

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 IPR2026-00163

Patent 11,376,136

12 *****

13 REMOTE DEPOSITION OF

14 BRAD CULBERT

15 Wednesday, July 29, 2026

16 8:03 a.m. to 12:45 p.m. (Pacific)

17 Pages 1 to 107

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22
23
24 JOB NO.: MW 8358916

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 Ms. LaValley..... 4

CAUTION or INSTRUCTIONS NOT TO ANSWER:
Page 9, Line 7

SPECIAL INSTRUCTIONS or REQUESTS: (None.)

E X H I B I T S

PREVIOUSLY MARKED EXHIBITS FIRST REFERRED TO: PAGE

Exhibit 1001 U.S. Patent No. 11,376,136 B2 50
MEDTRONIC EXHIBIT 1001

Exhibit 1002 Declaration of Mr. Brad Culbert 14
in Support of Petition for
Inter Partes Review of
U.S. Patent No. 11,376,136

Exhibit 1012 U.S. Patent Application 97
2006/0253201 A1
MEDTRONIC EXHIBIT 1012

Exhibit 1013 U.S. Patent Application 29
Publication Number 2005/0278026
MEDTRONIC EXHIBIT 1013

(Previously marked exhibits are not attached.)

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, July 29, 2026, 8:03 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 10:58:07
6 for the record and who you're representing,
7 beginning with the noticing attorney.

8 MS. LaVALLEY: My name is Ashley
9 LaValley, and I have with me Eric ZelepugAs from
10 Avantech Law, and I represent the patent owner, 11:03:51
11 Moskowitz Family LLC.

12 MR. PARK: Young Park from Paul
13 Hastings representing petitioner, Medtronic, Inc.;
14 and the witness, Mr. Brad Culbert.

15 BRAD CULBERT, 11:04:08
16 duly affirmed, was examined and testified as follows:

17 EXAMINATION

18 BY MS. LaVALLEY:

19 Q. Mr. Culbert, I represent the patent owner,
20 Moskowitz Family LLC, in this IPR Number 2026-00163 11:04:37
21 involving U.S. Patent Number 11,376,136, and I'll
22 plan to refer to it as the '136 patent throughout
23 this deposition. Do you understand that?

24 A. I do.

25 Q. Can you please state your full name and 11:04:58

1 address for the record.

2 A. It's Brad Culbert, 22532 Petra, Mission
3 Viejo, California, 92692.

4 Q. Where are you testifying from today?

5 A. I'm at the Paul Hastings office in Irvine, 11:05:17
6 California.

7 Q. And who is in the room with you?

8 A. Mr. Park.

9 Q. And just Mr. Park is in the room with you;
10 is that correct? 11:05:33

11 A. That is -- that is correct.

12 Q. All right. Can you confirm there's nothing
13 on the screen in front of you, apart from the video
14 and the audio for this deposition?

15 A. Yeah, it's just a control screen. 11:05:45

16 Q. Okay.

17 A. I guess you can't see, but yeah. And I
18 have my declaration and supporting materials,
19 binders.

20 Q. And are all of those documents clean, 11:05:58
21 unmarked?

22 A. That is correct.

23 Q. All right. Have you been deposed before?

24 A. Yes, I have.

25 Q. I know that because I've -- I'm now on my 11:06:09

1 third deposition with you, Mr. Culbert. It's good
2 to see you again.

3 A. Nice to see you.

4 Q. How many times have you been deposed?

5 A. I believe this is now my -- I've been 11:06:27
6 deposed 13 times prior, I believe.

7 Q. Okay. Were these matters in which you were
8 acting as an expert?

9 A. That is correct.

10 Q. And did these proceedings involve patents? 11:06:42

11 A. The majority of them involve patents.

12 Q. Did some involve trade secrets?

13 A. Yes, there was one case that involved trade
14 secrets.

15 Q. And was that a district court litigation? 11:07:07

16 A. I actually don't remember off the top of my
17 head. I would assume so, but I can't fully say it
18 is. Although I can look at my resume, if I put it
19 on there. On my CV.

20 (Reviewing document.) 11:07:36

21 It's not listed on my CV, so I can't 100
22 percent say it was, but it was a litigation.

23 Q. Who were the parties in that litigation?

24 A. It was Aegis Spine and Life Spine.

25 Q. And what technology was at issue in that 11:08:03

1 case, just generally?

2 A. An expandable implant. It -- for interbody
3 fusion.

4 Q. And did you act as an expert for the
5 plaintiff or the defendant in that case? 11:08:18

6 A. The defendant.

7 Q. And the remaining proceedings in which you
8 were deposed, were those all IPRs?

9 A. They were -- I do have another litigation
10 case going right now, but that is confidential, so 11:08:41
11 I can't really say too much about it. And then I
12 had -- did have a PGR case, and the remaining were
13 IPRs.

14 Q. And generally what technologies were at
15 issue in the IPR proceedings? 11:08:58

16 A. The majority of them were expandable
17 interbody implants for the spine. I did have one
18 IPR case that involved a neurovascular thrombectomy
19 system.

20 Q. And the PGR case, did that also involve 11:09:23
21 spinal implants?

22 A. Yes, it involved the -- an expandable
23 interbody spinal implant.

24 Q. Roughly what percentage of the IPR
25 proceedings in PGR were you acting as an expert for 11:09:44

1 the patent owner versus the petitioner?

2 A. (Reviewing document.)

3 7 -- I believe it was 8 of the 11
4 proceedings were for the patent owner.

5 Q. And for the record, were you consulting 11:10:25
6 your CV just now?

7 A. That is correct. Exhibit 1003.

8 Q. Do you understand you're testifying under
9 oath?

10 A. I do. 11:10:45

11 Q. Is there any reason why you cannot give
12 truthful, accurate, and complete testimony today?

13 A. No, there is not.

14 Q. If at any point I ask a question that you
15 don't understand, please let me know, and I will 11:10:56
16 try to clarify it. Okay?

17 A. Okay.

18 Q. If you respond to my question, is it fair
19 to assume that you understood it?

20 A. It is. 11:11:10

21 Q. So that we can try to get a clear record,
22 please try to provide a verbal response in response
23 to my questions. Understood?

24 A. Understood.

25 Q. And I'll try to take breaks every hour or 11:11:23

1 so, but please let me know if at any point you need
2 to take a break. Okay?

3 A. Okay.

4 Q. And you understand that at certain points
5 your counsel may make certain objections? 11:11:35

6 A. I'm aware of that.

7 Q. Unless they instruct you not to answer,
8 I'll ask that you provide an answer to my question.
9 Do you understand?

10 A. I understand. 11:11:49

11 Q. Who hired you in connection with this
12 proceeding?

13 A. Are you referring to an individual or a
14 firm?

15 Q. Firm or entity. 11:12:04

16 A. Entity. Well, I was retained as an
17 independent expert consultant by Medtronic. The
18 person -- the firm that reached out to me was
19 Hueston Hennigan.

20 Q. And does Hueston Hennigan -- is that 11:12:31
21 Medtronic's counsel?

22 A. Yes, that is Medtronic's counsel.

23 Q. So is your agreement with Hueston Hennigan
24 or with Medtronic?

25 A. My agreement is with Hueston Hennigan on 11:12:55

1 behalf of Medtronic.

2 Q. Are you being compensated for your work in
3 this proceeding?

4 A. Yes, on an hourly basis.

5 Q. Are you being compensated by Medtronic? 11:13:11

6 A. My understanding is Medtronic pays Paul
7 Hastings -- reimburses Paul Hastings and Paul
8 Hastings passes that on to me. According to my
9 consulting agreement, Medtronic is responsible for
10 all payments. 11:13:37

11 Q. And you mentioned that you are being
12 compensated on an hourly basis. What is your
13 hourly rate that you're charging in this
14 proceeding?

15 A. \$500 per hour. 11:13:52

16 Q. Is that your standard rate for consulting
17 arrangements?

18 A. It's my standard rate for expert witness
19 consulting arrangements.

20 Q. Do you know approximately how many hours 11:14:13
21 you've billed in connection with this proceeding?

22 A. I do not know how much specifically for
23 this proceeding, no, as there are approximately
24 nine proceedings going almost concurrently, so I --
25 I don't keep track of that in my head. 11:14:34

1 Q. Those nine proceedings that you're
2 referring to, are those IPR proceedings filed by
3 Medtronic against Moskowitz Family?

4 A. That is correct.

5 Q. So you're currently working on behalf of 11:14:54
6 Medtronic in nine separate proceedings against the
7 Moskowitz Family patents; is that correct?

8 A. That is correct.

9 Q. Do you keep track of which IPR proceeding
10 your work is connected to? 11:15:23

11 A. For billing purposes, I keep track of the
12 individuals, but I don't keep a running track in my
13 mind, no.

14 Q. Are you able to approximate whether you've
15 spent more or less than 10 hours in connection with 11:15:45
16 this proceeding?

17 A. I can't remember from many months ago how
18 many hours was spent in this proceeding.

19 Q. So you're unable to approximate whether
20 you've spent more than 10 hours in connection with 11:16:06
21 this IPR proceeding; is that correct?

22 A. Including prep time for this, it would be
23 more than 10 hours. So I do -- I know I've spent
24 more than 10 hours in preparation, but I don't
25 recall how many hours drafting the first report or 11:16:27

1 finalizing -- drafting, finalizing the expert
2 report.

3 Q. So you -- can you say one way or another
4 whether you've spent more than 10 hours in
5 connection with preparing your expert declaration 11:16:48
6 in connection with this proceeding?

7 A. I can't say one way or another. I don't --
8 as I mentioned, it was several months ago. I don't
9 recall how many hours spent on this.

10 Q. So is it true that you may have sent -- 11:17:05
11 spent less than 10 hours in connection with the
12 preparation of your expert declaration in
13 connection with this proceeding?

14 MR. PARK: Objection to form.

15 A. I'm not saying one way or another. I don't 11:17:17
16 recall.

17 Q. But would you agree that it's possible that
18 you spent less than 10 hours in connection with the
19 preparation of your expert declaration in
20 connection with this proceeding? 11:17:31

21 MR. PARK: Objection to form. Asked
22 and answered.

23 A. Again, I don't recall.

24 Q. So you do not -- as you sit here today, you
25 do not know whether you spent more than 10 hours in 11:17:48

1 connection with your declaration in this
2 proceeding; is that true?

3 MR. PARK: Objection to form.

4 A. I don't recall how many hours I spent on
5 preparing my declaration in this proceeding. 11:18:05

6 Q. Let's talk about your -- you mentioned your
7 deposition preparation. Can you provide an
8 approximate number of hours you spent preparing
9 the -- for this deposition?

10 A. Approximately 16 to 18 hours. 11:18:44

11 Q. How did you prepare for the deposition?

12 A. Reviewing my declaration, the supporting
13 exhibits for this declaration, as well as meeting
14 with Mr. Park.

15 Q. And how many meetings did you have with 11:19:14
16 Mr. Park?

17 A. Two meetings.

18 Q. And when were those two meetings?

19 A. Monday and Tuesday of this week.

20 Q. And how long was your meeting with Mr. Park 11:19:31
21 on Monday?

22 A. Approximately six hours.

23 Q. And how long was your meeting with Mr. Park
24 on Tuesday?

25 A. Again, approximately five and a half hours. 11:19:55

1 Q. And did you spend additional time reviewing
2 the materials on your own to prepare for the
3 deposition?

4 A. That is correct.

5 Q. And what materials did you review to 11:20:15
6 prepare?

7 A. I reviewed my declaration as well as the
8 supporting exhibits.

9 Q. Have you reviewed the petition that was
10 submitted in this IPR? 11:20:37

11 A. No, I have not.

12 Q. And you mentioned your declaration that you
13 submitted in connection with this IPR. I'm going
14 to pull that up on the AgileLaw platform. But I
15 understand you have a copy of your declaration in 11:21:14
16 front of you?

17 A. I do.

18 (Previously marked Exhibit 1002 was
19 introduced.)

20 BY MS. LaVALLEY: 11:21:32

21 Q. Your declaration was previously marked
22 Medtronic Exhibit 1002, correct?

23 A. That is correct.

24 Q. And can you please turn to page 60 of 115.

25 A. Okay. I'm there. 11:21:53

1 Q. Is that your signature on page 60 of 115?

2 A. That is my signature there that I
3 personally applied.

4 Q. At the time you signed, did you believe the
5 opinions expressed in your declaration were 11:22:10
6 accurate?

7 A. That is correct.

8 Q. Have any of your opinions changed since you
9 submitted your declaration?

10 A. No, they have not. 11:22:27

11 Q. And without disclosing the specific content
12 of your communications with your counsel, can you
13 generally explain how your declaration was
14 prepared?

15 A. In general, I reviewed the materials, 11:22:46
16 provided my ideas to counsel. They started doing
17 initial drafts of portions of the declaration,
18 which I reviewed and edited as we went along. It
19 was a very iterative process.

20 Q. Did you have meetings with counsel during 11:23:16
21 this process?

22 A. Yes, I had meetings with counsel.

23 Q. And about --

24 A. During the process. Sorry.

25 Q. Oh, sorry. Please. I thought you were 11:23:32

1 finished.

2 A. Yeah, no, so I was just adding "for the
3 process" -- or "during the process."

4 Q. And how many meetings would you approximate
5 that you had with counsel? 11:23:44

6 A. I don't recall how many on this proceeding
7 I had.

8 Q. Can you say whether or not you had more
9 than one meeting with counsel in connection with
10 this proceeding? 11:24:04

11 A. Definitely there were several meetings or
12 phone calls on -- on this proceeding.

13 Q. And did the attorneys prepare the first
14 drafts of your declaration portions?

15 MR. PARK: Objection to form. 11:24:36

16 A. After I provided my ideas, the attorneys
17 provided -- started providing the drafts of this --
18 of the declaration for my review and editing.

19 Q. Did you identify the prior art references
20 at issue in this IPR? 11:24:58

21 A. I don't recall on this proceeding if I did
22 or not. As you see, the prior references are from
23 other proceedings, so they may have been
24 established already.

25 Q. Do you know whether counsel supplied those 11:25:25

1 references?

2 MR. PARK: Objection to form.

3 A. Again, I don't recall if they provided me
4 with all the references or if any were a result of
5 my own looking, searching. 11:25:44

6 Q. Did you independently search for prior art
7 in connection with this IPR?

8 MR. PARK: Objection to form.

9 A. I don't recall in this IPR as -- yeah.
10 I'll just -- I don't recall in this IPR if I did or 11:26:03
11 not.

12 Q. Do you recall whether you independently
13 searched for prior art in connection with any of
14 the IPRs that you're involved with on behalf of
15 Medtronic? 11:26:21

16 A. Yes, I def- -- I definitely did searching
17 for prior art on one or more of the IPRs involved
18 with the Moskowitz and Medtronic cases.

19 Q. Did counsel identify the combinations of
20 prior art to analyze? 11:26:51

21 MR. PARK: Objection to form.

22 A. I re- -- I reviewed the prior art
23 references independently and came to my conclusions
24 as stated in my declaration.

25 Q. Regarding your opinions as to particular 11:27:33

1 combinations of prior art references, did counsel
2 identify those combinations, or did you
3 independently do that?

4 A. I don't recall on this IPR case.

5 Q. Earlier you mentioned that you did not 11:27:59
6 review the petition, correct?

7 A. I did not review the petition.

8 Q. So is it safe to assume you did not assist
9 in drafting the petition?

10 A. No, I did not assist in drafting the 11:28:18
11 petition other than providing my expert report.

12 Q. Can you please turn to paragraph 40 of your
13 declaration. And let me know when you're there.

14 A. I am there.

15 Q. And then paragraph 40 of your declaration 11:28:57
16 that's Exhibit 1002, you state that you have not
17 expressly construed any claim term for purposes of
18 your opinions in your declaration, correct?

19 A. I say, "I have not expressly construed any
20 claim term because the prior art discloses or 11:29:18
21 suggests each claim limitation under any reasonable
22 construction."

23 Q. So is it true that your declaration doesn't
24 provide a construction for the term "tool" as it is
25 used in the claims of the '136 patent? 11:29:31

1 A. I do not expressly construe the claim term
2 "tool."

3 Q. And what did you understand the term "tool"
4 to mean when offering your opinions?

5 A. Generally speaking, a device that provides 11:30:01
6 a function.

7 Q. And how did you arrive at that
8 construction?

9 A. That is the ordinary, customary meaning as
10 would have been understood by a POSITA at the time 11:30:26
11 of the invention for the patent.

12 Q. Did you consider the '136 patent in
13 determining what the proper construction of tools
14 should be as it is used in the claims?

15 A. Yes, I reviewed the patent claims, the 11:30:42
16 specification, the prosecution history of the
17 patent.

18 Q. If a single device performs two functions,
19 would you consider that to be two tools?

20 MR. PARK: Objection to form. 11:31:02

21 A. That's very broad. Can you narrow the
22 question down?

23 Q. How would you like me to -- strike that.

24 Why do you think that question's very
25 broad? 11:31:25

1 A. You really have to look at that case by
2 case, and with specific examples.

3 Q. So in order to respond whether a single
4 device performing two functions would be considered
5 to be two tools, would you need to know the 11:31:43
6 specific device that I'm referring to?

7 A. That is correct.

8 Q. Take, for example, a knife that ends in a
9 flathead screwdriver head, so it can cut and apply
10 torque to screws. Would you consider that to be 11:32:18
11 two tools?

12 A. I'd consider it as a device that functions
13 as two tools.

14 Q. Would you consider it to be one device?

15 A. I would consider the knife as one device 11:33:23
16 that functions as two tools.

17 Q. So would you consider the one device to be
18 two tools?

19 MR. PARK: Objection to form.

20 A. Yeah, I consider that as one device that 11:33:50
21 functions as two tools.

22 Q. So would you not consider that one device
23 to be two tools?

24 MR. PARK: Objection to form. Asked
25 and answered. 11:34:12

1 A. Again, I -- I consider that as a single
2 device that functions as two tools.

3 Q. So I understand that you would consider
4 that one device to function as two tools.

5 Structurally, would you consider that one device to 11:34:36
6 be two tools?

7 MR. PARK: Objection to form.

8 A. Well, again, it's one device functioning as
9 two tools. For cutting, you would probably have
10 one device one place, and then you would have the 11:35:06
11 same device somewhere else so you -- the function
12 as to two different tools.

13 Q. So in the hypothetical device that we're
14 discussing, would you consider the device to be
15 comprised of two tools? 11:35:31

16 MR. PARK: Objection to form.

17 A. Again, I would consider it as one device
18 that functions as two tools.

19 Q. And your answer, is that the same as -- as
20 a single tool with two tool functions? 11:36:01

21 MR. PARK: Objection to form. Asked
22 and answered.

23 A. As I said, it's one device that functions
24 as two tools.

25 Q. And would you consider that one device to 11:36:19

1 be a single tool or two tools with two tool
2 functions?

3 MR. PARK: Objection. Asked and
4 answered now several times.

5 A. I consider that one device that functions 11:36:32
6 as two tools.

7 Q. So are you unable to respond whether that
8 one device would be two tools or one tool?

9 MR. PARK: Objection to form.
10 Argumentative. Asked and answered several times 11:37:04
11 now.

12 A. Sorry. Can you repeat the question?

13 Q. Are you unable to respond whether the one
14 device would be two tools or one tool?

15 MR. PARK: Same objections. 11:37:24

16 A. I -- it's one device that functions as two
17 tools.

18 Q. So is it fair to say that you consider that
19 one device to be two tools?

20 MR. PARK: Objection to form. Asked 11:37:43
21 and answered several times now.

22 A. Again, one device that functions as two
23 tools.

24 Q. And in your opinion, is there a difference
25 between being a tool and functioning as a tool? 11:38:00

1 A. Trying to put this into context -- to a
2 specific context. So can you repeat the question
3 again, please?

4 Q. Sure. In your opinion, is there a
5 difference between a tool -- let me -- let me 11:39:10
6 repeat that one more time.

7 And in your opinion, is there a difference
8 between being a tool and functioning as a tool?

9 A. Generally it seems that it -- it could
10 potentially be the same. 11:39:43

11 Q. Now, you mentioned that -- strike that.
12 So do you consider function and structure
13 to be the same?

14 MR. PARK: Objection to form.

15 A. What context are you referring to? 11:40:18

16 Q. In the context of a tool.

17 MR. PARK: Objection to form.

18 A. Can you be more specific? Provide example?

19 Q. Sticking with the example of the tool that
20 we just referred to -- we were just referring to, 11:40:35
21 the hypothetical tool that, you know, has a knife
22 blade and ends in a flat tip screwdriver.

23 MR. PARK: Objection to form.

24 A. Can you put the question all in one? If
25 you don't mind, please. 11:40:55

1 Q. Sure. I'll -- strike that.

2 So you mentioned that your understanding of
3 what a tool is, is a device that provides a
4 function. Did I get that correct?

5 A. Generally a tool is a device that provides 11:41:34
6 a function.

7 Q. And does that definition of "tool" apply
8 only in the context of the '136 patent or more
9 generally?

10 A. It applies more generally that I applied to 11:41:54
11 the '136 patent.

12 Q. Do you think that definition only applies
13 in the context of surgical tools?

14 A. That it only applies? Is that what -- is
15 that the question? Sorry. 11:42:26

16 Q. Yes. Yep.

17 A. So as I stated, the definition is
18 generally -- is used generally, definition for a
19 tool; then I applied that general definition to the
20 '136 patent, which has surgical tools. 11:42:46

21 Q. If two structural components of a surgical
22 device had separate functions, would you consider
23 them to be separate tools?

24 MR. PARK: Objection. Form.

25 A. Again, that is very broad. Can we keep to 11:43:12

1 more specific examples?

2 Q. So are you unable to respond to that
3 question without a specific example?

4 MR. PARK: Objection to form.

5 Argumentative. 11:43:33

6 A. Again, that was the general definition of a
7 tool. Then you have to look at what you're looking
8 at to see how it applies to that situation.

9 Q. So might your definition of "tool" change
10 depending on the specific tool you'd be looking at? 11:43:55

11 MR. PARK: Objection to form.

12 A. Again, that's -- as I said, it's a general
13 definition, so it -- then you have to look at the
14 context and what you're looking at. Does a
15 specification actually give an express definition 11:44:16
16 or imply something different? So you really have
17 to look at the context of how you're applying that
18 general definition.

19 Q. Keeping it to the context of the '136
20 patent, if two structural components of a surgical 11:44:37
21 device had separate functions, would you consider
22 those to be separate tools?

23 MR. PARK: Objection to form.

24 A. So if we're in context of the '136 patent,
25 can we use something specific of the '136 patent 11:45:02

1 then?

2 Q. Well, I want to just kinda -- I'm trying to
3 understand your -- your definition of "tool" a
4 little bit better.

5 So you said generally you consider a tool 11:45:18
6 to be a device that provides a function, right?

7 A. I said generally a tool provides a
8 function. Then I stated that you have to look at
9 the -- then look at context. So looking at the
10 context of the '136, looking at the claims. For 11:45:38
11 example, 501 and 503 are two different tools,
12 applying that definition.

13 Q. Well, I'm asking more general than that.

14 MR. PARK: Objection to form.

15 BY MS. LaVALLEY: 11:46:14

16 Q. So --

17 A. You -- how you ask more general when you
18 said to be specific with '136?

19 MR. PARK: You don't have to --

20 THE WITNESS: Okay. Sorry. 11:46:24

21 MR. PARK: Why don't you reask the
22 question, Ashley?

23 THE WITNESS: Apologize.

24 BY MS. LaVALLEY:

25 Q. Sure. So I'm asking more general than 11:46:29

1 that. You identified two specific examples in the
2 '136 patent, two embodiments that you consider to
3 be tools, and I -- I appreciate that.

4 But I want to know, apart from those two
5 examples that you just identified, in the context 11:46:42
6 of a -- the '136 patent, applying your definition
7 of "tool," if two structural components of a device
8 had separate functions, would you consider them to
9 be separate tools?

10 MR. PARK: Objection to form. Asked 11:47:03
11 and answered several times now.

12 A. Again, I'd have to look at the specific
13 context of what the '136 patent is referring to.

14 Q. If two components, each with separate
15 functions, were permanently attached together, 11:47:33
16 would you still consider them to be separate tools
17 under your definition of "tool"?

18 MR. PARK: Objection to form.

19 A. I would have to look at the context of how
20 it's applied. 11:47:59

21 Q. You would have to look at the context of
22 how what is applied?

23 A. The hypothetical, using your tool that
24 you're describing.

25 Q. And what would you need to know about the 11:48:18

1 context to determine whether two components, each
2 with separate functions that were permanently
3 attached together, would be considered separate
4 tools?

5 MR. PARK: Objection to form. 11:48:33

6 A. I'd have to look what is disclosed, what it
7 is, how it functions, what it's doing, what the
8 specification states, what the claims state. All
9 of that goes into applying a general claim term for
10 a tool. 11:48:53

11 Q. And what -- what would you need to know
12 about how the components function to determine
13 whether those are considered two separate tools?

14 MR. PARK: Objection to form.

15 A. What do you mean? 11:49:12

16 Q. I'm just clarifying your prior response.
17 Would you -- would you need to know anything about
18 how the components function to determine whether
19 those are considered two separate tools?

20 MR. PARK: Objection to form. 11:49:29

21 A. Again, you have to look at ev- -- the whole
22 context with the general definition. So if you
23 provide me all the context, then I can maybe give
24 you an opinion at this time.

25 Q. So if -- without a specific example or 11:50:16

1 hypothetical, are you unable to answer the question
2 of whether two components, each with separate
3 functions that are permanently attached together,
4 are considered to be separate tools?

5 MR. PARK: Objection to form. Asked 11:50:34
6 and answered.

7 A. To provide an opinion, I would have to see
8 it in context and provide the specifics; that is
9 correct.

10 Q. Like to -- 11:50:56

11 MR. PARK: I know it hasn't been quite
12 an hour, but could we just take a real quick break?

13 MS. LaVALLEY: Sure. Why don't we take
14 a 10-minute break now, and that will be our break
15 for the hour. 11:51:09

16 MR. PARK: Okay.

17 (Break: 8:51 a.m. to 9:00 a.m.)

18 (Previously marked Exhibit 1013 was
19 marked for identification.)

20 BY MS. LaVALLEY: 12:00:59

21 Q. I'd like to turn to the Gordon reference
22 that's U.S. Patent Application Publication
23 Number 2005/0278026, which is marked as Medtronic
24 Exhibit 1013. Please let me know when you have
25 that in front of you. 12:01:18

1 A. I have it in front of me.

2 Q. Can you please turn to Figure 35?

3 A. I am there.

4 Q. And prior to the break, we were discussing
5 your understanding of "tool." Can you tell me, 12:01:53
6 Does Figure 35 show one or more tools?

7 A. Figure 35 shows at least two tools.

8 Q. Why do you say at least two tools are shown
9 on Figure 35?

10 A. (Reviewing document.) 12:02:35

11 Because there are two tools that provide
12 different functions. One is for holding, and one
13 is for expanding the implant. One's for holding
14 the implant, the other is for expanding the
15 implant. 12:03:31

16 Q. And you were reviewing some materials prior
17 to your response. What did you review to inform
18 your response?

19 A. I actually didn't really read anything. I
20 flipped through some pages, but that response was 12:03:45
21 completely on my own.

22 Q. Okay. And what are the components of the
23 first tool?

24 A. (Reviewing document.)

25 So outer shaft 706, holding device 710, and 12:04:11

1 handle 712 collectively comprise the first tool.

2 Q. And why do you consider those components to
3 comprise a single tool?

4 A. Because they are used in coordination to
5 hold the implant during insertion. 12:04:35

6 Q. Are there any structural features that
7 inform your understanding of why those components
8 are one tool?

9 MR. PARK: Objection to form.

10 A. As stated, those components collectively 12:05:05
11 are used to coordinate to hold the implant during
12 insertion.

13 Q. Do you consider the holding device at 710
14 to be a different tool from handle 712?

15 A. Sorry. I was looking at the references. 12:05:38
16 Can you repeat the question now?

17 Q. Sure. Do you consider the holding device
18 710 -- that's at the end -- to be a different tool
19 from the handle 712?

20 A. No, I do not. 12:06:05

21 Q. Why not?

22 A. Because they're fixedly coupled together
23 and both perform collectively to help coordinate to
24 hold the implant during insertion.

25 Q. Do they also have separate functions? 12:06:30

1 MR. PARK: Objection to form. Outside
2 the scope.

3 A. Are you refer- -- is there something
4 specific you're referring to?

5 Q. Well, so would you agree that the holding 12:06:57
6 device 710 is for holding the implant?

7 A. 710 is one of the components of -- of it
8 that collectively coordinate to hold the implant
9 during insertion.

10 Q. Would you agree that handle 712 is used to 12:07:28
11 hold the tool?

12 A. 712 is a handle that -- for the tool to
13 collectively coordinate to hold the implant during
14 insertion.

15 Q. So do you think that 712 and 710 have any 12:08:06
16 separate functions?

17 MR. PARK: Objection to form.

18 A. As I said, they collectively coordinate to
19 hold the implant during insertion.

20 Q. So apart from collectively being used to 12:08:22
21 coor- -- collectively be used to hold the implant
22 during insertion, are you aware of any functions
23 that 710 has that 712 doesn't?

24 MR. PARK: Objection to form. Outside
25 the scope. 12:08:38

1 A. I have not analyzed it in that respect, of
2 a -- yeah.

3 Q. So as you're sitting here today, you're not
4 aware of any separate functions that 710 has that
5 712 doesn't?

12:09:00

6 MR. PARK: Objection to form. Asked
7 and answered.

8 A. Again, I looked at it that they
9 collectively coordinate to hold the implant during
10 insertion.

12:09:12

11 Q. So what is the second tool -- or what do
12 you consider to be the second tool in Figure 35 of
13 Gordon?

14 A. Gordon's driver 708.

15 Q. Do you consider thumbwheel 714 to be a part 12:09:46
16 of that second tool?

17 A. Yes. The second tool consists of the inner
18 shaft 724 as well as the driver head 726 and the
19 thumbwheel 714.

20 Q. Were you reading from somewhere for your 12:10:20
21 last response?

22 A. I was using references of the number from
23 paragraph 51.

24 Q. Paragraph 51 of -- sorry, of Gordon?

25 A. Oh, I apologize. Paragraph 51 of my 12:10:36

1 declaration.

2 Q. So you were reviewing paragraph 51 of your
3 declaration to identify what the second tool is
4 comprised of; is that correct?

5 A. That is correct, as Figure 35 did not state 12:11:00
6 the driver head 726.

7 Q. And why do you consider components 708,
8 726, and 714 to be a single tool?

9 A. Can you repeat those numbers again, please?

10 Q. Sure. Why -- let's -- strike that. 12:11:38
11 What components do you consider to be part
12 of the second tool?

13 A. So the driver 708 consists of the inner
14 shaft 724, the driver head 726, and the thumbwheel
15 714. 12:12:03

16 Q. And why do you consider those components to
17 comprise a single tool?

18 A. Collectively they are used to drive the --
19 and expand the implant. When I say "drive," I mean
20 drive the screw to expand the implant. 12:12:25

21 Q. If any of those components were detachable,
22 would you still consider them to be a part of a
23 single tool?

24 MR. PARK: Objection to form.

25 A. Again, I would have to look at the context. 12:12:39

1 It's very broad and hypothetical that I have not
2 analyzed.

3 Q. If 714 could be detached from the remaining
4 components, would you still consider it to be part
5 of the same tool? 12:12:58

6 MR. PARK: Objection to form. Asked
7 and answered.

8 A. Again, I -- in this case, 714 is part of
9 the driver 708, so I consider that a one tool.

10 Q. And if 714 could be detached from 708, will 12:13:34
11 you still consider it to be part of that same tool?

12 MR. PARK: Objection to form. Asked
13 and answered.

14 A. Again, 714 is part of 708.

15 Q. So if 714 could be detached and reattached, 12:14:22
16 would you still consider it to be part of the same
17 tool as 708?

18 MR. PARK: Objection to form.

19 A. Again, the way '136 describes is that 708
20 is -- 714 is part of that -- whether it's 12:14:47
21 detachable or not, it's part of 708. So it's a
22 single tool.

23 Q. So 714 would be part of the same tool as
24 708 regardless of whether or not it could be
25 detached; is that correct? 12:15:13

1 MR. PARK: Objection. Mischaracterizes
2 the testimony.

3 A. The way it's described in 130- -- sorry.
4 The way it's described in the Gordon Exhibit 1013,
5 it is part of 708. 12:15:33

6 Q. Would it matter, one way or another, to
7 whether or not it's part of the same tool if it
8 could be detached or not?

9 MR. PARK: Objection to form. Outside
10 the scope. 12:16:00

11 A. Again, I would have to look at the very
12 specific context of why it's detachable, and
13 obviously that's not provided here, and I haven't
14 opined on that.

15 Q. Can you turn to paragraph 229 of Gordon, 12:16:20
16 and let me know when you're there.

17 A. I'm there.

18 Q. You see the first line of 229, patent
19 reads, "In one embodiment, thumbwheel 714 may be
20 fixedly coupled to driver 708 such that driver 708 12:16:55
21 rotates as thumbwheel 714 is rotated."

22 Do you see that?

23 A. I see that.

24 Q. And then the next sentence says, "In
25 another embodiment, thumbwheel 714 may be 12:17:08

1 threadably coupled to driver 708 such that driver
2 708 translates along its axis when thumbwheel 714
3 is rotated."

4 Do you see that?

5 A. I see that. 12:17:22

6 Q. In the second embodiment described at 229,
7 where "thumbwheel 714 may be threadably coupled to
8 the driver 708," does that suggest that 714 could
9 be removed from 708?

10 A. At what point in time are you referring to? 12:17:59

11 As it's assembled or what the user does with it?

12 Are...

13 So during use, yeah, I don't see it
14 decoupling. I see it working together to extend
15 and retract the shaft as it's turned in one 12:18:21
16 direction or the other direction.

17 Q. But prior to use, do you understand that
18 second embodiment to suggest that thumbwheel 714
19 could be removed from 708?

20 A. During the manufacturing of 708, it could 12:18:58
21 be -- it would be two separate pieces. But it
22 would probably come to the user as one piece.

23 Q. If thumbwheel 714 were threadably coupled
24 to driver 708, could the user remove 714 from
25 driver 708 by turning 714? 12:19:22

1 A. Yeah, if you're referring to Figure 35,
2 it's difficult to say.

3 Q. No, I'm -- I'm referring to the second
4 embodiment described in paragraph 229.

5 MR. PARK: Objection to form. 12:19:47

6 A. The second embodiment can be applied to
7 Figure 35. There's room in there for it to do that
8 function.

9 Q. So could the user remove 714 from driver
10 708? 12:20:16

11 A. It depends on the context and the specifics
12 of it. The specification doesn't apply, you do.

13 Q. And if thumbwheel 714 could be removed from
14 driver 708, would that change your opinion of
15 whether 714 and driver 708 comprise a single tool? 12:21:03

16 A. That's very broad, where there could be
17 many different situations for that. In reference,
18 so are you -- meaning after the case is done and
19 somebody takes it to disassemble it to sterilize it
20 and it puts it back together so when it goes to the 12:21:32
21 user, it's all assembled as one? There's very --
22 many different scenarios in that situation you're
23 describing.

24 Q. Is there any scenario in which thumbwheel
25 714 could be removed from driver 708 that would 12:21:52

1 affect your opinion of whether 714 and 708 comprise
2 the same tool?

3 A. The way I read Gordon, Exhibit 1013, 714 is
4 part of 708 as a single tool.

5 Q. So there is no scenario in which 714 could 12:22:34
6 be removed from 708 would affect your opinion of
7 whether they comprise a single tool; is that
8 correct?

9 MR. PARK: Objection. Asked and
10 answered. 12:22:48

11 A. I haven't analyzed and opined on all the
12 different scenarios. I opined that 714 is part of
13 708 as a single tool.

14 MS. LaVALLEY: Can we briefly go off
15 the record? 12:23:07

16 (Break: 9:23 a.m. to 9:30 a.m.)

17 BY MS. LaVALLEY:

18 Q. Mr. Culbert, would you agree that in the
19 embodiment shown in Figure 35, the driver is
20 permanently integrated within the parts handle 712 09:30:21
21 and 706?

22 MR. PARK: Objection to form.

23 A. In which embodiment specifically in
24 reference to paragraph 229?

25 Q. Well, which embodiment in paragraph 229 is 09:30:54

1 shown in Figure 35?

2 A. (Reviewing document.)

3 So Figure 35 is not clear if it's fixedly
4 coupled or threadably coupled to the driver as
5 stated in paragraph 229.

09:31:55

6 Q. And would that matter? Do you need to know
7 that information to answer my question?

8 A. Well, given the hypothetical scenario you
9 asked if -- can it be removed? If it's threadably
10 coupled, then there may be a possibility that you
11 could remove it. Not intended to by the user, but
12 it theoretically could be removed.

09:32:15

13 Q. And what are you talking -- when you say
14 "it could be removed," what -- what are you talking
15 about removing?

09:32:34

16 A. The thumbwheel 714 from the rest of 708 and
17 the handle 712.

18 Q. So in the second embodiment in
19 paragraph 229, do you believe that thumbwheel 714
20 could be removed from the rest of 708 and the
21 handle 712?

09:33:09

22 A. Based on the limited information in these
23 paragraphs and the figure, it theoretically could
24 be.

25 Q. How?

09:33:37

1 A. It can hold on to the distal end of 708 and
2 unscrew 714 and pull on 708 until it's disengaged,
3 and then the thumbwheel itself will then fall out
4 of the handle.

5 Q. Wouldn't a POSITA want to prevent that from 09:34:03
6 happening during surgery?

7 MR. PARK: Objection to form.

8 A. As I said, it doesn't describe -- sorry --
9 strike that.

10 The question was -- prior question is, Can 09:34:24
11 it be pulled apart? My answer was yes. And in a
12 situation under normal use during surgery, you
13 would not want it to come apart, correct.

14 Q. So you would not want the driver portion to
15 be removed from the handle portion of the 09:35:06
16 instrument shown in Figure 35, correct?

17 A. During surgery you would not want 708 --
18 the thumbwheel 714 disengaging from 708.

19 Q. And unless thumbwheel 714 could disengage
20 from 708, that part could not be removed from 09:35:46
21 handle 712, correct?

22 A. Please repeat that.

23 Q. Unless thumbwheel 714 could disengage from
24 708, that part could not be removed from the handle
25 712, correct? 09:36:15

1 MR. PARK: Object to form.

2 A. 714 would need to disengage and completely
3 be removed from 708 in order to be removed from
4 handle 712, as shown in Figure 35.

5 Q. So if 714 were permanently integrated with 09:36:41
6 708, it would be unable to move that driver portion
7 from handle 712, correct?

8 A. As shown in Figure 35, if 714 is fixedly
9 coupled to 708, then it does not appear that 704
10 could be removed from 712. 09:37:28

11 There are other embodiments that Gordon
12 discloses that can be used instead of 714.

13 Q. And in your declaration, you provide an
14 opinion that there are two handles, a first and
15 second handle, shown in Figure 35; is that correct? 09:38:14

16 A. (Reviewing document.)

17 Yes, that is correct.

18 Q. Okay. Please turn to paragraph 52 of your
19 declaration. I apologize. I don't have the page
20 number. 09:39:28

21 A. I've got it.

22 Q. Okay. So in paragraph 52 you rely on
23 Gordon's thumbwheel 714 as a second handle,
24 correct?

25 A. I rely on the thumbwheel 714 as a second 09:39:58

1 handle to rotate driver 708, but I also recognize
2 that Gordon discloses alternative embodiments,
3 which uses a knob or a lever instead of a
4 thumbwheel.

5 Q. And what definition of "handle" did you 09:40:14
6 apply in your analysis?

7 A. Part of an object that is used to move or
8 hold the object easily.

9 Q. Would you consider a car radio volume knob
10 to be a handle? 09:40:50

11 MR. PARK: Objection to form. Outside
12 the scope.

13 A. I'm not prepared to opine on that at this
14 time.

15 Q. So you can't answer one way or another 09:41:04
16 whether you would consider a car radio volume knob
17 to be a handle; is that correct?

18 MR. PARK: Objection to -- objection to
19 form. Argumentative.

20 A. I'm not prepared to provide a new opinion 09:41:17
21 at this time.

22 Q. Would a handle typically require a
23 component designed to be grasped by a hand?

24 MR. PARK: Objection to form.

25 A. If a handle is part of an object that is 09:41:53

1 designed to move or hold the object easily, which
2 can include using the hand. And fingers and -- are
3 included as part of the hand.

4 Q. So a handle may be a component designed to
5 be grasped by a hand, but it -- under your 09:42:38
6 definition it doesn't necessarily need to be able
7 to be grasped by a hand; is that correct?

8 A. In the context of the '136 patent, it is
9 intended to be grabbed by the hand, which may just
10 include fingers. And a thumb is a finger; you have 09:43:09
11 five fingers.

12 Q. So you believe, in the context of the '136
13 patent, that a handle is intended to be grabbed by
14 the hand, which may just include fingers; is that
15 correct? 09:43:35

16 A. That is correct.

17 Q. You just mentioned a moment -- a moment
18 ago -- and this is also included in paragraph 52 of
19 your declaration -- that Gordon discloses other
20 examples of control members, including a knob, a 09:44:04
21 lever, or a button; is that correct?

22 A. Yes, I -- in paragraph 52 I state, "Gordon
23 further discloses that 'other examples of control
24 members include, but are not limited to, a knob, a
25 lever, or a button.'" 09:44:34

1 Q. And then in the last sentence of
2 paragraph 52, you state that "A POSITA would have
3 recognized that an alternative embodiment in
4 Gordon, which uses a knob or a lever, instead of a
5 thumbwheel, would also disclose a second handle." 09:44:53

6 Do you see that?

7 A. I see that.

8 Q. And you left "button" out of that sentence,
9 correct?

10 A. I didn't use button as an example there. 09:45:14

11 Q. Is it your opinion that a POSITA would not
12 recognize a button as a handle?

13 A. I didn't analyze every scenario of a button
14 being a handle, so -- but knob or lever met the
15 claim limitation. 09:45:48

16 Q. So you include a knob or a lever as an
17 example of a handle; is that correct?

18 A. I used "knob" or "lever" as an example that
19 could be used as an alternative embodiment in
20 Gordon instead of the thumbwheel. 09:46:20

21 Q. But you have not included in paragraph 52
22 of your declaration that a button would be
23 considered a handle, correct?

24 A. I do not provide an opinion that a button
25 could be used as a handle with a -- in an 09:46:46

1 embodiment of Gordon instead of a thumbwheel.

2 Q. Why not?

3 MR. PARK: Objection to form.

4 A. I thought "knob" or "lever" was very
5 apparent enough to meet the claim limitation of -- 09:47:13
6 and definition of a handle. And as I mentioned in
7 my prior -- my previous answer, I didn't analyze
8 button thoroughly enough to determine, one way or
9 not -- another, if it is.

10 Q. And as you sit here today, do you have an 09:47:34
11 opinion as to whether a POSITA would consider a
12 button a handle?

13 A. I don't have an opinion today, as I didn't
14 go through the scenarios -- all the different
15 scenarios where it can be used or how it could be 09:47:56
16 used.

17 Q. Are you aware of any button that you would
18 consider to be a handle?

19 MR. PARK: Objection to form.

20 A. Again, I didn't go through all the 09:48:15
21 different scenarios. I felt a knob or a lever --
22 it was very apparent to a POSITA -- was enough to
23 show that it -- those are handles.

24 Q. Is a thumbwheel designed to be operated by
25 a thumb? 09:48:34

1 A. A thumbwheel is operated -- to be used with
2 at least a thumb. But in the case of Figure 35, it
3 appears to also potentially be a finger as well, at
4 least one finger, so a thumb and a finger.

5 Q. And you consider within your definition of 09:49:11
6 "handle" to include a structure that can be
7 actuated by only one finger, correct?

8 A. Can you repeat that question, please?

9 Q. Within your definition of "handle," you
10 include a structure that can be actuated by only 09:49:36
11 one finger; is that correct?

12 A. No, it's -- that is not correct. I didn't
13 say "just one finger." I believe I said "at least
14 one finger," and a thumb is a finger.

15 Q. But your definition of "handle" would 09:50:02
16 include a structure that can be actuated by just
17 one finger, wouldn't it?

18 A. Again, it would -- it would be operated by
19 at least one finger.

20 Q. So does your definition -- 09:50:23

21 A. Which includes the thumb.

22 Q. -- of "handle" require more than one
23 finger?

24 A. I said it has to be at least one finger.

25 Q. Does at least one finger include one 09:50:35

1 finger?

2 A. A handle can be -- there are scenarios
3 where a handle can be used with one finger.

4 Q. So does your definition of "handle" include
5 a structure that can be actuated by only one 09:51:03
6 finger?

7 A. The definition allows a structure to be
8 operated by one finger, which includes the -- which
9 is a thumb.

10 Q. Can a screwdriver handle be actuated by 09:51:41
11 just one finger?

12 MR. PARK: Objection to form. It's
13 outside the scope.

14 A. Generally speaking, you would use two
15 fingers for a screwdriver, but again, you would 09:52:05
16 have to look at all the scenarios. If it -- the
17 screwdriver handle has a thumbwheel, which is --
18 where some thumb -- something -- some thumbwheels
19 are designed just to have -- to be used with just
20 one finger. 09:52:26

21 Q. Figure 35 does not show any hands operating
22 the instrument, correct?

23 A. Figure 35 does not show any hands operating
24 the instrument.

25 Q. And in paragraph 52 of your declaration, 09:52:54

1 you cite paragraphs 228, 229, and 234 of Gordon to
2 support your explanation of how two hands would
3 grip each of handle 712 and the thumbwheel or other
4 control members. Do you see that?

5 MR. PARK: Objection to form. 09:53:23

6 A. I believe you meant 714 instead of 712?

7 Q. No, I meant 712. The first --

8 A. Oh, the handle.

9 Q. -- first sentence of -- the first sentence
10 of paragraph 52. 09:53:38

11 A. I apologize. Okay.

12 MR. PARK: And objection to form.

13 A. Can you repeat the question now, please?

14 Q. Sure. In paragraph 52 of your declaration,
15 you cite paragraphs 228, 229, and 234 of Gordon to 09:53:54
16 support your explanation of how two hands could
17 grip each of handle 712 and then the thumbwheel or
18 other control members; is that true?

19 MR. PARK: Objection to form.

20 A. I say in the first sentence, "The handle 09:54:16
21 712 is designed to be held with the thumb and
22 forefinger of one hand on the distal end of the
23 handle."

24 Q. Do any of the paragraphs you cite of Gordon
25 in paragraph 52 actually describe how the tools 09:54:39

1 would be held or operated?

2 A. (Reviewing document.)

3 So the paragraphs 228, 229, 234 do not
4 specifically state exactly how to place the user's
5 hand on the handles. But it would be very apparent 09:56:10
6 to a POSITA at the time how these handles would be
7 used.

8 Q. Could a surgeon hold handle 712 with one
9 hand and rotate the thumbwheel with the thumb on
10 the same hand? 09:56:28

11 A. Hypothetically, if they hold it in reverse,
12 where you're kind of -- your thumb is facing the
13 thumbwheel 714, you could do that, but I'm not sure
14 why a surgeon would do that because then he's
15 facing away from the patient. 09:57:03

16 Q. If you could look at claim 9 of the '136
17 patent, that's Exhibit 1001, please let me know
18 when you have that in front of you.

19 (Previously marked Exhibit 1001 was
20 introduced.) 09:58:21

21 A. Okay.

22 Q. And do you see -- so it's column 15,
23 line 33, where it describes the second adjusting
24 tool includes a second handle. Do you see that?

25 A. I see that. 09:59:10

1 Q. In your opinion, would a POSITA understand
2 claim 9 to require that the second handle be
3 functionally distinct from the first tool's handle?

4 A. What do you mean by "functionally
5 distinct"? 09:59:53

6 Q. Have a different function.

7 MR. PARK: Objection to form.

8 A. The tools themselves will have a different
9 function, and the handles are part of those
10 separate tools. 10:00:13

11 Q. So you believe that a POSITA would
12 understand claim 9 to require that the second
13 handle be functionally distinct from the first
14 tool's handle; is that correct?

15 MR. PARK: Objection to form. 10:00:40

16 A. Again, the -- the claim requires at least
17 two tools, and each separate tool has its own
18 handle, and that each tool overall has a function.

19 Q. So would you agree that each handle would
20 also have a different function? 10:01:15

21 MR. PARK: Objection to form.

22 A. You would have to look at -- it may or may
23 not have this different function, depending on how
24 it's used with that tool. It's looking at the tool
25 as a whole. This handle is part of the tool. 10:01:42

1 So if you have two different tools with two
2 different functions, you -- hypothetically
3 speaking, you could have two handles just for
4 holding. So the -- they have same base function,
5 but they're not part of the function of trying 10:01:58
6 to -- of the overall tool itself.

7 Q. In the hypothetical that you just
8 mentioned, where the two handles have the function
9 of holding, in that scenario, wouldn't the handles
10 have separate functions of holding two separate 10:02:21
11 tools?

12 MR. PARK: Objection to form. Asked
13 and answered.

14 A. Yeah, I -- each handle for each tool
15 will -- has the function to make that tool work as 10:02:43
16 designed.

17 Q. In your opinion, would a POSITA understand
18 claim 9 to allow that the second handle be part of
19 the same structure as the first handle?

20 A. (Reviewing document.) 10:03:35

21 So claim 9 requires two tools and two
22 handles.

23 Q. Does claim 9 allow that the second handle
24 could be part of the first tool?

25 A. I'm not sure what you mean "be part of the 10:04:40

1 first tool."

2 Q. Structurally part of this first tool.

3 MR. PARK: Objection to form.

4 A. Again, you would have to analyze how it's
5 being used structurally. Claim 9 allows 10:04:58
6 Figure 35 -- two tools in Figure 35 to be used.

7 Q. What do you mean claim 9 allows Figure 35
8 to be used?

9 A. Sorry.

10 (Reviewing document.) 10:05:46

11 So Figure 35 of Gordon -- let me clarify
12 that -- is two tools. And in this specific
13 embodiment, those two are -- those two handles are
14 still independent of each other for the functions
15 needed. One is to hold and stabilize the implant 10:06:09
16 for insertion. The other one is to drive and
17 expand the implant.

18 MR. PARK: Can we go off the record for
19 one second?

20 MS. LaVALLEY: Yes. 10:06:32

21 (Break: 10:06 a.m. to 10:16 a.m.)

22 BY MS. LaVALLEY:

23 Q. Mr. Culbert, could you turn to paragraph 55
24 of your declaration and let me know when you're
25 there. 10:16:17

1 A. Yeah, I'm there.

2 Q. And in paragraph 55 you've identified the
3 embodiment of Gordon shown in figures A through C
4 as the claimed expandable spinal implant sized and
5 configured to be implanted in a human spine, 10:16:54
6 correct?

7 A. Did you say Figures 15A through C?

8 Q. Yes.

9 A. That is correct.

10 Q. And in paragraph 57 of your declaration, 10:17:14
11 you opine that Gordon's holding recesses 733, shown
12 in the embodiment of Figure 38, are first and
13 second engagement portions of the implant, correct?

14 A. (Reviewing document.)

15 Sorry. Did you say paragraph 57? 10:17:53

16 Q. Yes.

17 A. Okay. And your -- were you reading from a
18 specific sentence?

19 Q. The sentence that's at the bottom of
20 page 30 and goes to page 31. Let me just repeat my 10:18:12
21 question.

22 In paragraph 57 you opine that Gordon's
23 holding recesses 733, shown in the embodiment of
24 Figure 38, are first and second engagement portions
25 of the implant, correct? 10:18:35

1 A. (Reviewing document.)

2 Okay. I state that the holding recesses
3 733 are configured to engage with holding arms 716.

4 Q. So what -- what do you identify in Gordon
5 as the first and second engagement portions of the 10:19:21
6 implant?

7 A. If you look at Figure 38, the annotated
8 version right below the paragraph, it points to
9 733, the tool engagement portions. There's one on
10 this side (indicating), and there's one on the 10:19:45
11 opposite side that's not shown in Figure 38. But
12 it's clearly stated in Gordon itself that there is
13 one there.

14 Q. So you are relying on Gordon's holding
15 recesses 733, which are shown in the embodiment of 10:20:00
16 Figure 38, as the first and second tool engagement
17 portions of the implant; is that correct?

18 A. I'm using 733 shown on Figure 38 as the
19 first one and the specification itself that states
20 there is a second engagement portion, 733, on the 10:20:26
21 opposite side.

22 Q. So you're relying on the embodiment of
23 Figure 38 to opine that Gordon discloses, I guess,
24 the first tool engagement portion, correct?

25 A. I rely on, as one example, the embodiment 10:20:56

1 of Figure 38, with the tool engagement portions,
2 but those could also be applied to Figure 15
3 embodiment, as they both C shaped, very similar
4 C-shaped implants. And Figure 15 would also meet a
5 tool to implant into the spine as well as to 10:21:31
6 expand.

7 Q. Does embodiment in Figures A through C of
8 Gordon show any such recesses?

9 A. A through C what?

10 Q. Sorry. Does embodiment in Figures 15A 10:21:52
11 through C show any such recesses?

12 A. The Figures 15A through C do not expressly
13 show the recesses 733, but it would be apparent to
14 a POSITA that you would need a way to insert this
15 and expand the implant, and Gordon discloses that 10:22:17
16 in Figure 38. And so a POSITA would more than
17 likely apply the same -- not just POSITA, but the
18 inventor would apply the same features on
19 Figure 15A to C.

20 Q. But the inventor chose not to show any 10:22:43
21 recesses in the embodiment shown in Figures A
22 through C, correct?

23 MR. PARK: Objection to form.

24 A. The inventor did not expressly show them on
25 Figures 15A to C. It is apparent that you do need 10:23:06

1 something, a tool and features, in order to implant
2 the device and expand it.

3 Q. Could a tool grip a device without
4 engagement recesses?

5 A. In a hypothetical scenario, you could. I 10:23:40
6 don't know why you would look outside of what
7 Gordon discloses how to do it later on with a very
8 similar implant. Why not just use the same tools
9 to do that?

10 Q. Would the embodiment shown in Figures 15A 10:24:04
11 through C not work unless recesses were added?

12 MR. PARK: Objection to form.

13 A. Again, 15 -- Figures 15A to C needs a way
14 to be implanted into the spine and expanded. One
15 way to do that, which Gordon discloses, is to add 10:24:35
16 recesses.

17 Q. And could the implant shown in Figures A
18 through C be implanted and expanded without the
19 recesses?

20 A. Hypothetically, there may be a way to do 10:25:05
21 that, but Gordon doesn't disclose that. What
22 Gordon does disclose is, on a similar implant, to
23 use -- a similar C-shaped implant that -- to use
24 recesses with its tools.

25 Q. Can you turn to Figure 41 of Gordon. 10:25:27

1 A. Okay. I'm there.

2 Q. Does Figure 41 show an implant being
3 grasped by a tool without recesses?

4 A. (Reviewing document.)

5 The implant -- 484 in Figure 41 appears to 10:26:44
6 be very similar to the implant in Figure 38 that
7 has the recesses on both sides. And if you look at
8 the first sentence of paragraph 138, it states that
9 "It is to be understood that implants described
10 herein may include features not necessarily 10:27:09
11 depicted in each figure."

12 So a POSITA -- it would be apparent to a
13 POSITA that there would be recesses 733 on the
14 same -- on the implant 484 in Figure 41.

15 Q. But you would agree that no recesses are 10:27:38
16 shown on the implant 484 in Figure 41, correct?

17 MR. PARK: Objection to form.

18 A. Well, as I state, the Figure 41 does not
19 expressly show the recesses, but it is understood
20 that implants described within the specification 10:28:02
21 here may include features not necessarily depicted
22 in each figure. So you would have to look at the
23 prior 484 on Figure 38, and it clearly shows that
24 it has recesses 733.

25 Q. Going back to the Figure 38, please let me 10:29:00

1 know when you're there. Figure 38 of Gordon.

2 A. I'm there.

3 Q. Where are the recesses 733 located on the
4 implant?

5 A. They are -- generally they're located on 10:29:24
6 the proximal end of implant 484.

7 Q. What does "proximal" mean?

8 A. "Proximal" is an area or a portion of an
9 object that is closer to the user.

10 Q. And what does "distal" mean? 10:30:22

11 A. "Distal" is an area or a portion of an
12 object that is further away from the user.

13 Q. Does proximal include the midway point of
14 an object?

15 A. It's -- 10:30:55

16 Q. And let me -- let me re- -- well, no.
17 Please go ahead.

18 A. Well, I was looking for more clarification.
19 Are you talking about a specific point midway?

20 Q. Yeah. I'm talking about the midway point 10:31:11
21 between the most proximal end and the most distal
22 end of an object.

23 A. So it could include an area or a portion on
24 one side of the midway point up to that midway
25 point -- up to and including that midway point, 10:31:41

1 especially if it's a portion.

2 Q. What would you consider to be the proximal
3 end of an implant?

4 A. The area or portion of the implant that is
5 closest to the user. 10:32:09

6 Q. Would you consider the entire half of an
7 implant that is closest to a user to be the
8 proximal end?

9 A. You have to look at the exact context it's
10 being used as, but yes, it could be that entire 10:32:34
11 area or portion of the implant.

12 Q. So looking specifically at Gordon's
13 embodiment shown in Figure 38, do you consider the
14 entire half of that implant that's proximal to be
15 the proximal end? 10:33:14

16 A. Yeah, the area or portion of the implant
17 closest to the user is the proximal end.

18 Q. Do you consider the entire half of the
19 implant shown in Figure 38 that's closer to the
20 user to be a proximal end? 10:33:50

21 A. Sorry. Can you -- can you repeat that
22 again, please?

23 Q. Do you consider the entire half of the
24 implant shown in Figure 38 that's closest to the
25 user to be a proximal end? 10:34:05

1 A. It can include all the way up to the
2 midpoint to being the proximal end. You kind of
3 have to look at the context and how somebody's
4 describing it.

5 Q. Well, in the context of the implant shown 10:34:30
6 in Figure 38, do you consider the proximal end of
7 that implant to be the entire half of the implant
8 that's closest to the tool?

9 A. It can include the area and portion all the
10 way up to the midpoint. 10:34:53

11 Q. So your -- your response said, "It can
12 include the area portion all the way up to the
13 midpoint." Does it include the area portion all
14 the way up to the midpoint, in your opinion?

15 A. If you're looking at the implant alone 10:35:10
16 itself, yes.

17 Q. In what scenario would it not include the
18 area portion all the way up to the midpoint, in
19 your opinion?

20 A. You would have to look at the context of 10:35:49
21 the specification, if it provides something
22 different.

23 Q. And I just -- your prior response said, "If
24 you're looking at the endpoint -- implant alone
25 itself, yes." Why did -- what did you mean by 10:36:14

1 including that modifier "if you're looking at the
2 implant alone"?

3 A. I guess this goes into the hypotheticals,
4 where if you're looking for something that
5 interfaces with the implant at a specific spot and 10:36:42
6 that specific spot is on the proximal end, that
7 specific spot may not be all the way to the
8 centerline or not. So I just want to make that --
9 it's still considered the proximal end that --
10 where that -- in this scenario where it's saying 10:37:06
11 that this hypothetical feature is on the proximal
12 end.

13 Q. What about the top surface of the implant
14 shown in Figure 38 on the, you know, left side of
15 the implant? Would you consider that to be part of 10:37:35
16 the proximal end?

17 A. The area or portion of the top surface up
18 to the midline is the -- is included in the
19 proximal end of the implant.

20 Q. Will you turn to page 68 of your 10:38:40
21 declaration?

22 A. Page 68 or paragraph?

23 Q. Page 68, but I'm trying to -- I'll let you
24 know in a moment if I mean page 68 of 115 or the
25 other page number. 10:38:59

1 A. Okay. No problem.

2 Q. So, yes, please turn to page 71 of 115 of
3 your declaration. This is in the appendix.

4 A. I'm there. Starting with claim 10?

5 Q. Yes. So there's an arrow pointing to the 10:39:23
6 side of the implant that is labeled "Implant
7 proximal end."

8 So is that just intended to identify the
9 entire half of that implant?

10 A. That is correct. Just like the distal end 10:39:52
11 is showing the relative distal end of the implant,
12 and the other arrow is showing the relative area of
13 the proximal end of the implant.

14 Q. And is it correct that you consider the
15 tool engagement portions that -- the recess shown 10:40:14
16 there to be on the proximal end of the implant?

17 MR. PARK: Objection to form.

18 A. Sorry, can you repeat that again, please?

19 Q. Yeah, so you see the arrow pointing to the
20 tool engagement portion? 10:40:40

21 A. Yep. 733?

22 Q. Yes. So do you consider that tool -- what
23 you've identified as the tool engagement portion,
24 recess surface 733, to be on the proximal end of
25 the implant? 10:41:03

1 MR. PARK: Objection to form.

2 A. (Reviewing document.)

3 Yes, I believe that 733 is on the proximal
4 end of the implant. And in paragraph 237, the
5 location of the recesses 733 "may be selected 10:42:14
6 according to the approach to be used (example:
7 TLIF, PLIF) and the location of an expansion member
8 of the implant."

9 Q. Just to clarify your response, why did --
10 why did you include the second part of your 10:42:51
11 response, "The location of the recesses 733 may be
12 selected according to the approach to be used"?

13 A. Because Figure 33 in a specification, don't
14 specify an exact point where it is. It could be
15 anywhere along that proximal end depending on the 10:43:11
16 approach. Size of the implant, how it's used, how
17 to stabilize it. In general, it's on the proximal
18 end.

19 Q. In Figure 38, is it your opinion that the
20 recess surfaces, 733, are on the proximal end of 10:43:35
21 the implant?

22 A. Yes, looking at Figure 38, 733 is on the
23 proximal end of the implant.

24 Q. So there's another arrow -- and I'm still
25 on page 71 of 115 of your declaration, claim 10. 10:44:05

1 There's another arrow -- are -- sorry. Are you --
2 are you there?

3 A. Yeah, I'm there.

4 Q. Okay. So there's another arrow pointing to
5 the screw head, which you identify as accessible 10:44:23
6 at -- from a proximal direction. Do you see that?

7 A. Yeah, I see "Screw head (accessible at
8 proximal end from proximal direction.)"

9 Q. So do you consider both the left side of
10 the implant and front side of the implant to be 10:44:45
11 part of the proximal end?

12 A. Just to be clear, what do -- what are you
13 referring to as front side?

14 Q. Just looking -- I guess -- yeah. The --
15 thank you. I'll clarify. 10:45:05

16 So just looking at the figure, the left
17 side and the front side, the front side is from the
18 perspective of -- that the figure is shown, and the
19 left side is from -- yeah, on the left side of the
20 figure. 10:45:19

21 Does that make sense?

22 A. Yeah, I would -- I would consider where the
23 arrow from the statement "Screw head (accessible at
24 proximal end from proximal direction)" is still on
25 the proximal end of the implant. 10:45:39

1 Q. So you would consider both the side of the
2 implant where the arrow is pointing to the screw
3 head and the side of the implant that shows recess
4 733, you would consider both sides to be at the
5 proximal end?

10:46:04

6 A. Yes, I would consider them both arrows
7 pointing to the proximal end of the implant.

8 Q. What part of the implant would you consider
9 to be near the implant proximal end?

10 A. (Reviewing document.)

10:47:00

11 Can you repeat the question, please?

12 Q. What part of the implant would you consider
13 to be near the implant proximal end? Again,
14 referring to Figure 38.

15 A. (Reviewing document.)

10:47:23

16 The whole end is the proximal end. I'm not
17 sure nearest -- what you mean by the nearest to
18 what? What's the reference? Nearest to the tool?

19 Q. Well, claim 10 uses the phrase "near the
20 implant proximal end."

10:47:38

21 Do you see that on page 71 of 115 of your
22 declaration?

23 MR. PARK: Feel free to read through
24 your opinion as well.

25 THE WITNESS: Yep.

10:47:52

1 A. Just give me a minute to find it here.

2 Q. Sure.

3 A. (Reviewing document.)

4 Okay. Go ahead. Sorry. Can you repeat

5 the question again now that I've read it? 10:49:09

6 Q. Sure. What part of the implant shown in
7 Figure 38 would you consider to be near the implant
8 proximal end?

9 A. (Reviewing document.)

10 Well, the recess surfaces are positioned at 10:49:52
11 or near the implant proximal end.

12 Q. Do you consider the recess surfaces to be
13 positioned at the insert [as spoken] proximal end?

14 A. (Reviewing document.)

15 I consider them to be on the proximal end. 10:50:20

16 Q. But you don't consider them to be
17 positioned at the insert proximal end -- excuse me,
18 implant proximal end?

19 MR. PARK: Objection to form. Did you
20 say "insert proximal end"? 10:50:51

21 MS. LaVALLEY: I did, and I corrected
22 myself.

23 A. (Reviewing document.)

24 Sorry, maybe -- can we try this again?

25 Q. Yes. Let me -- let me repeat my question. 10:51:03

1 Do you consider the recess surfaces to be
2 positioned at the insert proximal end? I -- excuse
3 me. I'm going to repeat myself again.

4 Do you consider the recess surfaces to be
5 positioned at the implant proximal end? 10:51:24

6 A. (Reviewing document.)

7 I considered them to be near the implant
8 proximal end and not at the very point of the most
9 proximal portion of the implant.

10 Q. So would it be correct to state that you do 10:52:13
11 not consider the recess surfaces to be positioned
12 at the implant proximal end?

13 A. (Reviewing document.)

14 The recess [as spoken] are positioned near
15 the end and not on the very end of the implant. 10:52:42

16 Q. Okay. And I'm not -- I'm not asking about
17 the very end of the implant. Well, I guess, let me
18 ask this.

19 Do you consider the very end of the implant
20 to be the implant proximal end? 10:52:59

21 MR. PARK: Objection to form.

22 A. The proximal end of the implant is what
23 I've stated before. Anywhere -- an area or portion
24 closest to the user up to the midline.

25 Q. Okay. So would you consider the recess 10:53:30

1 surfaces to be positioned at the implant proximal
2 end?

3 A. (Reviewing document.)

4 I would not consider it to be at the very
5 end of the implant. But it is, and it can be, 10:54:10
6 based on paragraph 237, on -- somewhere on the
7 proximal or near the proximal end.

8 Q. Okay. And I'm not asking about the very
9 end of the implant. I'm asking whether you would
10 consider the recess surfaces to be positioned at 10:54:31
11 the implant proximal end.

12 A. (Reviewing document.)

13 I would consider the recesses 733 more near
14 the implant proximal end than at the very -- at the
15 end of the proximal end of the implant. 10:55:32

16 Q. So would you agree that the recess
17 surfaces, 733, are not at the end of the
18 proximal -- excuse me. Let me strike that.

19 So would you agree that the recess
20 surfaces, 733, are not at the proximal end of the 10:56:07
21 implant?

22 A. (Reviewing document.)

23 I would need to review '136 a little bit
24 deep -- for the specification to see how they're
25 defining "at." But it at least speaks where it's 10:56:40

1 near the implant proximal end. At -- it's on the
2 end of the implant. So it's -- I guess you could
3 say that it is at or near the implant proximal end.

4 Q. So aren't [as spoken] the recess surfaces,
5 733, near the implant proximal end, in your 10:57:12
6 opinion?

7 A. (Reviewing document.)

8 Q. So just for clarification of the record, I
9 asked: Are the recess surfaces, 733, near the
10 implant proximal end, in your opinion? 10:57:34

11 A. (Reviewing document.)

12 I'd say the proximal recesses 733, in my
13 opinion, are positioned at or near the implant
14 proximal end.

15 Q. Are you unable to tell me whether it's your 10:58:30
16 opinion that the recesses 733 are either at or near
17 the implant proximal end?

18 MR. PARK: Objection. Asked and
19 answered.

20 A. The recesses 733 are positioned at or near 10:58:47
21 the implant proximal end.

22 Q. And is it your opinion that the recesses
23 733 are positioned at or near the implant proximal
24 end?

25 MR. PARK: Objection. Asked and 10:59:15

1 answered.

2 A. The recesses 733 are positioned at or near
3 the implant proximal end.

4 Q. So is it your opinion that the recesses 733
5 are both at and near the implant proximal end? 10:59:32

6 MR. PARK: Objection. Mischaracterizes
7 the testimony.

8 A. The recesses aren't a defined point, so
9 they can extend being at or near the proximal end
10 of the implant. 10:59:59

11 Q. And in the case of the implant shown in
12 Figure 38 of Gordon, can you tell me whether you
13 believe the recesses 733 are positioned at, near,
14 or both at and near the implant proximal end?

15 MR. PARK: Objection to form. 11:00:31

16 A. I opine that 733 are positioned at or near
17 the implant proximal end. Again, paragraph 237
18 allows it to be in variable positions at or near
19 the proximal end.

20 Q. Okay. And in Figure 38, is it either at or 11:00:59
21 near that you opine --

22 MR. PARK: Objection.

23 BY MS. LaVALLEY:

24 Q. -- this -- recesses 733 are located with
25 respect -- 11:01:15

1 MR. PARK: Objection to form.

2 BY MS. LaVALLEY:

3 Q. -- to the implant proximal end?

4 MR. PARK: Objection to form. Asked

5 and answered now several times. 11:01:21

6 A. Again, paragraph 237 is in reference to
7 Figure 38 that says it could be positioned in
8 different locations depending on the approach, as
9 well as, going back to paragraph 138, "understood
10 that implants described herein may include features 11:01:42
11 not necessarily depicted in each figure."

12 Q. Okay. And beyond reading from your
13 declaration, are you unable to provide further
14 clarification as to whether it's your opinion that
15 recesses 733 shown in Figure 38 are at, near, or 11:02:04
16 both at and near the implant proximal end?

17 MR. PARK: Objection. Argumentative as
18 to whether further clarification is needed. Asked
19 and answered.

20 A. I state in my declaration that the recesses 11:02:22
21 733 are positioned at or near the implant proximal
22 end.

23 Q. And with respect to implant shown in
24 Figure 38, what portion of the implant would you
25 consider to be near the implant proximal end? 11:02:59

1 MR. PARK: Objection to form.

2 A. Can you repeat the question, please? I
3 just went back to Figure 38.

4 Q. Sure. With respect to the implant shown in
5 Figure 38 of Gordon, what portion of the implant 11:03:22
6 would you consider to be near the implant proximal
7 end?

8 MR. PARK: Objection to form.

9 A. Feature 733 is positioned at or near the
10 implant proximal end. 11:03:37

11 Q. Separate and apart from feature 733, what
12 portion of the implant shown in Figure 38 would you
13 consider to be -- still consider to be near the
14 implant proximal end?

15 MR. PARK: Objection to form. Asked 11:04:05
16 and answered.

17 A. Feature 733 is positioned at or near the
18 implant proximal end.

19 Q. Would you consider -- do you see the cutout
20 on the top surface of the implant shown in 11:04:18
21 Figure 38?

22 A. Are you referring to the cutout below 484?

23 MR. PARK: You could just ask her to
24 explain what she means by "cutout."

25 ///

1 BY MS. LaVALLEY:

2 Q. Yes, I'm referring to the cutout that's
3 shown beneath the number 484. Do you see that?

4 A. I see the cutout.

5 Q. Would you consider that cutout to be 11:05:06
6 positioned near the implant proximal end?

7 A. I'd have to review the spec on how -- where
8 it's placed. Is -- spec does state it can be in --
9 I'm not saying with this cutout, but it has shown
10 that the spec can say things are in different 11:05:41
11 locations.

12 Q. And I'm referring to just what's shown in
13 Figure 38. Based on the Figure 38 and where that
14 cutout is shown on Figure 38, would you consider
15 that cutout to be near the implant proximal end? 11:06:02

16 A. (Reviewing document.)

17 I would consider that cutout on the distal
18 end of the implant.

19 Q. So you would not consider that cutout to be
20 near the implant proximal end; is that correct? 11:06:47

21 MR. PARK: Objection. Asked and
22 answered.

23 A. I would view it as it is on the distal end
24 of the implant.

25 Q. If a feature is on the distal end of the 11:07:07

1 implant, is that not near the implant proximal end?

2 A. I think in Figure 38 that cutout is clearly
3 on the distal end of the implant, so it's hard to
4 reference it that it's near the distal -- near the
5 proximal end. A POSITA wouldn't reference it that 11:07:53
6 way.

7 Q. Would a POSITA consider the midline of the
8 implant halfway between the very distal end and the
9 very most proximal end to be near the implant
10 proximal end, in your opinion? 11:08:34

11 A. The midline can be considered, if the
12 feature extends up to the midline, near the
13 proximal end.

14 Q. If a feature does not extend beyond that
15 midline in the proximal direction and is only on 11:09:07
16 the midline of the implant, would a POSITA consider
17 that feature to be near the implant proximal end,
18 in your opinion?

19 A. If we're hypothetically discussing a point
20 on the midline, a POSITA would just -- it would 11:09:33
21 consider it to be a point on the midline.

22 Q. So in your opinion, a POSITA would not
23 consider a point on the midline to be near the
24 implant proximal end; is that correct?

25 MR. PARK: Objection to form. 11:09:54

1 A. That's not what I -- no, it -- what I'm
2 saying is that a POSITA wouldn't consider it in
3 reference to the proximal end. It would be
4 considered -- if it's a point on the midline, it
5 would consider it as a point on the midline. 11:10:07

6 Q. Yeah. I'm not -- that's a little bit
7 different from what I'm asking. I'm not -- I'm not
8 asking whether a POSITA would consider a feature to
9 be a point on the midline. So I'll -- I'm asking
10 with respect to the phrase "near the implant 11:10:27
11 proximal end." So I'll restate my question.

12 In your opinion, would a POSITA consider a
13 point on the midline to be near the implant
14 proximal end?

15 A. If a -- you're referencing a point on the 11:10:48
16 midline, you would just consider it as a point on
17 the midline. You wouldn't be thinking of it as
18 near the proximal end or near the distal end.

19 Q. So is it correct that a POSITA would not
20 consider a point on the midline to be near the 11:11:10
21 proximal end?

22 A. I'm saying that a POSITA wouldn't consider
23 it near -- would not consider that phrase "near the
24 midline." It would consider it on the midline.

25 Q. I didn't ask about near the midline. I 11:11:33

1 asked --

2 A. Oh, apologies.

3 Q. I can repeat my question.

4 Is it correct that a POSITA would not
5 consider a point on the midline to be near the 11:11:43
6 proximal end?

7 MR. PARK: Objection to form.

8 A. POSITA -- if you have a discrete point on
9 the midline that you're referencing, they would not
10 necessarily look to see if it's near the proximal 11:12:02
11 or near the distal. It's a discrete point on the
12 midline.

13 Q. But if a POSITA were asked if a point on
14 the midline were near the proximal end of the
15 implant, what would they say? 11:12:22

16 MR. PARK: Objection to form.

17 A. They would say it's on the midline and
18 it's... Proximal portion can include up to the
19 midline.

20 Q. So is it your opinion that the proximal end 11:13:00
21 of the implant would include a midline?

22 MR. PARK: Objection to form.

23 A. A midline is -- it can include up to the
24 midline.

25 Q. So the proximal end of an implant would not 11:13:38

1 include the midline; it would only include up to
2 that midline -- is that accurate? -- in your
3 opinion?

4 MR. PARK: Objection to form.

5 A. The proximal end of an implant can include 11:13:56
6 up to the end -- up -- up to the midline.

7 Q. So what portion of my question did you not
8 agree with?

9 MR. PARK: Objection to form.

10 A. Restate the question, please. 11:14:21

11 Q. So the proximal end of an implant would not
12 include the midline; it would only include up to
13 that midline -- is that accurate? -- in your
14 opinion?

15 A. A midline is an infinitesimally small 11:14:50
16 thickness, so it would include everything up to
17 that midline. The midline itself, which is kind of
18 a very small thin reference point, would not be
19 included with the proximal end.

20 Q. Would a POSITA still consider that midline 11:15:19
21 to be near the proximal end of the implant?

22 A. The midline would be considered near both
23 the proximal and distal end of the implant.

24 MR. PARK: Do you want to take a break?

25 MS. LaVALLEY: Yeah. I'm 11:16:30

1 determining -- it might be a good place to take a
2 break before I move on.

3 (Break: 11:16 a.m. to 11:26 a.m.)

4 BY MS. LaVALLEY:

5 Q. Mr. Culbert, please turn to page 75 of 115 11:26:48
6 of your declaration and your discussion of
7 claim 15.

8 A. I am there.

9 Q. And here you state, "As shown in Figure 15B
10 below, both the first and second expandable spinal 11:27:10
11 structures are discrete and unitary; i.e., 'single
12 integral' structures."

13 Do you see that?

14 A. I see that.

15 Q. Do you understand "single integral" to mean 11:27:26
16 discrete and unitary?

17 A. (Reviewing document.)

18 In this context I see "single integral" as
19 being discrete and unitary.

20 Q. What do you mean by "discrete and unitary"? 11:27:57

21 A. They are its own separate entity or object.

22 Q. What are you referring to by "they" in that
23 statement?

24 A. In the case of claim 15, the structures.

25 Q. The first expandable spinal implant 11:28:45

1 structure and the second expandable spinal implant
2 structure; is that correct?

3 A. That is correct. It's the first single
4 integral structure and the second se- -- second
5 single integral structure. 11:29:03

6 Q. So just looking at the language of claim 15
7 for a moment, claim 15 includes "wherein the first
8 expandable spinal implant structure is a first
9 single integral structure."
10 Do you see that? 11:29:28

11 A. I see that.

12 Q. So is it your understanding that claim 15
13 requires that the first expandable spinal implant
14 structure is discrete and unitary?

15 A. (Reviewing document.) 11:30:33
16 The first and second implant structures are
17 discrete and unitary.

18 Q. So just with regard to the first expandable
19 spinal implant structure, would you agree that
20 claim 9 requires that the first expandable -- or, 11:31:06
21 excuse me. Would you agree that claim 15 requires
22 that the first expandable spinal implant structure
23 is discrete and unitary?

24 A. The first single integral structure of the
25 implant shown in 15B is discrete and unitary. 11:31:29

1 Q. I'm just -- just to focus on the claim
2 language of claim 15 at the moment, I'm trying to
3 understand your understanding of the -- the
4 language of claim 15.

5 So claim 15, you would agree, it requires 11:31:55
6 "wherein the first expandable spinal implant
7 structure is a first single integral structure,"
8 correct?

9 A. Yeah, the first expandable spinal implant
10 structure is a first single integral structure. 11:32:11

11 Q. And earlier you testified that you
12 understand single integral structures in this
13 context to be discrete and unitary; is that
14 accurate?

15 A. I state that Gordon's 15B is discrete and 11:32:28
16 unitary, which meets the single integral structure
17 limitation.

18 Q. Okay. Well, what do you understand "single
19 integral structure" to mean in the context of claim
20 15? 11:33:03

21 A. (Reviewing document.)
22 Single integral structure is a structure
23 that is discrete and unitary.

24 Q. So would you agree that claim 15 requires
25 that the first expandable spinal implant structure 11:33:31

1 is discrete and unitary?

2 A. (Reviewing document.)

3 The spinal implant structure of claim 15 is
4 discrete and unitary.

5 Q. The first expandable spinal implant 11:34:15
6 structure of claim 15 is discrete and unitary,
7 correct?

8 A. (Reviewing document.)

9 Yeah, the first expandable spinal implant
10 structure is the first single integral structure, 11:34:34
11 which is a discrete and unitary structure.

12 Q. And the second expandable spinal implant
13 structure of claim 15 is discrete and unitary as
14 well, correct?

15 A. The second expandable spinal implant 11:34:53
16 structure is a second single integral structure,
17 which is discrete and unitary.

18 Q. And in the context of claim 15 -- strike
19 that.

20 And what is your understanding of a unitary 11:35:54
21 structure?

22 A. It's hard to define it any further than
23 saying it's a single structure.

24 Q. So do you believe a unitary structure is a
25 single structure? Is that correct? 11:36:32

1 A. I believe that discrete and unitary
2 structure is a single integral structure.

3 Q. Do you believe a single integral structure
4 requires a structure that is comprised of a single
5 material?

11:37:12

6 A. (Reviewing document.)

7 I'd really have to see the context of how
8 it's formed.

9 Q. Do you see in Figure 15B -- on the same
10 page 75 of 115, do you see the hatched and the top 11:37:56
11 layer shown in Figure 15B?

12 A. I see the hatched layer in Figure 15B.

13 Q. Do you know what that layer represents?

14 A. (Reviewing document.)

15 It appears to be referencing the -- it -- 11:40:03
16 since this is a cross-section view, it appears to
17 be the cross-section of the top of the -- and
18 bottom of the implant.

19 Q. Do you understand that layer to show
20 osteoconductive scaffolding? 11:40:22

21 A. (Reviewing document.)

22 Is that referenced somewhere in the
23 specification?

24 Q. Yeah. Why don't I -- I'll refer you to --
25 maybe this will help you out. If you turn to 11:41:19

1 page 65 of 115 of your declaration, there's a
2 discussion in the very last paragraph on that page.

3 A. The -- what paragraph number?

4 Q. The third paragraph on page 65 of 115,
5 starting -- 11:41:58

6 A. 257?

7 Q. Oh, I'm sorry. I'm in your declaration.

8 A. Oh.

9 Q. So if you -- if you could -- yep. Page 65
10 of 115 of your declaration. Just let me know when 11:42:09
11 you're there.

12 A. I'm there.

13 Q. Okay. Do you see the third paragraph
14 starting "Gordon further discloses"?

15 A. (Reviewing document.) 11:42:34

16 Q. The second sentence of that paragraph
17 states, "As shown in Figure 15B below, the first
18 and second expandable structures have an
19 'osteoconductive scaffolding.'"

20 Do you see that? 11:42:48

21 A. I see that.

22 Q. And which portion of Figure 15B do you
23 believe to be the osteoconductive scaffolding?

24 A. (Reviewing document.)

25 So the 15B, like I said, is a 11:44:10

1 cross-sectional view, so the top and bottom hatched
2 areas is the scaffolding -- or the scaffolding
3 areas of those bodies -- or structures.

4 Q. So the top hatching -- or, excuse me. So
5 the top hatched layer and the bottom hatched layer, 11:44:55
6 as shown in Figure 15B, you understand to be the
7 osteoconductive scaffolding, correct?

8 A. (Reviewing document.)

9 That is correct.

10 Q. What is osteoconductive scaffolding? 11:45:17

11 A. It has- -- it's generally a structure that
12 has open spaces to allow bone to in-grow into.

13 Q. In the case of Figure 15B, is the
14 osteoconductive scaffolding separable from the
15 surface it's coupled to? 11:45:59

16 A. It doesn't need to be. It could be the
17 same material, and the scaffolding could be created
18 by etching in the same metal or PEEK material.
19 It...

20 Q. Would you consider the osteoconductive 11:46:25
21 scaffolding and the structural portion beneath it
22 in Figure 15B to comprise an integral structure?

23 A. (Reviewing document.)

24 The scaffolding on the top and the
25 bottom -- let me start with the top. 11:47:00

1 The scaffolding on the top is an integral
2 part of the first expansion member -- or first
3 expansion structure.

4 Q. So just focusing on the top half of the
5 implant shown in Figure 15B, are you with me? 11:47:25

6 A. I'm with you.

7 Q. So would you -- you consider the
8 scaffolding shown on the top layer to be integral
9 with the structure just beneath it?

10 MR. PARK: Objection to form. It's 11:47:48
11 outside the scope.

12 A. (Reviewing document.)

13 The scaffolding structure is part of the
14 first expandable implant structure.

15 Q. And do you consider the scaffolding to be 11:49:10
16 integral with the structure just beneath it?
17 Focusing on the top half of the implant.

18 A. I consider the scaffolding as integral part
19 of the entire first expandable spinal implant
20 structure. 11:49:43

21 Q. And just focusing on the portion of the
22 implant that's just beneath the scaffolding on the
23 top half, do you see that?

24 A. Sorry. Which portion?

25 Q. Just, again, focusing on the implant in 11:50:27

1 15B, you see the top --

2 A. Okay.

3 Q. -- top half of the implant?

4 A. I see it.

5 Q. So shown in Figure 15B, the top half of the 11:50:42
6 implant both has the hatched layer and the solid
7 white layer.

8 Do you see that?

9 A. I see the hatched portion and the
10 nonhatched portion. 11:51:02

11 Q. And do you believe the hatched portion,
12 which we've -- we agree is the osteoconductive
13 scaffolding, to be integral with the nonhatched
14 portion?

15 A. I believe the hatched portion is integral 11:51:27
16 with the nonhatched portion to create the first
17 expandable spine implant structure. And this can
18 be easily created by etching the surfaces to create
19 that scaffolding, so it could be a processing
20 feature to create the pro- -- so it could be the 11:51:55
21 same material, everything. So it's all integral as
22 one piece. You're just taking away material to
23 create the scaffolding.

24 Q. Please turn to paragraph 67 of your
25 declaration. 11:52:24

1 A. 67 of 115?

2 Q. Paragraph 67. Not page.

3 A. Oh, paragraph.

4 Q. It is on page 40 of 115.

5 A. I'm there. 11:52:54

6 Q. And in paragraph 67, you begin your
7 discussion of a combination of McLuen with Gordon,
8 correct?

9 A. (Reviewing document.)

10 Correct. 11:53:14

11 Q. And in this combination, McLuen would
12 supply the implant, correct?

13 A. (Reviewing document.)

14 In this combination, the implant referenced
15 is the McLuen implant. 11:53:42

16 Q. And in this proposed combination, Gordon
17 would supply the implantation tool; is that
18 correct?

19 A. In this combination, Gordon would supply
20 the tool assembly, which is -- consists of at least 11:54:02
21 two tools.

22 Q. So the combination that you discuss is
23 based on using Gordon's instrumentation with
24 McLuen's implant; is that accurate?

25 A. The combination is utilizing Gordon's tools 11:54:22

1 with the McLuen implant.

2 Q. Are you aware of any reason why a POSITA
3 would have selected McLuen's implant over Gordon's
4 implant?

5 A. I think it would be a design choice of a 11:54:46
6 POSITA.

7 Q. And are you aware of any reason why a
8 POSITA would have selected McLuen's design of an
9 implant over Gordon's design?

10 A. Again, it would be a design choice of a 11:55:58
11 POSITA on -- there are several variables that go
12 into this spine surgery. So depending on what
13 specifics of that spine surgery -- i.e., the
14 approach, how much expansion, stabilization --
15 there's many, many factors that could be 11:56:17
16 considered. And so depending on a -- what the
17 exact goal is, one could choose one or the other.

18 Q. And can you provide some examples of what
19 factors would have led a POSITA to select McLuen's
20 design over Gordon's design for an implant? 11:56:36

21 A. As mentioned, it's the approach. If it's
22 an ALIF, PLIF, XLIF, these are all different
23 approaches. How you approach the vertebral bodies
24 also can dictate the shape of the implant. How
25 much expansion you want to get out of the implant. 11:57:24

1 How much stabilization.

2 Q. And just using stabilization, for example,
3 you said the design choice between McLuen's and
4 Gordon's implant may be motivated by how much
5 stabilization you need. Is that accurate? 11:58:03

6 A. Between -- generally speaking, between the
7 two, so several embodiments of each, the -- you can
8 look at stabilization as a factor in your design
9 choice.

10 Q. And which implant, between McLuen's and 11:58:31
11 Gordon's, would provide more stabilization?

12 A. Again, there's many embodiments of Gordon.
13 So I'm not sure to compare -- how to compare that
14 against McLuen.

15 Q. Do any of Gordon's embodiments provide more 11:59:06
16 stabilization than McLuen's implants would?

17 A. I have not opined on that. It's -- I would
18 really have to study it a lot more closely to
19 compare all the embodiments.

20 Q. Did your declaration -- 11:59:42
21 (Indiscernible crosstalk.)

22 Q. Oh, sorry. Go -- please go ahead. Please
23 finish.

24 A. But it would be apparent to the reviewer
25 that both of them will work. 11:59:52

1 Q. Does your declaration provide any reason
2 why a POSITA would have selected McLuen's implant
3 over the design of Gordon's implant?

4 A. (Reviewing document.)

5 I don't recall providing a rationale why 12:04:25
6 McLuen -- to choose McLuen over the Gordon implant
7 other than it's just a design choice.

8 Q. And in paragraph 67 of your declaration,
9 are you still -- do you still have that page in
10 front of you? 12:04:47

11 A. Yep, I'm there.

12 Q. The third sentence states that "McLuen
13 discloses a system comprising a spinal implant
14 (e.g., bone fusion device 1500) and a tool for
15 securing and expanding that implant." 12:05:08

16 Do you see that statement?

17 A. I see that statement.

18 Q. Would you agree that McLuen discloses a
19 completed system comprising an implant and the
20 tools necessary to use it? 12:05:23

21 MR. PARK: Objection to form.

22 A. McLuen discloses a system that comprises a
23 spinal implant and the need for tools for securing
24 and expanding the implant. It does not provide the
25 details of the tools themselves. 12:05:43

1 Q. In the next sentence in paragraph 67, you
2 go on to describe that McLuen describes "tools with
3 both, one, a screwdriver or similar implement; and,
4 two, another tool that fits into channels on the
5 implant to secure it in place and keep the
6 screwdriver from slipping."

12:06:10

7 Do you see that?

8 A. I see that.

9 Q. Can McLuen use one integrated tool for
10 securing and expanding the implant?

12:06:27

11 MR. PARK: Objection to form.

12 A. McLuen discloses that you need at least two
13 tools to do that. It doesn't give you any details
14 on the tools themselves.

15 Q. Where does McLuen state that you require
16 two separate tools for securing and expanding the
17 implant?

12:07:05

18 A. (Reviewing document.)

19 Q. And just for the record, McLuen is
20 Medtronic Exhibit 1012. Do you have a copy of
21 Exhibit 1012?

12:07:38

22 A. I do.

23 (Reviewing document.)

24 I'm reviewing, as I referenced in my

25 declaration, paragraph 76 of that Exhibit 1012. It 12:08:01

1 says, "To secure the bone fusion device 1500 in
2 place, a user generally utilizes an implement such
3 as a screwdriver to turn the positioning means
4 1508. Screwdrivers unfortunately have the ability
5 to slip out of place. When performing surgery near 12:08:22
6 someone's spine, it is preferable to prevent, or at
7 least minimize, the slipping ability. To do so,
8 channels 1522 are implemented to receive a tool
9 (not shown). The tool (not shown) has attachments
10 that fit within the channels 1522 to secure the 12:08:39
11 tool (not shown) in place."

12 Q. And that was paragraph 76 of McLuen that
13 you were just reading from; is that correct?

14 A. That is correct.

15 Q. Where in paragraph 76 of McLuen does it 12:09:09
16 specify that the tool used to secure the tool in
17 place must be separate from the screwdriver?

18 A. It describes two tools that are required:
19 one, a screwdriver; and, two, a holder to prevent
20 the screwdriver from slipping. 12:09:48

21 Q. Doesn't the description in McLuen allow for
22 the screwdriver itself to have attachments to
23 secure the tool?

24 MR. PARK: Objection to form.

25 A. Paragraph 76 describes two tools where 12:10:06

1 then -- but doesn't provide the details. So that's
2 what prompts to look outside of this specification
3 to see how it's done at the time. And that's when
4 you bring Gordon involved -- in to then look at how
5 Gordon does it, and Gordon provides two tools to do 12:10:43
6 it.

7 Q. Where in McLuen does it say that it
8 requires two tools?

9 A. Paragraph 76 it says you need a screwdriver
10 and a holder. 12:11:01

11 Q. And which line of paragraph 76 does it
12 mention a holder?

13 A. (Reviewing document.)

14 Oh, I'm using the term "holder" at -- to
15 interface with the channels 1522 where paragraph 76 12:11:43
16 states that you need a tool that's not shown to
17 interface with the channels of 15- -- the channels
18 1522.

19 Q. But couldn't the tool described in
20 paragraph 76 include the screwdriver? 12:12:08

21 A. It doesn't state that it's -- as part of
22 the screwdriver. It -- it only states that you
23 need it -- a tool, which is not shown, to do those
24 functions. And --

25 Q. And also -- 12:12:34

1 A. -- it lists the screwdriver separately.

2 Q. It never states that the tool required for
3 stabilization must be separate from the
4 screwdriver, correct?

5 A. It only states that you need a screwdriver 12:12:46
6 and a -- and a tool to prevent slipping of the
7 screwdriver.

8 Q. But you would agree that paragraph 76 never
9 says that the tool to prevent slipping of the
10 screwdriver must be separate from the screwdriver. 12:13:20

11 A. 76 does list them separately. Doesn't
12 specifically state that it has to be separate, but
13 it does list the -- them as two separate tools.

14 Q. Would a screwdriver with attachments which
15 can engage with the implant's channels 1522 work to 12:13:57
16 secure and expand the McLuen implant?

17 MR. PARK: Objection to form.

18 A. This is getting really broad. So can you
19 be more -- can you repeat that question, please?

20 Q. Would a screwdriver with attachments that 12:14:16
21 can engage with the implant's channels 1522 work to
22 secure and expand the McLuen implant?

23 MR. PARK: Objection to form.

24 A. I'm not envisioning that at this time. You
25 may have to describe more details of how that could 12:14:37

1 be achieved.

2 Q. Why are you not envisioning that?

3 MR. PARK: Objection to form.

4 A. How is that accomplished?

5 Q. What additional details would you need to 12:15:05
6 assess whether a single integral tool could be used
7 to secure and expand the McLuen's implant?

8 MR. PARK: Objection to form. Outside
9 the scope.

10 A. I had opined on how to create a single tool 12:15:19
11 [indiscernible audio] --

12 COURT REPORTER: Sorry. I think your
13 audio is a little garbled for me again.

14 A. Sorry. My -- I haven't opined how a single
15 tool could achieve all of this as paragraph 76 12:15:40
16 implies two tools [indiscernible audio].

17 MS. LaVALLEY: I think your
18 connection's a little bit garbled. I'm losing some
19 of the audio.

20 COURT REPORTER: I am as well. I think 12:16:12
21 your video is going fuzzy again, too,
22 unfortunately.

23 THE WITNESS: [Indiscernible audio.]

24 COURT REPORTER: Agree to go off the
25 record? 12:16:13

1 MS. LaVALLEY: Yes.

2 (Proceedings were paused due to
3 technical difficulties.)

4 COURT REPORTER: Okay. I think we
5 might need to do that last answer one more time 12:16:39
6 just to confirm.

7 A. Okay. I haven't opined if a single tool
8 could achieve what you are describing. I focused
9 that on paragraph 76, which, to me, discloses two
10 tools. 12:16:55

11 (Previously marked Exhibit 1012 was
12 introduced.)

13 Q. And can you turn to Figure 15 of
14 Exhibit 1012, the McLuen reference.

15 A. I am there. 12:17:17

16 Q. And McLuen shows a Phillips head
17 positioning means, correct?

18 A. Yeah, 1508 in Figure 15 appears to have a
19 Phillips head on it.

20 Q. Do different driver heads have different 12:17:40
21 gripping abilities?

22 A. Yes, a flat screwdriver versus a Phillips
23 versus a Robertson versus Torx can have different
24 gripping abilities.

25 Q. Would a Phillips head be less stable than 12:18:10

1 other driver heads?

2 A. In terms of what?

3 Q. Like more --

4 A. You have to look at the force.

5 Q. Like more prone to -- 12:18:29

6 A. Sorry.

7 Q. -- cam out?

8 A. Depending on the specific application and
9 the forces involved and what's required, a Phillips
10 can adequately do the job. 12:18:56

11 Q. Would a hexagonal screwdriver head
12 generally provide more contact area than a Phillips
13 driver?

14 A. There are several factors involved where
15 you have to look at the size of the head itself, of 12:19:23
16 the driver, the depth it goes in. How were you
17 comparing -- what are we comparing?

18 Q. So, I guess, focusing on the McLuen implant
19 shown in Figure 15, all other things equal, would a
20 hexagonal screwdriver head provide more stability 12:19:51
21 than a Phillips head?

22 MR. PARK: Objection to form.

23 A. Well, for this application, Figure 15, the
24 inventor apparently feels that a Phillips is
25 adequate for this function. 12:20:15

1 Q. Setting adequacy aside, would a hexagonal
2 screwdriver head provide more stability than a
3 Phillips head in the embodiment shown in Figure 15?

4 MR. PARK: Objection to form.

5 A. Again, if the inventor feels that this was 12:20:41
6 adequate enough, then there wouldn't be a need to
7 make it stronger. Or if you can make it stronger.

8 Q. And you would agree that the McLuen
9 reference also mentions slippage of the screwdriver
10 based on the Phillips head, correct? 12:21:10

11 A. McLuen mentions the slippage of a driver --
12 screwdriver, not specific to a Phillips head.

13 Q. But McLuen shows a Phillips head in its
14 embodiment, correct?

15 MR. PARK: Objection to form. 12:21:47

16 A. In the embodiment of Figure 15, McLuen
17 shows a screwdriver head -- a Phillips screwdriver
18 head in that figure. I -- there may be other with
19 a -- I would have to go through the spec to show
20 if -- see if it sh- -- discloses other screwdriver 12:22:14
21 heads.

22 Q. Would you generally recommend a Phillips
23 interface where resistance to slippage is desired?

24 MR. PARK: Objection to form. It's
25 outside the scope. 12:22:33

1 A. I -- I would have to look at that very
2 specific application, forces involved. There's a
3 lot involved in determining that. That's kind of
4 not what I've opined here.

5 Q. McLuen's implant shown in Figure 15 12:23:11
6 generally has flat side surfaces; is that accurate?

7 A. (Reviewing document.)

8 Figure 15 has surfaces that -- well, on the
9 top and the bottom surface, there are these
10 serrations, so I don't know if that is flat -- 12:23:48
11 considered flat.

12 Q. Turning back to the Gordon reference,
13 Exhibit 1013, and looking at Figure 35?

14 A. Okay.

15 Q. Let me know when you're there. Great. 12:24:53
16 Is the instrument 700 shown in Gordon
17 generally compatible with Gordon's implant?

18 A. Can you repeat that? It kind of cut out
19 for one quick second there.

20 Q. Sure. Is the instrument 700 shown in 12:25:19
21 Gordon generally compatible with Gordon's implant?

22 A. Is there a specific embodiment you're
23 referring to with Gordon?

24 Q. Let's take a look at Figure 38, for
25 example. Would you agree that the instrument shown 12:25:41

1 in Figure 38 is compatible with the implant shown
2 in Figure 38?

3 A. (Reviewing document.)

4 The tool assembly, 700, in Figure 38 is
5 compatible with the implant 484 in Figure 38. 12:26:09

6 Q. And would you agree in Figure 38 that the
7 geometry of Gordon's holder corresponds to the
8 geometry of Gordon's implant?

9 A. (Reviewing document.)

10 The geometry of 700, holder, corresponds 12:26:41
11 with the implant 484 in Figure 38.

12 Q. And would the features of Gordon's
13 instrument need to be modified so as to engage with
14 McLuen's implant?

15 A. (Reviewing document.) 12:27:12

16 The features of Gordon's 716 of 700 would
17 need to be designed to fit with McLuen's implant.

18 Q. And what changes would need to be made to
19 what is shown in Figure 38 with respect to Gordon's
20 instrument to fit with McLuen's implant? 12:28:06

21 A. Well, what's shown in Figure 38 is not
22 dimensioned. So when you take this and design it
23 for McLuen, you would make sure that the dimensions
24 fit McLuen.

25 Q. So would Gordon's holding arms 716, 12:29:06

1 including portion 722, need to be modified so as to
2 engage the channels 1522 of the McLuen implant?

3 MR. PARK: Objection to form.

4 A. Again, there's no dimensions for those --
5 for 716 and 722 in Figure 38. So when designing 12:29:35
6 this for McLuen, you would make sure the dimensions
7 fit McLuen.

8 Q. Would you want to use -- would a POSITA
9 want to use Gordon's holding arm 716 with rounded
10 lobes 722 with McLuen's implant? 12:30:06

11 A. (Reviewing document.)

12 It can be used with McLuen's implant.
13 There's advantages and disadvantages of both. One
14 advantage is that it provides a leading edge to
15 go -- slide over McLuen's implant. 12:30:39

16 Q. And when you say "one advantage is that it
17 provides a leading edge," are you referring to
18 the -- the rounded lobe 722 on Gordon's instrument?

19 A. Yes, that's correct. 722, the rounded,
20 could help facilitate to advance onto the McLuen 12:31:05
21 implant.

22 Q. Would McLuen's channels need to be modified
23 to facilitate rounded edges, 722 --

24 MR. PARK: Objection to --

25 ///

1 BY MS. LaVALLEY:

2 Q. -- to engage with the implant?

3 MR. PARK: Objection to form.

4 A. You can design 716 holder, including the
5 722, without changing McLuen's channels. 12:31:49

6 Q. And what design changes would a POSITA need
7 to make to allow the 7 -- Gordon 716 holder,
8 including 722, to engage with McLuen's channels?

9 MR. PARK: Objection to form.

10 A. Sorry. Did I say "design change"? I 12:32:34
11 thought I said you would design it to fit McLuen's
12 channels.

13 Q. And I was referring to changes from what's
14 shown in Figure 38. How would a POSITA design the
15 tool or Gordon's holder to engage with McLuen's 12:33:04
16 channels?

17 MR. PARK: Objection to form.

18 A. The design holder, 716, in Figure 38 would
19 be -- would not be -- require any changes per se.
20 It just requires it to be designed to match 12:33:40
21 dimensionally the channels of McLuen.

22 Q. So if you -- if a POSITA were to design a
23 holder to engage the channels of McLuen, that
24 holder would have shorter holding arms than what's
25 shown in Gordon Figure 38 since McLuen's channels 12:34:25

1 are closer to the end of the implant. Is that
2 accurate?

3 A. (Reviewing document.)

4 If the implant 484 in Figure 38 --

5 MR. PARK: 484? 12:34:55

6 A. Implant 484 in Figure 38 --

7 MR. PARK: Sorry. Just so that the
8 record's clear, 484. Like -- he puts his 4s close
9 together. So he's saying 484, not 44.

10 THE WITNESS: Okay. I'll be careful. 12:35:12

11 MR. PARK: I mean, it's just how it's
12 coming out on the transcript.

13 THE WITNESS: Okay.

14 BY MS. LaVALLEY:

15 Q. So please, go ahead. You were discussing 12:35:33
16 implant 484 in Figure 38.

17 A. Yeah, the relative sizes of 484 and implant
18 from McLuen, as well as the statement in Gordon
19 that states that those 733s could be anywhere along
20 the proximal end. It's hard to give you an exact 12:36:04
21 answer without more information.

22 Q. Would a POSITA understand that engagement
23 between the holder and the implant closer to the
24 midline of the implant would generally increase
25 stability? 12:36:39

1 MR. PARK: Objection to form.

2 A. Can you be more specific on what -- are we
3 referring to fig- -- what are we referring to?

4 Q. I guess we can -- if you want to refer
5 specific -- I was asking you generally. But if you 12:37:09
6 want a specific example, which I suspect you do --
7 so taking Figure 38 and the implant shown in 484,
8 would moving the recesses 733 closer to the
9 proximal end of the implant -- the very proximal
10 end of the implant lead to less stability between 12:37:44
11 the holder and the implant?

12 MR. PARK: Objection to form.

13 A. There doesn't appear to be enough
14 information to answer that question -- again,
15 dimensions, the forces involved, like the 12:38:07
16 materials -- it could be adequate enough on the
17 prox- -- the very proximal end, closer to the user
18 versus to where it's shown here.

19 It could be -- for the indication and use
20 of how this is implanted and the forces involved 12:38:32
21 could be enough. So until I have more information,
22 I can't give that informa- -- give you an answer.

23 MR. PARK: We've been going well over
24 an hour.

25 MS. LaVALLEY: I'm actually -- I don't 12:38:59

1 think I have anything further, so I'll pass the
2 witness.

3 THE WITNESS: Oh, okay.

4 MR. PARK: Can we take a short break?

5 MS. LaVALLEY: Sure. 12:39:16

6 (Break: 12:39 p.m. to 12:44 p.m.)

7 MR. PARK: No further questions. No
8 questions from us. The deposition's closed.

9 MS. LaVALLEY: Thank you.

10 (Time Noted: 12:45 p.m., 12:45:06

11 July 29, 2026.)

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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.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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