

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 *****

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 *****

5 MEDTRONIC INC.,

6 Petitioner,

7 v.

8 MOSKOWITZ FAMILY, LLC

9 Patent Owner.

10 *****

11 IPR2026-00162

Patent 12,011,367

12 *****

13 REMOTE DEPOSITION OF

14 BRAD CULBERT

15 Wednesday, August 19, 2026

16 10:01 a.m. to 12:56 p.m. (Central)

17 Pages 1 to 75

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22
23
24 JOB NO.: MW 8391244

25 REPORTED BY: Merilee S. Johnson, RDR, CRR, CRC, RSA

A P P E A R A N C E S

(All appearing via remote videoconference)

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I N D E X

WITNESS: BRAD CULBERT	PAGE
Examination by Mr. Werner.....	4

CAUTION or INSTRUCTIONS NOT TO ANSWER: (None.)

SPECIAL INSTRUCTIONS or REQUESTS: (None.)

E X H I B I T S

EXHIBITS MARKED AND FIRST REFERRED TO:	PAGE
Exhibit 1002 Declaration of Mr. Brad Culbert in Support of Petition for Inter Partes Review of U.S. Patent No. 12,011,367	7
Exhibit 1057 U.S. Patent No. 9,445,919 B2	21

(Exhibits retained by counsel.)

REPORTER'S NOTE: All quotations from exhibits are reflected in the manner in which they were read into the record and do not necessarily indicate an exact quote from the document.

1 (PROCEEDINGS, August 19, 2026, 10:01 a.m.)

2 COURT REPORTER: We're on the record in
3 the matter of Medtronic, Inc., versus Moskowitz
4 Family LLC.

5 Counsel, please state your appearances
6 for the record and who you're representing,
7 beginning with the noticing attorney.

8 MR. WERNER: I'm Todd Werner from
9 Avantech Law on behalf of Moskowitz, the patent
10 owner.

11 MR. PARK: Young Park from Paul
12 Hastings LLP representing petitioner, Medtronic,
13 Inc., as well as the witness, Brad Culbert.

14 BRAD CULBERT,
15 duly affirmed, was examined and testified as follows:

16 EXAMINATION

17 BY MR. WERNER:

18 Q. Good morning, Mr. Culbert.

19 A. Good morning.

20 Q. Could you please state your full name for
21 the record?

22 A. Brad Culbert.

23 Q. And what is your work address?

24 A. 22532 Petra, Mission Viejo, 92692. That's
25 Mission Viejo, California.

1 Q. Do you currently hold any positions?

2 A. In what regards?

3 Q. With regard to employment. Or any
4 companies that you're involved with.

5 A. I'm self-employed. I'm a consultant.

6 Q. Do you operate as an -- out of an
7 organization or just as a individual?

8 A. Individual.

9 Q. You've had your deposition taken before; is
10 that correct?

11 A. Yes.

12 Q. Do you have an idea of how many times
13 you've been deposed as an expert?

14 A. Approximately 14 times.

15 Q. And were you just consulting your CV?

16 A. That is correct.

17 Q. Can you identify for me what materials you
18 have in front of you?

19 A. I have my declaration and their exhibits.
20 This binder has all the exhibits.

21 Q. So all the documents in front of you are
22 materials that are either your declaration or have
23 been submitted as an exhibit in this IPR; is that
24 correct?

25 A. As a exhibit referenced in my declaration.

1 Q. And I see there's a monitor in front of
2 you. Does that just have the Zoom interface on it
3 right now?

4 MR. PARK: Yes. It's the control
5 panel.

6 THE WITNESS: Correct.

7 BY MR. WERNER:

8 Q. Oh, it's the control panel. Do you have a
9 video screen in front of you that you're looking at
10 for the Zoom?

11 A. Yeah. On the back wall.

12 Q. Okay. So you don't have any electronic
13 devices in front of you, correct?

14 A. Correct.

15 Q. Do you agree to tell the whole truth today?

16 A. I do.

17 Q. And to provide complete and honest answers?

18 A. I do.

19 Q. Is there any reason that you would be
20 unable to do so today, such as any life
21 distractions or medication?

22 A. No.

23 Q. If you think any of my questions have any
24 ambiguity, will you agree to let me know?

25 A. I will.

1 Q. And if you could please make sure to allow
2 me to finish my questions and counsel to complete
3 any objections before stating your answer, that
4 will help keep a clean record. Is that okay?

5 A. Yes.

6 Q. And I will do my best to wait until you
7 have completed your answer, but if I've interrupted
8 you, please let me know.

9 A. Okay.

10 Q. You submitted a declaration in this IPR; is
11 that correct?

12 A. That is correct.

13 Q. And you have that declaration before you,
14 which is previously marked as Exhibit 1002; is that
15 correct?

16 A. That is correct.

17 (Exhibit 1002 was introduced.)

18 BY MR. WERNER:

19 Q. Did you review that declaration in
20 preparation for today's deposition?

21 A. I did.

22 Q. Did you identify any errors or changes that
23 you would like to make to your declaration?

24 A. No, I did not identify any errors in the
25 declaration.

1 Q. What did you do to prepare for today's
2 deposition beyond reviewing the declaration?

3 A. I also reviewed the support material and
4 met with counsel.

5 Q. Mr. Park, is that who you met with?

6 A. That is correct.

7 Q. Was there anyone else that attended the
8 meeting?

9 A. There was Ms. Younkins for a couple hour --
10 an hour or two.

11 Q. How long was your meeting otherwise? In
12 total, including that time.

13 A. Approximately four hours yesterday and
14 approximately four hours the day before.

15 Q. Your declaration references a Palmatier
16 prior art reference; is that correct?

17 A. That is correct.

18 Q. How did you first become aware of
19 Palmatier?

20 A. I don't recall the first time I saw
21 Palmatier.

22 Q. Was it provided to you by counsel when you
23 first saw it?

24 A. I don't recall when the first time I saw it
25 and who provided it to me or if I found it on my

1 own.

2 Q. Do you have any reason to believe you found
3 it on your own?

4 A. I've done several IPRs with expandable
5 cages, so it may have been in a prior IPR as well.

6 Q. But as you sit here today, you don't have
7 any concrete recollection of considering Palmatier
8 in a prior -- in an IPR proceeding not involving a
9 Moskowitz patent, do you?

10 A. Sorry. Can you repeat that question?

11 Q. Do you have any concrete recollection of
12 considering Palmatier prior to any involvement in
13 any legal proceedings involving Moskowitz?

14 A. No, I don't have a concrete recollection.
15 As I said, I don't remember -- recall when I first
16 was introduced to Palmatier.

17 Q. Do you rely on three different embodiments
18 described in Palmatier in support of your opinions
19 in this matter?

20 MR. PARK: Objection to form.

21 A. What embodiments are you referring to?

22 Q. Are you able to answer that question?

23 MR. PARK: Objection to form.

24 A. I -- yeah. Can you be more specific?

25 Q. What is ambiguous about my question?

1 A. As -- I rely on embodiments 40, 540, and
2 840 of Palmatier. As well as --

3 Q. So --

4 A. -- the rest of the specification.

5 Q. In terms of physical embodiments in
6 Palmatier, is it correct that you rely upon
7 embodiment 40, embodiment 540, and embodiment 840?

8 MR. PARK: Objection to form.

9 A. Yeah, could -- say that again, please?

10 Q. In terms of embodiments in Palmatier, is it
11 correct that you rely upon what is identified as
12 embodiment 40, embodiment 540, and embodiment 840?

13 MR. PARK: Same objection.

14 A. I rely on embodiments that have -- 40, 540,
15 and 840 as well as the rest of the specification of
16 Palmatier.

17 Q. You agree that there are differences
18 between each of embodiments 40, 540, and 840,
19 correct?

20 A. Say that again, please.

21 Q. You agree that there are differences
22 between each of the embodiments 40, 540, and 840,
23 correct?

24 A. Yes, there are differences between
25 embodiments 40, 540, and 840.

1 Q. Is there anywhere that Palmatier states
2 that statements it makes about one implant applied
3 to the other implants?

4 Sorry. Let me -- let me withdraw that.
5 I'll reask that.

6 Is there anywhere that Palmatier states
7 that the statements it makes about one embodiment,
8 such as embodiment 40, apply to the other
9 embodiments, such as embodiments 540 and 840?

10 A. Palmatier states it would be understood
11 that "various modifications may be made to the
12 embodiments disclosed herein."

13 Q. And that's a reference that applies to all
14 embodiments, correct?

15 A. That applies to all embodiments, correct.

16 Q. Is there anywhere that Palmatier
17 specifically states that statements about one of
18 the identified embodiments therein, such as
19 embodiment 40, apply to the other embodiments, such
20 as embodiments 540 or 840?

21 A. I would have to review it again to see if
22 it specifically states that, but it does say that
23 various modifications may be made to the
24 embodiments.

25 Q. As you sit here today, you're not able to

1 identify any statement where Palmatier indicates
2 that statements about embodiment 40 apply to
3 embodiments 540 or 840, correct?

4 MR. PARK: Objection to form.

5 A. (Reviewing document.)

6 It says, "Palmatier explains that its
7 statements about implant 40 and 540 also apply to
8 implant 840."

9 Q. Where does it -- where does Palmatier state
10 that?

11 A. 1057, column 18, 38 to 41.

12 (Court reporter requested
13 clarification.)

14 MR. PARK: I think he was talking to
15 himself.

16 BY MR. WERNER:

17 Q. It's actually quite difficult to understand
18 you guys sometimes. I'm not sure if there's a
19 setting or anything to the microphone, but there's
20 been a little bit of a feedback, an echo.

21 MR. PARK: Is it coming from our end?

22 MR. WERNER: Yeah.

23 MR. PARK: I mean, I don't have
24 anything on, so...

25 MR. WERNER: It's -- and it's not fully

1 consistent.

2 BY MR. WERNER:

3 Q. In any event, I think you identified a
4 passage, Mr. Culbert. Can you restate what that
5 passage was?

6 MR. PARK: I think I was saying he was
7 probably talking under his breath.

8 But go ahead. You can answer the
9 question.

10 A. Okay. So I stated, "Palmatier explains
11 that its statement about implant 40 and implant 540
12 also apply to implant 840." That's in
13 Exhibit 1057, paragraph 18, 38 to 41, where
14 "intervertebral implant 840 is similar to
15 intervertebral 40 and intervertebral 540 and their
16 components."

17 Q. Okay. So in that passage, Palmatier merely
18 indicates that the embodiments are similar,
19 correct?

20 MR. PARK: Objection to form.

21 A. It states that "intervertebral implant 840
22 is similar to intervertebral 40 and intervertebral
23 implant 540 and their components."

24 Q. In that passage, Palmatier does not
25 indicate that statements about intervertebral

1 embodiment 40 apply to implants 840 or 540, does
2 it?

3 MR. PARK: Objection to form.

4 A. Sorry. Yeah. Could -- repeat the question
5 again, please.

6 Q. In that passage, Palmatier does not
7 indicate that statements about embodiment 40 apply
8 to embodiments 540 and 840, does it?

9 MR. PARK: Objection to form.

10 A. It implies that the implants are very
11 similar to each other, and that -- and it also
12 state -- goes on to state various modifications may
13 be made to the embodiments.

14 Q. Does it go on to state that in that same
15 paragraph, or is that in a different passage that
16 you're referring to?

17 A. The "various modifications" statement was
18 on a second -- a different paragraph.

19 Q. And that "various modifications" statement
20 is not in reference to anything; it's just any --
21 any modifications generally, correct?

22 MR. PARK: Objection to form.

23 A. It says various modifications may be made
24 to the embodiments, so that is 40, 540, and 840
25 that are -- were disclosed.

1 Q. And that could also be changes that are not
2 even remotely referenced anywhere in Palmatier,
3 correct?

4 A. (Reviewing document.)

5 The -- well, it has to be in reference to
6 the embodiments 40, 540, and 840. It's not
7 specific on the exact changes.

8 Q. So the changes that that sentence
9 contemplates could be ones that are not mentioned
10 in Palmatier, correct?

11 A. If it's apparent at the time of the
12 invention to a POSITA, then, correct.

13 Q. And the closest that Palmatier gets to
14 saying that statements about one of the three
15 embodiments we've been discussing apply to the
16 other embodiments that we've been discussing is
17 when he says that those embodiments are similar,
18 correct?

19 MR. PARK: Objection to form.

20 A. That is a paragraph that I identified -- or
21 those two paragraphs I've identified. I can't
22 remember off the top of my head if -- if it does
23 say it elsewhere.

24 Q. Which claims, if any, do you contend that
25 embodiment 40 anticipates?

1 MR. PARK: Objection to form.

2 A. Can you ask that again, please? Which
3 claims?

4 Q. Which claims, if any, do you contend that
5 embodiment 40 anticipates?

6 A. (Reviewing document.)

7 Well, I looked at all the prior art
8 references to disclose it, just the features
9 recited in claims 8, 9, 13, and 17 to 21 of the
10 '367 patent.

11 In the claim mapping, I -- primary focus in
12 examples I used was embodiment 840, but I did bring
13 in some statements from embodiment 40 -- implant
14 40.

15 Q. I just want to make sure I have that
16 correct.

17 In your claim mapping, your primary focus
18 was on embodiment 840, but you also consider
19 statements relating to embodiments 40 and 540; is
20 that correct?

21 A. Yes, those statements were also applicable
22 to 840.

23 Q. So am I correct that your anticipation
24 opinions in this case are based on embodiment 840
25 and not, in isolation, embodiments 40 or 540?

1 MR. PARK: I don't think he provides
2 anticipation of opinions, Counsel.

3 MR. WERNER: He --
4 (Indiscernible crosstalk.)

5 MR. WERNER: The witness can -- the
6 witness can speak for itself, if that's --

7 THE WITNESS: Yeah.

8 MR. WERNER: -- speak for himself, if
9 that's correct. I don't think you need to speak
10 that into the record for him.

11 MR. PARK: I think that declaration
12 speaks for itself and not a -- he's not a lawyer,
13 so he -- yeah, and I think you're confusing him.
14 And I just want to keep the record clean.

15 A. Yeah, that's why I answered the previous
16 question that I considered whether prior art
17 references disclose or suggest the features recited
18 in claims 8, 9, 13, and 17 to 21.

19 I did not say I anticipated.

20 Q. Okay. So you didn't -- it's not your --
21 you do not offer any opinions about anticipation;
22 is that correct?

23 A. I offer opinion where the prior art
24 references disclose or suggest the features recited
25 in claims 8, 9, 13, and 17 to 21 of the '367

1 patent.

2 Q. Do you contend that embodiment 40, as drawn
3 in the figures in Palmatier, teaches all of the
4 features recited in any of claims that are
5 challenged in this proceeding?

6 A. Embodiment 40?

7 Q. Yes.

8 A. Embodiment 40 alone does not disclose or
9 suggest the features -- all the features recited in
10 claims 8, 9, 13, and 17 to 21 of '367 patent.

11 Q. I think your answer was the collective --
12 collection of all of those claims.

13 Is there any one claim for which
14 embodiment 40 discloses all of the features
15 required by that claim?

16 A. I --

17 MR. PARK: Objection. Outside the
18 scope.

19 A. I was going to say, I didn't provide that
20 opinion.

21 Q. Did you offer any opinion that embodiment
22 540 discloses all of the features required by any
23 claims challenged in this proceeding?

24 A. I did not provide that opinion.

25 Q. Did you offer any opinion that embodiment

1 840 discloses all of the features required by any
2 claims challenged in this proceeding?

3 A. (Reviewing document.)

4 As I mentioned, the claim map being --
5 focuses on embodiment 840, but does make reference
6 to the other embodiments. For example, it says
7 Palmatier discloses that the implant 840 expands
8 like implants 40 and 540 --

9 (Court reporter requested
10 clarification.)

11 A. For example, Palmatier discloses that the
12 implant 840 expands like implants 40 and 540, via a
13 mechanism comprising a screw and a wedge.

14 Q. Did you offer -- strike that.

15 Do you offer any opinions in this case that
16 embodiment 840, as drawn in the figures in
17 Palmatier, anticipates any challenged claims
18 without the need to make any changes to that
19 embodiment?

20 A. I didn't provide an opinion of
21 anticipation.

22 Q. Did you -- strike that.

23 Do you offer any opinions in this case that
24 embodiment 840, as drawn in the figures of
25 Palmatier, teaches all of the elements of any

1 particular claim that is challenged in this
2 proceeding?

3 A. (Reviewing document.)

4 Yes, with -- 840 is the primary embodiment
5 for the claim map, being for most of the claims
6 alone, with support from the specification itself
7 and other reference materials.

8 Q. I'm not sure that answers my question.

9 Is it your opinion that embodiment 840, as
10 drawn in the figures of Palmatier -- so without any
11 changes to those figures -- teaches all of the
12 elements of any particular claim that is challenged
13 in this proceeding?

14 MR. PARK: Objection. Asked and
15 answered.

16 A. (Reviewing document.)

17 840, as -- as disclosed in Palmatier,
18 discloses or suggests the features recited in
19 claims 8, 9, 13, 17 -- and 17, without any
20 modifications.

21 Q. Is it your opinion that embodiment 840
22 would need to be modified in order to teach or
23 suggest all features of claims 18, 19, 20, and 21?

24 A. (Reviewing document.)

25 I apologize. They -- it also includes 21.

1 So there'd be a very slight modification for claims
2 18 and 19 and 20.

3 See -- 19 and 20 rely on -- 20 relies on
4 19; 19 relies on 18.

5 Q. Okay. So if I understand correctly, your
6 opinions concerning claim 18 are based upon a
7 modification to embodiment 840; is that correct?

8 A. It's modification that was known to a
9 POSITA at the time of the invention and disclosed
10 by Palmatier for -- that would need to be done for
11 claims 18 and 19 and 20.

12 Q. You have before you, and I will provide to
13 our court reporter, Exhibit 1057.

14 (Exhibit 1057 was introduced.)

15 BY MR. WERNER:

16 Q. Is that the Palmatier reference that we've
17 been discussing?

18 A. Yep, I've got it.

19 Q. Can you confirm that em- -- that Figures 1
20 through 16 correspond to embodiment 40?

21 A. Yes, Figures 1 through 16 of Palmatier in
22 Exhibit 1057 refer to embodiment 40.

23 Q. Can you also confirm that Figures 17
24 through 21 correspond to embodiment 540?

25 A. Figures 17 to 21 are in reference to

1 embodiment 540.

2 Q. And Figures 22 through 28 correspond to
3 embodiment 840; is that correct?

4 A. Figures 22 to 28 refer to embodiment 840.

5 Q. If we could turn to embodiment 40. I just
6 want to make sure we're using the same nomenclature
7 for things.

8 Can you confirm that the component
9 identified as 46 is the piston? What Palmatier
10 calls the piston.

11 A. (Reviewing document.)

12 Yes, 4- -- component 46, Palmatier refers
13 to as the piston.

14 Q. Component 48 for embodiment 40 is
15 identified by Palmatier as the base, correct?

16 A. (Reviewing document.)

17 Yes, component 48, and Palmatier is
18 referring to as the base.

19 Q. Palmatier also identifies component 58 of
20 embodiment 40 as the wedge, correct? That was 58.

21 A. Yes, 58 of embodiment 40 is the wedge.

22 Q. I'd like to walk through each of these
23 components and the structure of those components.
24 Let's start with the base portion.

25 Do you agree that the inner surface of the

1 base is planar or flat?

2 A. Are you referring to a specific figure? So
3 we're on the same page.

4 Q. I believe the answer would be the same for
5 all figures, so I'd extend it to all of them.

6 All figures pertaining to embodiment 40.

7 A. Okay. Yeah, can you repeat the question
8 again, please?

9 Q. Do you agree that the inner surface of the
10 base for embodiment 40 is planar, or flat?

11 A. Yes, the inner surface of the base is flat,
12 or planar.

13 Q. It has a -- the base of embodiment 40 has a
14 posterior wall, correct?

15 A. (Reviewing document.)
16 Yes, it has a posterior wall.

17 Q. But the base embodiment -- the base in
18 embodiment 40 does not have sidewalls, correct?

19 A. (Reviewing document.)
20 It -- base does not -- base 48 in
21 embodiment 40 does not have the sidewalls
22 specifically similar to embodiment 840.

23 Q. Instead of sidewalls, base 48 in embodiment
24 40 is fully planar from -- throughout the
25 cross-section of the component, correct?

1 A. Which cross-section are you referring to?

2 Q. The --

3 A. Sorry.

4 Q. Perpendicular to axis A as shown in

5 Figure 1.

6 A. (Reviewing document.)

7 Okay. Sorry, can you repeat that question
8 again?

9 Q. If you go from one side of -- setting aside
10 the posterior wall and focusing on base portion --
11 or base of for -- strike that. Let me start over.

12 Setting aside the posterior wall of base 48
13 of embodiment 40, do you agree that the surface is
14 fully planar without walls that extend upwards from
15 the inner surface of the base?

16 A. That is correct.

17 Q. There is no anterior wall on base 48 of
18 embodiment 40, correct?

19 A. There is no anterior wall of base 48 of
20 embodiment 40.

21 Q. The wedge in embodiment 40 is a separate
22 part from the base and the piston, correct?

23 A. The wedge is a separate component from the
24 base and the piston.

25 Q. The -- is there a term you would use to

1 refer to the sides of the device? And I'm using
2 "sides" to refer to the two sides that are neither
3 posterior nor anterior. Is there a term you would
4 use to refer to those sides?

5 MR. PARK: Objection to form.

6 A. Which -- which component are you referring
7 to?

8 Q. In embodiment 40. And this is not really
9 specific to any embodiment. I just want to get
10 some language we can use so we can more easily talk
11 about the structure of the device. And Palmatier
12 describes -- if we're looking at Figure 1, the
13 screw portion, I believe, is the posterior end; the
14 opposite side of that is the anterior end.

15 I'm wondering if there is a term that you
16 believe is appropriate to use for the other two
17 sides of the device, which I would -- I would
18 generally call the sides of the device, but I don't
19 know if that's acceptable or not.

20 A. (Reviewing document.)

21 Q. Maybe -- can we agree that if I use the
22 term "longitudinal sides," I am talking about the
23 sides that are the longest sides of the implant as
24 it's drawn?

25 MR. PARK: Objection. Vague.

1 A. Yeah, I'm -- the whole --

2 MR. WERNER: You don't need to -- you
3 don't need to state the basis for your objection
4 beyond form.

5 MR. PARK: Just trying to help you out.

6 A. The --

7 MR. WERNER: I don't need your help.

8 A. The -- sorry. I'm -- lost my train of
9 thought there. Can you repeat the question?

10 Q. Is it all right if I refer to -- if you're
11 looking at Figure 1, and there's an arrow pointing
12 to the side of the device at 58, if I refer to that
13 side of the implant of embodiment 40 as a
14 longitudinal side?

15 A. The entire side of the implant and not just
16 the wedge?

17 Q. Correct.

18 A. Okay. You can refer to that -- to that for
19 this -- for this.

20 Q. You understand that's what I'm referring to
21 when I -- when I use the phrase "longitudinal
22 side"; is that fair?

23 A. That is fair.

24 Q. After going through all that, I'm not sure
25 it's going to work even with that clarification.

1 So I may come back -- I may use that term, I may
2 not, moving forward. But I'll move to my next
3 question.

4 If you could return to Figure 1 of
5 Palmatier. Do you see the references to 110 and
6 112?

7 A. I see them.

8 Q. Would you agree that those are part of the
9 wedge?

10 A. (Reviewing document.)

11 Yes. Portions 110 and 112 are part of the
12 wedge.

13 Q. And as shown in Figure 1, the wedge -- the
14 posterior end of the wedge extends beyond the
15 piston and the end of the piston and base for
16 embodiment 40, correct?

17 A. In Figure 1, 110 and 112 extend proximally
18 to the -- the base and the piston.

19 Q. Would you -- do you dispute that the wedge
20 extends beyond the edge of the base and piston of
21 embodiment 40 in Figure 1?

22 A. Say that again, please.

23 Q. Do you dispute that the wedge extends
24 beyond the posterior edge of the base and piston of
25 embodiment 40 in Figure 1?

1 A. Yeah. 110 and 112 extend proximally to the
2 base -- from the base and the piston in Figure 1.

3 Q. Why did you add the word "proximally" to
4 your answer? What is the significance of that word
5 to your answer?

6 A. To be clear where it's extending.

7 Q. What does "proximally" mean in your answer?

8 A. Closest to the user.

9 Q. Okay. I see. So you're saying the
10 direction in which it extends beyond the edge of
11 the base in the piston?

12 A. That is correct.

13 Q. Figure 1 shows the implant in the compact
14 or contracted state, correct?

15 A. Figure 1 shows the implant in an unexpanded
16 state.

17 Q. Whereas Figure 2 shows the implant in the
18 expanded state, correct?

19 A. Figure 2 shows the implant in the fully
20 expanded state.

21 Q. So in the unexpanded state, embodiment --
22 in embodiment 40, the wedge extends beyond the
23 posterior edges of the base and piston, correct?

24 A. In Figure 1, as I mentioned, features 110
25 and 112 are proximal -- extend proximally to the

1 base and the piston when it's inserted and be --
2 prior to expansion.

3 Q. As the screw is turned and the device is
4 expanded, the wedge moves towards the interior of
5 the implant and eventually no longer protrudes
6 beyond the posterior edges of the base and piston,
7 correct?

8 A. As the screw turns, it moves the wedge,
9 including features 110, 112, so they no longer --
10 when in the fully expanded conditions, as shown in
11 Figure 2, that it no longer extends beyond --
12 proximally beyond the piston and the base.

13 Q. I'd like to turn to the piston of
14 embodiment 40. And that is component 46, correct?

15 A. Component 46 is the piston, correct.

16 Q. Okay. Component 46 has -- strike that.
17 The piston in embodiment 40 has sidewalls,
18 correct?

19 A. The piston in embodiment 40 has sidewalls.

20 Q. And in embodiment 40, the sidewalls of the
21 piston are pushed up as the wedge advances in the
22 anterior direction, correct?

23 A. Portions of the sidewalls of 46 are pushed
24 up. Yeah, it's -- you have to remember the piston
25 is hinged, and so the sidewall at the pivot point

1 or proximal to it are not -- necessarily go up.

2 MR. WERNER: You want to take a break
3 now or in a little bit? It's not going to be a
4 long deposition. I'm not -- like, just so you
5 know, I'm -- I'm not --

6 THE WITNESS: I wouldn't mind. Yeah,
7 if we could take a break.

8 (Break: 10:59 a.m. to 11:09 a.m.)

9 BY MR. WERNER:

10 Q. I'd like to turn to embodiment 540. For
11 that embodiment, the piston is identified as
12 component 546, correct?

13 A. (Reviewing document.)

14 The piston in embodiment 540 is identified
15 as 546.

16 Q. The base for embodiment 540 is identified
17 as component 548, correct?

18 A. Correct.

19 Q. And the wedge is identified as component
20 558 for embodiment 540, correct?

21 A. Correct.

22 Q. The base portion in embodiment 540 has a
23 posterior wall, correct?

24 A. Correct.

25 Q. Does it also have sidewalls?

1 A. (Reviewing document.)

2 Yes. Base component of 548 has sidewalls.

3 Q. And those sidewalls mate with the sidewalls
4 of the piston in the unexpanded state, correct?

5 A. The sidewalls of 548 -- yes, they mate with
6 the piston sidewalls, 546.

7 Q. Between the sidewalls of the base, the
8 inner surface is flat, correct?

9 A. It's smooth. It's on an angle, but it is
10 smooth right across and down on the angle.

11 Q. For the base, the inner surface between the
12 sidewalls is at an angle?

13 A. Repeat that again, please.

14 Q. Is it your understanding that the inner
15 surface of the base between the sidewalls is at an
16 angle?

17 A. Oh, "between" the sidewalls. I thought you
18 said "on" the sidewalls. My mistake.

19 The area between the sidewalls on base 548
20 is flat.

21 Q. And the wedge can slide along that flat
22 inner surface of the base, correct?

23 A. Correct.

24 Q. There is no anterior wall on the base in
25 embodiment 540, correct?

1 A. There's an anterior end to the base but not
2 a wall of the implant, no.

3 Q. If you could turn to Figure 19.

4 A. Okay.

5 Q. Does this show the base and the wedge parts
6 of the 540 embodiment?

7 A. Yeah, Figure 19 shows the base and the
8 wedge.

9 Q. And it omits the piston in order to get a
10 better view of the structure of those components;
11 is that fair to say?

12 A. Yes, the piston has been removed from the
13 figure to see that -- those components.

14 Q. Actually, if we could go to Figure 17.

15 A. Okay.

16 Q. Are you there?

17 A. Yep.

18 Q. Figure 17 shows embodiment 540 in the
19 unexpanded state, correct?

20 A. Correct.

21 Q. Similar to embodiment 40, the wedge extends
22 beyond the posterior edges of the base and piston,
23 correct?

24 A. Yes, the base extends proximally to the
25 base and the piston.

1 Q. I think you meant the wedge extends
2 proximally, correct?

3 A. Oh. Correct. The wedge extends proximally
4 to the base and the piston.

5 Q. And, again, by "proximally," you mean
6 towards the user, or the -- the surgeon, correct?

7 A. Correct.

8 Q. As the wedge ex- -- is extended to --
9 towards the anterior end of embodiment 540, it
10 pushes up the piston; is that correct?

11 A. Yes, the wedge -- as the wedge is extended
12 along the base, it pushes up the piston.

13 Q. Do you -- do you know what inner surface of
14 the piston the wedge pushes up against to cause
15 that to happen?

16 A. (Reviewing document.)
17 614 and 616 drive apart the components 546
18 and 548.

19 Q. Is there a figure you're -- you're looking
20 at where those are identified?

21 A. Figure 19 identifies them. And the top of
22 column 17 of specification.

23 Q. I'm wondering -- yeah. Okay. I -- you
24 were pointing to the ramp -- the ramp portions of
25 the wedge for 616 and 614; is that correct?

1 A. That is correct.

2 Q. Is there a corresponding surface on the
3 piston, that extends laterally from sidewall to
4 sidewall, that engages with that ramp?

5 A. There is a -- there must be an interior
6 surface for it to push against in order for it to
7 expand.

8 Q. And if you look at Figure 18, is that
9 surface sort of cut off to show a cross-section?
10 At least in the -- in the front end or the anterior
11 end of the piston.

12 And to orient you, I'm referring to the --
13 not necessarily to what 568 identifies, but to the
14 portion of the piston to the right of that
15 indicator. And that's in -- in Figure 18.

16 A. (Reviewing document.)

17 Q. I'm sorry. I said -- I meant 568.

18 A. Okay.

19 (Reviewing document.)

20 So the -- the cross-sectional area, I feel
21 like, 64, this big... Oh, okay.

22 Q. There's not really a number, I think,
23 pointing to what I'm trying to describe, is the
24 problem.

25 A. Okay.

1 Q. Okay. How about this: Is 702 the basket,
2 what is called the basket of the piston?

3 A. Yeah, 702 and -- and 704 are the baskets.
4 Oh, basket, 702 -- sorry --

5 Q. 704 is a basket of the wedge, or is -- a
6 basket of the base?

7 (Indiscernible crosstalk clarified by
8 the court reporter.)

9 A. Sorry. 702 is a basket.

10 Q. Is there a surface at the bottom of that
11 basket that is what engages with the wedge?

12 A. (Reviewing document.)

13 Yes, the bottom of 702 engages with the
14 wedge. The angled grab -- all -- the whole inner
15 surface.

16 Q. You can turn to embodiment 840.

17 For embodiment 840, the piston is labeled
18 846, correct?

19 A. Correct.

20 Q. The base is labeled 848, correct?

21 A. Correct.

22 Q. And the wedge is labeled 858, correct?

23 A. Correct.

24 Q. In embodiment 840, the base has, again, a
25 posterior wall, correct?

1 A. Base 848 has a posterior wall.

2 Q. It also has sidewalls?

3 A. It also has sidewalls.

4 Q. And unlike embodiment in 40 and 540, it has
5 a wedge-shaped front wall, correct?

6 A. Base component 848 has a wedge-shaped front
7 wall, 884.

8 Q. And neither embodiment 40 or 540 have that
9 wedge-shaped front, correct?

10 MR. PARK: Objection to form.

11 A. The base components of 40 and 540 do not
12 have a wedge-shaped component like 840.

13 Q. That is one of the main differences between
14 embodiment 840 from embodiments 40 and 540,
15 correct?

16 A. The main difference is the nesting feature
17 of 840. 884, the wedge, is just an added feature.

18 Q. What is your understanding of the purpose
19 of the wedge-shaped front that Palmatier introduces
20 in embodiment 840?

21 A. To assist in the insertion of the implant
22 into the disc space.

23 Q. How does the wedge-shaped front accomplish
24 that?

25 A. By having a taper aspect to it, to the

1 front end.

2 Q. What does the taper do to facilitate
3 insertion of the implant into the disc space?

4 A. The taper can help guide it into the disc
5 space. Does it need to be all the way full bullet
6 nose? No. It's just the material was there, so
7 that's why they made it nicely all the way to --
8 front like that.

9 Q. If you could turn to Palmatier column 18,
10 line 46.

11 A. Page [sic] 46. I'm there.

12 Q. It says, "Base component 848 includes a
13 wedge-shaped anterior end 884. Base component 848
14 protects wedge 858 and screw 892 as intervertebral
15 implant 840 is inserted into an intervertebral disc
16 space. It is contemplated" --

17 A. I see that.

18 Q. And I'll continue.

19 A. Sorry.

20 Q. Thank you.

21 A. Yeah.

22 Q. "It is contemplated that forces employed to
23 introduce or deliver intervertebral implant 840 to
24 the intervertebral disc space are transmitted
25 through the inserter to an anterior end 842 of

1 intervertebral implant 840," correct?

2 A. I see that. Correct.

3 Q. What does that indicate to you about the
4 function of the wedge at the anterior end of the
5 base?

6 MR. PARK: Objection to form.

7 A. So the -- it's not the 884 that's
8 protecting it. That's not what the sentence, to
9 me, states. It says the base component 848, which
10 includes the sidewalls and the nesting feature.

11 And that prevents the lateral movement of
12 the piston, which would put the forces on the wedge
13 and the screw, thereby protecting them.

14 Q. So it's your opinion that the wedge -- the
15 wedge does not do any -- strike that.

16 I gotta be more specific.

17 It is your opinion that the wedge-shaped
18 front that Palmatier introduces for embodiment 840
19 does not serve to protect the wedge component of
20 the implant?

21 A. I don't see how it protects the wedge
22 component of the implant or the screw. It's merely
23 there for insertion. In order to help guide the
24 insertion.

25 Q. What is -- what is the basis for your

1 opinion that the wedge-shaped front end introduced
2 in embodiment 840 is to facilitate insertion of the
3 implant into the disc space?

4 MR. PARK: Objection. Asked and
5 answered.

6 A. So -- the basis of my opinion? Is that
7 what you -- can you repeat the question, please?

8 Q. Yeah. What is the basis for your opinion
9 that the wedge-shaped front end introduced in
10 embodiment 840 is to facilitate insertion of the
11 implant into the disc space?

12 A. Based on my experience and a POSITA
13 experience at the time of the invention, I don't
14 see how it protects it -- the wedge or the piston
15 itself. So the only logical reason for a wedge
16 front is for insertion -- ease of insertion.

17 Q. If I'm correct, that's something that --
18 that you've deduced as opposed to something that
19 Palmatier actually states in the reference; is that
20 correct?

21 A. (Reviewing document.)

22 I don't recall Palmatier specifically
23 saying that. That's just obvious -- apparent to a
24 POSITA at the time, that a wedge -- or some sort of
25 taper at the front helps insertion.

1 And, again, I don't see how a wedge-shaped
2 front helps protect the piston or the screw.

3 Q. Or the wedge component 5- --

4 A. Or the wedge, yes. Sorry.

5 Q. Do you agree that because of the
6 wedge-shaped front of the base component of
7 embodiment 540, the base is longer than the piston?

8 A. As shown in Figures 22 --

9 MR. PARK: Did you mean to say
10 embodiment 540, Counsel?

11 MR. WERNER: Oh. I did not, if I did.
12 I'll reask the question.

13 BY MR. WERNER:

14 Q. Do you agree that due to the wedge-shaped
15 front of the base component of embodiment 840, the
16 base is longer than the piston?

17 A. I would say the base is longer than the
18 piston in 840.

19 Q. Another difference between 8- -- embodiment
20 840 from 40 and 540 is that the nose of the piston
21 rests inside the outer walls of the base; is that
22 correct?

23 A. Maybe -- can you repeat that again, please?

24 Q. Another difference between embodiment 840,
25 relative to embodiments 40 and 540, is that the

1 nose of the piston rests inside the outer walls of
2 the base; is that correct?

3 A. Yes, 846 piston is nested in the outer
4 walls of the base 848.

5 Q. And that does not happen in embodiments 40
6 or 540, correct?

7 A. That is correct.

8 Q. And embodiments 40 and 540, the base does
9 not have an anterior wall, correct?

10 A. (Reviewing document.)

11 Embodiments 40 and 540 do not have an
12 anterior wall extend above -- it has an anterior
13 end but not a wall that goes up above the flat
14 surface.

15 Q. If you could turn to Figure 26.

16 A. Okay.

17 Q. Does this figure show the wedge extending
18 beyond the posterior ends of the base and piston in
19 the unexpanded state?

20 A. Yes.

21 Q. And Figure 25 shows the implant in a
22 partially expanded state; is that correct?

23 A. That is correct.

24 Q. And in that partially expanded state, the
25 wedge still extends beyond the posterior ends of

1 the base and piston, correct?

2 A. That is correct.

3 Q. If you look at Figure 26, the wedge -- the
4 top of the wedge appears to be taller than portions
5 of the piston; is that correct?

6 MR. PARK: Objection to form.

7 A. Can you repeat the question, please?

8 Q. In Figure 26, do you agree that the top of
9 the wedge is taller than portions of the piston?
10 Extends beyond portions of the --

11 MR. PARK: Objection to form.

12 A. The top of the wedge shown in Figure 26
13 appears to sit parallel to the top of the -- what
14 are they called? -- of the ridges on the piston
15 846.

16 Q. But above the upper surface of the piston,
17 between the ridges, correct?

18 MR. PARK: Objection to form.

19 A. In Figure 26, the top of the wedge appears
20 to be higher than the area between the ridges on
21 piston 846.

22 Q. So does that indicate to you that the --
23 the piston is -- resides between portions of the
24 wedge?

25 MR. PARK: Objection to form.

1 A. Sorry. Say that again, please.

2 Q. Well, I'm -- let me ask the question
3 differently.

4 What portion of the wedge do you understand
5 to interface with the piston to cause it to expand
6 upward?

7 A. Well, in Figure 26, 858 wedge is a
8 cross-sectional view of the implant, and 858 wedge
9 is similar to the wedge in Figure 28. So if you
10 take a cross-section of Figure 28 and you're
11 looking at it, that top surface is not what is
12 driving the piston apart. It's actually a step on
13 the other side of it that you don't see in
14 Figure 26 that is driving the piston apart from the
15 base.

16 Q. So in Figure 28, the wedge sort of has two
17 different upper surfaces; is that fair to say? The
18 lower upper surface --

19 A. Yeah.

20 Q. -- and the higher upper surface?

21 A. Yes, there's two surfaces on the top of the
22 wedge. And it is the lower surface that is doing
23 the expansion with the piston and the base. Or --
24 against the piston to move it away from the base.

25 Q. There's also a -- continuing with

1 Figure 28, there's a slot on the side of the wall
2 between those two steps; is that correct? Labeled
3 as 950?

4 A. That is correct.

5 Q. And that serves to retain a pin in the
6 piston; is that correct?

7 A. A pin through the -- yeah, the pin -- in
8 looking at Figure 27, the pin 948 that goes through
9 the piston.

10 Q. And that pin is also shown in Figures 24
11 through 26; is that correct? Or -- well, actually,
12 is it shown in Figures 24 to 26?

13 A. Not -- this is the design feature that
14 Palmatier exposes specifically to Figure 27 to 28,
15 the embodiment 840.

16 Q. Do you understand embodiment -- strike
17 that.

18 Do you understand Figure 28 to show a
19 change relative to Figures 24 through 26?

20 A. Yeah, Figures 27 and 28 are slightly
21 different than Figures 24 to 26.

22 Q. Is the difference being the use of pins
23 that connect the piston to that slot of the wedge
24 in Figures 27 to 28 versus the linkage -- linkage
25 902 used in Figures 24 through 26?

1 A. Yes, that's the main difference between 27
2 to 28 and 24 to 26 is that it uses the slot 950 and
3 pin 948 instead of the linkage in pins -- was it
4 902, 908, and 904?

5 Q. Do you know what the purpose of the linkage
6 902 is in Figures 24 through 26?

7 A. The purpose is to prevent the piston from
8 overexpanding or coming apart from the base. It
9 also facilitates helping to unexpand the implant,
10 if needed.

11 Q. How does the linkage 902 help the implant
12 unexpand?

13 A. It helps guide the piston back down into
14 the sidewalls.

15 Q. So both versions of embodiment 840 -- we'll
16 call version 1 corresponding to Figures 24
17 through 26 and version 2 corresponding to Figures
18 27 and 28.

19 In both of those versions, they -- there is
20 a -- the use of a pin assembly to help guide the
21 piston relative to the base, correct?

22 A. Yes, both version 1 and version 2 are
23 pin-type assemblies, pin and slots or linkages, to
24 help prevent overexpansion as well as to unexpand
25 the implant.

1 Q. And those pin assemblies are located at the
2 posterior end of the implant, correct?

3 A. That's -- the assemblies 902 and 952 and
4 948, they're at the distal end -- or anterior end.

5 Q. Thank you. I used the wrong word. The
6 anterior end. There are no corresponding pin
7 assemblies described at the anterior region of
8 embodiments 40 or 540, correct?

9 A. Embodiments, as shown in Figures 1 to 21,
10 do not show an anterior pin and linkage system or
11 slot. But they -- again, I refer to as -- at the
12 start of deposition, Palmatier does state that
13 various modifications may be made to the
14 embodiments.

15 Q. It's your opinion that a POSITA would be
16 motivated to increase the length of the piston in
17 embodiment 840; is that correct?

18 A. Yes, the -- a POSITA would be motivated at
19 the time of the invention to lengthen the piston to
20 increase the coverage on the vertebral body
21 endplate to prevent any subsidence.

22 Q. What is subsidence?

23 A. That's when the vertebral body collapses
24 onto the implant and the implant itself goes into
25 the vertebral body, especially on the inside, away

1 from the cortical edges of the wall, and it's a
2 very undesirable effect because you lose disc
3 height.

4 Q. You're not aware of any information that
5 embodiment 840 suffered from subsidence, correct?

6 A. I have not known embodiment 840 to be
7 commercialized, so I don't have a report that does
8 that. But it is logical that if you want as much
9 coverage as possible, and -- just like embodiments
10 40 and 540 where they extend out, you don't want
11 the top shorter than the bottom to get -- to miss
12 out on the opportunity to capture the hard cortical
13 edges of the vertebral body.

14 Q. Do you know the length of the piston in any
15 of the figures corresponding to embodiment 40?

16 A. Which embodiment?

17 Q. Embodiment 40.

18 A. (Reviewing document.)

19 It doesn't appear that Palmatier
20 specifically states the exact dimensions of
21 embodiment 40.

22 Q. You also don't know the length of any
23 pistons in any of the figures corresponding to
24 embodiments 540 or 840, correct?

25 A. Palmatier doesn't disclose the dimensions

1 specifically of 40, 540, or 840, but they would
2 obviously be sized for vertebral bodies without
3 extending past the vertebral body. So you don't
4 want to get into the delicate structures outside of
5 the spinal column. So as in Figure 22, 884, you
6 don't want that sticking out, potentially touching
7 the vena cava or aorta or other sensitive nerves or
8 tissues.

9 Q. There are no statements in Palmatier
10 indicating that the piston in embodiment 840 is too
11 short or lacks adequate surface area, correct?

12 A. 840 itself doesn't specifically state that,
13 but Palmatier does show in embodiments 40 and 540
14 that having the piston and the base same length is
15 beneficial.

16 Q. Where does it say that? Where does
17 Palmatier state that?

18 A. Well, it's how it's disclosed, that they
19 are created that same length. And that -- that's
20 just something that's -- was done at the time to
21 maximize the footprint of the implant with the
22 vertebral body.

23 Q. And so in your opinion, the fact that the
24 piston and base are the same length in embodiments
25 40 and 540 would be viewed as a benefit and

1 preferred relative to embodiment 840; is that
2 correct?

3 A. I'm saying that maximizing the surface
4 footprint of the implant is what is desired when
5 designing the implant.

6 Q. And in your opinion, embodiments 40 and 540
7 accomplish that, but embodiment 840 does not,
8 correct?

9 A. Embodiment 540 piston is shorter than 840,
10 and that's why a POSITA would have been motivated
11 to extend the piston to the end to maximize that
12 surface footprint.

13 MR. PARK: Just to clarify the record,
14 do you mean embodiment 840 piston is shorter than
15 540, or 540 is shorter than 840?

16 MR. WERNER: Are you trying to clarify
17 the witness's testimony, Counsel? I -- my question
18 was clear. I don't think --

19 MR. PARK: I think the witness
20 misspoke, but I'm just --

21 MR. WERNER: Yeah.

22 MR. PARK: -- confirming.

23 I could ask this on redirect, but I'm
24 just trying to save us some time here.

25 A. Sorry, I missed -- I missed that.

1 Q. I agree with counsel that you just had --
2 you misspoke, but -- so I'll just ask the question
3 again.

4 A. Okay.

5 Q. In your opinion, embodiments 40 and 540 are
6 preferred relative to embodiment 840 because the
7 piston maximizes the surface footprint of the
8 implant, correct?

9 A. It's -- 840 has other benefits, especially
10 structurally, that -- the sidewalls that protect
11 the wedge and the piston. What I recommend -- or,
12 not "recommend," but what a POSITA would have done
13 at the time was extend that piston so it's similar
14 to 40, 540.

15 Q. In your declaration, do you identify any
16 benefits of embodiment 840 relative to 540 or 40?

17 A. (Reviewing document.)

18 So paragraph 41, at the bottom of
19 page 21 -- or, sorry, 23 of 70, I state, "According
20 to Palmatier, 'base component 848 protects wedge
21 858 and screw 892 as intervertebral implant 840 is
22 inserted into an [distorted audio] disc space.'"

23 (Court reporter requested
24 clarification.)

25 A. Okay. I'll start again.

1 "According to Palmatier, 'Base component
2 848 protects wedge 858 and screw 892 as
3 intervertebral implant 840 is inserted into an
4 intervertebral disc space.'"

5 And it's really the nesting of the piston
6 with the base that provides that stability and
7 protection to the wedge and the screw.

8 Q. You're introducing that part now. That's
9 not in your declaration, right? That last part you
10 just said?

11 MR. PARK: Objection to form.

12 A. I state that -- the nesting -- here, let me
13 find it.

14 MR. PARK: Paragraph 41.

15 MR. WERNER: Counsel, did you just
16 direct him to a paragraph? I believe you said
17 paragraph --

18 MR. PARK: Yep, I did, I told him
19 "paragraph 41."

20 MR. WERNER: All right. That's enough
21 of that. The witness can use his own declaration.
22 You don't need to tell him where to find what you
23 believe to be the appropriate response you wanted
24 to get. That's absolutely inappropriate. If that
25 happens again, we're calling. That is ridiculous.

1 MR. PARK: That's not ridiculous. I'm
2 trying to move this thing along.

3 MR. WERNER: Counsel, we have seven
4 hours on the record. We're nowhere close. We've
5 been moving along very well. I do not want you
6 interfering with the deposition anymore.

7 MR. PARK: I'm not interfering.

8 MR. WERNER: You just directed the
9 witness to the part of -- the portion of his
10 declaration you want him to read. You're not the
11 examining attorney, and that needs to stop.

12 MR. PARK: This is his declaration.
13 It's his testimony. It's in the record, Counsel.
14 I'm not giving him any testimony. It's already in
15 the record.

16 MR. WERNER: All right. You can answer
17 to the board if -- if it's -- if it becomes
18 necessary.

19 A. Okay. So prior to the sentence that I
20 read, the -- "Palmatier's implant 840 differs from
21 implants 40, 540 because, as shown in Figure 22
22 below, base component 848 has sidewalls that create
23 an opening to nest part of piston component 846
24 within base component 848."

25 Q. Where do you indicate that that makes the

1 implant more stable, the fact that the -- there are
2 sidewalls on the base, in your declaration in terms
3 of protecting the wedge."

4 A. I don't -- I don't explicitly state that,
5 but that's just apparent to any POSITA. And that's
6 why I added the second sentence.

7 (Court reporter requested
8 clarification.)

9 A. "According to Palmatier, 'Base component
10 848 protects wedge 858 and screw 892 as
11 intervertebral implant 840 is inserted into an
12 intervertebral disc space.'" That's --

13 Q. And that -- you're -- in that sentence,
14 you're referring to protecting the wedge and screw
15 during insertion, correct?

16 A. That sentence was referring to insertion.
17 But it also would be apparent to a POSITA that
18 during expansion as well, and after implantation,
19 those sidewalls provide stability.

20 Q. That's your -- that's where you're adding
21 in your thoughts compared to what Palmatier
22 actually says, correct?

23 MR. PARK: Objection to form.

24 A. I'm adding in what a POSITA would have
25 known at the time, especially with the

1 requirements -- the sheer -- the stability
2 requirements -- testing requirements of the FDA and
3 how the implant is used in vivo.

4 Q. You have no data whatsoever that
5 embodiments 540 or 840 were inadequate to protect
6 wedge or that the wedge needed protecting, correct?

7 A. Palmatier suggests that the wedge and screw
8 needed protecting. And that's why they have -- he
9 has embodiment 840.

10 Q. Embodiment 840 has a number of differences
11 beyond the sidewalls -- correct? -- relative to
12 embodiments 540 and 40.

13 A. The main difference is the sidewalls, but
14 there are other -- there are other differences.

15 Q. Embodiment 540 has sidewalls, doesn't it?

16 A. 540 has sidewalls, but they do not nest
17 like they do in 840. With the --

18 (Indiscernible crosstalk.)

19 Q. And why does -- you're only talking about
20 the top nesting in the sidewalls, correct? Sorry.
21 The piston nesting in the sidewalls, correct?

22 A. The piston testing -- sorry, excuse me.

23 The piston nesting inside the sidewalls of
24 the base helps provide the stability and the
25 protection.

1 Q. Are you aware of any wedges being damaged
2 in use of spinal implants generally?

3 A. Can you repeat that question, again,
4 please?

5 Q. Are you aware of any wedges being damaged
6 in use of spinal implants generally?

7 A. I am aware, with -- from personal
8 experience, of wedges being damaged of -- on spinal
9 implants during development, and that's why there's
10 FDA guidance on the testing requirements and what
11 they have to meet, so...

12 Q. Describe the experience that you're
13 referring to.

14 A. It was during this FDA testing of the
15 Opticage that I was responsible for developing with
16 Interventional Spine.

17 We saw damages to the wedge for expan- --
18 the wedge that expands the two endplates apart
19 during compression as well as shear testing.

20 Q. How did that damage occur?

21 What caused the damage? I'm -- I'm saying.

22 A. The loading of the implants themselves.
23 From a compression load and a shear load.

24 Q. So by squeezing the implants together, it
25 caused damage to the wedge? Sorry, the -- the --

1 the top and bottom of the -- strike that.

2 So by compressing the top and bottom of the
3 implant, it caused damage to the wedge; is that
4 what -- one of the causes you're referring to?

5 A. That is one of the causes, as well as, I
6 mentioned, the shear. When you have simulated
7 endplates that rotate it with a force, that had
8 caused damage as well as fatigue, where you cycle
9 loading, in either one of those cases, for a --
10 several million cycles, and that could cause damage
11 to the wedges.

12 Q. Are you aware of any other damage to any
13 wedges used to -- in expanding spinal implants?

14 A. I'm not aware off the top of my head, but
15 that doesn't mean it didn't happen. I'm sure other
16 people experienced what I experienced during
17 development.

18 Q. And there's also been many experiences
19 where you didn't have any problems with damage to
20 the wedge, correct?

21 MR. PARK: Objection to form.

22 A. I can't say that at all.

23 MR. PARK: Now a good time for a break,
24 Counsel?

25 MR. WERNER: Just about.

1 BY MR. WERNER:

2 Q. Would increasing the length of the piston
3 impact the invasiveness of the insertion of the
4 implant?

5 A. What do you mean by "invasiveness"?

6 Q. Do you understand the term "invasive"?

7 MR. PARK: Objection to form.

8 A. I'm more focused on what -- how you -- in
9 what context do you want the -- the question is
10 coming from.

11 Q. The -- this context of spine surgery.

12 MR. PARK: Objection to form.

13 A. The -- can you repeat the question?

14 Q. By increasing the length of the -- strike
15 that.

16 Would increasing the length of the piston
17 in embodiment 840 impact the invasiveness of the
18 insertion of the implant?

19 MR. PARK: Objection to form.

20 BY MR. WERNER:

21 Q. During the surgical procedure.

22 MR. PARK: Objection to form.

23 A. Yeah, I'm not sure how it's invasive to
24 begin with.

25 Q. Wouldn't it make the implant larger? Isn't

1 that the point you're trying to achieve?

2 A. Right, but I don't see how it's invasive.

3 Q. Isn't a larger implant more invasive than a
4 smaller implant?

5 A. It's going down a channel. And so what
6 you're trying to achieve is cortical edge-to-edge
7 coverage of the endplate, so it would make it
8 easier for the surgeon to do that when you have
9 both the -- the top piston and the bottom base the
10 same length.

11 Q. It would actually make it easier to insert
12 the device by increasing the length of the piston?

13 A. To insert it to the right -- correct
14 location, yes, because you're not balancing where
15 you're putting it in the top versus the bottom.
16 And --

17 Q. What do you mean --

18 (Indiscernible crosstalk.)

19 A. -- the vertebral endplates.

20 Q. What do you mean by "balancing"?

21 A. You're trying to center the implant with
22 respect to the vertebral bodies to maximize the
23 coverage. And when you have the top a different
24 length than the bottom, that makes it more
25 difficult while you're inserting -- how far you're

1 going to insert it.

2 Q. Are you aware of commercialized implants
3 where the top of the implant is smaller than the
4 bottom of the implant?

5 A. (Reviewing document.)

6 I don't recall off the top of my head. The
7 majority of them, I believe, are the same for that
8 very reason.

9 Q. The majority of them. I'm referring to
10 any.

11 Are you aware of any commercialized
12 implants where the top of the implant is smaller
13 than the bottom of the implant?

14 MR. PARK: Objection. Asked and
15 answered.

16 A. Not off the top of my head, no.

17 Q. How many commercialized implants are you
18 aware of? Like, the structure of.

19 A. I don't have -- I don't have an exact
20 number.

21 Q. Is it more than five?

22 A. I don't have an exact number.

23 Q. Is it more than twenty?

24 A. I don't have an exact number.

25 Q. Do you have an estimate?

1 A. Not at this time. I...

2 Q. Are you aware of any commercialized -- the
3 structure of any commercialized intervertebral disc
4 implant devices?

5 A. Page 14 of 70 of my declaration shows
6 examples of devices.

7 Q. Those are the ones that you personally
8 worked with? Is that what you're referring to?

9 A. I didn't -- what do you mean "personally
10 work with"?

11 Q. I guess I'm -- I'll need to look at page --
12 I -- I don't know what page 14 is, so...

13 MR. PARK: 14 of 70.

14 A. As well as 13 of 70, at the bottom of that.
15 Those are static implants.

16 Q. I -- can you direct me to the
17 commercialized implants you're referring to that
18 you're aware of the structure of in the passage
19 you're referring to?

20 A. It's not a passage; it's the figures.
21 So if you look at the bottom of page 13 of
22 70 of my declaration.

23 Q. Okay.

24 A. There are four implants shown. As well as
25 the top of page 14 of 70. There are implants

1 and...

2 Q. Do you know how you found these images and
3 references that depict these images?

4 A. So the ones on bottom of page 13 of 70, the
5 Figure 2, come from Exhibit 1061. Actually, the --
6 both -- both sets come from 1061. So if you look
7 at Exhibit 1061, page 5 of 17.

8 Q. Yeah, I'm wondering how you came into
9 possession of those references.

10 A. I honestly don't remember if I found them,
11 Counsel found these references. I do know that the
12 author, BK Doyle, I worked with him and did
13 biomechanical studies with him a period of time,
14 many years ago.

15 MR. WERNER: All right. Now's a good
16 time for a break.

17 MR. PARK: Okay. 10 minutes?

18 (Break: 12:18 p.m. to 12:29 p.m.)

19 BY MR. WERNER:

20 Q. You discussed earlier some damage caused to
21 the wedge during FDA-required testing of an implant
22 that you had experience with.

23 Do you recall that?

24 A. I recall that.

25 Q. Did you have any -- have you had any

1 experience with any other portions of the -- an
2 implant being damaged during testing or use?

3 A. Yes, I had other issues with the implant.
4 I remember fatigue cracking of the endplates, one
5 or more of the endplates.

6 Q. Do you know what caused that?

7 A. It was a function of a sharp radius feature
8 on the endplate that, under repetitive loading,
9 created a fatigue crack.

10 Q. Do you have any other experiences with
11 damage to implants?

12 A. I'm sure I did. I don't remember
13 everything at this time.

14 Q. What is your experience with spinal
15 implants prior to your engagement in matters
16 related to Moskowitz?

17 And outside of your involvement that's
18 referenced in prior companies that you worked for,
19 in your CV or -- sorry, in your declaration.

20 MR. PARK: Objection to form.

21 A. Can you rephrase that all together again,
22 please?

23 Q. Yeah. Outside of your personal involvement
24 that's described in your declaration, what was your
25 personal experience with implants, spinal implants,

1 prior to your involvement in any matters involving
2 Moskowitz?

3 A. I think -- are you referring also outside
4 of my experience, the 10 years I did specifically
5 designing the implants -- actually 10 years, at
6 Interventional Spine, plus a couple years at
7 another company, consulting?

8 Q. Let me ask it differently. How many
9 commercialized implant products have you been
10 involved with? Spinal implants.

11 A. I don't have an exact count but at least
12 four or five.

13 Q. Were all of those used for fusion
14 procedures or any of them?

15 A. Majority of them are used. I did have one
16 nonfusion device that was commercialized.

17 Q. Okay. You indicated that the sidewalls --
18 in your opinion, the sidewalls of embodiment 540
19 would provide greater stability to the implant; is
20 that accurate?

21 MR. PARK: Objection to form.

22 BY MR. WERNER:

23 Q. Structural stability?

24 MR. PARK: Objection.

25 A. I said the sidewalls in embodiment 840

1 provide structural support of the implant.

2 Q. Wouldn't the wedge front on the base in
3 embodiment 840 also provide structural support?

4 MR. PARK: Were you referring to 884?

5 MR. WERNER: Yes.

6 A. Can you -- can you repeat that again,
7 please?

8 Q. Wouldn't the wedge at the anterior end of
9 base -- of the base in 840 also provide structural
10 stability?

11 A. (Reviewing document.)

12 It may provide some, but I don't think it's
13 required. I don't see a lot of forces happening on
14 that area.

15 Q. What do you mean --

16 A. In terms of structural stability.

17 Q. What do you mean you don't see a lot of
18 forces on that area?

19 A. On the front end of 884, you'd have the
20 forces of insertion, so if it hits something, those
21 are -- yeah, but it can provide some added
22 stability between the sidewalls, but I'm not sure
23 if it's needed.

24 Q. How do you know that the structural
25 stability added by larger sidewalls in embodiment

1 840 is needed? Larger sidewalls of the base, I'm
2 referring to.

3 A. It just -- I'm sorry. Can you repeat the
4 question again, please?

5 Q. How do you know that the additional
6 structural support provided by the larger sidewalls
7 in embodiment 840 relative to embodiment 540 is
8 needed?

9 A. Because Palmatier states is that 840
10 differs from the implants 40, 540 because of the
11 sidewalls, and it's just apparent to a POSITA that
12 those are the features that are protecting the
13 wedge and the screw from --

14 Q. Palmatier also says that 840 differs from
15 implants 40 and 540 because of the wedge on the
16 anterior side of the base, correct?

17 A. It states that, but I don't know -- or a
18 POSITA wouldn't know how that would protect the
19 wedge or the screw.

20 Q. Wouldn't it provide structural stability?

21 A. It can increase structural stability
22 between the sidewalls, but I'm not sure if it's
23 needed.

24 Q. Do you know if the implants described in
25 Palmatier are designed for any particular type of

1 surgical approach in terms of the trajectory of
2 insertion?

3 A. Palmatier's implants are -- for insertion
4 are more from a posterior approach since the
5 anterior portion of the implants expand.

6 Q. And that will provide the appropriate
7 lordosis? I'm not sure I'm saying that word right.

8 A. Yeah. That assists in the lordosis
9 geometry between the vertebral bodies.

10 Q. Returning to embodiment 540, do you
11 understand there to be any differences between --
12 in the embodiments shown between Figures 16
13 through 21?

14 A. So 16 is 40. Figure 16 is 40?

15 Q. Oh, I'm sorry. 17.

16 A. Okay.

17 Q. 17 through 21.

18 MR. PARK: Objection. Outside the
19 scope.

20 A. So what about Figure 17 through 21,
21 embodiment 540?

22 Q. Do you understand there to be any
23 differences between the embodiments in those
24 images?

25 MR. PARK: Same objection.

1 A. I would need to review again. I don't
2 remember off the top of my head.

3 MR. WERNER: It's a curious answer
4 right after the improper objection, which counsel
5 continues to engage in.

6 MR. PARK: That was not an improper
7 objection, Counsel.

8 MR. WERNER: "Objection to form" is all
9 you should be saying, or privilege, and I don't
10 think that's come up today. So all the other
11 objections are improper.

12 MR. PARK: We can disagree about that.
13 BY MR. WERNER:

14 Q. If you could turn to the language of
15 claim -- what you've identified as claim element
16 8.h.

17 A. Page 52 of 70 of my declaration? 8 at the
18 top?

19 Q. Oh, I'm -- I'm sorry. I said -- oh.
20 Did you say -- I said 8.h.

21 A. Yeah.

22 Q. On page 52 --

23 A. Correct.

24 Q. -- I'm seeing claim 17.

25 A. No, 52 of 70. So the -- by -- it's --

1 Q. Oh, you're using PDF -- okay. I gotcha.

2 A. So yeah, I -- I don't mind using either
3 one. So if it's easier, 50, I'll use that.

4 Q. Okay. That claim language for element 8.h
5 uses the term "axially confined."

6 Do you see that?

7 A. I see that.

8 Q. What is your understanding of that phrase
9 as it's used in this claim?

10 A. (Reviewing document.)

11 So my recollection is that '367
12 specification doesn't provide any guidance or a
13 term of axial or axially. So you use the literal
14 meaning, so along the line. So means the wedge is
15 combined -- confined along the line within the
16 space defined by the first body and the second body
17 in the compressed end expanded configurations.

18 Q. In your opinion, is -- embodiment 840, does
19 it satisfy this requirement? As drawn in
20 Palmatier?

21 A. Yes, 840 discloses 8.h claim term. Or
22 claim. So... Can you repeat the question?

23 Q. Yeah. In your opinion, is -- does
24 embodiment 840 satisfy the requirement of axial
25 confinement in 8.h?

1 A. Embodiment 840 satisfies the claim element
2 8.h.

3 Q. If you could turn to claim element 17.f,
4 which is 56 of 70.

5 A. 17.f?

6 Q. Yes.

7 A. I have that as 56 of 70.

8 Q. That's what I meant, if I didn't say that.

9 A. Okay. I thought you said 57, but I could
10 be wrong. I'm there.

11 Q. Take a second to read that element, and
12 then I'm going to ask you about your understanding
13 of it.

14 A. (Reviewing document.)

15 Okay. I read it.

16 Q. Do you understand that element to require
17 the ends of the first and second implant bodies to
18 terminate at the same position along the
19 longitudinal axis?

20 A. (Reviewing document.)

21 So '367 doesn't define exactly what -- or
22 doesn't define "axially" or "aligned." So taking
23 the literal definition of two points -- or two
24 components -- two or more components that fall
25 along a straight line, Palmatier does disclose and

1 suggests this limitation. And I described that in
2 my declaration, paragraphs 50 to -- to 51.

3 Q. So is it your understanding that two bodies
4 that have a length and one is placed over the top
5 of the other one are always axially aligned
6 regardless of their respective lengths?

7 MR. PARK: Objection to the form.

8 A. In which axis are you referring to?

9 Q. Let's say they're aligned parallel --

10 A. Scope.

11 Q. How about this. Let me rephrase my
12 question.

13 Is it your understanding that this element
14 would be satisfied whenever two parts have a
15 generally rectangular shape and they are arranged
16 parallel to each other regardless of --

17 MR. PARK: Objection to form.

18 BY MR. WERNER:

19 Q. -- how long they are?

20 A. If it -- if you align the axi -- those
21 elements, similar to what I described in
22 paragraph 51 -- or Figure 23 of paragraph 51 -- so
23 you look at the top view, as I stated, '367 was
24 not -- provided no guidance on what axially
25 aligned -- the words "axial" or "aligned" are.

1 So using the literal definition of it, you
2 can look at any axis; and those two rectangular
3 elements, even though if one is longer than the
4 other, if you're looking at the top view, like
5 Figure 23, then yes, they -- they would be
6 considered axially aligned.

7 Q. Element 17.f specifically refers to the
8 ends of those first and second implant bodies,
9 right?

10 A. Correct. They do -- it -- element 17.f
11 refers to the ends.

12 Q. And you don't understand that, by virtue of
13 referring to the ends of the first and second
14 implant bodies, this element requires those ends to
15 terminate at the same point along the longitudinal
16 axis?

17 A. They terminate on an axis, as described in
18 my paragraph 51 -- Figure 23 of paragraph 51. As I
19 mentioned, '367 is not very specific -- is not
20 specific on the axis and how to align.

21 Q. So your understanding is that as long as
22 the first and -- the ends of the first and second
23 implant bodies terminate along the same axis, this
24 element is satisfied?

25 MR. PARK: Objection to form.

1 A. If the ends of each body terminate along
2 the axis as shown in Figure 23 --

3 (Indiscernible crosstalk.)

4 BY MR. WERNER:

5 Q. I'm sorry. I'm not asking you about
6 anything having to do with Palmatier. I'm asking
7 for your understanding of the claims in the
8 challenged patent.

9 Is it your opinion that as long as the ends
10 of the first and second implant bodies terminate
11 along the same axis -- they don't need to terminate
12 at the same point on that axis -- that would
13 satisfy claim element 17.f? Is that correct?

14 A. If the two ends are aligned on an axis in
15 this -- then they satisfy claim 17.f.

16 Q. And so, say, for example, you -- you had an
17 x-axis that goes from -- a part that is on the
18 x-axis from 1 to 4 and another part above that,
19 also parallel on the x-axis, goes from 2 to 3,
20 those would be -- those would satisfy claim element
21 17.f?

22 A. What do you mean 1 to 2 and 3 to 4?

23 Q. Yeah, one goes from 1 to 4, and one goes
24 from 2 to 3. They are both arranged, one above the
25 other, on the x-axis.

1 A. Sorry. I'm -- I'm not quite following.
2 Can you start again?

3 Q. Yeah. I'm just arbitrarily calling
4 something an x-axis. And then you know an axis can
5 go from negative infinity to positive infinity.
6 I'm using that to define the length of the -- of
7 the bodies.

8 One body is on that axis from 1 to 4. So
9 it has a length of, say, 3.

10 The other one is on that same axis, just
11 above that first body, and it goes from 2 to 3, so
12 it has a length of 1.

13 In your opinion, that satisfies claim
14 element 17.f, correct?

15 A. As you're viewing that axis from the top,
16 that will satisfy the claim limitation 17.f.

17 Q. In your opinion, the respective ends of
18 those two bodies are axially aligned; is that
19 correct?

20 A. When viewing that from the top view, those
21 two ends are axially aligned as they both terminate
22 along that axis.

23 MR. WERNER: I have no further
24 questions.

25 MR. PARK: Okay. No questions from me.

1 We'll close the deposition.

2 MR. WERNER: Thank you for your time,
3 Mr. Culbert.

4 (Time Noted: 12:56 p.m.,
5 August 19, 2026.)

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[illegible]

I hereby certify that I reported the remote deposition of Brad Culbert, on August 19, 2026, and that the witness was by me first duly affirmed to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was not addressed.

WITNESS MY HAND AND SEAL THIS 23rd day of
August, 2026.

Meille Johnson

Merilee S. Johnson, RDR, CRR, CRC, RSA
Notary Public, Hennepin County, Minnesota
My commission expires January 31, 2031

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	2		4
	2 28:17,19 29:11 45:17,22 61:5 72:19,22 72:24 73:11 20 20:23 21:2,3 21:3,11		4 3:4 22:12 72:18,22,23 73:8 40 10:1,7,12,14 10:18,22,25 11:8,19 12:2,7 13:11,15,22 14:1,7,24 15:6 15:25 16:5,13 16:14,19,25 18:2,6,8,14 19:8,12 21:20 21:22 22:5,14 22:20,21 23:6 23:10,13,18,21 23:24 24:13,18 24:20,21 25:8 26:13 27:16,21 27:25 28:22 29:14,17,19,20 32:21 36:4,8 36:11,14 40:20

40:25 41:5,8 41:11 46:8 47:10,15,17,21 48:1,13,25 49:6 50:5,14 50:16 52:21 54:12 65:10,15 66:14,14 41 12:11 13:13 50:18 51:14,19 46 22:9,12 29:14,15,16,23 37:10,11 48 22:14,17 23:20,23 24:12 24:17,19	36:14 40:7,10 40:20,25 41:6 41:8,11 46:8 47:10,24 48:1 48:13,25 49:6 49:9,15,15 50:5,14,16 52:21 54:5,12 54:15,16 63:18 65:7,10,15 66:10,21 546 30:12,15 31:6 33:17 548 30:17 31:2 31:5,19 33:18 55402 2:11 558 30:20 56 69:4,7 568 34:13,17 57 69:9 58 22:19,20,21 26:12	702 35:1,3,4,9 35:13 704 35:3,5 75 1:18 750-9951 2:12 8 8 16:9 17:18,25 18:10 20:19 40:19 67:17 8.h 68:4,21,25 8.h. 67:16,20 69:2 80 2:10 8391244 1:24 840 10:2,7,12 10:15,18,22,25 11:9,20 12:3,8 13:12,14,21 14:1,8,24 15:6 16:12,18,22,24 19:1,5,7,12,16 19:24 20:4,9 20:17,21 21:7 22:3,4 23:22 35:16,17,24 36:12,14,17,20 37:15,23 38:1 38:18 39:2,10 40:15,18,20,24 44:15 45:15 46:17 47:5,6 47:24 48:1,10 48:12 49:1,7,9	49:14,15 50:6 50:9,16,21 51:3 52:20 53:11 54:5,9 54:10,17 57:17 63:25 64:3,9 65:1,7,9,14 68:18,21,24 69:1 842 37:25 846 35:18 41:3 42:15,21 52:23 848 35:20 36:1 36:6 37:12,13 38:9 41:4 50:20 51:2 52:22,24 53:10 855 2:12 858 35:22 37:14 43:7,8 50:21 51:2 53:10 884 36:7,17 37:13 38:7 48:5 64:4,19 892 37:14 50:21 51:2 53:10
5			
5 40:3 61:7 50 68:3 70:2 51 70:2,22,22 71:18,18 52 67:17,22,25 540 10:1,7,12 10:14,18,22,25 11:9,20 12:3,7 13:11,15,23 14:1,8,24 15:6 16:19,25 18:22 19:8,12 21:24 22:1 30:10,14 30:16,20,22 31:25 32:6,18 33:9 36:4,8,11	6 614 33:17,25 616 33:17,25 64 34:21 7 7 3:14 70 50:19 60:5 60:13,14,22,25 61:4 67:17,25 69:4,7		
			9 9 16:9 17:18,25 18:10 20:19 9,445,919 3:16

900 2:11 902 44:25 45:4 45:6,11 46:3 904 45:4 908 45:4 92692 4:24 948 44:8 45:3 46:4 950 44:3 45:2 952 46:3	added 36:17 53:6 64:21,25 adding 53:20 53:24 additional 65:5 address 4:23 addressed 75:16 adequate 48:11 advances 29:21 affect 75:14 affects 75:14 affirmed 4:15 75:5 ago 61:14 agree 6:15,24 10:17,21 22:25 23:9 24:13 25:21 27:8 40:5,14 42:8 50:1 ahead 13:8 align 70:20 71:20 aligned 69:22 70:5,9,25,25 71:6 72:14 73:18,21 allow 7:1 ambiguity 6:24 ambiguous 9:25 angle 31:9,10 31:12,16	angled 35:14 answer 3:6 7:3 7:7 9:22 13:8 18:11 23:4 28:4,5,7 52:16 67:3 answered 17:15 20:15 39:5 59:15 answers 6:17 20:8 anterior 24:17 24:19 25:3,14 29:22 31:24 32:1 33:9 34:10 37:13,25 38:4 41:9,12 41:12 46:4,6,7 46:10 64:8 65:16 66:5 anticipated 17:19 anticipates 15:25 16:5 19:17 anticipation 16:23 17:2,21 19:21 anymore 52:6 aorta 48:7 apart 33:17 43:12,14 45:8 55:18	apologize 20:25 apparent 15:11 39:23 53:5,17 65:11 appeal 1:3 appear 47:19 appearances 4:5 appearing 2:1 appears 42:4 42:13,19 applicable 16:21 applied 11:2 applies 11:13 11:15 apply 11:8,19 12:2,7 13:12 14:1,7 15:15 approach 66:1 66:4 appropriate 25:16 51:23 66:6 approximately 5:14 8:13,14 arbitrarily 73:3 area 31:19 34:20 42:20 48:11 64:14,18 arranged 70:15 72:24
a			
a.m. 1:18 4:1 30:8,8 able 9:22 11:25 above 41:12,13 42:16 72:18,24 73:11 absolutely 51:24 acceptable 25:19 accomplish 36:23 49:7 accurate 63:20 achieve 58:1,6 action 75:13,14 actually 12:17 32:14 39:19 43:12 44:11 53:22 58:11 61:5 63:5 add 28:3			

arrow 26:11 art 8:16 16:7 17:16,23 aside 24:9,12 asked 20:14 39:4 59:14 asking 72:5,6 aspect 36:25 assemblies 45:23 46:1,3,7 assembly 45:20 assist 36:21 assists 66:8 attended 8:7 attorney 4:7 52:11 75:11,12 attorneys 75:14 audio 50:22 august 1:17 4:1 74:5 75:5,18 author 61:12 avantech 2:9 4:9 avantechlaw.... 2:12 avenue 2:5 aware 8:18 47:4 55:1,5,7 56:12,14 59:2 59:11,18 60:2 60:18 axi 70:20 axial 68:13,24 70:25	axially 68:5,13 69:22 70:5,24 71:6 73:18,21 axis 24:4 69:19 70:8 71:2,16 71:17,20,23 72:2,11,12,14 72:17,18,19,25 73:4,4,8,10,15 73:22	37:13 38:5,9 40:6,7,15,16,17 40:21 41:2,4,8 41:18 42:1 43:15,23,24 45:8,21 48:14 48:24 50:20 51:1,6 52:22 52:24 53:2,9 54:24 58:9 64:2,9,9 65:1 65:16 based 16:24 21:6 39:12 basis 26:3 38:25 39:6,8 basket 35:1,2,4 35:5,6,9,11 baskets 35:3 beginning 4:7 behalf 2:3,8 4:9 believe 9:2 23:4 25:13,16 51:16 51:23 59:7 beneficial 48:15 benefit 48:25 benefits 50:9 50:16 best 7:6 better 32:10 beyond 8:2 26:4 27:14,20 27:24 28:10,22	29:6,11,12 32:22 41:18,25 42:10 54:11 big 34:21 binder 5:20 biomechanical 61:13 bit 12:20 30:3 bk 61:12 board 1:3 52:17 bodies 48:2 58:22 66:9 69:17 70:3 71:8,14,23 72:10 73:7,18 body 46:20,23 46:25 47:13 48:3,22 68:16 68:16 72:1 73:8,11 bottom 35:10 35:13 47:11 50:18 56:1,2 58:9,15,24 59:4,13 60:14 60:21 61:4 brad 1:16 3:3 3:14 4:13,14 4:22 75:5 break 30:2,7,8 56:23 61:16,18 breath 13:7
	b		
	b 3:11 b2 3:16 back 6:11 27:1 45:13 balancing 58:14,20 base 22:15,18 22:24 23:1,10 23:11,13,17,17 23:20,20,23 24:10,11,12,15 24:17,19,22,24 27:15,18,20,24 28:2,2,11,23 29:1,6,12 30:16,22 31:2 31:7,11,15,19 31:22,24 32:1 32:5,7,22,24,25 33:4,12 35:6 35:20,24 36:1 36:6,11 37:12		

bring 16:12	change 44:19	collapses 46:23	31:2 36:6,12
bullet 37:5	changes 7:22	collection	37:12,13 38:9
c	15:1,7,8 19:18	18:12	38:19,22 40:3
c 2:1	20:11	collective 18:11	40:6,15 50:20
cages 9:5	channel 58:5	column 12:11	51:1 52:22,23
california 4:25	charged 75:8,9	33:22 37:9	52:24 53:9
call 25:18	claim 16:11,17	48:5	components
45:16	18:13,15 19:4	combined	13:16,23 22:23
called 35:2	20:1,5,12 21:6	68:15	22:23 32:10,13
42:14	67:15,15,24	come 27:1 61:5	33:17 36:11
calling 51:25	68:4,9,21,22	61:6 67:10	69:24,24
73:3	69:1,3 72:13	coming 12:21	compressed
calls 22:10	72:15,20 73:13	45:8 57:10	68:17
capture 47:12	73:16	commercializ...	compressing
case 16:24	claims 15:24	47:7 59:2,11	56:2
19:15,23	16:3,4,9 17:18	59:17 60:2,3	compression
cases 56:9	17:25 18:4,10	60:17 63:9,16	55:19,23
cause 33:14	18:12,23 19:2	commission	comprising
43:5 56:10	19:17 20:5,19	75:24	19:13
caused 55:21	20:23 21:1,11	compact 28:13	concerning
55:25 56:3,8	72:7	companies 5:4	21:6
61:20 62:6	clarification	62:18	concrete 9:7,11
causes 56:4,5	12:13 19:10	company 63:7	9:14
caution 3:6	26:25 50:24	compared	conditions
cava 48:7	53:8	53:21	29:10
center 58:21	clarified 35:7	complete 6:17	configurations
central 1:18	clarify 49:13,16	7:2	68:17
certificate 75:1	clean 7:4 17:14	completed 7:7	confined 68:5
certify 75:4	clear 28:6	component	68:15
challenged	49:18	22:8,12,14,17	confinement
18:5,23 19:2	close 52:4 74:1	22:19 23:25	68:25
19:17 20:1,12	closest 15:13	24:23 25:6	confirm 21:19
72:8	28:8	29:14,15,16	21:23 22:8
		30:12,17,19	

confirming 49:22	10:11,19,23 11:14,15 12:3	71:10 72:13 73:14,19	cross 23:25 24:1 34:9,20 43:8,10
confusing 17:13	13:19 14:21 15:3,10,12,18	correctly 21:5	crosstalk 17:4 35:7 54:18 58:18 72:3
connect 44:23	16:16,20,23	correspond 21:20,24 22:2	crr 1:25 75:23
consider 16:18	17:9,22 21:7	corresponding 34:2 45:16,17 46:6 47:15,23	culbert 1:16 3:3,14 4:13,14 4:18,22 13:4 74:3 75:5
considered 17:16 71:6	22:3,15,20 23:14,18,25	cortical 47:1,12 58:6	curious 67:3 currently 5:1
considering 9:7 9:12	24:16,18,22 26:17 27:16	cost 75:8	cut 34:9
consistent 13:1	28:12,14,18,23	counsel 3:18 4:5 7:2 8:4,22 17:2 40:10 49:17 50:1 51:15 52:3,13 56:24 61:11 67:4,7 75:11 75:12	cv 5:15 62:19 cycle 56:8 cycles 56:10
consultant 5:5	29:7,14,15,18	count 63:11	d
consulting 5:15 63:7	29:22 30:12,17 30:18,20,21,23	county 75:3,24	d 3:1
contemplated 37:16,22	30:24 31:4,8 31:22,23,25	couple 8:9 63:6	damage 55:20 55:21,25 56:3 56:8,10,12,19 61:20 62:11
contemplates 15:9	32:19,20,23 33:2,3,6,7,10	court 4:2 12:12 19:9 21:13 35:8 50:23 53:7	damaged 55:1 55:5,8 62:2
contend 15:24 16:4 18:2	33:25 34:1 35:18,19,20,21	coverage 46:20 47:9 58:7,23	damages 55:17
context 57:9,11	35:22,23,25	crack 62:9	data 54:4
continue 37:18	36:5,9,15 38:1	cracking 62:4	day 8:14 75:18
continues 67:5	38:2 39:17,20	crc 1:25 75:23	declaration 3:14 5:19,22 5:25 7:10,13 7:19,23,25 8:2 8:15 17:11
continuing 43:25	40:22 41:2,6,7 41:9,22,23	create 52:22	
contract 75:13	42:1,2,5,17	created 48:19 62:9	
contracted 28:14	44:2,4,6,11 45:21 46:2,8 46:17 47:5,24 48:11 49:2,8 50:8 53:15,22 54:6,11,20,21 56:20 58:13 65:16 67:23		
control 6:4,8			
copies 75:9,10			
correct 5:10,16 5:24 6:6,13,14 7:11,12,15,16 8:6,16,17 10:6			

50:15 51:9,21 52:10,12 53:2 60:5,22 62:19 62:24 67:17 70:2 deduced 39:18 define 69:21,22 73:6 defined 68:16 definition 69:23 71:1 delicate 48:4 deliver 37:23 depict 61:3 deposed 5:13 deposition 1:15 5:9 7:20 8:2 30:4 46:12 52:6 74:1 75:5 75:9,16 describe 34:23 55:12 described 9:18 46:7 62:24 65:24 70:1,21 71:17 describes 25:12 design 44:13 designed 65:25 designing 49:5 63:5 desired 49:4 developing 55:15	development 55:9 56:17 device 25:1,11 25:17,18 26:12 29:3 58:12 63:16 devices 6:13 60:4,6 difference 36:16 40:19,24 44:22 45:1 54:13 differences 10:17,21,24 36:13 54:10,14 66:11,23 different 9:17 14:15,18 43:17 44:21 58:23 differently 43:3 63:8 differs 52:20 65:10,14 difficult 12:17 58:25 dimensions 47:20,25 direct 51:16 60:16 directed 52:8 direction 28:10 29:22 disagree 67:12	disc 36:22 37:3 37:4,15,24 39:3,11 47:2 50:22 51:4 53:12 60:3 disclose 16:8 17:17,24 18:8 47:25 69:25 disclosed 11:12 14:25 20:17 21:9 48:18 discloses 18:14 18:22 19:1,7 19:11 20:18 68:21 discussed 61:20 discussing 15:15,16 21:17 dispute 27:19 27:23 distal 46:4 distorted 50:22 distractions 6:21 document 3:21 12:5 15:4 16:6 19:3 20:3,16 20:24 22:11,16 23:15,19 24:6 25:20 27:10 30:13 31:1 33:16 34:16,19 35:12 39:21 41:10 47:18	50:17 59:5 64:11 68:10 69:14,20 documents 5:21 doing 43:22 doyle 61:12 drawn 18:2 19:16,24 20:10 25:24 68:19 drive 33:17 driving 43:12 43:14 due 40:14 duly 4:15 75:5
			e
			e 2:1,1 3:1,11 earlier 61:20 ease 39:16 easier 58:8,11 68:3 easily 25:10 echo 12:20 edge 27:20,24 28:10 58:6,6 edges 28:23 29:6 32:22 47:1,13 effect 47:2 eighth 2:10 either 5:22 56:9 68:2

electronic 6:12 element 67:15 68:4 69:1,3,11 69:16 70:13 71:7,10,14,24 72:13,20 73:14 elements 19:25 20:12 70:21 71:3 em 21:19 email 2:6,12 embodiment 10:7,7,7,12,12 10:12 11:7,8 11:19 12:2 14:1,7 15:25 16:5,12,13,18 16:24 18:2,6,8 18:14,21,25 19:5,16,19,24 20:4,9,21 21:7 21:20,22,24 22:1,3,4,5,14 22:20,21 23:6 23:10,13,17,18 23:21,22,23 24:13,18,20,21 25:8,9 26:13 27:16,21,25 28:21,22 29:14 29:17,19,20 30:10,11,14,16 30:20,22 31:25 32:6,18,21	33:9 35:16,17 35:24 36:4,8 36:14,20 38:18 39:2,10 40:7 40:10,15,19,24 44:15,16 45:15 46:17 47:5,6 47:15,16,17,21 48:10 49:1,7,9 49:14 50:6,16 54:9,10,15 57:17 63:18,25 64:3,25 65:7,7 66:10,21 68:18 68:24 69:1 embodiments 9:17,21 10:1,5 10:10,14,18,22 10:25 11:9,9 11:12,14,15,18 11:19,20,24 12:3 13:18 14:8,13,24 15:6,15,16,17 16:19,25 19:6 36:14 40:25 41:5,8,11 46:8 46:9,14 47:9 47:24 48:13,24 49:6 50:5 54:5 54:12 66:12,23 employed 5:5 37:22	employee 75:11 75:12 employment 5:3 endplate 46:21 58:7 62:8 endplates 55:18 56:7 58:19 62:4,5 ends 41:18,25 69:17 71:8,11 71:13,14,22 72:1,9,14 73:17,21 engage 67:5 engagement 62:15 engages 34:4 35:11,13 entire 26:15 errors 7:22,24 especially 46:25 50:9 53:25 esq 2:4,10 estimate 59:25 event 13:3 eventually 29:5 ex 33:8 exact 3:21 15:7 47:20 59:19,22 59:24 63:11 exactly 69:21	examination 3:4 4:16 examined 4:15 examining 52:11 example 19:6 19:11 72:16 examples 16:12 60:6 excuse 54:22 exhibit 3:14,16 5:23,25 7:14 7:17 13:13 21:13,14,22 61:5,7 exhibits 3:13 3:18,20 5:19 5:20 expan 55:17 expand 34:7 43:5 66:5 expandable 9:4 expanded 28:18,20 29:4 29:10 41:22,24 68:17 expanding 56:13 expands 19:7 19:12 55:18 expansion 29:2 43:23 53:18 experience 39:12,13 55:8
--	--	--	--

55:12 61:22 62:1,14,25 63:4 experienced 56:16,16 experiences 56:18 62:10 expert 5:13 expires 75:24 explains 12:6 13:10 explicitly 53:4 exposes 44:14 extend 23:5 24:14 27:17 28:1,25 41:12 47:10 49:11 50:13 extended 33:8 33:11 extending 28:6 41:17 48:3 extends 27:14 27:20,23 28:10 28:22 29:11 32:21,24 33:1 33:3 34:3 41:25 42:10	fact 48:23 53:1 fair 26:22,23 32:11 43:17 fall 69:24 family 1:8 4:4 far 58:25 fatigue 56:8 62:4,9 fda 54:2 55:10 55:14 61:21 feature 36:16 36:17 38:10 44:13 62:7 features 16:8 17:17,24 18:4 18:9,9,14,22 19:1 20:18,23 28:24 29:9 65:12 feedback 12:20 feel 34:20 figure 23:2 24:5 25:12 26:11 27:4,13 27:17,21,25 28:2,13,15,17 28:19,24 29:11 32:3,7,13,14,18 33:19,21 34:8 34:15 41:15,17 41:21 42:3,8 42:12,19 43:7 43:9,10,14,16 44:1,8,14,18	48:5 52:21 61:5 66:14,20 70:22 71:5,18 72:2 figures 18:3 19:16,24 20:10 20:11 21:19,21 21:23,25 22:2 22:4 23:5,6 40:8 44:10,12 44:19,20,21,24 44:25 45:6,16 45:17 46:9 47:15,23 60:20 66:12 financially 75:13 find 51:13,22 finish 7:2 first 3:13 8:18 8:20,23,24 9:15 68:16 69:17 71:8,13 71:22,22 72:10 73:11 75:5 five 59:21 63:12 flat 23:1,10,11 31:8,20,21 41:13 focus 16:11,17 focused 57:8 focuses 19:5	focusing 24:10 following 73:1 follows 4:15 footprint 48:21 49:4,12 50:7 force 56:7 forces 37:22 38:12 64:13,18 64:20 form 9:20,23 10:8 12:4 13:20 14:3,9 14:22 15:19 16:1 25:5 26:4 36:10 38:6 42:6,11,18,25 51:11 53:23 56:21 57:7,12 57:19,22 62:20 63:21 67:8 70:7,17 71:25 forward 27:2 found 8:25 9:2 61:2,10,11 four 8:13,14 60:24 63:12 front 5:18,21 6:1,9,13 34:10 36:5,6,9,19,23 37:1,8 38:18 39:1,9,16,25 40:2,6,15 64:2 64:19
f			
facilitate 37:2 39:2,10 facilitates 45:9			

full 4:20 37:5 fully 12:25 23:24 24:14 28:19 29:10 function 38:4 62:7 further 73:23 fusion 63:13	guidance 55:10 68:12 70:24 guide 37:4 38:23 45:13,20 guys 12:18	hits 64:20 hold 5:1 honest 6:17 honestly 61:10 hour 8:9,10 hours 8:13,14 52:4	36:21 37:3,15 37:23 38:1,20 38:22 39:3,11 41:21 43:8 45:9,11,25 46:2,24,24 48:21 49:4,5 50:8,21 51:3 52:20 53:1,11 54:3 56:3 57:4 57:18,25 58:3 58:4,21 59:3,4 59:12,13 60:4 61:21 62:2,3 63:9,19 64:1 69:17 71:8,14 71:23 72:10	
g	h 3:11 hand 75:18 happen 33:15 41:5 56:15 happening 64:13 happens 51:25 hard 47:12 hastings 2:4 4:12 head 15:22 56:14 59:6,16 67:2 height 47:3 help 7:4 26:5,7 37:4 38:23 45:11,20,24 helping 45:9 helps 39:25 40:2 45:13 54:24 hennepin 75:3 75:24 higher 42:20 43:20 hinged 29:25	i	idea 5:12 identified 10:11 11:18 13:3 15:20,21 22:9,15 30:11 30:14,16,19 33:20 67:15 identifies 22:19 33:21 34:13 identify 5:17 7:22,24 12:1 50:15 images 61:2,3 66:24 impact 57:3,17 impartiality 75:15 implant 11:2 12:7,8 13:11 13:11,12,14,21 13:23 16:13 19:7,12 25:23 26:13,15 28:13 28:15,17,19 29:5 32:2	implantation 53:18 implants 11:3 14:1,10 19:8 19:12 52:21 55:2,6,9,22,24 56:13 59:2,12 59:17 60:15,17 60:24,25 62:11 62:15,25,25 63:5,10 65:10 65:15,24 66:3 66:5 implies 14:10 improper 67:4 67:6,11

inadequate 54:5	33:13 35:14	13:22,22,25 37:14,15,23,24 38:1 50:21 51:3,4 53:11 53:12 60:3	isolation 16:25 issues 62:3
inappropriate 51:24	insert 58:11,13 59:1	introduce 37:23	j
includes 20:25 37:12 38:10	inserted 29:1 37:15 50:22 51:3 53:11	introduced 7:17 9:16 21:14 39:1,9	j 2:4 january 75:24 job 1:24 johnson 1:25 75:23
including 8:12 29:9	inserter 37:25	introduces 36:19 38:18	k
increase 46:16 46:20 65:21	inserting 58:25	introducing 51:8	keep 7:4 17:14 know 6:24 7:8 25:19 30:5 33:13 45:5 47:14,22 60:12 61:2,11 62:6 64:24 65:5,17 65:18,24 73:4
increasing 57:2 57:14,16 58:12	insertion 36:21 37:3 38:23,24 39:2,10,16,16 39:25 53:15,16 57:3,18 64:20 66:2,3	invasive 57:6 57:23 58:2,3	known 21:8 47:6 53:25
indicate 3:21 13:25 14:7 38:3 42:22 52:25	inside 40:21 41:1 46:25 54:23	invasiveness 57:3,5,17	l
indicated 63:17	instructions 3:6,8	invention 15:12 21:9 39:13 46:19	labeled 35:17 35:20,22 44:2
indicates 12:1 13:18	inter 3:14	involved 5:4 63:10	lacks 48:11
indicating 48:10	interest 75:14	involvement 9:12 62:17,23 63:1	language 25:10 67:14 68:4
indicator 34:15	interested 75:13	involving 9:8 9:13 63:1	larger 57:25 58:3 64:25 65:1,6
indiscernible 17:4 35:7 54:18 58:18 72:3	interface 6:2 43:5	ipr 5:23 7:10 9:5,8	lateral 38:11
individual 5:7 5:8	interfering 52:6,7	ipr2026-00162 1:11	laterally 34:3
infinity 73:5,5	interior 29:4 34:5	iprs 9:4	law 2:9 4:9
information 47:4	interrupted 7:7		
inner 22:25 23:9,11 24:15 31:8,11,14,22	interventional 55:16 63:6		
	intervertebral 13:14,15,15,21		

lawyer 17:12 legal 9:13 length 46:16 47:14,22 48:14 48:19,24 57:2 57:14,16 58:10 58:12,24 70:4 73:6,9,12 lengthen 46:19 lengths 70:6 life 6:20 limitation 70:1 73:16 line 37:10 68:14,15 69:25 linkage 44:24 44:24 45:3,5 45:11 46:10 linkages 45:23 literal 68:13 69:23 71:1 little 12:20 30:3 llc 1:8 4:4 llp 2:4,9 4:12 load 55:23,23 loading 55:22 56:9 62:8 located 46:1 location 58:14 logical 39:15 47:8 long 8:11 30:4 70:19 71:21 72:9	longer 29:5,9 29:11 40:7,16 40:17 71:3 longest 25:23 longitudinal 25:22 26:14,21 69:19 71:15 look 34:8 42:3 60:11,21 61:6 70:23 71:2 looked 16:7 looking 6:9 25:12 26:11 33:19 43:11 44:8 71:4 lordosis 66:7,8 lose 47:2 lost 26:8 lot 64:13,17 lower 43:18,22 m made 11:11,23 14:13,23 37:7 46:13 main 36:13,16 45:1 54:13 majority 59:7,9 63:15 make 7:1,23 16:15 19:5,18 22:6 57:25 58:7,11	makes 11:2,7 52:25 58:24 manner 3:20 map 19:4 20:5 mapping 16:11 16:17 marked 3:13 7:14 mate 31:3,5 material 8:3 37:6 materials 5:17 5:22 20:7 matter 4:3 9:19 matters 62:15 63:1 maximize 48:21 49:11 58:22 maximizes 50:7 maximizing 49:3 mean 12:23 28:7 33:5 40:9 49:14 56:15 57:5 58:17,20 60:9 64:15,17 72:22 meaning 68:14 means 68:14 meant 33:1 34:17 69:8 mechanism 19:13	medication 6:21 medtronic 1:5 4:3,12 meet 55:11 meeting 8:8,11 mentioned 15:9 19:4 28:24 56:6 71:19 merely 13:17 38:22 merilee 1:25 75:23 met 8:4,5 microphone 12:19 million 56:10 mind 30:6 68:2 minneapolis 2:11 minnesota 2:11 75:2,24 minutes 61:17 missed 49:25 49:25 mission 4:24,25 misspoke 49:20 50:2 mistake 31:18 modification 21:1,7,8 modifications 11:11,23 14:12 14:17,19,21,23
--	--	--	---

20:20 46:13 modified 20:22 monitor 6:1 morning 4:18 4:19 moskowitz 1:8 4:3,9 9:9,13 62:16 63:2 motivated 46:16,18 49:10 move 27:2 43:24 52:2 movement 38:11 moves 29:4,8 moving 27:2 52:5 mw 1:24	65:1,8,23 needs 52:11 negative 73:5 neither 25:2 36:8 nerves 48:7 nest 52:23 54:16 nested 41:3 nesting 36:16 38:10 51:5,12 54:20,21,23 new 2:5,5 nicely 37:7 nomenclature 22:6 nonfusion 63:16 nose 37:6 40:20 41:1 notary 75:24 note 3:20 noted 74:4 noticed 75:9 noticing 4:7 now's 61:15 number 34:22 54:10 59:20,22 59:24	14:3,9,22 15:19 16:1 18:17 20:14 25:5,25 26:3 36:10 38:6 39:4 42:6,11 42:18,25 51:11 53:23 56:21 57:7,12,19,22 59:14 62:20 63:21,24 66:18 66:25 67:4,7,8 70:7,17 71:25 objections 7:3 67:11 obvious 39:23 obviously 48:2 occur 55:20 offer 17:21,23 18:21,25 19:14 19:15,23 office 1:1 oh 6:8 31:17 33:3 34:21 35:4 40:11 66:15 67:19,19 68:1 okay 6:12 7:4,9 13:10,17 17:20 21:5 23:7 24:7 26:18 28:9 29:16 32:4,15 33:23 34:18,21 34:25 35:1	41:16 50:4,25 52:19 60:23 61:17 63:17 66:16 68:1,4 69:9,15 73:25 omits 32:9 ones 15:9 60:7 61:4 opening 52:23 operate 5:6 opinion 17:23 18:20,21,24,25 19:20 20:9,21 38:14,17 39:1 39:6,8 46:15 48:23 49:6 50:5 63:18 68:18,23 72:9 73:13,17 opinions 9:18 16:24 17:2,21 19:15,23 21:6 opportunity 47:12 opposed 39:18 opposite 25:14 opticage 55:15 order 20:22 32:9 34:6 38:23 ordered 75:9 organization 5:7
n	n 2:1 3:1 name 4:20 necessarily 3:21 30:1 34:13 necessary 52:18 need 17:9 19:18 20:22 21:10 26:2,3,7 37:5 51:22 60:11 67:1 72:11 needed 45:10 54:6,8 64:23	o	
	objection 9:20 9:23 10:8,13 12:4 13:20		

orient 34:12 original 75:8 outer 40:21 41:1,3 outside 18:17 48:4 62:17,23 63:3 66:18 overexpanding 45:8 overexpansion 45:24 own 9:1,3 51:21 owner 1:9 2:8 4:10	15:2,10,13 18:3 19:7,11 19:17,25 20:10 20:17 21:10,16 21:21 22:9,12 22:15,17,19 25:11 27:5 36:19 37:9 38:18 39:19,22 44:14 46:12 47:19,25 48:9 48:13,17 50:20 51:1 53:9,21 54:7 65:9,14 65:25 68:20 69:25 72:6	13:20 14:3,9 14:22 15:19 16:1 17:1,11 18:17 20:14 25:5,25 26:5 36:10 38:6 39:4 40:9 42:6 42:11,18,25 49:13,19,22 51:11,14,18 52:1,7,12 53:23 56:21,23 57:7,12,19,22 59:14 60:13 61:17 62:20 63:21,24 64:4 66:18,25 67:6 67:12 70:7,17 71:25 73:25	14:15 60:18,20 past 48:3 patent 1:1,3,9 1:11 2:8 3:15 3:16 4:9 9:9 16:10 18:1,10 72:8 paul 2:4 4:11 paulhastings.... 2:6 pdf 68:1 people 56:16 period 61:13 perpendicular 24:4 personal 55:7 62:23,25 personally 60:7 60:9 persons 75:14 pertaining 23:6 petition 3:14 petitioner 1:6 2:3 4:12 petra 4:24 phone 2:6,12 phrase 26:21 68:8 physical 10:5 pin 44:5,7,7,8 44:10 45:3,20 45:23,23 46:1 46:6,10
p			
p 2:1,1 p.m. 1:18 61:18 61:18 74:4 page 3:3,13 23:3 37:11 50:19 60:5,11 60:12,21,25 61:4,7 67:17 67:22 pages 1:18 palmatier 8:15 8:19,21 9:7,12 9:16,18 10:2,6 10:10,16 11:1 11:6,10,16 12:1,6,9 13:10 13:17,24 14:6	palmatier's 52:20 66:3 panel 6:5,8 paragraph 13:13 14:15,18 15:20 50:18 51:14,16,17,19 70:22,22 71:18 71:18 paragraphs 15:21 70:2 parallel 42:13 70:9,16 72:19 park 2:4,5 4:11 4:11 6:4 8:5 9:20,23 10:8 10:13 12:4,14 12:21,23 13:6	part 24:22 27:8 27:11 51:8,9 52:23 72:17,18 partes 3:15 partially 41:22 41:24 particular 20:1 20:12 65:25 parties 75:9,11 75:13 parts 32:5 70:14 party 75:9 passage 13:4,5 13:17,24 14:6	

pins 44:22 45:3 piston 22:9,10 22:13 24:22,24 27:15,15,18,20 27:24 28:2,11 28:23 29:1,6 29:12,13,15,17 29:19,21,24 30:11,14 31:4 31:6 32:9,12 32:22,25 33:4 33:10,12,14 34:3,11,14 35:2,17 38:12 39:14 40:2,7 40:16,18,20 41:1,3,18 42:1 42:5,9,14,16,21 42:23 43:5,12 43:14,23,24 44:6,9,23 45:7 45:13,21 46:16 46:19 47:14 48:10,14,24 49:9,11,14 50:7,11,13 51:5 52:23 54:21,22,23 57:2,16 58:9 58:12 pistons 47:23 pivot 29:25 placed 70:4	planar 23:1,10 23:12,24 24:14 please 4:5,20 7:1,8 10:9,20 14:5 16:2 23:8 27:22 31:13 39:7 40:23 42:7 43:1 55:4 62:22 64:7 65:4 plus 63:6 point 29:25 58:1 71:15 72:12 pointing 26:11 33:24 34:23 points 69:23 port 52:9 portion 22:24 24:10 25:13 30:22 34:14 43:4 52:9 66:5 portions 27:11 29:23 33:24 42:4,9,10,23 62:1 posita 15:12 21:9 39:12,24 46:15,18 49:10 50:12 53:5,17 53:24 65:11,18 position 69:18 positions 5:1	positive 73:5 possession 61:9 possible 47:9 posterior 23:14 23:16 24:10,12 25:3,13 27:14 27:24 28:23 29:6 30:23 32:22 35:25 36:1 41:18,25 46:2 66:4 potentially 48:6 preferred 49:1 50:6 preparation 7:20 prepare 8:1 prevent 45:7,24 46:21 prevents 38:11 previous 17:15 previously 7:14 primary 16:11 16:17 20:4 prior 8:16 9:5,8 9:12 16:7 17:16,23 29:2 52:19 62:15,18 63:1 privilege 67:9 probably 13:7 problem 34:24	problems 56:19 procedure 57:21 procedures 63:14 proceeding 9:8 18:5,23 19:2 20:2,13 proceedings 4:1 9:13 products 63:9 protect 38:19 40:2 50:10 54:5 65:18 protecting 38:8 38:13 53:3,14 54:6,8 65:12 protection 51:7 54:25 protects 37:14 38:21 39:14 50:20 51:2 53:10 protrudes 29:5 provide 6:17 18:19,24 19:20 21:12 53:19 54:24 63:19 64:1,3,9,12,21 65:20 66:6 68:12 provided 8:22 8:25 65:6 70:24
---	---	---	--

provides 17:1 51:6 proximal 28:25 30:1 proximally 27:17 28:1,3,7 28:25 29:12 32:24 33:2,3,5 public 75:24 purpose 36:18 45:5,7 push 34:6 pushed 29:21 29:23 pushes 33:10 33:12,14 put 38:12 putting 58:15	quotations 3:20 quote 3:21 r r 2:1 radius 62:7 ramp 33:24,24 34:4 rate 75:10 rdr 1:25 75:23 read 3:20 52:10 52:20 69:11,15 75:16 really 25:8 34:22 51:5 reask 11:5 40:12 reason 6:19 9:2 39:15 59:8 recall 8:20,24 9:15 39:22 59:6 61:23,24 recited 16:9 17:17,24 18:4 18:9 20:18 recollection 9:7 9:11,14 68:11 recommend 50:11,12 record 3:21 4:2 4:6,21 7:4 17:10,14 49:13 52:4,13,15 75:7	rectangular 70:15 71:2 redirect 49:23 refer 21:22 22:4 25:1,2,4 26:10,12,18 46:11 reference 8:16 11:13 14:20 15:5 19:5 20:7 21:16,25 39:19 referenced 5:25 15:2 62:18 references 8:15 16:8 17:17,24 27:5 61:3,9,11 referred 3:13 referring 9:21 14:16 22:18 23:2 24:1 25:6 26:20 34:12 53:14,16 55:13 56:4 59:9 60:8 60:17,19 63:3 64:4 65:2 70:8 71:13 refers 22:12 71:7,11 reflected 3:20 regard 5:3 regardless 70:6 70:16 regards 5:2	region 46:7 related 62:16 relating 16:19 relative 40:25 44:19 45:21 49:1 50:6,16 54:11 65:7 75:11,12 relies 21:3,4 rely 9:17 10:1,6 10:11,14 21:3 remember 9:15 15:22 29:24 61:10 62:4,12 67:2 remote 1:15 2:1 75:4 remotely 15:2 removed 32:12 repeat 9:10 14:4 23:7 24:7 26:9 31:13 39:7 40:23 42:7 55:3 57:13 64:6 65:3 68:22 repetitive 62:8 rephrase 62:21 70:11 report 47:7 reported 1:25 75:4 reporter 4:2 12:12 19:9
q question 9:10 9:22,25 13:9 14:4 17:16 20:8 23:7 24:7 26:9 27:3 39:7 40:12 42:7 43:2 49:17 50:2 55:3 57:9 57:13 65:4 68:22 70:12 questions 6:23 7:2 73:24,25 quite 12:17 73:1			

21:13 35:8 50:23 53:7 reporter's 3:20 75:1 representing 4:6,12 requested 12:12 19:9 50:23 53:7 requests 3:8 require 69:16 required 18:15 18:22 19:1 61:21 64:13 requirement 68:19,24 requirements 54:1,2,2 55:10 requires 71:14 resides 42:23 respect 58:22 respective 70:6 73:17 response 51:23 responsible 55:15 rest 10:4,15 restate 13:4 rests 40:21 41:1 retain 44:5 retained 3:18 return 27:4 returning 66:10	review 3:15 7:19 11:21 67:1 reviewed 8:3 reviewing 8:2 12:5 15:4 16:6 19:3 20:3,16 20:24 22:11,16 23:15,19 24:6 25:20 27:10 30:13 31:1 33:16 34:16,19 35:12 39:21 41:10 47:18 50:17 59:5 64:11 68:10 69:14,20 ridges 42:14,17 42:20 ridiculous 51:25 52:1 right 6:3 26:10 31:10 34:14 51:9,20 52:16 58:2,13 61:15 66:7 67:4 71:9 75:16 rotate 56:7 rsa 1:25 75:23	satisfied 70:14 71:24 satisfies 69:1 73:13 satisfy 68:19,24 72:13,15,20 73:16 save 49:24 saw 8:20,23,24 55:17 saying 13:6 15:14 28:9 39:23 49:3 55:21 66:7 67:9 says 12:6 14:23 15:17 19:6 37:12 38:9 53:22 65:14 scope 18:18 66:19 70:10 screen 6:9 screw 19:13 25:13 29:3,8 37:14 38:13,22 40:2 50:21 51:2,7 53:10 53:14 54:7 65:13,19 seal 75:18 second 14:18 53:6 68:16 69:11,17 71:8 71:13,22 72:10	section 23:25 24:1 34:9 43:10 sectional 34:20 43:8 see 6:1 11:21 21:3 27:5,7 28:9 32:13 37:17 38:2,21 39:14 40:1 43:13 58:2 64:13,17 68:6 68:7 seeing 67:24 self 5:5 sensitive 48:7 sentence 15:8 38:8 52:19 53:6,13,16 separate 24:21 24:23 serve 38:19 serves 44:5 sets 61:6 setting 12:19 24:9,12 seven 52:3 several 9:4 56:10 shape 70:15 shaped 36:5,6,9 36:12,19,23 37:13 38:17 39:1,9 40:1,6
	s		
	s 1:25 2:1 3:11 75:23		

40:14 sharp 62:7 shear 55:19,23 56:6 sheer 54:1 short 48:11 shorter 47:11 49:9,14,15 show 32:5 34:9 41:17 44:18 46:10 48:13 shown 24:4 27:13 29:10 40:8 42:12 44:10,12 46:9 52:21 60:24 66:12 72:2 shows 28:13,15 28:17,19 32:7 32:18 41:21 60:5 sic 37:11 side 24:9 25:14 26:12,13,14,15 26:22 43:13 44:1 65:16 sides 25:1,2,2,4 25:17,18,22,23 25:23 sidewall 29:25 34:3,4 sidewalls 23:18 23:21,23 29:17 29:19,20,23	30:25 31:2,3,3 31:5,6,7,12,15 31:17,18,19 36:2,3 38:10 45:14 50:10 52:22 53:2,19 54:11,13,15,16 54:20,21,23 63:17,18,25 64:22,25 65:1 65:6,11,22 sign 75:16 signature 75:23 significance 28:4 similar 13:14 13:18,22 14:11 15:17 23:22 32:21 43:9 50:13 70:21 simulated 56:6 sit 9:6 11:25 42:13 sized 48:2 slide 31:21 slight 21:1 slightly 44:20 slot 44:1,23 45:2 46:11 slots 45:23 smaller 58:4 59:3,12 smooth 31:9,10	sorry 9:10 11:4 14:4 24:3,7 26:8 34:17 35:4,9 37:19 40:4 43:1 49:25 50:19 54:20,22 55:25 62:19 65:3 66:15 67:19 72:5 73:1 sort 34:9 39:24 43:16 south 2:10 space 36:22 37:3,5,16,24 39:3,11 50:22 51:4 53:12 68:16 speak 17:6,8,9 speaks 17:12 special 3:8 specific 9:24 15:7 23:2 25:9 38:16 71:19,20 specifically 11:17,22 23:22 39:22 44:14 47:20 48:1,12 63:4 71:7 specification 10:4,15 20:6 33:22 68:12 spinal 48:5 55:2,6,8 56:13	62:14,25 63:10 spine 55:16 57:11 63:6 squeezing 55:24 ss 75:3 stability 51:6 53:19 54:1,24 63:19,23 64:10 64:16,22,25 65:20,21 stable 53:1 start 22:24 24:11 46:12 50:25 73:2 state 4:5,20 12:9 14:12,12 14:14 26:3 28:14,16,18,20 28:21 31:4 32:19 41:19,22 41:24 46:12 48:12,17 50:19 51:12 53:4 75:2 stated 13:10 70:23 statement 12:1 13:11 14:17,19 statements 11:2,7,17 12:2 12:7 13:25 14:7 15:14 16:13,19,21
---	--	--	---

48:9 states 1:1 11:1 11:6,10,17,22 13:21 38:9 39:19 47:20 65:9,17 static 60:15 stating 7:3 step 43:12 steps 44:2 sticking 48:6 stop 52:11 straight 69:25 street 2:10 strike 19:14,22 24:11 29:16 38:15 44:16 56:1 57:14 structural 63:23 64:1,3,9 64:16,24 65:6 65:20,21 structurally 50:10 structure 22:23 25:11 32:10 59:18 60:3,18 structures 48:4 studies 61:13 submitted 5:23 7:10 subsidence 46:21,22 47:5	substantial 75:14 suffered 47:5 suggest 17:17 17:24 18:9 20:23 suggests 20:18 54:7 70:1 suite 2:11 support 3:14 8:3 9:18 20:6 64:1,3 65:6 sure 7:1 12:18 16:15 20:8 22:6 26:24 56:15 57:23 62:12 64:22 65:22 66:7 surface 22:25 23:9,11 24:13 24:15 31:8,11 31:15,22 33:13 34:2,6,9 35:10 35:15 41:14 42:16 43:11,18 43:20,22 48:11 49:3,12 50:7 surfaces 43:17 43:21 surgeon 33:6 58:8 surgery 57:11 surgical 57:21 66:1	system 46:10 t t 3:11 take 30:2,7 43:10 69:11 taken 5:9 talk 25:10 talking 12:14 13:7 25:22 54:19 taller 42:4,9 taper 36:25 37:2,4 39:25 teach 20:22 teaches 18:3 19:25 20:11 tell 6:15 51:22 75:6 tendency 75:14 term 24:25 25:3,15,22 27:1 57:6 68:5 68:13,21 terminate 69:18 71:15,17 71:23 72:1,10 72:11 73:21 terms 10:5,10 53:2 64:16 66:1 testified 4:15 testimony 49:17 52:13,14	75:7,7 testing 54:2,22 55:10,14,19 61:21 62:2 thank 37:20 46:5 74:2 thing 52:2 things 22:7 think 6:23 12:14 13:3,6 17:1,9,11,13 18:11 33:1 34:22 49:18,19 63:3 64:12 67:10 thought 26:9 31:17 69:9 thoughts 53:21 three 9:17 15:14 time 8:12,20,24 15:11 21:9 39:13,24 46:19 48:20 49:24 50:13 53:25 56:23 60:1 61:13,16 62:13 74:2,4 times 5:12,14 tissues 48:8 today 6:15,20 9:6 11:25 67:10
---	--	--	--

today's 7:20 8:1 todd 2:10 4:8 together 55:24 62:21 told 51:18 top 15:22 33:21 42:4,8,12,13,19 43:11,21 47:11 54:20 56:1,2 56:14 58:9,15 58:23 59:3,6 59:12,16 60:25 67:2,18 70:4 70:23 71:4 73:15,20 total 8:12 touching 48:6 towards 29:4 33:6,9 trademark 1:1 train 26:8 trajectory 66:1 transcribed 75:7 transmitted 37:24 trial 1:3 true 75:7 truth 6:15 75:6 trying 26:5 34:23 49:16,24 52:2 58:1,6,21	turn 22:5 29:13 30:10 32:3 35:16 37:9 41:15 67:14 69:3 turned 29:3 turns 29:8 twenty 59:23 two 8:10 15:21 25:2,16 43:16 43:21 44:2 55:18 69:23,23 69:24 70:3,14 71:2 72:14 73:18,21 type 45:23 65:25	understood 11:10 undesirable 47:2 unexpand 45:9 45:12,24 unexpanded 28:15,21 31:4 32:19 41:19 united 1:1 upper 42:16 43:17,18,20 upward 43:6 upwards 24:14 use 24:25 25:4 25:10,16,21 26:21 27:1 44:22 45:20 51:21 55:2,6 62:2 68:3,13 used 16:12 44:25 46:5 54:3 56:13 63:13,15 68:9 user 28:8 33:6 uses 45:2 68:5 using 22:6 25:1 68:1,2 71:1 73:6	various 11:11 11:23 14:12,17 14:19,23 46:13 vena 48:7 version 45:16 45:17,22,22 versions 45:15 45:19 versus 4:3 44:24 58:15 vertebral 46:20 46:23,25 47:13 48:2,3,22 58:19,22 66:9 video 6:9 videoconfere... 2:1 viejo 4:24,25 view 32:10 43:8 70:23 71:4 73:20 viewed 48:25 viewing 73:15 73:20 virtue 71:12 vivo 54:3
	u		
	u.s. 3:15,16 unable 6:20 under 13:7 62:8 understand 12:17 21:5 26:20 43:4 44:16,18 57:6 66:11,22 69:16 71:12 understanding 31:14 36:18 68:8 69:12 70:3,13 71:21 72:7		
		v	
		v 1:7 vague 25:25	w
			wait 7:6 walk 22:22 wall 6:11 23:14 23:16 24:10,12 24:17,19 30:23 31:24 32:2

35:25 36:1,5,7 41:9,12,13 44:1 47:1 walls 24:14 40:21 41:1,4 want 16:15 17:14 22:6 25:9 30:2 47:8 47:10 48:4,6 52:5,10 57:9 wanted 51:23 way 37:5,7 we've 15:15,16 21:16 52:4 wedge 19:13 22:20,21 24:21 24:23 26:16 27:9,12,13,14 27:19,23 28:22 29:4,8,21 30:19 31:21 32:5,8,21 33:1 33:3,8,11,11,14 33:25 35:5,11 35:14,22 36:5 36:6,9,12,17,19 36:23 37:13,14 38:4,12,14,15 38:17,19,21 39:1,9,14,15,24 40:1,3,4,6,14 41:17,25 42:3 42:4,9,12,19,24 43:4,7,8,9,16	43:22 44:23 50:11,20 51:2 51:7 53:3,10 53:14 54:6,6,7 55:17,18,25 56:3,20 61:21 64:2,8 65:13 65:15,19 68:14 wedges 55:1,5 55:8 56:11,13 wednesday 1:17 werner 2:10,12 3:4 4:8,8,17 6:7 7:18 12:16 12:22,25 13:2 17:3,5,8 21:15 26:2,7 30:2,9 40:11,13 49:16 49:21 51:15,20 52:3,8,16 56:25 57:1,20 61:15,19 63:22 64:5 67:3,8,13 70:18 72:4 73:23 74:2 whatsoever 54:4 withdraw 11:4 witness 3:3 4:13 6:6 17:5,6 17:7 30:6 49:19 51:21 52:9 75:5,7,16	75:18 witness's 49:17 wondering 25:15 33:23 61:8 word 28:3,4 46:5 66:7 words 70:25 work 4:23 26:25 60:10 worked 60:8 61:12 62:18 wrong 46:5 69:10	73:3 years 61:14 63:4,5,6 yep 21:18 32:17 51:18 yesterday 8:13 york 2:5,5 young 2:4 4:11 youngpark 2:6 younkins 8:9
		x	z
		x 3:1,11 72:17 72:18,19,25 73:4	zoom 6:2,10
		y	
		yeah 6:11 9:24 10:9 12:22 14:4 17:7,13 17:15 23:7 26:1 28:1 29:24 30:6 32:7 33:23 35:3 37:21 39:8 43:19 44:7,20 49:21 57:23 61:8 62:23 64:21 66:8 67:21 68:2,23 72:23	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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