to cause the acts that someone down the road says constitute infringement.

MR. LoCASCIO: Yes, with knowledge, though, beyond just that that thing will occur. The product -- the fact that someone will put a vacutainer on, okay, and that's the missing element, for instance, in that hypothetical I gave you, that is not under the law sufficient --

THE COURT: Right. That goes to knowledge, not specific intent. But anyway, all right, go ahead, wrap up your argument. I mean, you know, this is the challenge if you are a district court judge as opposed to a federal circuit appellate judge, right? It's hard to think about what's just occurred in the last 24 hours and to... I mean, my sense is they do not have anything close to showing knowledge or willful blindness of infringement. It's not even in the ballpark. But, you know, it's just easier as a district court judge, let it go. And in this case, I'm not sure why Magnolia wants me to let it go.

MR. LoCASCIO: I understand and appreciate the challenges on your side of this conversation. But I also say that in the realm of federal district judges, there's an easy way and the right way, and I think in this court, you're very thoughtful of the second and not just the first.

So on that score, Your Honor, I'll move on from the indirect infringement argument.

With respect to the third prong, damages. No reasonable jury could find damages for Magnolia for two reasons. First, on lost profits, Magnolia's failed to put forth sufficient evidence on which a jury could find it under *Panduit* Factors 1 and 2. They failed to establish lost sales as a result of the Kurin Jet. No reasonable juror could find that the Steripath Gen2 and Micro competed with the Jet. No reasonable juror could find that the Micro or Gen2 practiced any claim of the asserted patents where the customers purchased either of those products did so based on the claimed inventions.

They also fail *Panduit* Factor 2 because Mr. Napper opined Kurin's Lock was not an acceptable non-infringing alternative. That opinion is not supported by any factual evidence to support it, so no reasonable jury could conclude Lock was not an acceptable non-infringing alternative.

Panduit Factor 4 is assessment of lost profits. Mr. Napper's, that is the only evidence on this topic, was unsupported and contrary to record evidence.

With respect to reasonable royalty --

THE COURT: By the way, on the Kurin Lock, so you just said no reasonable jury could conclude that the

Lock was not an acceptable non-infringing alternative.

That was your position, correct?

MR. LoCASCIO: Correct, Your Honor.

THE COURT: Okay. Now, especially given your client's testimony, it's hard for me to understand that to be true. And now, but my sense is that's not really... That is really not the argument. The argument is that you can't have it both ways. You can't say that their devices would be non... would be acceptable non-infringing, and at the same time say the Kurin Lock is not; is that --

MR. LoCASCIO: There's that argument that you made, which is the first one I addressed.

THE COURT: Right.

MR. LoCASCIO: But I do think -- and why I'll explain, the Lock has -- it is not -- no reasonable jury could determine that the Lock is not a non-infringing alternative in the context of this. They are seeking lost profits on the Micro, which requires activity. It's not automatic. If they said there is a market for automatic diversion devices that required no activity and they had one --

THE COURT: But that's really your first argument, isn't it? No?

MR. LoCASCIO: I don't know which way we want to stack them as first or second.

But to your point about the Lock, Your Honor, the Lock and the Micro requiring a second step are more comparable, and so if they are going to seek lost profits on the Micro, which is a step backward from the Jet in terms of its automaticity, or whatever the right word is, then the Lock has to be a non-infringing alternative.

With respect to reasonable royalty, Magnolia has failed to apportion its royalty to the inventive aspect or incremental benefit of the asserted patents. In fact, Mr. Napper doesn't even claim the inventive aspect or incremental benefit is tied to the pressure differential aspect of the claims. He simply said in his testimony the benefits were lower contamination, which the record clearly established was already available based on the prior art. He referenced discussions with Mr. Bullington and Dr. Meinhart, but neither of those witnesses testified about the purported technical incremental benefits of the asserted patents, so the jury has no factual support for apportioning the Magnolia royalty.

As we discussed, it is not broken out by claim. It is not dependent on the claims that can only be infringed by indirect infringement versus those that can be infringed by direct infringement.

Lastly, Your Honor, with respect to the

question of inducement, the inducement question could be addressed in a willfulness phase if Your Honor is going to have one. I actually would suggest --

THE COURT: Where could it be addressed in willfulness? I mean, I'm lost. We are doing infringement now, right? I mean.

MR. LoCASCIO: You are right. Let me retract that.

The -- I am going to end there, but I am just going to also, while at this time I'm at the lectern, suggest that on this issue of a willfulness trial, because we're all -- our teams are all preparing lots of things, we're going to submit a bench brief because, to the point we've discussed before, we don't think there should be one from an evidentiary standpoint, but also that there's no right to a jury trial.

THE COURT: Yeah. Okay. On that, I'm not so sure as I was last time I was with you.

Mr. Ramani, can you just address inducement. I don't need to hear your argument on anything else.

What's the evidence that's been adduced so far from which a rational juror could conclude that Kurin knew that its product infringed the asserted patents?

MR. RAMANI: Several things, Your Honor. The pertinent claims are in the '081 patent, which

Professor Meinhart identified yesterday. And as Mr. LoCascio just described, they do require use of a vacutainer or other collection device in the attachment of it. And so that's why in order to infringe those claims, they have to be asserted against -- there needs to be some indirect infringement claim brought against Kurin as compared to bringing it against the actual individuals who are collecting the sample.

And so Professor Meinhart explained, walked us through the video, and he said that you would be following the instructions as provided in that video in order to carry out the operation --

THE COURT: I'm sorry. I don't... Just focus, if you could, because I'm really conscious of the time, right? I'd also like to get a little of a break. I have to make a phone call in another matter.

Can you please just focus on what's the evidence that someone from Kurin knew that the use of its product, i.e. or its product infringed the asserted patents?

I mean, we've got, for instance, we've already got today... We've got an admission. It is undisputed that Kurin knew... Well, they knew of two of the patents, right? I guess there's a third. We don't have an argument about that.

Actually, let's do that.

The third patent, what's the knowledge Kurin knew of the patent?

MR. RAMANI: The knowledge Kurin knew of the '709 patent?

THE COURT: Yeah.

MR. RAMANI: I don't know that it came out during our case in chief.

THE COURT: Well, that's a problem, right? So that means it's over.

MR. RAMANI: I'm sorry, there is no inducement claim. The inducement claim is only for the '081.

THE COURT: That answers the question. I don't fault you for that. All right. So the bottom line is, yeah, it's undisputed in February of 2023 they knew of the patent. So the knowledge on the first prong is absolutely established. What's the knowledge that they knew that those two patents were infringed?

MR. RAMANI: The knowledge that they knew -- focusing just on '081 patent, Your Honor.

THE COURT: Okay. What is the knowledge that it knew that use of its device infringes the patent?

MR. RAMANI: Well, they can only be used with a vacuum source. We have the web video. We have testimony from --

THE COURT: I'm lost. How does that get you knowledge of infringement because they know it can only be used with a vacuum source?

MR. RAMANI: Well, because that's part of the inventive aspect, Your Honor.

THE COURT: Well, it might be part of it but what about all the other claims? What's the evidence that they knew this device infringed?

MR. RAMANI: There's also testimony from Mr. Nason that came in about the operation of the device. But that's what we have at this point. Given the rulings Your Honor made before the trial, that's the evidence.

Actually, I have just been reminded by my colleague, the testimony that I just showed Mr. Rogers yesterday, where he said that he was infringing, that the Jet practices the '081, we have that.

THE COURT: Actually, that's a great point, and that was introduced in your case-in-chief.

MR. RAMANI: It was.

THE COURT: So I am going to deny the motion.

MR. RAMANI: Thank you, Your Honor.

THE COURT: Thank you for reminding me of that.

Okay. So the motion is denied. Obviously you are going to feel free to raise all these issues in what I'm sure will be... well, who knows what the verdict will

be, but it's preserved. Okay? Thank you very much. Anything else?

MR. RAMANI: Can I just make one record correction, Your Honor?

THE COURT: Yes.

MR. RAMANI: I think I misspoke. If I said that the two claims that Magnolia has asserted for inducement are only inducement claims. That's incorrect. They are inducement and direct infringement claims for both.

THE COURT: Is every claim that's asserted being asserted under a theory of direct infringement?

MR. RAMANI: Yes.

THE COURT: Then why are you bringing inducement?

MR. RAMANI: There's just two claims -- I can check with my team on this, Your Honor, to be blunt. I will have a better answer for you.

THE COURT: Okay.

MR. RAMANI: Thank you.

THE COURT: All right. Let's take a break for lunch. We will be back at ten of.

Be ready to go at 1:00, okay?

(Whereupon, a recess is taken.)

THE COURT: Please be seated. I just want to

make sure I have this right, though. There's alleged infringement occurring after Mr. Rogers' deposition; is that right?

MR. RAMANI: That's right, Your Honor.

THE COURT: Okay. All right. Just want to make sure about that.

All right. Next? Anything else? No?

MR. RAMANI: Not from either of us, Your Honor.

THE COURT: Mr. Rogers, is he here?

MR. RAMANI: He's here.

THE COURT: He should get on the stand.

(The jury enters the courtroom at 1:10 p.m.)

THE COURT: All right. Great, thanks. Have a seat. Thank you for being patient. I have other matters to attend to and the extra 12 minutes was my... I had to deal with another case, so sorry about that.

Mr. Ramani.

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Actually, good afternoon, Mr. Rogers. Let's discuss the Kurin Lock product.

Now, that was Kurin's first commercial product, right?

A. That's correct.

Q. And there's been a lot of testimony from you, in

particular, about the Kurin Lock, so let's just make sure that everyone is oriented.

Magnolia is not accusing the Kurin Lock of infringement in this case, right?

A. That's true.

Q. The reason that the Lock is even being discussed is that Kurin is saying that the Lock, in combination with some Kurin patents, invalidate the Magnolia patent claims, right? Is that your understanding?

A. I'm not an attorney so I don't know about this combination statement, but, yes, I invented it first.

Q. So let's talk about some technical differences between the Lock and the Jet.

So unlike the Jet, the Lock does not rely on a drawing force at the outlet to bring the initial blood into the device, true?

A. That is true.

MR. RAMANI: Your Honor, may I?

THE COURT: Sure.

MR. RAMANI: Thank you.

THE COURT: Do you want to move it?

MR. RAMANI: Yes, thank you.

THE COURT: You may want to see it, so...

MR. LoCASCIO: I can get up, Your Honor.

THE COURT: Sure.

MR. LoCASCIO: Probably easiest for everybody.

THE COURT: Want to go over there if that's a problem?

MR. RAMANI: No, that's not a problem. Not at all.

Mr. LoCascio, you want to --

MR. LoCASCIO: Trying to figure out if I can get an angle on it.

MR. RAMANI: Hold it up. Okay.

MR. LoCASCIO: Your Honor, am I fine to put my pad here?

THE COURT: Yes.

MR. LoCASCIO: Thank you.

THE COURT: You cannot go in the box, though.

MR. LoCASCIO: I have no plans to join the jury, Your Honor.

BY MR. RAMANI:

Q. Okay. We just talked about that.

MR. RAMANI: Your Honor, may I ask questions from here?

THE COURT: Yes.

MR. RAMANI: Thank you.

BY MR. RAMANI:

Q. The second difference between the Lock and the Jet, the Lock does not have a movable plug, true?

A. That's true.

Q. Okay. Let's add that.

And then, unlike the Jet, the Lock also has a vent that sends air directly outside of the device, right?

A. The Lock contains that, yes.

Q. Okay. So you would agree, wouldn't you, that these three differences are technical differences between the Lock and the Jet, right?

A. Yes.

Q. Okay.

MR. RAMANI: I will move this aside for now. I may come back to it.

THE COURT: Is that going to be in the way of the screen?

MR. RAMANI: I will slide it over a little bit.

THE COURT: Thank you.

BY MR. RAMANI:

Q. So, Mr. Rogers, why don't we take a look at an exhibit that's already in evidence, PTX-134.

And this is the February press release.

MR. RAMANI: Can we just blow up the title and the first two paragraphs, Mr. Smith. Thank you.

BY MR. RAMANI:

Q. This is the press release upon the Kurin Jet's announcement, right? We've seen this a few times?

A. I have.

Q. Yeah? So I don't want to belabor this, but Kurin announces the Jet, which is "a quantum leap forward." See that?

A. I do.

Q. And that's in comparison to the Lock, right?

A. It's actually a comparison to everything that existed on the market.

Q. Okay. Well, why don't we go to the next paragraph. We see right before that black line, "a significant technological advance over Kurin's own market-leading Lock."

That's what Kurin told the world, right?

A. That's true.

Q. Okay. And then you actually have a quotation here. And at the end on the first sentence, you say that "the Jet is a fundamentally different product that provides a new level of performance."

That's all true?

A. It is.

Q. Okay. And so, look, looking at that easel, we see those three technical differences between the Lock and the Jet. That's why you said what you did in this press release when you announced the Jet, right?

A. Those are elements of the Lock, but no, that's not

why I thought it was fundamentally different.

Q. Well, I think we can agree that it is a significant technological advance over the Lock given these three missing items, right?

A. I think those three items enable what made it fundamentally different.

Q. Okay. Let's talk --

MR. RAMANI: We can take that down, Mr. Smith. Thank you.

BY MR. RAMANI:

Q. Let's talk about Nolan Pupping. Now, he's an engineer who works at Kurin, right?

A. He is.

Q. And you asked him to tear down the Steripath Micro in 2021, right?

A. I did.

Q. Okay. Mr. Rogers, in your binder, the big white binder in front of you, there is a tab labeled PTX-96.

A. I have it.

Q. You have it? You see that that's an e-mail exchange between you, Mr. Pupping and some other folks?

A. Yes.

MR. RAMANI: All right. Your Honor, Magnolia Medical moves PTX-96 into evidence.

MR. LoCASCIO: No objection, Your Honor.

THE COURT: All right. It's admitted.

(Exhibit PTX-96 admitted into evidence.)

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Why don't we start off at the last page, which is Page 7.

MR. RAMANI: One more, Mr. Smith. Page 7. Let's blow that up, please.

BY MR. RAMANI:

Q. So this is an e-mail from you in July of 2021 to members of your management team, right?

A. It is.

Q. And you say in the second sentence: "I will also be bringing samples of SP and vascular integrity."

Do you see that?

A. I do.

Q. SP is Steripath, right?

A. I would say that's a fair conclusion.

Q. Okay. You then go on to write: "We absolutely do not," in all caps, "want to discuss Dakota with the sales team," exclamation point, right?

A. That's true.

Q. And Dakota was the code name for the Jet, true?

A. It was.

Q. Okay.

MR. RAMANI: Why don't we go up to the -- to Page 6, Mr. Smith. Look at Mr. Rogers' next e-mail right near the bottom. There we go.

BY MR. RAMANI:

Q. So here you're having a further exchange with these folks, Mr. Rogers. Do you see that? It's on July 10th.

It's on the screen if you want to follow along there as well. Should be on the monitor in front of you too.

So you see here you say in the third paragraph, you have the sales meeting coming up: "I plan to ship 100 or so Steripath and will have maybe a dozen vascular integrity products," right?

A. It does say that.

Q. Yeah. So this is for a sales meeting you are having with your sales team in 2021. You are going to bring 100 Steripaths, maybe a dozen products from this other company, Vascular Integrity, right?

A. Yes.

Q. Okay. Why don't we move up to Page 5 and let's look at Mr. Rogers' e-mail in the middle of the page there.

So this was after Mr. Pupping had provided an analysis to you of the Steripath Micro, right? He hadn't torn it down yet but he provided this analysis, right?

A. I don't see an analysis on here.

Q. Go ahead and look at the prior page, Mr. Rogers, and

you'll see it. You will see mention of it.

A. Okay. It says there is an attachment.

Q. Yep. Go ahead. Keep going.

So you're responding and you're saying: "Good start. Rather than beginning with their advertisement, perhaps we can set this up a bit differently." And you want columns that say "they claim" and "the reality."

Do you see that?

A. I do.

Q. And then you ask a bunch of specific questions about the Steripath, A through G. You see all those?

A. I do.

Q. Okay. So Mr. Pupping and you have further back-and-forth. And then, if we go to Page 2, you say in the e-mail right in the middle of the page: "Nolan, would you now dissect the device."

That's what you asked him to do, right?

A. I'm sorry. Which one are we on?

Q. We're on Page 2.

A. Page 2.

Q. And there's an e-mail to from you to Mr. Pupping right in the middle. And again, it's on the screen if you'd rather look at it there.

A. I do see it.

Q. Yeah?

And so you're asking him to take apart the Steripath Micro, one of your engineers, right?

A. I am.

Q. Okay. Why don't we go to Page 1 of this e-mail thread.

So you then have a response to Mr. Pupping at the bottom and you ask for a drawing that would explain the structure and how you believe it works.

Do you see that?

A. I do.

Q. And you say: "Perhaps a hand sketch with callouts might work."

A. It says that.

Q. And then you end your e-mail by saying: "In either case, a drawing would help when I explain this to others," right?

A. That's true.

Q. When I took your deposition, you could not remember who those others were. They were salespeople or somebody else, right?

A. That's true.

Q. You guessed you shared it with your outside counsel, Jon Hangartner, right?

A. I don't know.

Q. Now, he's a patent lawyer, isn't he?

A. He is.

Q. And he's been here watching the trial in the audience?

A. He is.

Q. In fact, in the audience, you have several people here on the left side all week from Kurin, right?

A. I think they are on the left side just so they can see the screen.

Q. Oh, sure. I am not suggesting you are trying to say they're on the plaintiff's side but five or six or eight of your employees have been here in court all week, right?

A. Employees, I believe there's only two.

Q. You've got board members, other people associated with Kurin, right?

A. No board members.

Q. Investors?

A. Investors and counsel.

Q. Okay.

MR. RAMANI: We can take that down, Mr. Smith thank you.

BY MR. RAMANI:

Q. So, Mr. Rogers, you were asked some questions --

MR. RAMANI: If I could get the document camera, please.

BY MR. RAMANI:

Q. Now, again, as part of the prior art in this case -- and, again, this is on Kurin saying that Magnolia never should have received its three patents.

On that side of the case, we have the Kurin Lock, and then we also have this patent application of yours.

And I think the shorthand for it, as we can see up here, is the Rogers '445 patent, right? We talked about that?

A. Yes.

Q. You referenced this figure, Figure 24C and Figure 24D, to describe how it works just a few minutes ago with your testimony, right?

A. I did.

Q. Okay. Let's talk about that.

So you attach a vacuum source here at the outlet, right?

A. Correct.

Q. Then blood comes in here, and you said it hits this plug right there, right?

A. Correct.

Q. That plug does not move.

That is not a movable plug, true?

A. I think the whole inner chamber is a movable plug because it all moves together.

Q. Sure. That is not my question. The plug -- because we will get to the rest of chamber in a minute, don't worry.

But this plug -- you just mentioned it is a plug. I just don't want there to be any confusion.

That is not a movable plug, as is used in the Jet, true?

A. It's not like the plug in the Jet, no.

Q. Okay. So then you said as this plug gets wetted, air is no longer able to go out. And so now we're getting to what you wanted to say. I told you we would.

This whole chamber here slides down, right? It rotates -- it moves forward, right?

A. And that -- what's the phrase -- the air-permeable plug. They all move together.

Q. Right. They all move this way?

A. Correct.

Q. As you can see.

So the sides here and this part move down towards the end, as you see in Figure 24D, right?

A. That's correct.

Q. And so what's now been uncovered are these two paths -- it's really one because it's a circle in a cross-section -- through which cleaner blood can flow, right?

A. That's correct.

Q. Okay. And it's Kurin's contention that this inner body, this cover that slides, that's a movable plug, true?

A. Sure. It plugs the holes.

Q. You ever used ear plugs?

A. I have.

Q. You have, right?

A. Sure.

Q. Yeah. You put them in your ears, inside, right?

A. Sometimes. Sometimes they are over the ear.

Q. Well, that's where I was going next. There are also earmuffs when it's cold, like it was here the last few days.

Those cover over your ears, right?

There is a difference between covering versus plugging.

You'd agree with that, wouldn't you?

A. No.

Q. Okay. So, Mr. Rogers, let's then turn to your patent, the '052 patent.

And now, just to set the table, that's the patent that Kurin is asserting back as a counterclaim, it's called, against Magnolia, right?

A. That's correct.

Q. So what that means is Magnolia sues on its three

patents, and we've talked about those some. Kurin, after that, countersues after getting the patent, as we talked about, against Magnolia, right?

A. That's true.

Q. Okay. Before we get into the specifics of your patent, let's talk about what you did not invent, so what was already known and out there.

Let's take a look at Claim 1.

MR. RAMANI: Mr. Smith, if we could, please, pull that up, DTX-1, Page 68.

Go ahead and go forward, Mr. Smith, to Claim 1, please.

There we go. Would you blow it up, please.

I think we're missing a little bit of the bottom, Mr. Smith.

All right. DTX, please.

There we go. If you could blow up Claim 1, please.

Thank you, Mr. Smith.

BY MR. RAMANI:

Q. Okay. So, Mr. Rogers, this is Claim 1 of your '052 patent, right?

A. It is.

Q. Okay. So let's talk about what was already out there, what wasn't invented by Kurin.

So the first bit of language, "an inlet port for receiving a blood sample."

That was already known, right?

A. Sure.

MR. RAMANI: Let's keep that highlighting, Mr. Smith, and let's add to it.

BY MR. RAMANI:

Q. The second piece, an outlet port.

That was already known, right?

A. That was an element that was out there.

Q. Okay. Let's go to the third one. "A chamber connected with the inlet port and configured to collect a first portion of the blood sample when under a drawing force applied from the outlet port from a blood sample collection device."

That was already known, too? That wasn't something Kurin invented?

A. No, that's new.

Q. You are saying that's new?

A. Yeah, I do.

Q. Okay. Well, we'll get back to that.

Let's go to the next element, point 4, which is, "a sampling channel connected with the inlet port and configured to convey a subsequent portion of the blood sample to the outlet port."

That was already known, right?

A. Yes.

Q. Okay. So we've got the first four highlighted, and your testimony is Number 3 was new. One, two, and four were already known.

Have that right?

A. Yes.

Q. Okay.

MR. RAMANI: Now, Mr. Smith, let's not highlight Number 5.

BY MR. RAMANI:

Q. But you would agree that Number 5 was also known, right?

A. Yes.

Q. Okay. So what's new here, in your view as the inventor of the '052 patent, is point Number 3, true?

A. I'm not a patent attorney. I think all the elements are collectively looked at.

Q. Okay. Sure. But when we went through at least the first four, you said, I think, twice that element Number 3 was new. That's what was not known. I will even look at the combination of those first four.

You take all four of those together, you're saying that the thing that was new is what Mr. Smith has put up in red, that's the chamber connected and so on, right?

A. I'm not a patent attorney, but I generally would agree with that statement.

Q. I know you are not a patent attorney, but this is your patent, right?

A. I don't write the claims.

Q. Of course, but you are the first listed name, as we saw, on the inventors on the patent, aren't you?

A. I am.

Q. And this trial is important to you and Kurin, right?

A. Sure.

Q. So you, of course, prepared for this trial.

Surely you read your patent in preparation for your testimony?

A. I did look at it.

Q. Okay. So you looked at it, made sure you were familiar with it before you came and testified under oath, right?

A. I think that's generally true.

Q. Well, in fact, despite what you just testified, the U.S. Patent Office said that Magnolia and Dr. Patton, in particular, had invented all four of these highlighted items in Claim 1 together back in 2008, years and years before you filed this application.

MR. LoCASCIO: Objection, Your Honor. I've let this go on for a while given the witness's role, but

Magnolia is not asserting in this case invalidity based on any prior art reference.

THE COURT: So that's objection?

MR. LoCASCIO: 402, 403.

THE COURT: Overruled.

MR. RAMANI: Thank you, Your Honor.

BY MR. RAMANI:

Q. Okay. Let's take a look at what happened in the Patent Office. If you turn to your witness binder, that white binder in front of you, Mr. Rogers. DTX-4A.

A. It's black.

Q. Oh, it's black. Excuse me.

DTX-4A, would you take a look, please.

You understand that when you apply for a patent, there's a back and forth that happens between the patent applicants or their lawyers and the people at the Patent Office who are figuring out whether this patent should come out, right?

A. I do.

Q. And that's called the file history?

A. That's what I understood with the testimony somewhere along the way.

Q. Okay. Good.

Well, why don't you turn to Page 35 or, if you like, you can look at it on the screen, as you prefer.

Looking at the screen? Okay.

MR. RAMANI: Well, Mr. Smith, if we could go to DTX-4 at Page 35, please.

Great. Would you just blow up Claim 1 there, Mr. Smith. And now, Mr. Smith, if it's possible, could you pull up that highlighted Claim 1 you had before and put them side by side.

Yep. Can you show that with Claim 1 in DTX-4.35.

Great.

BY MR. RAMANI:

Q. So, Mr. Rogers, if you compare the claims that Kurin submitted when it filed for your '052 patent originally, they're identical to the first four that we have highlighted in the patent as it issued, right? You see that?

A. I have to do a literal comparison as I look at this to make sure they are the same.

Q. If that's what you need to do, by all means. Go ahead.

A. They look almost the same.

Q. I mean, they are identical, right? Identical, word for word?

A. Well, actually, there is a word missing from the end of the fourth element.

Q. Oh, you mean the "and"?

A. It's an important word.

Q. Of course, of course, because that housing that defines gets added on later. So that's true. Thank you for pointing that out.

But the first four elements, other than that "and" --

MR. LoCASCIO: Your Honor, may I approach?

THE COURT: Sure.

(Whereupon, the following occurred at sidebar:)

THE COURT: All right.

MR. LoCASCIO: During the pretrial conference, there was a motion in limine on this very argument, the suggestion that they would compare to the Patton patent and argue that the scope of the patentability of this reference or the -- of the '052 patent was limited because of additions and features and comparison to Patton.

And on Page 191 of the pretrial conference, Mr. Ramani argued -- you asked, "Why would it be relevant because they are not asserted prior invalidity anymore?" Mr. Ramani, "It's relevant because it shows the scope of what they invented as very narrow because in this particular case," and Your Honor interrupted him -- or Your Honor spoke up, as is his right, and said:

"The Court: Hold up. I can't resolve this one right now. If you want to bring that, you cannot bring

that up" -- "or can't bring that up or mention it until you seek permission."

THE COURT: Okay.

MR. LoCASCIO: But that never happened. And I raised it in advance and addressed the argument that was made then, that what we're seeing here is essentially a back-door invalidity argument that they do not have in this case for anticipation or obviousness, based on the Patton reference. To argue this claim is limited and would confuse the jury into saying that this one particular feature is the only feature. And we all know that that's not how patents are granted or reviewed. This patent was granted over the Patton reference, and this line of examination. Why I objected the way I did, Your Honor, is --

THE COURT: What do you mean why you did?

MR. LoCASCIO: Objected on that there's no prior art invalidity in the case. And I said 402, 403 when I objected about five questions ago.

THE COURT: Right. Go ahead.

MR. LoCASCIO: We got the pretrial conference transcript out and raised it now. Because of that, the jury is being misled into thinking this patent could be invalid over the Patton reference if they find this one element that Mr. Ramani is going -- one unhighlighted

element, Element 5, except they don't have that argument in this case because they didn't assert prior art invalidity because Your Honor precluded them from doing so because they had not properly disclosed it, Your Honor, in their expert reports.

And this is -- it's what we raised then, what we expected would happen, and here we are. And it wasn't raised -- and there was an order from the Court that it should have been raised.

THE COURT: Okay. What are your...

I'm not going to let him make it as an invalidity argument. I'm just not going to let it happen. Here's the thing, you both, I mean, frankly, it's kind of enjoyable to watch, but this has been mainly about who is the better innovator. It's not been a patent case, and you both are trying it this way. You both. You didn't object to either of your openings. You've let it get here. And so now we have in front of the jury who is the better innovator. And both sides have kind of planted the flag and that's the theory they're pursuing, and this goes to that.

MR. RAMANI: It does indeed.

THE COURT: This is how you guys wanted to try the case. So now, if anybody tries to argue, but I'll bet you Mr. Ramani won't, that this is somehow an invalidity

defense, then I will stop it.

MR. LoCASCIO: Here's my -- what I'd say is the problem. If they were arguing throughout this case that the innovation was something around the Bullington work, except recall that this case from the beginning, the inventive story we've heard is the Patton story.

THE COURT: I would argue --

MR. LoCASCIO: I'm sorry, Your Honor?

THE COURT: I interrupted you. I apologize. What I meant is, I don't think it was limited to Bullington. I don't think it was limited to Patton. But it started with Patton, with him leaving Nebraska and going to med school. What a great story. Not sure how it's relevant.

MR. LoCASCIO: And then we have his publication and article that we saw. And Mr. Bullington talked about that. And that was the solution to this problem. Except that's not his patents. Those patents were in this case and those patents are out of this case because --

THE COURT: Well, you can ask him on redirect, you know.

MR. LoCASCIO: Okay.

THE COURT: Part of the problem is, look, it's really hard to draw, you know, if it were me and with a lot of other attorneys, these guys, I'm pointing at

Ms. Farnan and Mr. Smith have seen me. I really rein in the lawyers a lot in these patent cases. It's a strict liability offense, I'm rather betraying my background, strict liability tort. And I don't need the grandpop. I mean, no exception. I don't think I tried a patent case yet where somebody didn't bring out that they're a grandfather or a grandmother. It's amazing.

But you all tried it that way. And if I were doing the system, I would probably, you know, would have had the expert begin the case, wouldn't have had any inventor testimony on any of this.

You both tried it this way. I actually, from the beginning, thought the fairest way to try this case, anticipating precisely what I am seeing in court, is that both sides would get a chance to bring their patents against each other at the same time.

I will say this, because I've said a lot in jest, and teasing about some of, you know, what somebody might infer from my comments, says a side show has dominated. But I actually do think a lot of the testimony from the founders of the company is relevant and is informative and it's good for the jury to have a full picture. Both sides, I think, have been treated fairly. I don't think anybody could reasonably object to my evidentiary calls because they've applied equally to both

sides. And I think this applies equally to both sides. So I'm going to let it. And, boy, but I'll bring a hammer down if all of a sudden Magnolia suggested this went to the validity of the asserted patent. Okay?

MR. LoCASCIO: Okay.

THE COURT: All right. Thank you.

MR. RAMANI: Thank you, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

THE COURT: You may proceed.

MR. RAMANI: Thank you, Your Honor.

Mr. Smith. I was asking for DTX- -- oh, here we go. Just to reorient.

BY MR. RAMANI:

Q. So before the sidebar, Mr. Rogers, we were talking about how the Patent Office said that Dr. Patton of Magnolia Medical actually invented the four yellow highlighted items in your '052 patent. Let's take a look in your binder at DTX-4B, please.

MR. RAMANI: Could you pull that up, Mr. Smith, just by itself.

Thank you. Would you please scroll forward, Mr. Smith. One more. Here's what we want. Okay.

BY MR. RAMANI:

Q. All right. Mr. Rogers, if you go to the page -- I mean, you can look at it on the screen if you prefer.

You see that there's an office action summary? You understand that?

MR. RAMANI: Can you blow that up, Mr. Smith, at the top? Thank you.

BY MR. RAMANI:

Q. Do you see that?

A. I see it.

Q. Okay.

MR. RAMANI: Then, Mr. Smith, if you could blow up the Disposition of Claims in the middle, please.

BY MR. RAMANI:

Q. While he's doing that, an office action summary is a notice from the Patent Office, the examiner, back to your lawyers, right?

MR. LoCASCIO: Objection, Your Honor, foundation.

THE COURT: Hold up.

MR. LoCASCIO: He was testifying.

THE COURT: What's the relevance?

MR. RAMANI: It's in evidence, Your Honor. I just want to point out that the claims are rejected and we'll go to the next page in a minute.

THE COURT: Okay. Hold on a second.

All right. Ask the one question, if the witness even knows.

MR. RAMANI: Okay. Why don't I move forward a little bit. Why don't we go to Page 4.3612. Go ahead and click forward. One more. Okay. Would you blow up the bottom portion there.

BY MR. RAMANI:

Q. See there, Mr. Rogers, it says, "Claim 1 is rejected as being anticipated by Patton 2008," and so on?

Do you see that?

A. I do see that.

Q. You understand that that's Dr. Patton, one of the co-founders of Magnolia Medical, right?

A. I don't know for certain, but it appears to be true.

Q. And you see the date there is 2008, right?

A. I do.

Q. Okay. Thank you.

Why don't we turn back to your patent.

MR. RAMANI: Mr. Smith, can we pull up Figure 23B of the '052 patent, please.

If you could rotate it, please. Great. Thank you.

BY MR. RAMANI:

Q. So, Mr. Rogers, you talked about this during your direct examination. Do you remember?

A. I do.

Q. This is in your patent, your '052 patent, right?

A. Yes, it is.

Q. Okay. And you explained that the valve shown at the top requires an actuation, some kind of click, in order to open it so that the clean blood can flow up and around, right?

A. Well, that's what it shows in this illustration. There a little bit more to that.

Q. Got it. Let's talk about this Figure 23 a little bit more then. It addresses the concepts embodied in the Jet, right?

A. I would say, no, it doesn't.

Q. You would say, no, it doesn't? You remember I took your deposition, and at your deposition, I asked you:

"Let me make sure I understand your testimony. Figure 23 in the '052 patent addresses the concepts embodied in the Jet device, right?"

And you said: "Correct."

A. So that was back in May, as I recall. And when I look at this, I think it is the principle of operation with the Jet, but it's not automatic.

Q. So let's talk about that. So you gave the testimony that I just described during your deposition under oath this past May, right?

A. I believe that's true.

Q. And you've been deposed, what, 12, 15 times at this

point?

A. I have no idea.

Q. So you understand that when you give a deposition, you and your lawyers have a chance to sit down and submit any corrections or clarifications after the deposition, right?

A. I thought that was just to fix typos.

Q. Whatever the fix is, you didn't submit a clarification to correct that testimony I read, right?

A. No.

Q. Okay. So, basically, this Figure 23 of the '052 patent is the Jet without the housing, right?

A. No, I think there's a housing there.

Q. You think there's a housing there?

A. I do.

Q. When I took your deposition on May 8, 2025, I asked you --

MR. LoCASCIO: Page?

(Counsel confer.)

BY MR. RAMANI:

Q. "Question: So is Figure 23 of the '052 patent the Jet?

"Answer: Basically, yes, just doesn't have the housing."

That's how you testified under oath just this past

May, right?

A. Well, it doesn't have the housing of a commercially available Jet, but the fluids are clearly housed.

Q. Mr. Rogers, I'd like you to please listen to my question and answer my question, if you would.

A. Please ask it again.

Q. I'm happy to.

So when I took your deposition this past May in your lawyer's offices, I asked you:

"Question: So is Figure 23 of the '052 patent the Jet?

"Answer: Basically, yes. Just doesn't have the housing."

That's how you testified in your deposition, right?

A. I believe that's true.

Q. Okay.

So you understand that the '052 patent of yours, other than Figure 23, all the other figures describe the Kurin Lock, right?

A. I would have to look through all the figures.

Q. Okay. Well, as we saw earlier, the Kurin Lock does not operate with a drawing force at the outlet. That's point Number 1 over on the flip board we wrote on, right?

A. Well, if you look at 1, it's kind of deceptive because you can't get blood in a blood culture bottle

without a drawing force at the outlet.

Q. So let's clarify then. So the Kurin Lock does not use a drawing force at the outlet to bring the dirty blood into the device, right?

A. Correct.

Q. Okay. So Figure 23 and its associated text in the written description of your patent, that's the only embodiment that discussed use of a drawing force at the outlet in the '052 patent, right?

A. I think that's true. I'd have to review it.

Q. Well, let's take a look at --

MR. RAMANI: Can I get the document camera, please. Thank you.

BY MR. RAMANI:

Q. Let's take a look at your lawyer's opening statement slides here. You see there's -- this was shown, the '052 patent. And you see what's highlighted at the top of this paragraph is Figure 23A and B illustrate another, and so on. And then there's a sign that says: "Vacuum-powered to the vacuum or other drawing force."

You see that?

A. I do.

Q. That's the only disclosure of a vacuum or other drawing force applied from the outlet port in your '052 patent, right, in connection with Figures 23A and B?

A. Again, I'd have to look through it all but I'll take -- you know, I believe that's true.

Q. So let's return to the last element of Claim 1 of your '052 patent.

MR. RAMANI: Mr. Smith, can we pull up the -- just the highlighted version that we were working through before.

There we go. Thank you.

BY MR. RAMANI:

Q. So, Mr. Rogers, focusing on --

MR. RAMANI: And could you highlight the inlet port portion as well, Mr. Smith, please.

BY MR. RAMANI:

Q. Okay. So we saw that all four of those were rejected by the Patent Office. So turning to this housing that defines the inlet port, the sampling channel and the outlet port.

The housing that defines is not present in Figure 23, but instead, other figures of the '052 patent, true?

A. That's true. It's throughout it in the other figures.

(Reporter clarification.)

THE WITNESS: It's throughout. Throughout. Sorry.

BY MR. RAMANI:

Q. Right. So it's throughout the other figures but it's not in Figure 23, right? You agree with that?

A. Yes.

Q. Okay. So for the housing that defines element, you had to look at other embodiments, as it's called, in the '052 patent, right?

A. Well, I believe that there are housings throughout the patent in the other embodiments, a different kind of housing than what's shown in 23A and B.

Q. In the other patents?

A. Well, in the other drawings in this patent.

Q. Oh, sure, the other drawings, right. But there's a -- I'm just asking about 23 -- 23A and B doesn't provide the housing that defines in your '052 patent, right?

A. No, I think it does.

Q. Okay. You remember when I took your deposition this past May, I asked you:

"QUESTION: So for the housing, you looked at other embodiments --

THE COURT: Hold on. Hold on.

MR. LoCASCIO: Could we get a page and line when the witness is being asked about his testimony.

MR. RAMANI: I apologize, Your Honor. 330, 10 to 12.

MR. LoCASCIO: Thank you.

MR. RAMANI: May I proceed, Your Honor?

THE COURT: Yeah.

MR. RAMANI: Thank you.

BY MR. RAMANI:

Q. So at your deposition this past May, I asked you:

"QUESTION: So for the housing, you looked at other embodiments in the '052 patent, right?

"ANSWER: I did."

You said that, right?

A. I don't know. I don't have it in front of me.

Q. Well, maybe I can refresh your recollection. If you turn in your binder, there's a tab that says "5/9/29 Deposition."

Could you please turn to Page 330. Tell me when you're there.

A. I have it.

Q. Okay. Please read to yourself Page 330, Lines 10 to 12. And, now, please put away the document. You have to put it away, sir. Technical -- for technical legal reasons.

So let me ask you the question again. At your deposition this past May, I asked you:

"QUESTION: So for the housing, you looked at other embodiments in the '052 patent, right?

"ANSWER: I did."

That's how you testified at your deposition under oath?

A. I did.

Q. Great.

MR. RAMANI: Mr. Smith, can we go back to the '052 patent and look at the text on Page 66 that shows how Figure 23 works.

It's forward. Page 68, I believe, Mr. Smith. There we go. And starting on the left where it says "Figure 23A," would you please blow that up, that paragraph.

Okay. So, Mr. Smith, would you please highlight where it says "a vacuum or other drawing force" and so on, that whole sentence. The whole sentence, go ahead. All the way down to "be sequestered" -- great. Thank you.

BY MR. RAMANI:

Q. So, Mr. Rogers, this is in your '052 patent and this is the description of this vacuum or other drawing force we've been talking about, right?

A. Yes, it is.

Q. And so down near the bottom it says: "The initial aliquot of blood will contact the hydrophobic plug and cause the initial aliquot of blood to back up into the

sequestration chamber and be sequestered there."

Do you see that?

A. I do.

Q. Now, that's what you wrote when you applied for this patent back when lawyers said you put your flag down in 2016, right?

A. I didn't write it but the attorneys did.

Q. They did.

And you understood then -- you agreed with this language back then, didn't you?

A. It was my understanding of how it worked, yes.

Q. Yeah. Your understanding was that your invention sequestered in 2016, right?

A. Yes.

Q. In 2019, because Kevin Nason conducted some tests, you changed your mind, right? You came to conclude your device did not sequester, your inventions did not sequester blood, right?

A. By the definition of the word as I understood it then, no.

Q. So back to this opening timeline.

MR. RAMANI: Can I get the document camera, please. Thank you.

BY MR. RAMANI:

Q. Mr. Rogers, we've seen this a few times now. You

filed for your '052 patent after Magnolia had already sued, right?

A. We filed a continuation, yes.

Q. Yeah, you filed a continuation, right?

And what that means is you filed a new application, but it ties back to your 2016 original application, right?

A. Yes. It's my understanding that you can't change anything other than the claims.

Q. Now, you have heard of the practice of submitting corrections to a patent specification, right?

A. I have not.

Q. When I took your deposition --

MR. RAMANI: And this is 337, 15 to 17, Counsel.

BY MR. RAMANI:

Q. -- didn't I ask you:

"QUESTION: You're aware that you can submit corrections to a patent specification, right?"

And you said:

"ANSWER: I've heard of the practice"?

A. I have heard of it. I haven't done it.

Q. Well, whatever the case is, you didn't submit a correction to your application when you filed it in July of 2024 as to the sequestration point, right?

A. I have no idea if that was -- if that happened.

Q. And you didn't do it because you know if you had, you would have lost that 2016 date. That was the key for you, right? You needed to keep that 2016 date. If you change any of the text, if you said we no longer sequester -- my understanding changed in 2019, my invention doesn't sequester, you wouldn't get that 2016 date, right?

A. No, that wasn't what I was thinking.

Q. And then you couldn't have sued Magnolia, you couldn't have countersued Magnolia in this case with that patent, right?

A. I couldn't -- I did countersue Magnolia.

Q. You did. But if you made the correction, if you changed the language that you said doesn't accurately describe your invention, you wouldn't have gotten the date you needed to get the patent and countersue Magnolia, true? That's why you didn't change your wording?

A. If I didn't get the patent, then, no, I could not.

Q. And it's your testimony, by the way, repeatedly under oath, that the timing of your patent filing and issuance was completely coincidental, had nothing to do with the fact that Magnolia sued you, right?

A. So patents go through a continuation practice and you constantly keep them alive and file new claims. The attorneys did this.

Q. Right. And your attorneys did that, sure. But I

asked you a question about you. And you have testified repeatedly that you did not ask that this patent get applied for so you could countersue Magnolia. It just happened coincidentally three months after Magnolia sued Kurin for infringing three patents.

That's your testimony, right?

A. I did not instruct anyone to do it.

Q. Okay. Let's talk about the market for blood diversion devices.

In 2022, you testified that the blood culture collection market could be a $1 billion market, right?

A. I believe that's true.

Q. And by that you mean $1 billion in sales every year, true?

A. Yes.

Q. Similarly, you'd like to see a valuation of Kurin of hundreds of millions of dollars, right?

A. I think you are taking that out of context.

Q. Sir, let me ask you my question again. And I'll ask it this way, if you prefer.

MR. RAMANI: And Counsel, from the deposition, it's 295, 5 to 10.

BY MR. RAMANI:

Q. When I took your deposition back in May, sir, and you testified under oath, didn't I ask you:

"What valuation would you like to see of Kurin?

"ANSWER: Really high.

"QUESTION: Give me a number.

"ANSWER: Hundreds of millions of dollars."

Was that your testimony?

A. I would have to see the testimony.

Q. Well, do you remember it?

A. No. I remember you asking me billions of dollars or an IPO and I said no.

Q. Okay. So you don't remember this specific testimony I just read you, right?

A. I remember portions of -- generally, yes.

Q. We can move on.

Now, you own somewhere in the 23 to 24 percent range of Kurin, right? That is true as of your deposition?

A. I think that's generally true.

Q. And including all of the trusts for your family and so on, that ownership percentage is probably in the 30 to 35 percent range, right?

A. No, that's not true.

Q. Once again, at your deposition when I questioned you under oath this past May, I asked you:

"QUESTION: What percentage of Kurin do you own?

"ANSWER: Boy, now, this is a test. I believe I own either 23 to 24 percent. But my family, I think, is -- if

you include all the trusts of the family, it's probably in the 30 to 35 range."

That was the answer you gave, was it not?

A. I misspoke.

Q. You mean you misspoke in the deposition?

A. I guess I did. I --

Q. And let me stop you.

Again, you had a chance to correct it if you made a mistake; you didn't do that, right?

A. I didn't see that.

Q. Okay. Now, if Kurin hits a billion-dollar valuation, that would mean, according to this testimony you gave, 30 to 35 percent, 300 to $350 million of Kurin stock value for you and your family, right?

A. If those numbers are correct and that were to happen, then, yeah, that would be true.

Q. So for that to happen, you'd have to win this case, right?

A. Which case?

Q. This lawsuit that you are here testifying in?

A. The counterclaim or the one against me?

Q. I just think of it as one lawsuit. If Kurin loses this case, probably going to be a challenge for you to get to a billion-dollar valuation anytime soon, right?

A. Well, if we were to lose the case, yes, it would --

everything would be very difficult.

Q. So let's talk about patent filing again.

Now, you're accusing the Steripath Micro of infringing the '052 patent, as we've heard, right?

A. I am.

Q. And the Steripath Micro, as we can see, was out of the market October of 2020, right?

A. Yes.

Q. And, again, you had already put your flag down in 2016, right?

A. Correct.

Q. But -- and you learned about the Micro, of course, because you guys are competitors, shortly after it came out, right?

A. At some point I did.

Q. You didn't apply for what became '052 patent any time in a couple of years after the Micro, right?

A. No.

Q. As we just saw, you had the Steripath Micro even torn down by one of your engineers in July 2021, Mr. Pupping, right?

A. Yes.

Q. You didn't have anybody apply for the '052 patent after that teardown when you saw the guts and saw how it worked, right?

A. I did not. Well, I did after -- well, I didn't. The patent attorneys did later.

Q. Yeah. But not then.

That was in 2021?

A. No.

Q. Nobody applied then, right?

A. No.

Q. So the Kurin Jet launched, again, in 2023.

Nobody went and applied for the '052 patent around that launch, right?

A. No.

Q. And, again, it's your testimony that this is all just coincidental, has nothing to do with the fact that Magnolia sued you, right?

A. I believe there's more to the story.

Q. Now, on the topic of Magnolia, you've known of Magnolia Medical since 2013, right?

A. I've known of Magnolia Medical since 2015.

Q. Well, you were e-mailing with Magnolia Medical personnel in 2013.

Your own lawyer showed you that earlier, didn't he?

A. Yes.

Q. Okay. Let's take a look -- I want to make sure I heard your testimony right, and if I didn't, maybe we can save some time.

I think your lawyer might have asked you, "You were never an advisor to Magnolia Medical?"

You were an advisor to Magnolia Medical, weren't you?

A. I did give them some device. I wouldn't consider myself an advisor.

Q. Okay. In your mind, there is a difference between giving somebody commercial advice versus being an advisor to them? Is that what we're talking about?

A. I think if it's just kind of a -- somebody who is not directly related to the company in some way, a paid consultant, then it's just comments.

Q. Now, suffice to say, in 2013, you know Magnolia had five issued patents, right?

A. I don't know that I knew that.

Q. Okay. Well, let's take a look at PTX-21.

MR. RAMANI: Which is already in evidence, Mr. Smith.

BY MR. RAMANI:

Q. And this is e-mail that your lawyer showed you earlier, Mr. Rogers. It's up on the screen, if you prefer to follow there but, again, it's up to you.

And the lawyer showed you this, but he didn't show you the third page. Let's go to the third page.

And you see, at the top, there is an e-mail from you to Ward Sparacio, that we heard some about, right?

You see that, Mr. Rogers?

A. June 17, 2013?

Q. Correct. It's on the screen, if you want to look there.

And do you see down at Number 5, "Have you reviewed the patents? Five patents issued with several informal FTOs."

Do you see that?

A. Yes, I do.

Q. So you knew in June of 2013 Magnolia had five patents, with several informal freedom to operates as well, right?

A. That was a response from Ward Sparacio.

Q. Yeah, it was a response to you?

A. Yes.

Q. Yeah, and you read it because the chain goes on up above, right?

So let's go ahead and go forward --

MR. RAMANI: We can take that down, Mr. Smith.

BY MR. RAMANI:

Q. Let's go forward to 2015. I'm not going to show the next adventure e-mail. I think the jury has seen that enough. We have all talked about it probably more than enough.

But you had this meeting with Mr. Bullington at the

fish market in March 26, right? Testified about this?

A. I believe that's correct.

Q. And he brought the device to the meeting, as you talked about.

He may have even handed it to you, just not sure, right?

A. Yes.

Q. Now, "that was a very important meeting."

That's how you described it, right?

A. Yes.

Q. Now, it was suggested by your lawyer and asked -- I think you maybe even said you didn't start thinking about a new company, let alone starting a new company, within ten days of that lunch.

Remember that, in your direct testimony?

A. That's true.

Q. Okay. Why don't we pull up PTX-27, and let's test that testimony.

MR. RAMANI: 27, Mr. Smith.

Great. Would you please blow up the top e-mail.

BY MR. RAMANI:

Q. So you see this is this e-mail exchange between you and Gino Kang that we've seen.

It was shown in your lawyer's opening about how he

had gone and looked at Magnolia's website and was criticizing it, all this stuff, right? That's the first e-mail?

A. Yes.

Q. Your response above is where you describe it as a Rube Goldberg, all of that, right?

You then go on to say --

MR. RAMANI: And why don't we highlight the second to last sentence, Mr. Smith.

BY MR. RAMANI:

Q. "I'm getting some market research done to see how big this is."

Do you see that?

A. I do.

Q. Now, right after that you wrote, "If large enough, it's a project we should discuss."

That means a new business, right?

A. No.

Q. So after meeting with Mr. Bullington -- let's jump forward, actually. Let's see if we can save some time. Let's jump forward to PTX-28, which is in evidence.

MR. RAMANI: And let's start at the e-mail at the bottom, Mr. Smith.

BY MR. RAMANI:

Q. So this is an e-mail from you to several of your

former colleagues of the company you had sold, right?

A. Yes.

Q. And here you write, on June 11, 2015, "It doesn't look good for Magnolia," and so on.

Do you see that?

A. I do.

Q. Now, at your deposition, you couldn't say why you were watching Magnolia here in June, right?

A. I did not say.

Q. Okay.

MR. RAMANI: So let's go ahead and scroll up to the next e-mail, Mr. Smith.

The next two, actually, that one and the one from Mr. Rogers above it, please. Thank you.

Great.

BY MR. RAMANI:

Q. So Mr. Kang asks if you have insights on Magnolia, and you say that you met the CEO and there would be three, maybe six key studies that would complete in 30 days. It is now nearing 90 days and nothing.

So you have been tracking Magnolia from the time of that lunch, right? He told you studies would come out in 30 days. It's been almost 90 days, you haven't seen anything, right?

A. Yeah.

Q. Okay. Why don't we go up to the note right above from Dave Lloyd.

And he writes, "Timing is funny. Today I received a bottle of 2011 Darioush cabernet from Greg and Ward as a thank you, so they haven't disappeared?"

Do you see that?

A. I do.

Q. Now, Mr. Lloyd had helped Mr. Bullington and Mr. Sparacio with some distributors, right?

A. He did.

Q. Mr. Lloyd did that because you asked him to.

You asked him to help Magnolia, didn't you?

A. Yes, upon request from Ward.

Q. So two months after your very important lunch meeting, where you decided you didn't want to work with Magnolia -- and by the way, you never told them -- you are having Mr. Lloyd help out Magnolia while you are still tracking them, right? Do we have the picture straight right here?

MR. LoCASCIO: Objection, compound.

THE WITNESS: Working with someone is not the same as helping.

THE COURT: It's overruled.

Go ahead. Do we have the picture. Go ahead.

BY MR. RAMANI:

Q. Go ahead, sir.

A. Working with someone is not the same as helping them.

Q. Working with someone is not the same as helping them. Okay.

Meanwhile, around this time frame, this June 12, 2015 time frame, when all of this is happening, you conceived of the Kurin Lock in late or mid July, the prototype, right?

A. I believe that's true.

Q. And then you built that prototype, right?

A. I'm sorry, what was the question?

Q. Then you built that prototype, right?

A. Well, I jerry-rigged some parts together, yes.

Q. Okay. And then you go on and -- I think we may have seen this -- in July, you meet with your old colleagues and you decide you are going to start a company.

It will focus on false positive blood cultures, right?

A. We didn't meet in July.

Q. You did not meet in July?

A. We had a telephone conference.

Q. Okay. So you had a telephone conference to talk about new co meeting agenda, right?

A. That's true.

Q. All right.

Now, while all this was happening, you didn't tell Mr. Bullington about that meeting, about how you were tracking him, about how you were, at the same time, asking people to help him, and so on? You didn't share any of that stuff, right?

A. I did not.

Q. Wouldn't it have been honorable to just call the guy and say, "Hey, listen, I'm going to do a competing venture against you"? Wouldn't that have been the right thing to do?

A. I think I gave him the message that his device was too complicated.

Q. Let me try again.

When I asked you at your deposition in May, "Wouldn't it have" --

MR. RAMANI: And it's, by the way, 15, 14 to 19, counsel.

BY MR. RAMANI:

Q. At your deposition in May, I asked you, "Wouldn't it have been honorable to just call the guy and say, 'Hey, listen, I'm going to do a competing venture against you,'" and the answer you gave is, "I don't know if it's honorable or not. It's pretty stupid."

A. I would agree with that statement.

MR. RAMANI: Thank you.

No further questions, Your Honor.

THE COURT: All right.

Any redirect?

REDIRECT EXAMINATION

BY MR. LoCASCIO:

Q. Mr. Rogers, you were asked a question a second ago about helping Ward Sparacio about distribution.

Do you recall that?

A. I do.

Q. And you said -- Mr. Ramani, then, turned it into an answer. I actually objected to it. This was sort of a big long question.

Mr. Ramani's question was about you were working with Magnolia, and you gave an answer that said, "Working with someone is different than helping someone."

What did you mean by that?

A. Well, when I think of working, that you are engaged together to do something. We were just giving information once in a while that we already possessed when they requested it.

Q. Was there any point in time where you or Mr. Lloyd or anyone else was working with Magnolia, sir?

A. No.

Q. Mr. Ramani asked you a lot of questions about a

patent owned or issued to a Dr. Patton.

Do you recall that?

A. I do.

Q. And you've been in this courtroom the whole time, and did you hear questions and the narrative from Mr. Ramani about, "Well, Dr. Patton grew up on a farm in Nebraska and he developed something" -- do you remember all that?

A. I do.

Q. And Mr. Bullington testified, and he went on about how he met Dr. Patton and Dr. Patton did some studies.

Remember all that?

A. I do.

Q. Sir, are any of the Magnolia patents, whether they're still in existence now or not, owned by Dr. Patton where he's actually an inventor on anything? Are any of those asserted in this case?

A. None are asserted in this case.

Q. And you understand, sir, that in this case, the parties accused of patent infringement can argue that a patent is invalid because someone else had done it first and it existed in the prior art, correct?

MR. RAMANI: Objection. Leading.

THE COURT: Yep. Sustained.

BY MR. LoCASCIO:

Q. Mr. Rogers, are any of the Patton patents or any

publication by Dr. Patton or anything else being asserted by Magnolia in this case as prior art to invalidate your Rogers '052 patent?

A. No, they are not.

Q. And are you aware -- withdrawn.

Is Magnolia arguing that anyone in any reference, any patent, any article, or any prior sale of anything, is prior art to invalidate the '052 patent that you have in this case?

MR. RAMANI: Objection. Leading.

THE COURT: It is a close call.

I'll allow the question, and then I'm going to put an end to the closing argument. All right?

THE WITNESS: No.

MR. LoCASCIO: Thank you, Your Honor.

No further questions.

THE COURT: All right. You may step down.

Next witness?

MR. LoCASCIO: We'll tidy it up as we do the hand off.

At this point, Kurin calls Kevin Nason to the stand.

THE COURT: Okay.

MR. LoCASCIO: My colleague will be handling Mr. Nason's testimony.

THE CLERK: Please remain standing and raise your hand. Please state and spell your name for the record.

THE WITNESS: Kevin Nason, K-E-V-I-N, N-A-S-O-N.

KEVIN NASON, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

BY MS. TRIPATHI:

Q. Good afternoon.

MS. TRIPATHI: Kurin moves into evidence DTX-0019, 1072, 1073, 91, 654, 1086, 1085, 502, and 633. To be clear, those are all DTX exhibits.

MR. BLOCK: No objection, Your Honor.

THE COURT: All right. They are admitted.

Hold up.

What was exhibit between 1073 and 1086, please.

MS. TRIPATHI: I had two DTX-91, DTX-654. I'm also happy to read them again.

THE COURT: Okay. We're good. Thank you very much, and they are all admitted.

MS. TRIPATHI: Thank you.

(Exhibits DTX-0019, 1072, 1073, 91, 654, 1086, 1085,

502, and 633 were admitted into evidence.)

BY MS. TRIPATHI:

Q. Good afternoon, Mr. Nason. Can you please introduce yourself to the jury?

A. My name is Kevin Nason.

Q. What do you do for work?

A. I am VP of research and development at Kurin.

Q. What is your educational background?

A. I have a bachelor's degree in mechanical engineering from University of California San Diego and a master's degree in mechanical engineering from Stanford.

Q. You had mentioned that you were the vice president of research and development at Kurin.

How long have you been with Kurin?

A. I started working there in May 2018.

THE COURT: Do me a favor. You are going back like this, and we're getting reverberations from the microphone. If you could just kind of sit a little bit closer, that would be good. Thank you very much.

BY MS. TRIPATHI:

Q. How did you come to work at Kurin?

A. So I worked at a small orthopaedic start-up that grew, got acquired by a larger company, and I wasn't enjoying the larger company as much, so I contacted Gino Kang, and I knew Bob Rogers, two founders of Kurin, and

talked to them. Gino said he was going to be leaving and it would be a good opportunity for me to come to a small company and help it grow.

Q. Why didn't you like working at a larger company? Why do you prefer start-ups?

A. Just like the smaller, faster environment, more contribution to the projects and a smaller group to work with.

Q. And what do you do at Kurin on a day-to-day basis? What's a typical day look like for you?

A. So I'm responsible for any new product development that we're working on, designing and developing test equipment to test our devices and then supporting our manufacturing line for all of our products.

Q. And during your time at Kurin, which products have you worked on, be it development, testing, or anything else?

A. Worked on the Kurin Lock, worked on the advanced safety needle, and I worked on the Kurin Jet, and then some other smaller projects.

Q. So when you started at Kurin in May 2018, what was your first assignment?

A. First project was working on the -- improving the manufacturing and assembly of the Kurin Lock.

Q. And what aspect of the Kurin Lock were you looking to

improve upon for the manufacturability?

A. Initially, specifically I was looking at the coating of the umbrella valve component inside the Lock.

Q. Are you familiar with how the Kurin Lock operates?

A. Yes, I am.

Q. Can we please -- can you please turn in your binder to DTX-15.

A. I don't have a binder.

Q. My apologies. I have not passed those out.

MS. TRIPATHI: May I approach, Your Honor?

THE COURT: Yes.

BY MS. TRIPATHI:

Q. That might make it easier to turn to DTX-15, if you actually have it. Can you let me know when you have that pulled up?

A. Yes.

Q. And what is the document at DTX-15?

A. It's a screenshot of a video, Kurin video from the website.

Q. And did you contribute to the creation of this video?

A. I did.

MS. TRIPATHI: Can we publish DTX-15, and can we please play, without audio, from 23 to 28.

(Video plays.)

BY MS. TRIPATHI:

Q. So, Mr. Nason, we're going to get into some technical details. So I believe you have a pointer you may use to assist you with your testimony.

Can you please explain to the jury what it is that they just saw happen in the Kurin Lock?

A. Yes. So beginning of the video, the nurse inserts the needle into the patient's vein. Blood starts traveling down the tube into the Lock, turns here, it's traveling into the containment channel of the Lock.

Q. You had mentioned that the blood turned. Why did it turn down the path that it did?

A. So the --

THE COURT: Actually, I'm sorry to do this, but I have to attend to a matter of some urgency. You've only just started, so let's take our afternoon break real quick, if we could, and I can have you just take about 10 to 15 minutes. And then you can back up and start the last couple questions again. All right? Thank you very much.

(The jury exits the courtroom at 2:26 p.m.)

THE COURT: Okay. We are going to come back in ten minutes. All right? Thank you very much.

Please be seated.

MR. RAMANI: Your Honor, if I could say, I

don't mean to interrupt Ms. Tripathi, but if this is the afternoon break, I think there might be some deposition and exhibit issues with the next witness.

THE COURT: The very next one?

MR. LoCASCIO: Actually, I don't think -- I don't think you're wrong. I may say mistaken. The only exhibit issue that was in the Norfleet exhibit list is in evidence, came in already, DTX-15, I think -- not 15. The Micro -- whatever that exhibit is, that exhibit is now in. The testimonial issue, scope of her testimony, I expect objections can be dealt with live.

THE COURT: Okay.

MR. LoCASCIO: So Ms. Norfleet can testify. There are also a series of videos that are agreed and done and depending on how we gap it, we need to fill one with that, we can do that, too.

THE COURT: Right. And if we have to take a break, we'll just take a break. This was a short one, so we're good.

What I would do is, I would just back up two questions, and I think you could just pick up and it will be as if there -- you weren't interrupted. All right.

MS. TRIPATHI: Sounds good.

THE COURT: If you could pick your voice up. People cannot hear you. You have to move in. Kind of

back up. Because if I go any higher on the mic, we get the reverberations.

Yes. Somebody was going to say something.

MR. BLOCK: Sorry, Your Honor.

THE COURT: I thought somebody was going to say something to me.

MR. BLOCK: Sorry. I think not. I think if there's an issue, I'm sure we can raise it later based on the exchange.

THE COURT: All right. Perfect. Thank you. We will bring the jury in.

(The jury enters the courtroom at 2:43 p.m.)

THE COURT: All right. Please be seated. All right. Thanks again. Now I've got literally hundreds of things going on, so sometimes things crop up, so that's what happens. That was a little earlier than we anticipated. If you think you need a break between now and five, just let me know and we will do that. Okay? Thank you.

MS. TRIPATHI: Thank you, Your Honor.

Can we please play DTX-15, starting at 23.

(Video plays.)

BY MS. TRIPATHI:

Q. So, Mr. Nason, before the video stopped, can you please describe what is happening in the Kurin Lock

device?

A. So as the blood's coming down into the Lock, air is flowing out through this white component with the vent. There's air trapped in the lower portion of the tubing in the device so air can't travel that way and move the air out of the way. So it's travel in the path of least resistance following the air and traveling into this U-shaped containment channel.

MS. TRIPATHI: Can we please continue the video.

(Video plays.)

BY MS. TRIPATHI:

Q. Okay. What was the next thing that happened in the operation of the Kurin Lock?

A. So that component lets air pass through, but not liquid. So once the liquid contacts the vent, it seals and stops the flow.

Q. And in the video, what is your understanding of what these black particles represent?

A. The black particles represent contaminants or sources of contamination in the initial volume of blood.

MS. TRIPATHI: Let's continue the video to 39.

(Video plays.)

BY MS. TRIPATHI:

Q. So what just happened with that white portion that

you referred to as a vent?

A. The vent has a chemical inside of it that reacts with the blood and seals it. So at this point, the vent is sealed both to air and blood.

MS. TRIPATHI: And can we continue the video through to 56, please.

(Video plays.)

BY MS. TRIPATHI:

Q. So the words "watch for blood to stop" appeared on the left side of the screen. Can you explain what that means?

A. So now that the containment channel is filled with blood, it's forced to go down this channel on the left we call the sampling channel. And then, as I mentioned before, the other end is sealed opposite the needle. So there's air trapped in this portion and that prevents the blood from continuing to flow.

Q. And your understanding of the design of the Lock, what happens if you don't wait for the blood to stop in that second channel?

A. So the important thing is that the blood fills that contamination containment channel and seals the vent. By having the nurses wait for the blood to stop there, you ensure that that chamber is filled.

Q. And why do you want to fill containment channel?

A. The -- most of the contaminants or sources of contamination are in the initial volume of blood. So you want to get all that you can into that containment channel and trapped inside the Lock.

MS. TRIPATHI: Can we continue the video through 1 minute and 1 second.

(Video plays.)

BY MS. TRIPATHI:

Q. So what is that bottle that just appeared on the left side of the screen?

A. So that bottle is in the evacuated blood culture collection bottle. That's the next step, is attaching it to the end of the device.

MS. TRIPATHI: And can we just continue the video through to the end.

(Video plays.)

BY MS. TRIPATHI:

Q. And so what was the purpose of attaching the vacuum bottle after waiting for the blood to stop?

A. So the bottle has a vacuum inside of it so when you attach it to that end of the device, that pulls the blood from the patient down through the Lock, the sampling channel, and into the collection bottle.

Q. And so when a nurse initially starts the operation of the Kurin Lock, is that bottle attached?

A. No. That -- they attach that once the blood stops flowing in the sample channel.

MS. TRIPATHI: Can we take that down, please.

BY MS. TRIPATHI:

Q. Can you please turn to DTX-19 in your binder.

A. Okay.

Q. What is this document?

A. This is an engineering drawing of the Kurin Lock assembly.

MS. TRIPATHI: And can we put DTX-19 on the screen, please.

BY MS. TRIPATHI:

Q. So who put this engineering drawing together?

A. I did.

Q. Focusing on the right-hand side of this, can you explain what this schematic or engineering drawing is showing?

A. So this is called the exploded view and it's just showing all the components that go into the Lock, as well as a list of the components.

Q. Does this drawing depict the same Lock that we just saw in the video?

A. This one is a more recent version of the Lock design.

Q. And how do you know that?

A. This one has the valve right here at Number 7 and the

video did not.

Q. And how does the drawing describe what Number 7 is?

A. It's an umbrella valve.

Q. And what type of valve is an umbrella valve?

A. Umbrella valve is a common valve. It's just a one-way valve. It allows flow to go one direction and not the other.

Q. And you had mentioned that this wasn't in the original Kurin Lock. Why was it later added?

A. So the valve basically acts as a backup to the vent. So in the event the nurse forgets, attaches the vacuum bottle before the Lock is filled and blood sealed the vent, it prevents air from being pulled into the system.

Q. And what is that valve made of?

A. It's silicone rubber.

Q. Is that a common material to make valves out of?

A. It's very common, especially in medical devices.

MS. TRIPATHI: We can take that down. Thank you.

BY MS. TRIPATHI:

Q. So jumping forward, can you describe what was your next big project?

A. The next major project I worked on at Kurin was the Dakota device.

Q. And how did development for the Kurin Jet, which I

believe you said the name of it was the Dakota Project, how did that begin?

A. So Bob came by the office one day early March 2019 and he said he wanted me to start working on the next generation of our Lock device. And he said it came from a concept that was in one of our earlier patents and it improved the usability for the clinicians.

Q. Can you turn to DTX-1072 in your binder.

MS. TRIPATHI: And can we also put that on the screen.

BY MS. TRIPATHI:

Q. What is this document?

A. This is a picture of a sketch that Bob drew during that meeting.

Q. And who took this picture?

A. I did.

Q. And when did you take this picture?

A. March 7, 2019.

Q. And so you had mentioned that Mr. Rogers had come to you with a new idea with this sketch. Was that typical or out of the ordinary for Mr. Rogers?

A. It's very common for Bob to call me up and say, hey, I had this new idea. I want you to take a look at it.

He'll come by, we'll gather the engineers together, discuss the idea, brainstorm concepts for it, sketch it

up, and then, you know, if necessary, build a prototype is usually the next step.

Q. And just looking at this sketch that's up on the screen, DTX-1072, what was your understanding of what this concept meant to convey?

A. So, I mean, this concept, figure in a patent, one of our earlier patents, and it sort of conveys a new layout of the next generation of the Dakota -- of the Lock. Sorry.

Q. Could you please turn to DTX-11 in your binder.

MS. TRIPATHI: And can we please get that on the screen as well?

THE WITNESS: Okay.

BY MS. TRIPATHI:

Q. What is this document?

A. This is a Kurin patent.

Q. Can we turn to DTX-11 at 52.

So when did you first see this Figure 23 of the DTX-11.52?

A. So when Bob stopped by, he didn't have the patent with him so he made that sketch that we just saw and said it was from a figure in our patent. So after that meeting, I went and gathered the patent and looked at this figure.

MS. TRIPATHI: Mr. Urban, can you please rotate

this clockwise. Thank you.

BY MS. TRIPATHI:

Q. Does this figure demonstrate a valve?

A. Yes, there is a valve.

Q. And where is that?

A. There.

Q. Does this figure show a movable plug?

A. It does not.

Q. And does this drawing -- I'm sorry. Does this figure represent the same concept that Mr. Rogers had drawn for you on March 7?

A. Yes.

Q. Are you aware of any other Kurin patents and publications?

A. I am.

MS. TRIPATHI: Can we please switch to the ELMO.

BY MS. TRIPATHI:

Q. Mr. Nason, I am showing you DTX-7. Do you recognize this document?

A. Yes, I do.

Q. So turning to Figure 24 on DTX-754, Figure 24, can you explain what this figure shows?

MR. BLOCK: Objection, Your Honor. May I approach?

THE COURT: Yes. Believe it or not, I know I'd probably get irritated if I were you, but the sidebars really do save time, I promise you. Okay?

Come on up.

(Whereupon, the following occurred at sidebar:

MR. BLOCK: So I obviously don't know what they are going to do with this document, but Mr. Nason is not an inventor, and my concern is that they are going to use him for quasi expert testimony about how this asserted prior art operates. I think they have an expert for that and he's not equipped to do it and we have no disclosure.

THE COURT: Okay. And he is not an inventor on the patent?

MR. BLOCK: He is not an inventor on this patent.

THE COURT: All right.

MS. TRIPATHI: So counsel for Magnolia chose to ask Mr. Nason all about this figure and he gives his initial impression as an engineer. He is not offering testimony as an expert or comparing any claims or anything. I don't intend to show him.

MR. BLOCK: May I respond? I'm sorry.

THE COURT: So counsel for Magnolia hasn't asked him any questions in trial.

MS. TRIPATHI: Understood.

THE COURT: So I think you're referring to some deposition, is my guess, where counsel for Magnolia asked him questions.

MS. TRIPATHI: Precisely, yes.

THE COURT: Well, that doesn't make it relevant to this trial.

MS. TRIPATHI: Okay. Understood.

THE COURT: Well, then, I'm going to sustain the objection.

MS. TRIPATHI: No problem.

(Whereupon, the discussion at sidebar concludes.)

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THE COURT: The objection is sustained, so you can take the screen down, please.

MR. BLOCK: Thank you, Your Honor.

MS. TRIPATHI: Can we please go back to Figure 23.

BY MS. TRIPATHI:

Q. So Mr. Rogers had shown you -- I'm sorry, Mr. Rogers had referred you to a patent, and this was the figure that you had looked at?

A. Yes.

Q. What was the next thing that you did?

A. So after I looked at this figure, I gathered some tubing and other components from the office and I went

home and built up a quick prototype of this.

Q. Could you please turn to DTX-1073.

A. Okay.

MS. TRIPATHI: Can we please get DTX-1073 on the screen.

BY MS. TRIPATHI:

Q. Can you please explain to the jury what is shown in this image -- in this -- well, first, this is a video.

MS. TRIPATHI: Can we please play the video.

(Video plays.)

BY MS. TRIPATHI:

Q. Can you please explain to the jury what is shown in this video?

A. So this video is just showing the prototype that I built up and was trying to test. We have the inlet here, which is the blue liquid, the main channel coming down here, the vent, the outlet down this side, and then this is the sampling channel on the side, and this clamp represents the valve that was in the figure.

Q. And you had referenced a figure.

MS. TRIPATHI: Can we put DTX-1152 up on the screen. Can we make that side by side, please. So can we rotate Figure 23 just another 90 degrees.

BY MS. TRIPATHI:

Q. Can you explain how your prototype meant to test

Figure 23?

A. So it has all the same components. The needle up here, that's where the patient would be, and that's the source of the liquid. That's my jar of blue liquid there. The main channel coming down and hitting the vent, it's called the hydrophobic plug in this figure, but we've been calling it the vent. It's right here. And then the outlet going down here to the collection bottle, that's shown down here. And then the side channel right here -- sample channel, sorry, with a valve. And then here's my sample channel.

Sorry, lost my cursor.

Here's the sample channel. And then, again, this clamp is representing the valve in my prototype.

Q. And how long after having that discussion with Mr. Rogers and seeing this figure did you create this prototype?

A. This was created on March 9, so two days later.

Q. And what are the differences between this prototype setup and what eventually becomes the Kurin Lock -- sorry, Jet?

A. Really, the primary difference here is that the -- this vent in the Lock, that vent --

Q. My apologies.

The differences between this prototype and the Kurin

Jet?

A. Oh, I'm sorry. I mean, functionally, they are equivalent.

Q. And then after creating this prototype, what was the next step in the design process?

A. So usually one of the first steps of any new project is to draw up a requirements document, which tells what the device is supposed to do and what requirements it's supposed to meet.

MS. TRIPATHI: Could we please put DTX-91, Page 2, on the screen.

BY MS. TRIPATHI:

Q. What is this document?

A. So this is a draft requirements document that Bob sent me for review.

Q. And so there's some black on this screen and there's some red on the screen.

Can you just explain what that means?

A. The black is Bob's original draft version, and the red are my comments and feedback and questions.

Q. And when did you receive the black text portion from Mr. Rogers?

A. March 28, 2019.

Q. So how much time had passed from your prototype until this draft requirements document was put together?

A. Nineteen days.

Q. So let's start with Number 1.

MS. TRIPATHI: Can we make that bigger.

BY MS. TRIPATHI:

Q. What is your understanding of what this design requirement entailed?

A. So this requirement just means that the device needs to have a containment channel that brings in the initial volume of blood and that that volume should not exceed .15 milliliters, which is the same as our Lock.

MS. TRIPATHI: Can we also blow up the fourth requirement.

BY MS. TRIPATHI:

Q. So as part of designing in Project Dakota, which becomes the Kurin Jet, what did you understand this requirement to mean for the development process?

A. So this requirement just means that the vacuum inside the collection bottle or syringe needs to be the driving force or the energy to start the blood flowing, go into the containment channel, and then into the sample channel.

Q. And did these two features from --

MS. TRIPATHI: Can we also blow up the date, please, just at the top.

BY MS. TRIPATHI:

Q. Did these two features from March 29, 2019, make it

into the final and commercialized Jet product?

A. Yes.

MS. TRIPATHI: Can we take that down, please.

Can we put DTX-654 on the screen.

BY MS. TRIPATHI:

Q. So what is this document?

A. So this is a document I put together just showing a couple of different concepts of how you would actually build this into a product that you would sell in a hospital.

Q. Who created these slides?

A. I did.

Q. When did you make them?

A. November 8, 2019.

Q. So this is November 2019.

What were you doing between March 2019 and November 2019?

A. We were just working on adding more detail to the different components, again, figuring out how it would be assembled and how it could look as an actual product in a hospital.

Q. So can we please turn to the second page of DTX-654, and I'd like to focus your attention on the title and the image that appears on the right-hand side.

Can you explain what Dakota Gen2 configuration is?

A. So this is the Dakota concept, and I call it the Gen2 because it looked like the next generation of the Lock.

Q. And how would you describe what concept you had made up for the image on the right, this Dakota Gen2 configuration?

A. So this is a Lock modified to the concept that was shown in the Figure 23 from the patent, and so functionally it is a Dakota, but it is put in a housing that is the same size and shape as the Lock.

MS. TRIPATHI: Can we place a screenshot of the Lock from DTX-15 at 28 seconds up on the left side of the screen.

BY MS. TRIPATHI:

Q. So, Mr. Nason, I am showing you the mockup in that video of the Kurin Lock on the left-hand side, and the Dakota Gen2 configuration on the right-hand side.

Can you explain the similarities and differences between these two images?

A. Yes. So on the Lock, you know, the blood comes in the inlet, down here through this U-shaped containment channel, and hits the vent right here.

In the Dakota, same thing. It comes in the inlet, down this U-shaped channel, and stops when it hits the vent. They both have -- there's a sample channel that branches off here, travels down to the outlet.

Q. And so looking at these two images, what did you do to get from the Lock to the gen 2 configuration? What changes did you make?

A. So really, the primary change is the orientation of this vent component. In the Lock, it's venting from the containment channel up and out to atmosphere. In the Dakota concept, it's venting from the containment channel over to the sample channel. So instead of going up and out to atmosphere, it goes sideways and within the device.

Q. Are there any other changes that you -- any other changes you made between the Kurin Lock and the gen 2 configuration?

A. So the other component you can see here is this component right here called a resistor that we put at the entrance to the sample channel. So that component just makes sure that all of the blood goes into the containment channel first, before any of it can -- before it pushes the resistor out of the way and can go down the sample channel.

Q. You said resistor.

What is a resistor?

A. Resistor is just kind of a generic general term for something, in this case, that resists flow in that direction.

Q. What are some examples of resistors that you are

aware of?

A. You can use a lot of things. You can use a valve. You can use just a kind of plug, a soft plug that's shown here. You can use a dissolvable material. This one is a plug, kind of like a cork in a wine bottle, that gets pushed out of the way.

Q. And so you described a couple resistors.

When did you learn about these types of resistors?

A. I mean, we always knew that putting a resistor there would improve the functionality of the device because, again, it makes sure the containment channel gets filled completely before any blood goes into the sample channel. So it's acting like the valve from that original figure, but it works under fluid movement and pressure instead of a user operating it.

MS. TRIPATHI: And for DTX-654, can we go forward one slide to Slide 3.

BY MS. TRIPATHI:

Q. So in November 2019, you had -- what does this show that existed at Kurin by November 2019?

A. So this is just a more mature version of the concept. We have custom plastic components in here. The vent has changed to this air permeable membrane. It does the same thing, just a different form. We have the resistor in there. So this is very close to the Jet device we sell

today.

Q. What differences, if any, are there between this that existed in November 2019 and the Jet that eventually becomes commercialized?

A. So this component right here, the diverter, we got rid of that. We just integrated into this housing. Then this version of the resistor is showing a dissolvable material, but the Jet has a plug-style resistor that serves the same function.

Q. And can you please turn to DTX-1086 in your binder.

MS. TRIPATHI: And can we also put that on the screen.

BY MS. TRIPATHI:

Q. What is this document?

A. This is an e-mail from me to Chuck, our chief financial officer, answering some questions that Bob asked.

MS. TRIPATHI: Can we blow up the top portion where it shows that the second-in-time -- well, first-in-time e-mail, second in time it appears on -- the second one, actually.

BY MS. TRIPATHI:

Q. So this original e-mail, who had sent it and when?

A. That was from Bob Rogers on December 23 to Chuck and myself.

MS. TRIPATHI: And then can we show the later-in-time but appears higher up because that's the way e-mails print. To, from, sent, subject.

BY MS. TRIPATHI:

Q. And so who sent this e-mail and when?

A. This looks like I sent it back to Chuck on the same day, 12/23.

Q. So between the November 2019 presentation we had looked at and this e-mail on December 23, 2019, what had you done on the Dakota concept?

A. Not a whole lot. I mean, the designs of the components were complete, and so we were getting ready to start building larger quantities of products.

Q. Going back to the e-mail itself, can we focus on Number 8 and the corresponding answer.

So what appears in black and what appears in red?

A. Black would be Bob's question and then red is my response.

Q. And what did you understand Mr. Rogers to be asking of you?

A. So he was just looking for a comparison of the cost to manufacture the Lock device and the new Dakota concept in larger quantities.

Q. Can you please read the first three sentences of your response?

A. "At this point, Dakota may have the same number of parts as the current Lock. The cap will go away, but could be replaced by the diverter which may be cheaper depending on the design, which I don't know yet. The plug would get replaced by the membrane and the mini valve would be replaced by the resistor."

Q. What did you mean by "the plug would get replaced by the membrane"?

A. So the plug, which we're calling today the vent, changed, as I mentioned, from that sort of solid vent into a membrane, which does the same thing, just a different shape.

Q. And what did you mean by "the mini valve would be replaced by the resistor"?

A. So it was still called resistor at this point because we didn't know exactly what it was going to be, but it could have been the mini valve, but it would be some component like that and on the same cost, very equivalent.

Q. So looking at the table at the bottom of your response, who filled this table out?

A. I put in all the red text.

Q. And how did you choose to create this table and why?

A. Again, just a comparison between the two. And since they're so similar, it made sense just to line them up so they both have bottom housing, they both have the top

housing. Again, cap is in the Lock, didn't make it as a diverter into the Jet. The plug just got directly replaced by the membrane. And then the mini valve is replaced by the resistor.

Q. Can you turn in your binder to 1085.

MS. TRIPATHI: And can we also put that on the screen.

BY MS. TRIPATHI:

Q. So let's focus on the top portion of this. First, do you recall what this is, what this document shows?

A. Yeah, this was a series of drawings and sketches I put together for a patent application.

Q. And when did you put this together?

A. May 15, 2020.

Q. And you had said you put this together for a patent application. Why is that?

A. So this was looking at different concepts for that resistor component that I was just talking about. And these -- specifically these are a stopper, what we call stoppers. Again, it's like a cork in a wine bottle. So a plug or a stopper for that resistor component.

MS. TRIPATHI: In the same presentation, DTX-1085, can we go to Slide 4. And can we focus on the top with the -- thank you.

BY MS. TRIPATHI:

Q. Can you explain to the jury what these three concepts are?

A. So these are all kind of rubber plug concepts. The left one is a rubber, call it inverted umbrella valve. It's similar to the umbrella valve, just turned upside down. So it -- that acts as a resistor sitting in the entrance to the sample channel.

The middle one is just another rubber version, shaped like a thimble or upside-down cup. And then this right one is a plug, like a soft rubber plug, kind of like an earplug that would just get pressed into this channel and the flow, the pressure difference would push it out of the way, move it out of the way so flow can go into the sample channel.

Q. And how did you come up with these concepts?

A. Just sat down and brainstormed all the different ways I could think of forming a stopper or a plug to stop flow and then allow flow.

Q. And how long did you brainstorm until you came up with these concepts?

A. This probably took a day.

Q. Why did it only take you a day?

A. It's pretty quick and easy just to kind of think back of different concepts I've used in the past and starting

with the valve, plugs, corks, you know, those kind of things, just sit down and come up with as many as you can. It's a pretty quick process.

Q. And can you please turn to DTX-502 in your binder.

MS. TRIPATHI: And can we please put that on the screen.

THE WITNESS: I'm sorry. What number was that?

BY MS. TRIPATHI:

Q. 502.

A. Okay.

Q. And, again, let's focus on the right side of this image. Can you explain what this document is?

A. This is an engineering drawing for the assembly of the Kurin Jet.

Q. And who created this?

A. I did.

Q. When did you create this drawing?

A. You can see the latest date for this, October 21, 2021.

Q. Was this version from October 21, 2021, ever sold?

A. It was.

Q. And when was it sold?

A. December of 2021.

Q. And what kind of sale was the December 2021 sale? How would you characterize it?

A. It was a small lot of products that we built using all these components put together in our facility in San Diego and sent out to a hospital for evaluation.

Q. And why was it a small first lot?

A. You always start small with a first batch and, again, these were being built by hand, so it took a little while, but...

Q. So did that ever change, is the Jet still made by hand?

A. No. So we built them by hand until mid 2023, when we got a large automation assembly machine that puts them together.

MS. TRIPATHI: You can take that down. Thank you.

BY MS. TRIPATHI:

Q. So you also mentioned at the beginning that one of your roles is to test products. Can you explain any testing that you had done on the Jet?

A. I have done a lot of testing on the Jet, including one that basically shows quantitatively how well it works.

Q. And from your testing, how well does the Jet work?

A. It works very well. So, yeah, we have a quantitative test where we can basically count the number of particles we put in, count how many are trapped inside the device, and how many, if any, get to the collection bottle.

Q. And aside from your quantitative testing, are you aware of anything else that indicates that the Jet works?

A. We have quite a lot of data from hospitals showing that it reduces false positive rates.

Q. Can you please turn to DTX-633.

MS. TRIPATHI: And can we just put it up on the screen.

BY MS. TRIPATHI:

Q. So this is going to be a video. Can you explain to the jury what they are about to see?

A. Yes. So just to orient you, this is a side view of the Jet device. This is the inlet over here on the left of the containment channel down here on the bottom. Sampling channel up here on the top and then the outlet down to the collection bottle right there.

Q. When the video plays, what will they see happen within the Kurin Jet?

A. So to do this test, we take these very tiny florescent spheres. We load a known number of those spheres in the inlet of the device, which is the needle in this case, then we pass fluid through the device, just as the nurse would do if they are collecting a sample in the hospital, and we count the number of spheres that remain in the Jet versus how many get to the collection bottle.

MS. TRIPATHI: Can we please play the video.

(Video plays.)

BY MS. TRIPATHI:

Q. That went very quickly. Can you explain what just happened and explain is this in real time? Is it slowed down? Sped up?

A. Yeah, so that's real time. So, you know, you just saw those little spheres I was talking about shoot in, get trapped here in the containment channel, and then while flow continues to go down the sampling channel into the collection bottle, the spheres just stay there.

MS. TRIPATHI: As I said it was so fast, can we play it one more time.

(Video plays.)

BY MS. TRIPATHI:

Q. All right. So how does this test confirm to you that the Jet operates as you expect it to?

A. Again, it's our quantitative way of counting how the -- almost all of the sources of contamination get trapped inside the device.

Q. From your testing, around how many or what percentage of the sources of contamination are reduced using the Jet?

A. So we do a large sample, we average it. It's around 94 percent get trapped, of those little tiny spheres get trapped inside.

MS. TRIPATHI: We can take that down.

BY MS. TRIPATHI:

Q. Mr. Nason, we started with your background. I just want to ask you a few more questions.

When did you get your bachelor's degree in mechanical engineering?

A. 1991, I believe. Long time ago.

Q. And when did you first start working on medical devices?

A. My first job out of college was at a -- during college was at a medical device company.

Q. And what year was that?

A. Well, that was during college in '91. Then when I graduated in '92, I started working at a consulting company doing a lot of medical devices.

Q. Thank you, Mr. Nason.

THE COURT: All right. Cross-examination.

MR. BLOCK: Your Honor, may my colleague approach?

THE COURT: Sure.

MR. BLOCK: Thank you.

CROSS EXAMINATION

BY MR. BLOCK:

Q. Good afternoon, Mr. Nason.

A. Good afternoon.

Q. My name is Micah Block. I don't think we've met

before. I'm one of the attorneys for Magnolia Medical and if it's okay with you, sir, I'm going to ask you a few questions.

A. Okay.

Q. Have you -- has anyone -- you've been outside the courtroom during trial proceedings, correct?

A. Just today, yes.

Q. Just today. Okay. Has anyone told you about what has happened in this trial so far?

A. No.

Q. Okay.

But until now, when you've been sworn for cross, you've been able to confer with counsel about your testimony, right?

A. Correct.

Q. Okay. Now, you've worked with Kurin since May of 2018, correct?

A. Yes.

Q. And you're responsible for development of Kurin's products; is that right?

A. That's part of it, yes.

Q. You were the primary engineer working on design for the product that became the Jet, right?

A. Yes.

MR. BLOCK: Can we see Plaintiff's Trial

Exhibit 160 on screen, please? Next page, please.

BY MR. BLOCK:

Q. Mr. Nason, do you recognize this as an engineering drawing of the Jet?

A. Yes.

Q. Okay. Now, Kurin designed the Jet to be activated by the vacuum force from a sample bottle or syringe, correct?

A. Yes.

Q. So a pressure differential between the patient and the vacuum source creates the flow in the Jet, right?

A. Yes.

Q. Now, in some Jet configurations, the vacuum source can be a syringe, right?

A. Yes.

Q. Sometimes it can be a culture bottle, right?

A. Yes.

Q. Can Kurin's customers operate the Jet as intended without attaching a syringe or a collection bottle?

A. Not that I'm aware of.

Q. At the place in the Jet where the blood, the first blood flows, you refer to that as the sideline chamber, right?

A. Yeah, I've been calling it the containment channel today.

Q. Containment channel. Okay.

After the containment channel fills, blood flow stops, and a pressure differential develops between the containment channel and the sample channel, which is this white space on top, right?

A. Correct.

Q. That means right before this component here -- let me pause on this component. You called it a stopper in the past. Are you comfortable calling it a plug now?

A. Sure.

Q. Okay. And in operation of the Jet, this plug moves, right?

A. Yes.

Q. Okay. So right before the movable plug moves, blood flow in this device has stopped, right?

A. For the most part, yes.

Q. Okay.

So just so I have it clear, right before the stopper moves, the fluid that's in the chamber here and the tube all the way up to the patient is at one pressure, right?

A. Yes.

Q. And then everything above the movable plug -- everything above the movable plug and above this membrane over here, they're also at the same pressure as the vacuum bottle or syringe, which has been attached over here, right?

A. Probably very close, yes.

Q. Very close. Substantially the same pressure all the way from the syringe or bottle to the top of the movable plug, right?

A. Yes.

Q. Okay. Now, the pressure below the plug and the pressure that's the same all the way from the top of the plug through the outlet to the sample bottle, those two pressures are different, right?

A. Yes.

Q. So at that point in time, right before the plug moves, you have a pressure differential between the pressure right at the bottom of the movable plug and the pressure at the outlet, true?

A. Yes.

Q. And it's the difference between those two pressures that causes this plug to move, correct?

A. Yes.

Q. Okay. And that opens the path for blood to flow down the sample channel out to the collection bottle or syringe, correct?

A. Yes.

Q. Now, this plug in the Jet, it's made of KEG-2000 silicone, right?

A. Yes.

Q. Entirely of that material, right?

A. Yes.

Q. At the time when a Jet is manufactured, this silicone plug is compressed into a pocket, correct?

A. Yes.

Q. And then it's that pressure differential that we've spoke about between the bottom of the plug and the higher pressure all the way from the top of the plug at the outlet and beyond that causes that plug to move up out of its compression, correct?

A. No. The higher pressure is on the bottom of the plug.

Q. Did I reverse them? I'm sorry about that. Let me try it again.

It is the higher pressure right at the bottom of the plug and the difference between that and the lower pressure above the plug at the outlet sample bottle all the same pressure, that's the differential that causes this plug, which has been compressed in the space, to move up, and that allows the blood to flow up through the sample channel, right?

A. Correct.

Q. Okay. Now, I think you testified on direct that your first project when you joined Kurin was improving manufacturing and assembly of the Kurin Lock.

Do I have that right?

A. Yes.

Q. Does that project have anything to do with Magnolia Medical?

A. No.

Q. Okay. Would you please turn in your cross-examination binder, the one that was just walked up, to the tab marked PTX-58?

A. Okay.

Q. Do you recognize PTX-58, sir?

A. It's an e-mail from Bob to me.

Q. And the date is May 15, 2018, right?

A. Yes.

MR. BLOCK: Your Honor, Magnolia moves to admit plaintiff's Trial Exhibit 58 and asks permission to publish it to the jury.

MS. TRIPATHI: No objection.

THE COURT: All right. It's admitted.

(Exhibit PTX-58 admitted into evidence.)

BY MR. BLOCK:

Q. So we're in May 15, 2018, right around the time you started at Kurin, right?

A. Yes.

Q. And in this May 2018 e-mail, the subject line is "Steripath Gen2 YouTube," right?

A. Correct.

Q. And there's a YouTube link to a video in this e-mail, correct?

A. Yes.

Q. This video that was linked in Mr. Rogers' e-mail to you was posted to YouTube by Magnolia Medical, right?

A. I assume so.

Q. Okay. And the title of the video -- let me ask, do you recall at your deposition the link was followed, we brought up the video, you testified about it?

Do you recall that?

A. Yes.

Q. Okay. So the title of the video is "Steripath Gen2 blood culture collection by Magnolia Medical Technologies," right?

A. Yes.

Q. And this video, which Mr. Rogers sent you right when you started working with Kurin, is a video showing the Steripath Gen2 product, which is a Magnolia product, right?

A. Yes.

Q. Now, you don't know exactly why Mr. Rogers sent you a video showing Magnolia Medical's product when he first hired you to do product design for Kurin, right?

A. I was new to this industry so I just assumed he

was -- you know, I was trying to learn about the industry. He showed me our products. I assumed it was just to learn about others products in the market.

Q. Okay. But your testimony at deposition, Page 136, was: "I don't know exactly why he sent me the link. There was no description or other text around it." Right?

A. Correct.

Q. But you do know that it's not common practice for engineers at Kurin to review videos about Magnolia's products, right?

A. It is not common practice, no.

Q. This was out of the ordinary?

A. I would say so.

Q. Yeah. Okay.

Now, when Kurin was developing the Jet, it used the project name Dakota, right?

A. Yes.

Q. And Kurin began designing its Jet product in March of 2019, correct?

A. Yes.

MR. BLOCK: Your Honor, before I go forward, may I approach to ask the Court a question?

THE COURT: Sure.

Are you going to want to go straight til 5:00?

THE JUROR: Can we get a break from like 4:00

to 4:10?

THE COURT: All right. We'll aim for 4:00. It will be brief. All right?

THE JUROR: Sounds good, yeah.

THE COURT: All right.

THE JUROR: Thank you.

MR. BLOCK: Go to sidebar real quick.

(Whereupon, the following occurred at sidebar:

THE COURT: All right. Go ahead.

MR. BLOCK: So what I would like to do next, and I'm asking Your Honor's permission because you addressed this same document in a different context.

THE COURT: Yes.

MR. BLOCK: Is walk through with Mr. Nason the spot in which he says that there was a Magnolia application that read on the Dakota project. Mr. Rogers asks him to delete it from the board slides, and then he does so.

THE COURT: Can I see the document?

MR. BLOCK: Yes.

MS. TRIPATHI: And can I also respond, Your Honor?

THE COURT: Sure.

MS. TRIPATHI: So the context is exactly the same. They were trying to use this with Mr. Rogers' dep

testimony and -- oh, it was actually with Mr. Nason's. It was with his own actual dep, Mr. Nason's deposition, that they tried to insert this into the case.

This is an unrelated publication with different figures, different spec, and it actually never actually issued. This is what --

THE COURT: All right. Hold on. Let me see the diagram. For him first, and then you line up yours.

MR. BLOCK: This is the document.

MS. TRIPATHI: This is the same.

THE COURT: Oh, this is the document? Oh, okay. That's great. Thank you.

MS. TRIPATHI: Also --

THE COURT: Just give me a chance.

Okay. And Dakota is the code name for the Jet project, right?

MR. BLOCK: Correct.

THE COURT: Okay. And when was the -- Kurin's patent that reads on the Jet is what patent number?

MS. TRIPATHI: There are multiple.

THE COURT: The first one.

MR. LoCASCIO: Kurin's patent that reads on the Jet, the first --

THE COURT: What's the one we are dealing with with Figure 24?

MR. LoCASCIO: Oh, Figure 24 is in the disclosure of the Rogers --

(Speaking simultaneously.)

THE COURT: It's the Rogers '445 patent, right?

MS. TRIPATHI: Yes.

THE COURT: All right.

MR. LoCASCIO: The Rogers '445 -- that's not a patent, it's an application, Your Honor.

THE COURT: When was that application filed?

MR. LoCASCIO: That application has -- the filing date of that, I believe, is 2017, Your Honor.

THE COURT: Okay. So it was filed before this PowerPoint presentation?

MS. TRIPATHI: At least by two years.

THE COURT: Okay.

MR. LoCASCIO: And just, if I may, Your Honor, this document and this witness, Your Honor ruled on this in -- a day ago. Your Honor ruled on this issue a day ago. If you want to look at the transcript of that, if it would be helpful.

THE COURT: Yeah. I remember it.

MR. LoCASCIO: Okay. Just --

THE COURT: All right. Okay. Yeah, I don't think I think it's... I am not going to let it go forward. And I just think it would be unduly prejudicial and open

up a mini trial to explain, and I'm especially informed by that decision, or at least I've given special weight to that decision, the fact that the application by Kurin for its patent that reads on the Jet occurred well before this presentation.

MR. BLOCK: That's -- just accept the ruling but just very quickly, Your Honor.

THE COURT: Yeah.

MR. BLOCK: There's a patent before this that they are trying to read on the Jet, but you should not take -- that is not what's asserted when infringement is asserted. They are talking about their invalidity case where they are trying -- I'm sorry. I don't know that anybody says the Jet practices at '445, and that will be in dispute. We have just gone through --

THE COURT: I'm sorry. It is in dispute that the --

MR. BLOCK: They can't practice the '445 because it is an application.

THE COURT: Oh, right. Okay.

MR. BLOCK: I am about to go through the timing of the development of the Jet. They say it came from Figure 23 and have an early date. There are aspects of the Jet that came months later. We just walked through a bunch of dates in 2019. When did this come, when did this

come, when did this come. And then there are things that are in the Jet now that they added to later.

So it is very complicated, and we asked this question in the context of an entire presentation you've now begun to see, that Magnolia has looked at their application and we are copying them. So it would be unfair not to let us respond, and this will establish the timeline and, in fairness, respond to the way folks are looking at each other's intellectual property over the relevant time frame.

THE COURT: Actually, yeah. I had forgotten and I'm glad you actually raised that because Mr. Rogers himself separated out, for instance, made a point to distinguish figures in the patent, including Figure 23, from the Jet.

And the Figure 24 in the Jet doesn't have a movable plug, right?

MS. TRIPATHI: Figure 24?

THE COURT: In the patent application that we're talking about.

MS. TRIPATHI: It does.

THE COURT: Wait, figure 24 has a movable plug?

MS. TRIPATHI: It does.

THE COURT: That moves separate from the cylinder? In other words, the plug itself moves, the way

Jet plug moves?

MS. TRIPATHI: I mean --

THE COURT: Hold on.

MS. TRIPATHI: The plug is part of the inner member, but a movable plug is not a term of art. It has not been construed to a movable plug.

THE COURT: I will construe it this way: The Jet plug... The plug in the Jet, when it moves, nothing else moves, right? It's just the plug? The plug is the only part of the device that moves when the differential pressure occurs, correct?

MS. TRIPATHI: That's correct.

THE COURT: Figure 24 in the patent application has a plug that moves along with other parts, i.e. the cylinder, whatever you want to call it.

The plug is not the only thing that moves by virtue of the pressure differential, correct?

MS. TRIPATHI: Understood.

But may I respond, just very quickly?

THE COURT: Yeah, you can respond.

MS. TRIPATHI: If that is your claim construction ruling, then they now lack written description because -- and if that's how we are proceeding with what a movable plug is, their disclosure doesn't actually cover that.

THE COURT: Have I --

MS. TRIPATHI: No, you have not. I'm sorry.

THE COURT: Have I construed the movable plug?

MS. TRIPATHI: No.

THE COURT: And no one has asked me to construe it, correct?

MS. TRIPATHI: No.

THE COURT: Well, I guess we will have to deal with that. So I think consistent with just... What is it you want to ask about this?

MR. BLOCK: I want to show that he looked at the Magnolia application, said it read on the Dakota. It took that. And then I will also show that Mr. Rogers said, "Wait, wait, wait. Don't say that to the board." And I can skip the second part if that's what gives you pause.

THE COURT: Well, the second part you are not going to get to say.

MR. LoCASCIO: Your Honor, having argued this last time we tried, just to get right to the point, where you -- why you precluded it last time for the same witness, for the same testimony from his deposition, was because the patent application referred to here is not one of the patent applications, and you asked, by way of this back and forth -- it was Mr. Ramani and I -- and you asked

Mr. Ramani, "Hey, is that this patent application?" "No. It didn't issue with those claims. They were different claims at the time." And thus, the mini trial factor.

If this document is shown, now we have to bring an expert in, or someone is going to have to now answer -- I guess we will do it on cross with Mr. Bullington -- to say, "Okay, let's look at what that patent application was." It didn't ultimately issue. It was rejected over '445 Rogers. This is its own trial. And that's why last time you said okay --

THE COURT: Actually, hold on. I forgot it was rejected over Rogers.

MR. LoCASCIO: It was.

THE COURT: Is that true?

MR. BLOCK: I actually don't know, but we are not asking about the claims, which is not the point.

THE COURT: Well, you know what, I have already ruled. I'm sorry. I'm just going to exercise my discretion. I think it opens up a can of worms, and there's been a lot of can of worms already open in the case. Essentially, you are asking me to revisit. I realize circumstances have changed, but I already made a ruling. I'm going to rely on it. Let's move on.

MR. BLOCK: Thank you, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

- - -

THE COURT: Again, thank you for your patience. One thing I'll tell you is: After the trial, I always meet with the juries. And, you know, I'll be able to share with you, you know, in ways why the case was expedited and why we had these sidebars.

So to the extent you are frustrated, and I do understand why you might be, as I say, I can shed a little bit of light on that, at least, at the conclusion of the case, all right?

But at the end of the day, as you can probably tell, these cases are complicated, right? So it takes a lot to get through them. So I appreciate it.

Mr. Block, you may proceed.

MR. BLOCK: Thank you, Your Honor.

Can I see DTX-1152 on the screen, please.

Sorry, before we pull that up, it may be a different document. I wrote it down quickly.

Let's skip forward. Can I see DTX-91 on the screen, please.

Okay. So -- sorry. Second page, please.

BY MR. BLOCK:

Q. You were shown this document when Kurin's lawyers were asking you questions, right, Mr. Nason?

A. Yes.

Q. Okay. Now, just a few questions on this, starting at the top.

"The product shall have," first, "a diversion chamber that divert and sequester the initial aliquot of blood," right?

A. Yes, that's what it says.

Q. And you designed the Jet to be a sequestration device for that requirement, correct?

A. We designed it to capture the initial volume of blood --

Q. Which is what you --

A. -- in the --

Q. I did not mean to interrupt you, sir. Please go ahead.

A. In the containment channel.

Q. Okay. Which is what Kurin referred to as sequestration, at least at this time in 2019, right?

A. Yeah. That's what Bob was referring to.

Q. Okay.

MR. BLOCK: Can we look at Number 7, and this red text -- highlight the last sentence.

BY MR. BLOCK:

Q. The red text is your text, it's your responses to Mr. Rogers, right, Mr. Nason?

A. Correct.

Q. And you say here, "There will be commingling/exchange between blood in the sample channel and the proximal end of the sequestration chamber, as there is with the current design."

Did I read that correctly?

A. Yes.

Q. So "current design" there means the old Kurin Lock, correct?

A. Yes.

Q. And then you are talking about what will be the new Kurin Jet one day, a while hence, correct?

A. Yes. I was referring to Dakota.

Q. And you are saying that in both the old Lock and Dakota that becomes Jet, there is commingling/exchange between blood in the sample channel and the end of the sequestration or containment chamber, right?

A. Yes.

Q. And to set us in time, March 2019, this is before that document you showed us where you came up with stopper concepts for a patent application, right?

A. Correct.

Q. Okay. Let's see DTX-92.

This was also March of -- March 28, 2019, right?

You can refer to your binder. I think your counsel put metadata at the back of the exhibit.

A. I'm sorry, what was the exhibit?

Q. This one is DTX-92.

A. Yeah, this is May 28, 2019.

Q. May?

A. Correct.

Q. Okay. This is still long before those stopper concepts you came up for the patent application, right?

A. Yes.

Q. And those stopper concepts don't appear -- you can flip through if you want, but they don't appear in this document because you came up with them later, right?

A. There is a resistor component that turned into the stopper in this document.

Q. Okay. Let's turn to that.

Which page is that?

A. Eight.

MR. BLOCK: Can I see Page 8, please.

BY MR. BLOCK:

Q. Okay. You are pointing to the resistor on the top right?

A. Yes.

Q. That's not the movable plug that's in the Jet today, right?

A. That is not what's in the Jet today, no.

Q. Okay. Let's look at defense Exhibit 654, marching

forward in time.

You said this was November of 2019, right?

A. Correct.

MR. BLOCK: And can we go forward to Slide 3, please.

BY MR. BLOCK:

Q. This says, "Dakota latest," right?

A. Correct.

Q. So fair to say this is the most up-to-date Dakota as of the date of this document in November 2019?

A. Yes.

Q. And I think you testified on direct, this one has a dissolvable material instead of a movable plug, right?

A. Again, it's just a resistor. In this actual picture, I believe it was a dissolvable material.

Q. Not the movable plug that later became part of the Jet, right?

A. Correct.

Q. Okay. Let's look at 1086, DTX-1086.

This was December of 2023, right? Sorry, 2023, I beg your pardon.

December 23 of 2019, correct?

A. Yes.

Q. And if you scroll down, you were talking about a part -- a little further. I have to remember where this

was.

Number 8, you were talking about the mini valve, right?

A. Yes.

Q. The mini valve is what you had in the Dakota concept as of December 2023? Sorry, I did it again.

December 23 of 2019? I apologize.

A. The mini valve was the component in the Lock.

Q. That was the component from the Lock.

So you are not even talking about what's in Dakota, the Jet, at that point?

A. The third column on the right is what was in the Dakota. It's just a generic resistor in this table.

Q. I got it.

You have generic resistor because, I think you testified on direct, you didn't know exactly what that was going to be in the Jet product as of the date of this document, right?

A. Right. We didn't have a final design yet, correct.

Q. Right. Okay. So let's talk about how your design advanced.

MR. BLOCK: Can we see DTX-1085, please.

BY MR. BLOCK:

Q. Okay. You were also shown this document when Kurin's lawyers were asking you questions?

A. Yes.

Q. You created Exhibit DTX-1085, Mr. Nason?

A. I did.

Q. This is from May 15 of 2020?

A. Yes.

Q. You said you created it for purposes of a patent application, right?

A. Correct.

Q. So Kurin was planning to go to the Patent Office and tell them they had come up with something they thought was new, right?

A. Yes. This was to cover different concepts for the stopper resistor.

Q. Okay. And on this first page, looking at the text, it says, "The Dakota concept could use a stopper to perform the same function as the resistor; e.g., dissolving film or plug," right?

A. Correct.

Q. So you had been using a resistor, correct?

A. They are all resistors.

Q. Okay. But you're making some distinction here. You say it could use a stopper to perform the same function as the resistor. Those are your words?

A. Yes, because a stopper is a version of a resistor.

Q. Okay. But you're coming up with something it could

use that it hadn't in the past. Can we agree on that?

A. Different versions it could use, yes.

Q. Something it had not used before, correct?

A. I'm not sure at that point if we had tried any of those in prototypes yet or not.

Q. Okay. Now, I think you agreed on direct that the stopper is a plug. You said like a cork in a wine bottle, correct?

A. Correct.

Q. Let's look at Slide 5. You write here, "One of the challenges of this concept is providing a location for the stopper to move so that it does not block the flow through the sample path or move downstream into the collection tube."

Do you see that?

A. Yes.

Q. That's saying you can't just put a stopper or a plug in the middle of a tube because it wouldn't have anywhere to move aside to open up a flow path, right?

A. Correct. You need to give it somewhere to go so it's not blocking the path.

Q. And what you came up with in this document is ideas for geometries that would allow a location for the stopper to move, fair?

A. For some of the concepts, yes.

Q. Right. Now let's see Slide 6, please.

Mr. Nason, here you are showing a cross-section of a Dakota device with a -- here you call it a stopper, right?

A. Yes.

Q. And second sentence beginning, "All of," this says, "All of the stopper concepts work the same. They are dislodged from the position shown (Blocking flow to the sample path) by the pressure differential to move out of the way and allow flow down the sample path," right?

A. Yes.

Q. That statement is accurate as to all of your stopper concepts?

A. I would say so.

Q. Now, these drawings that we've been looking at in DTX-1085, you said you created those in May of 2020 so they could go into a patent application, right?

A. Correct.

Q. And none of them appears in Kurin's '052 patent. Are you aware of that?

A. I'm not aware of that.

Q. Okay. Kurin did put these in a different patent application, however, right?

A. I believe so.

Q. Okay. And this different application is not the one that underlies the '052 patent reaching back to 2016. Do

you have that understanding?

A. Can I look at that patent you are referring to?

Q. Yeah, sure. Why don't we actually look at it together.

Would you please turn to the document in your cross-binder marked DTX-5.

A. Okay.

Q. Mr. Nason, this is a patent application from Kurin on which you are an inventor, correct?

A. Yes.

MR. BLOCK: Magnolia Medical moves Defense Trial Exhibit 5 into evidence and requests permission to publish it.

MS. TRIPATHI: No objection.

THE COURT: It's admitted.

(Exhibit DTX-5 admitted into evidence.)

BY MR. BLOCK:

Q. Okay. So we just established, Mr. Nason, you're an inventor under 72; that's your name?

A. Yes.

Q. Okay. Now, this application was filed June 1, 2021, that's Number 22 a little lower down, right?

A. Yes.

Q. However, it also refers to a provisional application date filed June 1 of 2020, right?

A. Yes.

Q. Now, I haven't gone back to look at that provisional, but that's pretty close in time to those May 15 stopper concepts, right? May 15 of 2020.

A. Correct.

Q. Okay.

Now, some of the drawings in here look familiar from the '052 patent, but some do not.

MR. BLOCK: Mr. Smith, can we see DTX-5 side-by-side with DTX-1, which is Kurin's '052 patent? And let's go forward to Figure 1 on both documents.

I'm asking Mr. Smith to do some sort of graphics Olympics here, which will take some ticking, but he's much faster than I am.

BY MR. BLOCK:

Q. Okay. These figures are identical, fair?

A. They appear to be, yes.

Q. Okay.

MR. BLOCK: Mr. Smith, can we tick through them one by one and stop when you get to Figure 15.

We can jump to 15, sir.

BY MR. BLOCK:

Q. Okay. All the same, I know you haven't had a chance to do it side by side, but all pretty much the same until now, right?

A. Yes.

Q. Looks like the same drawings to you?

A. Up to now, yes.

Q. This Figure 15, that looks like Kurin's older product, the Kurin Lock, right?

A. Similar, yes.

Q. In fact, you heard Mr. Rogers -- or you didn't hear it, but -- well, let me withdraw and move on.

MR. BLOCK: Mr. Smith, let's keep going. We can click a little faster. I want to stop when we get to 23B.

BY MR. BLOCK:

Q. Okay. All more or less the same until now, right?

A. Yes.

Q. In fact, I think they are the same. You didn't notice any differences?

A. I did not notice any differences.

Q. Okay. Let's go to the next page of each of these documents.

Okay. So on the '052 --

MR. BLOCK: Sorry. Can I still see them side by side?

BY MR. BLOCK:

Q. Okay. The '052 patent has advanced to the beginning of its Pros written description, whereas now in this new

application that Kurin filed, there are new and different diagrams from the middle of 2020 at the earliest, right?

A. I don't know when those figures are from.

Q. You don't know where these figures are from?

A. No.

Q. Okay. But you know that they're not in the '052 patent. We established that?

Respectfully, Mr. Nason, it's okay. I'm on a clock, and I don't even need your testimony to confirm that, so I'm going to jump ahead, if you don't mind.

A. Okay.

MR. BLOCK: Can I see Figure 32A in the application? It's on the right side. And you can bring the '052 patent down when you have a chance.

BY MR. BLOCK:

Q. This looks familiar, does it not, Mr. Nason?

A. Yes.

Q. So this is one of the drawings that you came up with in May of 2020, right?

A. Yes.

Q. May 15 of 2020, you created the diagram that became this part of this Kurin patent application.

A. That looks, correct.

Q. Okay.

MR. BLOCK: Would you forward -- Mr. Smith,

move forward to Figure 38C.

BY MR. BLOCK:

Q. That looks like part of Project Dakota for the Jet, right, Mr. Nason?

A. Yes, it looks like the figure we looked at earlier.

Q. And unlike the older Lock product, the Jet uses a vacuum source to draw the initial blood, right?

A. Yes.

MR. BLOCK: Can we go back to the first pages of DTX-1 and 5, Mr. Smith.

And next page on DTX-1. Perfect.

BY MR. BLOCK:

Q. Mr. Nason, you're not an inventor on the '052 patent, which is Kurin's patent in this case, right?

A. Correct.

Q. You are the creator of those stopper concepts which appear -- which you came up with in May of 2020 and which appear in DTX-5, the application, on the right?

A. Correct.

Q. Okay.

MR. BLOCK: Just quickly on this DTX-5, if we can have the whole screen there. Would you highlight the title of that, please, Mr. Smith.

BY MR. BLOCK:

Q. Mr. Nason, do you understand the capitalized words

near the upper left, that's sometimes called title of the patent?

A. Okay.

Q. Kurin called this "Fluid optimization and contaminant containment device and method using displaceable plug," right?

A. Yes.

Q. That's what Kurin called the thing that it invented in -- no earlier than June of 2020, right?

A. Plug, stopper, resistor, yeah.

Q. Okay.

A. Interchangeable.

MR. BLOCK: We can pull that down.

BY MR. BLOCK:

Q. Now, the goal of the Jet is to reduce contamination in blood samples, true?

A. It's to reduce the source of the contamination --

Q. Okay.

A. -- in blood samples.

Q. The Jet -- did I interrupt you, sir? Sorry.

A. No.

Q. The Jet tries to sideline the initial volume of blood because that initial volume is most likely to contain contaminants. Agreed?

A. Sources of contaminants, yes.

Q. But the initial volume of blood that gets sidelined in the Jet, not all of it remains in the waste chamber as the device continues to operate, right?

A. There's a small amount of mixing where the sample channel meets it, yes.

Q. Yeah. And, in fact, not all of the initial blood remains in the waste chamber as the device continues to operate. Some of it leaves the waste chamber up into the sample channel and may flow out of the device, correct?

A. There's no definitive way to say it stays or leaves. There is an area of mixing and that's all we know.

Q. Okay. In the Jet, there's no physical barrier that separates the waste channel from the sample channel, and that's why you can get this mixing we've been talking about, right?

A. Correct.

Q. Now, the same was true of Kurin's old product, the Lock, right? It had mixing between its waste and sample channels, correct?

A. Yes.

Q. And, in fact, you conducted a test showing that under some circumstances, all of the initial blood that flowed into the waste channel of the old Lock product could eventually flow right out through the sample channel, right?

A. Performed a test showing that?

Q. You don't recall that?

A. I don't.

Q. Okay. Well, I'm short on time so I'm going to move on.

At the time of your deposition earlier this year, Kurin had not done any clinical studies on the Jet, right?

A. I'm sorry. Could you repeat that question?

Q. Sure.

At the time of your deposition earlier this year, Kurin had not done any clinical studies on the Jet, right?

A. Kurin did not, no.

Q. Okay. Now, you talked about tests with plastic spheres to represent contaminants, right?

A. Skin fragments and sources of contaminants, yes.

Q. But Kurin has not done any real-world tests to assess the extent to which the Jet reduces contamination in the sample, right?

A. We've not done any clinical studies that I'm aware of.

Q. Kurin has done no such testing, right?

A. Not that I'm aware of.

MR. BLOCK: No further questions, Your Honor.

THE COURT: All right. Any redirect?

REDIRECT EXAMINATION

BY MS. TRIPATHI:

Q. Hello, Mr. Nason. Can you explain again what exactly is your educational and your work experience before you came to Kurin?

A. Bachelor's degree in mechanical engineering from UC San Diego and master's degree in mechanical engineering --

MR. BLOCK: Your Honor, the scope of cross --

THE COURT: Yeah. I mean, so I have got to interrupt too. I mean, that was direct and this is cross. I mean, sorry, this is redirect.

MS. TRIPATHI: Can we go to DTX-1086 on the first page.

THE WITNESS: Okay.

MS. TRIPATHI: My apologies. My numbers are a bit off. Can we get DTX-92, please. And can we go to Slide 7. Can we zoom in on the bottom portion.

BY MS. TRIPATHI:

Q. So this portion says: "Flow can be made to fill the chamber first through several methods." And then it lists geometry and resistance.

Can you explain what you meant with those two concepts on the slide.

A. Yes. So can I get the pointer? It's easier with the pointer to just explain.

Q. I would just explain. Thank you. I'm not sure where

the...

MR. LoCASCIO: Let's get a pointer.

THE WITNESS: I have the pointer but I just -- can you show the figure.

MS. TRIPATHI: Can we show the figure on top as well.

BY MS. TRIPATHI:

Q. We could also just remove the callout and then you could see the whole slide.

A. Okay. So geometry just means the shape of the flow path. So as the flow come in, it goes straight ahead into the containment channel. It doesn't have to turn corners. So that will encourage it to go in that location first.

And then resistance, as it says there, you know, resistance can be added to the sample path with a dissolvable material, constriction, or a plug so that flow fills the containment channel first before traveling to the sample path.

Q. Mr. Nason, you said plug. Where is that displayed on the slide?

A. (Indicating).

MS. TRIPATHI: So let's go back to 1085, Slide 1, please.

Thank you.

BY MS. TRIPATHI:

Q. Can you read the whole first sentence, please.

A. "The Dakota concept could use a stopper to perform the same function as the resistor, e.g. dissolvable film or plug."

Q. What did you mean by "resistor, e.g. dissolvable film or plug"?

A. So that just means the resistor is a general term and it could be a dissolvable resistor or a plug. Those are examples of a resistor.

Q. What did you mean by "plug"?

A. Plug, again, like a cork that blocks the sample channel and then moves out of the way and opens the sampling channel.

MS. TRIPATHI: That you, Mr. Nason. No further questions.

THE COURT: All right. Now, you wanted a break. Do you still want the break or should we just peter on to 5:00? What do you want to do?

THE JUROR: I think we're all good.

THE COURT: We're good? Let's keep going then. All right.

Next witness, please. You may step down, sir.

MR. LoCASCIO: Your Honor, at this time Kurin calls Abby Norfleet as its next witness.

THE COURT: All right.

MR. LoCASCIO: Calling Mr. McIntee.

MR. McINTEE: Just a moment.

May I approach, Your Honor?

THE COURT: Yes.

THE CLERK: Please remain standing and raise your hand. Please state and spell your name for the record.

THE WITNESS: Abby Norfleet. A-B-B-Y, N-O-R-F-L-E-E-T.

ABBY NORFLEET, having been called as a witness, being first duly sworn under oath or affirmed, testified as follows:

THE CLERK: Thank you. You may be seated.

MR. McINTEE: Your Honor, to start, there is no objections on the documents.

THE COURT: Okay.

MR. McINTEE: So Kurin moves to admit DTX-72, DTX-79, DTX-82, DTX-123, DTX-616, DTX-659, DTX-664, and DTX-1084.

THE COURT: What was the last one, please?

MR. McINTEE: DTX-1084.

THE COURT: Great. Thank you very much. Any objection? Right.

MR. VORONOV: No, Your Honor.

THE COURT: All right. They are all admitted. Thank you. Go ahead and proceed, Counsel.

(Exhibit DTX-72, DTX-79, DTX-82, DTX-123, DTX-616, DTX-659, DTX-664, DTX-1084 admitted into evidence.)

DIRECT EXAMINATION

BY MR. McINTEE:

Q. Good afternoon.

A. Good afternoon.

Q. Could you please introduce yourself to the jury.

A. Hi. My name is Abby Norfleet and I'm currently VP of sales for southeast region for Kurin.

Q. How long have you been at Kurin?

A. I've been with Kurin for about eight years now.

Q. And have you always been the executive vice president of sales?

A. I have not.

Q. What was your first role at Kurin?

A. So my initial role with Kurin when I first started was vice president of clinical outcomes. So my actual task with that job was to take on building our clinical processes, as well as our clinical team made up of nurses and phlebotomists to help support sales reps in the field. A primary function that we had was to educate our customers or prospective customers about blood culture contamination and how Kurin can help them solve that

issue.

Q. And how long were you in that role as the VP of clinical outcomes?

A. I was in that role for a little over three years or around three years.

Q. And after you were the VP of clinical outcomes, what did you do next at Kurin?

A. After that role, I moved into a role that we called our VP of customer experience where I kind of was a hybrid function between our sales or our more business team and our clinical team. I took on a few other projects as well but stayed very customer focused, working with a lot of our customers each day. Again, continuing to educate them about blood culture contamination and how we could help them solve that issue.

Q. How long were you in that role?

A. About a year.

Q. And before Kurin, what did you do?

A. I actually practiced as a critical care nurse at the bedside in a Level 1 facility, specifically in a neurosurgery intensive care unit. Oftentimes I was in the position as being a charge nurse. I also functioned as a preceptor where I trained new nurses as they came into the unit. And I also took on a lot of our side projects to help patient outcomes and our performance on the unit. A

little more specific to infection prevention.

Q. How long were you a nurse?

A. I was -- I practiced at the bedside for about three and a half years. My license I still maintain current, so I keep up my continuing education to keep that license current.

Q. When you were a nurse, was part of your duties to take blood cultures?

A. Yes, it was. In the ICU, those patients are even more susceptible to sepsis, so we were collecting blood cultures on our patient population daily.

Q. Can you describe the steps that you would take when performing a blood culture?

A. Yes. So at a high level, if I received an order to go collect a blood culture, obviously, I would need to go collect my supplies. That would include getting a needle, a way for the blood to make it into the blood culture bottle, the blood culture bottles themselves, a skin antiseptic, a disinfectant for the bottles, a tourniquet, gloves, things like that.

Once I would go identify the patient and then I was going to be collecting the right sample or the right test for the patient, I would do hand hygiene, so I would wash my hands, put on gloves. I would identify the site that I was going to collect blood from, and then I would do my

venipuncture, collect blood into the blood culture bottles. I would label them and then send them on to the lab.

Q. You mentioned two terms there. For one, antiseptic. Were you supposed to scrub and use that antiseptic on what?

A. Yeah, so with antiseptic, that's designed to help, basically, kill any bacteria that might be on the surface of the skin. So a big practice of that, or the best practices in that is whichever antiseptic that you are using -- there are multiple that the hospital can choose from -- you scrub for 30 seconds, and then you allow it to dry for another 30 seconds.

Q. When you were a nurse, was it your experience that they would follow that practice of scrubbing for 30 seconds and then waiting for 30 seconds?

A. Unfortunately, while things are in policy, sometimes I've heard before that policy is sometimes a wish list, we didn't always see it happen -- thirty seconds of scrubbing and 30 seconds of dry time sounds quick. In a very busy patient environment, sometimes that was a step that I don't think a lot of clinicians were fully aware of how long it could take.

Q. Now, have you heard of the term "false positive" in the context of a blood culture?

A. Yes, I have.

Q. What's your understanding of what a false positive is?

A. So a false positive would be once we sent the samples off to the lab, that what happens is they are checking or waiting for the blood to grow bacteria. If it does grow bacteria, that's going to be considered a positive sample.

When it would get reported as a false positive, oftentimes what we would find out that happened is either it was a bacteria that doesn't necessarily make the patient sick, so what people might hear about is, like, a pathogen, or it could have been multiple bacteria, which would have made it difficult for us to understand which treatment was most appropriate for the patient, so it would be deemed as a false positive or a contaminated blood culture and we would have to then redraw the sample.

Q. Now, I want to switch gears a little bit.

You started off by mentioning that you are the executive vice president of sales for the southeast region?

A. Correct.

Q. What Kurin products do you sell?

A. I sell the Kurin Lock and the Kurin Jet.

Q. I want to talk about the Jet.

Are there features of the Jet that you highlight to

potential hospitals that are interested in learning more about Kurin?

A. Yes, I do. Yes, there are. One being that it is a very small device that is built into a butterfly set that the clinicians are already used to using to collect other blood samples. So it's going to be something that is very easy and seamless to integrate into their existing practice and technique. They like that it is very small and that it is clear because it doesn't add a lot of extra weight to the patient's vein, and they can actually see how it works as they are utilizing the device. They like that it is automatic, that it automatically gets rid of that first little bit of blood for them.

So when we talked a little bit earlier about skin antisepsis, the reason why that's important is to kill bacteria on the top layer of the skin but even if they do it great, they can still end up with more bacteria that they might not be addressing, and that's because we have more bacteria in the deeper layers of our skin that just, unfortunately, good skin antisepsis isn't going to solve.

So they -- we have to do something about that first little bit of blood that's thought to have any of those skin contaminants. They like that the Kurin Jet automatically sidelines that first little bit of blood for them, and that it automatically draws the blood into the

patient -- or into the sample of the blood culture bottles.

Q. At this time, can you please turn to DTX-82 in your witness binder, Ms. Norfleet.

MR. McINTEE: Mr. Urban, can you publish --

THE WITNESS: Sorry?

BY MR. McINTEE:

Q. You have your binder, right, Ms. Norfleet?

MR. McINTEE: Mr. Urban, can you please publish DTX-82. Can you go to the last page.

BY MR. McINTEE:

Q. Is this a presentation that you wrote, Ms. Norfleet?

A. Yes, I did put this together.

Q. What is this presentation?

A. It is a presentation that we typically give as a sales presentation, or information about Kurin Jet.

MR. McINTEE: May we please go to Slide 2.

BY MR. McINTEE:

Q. Earlier we talked about blood cultures.

What is a contaminated blood culture that's identified here?

A. Yeah. So a contaminated blood culture, again, sometimes we use that synonymous or as another phrase for false positive blood culture. It would be a blood culture that was -- ended up contaminated, so we weren't able to

determine what was truly making the patient sick or what type of bacteria was making the patient sick.

Q. Now, do you use presentations like these to educate hospitals on this problem and the Kurin Jet?

A. Yes, we do.

Q. Why do you educate your customers about contaminated blood cultures?

A. So it is a big problem. Oftentimes, the big focus is on what's making the patient sick, especially if it might be due to some other device. It's actually a big problem on contaminated blood cultures because they -- we need to better understand how to effectively treat the patient with the right antibiotic and not accidentally do extra harm to them.

So the research actually shows that patients can be in the hospital for another two to three days if they have a contaminated blood culture. That puts these patients at a lot of risk of bad things that can happen to them, so it is a big cost clinically. It is a very big cost financially to the hospital. The longer the patient is in the hospital, the less they might actually be getting reimbursement for that. They are having to redraw the test. It is actually messing up the workflow within the hospital. So that patient may be taking up a bed that other patients might need. I think we've all heard horror

stories of EDs being too busy to take on patients and long wait times.

So we just really need to highlight, and I'll oftentimes educate our customers of how impactful contaminated blood cultures are, both clinical and financially.

THE COURT: Okay. I have got to have a sidebar, please, from counsel. Sorry to do this, but I need to have them.

(Whereupon, the following occurred at sidebar:)

THE COURT: Okay. I mentioned to you all we have to be respectful of the jury's time. It is undisputed, and both sides agree it's part of the reason why they develop these products is to avoid contamination. We all know. This is a complete waste of time. And this is not considerate of the jury. I mean, and she took five minutes to answer that last question about a point that this jury has already heard numerous times.

So now I do think I have got to cut back time. I have let you guys go, and I just think... It's 4:30. These poor people are sitting there. They are ready to get home. We do not need this kind of testimony.

Now, what's coming outside of this witness?

MR. McINTEE: Your Honor, Ms. Norfleet is planning to testify about the background and how she sells

the Kurin Jet.

THE COURT: So why is that relevant?

MR. McINTEE: Selling the Kurin Jet, Your Honor, and the features that they highlight is going to be relevant to at least a few *Georgia Pacific* factors.

THE COURT: You are telling me it's relevant that we have to educate the hospitals about the risk of contamination? I mean, this is ridiculous. I mean, I am really thinking of sanctioning you for time. I cannot believe you are doing this in front of the jury.

MR. McINTEE: I will certainly stop laying as much foundation, Your Honor.

THE COURT: You better. You better. And you really got to rein it in. I mean, this is really, really ridiculous. I'm really surprised. Let's move it. I mean, it's 4:30. You are going to go home. You are going to get a thousand dollars an hour. These people, they lost work today. They did not get to work today to listen to what we just heard for the last ten minutes? That is out of line. I want both the lead counsel to rein it in.

MR. RAMANI: Thank you, Your Honor. Will do.

(Whereupon, the discussion at sidebar concludes.)

\- - -

THE COURT: We definitely saved some time. And if I have to, we will cut time.

BY MR. McINTEE:

Q. Ms. Norfleet, what is compliance?

A. So compliance, in terms of how we talk about it with Kurin --

Q. And try to be brief, if you can.

A. Absolutely.

Compliance, in terms of how we talk about it with Kurin, is compliance to or how often clinicians are following best practices. That's one component of it. Another component of is going to be how often they are utilizing Kurin or using Kurin to collect the blood cultures.

So, for example, if they had 100 blood cultures that were collected and they used Kurin 90 times, they would have a 90 percent compliance rate.

Q. Is the Jet marketed to help with compliance?

A. Yes, it is.

Q. Are you familiar with the term "clinical data," Ms. Norfleet?

A. Yes, I am.

Q. Is there clinical data on the efficacy of the Kurin Jet?

A. Yes, there is.

Q. Does Kurin commission or conduct its own studies on the Kurin Jet?

A. No, we do not.

Q. Why not?

A. So big reason why we don't commission or ask -- pay people to do our own -- their studies -- studies on Jet or the Lock is because we want it to be more of a real-world approach. It's really important when you are putting something into place that is going to impact patient outcomes that it is going to reflect what's actually happening in the patient or the clinical environment.

So when we -- when you think about commissioning a study, that's more of a controlled situation, where you are making the assumption that something is used 100 percent of the time. We know that that's just not realistic, so we rely on our customers to see their own outcomes and do their own studies or their own publications to share their knowledge that they learned in their journey to decrease blood culture contamination.

MR. McINTEE: Mr. Urban, could you please publish DTX-1084.

BY MR. McINTEE:

Q. Ms. Norfleet, is this an example of a study on the efficacy of the Kurin Jet that is published on Kurin's website?

A. Yes, it is.

Q. And does it conclude that a hospital that used the

Kurin Jet was able to bring down their contamination rates?

A. Yes, it does.

Q. Okay.

MR. McINTEE: No further questions, Your Honor.

THE COURT: All right. Thank you.

Any cross?

MR. VORONOV: Yes, Your Honor.

If my colleague may approach with the binder?

THE COURT: All right.

CROSS EXAMINATION

BY MR. VORONOV:

Q. Good afternoon, Ms. Norfleet.

A. Good afternoon.

Q. You joined Kurin in 2017 as vice president of clinical outcomes, correct?

A. Yes, I did.

Q. And as a vice president of clinical outcomes within the Kurin organization, you were Kurin's highest-ranking medical professional, right?

A. At that time, yes.

Q. None of the Kurin founders were doctors, right?

A. They were not.

Q. And none of the Kurin founders were nurses, right?

A. They were not.

Q. Now, you testified just now about the Valleywise Medical Center case study that's DTX-1084?

A. Yes, I did.

MR. VORONOV: Mr. Smith, if you could please pull that up.

BY MR. VORONOV:

Q. And this is a case study that's published on Kurin's website?

A. Yes, it is.

Q. Now, you would, of course, want to make sure that the documents that Kurin distributes on its website are accurate, fair?

A. Yes.

MR. VORONOV: We can pull that down.

BY MR. VORONOV:

Q. Now, this study relates to the efficacy of the Kurin Jet, correct?

A. Yes, it does.

Q. Now, of course, Kurin has had issues with its products in the past, hasn't it?

A. They have happened, but they're rare.

Q. Well, let's take a look at a few of those.

Would you please turn to the tab labeled as Tab 1 in your binder.

If you could please turn to the page ending in 1666

at the bottom right, Ms. Norfleet.

This is an information form for a customer complaint, right?

A. So may I please have time to review the rest of this document?

Q. Of course.

A. Thank you.

THE COURT: I'm going to let the question go. If you need more time, you can ask for it. Go ahead.

BY MR. VORONOV:

Q. This is an information form for a customer complaint, right?

A. That is how I recognize this document, yes.

Q. And you received this customer complaint in 2019, right?

A. Based on the previous e-mail, yes.

MR. VORONOV: Your Honor, Magnolia moves to admit this document as PTX-306.

MR. McINTEE: No objection, Your Honor.

THE COURT: It's admitted.

(Exhibit PTX-306 admitted into evidence.)

MR. VORONOV: Mr. Smith, if you would please publish this to the jury and turn to Page 1 of the complaint. That's the right page. Thank you.

BY MR. VORONOV:

Q. Now, Ms. Norfleet, the complaint here is that blood leaked from the Kurin Lock during a procedure by a phlebotomist; is that right?

A. That is what is described on the complaint.

MR. VORONOV: If you would just scroll down a little bit, Mr. Smith.

BY MR. VORONOV:

Q. And there are two photos right below that of blood leaking from the Kurin Lock, right?

A. Yes.

Q. If you would please turn to Tab 2, the next tab.

Let me know when you're there.

A. I have got that there. Thank you.

Q. This is another customer complaint, right?

A. I would like to review this document as well, as it's still been a few years old.

Q. Of course. It's only two pages long.

THE COURT: I appreciate you want to read it. I get that. I'm sure your lawyer's told you that. And I'll give you as much time to answer the question. But, for instance, if you just ask what is it, is it a complaint? I don't know how much time you need to do that. So just take whatever you need to answer the question, if you would.

THE WITNESS: Okay.

THE COURT: Thank you.

THE WITNESS: Sure.

Yes, this seems to be an information form customer complaint.

BY MR. VORONOV:

Q. And you received this customer complaint in 2023, right?

A. Yes, I did.

MR. VORONOV: Your Honor, Magnolia moves to admit this document as PTX-307.

THE COURT: All right. Any objection?

MR. McINTEE: I have an objection, Your Honor --

THE COURT: What --

MR. McINTEE: -- subject to the pretrial conference, motion in limine, and 402 and 403, Your Honor.

THE COURT: Which motion in limine? Just remind by number.

MR. McINTEE: It is motion in limine -- Kurin's motion in limine Number 2.

THE COURT: Okay. Hold on one second.

Give me a second.

MR. VORONOV: Your Honor, if I may request a brief --

THE COURT: Hold on.

Why is this not subject to the motion in limine?

MR. VORONOV: This isn't subject to the motion in limine because --

THE COURT: Hold on, actually. You know what I'm going to do? I'm going to let you go early because I think this is going to just take too long. I want to try to make sure your time is not wasted. So let me see if I can't solve it with another sidebar. I do apologize. All right? And then we'll see. Otherwise, I'm tempted to let you go. But maybe we can expedite this.

(Whereupon, the following occurred at sidebar:)

THE COURT: All right. What I was reminded by the motion in limine was that there's to be no discussion of safety issues, that there's only to be discussed efficacy issues, correct?

MR. VORONOV: That's correct.

THE COURT: Am I right? I just want to make sure I'm remembering correctly what my ruling was.

MR. VORONOV: That's correct. I'm not intending to elicit any safety information by calling these issues.

THE COURT: Except you want to say part of the needle's sticking out after retraction in the document,

correct?

MR. VORONOV: I did not intend to have that as a safety issue. We can -- the problem was with these products, their -- one of the issues that we've raised is the acceptability of the Kurin Lock as a non-infringing alternative. They -- there are reasons that our expert needs to be able to point to in order to support that opinion.

THE COURT: Right.

MR. VORONOV: We simply intend to point to this as evidence.

THE COURT: Right. But you're putting a document into evidence which says, quote, "Part of a needle is still sticking out after retraction," unquote, and you didn't redact it, so you can't use the document right now. All right?

MR. VORONOV: Understood, Your Honor.

THE COURT: So, I mean, I ruled on a motion in limine. So if there's any other documents that refers to a safety issue, that's a problem.

MR. VORONOV: Understood. And just for the record --

THE COURT: Hold on. Hold on.

Now, what you can do is you can discuss it with her, not publish it in front of the jury, and then submit

a redacted version. I'll accept that. But let me hear from the other side.

If we redact "retracted needle," don't let them put it in front of the jury right now, do you still object?

MR. McINTEE: I think that would be okay. That was the issue we saw with it and that's why we drew the line between the first document he used. For the record, Your Honor, the first exhibit, the second one, and there's one more that were added to the exhibit list this afternoon at 3:00. So we had to shift gears to address it.

THE COURT: I appreciate that. I don't fault you. It's a legitimate objection. I totally get the objection. So you are telling me -- do you know these other complaints that are coming? Do any of them have safety issues?

There's one more, Your Honor, and I believe it does.

MR. VORONOV: Just in the interest of time, I heard what you said earlier. I'm not going to use the third document with Ms. Norfleet. This will be the last one that I discuss with her on this particular topic. I am planning to wrap up the cross very shortly afterwards.

THE COURT: All right. I think the best way to

do this actually, now that I think about it, is I'm not even sure it's fair to Kurin to have a redacted document like this in the back. So I will let you question her about it. You can just say, so the document has not been admitted. You can just say, isn't it true, and I am going to let him lead, that there was a complaint about, and he can just say what it is. I am going to go sustain the objection, and I'm going to limit, though, the discussion to that. Will that work?

For instance, the fact that pushing -- you have to push it, the push --

MR. McINTEE: Needle sticking out after retraction.

THE COURT: I'm not going to let him touch part of the needle. Underneath it says, push button does not work well. Sometimes I have to push it two or three times to get it to work, and it's flimsy. I'm going to let him lead and just say, "Isn't it true somebody complained that the push button does not work well," you can just read those two things. That's it. The document cannot come into evidence.

MR. VORONOV: Understood.

MR. McINTEE: The other issue is, Your Honor, that he was leading in the context of the Lock device, which doesn't have a push button. That's been one of

our --

THE COURT: You can do that on redirect. You can say, "By the way, you heard Lock," there is no Lock. You will get it out on redirect.

MR. McINTEE: Understood, Your Honor.

(Whereupon, the discussion at sidebar concludes.)

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THE COURT: All right. The objection is sustained, but you may ask questions as we discussed at sidebar about the document.

MR. VORONOV: So please leave that document down, Mr. Smith.

BY MR. VORONOV:

Q. Now, Ms. Norfleet, in your binder, this complaint related to some issues with Kurin needles, right?

A. I would say it's a complaint about a needle.

Q. And one of the complaints is that "The push button does not work well, sometimes I have to push it two or three times to get it to work," right?

THE COURT: I'm going to interrupt because of the concern I had. I think that question could lead to an answer that we just discussed at sidebar. The question should be: Doesn't the complaint include that a push button does not work well. It's not the complaint, okay?

BY MR. VORONOV:

Q. Doesn't the complaint include that the push button does not work well?

A. This is written -- it is written in the complaint issue in quotations.

Q. And another complaint issue in quotations is, quote, "Flimsy." Is that accurate?

A. I see that.

Q. You can put that away.

So let's talk about the Kurin Jet versus Kurin's previous generation product, the Kurin Lock.

There is a risk of bypassing the collection chamber in the Kurin Lock, right?

A. Yes, we proactively educate our customers on that. They are very aware of it and still have success with it today.

Q. And now, I believe that when you attach the blood culture bottle prematurely, that is what can cause the collection chamber to be bypassed, right?

A. In the Kurin Lock, there is a time where if they don't allow for the usually about one to three seconds, if they don't allow for that chamber to fill, then if they attach something to it, it might bypass that, yes.

We -- again, we proactively educate our customers to wait for that chamber to fill. They continue to buy Kurin

Lock now seven years, eight years ongoing at this point.

Q. And, Ms. Norfleet, I just want you to confirm that if that blood culture bottle is attached prematurely, that's what can cause the collection chamber to be bypassed, right?

A. That's true.

Q. As a consequence, in the Kurin Lock, the contaminated blood can go into the blood culture bottle and potentially contaminate the sample, true?

A. If it is not used in the way that it is intended, that can happen, just like with any medical device.

Q. So you would agree that if someone attaches the culture bottle prematurely in the Kurin Lock, the contaminated blood could go into the blood culture bottle and potentially contaminate the sample, right?

A. Correct.

Q. The Kurin Jet does not have the same problem of bypassing the collection chamber, fair?

A. That's accurate.

Q. The Kurin Jet also works faster than the Kurin Lock, right?

A. Yes, it does.

Q. And that's because the Kurin Jet functions on vacuum pressure in the blood collection phase, fair?

A. Once the clinician attaches either a blood culture

bottle or aspirates with a syringe, that is how Kurin Jet works.

Q. So the blood culture bottle or the syringe create that vacuum pressure for the Kurin Jet to function in the blood collection phase, right?

A. That's the source in which it has the blood go from collecting from the patient into the blood culture bottle.

Q. You would agree that the Kurin Jet is a fundamentally different product than the Kurin Lock, right?

A. Kurin Jet and Kurin Lock have a lot of same features and benefits, but yes.

Q. Yes, they are fundamentally different?

A. Yes.

MR. VORONOV: Thank you, Ms. Norfleet. No further questions, Your Honor.

THE WITNESS: Thank you.

THE COURT: Any redirect.

REDIRECT EXAMINATION

BY MR. McINTEE:

Q. Ms. Norfleet, you were asked a question on cross about a complaint related to a push button.

Do you recall that?

A. I do recall that.

Q. Does the Lock have a push button?

A. Yes, it does.

Q. And is that push button something that's on the Lock device itself?

A. No, it is not.

Q. Are you aware of a product -- strike that. Withdrawn.

You were asked about possible -- possibly bypassing the containment channel in the Lock if it's used improperly.

Do you recall that?

A. I do recall that.

Q. Does that problem also exist in the Micro?

A. Yes, it does.

MR. McINTEE: No further questions.

MR. VORONOV: Object to scope, Your Honor.

MR. McINTEE: No.

THE COURT: Horse is out of the barn.

All right. You may step down. Thank you.

Next.

MR. LoCASCIO: Your Honor, at this time there is a couple of dep designations that we don't have any more issues to take up with the Court so we can play those right now.

THE COURT: Okay. That would be great. Are they more than 10 minutes?

MR. LoCASCIO: They are so short and they will

fit and we may still leave early.

THE COURT: Oh, wow. Okay. All right. Something short, my goodness.

MR. LoCASCIO: Okay. First, the first of those, Your Honor, at this point we call Timothy Ramsey by deposition. Timothy Ramsey is a former principal mechanical engineer for Magnolia Medical Technologies, and through his testimony, deposition Exhibit 17, which is DTX-113, would be moved into evidence. And the total run time for Mr. Ramsey is 4 minutes 21 seconds.

THE COURT: All right. Thank you.

(Deposition designation of Timothy Ramsey plays as follows:

Q. Do you currently work as an employee for Magnolia Medical Technologies?

A. No, I'm not an employee of Magnolia.

Q. Were you previously an employee of Magnolia?

A. Yes.

Q. Who informed you of Kurin's existence?

A. Well, I guess -- actually, I don't -- I probably didn't hear the name then. I think I had heard that there was a competitor. I don't know when I heard the name. So, and I don't remember who in the interview process talked about it. But I just think I just knew it was a competitor, so...

Q. Did you know anything else about Kurin besides it being a competitor when you first started at Magnolia?

A. I think I knew that it was a lot less blood, a smaller device.

Q. Did you know anything else about Kurin's device when you started at Magnolia besides that it was smaller and used less blood?

A. I don't know -- this probably wasn't in the interview, but at some point in that early period I think I learned that it was -- I knew it was -- worked differently. You didn't squeeze it. You just relied on the -- on the blood pressure to fill itself.

Q. What was your initial impression of Kurin's device?

A. That it was small.

Q. Did you believe that Kurin's device had any advantages over Magnolia's device?

A. I think to the average person just looking at it, the fact that it's smaller and it looks visually simpler, I think that's an advantage.

Q. Are you aware of whether the Kurin Lock diverted a smaller volume compared to the Steripath that was then on the market?

A. Yes, it did.

Q. Are you aware that Kurin Lock was a smaller device than the Steripath that was then on the market?

A. Yes, it was.

Q. So I'm handing it -- you a document marked Exhibit 17 with Bates stamps number MAG-DEL0533036.

Do you recognize this document?

A. I don't remember making this particular -- but, I -- again, I do remember the -- the contents of it look familiar.

Q. So on the first page, do you see it's dated November 30, 2018?

A. I see that.

Q. And do you see your name appears as one of the presenters?

A. I see that.

Q. What does it mean when it says "inner body for molding"?

A. That's the name of this part, the inner body.

Q. So is this all one part?

A. Yeah, this is one injection-molded part.

Q. And then if you turn to the next page, it says "architecture outer body." Do you see that?

Is this also one injectable mold piece?

A. Similarly, yeah, this is another rigid plastic part, injection-molded part.

Q. And how are these parts combined together?

A. So the inner body and the outer body were

ultrasonically welded together. And the bladder is sandwiched -- ultrasonic weld.

Q. Can you turn to the last page that says "Next steps action items." And do you see it says "Housing detail design for manufacture"?

A. Yeah, I see that.

Q. What is the housing being referenced to here?

A. Probably the inner body and the outer body. So, yeah, I mean, this is telling me injection that we're getting ready for molding, but it's probably not quite ready yet.

(Conclusion of videotaped deposition excerpts of Timothy Ramsey.)

MR. LoCASCIO: Your Honor, Kurin calls its next witness, Shan Gaw. Shan Gaw is a product design consultant for Magnolia Medical Technologies. Deposition Exhibit 8, DTX-197 will come into evidence. May already be in evidence, but either way, from Mr. Gaw. His total run time is 2 minutes and 6 seconds.

THE COURT: Thank you.

(Deposition designation of Shan Gaw plays as follows:

Q. Will you please state your name for the record.

A. Shan Gaw.

Q. Do you work for Magnolia?

A. As an independent, yes.

Q. What do you do for Magnolia?

A. I provide design and engineering consulting support services.

Q. You were involved in the development of Magnolia's Steripath products, right?

A. That's correct.

Q. And the pressure differential, according to Claim 1, is in at least a portion of the channel between the movable plug and the outlet, right?

A. Okay.

Q. That's what the claim says, right?

A. Yes.

Q. The claims require that a pressure differential is built between the movable -- in the channel between the movable plug and the outlet, right?

A. Okay.

Q. So in that channel, somewhere in that channel, there has to be a pressure gradient in the channel, right?

A. That's how it's written here, correct.

Q. And when we're talking about the vacuum-driven approach, is this the same concept that is described in the '081, '863, and '709 patents?

A. That's what the intent is, yes.

Q. And negative pressure meaning pressure that would

pull the bodily fluid out of the patient and into the device, right?

A. Or negative pressure to act on something that would pull fluid. It was a generic statement about requiring negative pressure, not explicitly to pull fluid from a patient.

Q. You're a named inventor on the '081, the '863, and the '709 patents, right?

A. That's correct.

(Conclusion of videotaped deposition excerpts of Shan Gaw.)

MR. LoCASCIO: Your Honor, the last witness of the day, Kurin calls Michael DelVacchio, senior vice president for commercial of Magnolia Medical Technologies. There are no exhibits, and the total run time, quite coincidently, is 1 minute and 55 seconds.

(Deposition designation of Michael DelVacchio, Jr. plays as follows:)

Q. Will you please state your name for the record.

A. Michael Joseph DelVacchio, Jr.

Q. What was your title at Magnolia?

A. My title was senior vice president of commercial.

Q. When did you work at Magnolia?

A. I worked for Magnolia from November 27, 2023, through March 15, 2025.

Q. Did Mr. Bullington discuss Magnolia's profitability?

A. Yes.

Q. Was Magnolia profitable when you joined in November of 2023?

A. No.

Q. When you left in March of this year, was Magnolia profitable?

A. No.

Q. And you were at Magnolia for about 16 months, right?

A. Yes.

Q. Do you expect that Magnolia will be profitable at any point in the next year?

A. Their business plan has a pathway to profitability within that time frame.

Q. Setting aside the business plan, I'm asking whether you, based on your experience, expect that Magnolia will be profitable at some point in the next year.

A. I don't expect that.

Q. I just wanted to confirm, you left Magnolia in March of 2025, correct?

A. Yes.

Q. So sitting here today, what understanding, if any, do you have of Magnolia's current profitability and expenses?

A. I don't have any new information from the time I left in March.

MR. LoCASCIO: That's it.

(Conclusion of videotaped deposition excerpts of Michael DelVacchio, Jr.)

THE COURT: All right. That's a good way to end, right on time. Good.

All right. So thank you again for being patient, and tonight, please don't do anything, research or talk about the case. I'll ask you again first thing in the morning. I hope you have a good night. I'll see you tomorrow. Thank you very much.

(The jury exits the courtroom at 5:00 p.m.)

THE COURT: All right. Please be seated. I want to just follow up a little bit about the sidebar. So these are the questions that really were the breaking point for me.

So we asked a witness: Can you describe the steps that you would take when performing blood culture. We have heard a lot of testimony about that. I realize she's a nurse, but we've heard a lot of testimony about that and you have to pick and choose, right? And both sides, this is not even a contested point. Right? I mean, there's no advantage to either side at this point by explaining how you take a blood culture. You both are in the same business. So we have a lengthy answer for that.

And then we had a question. The next question

was talking about what he's supposed to do in terms of scrubbing. We've had testimony about that. Mr. Rogers testified about it.

Again, both sides, it's the same issue, you know. And there was follow-up questioning about that, about scrubbing for 30 seconds, and I recall specifically Mr. Rogers not long ago talking about that. Then, "Have you heard the term false positive?" I mean, again, I think there's been significant testimony. Am I wrong? Has there not been testimony about what a false positive is?

MR. LoCASCIO: You are not wrong, Your Honor, and we heard what you said at sidebar. And I think this is an issue of -- with one particular witness in terms of telling the story with context for her. And yes, if that witness -- and, frankly, I will take full responsibility in terms of if we had -- after the Rogers testimony, which was -- I'll say I learned some things in the Rogers testimony and I had heard most of them before, but Mr. Rogers maybe, as you can tell, is a freewill sort.

I can't say I -- after that, in the time window, I certainly did not corner Mr. McIntee and say, "Let me see Norfleet's outline once more," and I could have done that.

THE COURT: All right. You know, because it's

funny, one of the things I like about both of your firms is that you spread the work. I think it's great. And, you know, when I tell my clerks what firms to look for, that's one thing I think about. The best firms that come to my courtroom do that.

But what I find is that when this issue arises, it's always with the more junior lawyer, and it's because the junior lawyer is doing what a junior lawyer should do, a good junior lawyer, which is they are making sure they cover everything. But they've also got a narrow focus of their witness, and that's why I called both lead counsel, because I think it's really good, you know, for the senior attorneys. I don't mean to just single out you two, you know. I include Mr. Block, Mr. McEldowney, Mr. Smith, Ms. Farnan.

Like, you have got to bring the global perspective to this because the problem is I am the only one protecting their time, all right? And I get, I have never had a jury that didn't say to me that the one issue was it was over-tried.

So going forward, let's be sensitive to that. I did not, and normally I am much stricter on time than I am in this case. And I'm not going to pull time yet, but, boy, if I get that again, I'm just going to have to dock you. My normal thing, I would have just said, "There goes

an hour of your time." If we think we are going to have this witness talk about that, then you have not thought about the time, and were not really thinking about the jury, so...

Okay. So let's address that going forward, please. All right.

Are there are any other issues I need to attend to?

MR. RAMANI: Not from our side, Your Honor.

MR. LoCASCIO: I don't think there is anything else we have to have tackled today.

On the deposition objections that remain, there are a couple -- I think some of them on my own -- to your comment, I had that scorecard and was going through it myself here at the table, and I think there was probably two or three that are just going to fall off the table, for instance, given the Court's comment earlier about the timing of the prosecution of the third-in-time Magnolia patent. This was the question of whether a sample product went to the prosecution counsel and when did it happen, vis-a-vis the prosecution time.

THE COURT: Right. And it went in February, or it was asked for in 2023.

MR. LoCASCIO: We looked at that, Your Honor, and in light of your comments, we are going to take that

deposition testimony off because --

THE COURT: I can't even remember it.

MR. LoCASCIO: You had asked when were the claims, were there amendments, and how did the time of those dates line up. And in full disclosure, the record evidence, we know Jet samples were sent to prosecution counsel. We were not given -- we were sort of prevented from getting the date those were sent. The witness said, "I don't know," and it was sort of in a zone. We didn't move to compel on the privilege issues for that to sort of nail that point down. I think there is a factual basis, given some of the things that went on here, to still have that go in front of the jury, but given Your Honor's comments, I read what you were saying as unless we can prove that a claim was amended after that December date, then you were going to sustain the objection.

THE COURT: Because I don't think it makes sense. Why would it be relevant otherwise? Unless you can tell me why it's relevant, I don't see it.

MR. LoCASCIO: That's with respect to the prosecution counsel. There's testing. We are going to look at those designations, and we will come in the morning on anything that remains.

THE COURT: Okay. Just think it through. I mean, I just need to hear a basis for its relevance. I

mean, a lot of these are very close calls. I mean, that's why I am willing to change my mind one way, change it the other depending on, you know, who last speaks and whatever, but I am just trying to get it right. Okay.

All right. So we'll do that. I will see you in the morning then, I guess.

Wait, Mr. Ramani, you have got something?

MR. RAMANI: Can I just say one more thing?

THE COURT: Yes.

MR. RAMANI: Just as matter of planning, on the positive side in terms of not wasting the jury's time, I think we might close all the evidence this Friday, and certainly by this coming Monday, would be my expectation.

THE COURT: You mean on Phase I?

MR. RAMANI: On Phase I.

THE COURT: Right. Okay.

MR. RAMANI: I don't know if Your Honor wants to consider setting a charge conference Friday afternoon.

THE COURT: I see, yes. Okay. Do we have a lot of jury instruction issues in Phase I?

MR. RAMANI: I don't believe so.

MR. LoCASCIO: I don't think there's that many issues, to be fair.

THE COURT: See, I also make the mistake of I haven't looked at your instructions. So, for instance,

did you do what I want as far as mens rea? It's got to be, and I know that's a criminal term, but the Supreme Court also speaks of patents in that way.

If we are going to have inducement, we ought to have a separate knowledge instruction with willful blindness.

Do we have that in your proposal?

MR. RAMANI: I can't say for sure, but I will check tonight, Your Honor. If we don't, we'll work with the other side to try to get something tomorrow.

THE COURT: My main thing is we can simplify instructions. That's the biggest thing.

All right. We'll look into that. I will look at the jury instructions right now and will be prepared to talk tomorrow whether and when. Wait, tomorrow, what day is tomorrow?

MR. RAMANI: Thursday.

THE COURT: Tomorrow is Thursday? So we are talking finishing. okay. We have got to have a charge conference tomorrow, then.

MR. LoCASCIO: Just so we are all on the page because this one, particularly, given I was one who had raised when closing would be, when we would have to disclose closing demonstratives, I interpreted what my colleague to say is the evidence would close Friday,

maybe, or Monday, and then we need to have a charge conference before we could presumably close the case next week.

I don't think there is any scenario where either of us think we're finishing the case and closing this week.

THE COURT: I see, okay.

MR. RAMANI: We are going to -- we are taking your comments to heart, Your Honor. We're going to -- my team and I are going to really skinny things tonight. So maybe we close the evidence early Friday afternoon. I guess we will have to see.

THE COURT: I will certainly encourage the jury to depending... sorry.

Whenever we end, I will encourage the jury to give you the night.

MR. LoCASCIO: Thank you.

THE COURT: But look, if you finish at 11:00 a.m., we can't give them the night. I think I told you, my last patent trial, in front of the lawyers, we asked the jury, and I explicitly told them closings are better if you wait, and they said they wanted the closings.

MR. LoCASCIO: Shocker. If I was on a jury, I would probably have taken that.

THE COURT: Fortunately for the lawyers, it was only damages. It wasn't the liability. Anyway, I don't think that's what's going to happen. In fact, I'd even really suggest to them so strongly, I think, if you finish early afternoon on Friday or at lunchtime, that we say, "Look, let's just come back Monday morning." You should not plan on having to fly on your closing but, you know.

MR. LoCASCIO: Thank you. And then the only other comment I'd make is we are 100 percent sensitive and we will look at the time. I do want to point out that, obviously, tomorrow, we have our technical expert testifying on both sides of this case.

THE COURT: It's going to take time.

MR. LoCASCIO: That's going to take some time, and there's 12 claims asserted against us.

THE COURT: Here's the thing, I have got no problem with that. And you noticed, I didn't raise the time on anything else. It's the repetition, and it's when you do repetition about uncontested facts that we already have testimony on, then I intervene. But I don't think there was wasted testimony, other than that, frankly, I'm good. I mean, you know, we've only spent 10 percent of the case on patents, but other than that fact, it's interesting and I'm good with it, all right?

MR. LoCASCIO: Thank you, Your Honor.

THE COURT: We will see you tomorrow.

(The proceedings concluded at 5:10 p.m.)

CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer, RPR, FCRR
Official Court Reporter

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