

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 -----
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 -----

5 3D DIAGNOSTIX, INC.,

6 Petitioner,

7 vs.

8 WATSON GUIDE IP LLC,

9 Patent Owner.

10 -----
11 Case PGR2024-00040

12 Patent No. 11, 806, 209
13 -----

14
15 Virtual Deposition of ALAN BANKS

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22 Tiffany M. Pietrzyk, CSR RPR CRR

1 Virtual deposition of ALAN BANKS, pursuant to
2 notice, before Tiffany M. Pietrzyk, a Certified
3 Shorthand Reporter in the States of Illinois, Texas,
4 and California, Registered Professional Reporter,
5 Certified Realtime Reporter, and a Notary Public in
6 and for the State of Illinois.

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1 A P P E A R A N C E S

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C O N T E N T S

EXAMINATION OF ALAN BANKS	PAGE
By Mr. Feigelson	6

E X H I B I T S

(Attached to transcript.)

DEPOSITION EXHIBITS	PAGE
Exhibit 1024 GuidedSMILE Family of Products pdf	14
Exhibit 1025 Components of CHROME pdf	50
Exhibit 1026 GuidedSMILE Lite pdf	64
Exhibit 1027 GuidedSMILE Lite pdf	67
Exhibit 1028 Photograph	70
Exhibit 1029 ROE Dental Laboratory GuidedSMILE Lite pdf	69
Exhibit 1030 Corrected Pin Guide & Fixation Base - CHROME Live Webinar Series YouTube	99
Exhibit 1031 ROE Dental Laboratory Facebook Posts	36
Exhibit 1032 ROE Dental Laboratory YouTube	73

1	E X H I B I T S (Cont.)		
2	DEPOSITION EXHIBITS		PAGE
3	Exhibit 1033	Dentistry Today July-August	93
4		2023	
5	Exhibit 1034	Dentistry Today March 2023	87
6	Exhibit 1035	Dentistry Today June 2023	81
7	Exhibit 1036	Dentistry Today	83
8		January-February 2024	
9	Exhibit 1037	Dentistry Today May 2023	90
10	Exhibit 2006	Declaration of Alan Banks	9
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			

1 P R O C E E D I N G S

2 (Witness sworn.)

3 WHEREUPON:

4 ALAN BANKS,

5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. FEIGELSON:

9 Q. Good morning, Mr. Banks. My name is Aaron
10 Feigelson. I'm an attorney at Leydig, Voit & Mayer.
11 I'm representing 3D Diagnostix, Inc. in a
12 PGR2024-00040.

13 Mr. Banks, are you represented by an
14 attorney today?

15 A. I am.

16 Q. And your attorney is with you? That's
17 Mr. Karish?

18 A. Correct.

19 Q. You understand that you're under oath today?

20 A. I do.

21 Q. And do you understand that your oath is just
22 as binding as if you were sitting in front of the

1 patent trial and appeals board or a jury?

2 A. I do.

3 Q. Do you understand you must answer the
4 questions that I ask audibly so that the court
5 reporter can make an accurate transcript of what you
6 say?

7 A. Yes.

8 Q. Is there any reason, such as being on
9 medication, that you might be unable to provide
10 complete and accurate testimony today?

11 A. No reason.

12 Q. Do you have a recording device in the room
13 like an Amazon Echo or Google Home?

14 A. No, nothing. No.

15 Q. Mr. Banks, have you been deposed before?

16 A. One time, yeah, a long time ago.

17 Q. Was that for a patent case?

18 A. No.

19 Q. So let me review some ground rules. Okay?

20 I will ask the questions and you answer them. And
21 if you need a break for any reason, let me know.

22 We'll take a break. That's fine. The only thing I

1 ask is if there is a question that's outstanding,
2 that you answer the question before taking the
3 break.

4 Does that make sense?

5 A. It does.

6 Q. Also, please wait until I'm done asking a
7 question before answering. That makes it easier for
8 the court reporter to get a clean transcript.

9 Do you understand?

10 A. I do.

11 Q. You intend to testify truthfully today?

12 A. I do.

13 Q. Mr. Banks, what have you done to prepare for
14 today's deposition?

15 A. Met with counsel and went over my -- what's
16 it called -- my declaration and otherwise reviewed
17 3D DX's website, went over my resume. Otherwise,
18 just some dates and volumes of cases we've done,
19 that type of thing. Yeah, not much more than that.

20 Q. How long did you meet with Mr. Karish in
21 preparing for --

22 A. Yeah.

1 Q. Okay. And how long did you meet with him?

2 A. Three and a half hours, I think, total.

3 Q. Yesterday?

4 A. No. Friday and then the week before.

5 Q. All right.

6 MR. FEIGELSON: Ky, can you put up
7 Exhibit 2006.

8 REMOTE TECHNICIAN: Stand by.

9 MR. FEIGELSON: And this one, actually, you
10 can mark. For some reason this exhibit was
11 unmarked.

12 Counsel, I'll take notice that this was
13 submitted to PTAB without the footer information
14 with the exhibit number.

15 (Exhibit 2006 was marked for
16 identification and is attached to the
17 transcript.)

18 BY MR. FEIGELSON:

19 Q. Mr. Banks, do you recognize this document?

20 MR. FEIGELSON: Ky, can you scroll down a
21 little on it.

22 REMOTE TECHNICIAN: Sure.

1 A. I do. I recognize it.

2 Q. And is this the declaration that you were
3 referring to in your last answer?

4 A. Without looking all the way through it, yes.
5 I mean, it's the declaration that I signed, yeah.

6 Q. Can we skim through? It's not too long. We
7 can go page by page fairly quickly.

8 A. Yeah. Yes.

9 Q. Okay. This appears to be the document
10 that's your declaration?

11 A. Correct.

12 Q. And is that your signature on page 13?

13 A. It is.

14 Q. Mr. Banks, did you write this document?

15 A. I wrote it in -- sorry -- in concert with,
16 in conjunction with my attorneys, yeah.

17 Q. But you adopt the words as your own?

18 A. I do.

19 Q. Mr. Banks, what is your current employment?

20 A. I work for GuidedSMILE LLC.

21 Q. And you're the president of GuidedSMILE; is
22 that right?

1 A. Yes.

2 Q. Mr. Banks, are you a dentist?

3 A. No.

4 Q. Do you have any type of medical or dental
5 degree?

6 A. I do not.

7 Q. What type of degree do you have?

8 A. I have a bachelor's degree in business.

9 Q. And how long have you been working at
10 GuidedSMILE or its predecessor?

11 A. Like, for both companies, since 2001.

12 Q. Oh.

13 A. Yeah, the math could get us there, but since
14 then.

15 Q. Let's go to the first paragraph of this
16 declaration.

17 MR. FEIGELSON: Ky, can you put up
18 paragraph 1, or can we control this?

19 Q. Paragraph 1 says you've been president of
20 GuidedSMILE since it began operation in
21 January 2024; is that right?

22 A. Correct.

1 Q. And it says GuidedSMILE was spun off of ROE
2 Dental Lab to handle the CHROME GuidedSMILE product;
3 is that right?

4 A. Correct.

5 Q. So what was the business relationship
6 between GuidedSMILE and ROE?

7 A. GuidedSMILE is considered a wholly owned
8 subsidiary of ROE.

9 Q. I see.

10 At some point was there a business name
11 used? CHROME, was that used as the name of a
12 business?

13 MR. KARISH: Objection to form.

14 A. Not as a standalone name CHROME.

15 Q. CHROME GuidedSMILE?

16 A. Yes, CHROME GuidedSMILE. Yeah, they're --
17 been variations out in the marketplace but the
18 company itself has always been GuidedSMILE LLC. I
19 mean, since the beginning of '24.

20 Q. Prior to that, was the -- was there a
21 business entity known as CHROME GuidedSMILE?

22 A. Business entity? Forgive me. I don't know.

1 You know, those words put together in that order as
2 an actual business licensed somewhere, forgive me, I
3 don't know.

4 Q. Okay. But CHROME was used as the name of a
5 product line; is that right?

6 A. Yes. Sometimes standalone, sometimes in
7 conjunction with CHROME GuidedSMILE.

8 Q. Who chose the name CHROME to be used for the
9 business of ROE?

10 A. Best of my recollection, would be the patent
11 holder, Jay Watson.

12 Q. Why was the name CHROME chosen, do you know?

13 A. Primarily because we make the metal
14 components from chrome cobalt and might be entirely
15 because of that, you know, that match.

16 Q. So you refer in paragraph 1 to CHROME
17 GuidedSMILE product; correct?

18 A. Yes, right, right, yep.

19 Q. Is that a single product or is there a
20 family of products?

21 A. Well, we do -- sorry.

22 Q. Go ahead.

1 A. We do call it a family of products. CHROME
2 GuidedSMILE mostly alludes to our stackable guide
3 with chrome metal base, the CHROME osteo. But, you,
4 know in the last year, we developed a family of
5 products underneath it that have little tag lines
6 and that kind of thing.

7 Q. So when you refer to the CHROME GuidedSMILE
8 product in paragraph 1, are you referring to a
9 family of products?

10 A. I'd have to -- I'd have to think of other
11 products underneath that which are -- can I give you
12 an example? We call it -- we call a product smile
13 natural, which is a little variation of it. We make
14 the teeth a little bit differently. Still the full
15 stackable chrome metal componentry and everything.
16 Just a little variation of a part of it.

17 Q. Okay.

18 MR. FEIGELSON: Can we put up Exhibit 1024,
19 please.

20 (Exhibit 1024 was marked for
21 identification and is attached to the
22 transcript.)

1 REMOTE TECHNICIAN: Stand by.

2 Q. So Mr. Banks, this is a printout from the
3 website, the GuidedSMILE.com website?

4 A. Yes.

5 Q. I apologize. The print doesn't always look
6 like it does on the screen, as you might know. But
7 this refers to a GuidedSMILE family of products;
8 correct?

9 A. Yes.

10 Q. And if you could look over this document
11 briefly, and can you explain to me what products are
12 in the GuidedSMILE family of products?

13 A. Sure. The standard would be the one that
14 we've marketed from the beginning, which is what we
15 call an FP3 prosthesis with the metal -- the metal
16 fixation base, metal osteotomy guide, and F3
17 prosthesis. Then to satisfy some needs in the
18 marketplace, we made the GuidedSMILE Natural, call
19 it CHROME Natural or GuidedSMILE Natural. That
20 would have an F31 prosthesis. You also saw a
21 variation in there where it's made of plastic
22 instead of metal, and which we call Lite,

1 GuidedSMILE Lite. And then even the CombiGuide is
2 also in the family of products which is GuidedSMILE
3 standard without a prosthesis.

4 Q. Are there variants even within these
5 products that are in the family? For example, in
6 the standard CHROME GuidedSMILE standard, are
7 there -- does every instance of the CHROME
8 GuidedSMILE standard product include all of these
9 exact same components?

10 MR. KARISH: Objection. Form.

11 A. Jeez, I'd probably have to dig into it. I
12 mean, over the years we've had to do some minor
13 modifications, minor/major, some modifications that
14 would look different and function differently.
15 Usually, for the prosthesis, not for -- well,
16 usually for the prosthesis would be the variant. If
17 you looked at the different products -- sorry. Just
18 we've had some evolutions over the year and some
19 modifications, but there would be variations in the
20 standard, yeah.

21 Q. Has there been evolution to what you call
22 the pin guide?

1 A. I would say the pin guide itself, the design
2 of it, no change since the beginning. I mean, if I
3 say no -- I say -- I say a hundred percent concrete
4 no change, the design of it. The function of the
5 way it's used, yes. Little different of the
6 extensions of it head, the cover surface, that kind
7 of thing, possibly. But the function of how it
8 delivers that, no change.

9 Q. If we can go back to your declaration,
10 please, Exhibit 2006.

11 MR. FEIGELSON: Ky, can you go to -- toward
12 the end, paragraph 15.

13 Q. Mr. Banks, with paragraph 15, there's a
14 chart there. It says the, Total GuidedSMILE Sales.

15 Do you see that?

16 A. I do.

17 Q. Are those sales for all products in the
18 GuidedSMILE family?

19 A. I believe they are not all the products. I
20 believe -- sorry. I believe that they do not
21 include the CombiGuide. I believe that those are
22 just GuidedSMILE and their variations.

1 Q. Let's go back to paragraph 3 of this
2 document, please.

3 REMOTE TECHNICIAN: Stand by.

4 Q. Mr. Banks, this section says "Long Felt
5 Need."

6 Do you see that?

7 A. I do.

8 Q. And in paragraph 3, you start by saying from
9 your experience, you learned there was a need for a
10 guided surgical product to improve the efficiency
11 and accuracy of full-arch surgery and restoration;
12 is that right?

13 A. Correct.

14 Q. When did you learn of this supposed need for
15 a guided surgical product?

16 A. When? I suppose 2015 and before.

17 Q. How did you learn of that need?

18 A. Prior to that, our laboratory and the
19 industry, for the most part, was performing
20 surgeries freehand, not with a guide. And during
21 that time, we would -- we would go chairside during
22 a surgery and we would work with the doctor to

1 convert a prosthesis, a denture after the implants
2 were placed with freehand. And it was -- I guess it
3 was clear to us and clear to the doctors who were
4 restoring these cases, not the ones who were putting
5 the implants in but the ones who were restoring, it
6 was clear to them that guidance was needed, more
7 precision with implant placement, more precision
8 with bone reduction and case analysis, that type of
9 thing, that was needed because the restorative
10 component of these was often quite difficult from
11 implants just being, you know -- random isn't a nice
12 word, but nonplanned implant positions.

13 Q. So to make sure I understand, you say you
14 understood this need from the restorative side?
15 Would that be on the downstream of using the
16 prosthetic rather than the implant side of removing
17 teeth and drilling holes; is that fair?

18 A. It is fair, yes. And I would say at the
19 time, that that's who we mostly worked with, the
20 doctors who were restoring these cases. That was --
21 I mean, obviously, we were going chairside, right,
22 but that seemed to be the suffering party, the

1 restoring component of these full-arch cases.

2 Q. And was that need documented somewhere?

3 A. Oh, gosh.

4 MR. KARISH: Objection to form.

5 A. Yeah, I --

6 MR. KARISH: Go ahead.

7 A. -- I don't know. You mean by us?

8 Q. By -- anywhere. You say in the paragraph
9 from your experience you learned, but I'm wondering
10 if there's documentation to --

11 A. Yeah.

12 Q. -- corroborate your experience.

13 A. I would -- off the top of my head, no. But
14 I think that could be easily researched in freehand
15 versus guided for full arch. And my guess is that
16 the newsletter articles that I wrote when we were
17 marketing our first entry point into full-arch
18 guided, that we would have advertised with a
19 long-felt need and the issues that arise without
20 guidance.

21 Q. But you didn't include that in your
22 declaration; right?

1 A. Right. Right.

2 Q. Looking at paragraph 4, you talk about the
3 initial guided surgical product.

4 Which initial guided surgical product are
5 you referring to in that paragraph?

6 MR. KARISH: Hold on one sec, guys. You're
7 referring to paragraph 4?

8 MR. FEIGELSON: I'm sorry. Paragraph 5.
9 Thank you, Counsel.

10 MR. KARISH: Okay.

11 A. Okay. The early guides and guides that are
12 used today, but the guides then for full arch would
13 have been tissue- or tooth- or bone-supported type
14 guides.

15 Q. Can you give an example of a form of those
16 guides?

17 A. I suppose there are guides that we made. A
18 guide that would just -- can you clarify "example"?

19 Q. Well, you make a reference to the initial
20 guided surgical products; correct?

21 A. Yeah.

22 Q. And I want to know which particular products

1 you're referring to in that reference.

2 A. Okay. Well, as I mentioned, the early
3 guides were either fully tooth-supported, as an
4 example -- tooth supported which meant maybe some
5 tissue contact but they were just relying on teeth
6 to stay in the right position -- or they also -- we
7 also had tissue-supported guides that were similar
8 to how a denture would fit right on to the tissue,
9 on to, you know, squishy tissue. Then the other
10 would have been removing teeth and/or tissue and
11 then the guide would sit directly on the bone for
12 drilling.

13 Q. Do you know of any specific product names or
14 manufacturer?

15 A. Sure. Yeah. At the time, there would have
16 been NobelGuide would have been one that was pushed
17 by Nobel Biocare. That's a tooth- or
18 tissue-supported. And also Simplant, a Belgian
19 company that we worked with a little bit that would
20 make a lot of bone supported guides; tissue, teeth,
21 probably all three at the time. Those two were the
22 primary guided companies.

1 Q. You make a reference to nSequence later in
2 that paragraph?

3 A. Yes, but that came much later. That wasn't
4 some of these earlier guides I was referring to.

5 Q. So the time frame of those initially guided
6 surgical products that you're referring to now?

7 A. I believe NobelGuide and Simplant were
8 making these types of guides before us. I don't
9 know what year they started. And they continue to
10 make those types of guides today.

11 Q. So I'm trying to get a time frame for this
12 initial period.

13 Are we talking before 2010?

14 A. Oh, for those two companies? I don't know
15 about Nobel. I think Simplant, Simplant had been
16 around for a considerable amount of time. Forgive
17 me. I don't know start dates for either of them.

18 Q. I want to turn back to paragraph 4 for a
19 second. We can go a little bit up on the screen, I
20 think.

21 You make a statement here. You say about
22 this approach of the surgeon lacked predictability

1 with respect to proper alignment between the implant
2 with the prosthesis denture.

3 And you're referring there to the freehand
4 procedure; right?

5 A. Correct.

6 Q. Where did you learn your knowledge on the
7 history of full-arch restoration, Mr. Banks?

8 A. Well, are you asking me as of today or as of
9 back then?

10 Q. Well, I'm asking -- look, in paragraph 4,
11 you give some history about how surgeons perform
12 full-arch restoration; correct?

13 A. Yeah. Okay.

14 Q. I just want to know the basis of your
15 historical knowledge.

16 A. Sure. Sure. I understand. Okay.

17 You know, at the time when we began making
18 full-arch surgical guides, we were four years into
19 making guides in general. Simple guides. 1, 2, 3
20 implants. Sometimes getting a lit bit more
21 elaborate. So I understood the basics of what we
22 do, making a surgical guide, what they do, how they

1 perform, that type of thing. And then when the
2 cases got to be more complicated -- what I mean by
3 that is more implants, more full mouth, that type of
4 thing -- that's when us and the restorative doctor
5 would suffer, if you will. That is when we had to
6 come up with creative ways of restoring these cases.
7 And that is a -- I didn't invent that. That would
8 be an issue that I had been following since the
9 beginning because of the foils that we would have to
10 go through as a lab, the doctors finding implant
11 parts, correcting angulations, positions of implants
12 to try to make teeth for the patient. And it is a
13 daunting task when the implant's in the wrong
14 position to make a prosthetic that is going to
15 function.

16 So that -- my education on that was through
17 learning how to make the restorations and then work
18 backwards to figure out where the implants should
19 go, which is the essence of guided surgery,
20 especially full-arch, right? We always work
21 backwards. And that is from what we've learned from
22 these restorations.

1 Q. And you gained this knowledge and
2 understanding even though you're not a dentist or
3 you don't have a dental or medical degree; correct?

4 A. Correct.

5 Q. Looking back at paragraph 5, you say that
6 the nSequence product came after those initial
7 guided surgical products you referred to with Nobel
8 and Simplant; is that right?

9 A. I believe they did. To my knowledge of
10 their existence, yes.

11 Q. And was the nSequence product on the market
12 before the ROE CombiGuide product?

13 A. I don't know. Forgive me. I don't know.

14 Q. Was the nSequence product successful in the
15 marketplace?

16 A. They are still producing today, you know,
17 years later, so I -- -- I think they have a
18 successful product, yeah.

19 Q. That's by National Dentex; is that correct?

20 A. Yes. It is now, yeah.

21 Q. The first sentence of paragraph 5, you refer
22 to reliance on unpredictable surfaces for

1 installation; correct?

2 A. Right. I do. Yeah.

3 Q. What makes a surface predictable or
4 unpredictable?

5 A. Well, some of the things I brought up
6 before, and that is just if you're installing a
7 surgical guide and it's resting on tissue, tissue is
8 moldable, pliable, put pressure on it and something
9 on it moves, right? So that's an unpredictable
10 surface. We've discovered that over the years. You
11 know, a tissue-supported guide can move around
12 guided surgery, during installation. Even
13 tooth-supported, tissue-supported, these types of
14 guides rely on a person with fingers pushing
15 apically on a guide, holding it in position while
16 you're drilling. And that is an unpredictable
17 method. That's tissue and teeth.

18 And then what we discovered -- and that we,
19 the marketplace discovered -- even the
20 bone-supported guides, they're probably the least
21 accurate. And there's a lot of documented research
22 on this. Even studies of studies' studies show that

1 bone-supported guides are the least accurate and
2 lead to the most deviation of an implant position
3 based on the plan, and that's an uneven surface,
4 unpredictable surface. It's almost simulated bone
5 that you're making a guide fit. So those three or
6 sometimes a combination of three, there's different
7 ways to install these guides, it's an unpredictable
8 method.

9 Q. Mr. Banks, in your answer, you said that
10 these types of guides rely on a person with fingers
11 pushing apically on - --

12 A. Yeah.

13 Q. -- on a guide; is that correct?

14 A. Yes.

15 Q. What does apically mean?

16 A. Well, coronal is towards the teeth. Apical
17 is part of the apiectomy of a tooth. So it would
18 just be pressure towards the jaw, whatever jaw
19 you're working on, finger pressure to hold it in
20 position.

21 Q. How did you learn these terms with your
22 background? I'm curious.

1 A. Well, that's funny. I think about this a
2 lot. And just in general, I've probably been to 200
3 full-arch surgeries personally chairside with
4 doctors. I don't know. A thousand hours chairside
5 on our product. I write publications. I write
6 articles. I research. We have a KOL team, key
7 opinion leader team. I wrote our CHROME University,
8 you know, where doctors and lab techs and implant
9 reps and dental assistants, they all graduate and
10 they get a little certificate. It's hours and
11 lectures and learning. I just have to know these
12 terms. Learned them years ago. This is kind of all
13 I do. Guided surgery. It's all I do for lots of
14 years.

15 Q. Okay. It's impressive.

16 The -- I was gonna ask you about this
17 nSequence product that you refer to in paragraph 5.

18 Do you have personal experience using that
19 nSequence product?

20 A. I've never been chairside to a surgery, no.

21 Q. So what's your source for your information
22 when you say that using the nSequence guide led to

1 inaccuracies?

2 A. Yeah.

3 Q. End of paragraph 5.

4 A. Sure. Sure. And this would be -- this
5 would be based on first what I mentioned about what
6 I know about inaccuracies of guide delivery. Right?
7 Teeth, tissue, bone, that type of thing. Especially
8 undercut. And that's when we get into the full-arch
9 realm where if a -- I'm gonna get more specific, but
10 if a patient has real flared teeth, you have to get
11 a guide that goes beyond the teeth under the
12 undercut and then assembled to the jaw, the upper
13 and lower jaw. And a lot of guides, including
14 nSequence's, rely on a manual positioning of this
15 guide in order to screw it into the bone. Often
16 they're not able to use a pinning device, right?
17 Now they can, the pinning device is used, but it's
18 not used for the installation. So that is their
19 primary modis is to install this apparatus fixated
20 on the bone and then bring a delivery guide down to
21 it.

22 Now, I would learn of these inaccuracies

1 partly from what I know, but then also from doctors
2 who have switched from their system and come over to
3 our system. I would ask them why, what's different
4 about theirs and ours, what's better, what do you
5 like, different, better. And often, it would be the
6 installation of the guide, the proper alignment of
7 the guide to the bone, to the teeth.

8 You know, their guide has changed over the
9 years. They've adopted some of our technology. And
10 they've modified it a little bit to make it a little
11 bit different stabilization when they enter into the
12 mouth, but it still relies on this guide sitting on
13 the bone and being delivered by mucosa, by teeth, by
14 floating it in and then assembling. Just in my
15 experience and what doctors and, you know,
16 professional people who I work with tell me, that's
17 the biggest encumbrance of it.

18 Q. Does nSequence have metal guides for their
19 fixation-based or bone reduction guide?

20 A. They do now, yes. The fixation base part of
21 it, they call it a foundation guide.

22 Q. What about for their osteotomy guide or

1 drill guide, is that made of metal?

2 A. I don't know that I've seen images of metal.
3 I believe they're still using a plastic osteo guide.

4 Q. Moving to paragraph 6, you said that as a
5 result from the beginning of full-arch restoration
6 surgery, an effective guided surgical product was
7 needed to accomplish the procedure with higher
8 degrees of accuracy and predictability compared to
9 the freehand placement of implants or the early
10 guided surgical products; right?

11 A. Yes.

12 Q. And, again, I'll ask you, what is the source
13 of your conclusion that an effective surgical
14 product was needed?

15 A. I always -- I tell our doctors to come look
16 on our shelves of cases that have been restored with
17 guided and cases that have been restored with
18 freehand. It's a stark difference. Always has
19 been. A stark difference where the holes are in the
20 prosthetics, where the abutments are, AP -- anterior
21 posterior spread of prosthetics, cantilevers, all
22 types of indicators that would say a freehand

1 surgery -- many -- I'm not saying all. There's a
2 lot of good doctors out there that do freehand. But
3 by whole, if you looked at a freehand shelf compared
4 to a guided shelf, you would see alignment of
5 implants, position of implants, prosthetically,
6 surgically, you're gonna find a better result with
7 guided.

8 In fact, you'll see easy-to-find studies
9 that show positions of implants after surgery
10 compared to the guidance of them. Yes, there's a
11 deviation but the -- but the overall engineering
12 principles, the structural principles, implant
13 positioning, that we didn't invent but that we
14 follow are more precise, repeatable, predictable
15 with guided surgery.

16 Q. So Mr. Banks, I'm not asking about the
17 advantages of guided surgery over freehand. And
18 looking back, what I'm curious about is your
19 statement that an effective guided surgical product
20 was needed, right? And at the time, what was your
21 basis for that conclusion that a product -- an
22 effective guided surgical product was needed?

1 A. Oh, okay. Forgive me.

2 I was -- the only two products that I
3 mentioned before were Simplant and NobelGuide, the
4 two that I know. NobelGuide only guided Nobel
5 implants, not the other implants we worked with. So
6 we couldn't work with them if we were working with
7 all these other implant systems. So that one was
8 off the table for a full mouth implant guide.

9 Simplant, although a good product, was made
10 in Belgium. And it was very costly and very
11 time-consuming for them to design, fabricate, and
12 ship from Belgium and then for us to make a profit
13 on it. And so we -- we, as a guided surgery, you
14 know, product that we offered, decided to get into
15 more complex cases. And so that was our need.
16 Accessibility, right? We couldn't purchase them
17 easily in the marketplace, and so we made our own.

18 Q. And you didn't cite any articles, for
19 example, here that -- from the time that said an
20 effective guided surgical product is needed; right?

21 A. No, I don't think so. No.

22 Q. Let's turn to the next section, which you

1 call "Failure of Others." Is that right?

2 Mr. Banks, did you choose these section
3 heading titles yourself?

4 A. We wrote them together.

5 Q. In paragraph 7, you say that ROE launched
6 the CombiGuide in 2015; correct?

7 A. Correct.

8 Q. And it included a bone-mounted guide pinned
9 to the jawbone and could be used for full arch
10 surgery; right?

11 A. Correct, yes.

12 Q. And at the last sentence, you say despite
13 significant marketing efforts, the CombiGuide was
14 not a commercial success for ROE; is that right?

15 A. Yes.

16 Q. Can you tell me about those significant
17 marketing efforts? What were they?

18 A. We've always had a pretty good marketing
19 machine, you know, department. This would have been
20 courses, local courses, perhaps some regional
21 courses where we would teach how to use it, how it
22 functioned. We had a newsletter that went out to

1 6,000 dentists, customers of ours. It would have
2 been news -- you know, email blasts. It would have
3 been leaflets we put in cases we sent out; back
4 then, 100 to 200 cases a day, leaflets. Thinking we
5 probably did some online seminars. So we made a
6 pretty good marketing effort. We had a whole fee
7 schedule for surgical guides. This was on it. This
8 was one of our featured products. We had it on our
9 website. So I think we kind of went all in
10 marketing it.

11 Q. Did you have an online social media presence
12 for CombiGuide?

13 A. Oh, gosh, in 2015? There wasn't much social
14 media going on back then. Yeah. No. Not that I
15 know of, no.

16 Q. Yeah, let's take a look --

17 MR. FEIGELSON: Can you put up Exhibit 1031,
18 please.

19 (Exhibit 1031 was marked for
20 identification and is attached to the
21 transcript.)

22 Q. Mr. Banks, this is a printout of Facebook

1 posts from ROE Dental from in reverse chronological
2 order. It goes through 2018 going backwards. So if
3 we go to the back of this document, again, it's
4 reverse chronological. So on page 81?

5 MR. FEIGELSON: Can we go to page 81,
6 please.

7 Q. At the bottom of page 81 --

8 MR. FEIGELSON: Scroll down a little,
9 please. There.

10 Q. It goes on from page 81 to page 82. That
11 appears to be a post from February 16, 2016. Is
12 that about the CombiGuide?

13 A. That is -- well, it has a little word after
14 it, CombiGuide IP, which was a variation of it.

15 Q. Okay. Did this CombiGuide IP product have a
16 fixation base?

17 A. It -- this was -- no, this was a sequential
18 guide, which is the option to stackable.

19 Q. Okay. So a sequential guide is a series of
20 guides that would use the same -- the same pin
21 holes; is that right?

22 A. Yes, that's right. That's right.

1 Q. Does GuidedSMILE still have a sequential
2 guide?

3 A. No, we don't make sequential guides. No.

4 Q. So this is one Facebook post from
5 February 2016?

6 MR. FEIGELSON: And let's go to page 79,
7 please.

8 Q. At the very top of page 79, there you can
9 see -- is that the same CombiGuide IP product from a
10 March 29, 2016, post?

11 A. It looks like it, yeah.

12 Q. And let's go a few pages more, which is page
13 75 at the bottom.

14 You see this post from June 6, 2016?

15 A. I do.

16 Q. And is this post showing the use of the
17 CombiGuide product --

18 A. No.

19 Q. -- CombiGuide IP product?

20 A. Sorry. I don't believe so. I believe that
21 that is a -- just a simple fixated guide.

22 Q. Let's scroll down to the next page so you

1 can see the --

2 MR. FEIGELSON: The other direction, I'm
3 sorry, Ky. So on the top of page 76.

4 Q. Do you see there's a reference there to full
5 mouth reconstruction utilizing the CombiGuide IP for
6 \$299?

7 A. Okay. Yeah, yeah, yeah, I do. But even
8 then, it was still a sequential guide.

9 Q. Okay. So I can tell you you're welcome to
10 look for yourself, but these appear to be the only
11 three Facebook posts that make a reference to
12 CombiGuide.

13 Does that sound right to you?

14 A. Well, that's CombiGuide IP. And we did not
15 make many CombiGuide IPs. That's with a prosthesis
16 included. The rest of the CombiGuides, 300 of them
17 or so that we made from all of that advertising was
18 for bone reduction, implant replacement, and then
19 the doctor would do a denture conversion. You can
20 see this has a premanufactured prosthesis sitting on
21 top of it. And I think we made -- I don't know --
22 less than 20 of those. So our marketing was

1 CombiGuide without that IP on it.

2 Q. And yet, there's no Facebook posts for the
3 regular CombiGuide?

4 A. Interesting. Yeah. Interesting. But like
5 I said, I hardly did any social media stuff back
6 then.

7 Q. Did you publish any YouTube videos for the
8 CombiGuide?

9 A. I don't -- back then? I don't know. I
10 don't know.

11 Q. Would it surprise you to know that no
12 YouTube videos were found for the CombiGuide?

13 A. No, I guess not. I didn't use that platform
14 much. Then. Should have been more tech savvy, huh?

15 Q. I don't know.

16 Now, in your declaration you didn't provide
17 any sales information for the CombiGuide, did you?

18 A. I don't think so.

19 Q. And you didn't provide any volume
20 information in your declaration either?

21 A. No. No. Because I -- I do mention it, of
22 course, but yeah, I did not put that, no.

1 Q. Who developed the CombiGuide?

2 A. Would have been team effort, partly me, part
3 other people, the laboratory. I mean, I always work
4 in a little group of people, the lab developing
5 things. You know, we had people that were making
6 regular surgical guides. Then we would just develop
7 variations of it, you see.

8 Q. Did ROE apply for any patent on CombiGuide
9 technology?

10 A. No.

11 Q. Do you know why not?

12 A. At the time, it was not in our mind-set to
13 patent anything. I think at the -- at that time,
14 dental laboratories in general, I didn't see a lot
15 of things being patented. It probably just wasn't
16 in our mind-set to do that.

17 Q. And this would have been the 2016 time
18 frame?

19 A. Yeah, 2015, 2016, that time, yeah, during
20 development.

21 Q. Does ROE own any patents of its own?

22 A. No.

1 Q. Let's go back to the declaration, please.
2 Exhibit 2006.

3 Now, Mr. Banks, it's hard to tell from this
4 picture of the CombiGuide, but what are the
5 components there?

6 A. Just the two. The one on the bottom, the --
7 that's the bone reduction guide. And then the top
8 is the osteotomy guide.

9 Q. And so does the osteotomy guide there fit on
10 to the bone reduction guide?

11 A. Yeah, it clips into it, yeah.

12 Q. So it's not a sequential guide?

13 A. That is not a sequential, right. That's a
14 stackable osteo guide, right.

15 Q. So ROE is making the CombiGuide a stackable
16 guide system in 2016 -- or 2015?

17 A. I suppose this part of it is stackable. The
18 osteotomy and the bone reduction guide, yeah, one
19 stacking on top of the other, yeah.

20 Q. And what materials were these made from?

21 A. Med 610. A medical resin that the industry
22 uses for surgical guides.

1 Q. It's not made from metal? Did you have a
2 metal version?

3 A. No.

4 Q. Let's move on to paragraph 8. You notice --
5 I don't know how you're doing. Maybe we can take a
6 quick break?

7 A. I'm okay. I'm okay.

8 Q. Okay. I know we're getting into kind of a
9 big section of the declaration.

10 Let's look at paragraph 8 then. Okay,
11 Mr. Banks?

12 A. Sure.

13 Q. So in paragraph 8, you state that ROE
14 exclusively licensed CHROME GuidedSMILE from Watson
15 Guide LLC; right?

16 A. Correct.

17 Q. When did that license activity take place?

18 A. August 20- --

19 THE WITNESS: Marc?

20 MR. KARISH: I'm not answering the
21 questions. This is on you, Mr. Banks.

22 A. August 2016.

1 Q. And do you know what the license was
2 actually for, what technology was being licensed?

3 A. Well, at the time -- oh, gosh. I don't know
4 that I could regurgitate all that. I mean, we're
5 the contract manufacturer for his guide. You know,
6 that's the agreement, that we manufacture for
7 Watson.

8 Q. Did Watson have any issued patents on the
9 CHROME technology in August of 2016 at the time of
10 the license?

11 A. I believe his initial patents were a year
12 later. They were filed but clear -- what do you
13 call it -- approved a little more than a year later.
14 A little more than a year later. Thanks.

15 Q. You mentioned that Mr. Watson, Jay Watson,
16 chose the name CHROME?

17 A. Yes. Chose the name CHROME.

18 Q. And the reason for doing that was because
19 his fixation base and osteotomy guides were made
20 from a chrome-based metal; is that right?

21 A. Yeah. Catchy word too, but yeah, because of
22 the material.

1 Q. Was that material an important part of his
2 technology?

3 A. Well, I believe so, yeah. I think that part
4 of the claims are strength of material. It's
5 different than other products out there, you know,
6 in that it's -- it doesn't behave the same so it
7 needed some extra strength.

8 Q. What advantages did using the metal allow?

9 A. Well, it meant no flex first, which is
10 obviously key for predictability. But the other key
11 to the product is that it doesn't touch bone, it
12 floats labial to the bone. There's a gap. And in
13 order for that gap to -- in order for that gap to be
14 designed that way, we had to have a material that
15 was strong, that was stronger than plastic, that's
16 not resting on the bone and asking the bone for
17 support.

18 Q. Okay. Do you know if Watson had sold any
19 CHROME products prior to licensing with ROE in
20 August of 2016?

21 A. He did not.

22 Q. So is it fair to say that Watson and ROE

1 agreed to license his technology even though it had
2 not been used in practice?

3 A. That's -- yeah, that's correct.

4 MR. KARISH: I'm just gonna interpose a
5 belated objection that it misstates the prior
6 testimony and to the form of the question, but you
7 can proceed.

8 Q. Did Watson license his technology to anyone
9 else prior to licensing it to ROE?

10 A. He -- he had a partnership with another
11 laboratory before us. I don't know -- I don't have
12 all the details of that. No -- I don't know
13 anything about it other than he had a partnership
14 with another lab.

15 Q. And to your knowledge, he didn't have that
16 partnership when he entered into the license with
17 ROE?

18 A. I don't know that either. I don't know the
19 timelines on that.

20 Q. Well, you said that this was an exclusive
21 license that was entered into by ROE; correct?

22 A. Correct.

1 Q. So does that mean that no one else was
2 licensed at the time?

3 A. I don't think -- as a production facility, I
4 don't think so.

5 Q. In the last sentence of paragraph 8, you
6 state the CHROME GuidedSMILE product is marked with
7 a link to the patent numbers for the licensed Watson
8 Guide IP, LLC patents, including U.S. patent number
9 11,806,209; right?

10 A. Right.

11 Q. So first I want to clarify, is that a
12 particular GuidedSMILE product or is that the family
13 of GuidedSMILE products?

14 MR. KARISH: I'm sorry. Can you repeat the
15 question? I just -- I didn't quite get it. I
16 apologize.

17 MR. FEIGELSON: Yeah.

18 BY MR. FEIGELSON:

19 Q. So I asked I wanted to clarify that this
20 reference to the CHROME GuidedSMILE product being
21 marked, was that a reference to a particular
22 GuidedSMILE product, or is it a reference to the

1 family of GuidedSMILE products that you talked about
2 earlier?

3 A. It's a reference to the initial acceptance
4 to the actual patent.

5 Q. I'm asking about which products are being
6 marked with that patent.

7 A. Oh.

8 Q. Is it a specific product, or is it a family
9 of products?

10 A. Oh, I see. That is gonna be stamped on the
11 fixation base and the osteotomy guide, and it's --
12 and it would be stamped on the family of.

13 Q. How can you fit that number on the fixation
14 base?

15 A. How do we actually put it on there?

16 Q. Yeah.

17 A. Oh, well, we develop -- we design it in
18 software, and then there's a text function where you
19 just type on a keyboard and place it on there and it
20 makes an embossed, half-a-millimeter-deep engraving.

21 Q. And, again, when you talk about the family
22 of products, you're talking about the CHROME

1 GuidedSMILE Standard, the GuidedSMILE Natural, and
2 the GuidedSMILE Lite?

3 A. Correct, because they all used the -- those
4 two components, an osteotomy guide and a fixation
5 base.

6 Q. Is that marking elsewhere on the box for the
7 product, for example?

8 A. The box that we ship it out to the office,
9 it is not. It is not. Only on the product itself.

10 Q. And the -- specifically, the '209 patent is
11 included in that printing on the fixation basis and
12 osteotomy guide?

13 A. No. So we -- it's a link to a web page that
14 has the patent references.

15 Q. I see. So the patent references that are
16 there, do they identify which products are
17 associated with each particular patent?

18 A. No. I believe it just has the original and
19 then subsequent -- what do you call them -- not
20 amendments.

21 Q. Continuations?

22 A. Continuations, yeah. Thanks.

1 Q. Let's look at paragraph 9. And, again, you
2 talk about the fixation base in paragraph 9 can be
3 attached to a mouthpiece, which is called pin guide;
4 is that right?

5 A. Yes.

6 Q. The pin guide described here, is that a
7 dentate pin guide?

8 A. It is.

9 Q. There's also a version with an edentulous
10 pin guide?

11 A. That's correct.

12 MR. FEIGELSON: Let's put up Exhibit 1025,
13 please.

14 (Exhibit 1025 was marked for
15 identification and is attached to the
16 transcript.)

17 Q. Again, this is a printout from the
18 GuidedSMILE website, so I apologize that it doesn't
19 match what you would see on the screen.

20 Do you recognize this page from your
21 website?

22 A. I do.

1 Q. Did you write the text, the copy for these
2 pages?

3 A. It or a variation of it, yeah.

4 Q. Let's go back to the first page, please.
5 And the cover says "Components of CHROME"; right?
6 And underneath that, pin guide is the first
7 component that's listed; is that right?

8 A. Yes.

9 MR. FEIGELSON: And can we go to page 2.

10 Q. And the pin guide here is described as being
11 the first step of the CHROME GuidedSMILE surgical
12 process; right?

13 A. Yes.

14 Q. And the third bullet point there says that a
15 dentate pin guide, dentate pin guide seats on the
16 teeth, are verified via occlusal windows, and ensure
17 the surgery starts in the correct position; right?

18 A. Yes.

19 Q. Can you describe what you mean by "verified
20 via occlusal windows"?

21 A. Sure. You can see a -- well, we call it a
22 window, which is a void in the occlusal surface of

1 the pin guide -- sorry -- the tooth surface of the
2 pin guide. You will see the teeth protrude through
3 it. If you look at the bottom, the fourth image to
4 the right, right below the pin guide, you can see
5 the little teeth poking through the anterior, the
6 front of the mouth. That would indicate the guide
7 is seated. And those windows are placed around the
8 arch, sometimes two in the back, two in the front,
9 sometimes one in the front, depending on what teeth
10 we have available. There's rules about where the
11 pins, where these windows go, but those are the
12 windows.

13 Q. The next bullet says, With edentulous
14 patients, the pin will seat exactly like the denture
15 and verifies the bite and ultimate tooth position;
16 right?

17 A. Yes.

18 Q. Can you explain, first of all, what is an
19 edentulous patient?

20 A. Dentate is with teeth and edentulous is
21 without teeth. And people without teeth wear
22 dentures. And part of the process of making our

1 guide or any edentulous guide is taking that denture
2 and going through a process of digitizing it. Once
3 we have it digitized, then we use a software to
4 connect it to the fixation base. So then the
5 denture in surgery will seat -- sorry -- the pin
6 guide is gonna seat just like the denture on tissue,
7 and that's what delivers the fixation base because
8 they're attached together.

9 Q. So in the edentulous pin guide case, how do
10 you ensure that the pin guide is in the correct
11 position if there's not teeth there to hold it in
12 place?

13 A. Yeah. There's a couple different methods.
14 One is starting with a very good record of a denture
15 that fits very well. So in a lot of instances, you
16 have a denture that's really seating well, even has
17 suction, can fit really well. And another is the
18 doctor has to perform something to get the denture
19 to fit. So the denture, when it becomes a pin
20 guide, should be intimate with the tissue on the
21 palate, on the ridges on the tissue it should be.
22 But like we talked about this morning already, that

1 tissue guides can move around a little. And so
2 there are methods of making sure that the pin guide
3 is seated fully, putting a patient in occlusion,
4 biting --

5 Q. Occlusion means biting the teeth together?

6 A. The staff would hold the mandible and the
7 mandible apically forcing the patient to bite down.
8 And then during that process, the doctor would seat
9 the fixation base, drill and pin.

10 But you would also, on an edentulous -- we
11 don't mention it here and we should -- we do make a
12 window on the edentulous guide. We make a big
13 window in the palate so that when you put the pin
14 guide in -- first thing, before any surgery starts,
15 you put the pin guide in. You make a visual look in
16 the mouth to make sure that that pin guide is not
17 rocking or moving or there's any gaps between the
18 pin guide and the palate and the tissue, so you've
19 got a pretty good idea that this is going to seat
20 pretty intimately and then hopefully not move. Like
21 you said, there's no teeth to stabilize it, so it
22 takes some skill. But that's how it's used.

1 Q. Let's, while we're in this document, just go
2 to the next page about the fixation base. It's on
3 page 3. So from the bottom of page 2 to the top of
4 page 3, it talks about the fixation base.

5 It says it sets the foundation for the
6 surgery; right?

7 A. Right.

8 Q. And the second bullet point on page 3 says
9 it's unique in the industry because it's made of
10 CR/CO.

11 That's chromium cobalt; is that correct?

12 A. Correct.

13 Q. And that means rigidity and stability.

14 You talked about that a little earlier;
15 right? That's -- is that an important point of
16 the -- is that an important selling point of the
17 CHROME GuidedSMILE?

18 A. It is.

19 MR. KARISH: Objection. Form.

20 A. It's an important part of marketing, yeah.

21 Q. And the next bullet point says, The fixation
22 base is designed using our patent pending floating

1 guide technology, meaning the guide does not contact
2 bone, rather it's supported by divergent pin
3 placement; right? You referred to that advantage
4 earlier in your testimony as well; correct?

5 A. I did.

6 Q. And in that fixation base, correct me,
7 that's not in contact with the bone of the patient;
8 is that right?

9 A. Correct.

10 Q. And is that a point of distinction between
11 you and your competitors?

12 A. It is.

13 Q. In fact, is that a feature that you have
14 patents or that Watson has patents surrounding?

15 MR. KARISH: Objection. Calls for
16 speculation.

17 Q. You can answer.

18 MR. KARISH: You can answer it.

19 A. No, I know. Yeah, thanks.

20 That there's a gap between the fixation base
21 and the bone, honestly, I couldn't tell you if it's
22 said so like that in the patent. Sorry.

1 Q. Or that the fixation base is in front of the
2 teeth rather than behind it?

3 A. Well, I believe that that is, just not -- I
4 don't know about the floating part of it, the gap
5 part of it.

6 Q. I see.

7 MR. FEIGELSON: Let's go back to the
8 declaration, please. And we can look at
9 paragraph 10.

10 Q. And you say here that after the mouthpiece
11 or pin guide and fixation base are inserted and held
12 into place -- sorry. Start that over.

13 You say the patient's gums are cut and the
14 facial flap is created to expose the jawbone; right?

15 A. Yes.

16 Q. Then you say after, the mouthpiece or pin
17 guide and fixation base are inserted and held into
18 place while the fixation pins are placed in the jaw.
19 The mouthpiece is then removed and any remaining
20 teeth or dental fixtures are also removed; right?

21 A. Yes.

22 Q. And, again, in this example, that's a

1 dentate pin guide that you're showing in the
2 figure -- well, it would be in the figure above
3 paragraph 10?

4 A. Yes, dentate.

5 Q. And it's at that point, there's an osteotomy
6 guide or a drill guide that's mounted on to the
7 fixation base after the mouthpiece is removed?

8 A. Well, yes, and after -- but before -- but
9 after the other things you mentioned, teeth are
10 extracted.

11 Q. Bone reduction?

12 A. Yeah.

13 Q. Bone reduction means removing the teeth and
14 leveling out the bone so it's level with the
15 fixation base?

16 A. Correct.

17 Q. And at that point, there is an osteotomy
18 guide which is mounted on to the fixation base; is
19 that right?

20 A. Correct.

21 Q. And that's the picture that's after
22 paragraph 10 on page 5 of your declaration?

1 A. Yes.

2 Q. And this osteotomy guide is made from the
3 same metal; right?

4 A. It is.

5 Q. And the advantages of using the metal
6 osteotomy guide, you said it gives -- well, maybe
7 you didn't say for the osteotomy guide.

8 What are the advantages of using metal
9 there?

10 A. Essentially, it's the same benefits as a
11 fixation base. You don't have flexure and you don't
12 have any warping based on pressure during surgery.
13 That's the key feature of it inherent in plastic
14 guides. We make plastic guides, so pretty familiar
15 with the flexure and the issues that can cause from
16 it. But it also allows visibility. You can see
17 where your implants are going, your drills are
18 going, full visibility, irrigation. There are
19 multiple advantages to using metal over plastic.

20 MR. FEIGELSON: Mr. Banks, are you ready for
21 a break?

22 THE WITNESS: No, I'm okay.

1 MR. FEIGELSON: If you're all right, we'll
2 keep going.

3 MR. KARISH: Actually, do you mind if we
4 take five? I'd like to get some more coffee. I
5 hate to be selfish.

6 MR. FEIGELSON: We can take five. We can do
7 that. I just remind you, Mr. Banks, that you're
8 still under oath.

9 THE WITNESS: Oh, yeah.

10 (A short break was had.)

11 BY MR. FEIGELSON:

12 Q. Mr. Banks, what did you do on your break
13 just now for the last five minutes?

14 A. Went to the bathroom and we had a flood this
15 weekend so texted --

16 Q. I'm sorry about that.

17 A. Just texted the --

18 Q. Did you talk to Mr. Karish on your break?

19 A. Oh, yeah. Yeah. He just -- yeah.

20 Q. What did you discuss?

21 A. Just simple answers. That's all.

22 Q. Did you discuss the substance of your

1 testimony that you've given or that you're expected
2 to give?

3 A. No.

4 Q. Okay. Let's look at paragraph 14 of your
5 declaration. And you say the standard CHROME
6 GuidedSMILE kit includes -- also includes a tooth
7 model, bone model, and reduced bone model; right?

8 A. Yes.

9 Q. And you say the tooth model can be used
10 during the surgery to verify the fit of the
11 mouthpiece (pin guide) before it is used on the
12 patient. The bone model and reduced bone model can
13 be used during the bone reduction to assist in
14 visualizing the bone that needs to be removed;
15 right?

16 A. Yes.

17 Q. You then say the tooth model, bone model,
18 and reduced bone model are not a significant reason
19 why doctors choose to use CHROME GuidedSMILE; right?

20 A. I do.

21 Q. Mr. Banks, did you survey every doctor who
22 had used CHROME to know that this wasn't a reason --

1 a significant reason they chose to use CHROME?

2 A. No. No, I did not.

3 Q. Did you provide any survey data in your
4 declaration showing the factors that do or do not
5 influence a doctor's decision to use CHROME?

6 A. No. No.

7 Q. You then say, use Of CHROME GuidedSMILE is
8 driven by the efficiency and accuracy provided by
9 the series of guides used during surgery; right?

10 A. Yes.

11 Q. And you would agree that the use of a metal
12 fixation base aids in that efficiency and accuracy?

13 A. Yes.

14 Q. Is there any particular guide that's more
15 important than another in influencing a doctor's
16 decision to choose CHROME?

17 MR. KARISH: Objection. Form. Calls for
18 speculation.

19 A. I guess I didn't survey that either.

20 Q. Well, you say pretty definitively that the
21 tooth model, bone model, and reduced model are not a
22 significant reason why doctors choose to use CHROME;

1 right?

2 A. I do.

3 Q. You underline the word "not" even; right?

4 A. Yeah. It's kind of comical. Should I
5 answer why?

6 Q. Please.

7 A. I just -- I go to countless -- I say
8 countless. I go to a lot of surgeries and I'm
9 always amazed that those models are sitting in the
10 original bag, all zipped up, never used. They just
11 sit there. And in my opinion, they're a good tool.
12 You know? They help you guide what's gonna happen
13 in the surgery, but they sit there in their little
14 zipped baggy. So that's how I know that they're not
15 using them, unfortunately.

16 Q. So I'm gonna ask my question again.

17 A. Yeah.

18 Q. Is there any other guide in the kit that is
19 more important than another in influencing a
20 doctor's decision to choose CHROME GuidedSMILE?

21 A. I don't know that we call them all guides
22 but I would say that the -- that the pin guide, the

1 fixation base would be the most significant parts of
2 it, how you get started, how you install our
3 product.

4 Q. And that would be both for the dentate pin
5 guide and the edentulous pin guide?

6 A. Yeah.

7 Q. Now, GuidedSMILE, you mentioned they sell a
8 version of GuidedSMILE that does not use a metal
9 fixation base or osteotomy guide; correct?

10 A. We do.

11 Q. That's called GuidedSMILE Lite?

12 A. It is.

13 Q. Let's use Exhibit 1026, please.

14 (Exhibit 1026 was marked for
15 identification and is attached to the
16 transcript.)

17 Q. Again, this is another printout from the
18 GuidedSMILE website.

19 You recognize this, the contents of this
20 Exhibit 1026?

21 A. Yeah, so far.

22 MR. FEIGELSON: We can scroll down.

1 Q. It's only three pages.

2 A. Yes.

3 Q. And to confirm, the GuidedSMILE Lite is made
4 from a resin material?

5 A. Correct.

6 Q. Fixation base and the osteotomy guide;
7 right?

8 A. Correct.

9 Q. Is that as strong as the metal version?

10 A. No.

11 Q. Are there any other differences in the
12 operation between GuidedSMILE Lite and the metal
13 version of GuidedSMILE?

14 A. There are.

15 Q. Can you explain those?

16 A. The -- I'm just trying to think if there's
17 any other than the way they assemble. Metal --
18 standard metal uses a CHROME lock, a plunger system,
19 a mechanism that's locked into the fixation base;
20 and with Lite, it's a pin connection, removable
21 pins. Stacking pins, we call them.

22 MR. KARISH: Maybe it would be helpful to

1 see the next page of the exhibit. I don't know.
2 I'm just suggesting because we're looking at a blank
3 page.

4 A. I can explain more. The -- yeah, the --
5 it's kind of hard to see with the colors, but in
6 that case, you see there is six heads and the two
7 terminal, the ones on the end are little bit more of
8 a bluish color and the one, sort of, in the middle
9 is a little more bluish-purplish color. Those are
10 the stacking pins. And the ones that don't have the
11 blue heads, those are the fixation pins. Yeah.

12 Q. And the stack pins are used to mount
13 subsequent guides on to the fixation base; is that
14 right?

15 A. Correct.

16 Q. Okay. And the other pins are inserted into
17 drilled holes in the bone of the patient; correct?

18 A. Yes.

19 Q. Now, the GuidedSMILE Lite was sold by ROE
20 before spinning off GuidedSMILE in 2024; is that
21 right?

22 A. Oh, yeah. Yes, I believe it was.

1 MR. FEIGELSON: Let's bring up Exhibit 1027,
2 please.

3 (Exhibit 1027 was marked for
4 identification and is attached to the
5 transcript.)

6 MR. FEIGELSON: We're gonna have to blow
7 this up because, again, printing from the website
8 was -- it cut off the pages unless it was small.

9 Q. But this is a printout from the ROE Dental
10 Labs website.

11 Does this look familiar to you?

12 A. Yes.

13 Q. And this describes GuidedSMILE Lite product;
14 right?

15 A. It does.

16 Q. Now, there are two patient case studies that
17 are shown here, if we scroll down?

18 MR. FEIGELSON: Can we -- right -- yeah.
19 Thank you. Right there. So straddling pages 1
20 and 2.

21 Q. There are two patient case studies.

22 Do you see those?

1 A. I do.

2 Q. And the first one is labeled "Patient Case
3 Study 1." And the first line of that, which is
4 small, but we can blow up and see that.

5 MR. FEIGELSON: Yes, right there, please.

6 Q. And it says, The fixation base is delivered
7 via the pin guide and remains intact during the
8 entire procedure; correct?

9 A. Yes, correct.

10 Q. And that's really shown in the second photo
11 at the bottom of that page; right? Is that what I'm
12 looking at, the dentate pin guide delivering the
13 fixation base?

14 A. Correct.

15 Q. Let's go down to the "Patient Case Study 2."
16 And that first line says, The pin guide delivers the
17 holes for the subsequent components.

18 Do you see that?

19 A. I do.

20 Q. Does that mean that the pin guide is not
21 attached to the fixation base in this case?

22 A. Yeah, that was a sequential guide.

1 Q. And that's what's shown in the third picture
2 underneath the "Patient Case Study 2" bullet point;
3 is that right?

4 A. Correct.

5 Q. So there was a version of GuidedSMILE that
6 did not have a fixation base that was separate --
7 I'm sorry -- that was attached to the pin guide; is
8 that right?

9 A. Correct.

10 Q. So I think there might be an even earlier
11 version of the ROE product literature showing this.

12 MR. FEIGELSON: Can we go to Exhibit 1029,
13 please.

14 (Exhibit 1029 was marked for
15 identification and is attached to the
16 transcript.)

17 Q. Mr. Banks, Exhibit 1029 is a brochure or
18 flyer from ROE.

19 Do you recognize this?

20 A. That is from ROE. I haven't seen this in a
21 long time, but yes.

22 Q. It says "GuidedSMILE Lite" at the top and it

1 has prices for what it would cost for the system;
2 correct?

3 A. Yes.

4 Q. And the first picture on the right hand says
5 pin guide; is that right?

6 A. Yes.

7 Q. And that's a dentate pin guide being used to
8 locate holes that are later used --

9 A. Yes.

10 Q. -- for pinhole subsequent guides; correct?

11 A. Correct.

12 Q. And I just want to put on, I blew up one of
13 the pictures from the previous exhibit.

14 MR. FEIGELSON: Can we put up Exhibit 1028,
15 please.

16 (Exhibit 1028 was marked for
17 identification and is attached to the
18 transcript.)

19 Q. This is from the previous exhibit we saw
20 with the "Patient Case Study 2," the third picture.

21 Again, is this a dentate pin guide that's
22 being used to locate holes to be drilled then for

1 the subsequent --

2 A. Yes.

3 (Indecipherable crosstalk.)

4 Q. -- (Inaudible.)

5 A. Yes.

6 MR. FEIGELSON: Let's go back to the
7 declaration, please, Exhibit 2006. And we can move
8 to paragraph 15.

9 Q. You say here, With the same marketing effort
10 used to promote the CombiGuide, CHROME GuidedSMILE
11 was immediately a successful product for ROE.

12 So you say "with the same marketing effort";
13 correct, Mr. Banks?

14 A. I would say initially.

15 Q. Do you know how many Facebook posts ROE
16 published for CHROME GuidedSMILE in 2017?

17 A. I don't.

18 MR. FEIGELSON: So let's bring up
19 Exhibit 1031, please.

20 Q. We looked at this exhibit before. I'm not
21 gonna go through this, but I will represent, by my
22 count -- you're welcome to count on your own -- that

1 in 2017, there were eight Facebook posts regarding
2 the CHROME GuidedSMILE product.

3 Does that sound right to you?

4 A. I don't know.

5 Q. And in 2018, I lost count, but by May 3rd
6 alone, there were 11 posts about CHROME GuidedSMILE.

7 Does that sound right?

8 A. Sorry. I don't know.

9 Q. Earlier, we saw there were only two Facebook
10 posts -- two or three Facebook posts for the
11 CombiGuide IP product; right?

12 A. Uh-huh.

13 Q. Do you consider that to be the same
14 marketing effort that was used for CombiGuide that
15 was used for this initial release of the CHROME
16 GuidedSMILE?

17 A. I mean, as I mentioned before, it's a
18 platform that we did not -- that I recall, we didn't
19 use that platform much at all, maybe even before
20 this. I don't know if I can give you an answer of
21 comparison. The GuidedSMILE came much later,
22 probably did more social media posts then.

1 Q. So there was an avenue of marketing that you
2 were using for the CHROME GuidedSMILE that you were
3 not using for the CombiGuide?

4 A. Or just more of it. I mean, we -- we became
5 pretty excited about this GuidedSMILE product, you
6 know, after -- after getting involved. And, you
7 know, after we became the manufacturer of it, it was
8 a better product.

9 Q. What about YouTube videos? Have you made
10 any YouTube videos for the CHROME GuidedSMILE
11 product?

12 A. Many.

13 Q. And did you make any in 2017?

14 A. I don't know.

15 Q. Well, let's bring up Exhibit 1032.

16 (Exhibit 1032 was marked for
17 identification and is attached to the
18 transcript.)

19 Q. This is a printout of videos in, again,
20 reverse chronological order that were published by
21 ROE Dental Labs. And if we can turn to page 3,
22 please, and we can see right there on the third line

1 down, there's a CHROME GuidedSMILE surgical steps
2 video. Next to that is GuidedSMILE CHROME live
3 surgery.

4 Do you see those?

5 A. I do.

6 Q. And I'll represent the dates listed for
7 those -- you can confirm yourself -- are April and
8 June of 2017.

9 Does that sound right to you?

10 A. Sure, yeah.

11 Q. Do you know if you made these videos
12 yourself?

13 A. I'd have to push play to see if my voice is
14 on there.

15 Q. Well, this is just a printout so we can't do
16 that now.

17 A. Yeah. My -- it would have been me in almost
18 all of the early videos, yes, voice over the video.

19 Q. So, again, I will represent that I counted
20 11 videos that were made for the CHROME GuidedSMILE
21 in 2017.

22 Does that sound right to you approximately?

1 A. I don't know. Could be.

2 Q. And I didn't look at 2018, but there's
3 67 pages of YouTube videos here that go through
4 2018.

5 A. Hmm.

6 Q. And, again, you're not aware of any YouTube
7 videos at all for the CombiGuide product prior to
8 this; correct?

9 A. Not that I know of, no. I don't know how
10 much YouTube activity there was more than eight
11 years ago.

12 Q. Well, if you look also, there are some
13 videos -- go back to page 1 -- going back 15 years
14 or 14 years on the next page that ROE Dental Lab was
15 publishing on YouTube.

16 A. Yeah.

17 Q. Right?

18 A. Yeah, dentures, crowns, little on CT, right.

19 Q. But there were none on the CombiGuide at
20 that time; right?

21 A. Don't see any.

22 Q. We can go back to the declaration, please.

1 Mr. Banks, you're aware that GuidedSMILE is
2 currently involved in a patent litigation with 3D
3 Diagnostix?

4 A. Yes.

5 Q. And you're aware that there are three
6 patents that are being asserted in that litigation?

7 A. Don't recall three. Thought there were two,
8 but okay.

9 Q. The '016 patent, the '755 patent, and the
10 '209 patent.

11 Does that sound familiar to you?

12 A. No. Sorry.

13 Q. Prior to the litigation with 3D Diagnostix,
14 ROE had asserted one or two of those patents against
15 other parties; correct?

16 A. Uh-huh.

17 Q. I'm sorry? Can you give a --

18 A. I don't know. I don't know.

19 Q. Are you aware of a litigation involving the
20 '016 and/or the '755 patents against Global
21 Management System?

22 A. I don't know by that name.

1 Q. Dr. Nowak?

2 A. Oh, okay. Yes. Yes.

3 Q. What about a litigation brought against
4 Absolute Dental Services?

5 A. Yes.

6 Q. And both of those cases were filed in around
7 July of 2022; is that right?

8 A. I don't know the dates.

9 Q. Both of those cases settled in the following
10 summer of 2023; is that right?

11 A. Don't know the dates.

12 Q. Does that sound about right to you, about
13 two years ago?

14 A. Sounds about right.

15 Q. And both of those -- both of those entities
16 that were sued by ROE, they took a license on those
17 Watson patents at the time; is that right?

18 A. Yes.

19 Q. Now, the '209 patent that's at issue in this
20 proceeding did not issue until November of 2023; is
21 that right?

22 A. I don't know that date.

1 Q. I'll represent that's what it says on the
2 face of the patent.

3 A. Okay.

4 Q. We can put it up if you want.

5 So the '209 patent itself could not have
6 been included in the licenses with Global Management
7 System and Absolute Dental Services; right?

8 MR. KARISH: Objection. Calls for
9 speculation. Objection. Sorry. Calls for
10 speculation.

11 A. I don't know the details of that.

12 Q. Let's look at paragraph 17. This is under a
13 section entitled "Praise"; right?

14 A. Yes.

15 Q. And you state that, After launching CHROME
16 GuidedSMILE, ROE started to receive praise for the
17 product. Specifically, Dentistry Today, the
18 nation's clinical news magazine for dentists, gave
19 CHROME GuidedSMILE 11 awards across five categories;
20 correct? That's what you say?

21 A. Correct.

22 Q. Then at the top of the next page, you have

1 five bullet points listing these awards, these 11
2 awards; is that right?

3 A. Yes.

4 Q. What is Dentistry Today magazine?

5 A. It is a national publication, dental only.

6 Q. Does it publish product comparisons like
7 Consumer Reports?

8 A. Yeah, they have multiple throughout the
9 year. One of them would do that, product
10 comparisons.

11 Q. But the rest of them don't?

12 A. I don't know all the details of what they
13 do. Yeah.

14 Q. Is Dentistry Today a refereed journal?

15 A. What's a referee journal?

16 Q. Do scholars sent articles for submission
17 that are reviewed by peers for accuracy and
18 importance?

19 MR. KARISH: Objection. Calls for
20 speculation.

21 A. My understanding is that Dentistry Today
22 uses a peer-review editor, peer-review board before

1 articles are accepted and published, yes.

2 Q. How much does an annual subscription cost
3 for Dentistry Today?

4 A. I -- I believe it's a free publication to
5 the consumer.

6 Q. And the consumer is dentists, dental
7 professionals?

8 A. Dentists, anyone -- I believe anyone who
9 signs up on their page.

10 Q. In fact, Dentistry Today is primarily an
11 advertising tool; isn't that right?

12 MR. KARISH: Objection.

13 A. I don't know about primary. I don't know
14 about primary.

15 Q. Mr. Banks, you didn't identify any
16 particular issues of Dentistry Today where these
17 awards were listed, did you?

18 A. No.

19 MR. FEIGELSON: Let's bring up Exhibit 1035,
20 please.

21 ///

22 ///

1 (Exhibit 1035 was marked for
2 identification and is attached to the
3 transcript.)

4 Q. This is a printout from the June 2023
5 Dentistry Today. We have the cover.

6 Do you see that in front of you?

7 A. I do.

8 MR. FEIGELSON: Let's turn to page 3,
9 please.

10 Q. On the bottom right, lower right corner,
11 there's a blurb there about the CHROME GuidedSMILE;
12 correct?

13 A. Yes.

14 MR. FEIGELSON: Can we blow that up some,
15 see if we can read it.

16 Q. Mr. Banks, the blurb says, it refers to
17 GuidedSMILE as, quote, the ultimate all-on-X
18 surgical/restorative guide, offering unique
19 attributes to superior plastic systems; correct?

20 A. It does.

21 Q. And there's an instruction at the bottom of
22 the page. It says, Use FREEinfo card, circle 60.

1 Do you see that?

2 A. I do.

3 Q. Is that a way that a reader could obtain
4 more information about the product?

5 A. I believe so. I believe so, yeah.

6 Q. I remember seeing those in magazines growing
7 up. I wasn't sure they were still being used.

8 Is there a card, like, with numbers to be
9 circled that's included with this magazine?

10 A. I don't know. I don't know what happens
11 after you click it.

12 Q. Did ROE pay for this blurb to be included in
13 Dentistry Today? It's in the innovation section.
14 We can go out and we can see that.

15 Did ROE pay for this blurb to be included in
16 this innovation section?

17 A. That I don't know.

18 Q. Do you know who wrote the copy, the text
19 that's used in this blurb?

20 A. I believe I wrote part of it and then our
21 marketing department.

22 Q. So those are your -- ROE's words, they're

1 not Dentistry Today's word?

2 A. Not Dentistry Today words, I don't believe,
3 so.

4 MR. FEIGELSON: Can you scroll up, please, a
5 little bit and we can see this is in the -- I
6 believe it's the innovations section.

7 Q. Correct?

8 A. Yes.

9 Q. There's an innovations section that's
10 included in every issue of Dentistry Today, to your
11 knowledge?

12 A. I don't know.

13 MR. FEIGELSON: Let's go to Exhibit 1036,
14 please.

15 (Exhibit 1036 was marked for
16 identification and is attached to the
17 transcript.)

18 Q. Exhibit 1036 that you're looking at is the
19 cover of the January-February 2024 magazine.

20 Do you see that?

21 A. I do.

22 MR. FEIGELSON: And go to the next page,

1 please, page 2.

2 Q. It says, "Eighth Annual Top Innovative
3 Products"; right?

4 A. Yes.

5 Q. If we go to page 3, we see, again, at the
6 bottom, CHROME GuidedSMILE is featured there;
7 correct?

8 A. Correct.

9 Q. And it's described using the same language
10 that we saw in that previous June 2023
11 advertisement; right?

12 A. Yeah, appears so.

13 Q. It says, The ultimate all-on-X
14 surgical/restorative guide, offering unique
15 attributes superior to plastic systems?

16 A. Yes.

17 Q. Is this what you were referring to in
18 paragraph 17 of your declaration as a "Top
19 Innovative Products Winner"?

20 A. I don't know that it relates back to this --
21 to this exact page, this post here. I don't know.

22 MR. FEIGELSON: Can we go to the top of this

1 exhibit, please. Go to page 2.

2 Q. This section is called "Top Innovative
3 Products"; correct?

4 A. Yes.

5 Q. And in your declaration, you made a
6 reference that the CHROME GuidedSMILE was a "Top
7 Innovative Product Winner" in 2023 and 2024; right?

8 A. Correct.

9 Q. Is this what you were referring to?

10 A. Then yes, I believe so.

11 Q. And if you read about --

12 MR. FEIGELSON: Can we zoom in a little bit
13 on the description of top innovative product.

14 Q. Do you see it says, Dentistry Today's Eighth
15 Annual Top Innovative Products are selected based on
16 lead generation. These products appeared in our
17 innovations section throughout the past year.

18 Right?

19 A. Uh-huh. Yes.

20 Q. What did they mean by "lead generation"?

21 MR. KARISH: Just interpose an objection.
22 Calls for speculation.

1 You can answer, Alan, if you know.

2 A. Yeah, my understanding, Aaron, is that
3 Dentistry Today, they don't disclose exactly how
4 they pick products and companies and top this and
5 top that. They actually say they don't. But there
6 is -- there is an indication from them that they
7 pick these products by committee for impact in the
8 marketplace, for innovative significance, but then
9 also on this lead, which is how many -- I'm
10 presuming how many times it was clicked through to
11 see the level of interest.

12 Q. Right. In fact, lead generation is the only
13 criterion which is listed on this page.

14 A. I know. I know. Yeah.

15 Q. There's no mention here about any editorial
16 choice or anything like that; correct?

17 A. No. But I remember looking this up before,
18 and they give some other criteria besides just
19 click-through. Now, perhaps that was not
20 innovative. You can see there's other awards that
21 we won as well, and so they have -- I don't know.
22 Obviously, they put lead generation here as their

1 one, but they apparently have other criteria that
2 they allude to.

3 Q. In your declaration, you didn't list those
4 criteria on which those awards were based; right?

5 A. Did not.

6 MR. FEIGELSON: Let's go to Exhibit 1034.

7 (Exhibit 1034 was marked for
8 identification and is attached to the
9 transcript.)

10 Q. This is the March 2023 edition of Dentistry
11 Today magazine.

12 That's the cover you're looking at; right?

13 A. Yes.

14 Q. And if we go to page 3, in the Spotlight
15 section under Innovations, do you see that?

16 A. Yes.

17 Q. Again, we have the CHROME GuidedSMILE
18 product being featured there; right?

19 A. Yes.

20 Q. But now it's in a Spotlight section; right?

21 A. Yes.

22 Q. And it uses the same text that we saw in the

1 previous two examples with, The ultimate all-on-X
2 surgical/restorative guide, offering unique
3 attributes superior to plastic systems; right?

4 A. Yes.

5 Q. Is this what you referred to in your
6 declaration as an "Innovations Spotlight Winner"?

7 A. I don't know. It seems so. There's the
8 words "innovation" and "spotlight."

9 Q. Did ROE pay to have this blurb featured in
10 the Spotlight section of Dentistry Today?

11 A. I don't -- I don't believe so.

12 Q. To the immediate right of the Spotlight
13 section, there's a half-page advertisement for the
14 Grammetry products.

15 Do you see that?

16 A. Yes.

17 Q. That's a ROE product; right?

18 A. It is, yes.

19 Q. And ROE, I assume, paid for that
20 advertisement; correct?

21 A. I don't know.

22 Q. Was ROE's purchase of the big Grammetry ad

1 linked to the featuring of CHROME as a "spotlighted
2 product in Dentistry Today"?

3 A. I don't know. They're different products.

4 Q. Then how was it determined by Dentistry
5 Today that it would spotlight CHROME?

6 MR. KARISH: Objection. Calls for
7 speculation.

8 A. Yeah, I don't know.

9 Q. This really wasn't an award where CHROME was
10 a winner; correct?

11 MR. KARISH: Objection. Form.

12 A. I -- I don't know how they announce it. I
13 don't know what -- I don't know. They -- I -- I
14 believe they inform us that based on whatever their
15 criteria is, that GuidedSMILE wins an innovation
16 award.

17 Q. But the word "award" is not used here, is
18 it?

19 A. It is not used here.

20 Q. And it uses the same text that appeared in
21 the previous two times that this CHROME GuidedSMILE
22 was featured, using the text copy that you wrote or

1 your marketing team wrote; correct?

2 A. Yeah. Yeah.

3 Q. Do you have any interaction with Dentistry
4 Today in the placement of advertisements on behalf
5 of ROE or GuidedSMILE?

6 A. I do not.

7 Q. Do you have a marketing team that works for
8 you?

9 A. I do.

10 Q. Do they work with Dentistry Today for the
11 placement of advertisements?

12 A. They do.

13 Q. And other marketing that Dentistry Today
14 might provide for ROE or GuidedSMILE?

15 A. Yes.

16 MR. FEIGELSON: Let's go to Exhibit 1037,
17 please.

18 (Exhibit 1037 was marked for
19 identification and is attached to the
20 transcript.)

21 Q. This is the May 2023 edition of Dentistry
22 Today that you're looking at; correct?

1 A. Yes.

2 MR. FEIGELSON: Let's go to page 2, please.

3 Q. There's a Spotlight section here.

4 MR. FEIGELSON: Can we zoom in on that.

5 Q. This is for Glidewell Digital Treatment
6 Planning Services; is that right?

7 A. Yes.

8 Q. And, in fact, this system was -- this was a
9 featured system that -- this was a stackable guide
10 system that competed with CHROME GuidedSMILE;
11 correct?

12 A. Competes with, yes.

13 Q. And it received an Innovation Spotlight only
14 two months after CHROME received a Spotlight;
15 correct?

16 A. Yes, appears so.

17 MR. FEIGELSON: Let's look at the last page.
18 No, the top of that page, please.

19 Q. It says "11th Annual Top 25
20 Aesthetic/Restorative Products"; right?

21 A. Yes.

22 Q. And if we scroll down a little bit?

1 MR. FEIGELSON: I'm sorry. It's on page 4.

2 Q. At the bottom of page 4, there, again, is
3 CHROME GuidedSMILE being featured; correct?

4 A. It is.

5 Q. And it's using the same text that was used
6 in the previous times we've seen the CHROME
7 GuidedSMILE featured in Dentistry Today; correct?

8 A. Yes.

9 Q. Mr. Banks, is this what you were referring
10 to in paragraph 17 of your declaration as CHROME
11 GuidedSMILE being a "Top Aesthetic/Restorative
12 Product Winner"?

13 A. I believe so.

14 Q. And how was it determined that CHROME was a
15 top aesthetic/restorative product?

16 MR. KARISH: Objection.

17 A. I don't know how they --

18 MR. KARISH: Let me just object. Calls for
19 speculation.

20 A. Yeah, you know, in the title of this page
21 too, it says lead generation. That seems to be the
22 way they claim it, which is --

1 Q. Okay.

2 MR. FEIGELSON: Can we go to the top of
3 page 2, please. I'm sorry. Top of page 3. Right.

4 Q. So it says the -- they're selected on the
5 basis of lead generation; correct?

6 A. Yeah.

7 Q. So in other words, however many people
8 either click through or circled number whatever it
9 was on a card and sent it back, that's gonna
10 determine whether a product makes it onto this
11 stage; right?

12 MR. KARISH: Objection. Calls for
13 speculation.

14 A. I can only presume what their -- what their
15 declaration is here, lead generation. No other
16 facts.

17 MR. FEIGELSON: Let's look at Exhibit 1033.

18 (Exhibit 1033 was marked for
19 identification and is attached to the
20 transcript.)

21 Q. Exhibit 1033 is, you're looking at the first
22 page of the July-August 2023 edition of Dentistry

1 Today; right?

2 A. Yes.

3 Q. It says "Top 100 Products" on the front?

4 A. Yes.

5 MR. FEIGELSON: Let's go to page 3.

6 Q. There we have a feature of CHROME

7 GuidedSMILE again; right?

8 A. Yes.

9 Q. The text is a little different this time.

10 If you look at the second sentence of that

11 paragraph, it says, It delivers tooth- or

12 tissue-anchored bite verification, metal-guided bone

13 reduction, secure site drilling, and accurate

14 provisionalization.

15 Do you see that?

16 A. I do.

17 Q. What does it mean, delivering tooth- or

18 tissue-anchored bite verification?

19 A. Well, that would be the pin guide either

20 resting on teeth and/or tissue.

21 Q. So either the dentate pin guide or the

22 edentulous pin guide?

1 A. Correct.

2 Q. And how was it determined that CHROME
3 GuidedSMILE should be listed in this "Top 100
4 Products" section in Dentistry Today?

5 A. I don't know about the --

6 MR. KARISH: Objection. Calls for
7 speculation.

8 A. Yeah, I don't know.

9 MR. FEIGELSON: Let's go to the top of
10 page 2, please.

11 Q. You see its it says "Top 100 Products"?

12 A. Uh-huh.

13 Q. It says they're selected based on lead
14 generation; correct?

15 A. Correct.

16 Q. It says, All products appeared in Dentistry
17 Today at some point in the last year and are in no
18 particular order; right?

19 A. Yes.

20 Q. Once again, it's solely based on lead
21 generation or click-throughs or circling a card;
22 right?

1 MR. KARISH: Objection. Form and calls for
2 speculation.

3 A. I don't know if that's their only criteria.

4 Q. Is this what you referred to as a "Top 100
5 Product Winner" in your declaration on page 17?

6 A. I believe so.

7 MR. FEIGELSON: Can we go to page 4, please.

8 Q. So page 4 is a full-page ad in Dentistry
9 Today for CHROME GuidedSMILE; right?

10 A. Yes.

11 Q. So that appears on the next page that
12 follows the feature of the product; right?

13 A. Yes.

14 Q. There's a few bullet points on the right.
15 One says, Smaller guides for greater visibility and
16 better irrigation. Yeah? Do you see that?

17 A. I do.

18 Q. Is that a reference to the fixation base
19 only being in front of the teeth?

20 A. That would be a reference to the osteotomy
21 guide.

22 Q. And what does it mean, stronger guide versus

1 cervical resin guide, up to 20X stronger?

2 A. It would be just metal versus plastic.

3 Q. For the fixation base, the osteotomy guide,
4 or both?

5 A. Both.

6 Q. Let's go back to your declaration, please.

7 MR. FEIGELSON: Let's scroll down to the
8 next section beginning at paragraph 18 under a
9 section you call "Copying."

10 Q. And you make a statement on the next page,
11 page 11, that, After CHROME GuidedSMILE was
12 introduced, 3D Diagnostix changed its product to
13 include a mouthpiece that attached to the fixation
14 base to locate the fixation base, as shown below.

15 Do you see that?

16 A. I see that.

17 Q. You base that from the video that you're
18 referring to from the link above?

19 A. That's what my reference is, yeah, the
20 video.

21 Q. Did the video indicate that there was a
22 change made?

1 A. Well, it indicates that there's a
2 progression of types of guides.

3 Q. It indicates that there are different types
4 of guides; correct?

5 A. Yeah, different, yeah, yeah, different
6 pinning systems, different installation systems,
7 like an evolution of it.

8 Q. Did the video indicate when any change was
9 made?

10 A. I don't believe dates were on it.

11 Q. Did the video show a 3D Diagnostix product
12 using a floating fixation base?

13 A. Tissue only -- oh, a floating fixation base,
14 no, I don't believe so.

15 Q. Did the video show a 3D Diagnostix product
16 using a metal fixation base or osteotomy guide?

17 A. I don't believe so.

18 Q. Does the 3D Diagnostix product use locking
19 pins to attach components together like you
20 described with the CHROME product?

21 A. I believe they have two mechanisms, two
22 different mechanisms, from what I understand.

1 Q. And one of those we're looking at on this
2 page are actually magnets that are used?

3 A. Correct.

4 Q. To hold together; right?

5 A. Yes.

6 Q. Does CHROME GuidedSMILE use magnets?

7 A. No.

8 MR. FEIGELSON: I don't have a lot left.
9 Let's take a break and I can come back for the last
10 few minutes, I think.

11 (A short break was had.)

12 BY MR. FEIGELSON:

13 Q. Mr. Banks, I'd like to share with you -- you
14 said that you had made many videos for CHROME
15 GuidedSMILE over the last several years; correct?

16 A. Correct.

17 Q. I want to share one of those videos with
18 you.

19 MR. FEIGELSON: Can we put up Exhibit 1030,
20 please, 1030.

21 (Exhibit 1030 was marked for
22 identification and is attached to the

1 transcript.)

2 Q. So this is a printout from the YouTube page
3 from a video that was uploaded on April 20, 2020,
4 called "Pin Guide & Fixation Base - CHROME Live
5 Webinar Series (2/10)"

6 Do you see that?

7 A. I do.

8 Q. So I don't know if you remember this
9 particular video or not, if it rings a bell just by
10 the title, but I just want to play a little snippet
11 from it. It's about an hour long. I just want to
12 play about two minutes from it. Okay?

13 A. Okay.

14 MR. FEIGELSON: Ky, can I share my screen?

15 REMOTE TECHNICIAN: Yep, you're good to
16 share your screen now.

17 MR. FEIGELSON: Is it being shared.

18 A. Looks like it.

19 MR. KARISH: No video yet.

20 MR. FEIGELSON: That was just the intro.

21 You saw that? I'm going to go about 6 minutes and
22 50 seconds in and we'll play it for about two

1 minutes.

2 (A video was played.)

3 MR. FEIGELSON: I'll stop sharing my screen
4 now. We can go back to the Exhibit 1030.

5 BY MR. FEIGELSON:

6 Q. Mr. Banks, do you still believe that the
7 flowing guide technology is significant to the
8 CHROME system?

9 A. I do.

10 Q. And you believe that it sets CHROME
11 GuidedSMILE apart from competitor systems?

12 A. One of the things that does, yes.

13 Q. It's an important aspect of the CHROME
14 system?

15 A. Yes.

16 Q. And how -- who was the intended audience for
17 this YouTube video?

18 A. That was, I believe it was for dentists,
19 this webinar series we did. We marketed dentists.

20 Q. Dentists could sign up to watch these
21 videos? They were given live?

22 A. I think at the time --

1 (Unreportable crosstalk.)

2 A. -- I think at the time we were doing live as
3 opposed to pre-recorded, yeah.

4 Q. Did you charge dentists to attend these live
5 webinars?

6 A. No.

7 MR. FEIGELSON: Let's go to the next page of
8 this exhibit, so page 2, that was the title from the
9 video we saw. Go to page 3, please.

10 Q. This is from -- this page 3 is a screenshot
11 from about 20 minutes 43 seconds into the video. It
12 talks about a pin guide, and it says, Dentate fits
13 the model, will fit the teeth, and edentulous fits
14 the patient like a denture, it's a duplicate of the
15 denture. Right? You spoke about these two
16 different types of pin guides earlier; correct?

17 A. Yes.

18 Q. Let's go to the next page. So you had a
19 section in the video regarding the edentulous pin
20 guide and that began at about 29 minutes 7 seconds.
21 And we can go to the next page, which is page 5 of
22 the exhibit. This is a screenshot from about

1 30 minutes into the video.

2 Can you explain what we're looking at in the
3 screenshot, Mr. Banks?

4 A. That's the mandibular pin guide.

5 Q. And what does that mean when you say
6 mandibular pin guide?

7 A. Lower, for the lower jaw as opposed to the
8 upper jaw.

9 Q. This is the edentulous pin guide; correct?

10 A. Yes.

11 Q. So is this a copy of the patient's denture;
12 is that right?

13 A. Yes.

14 Q. But has been modified so that it can mount
15 onto a fixation base; right?

16 A. Correct. Correct.

17 Q. But this is not a dentate pin guide that has
18 a mouthpiece, like, going over the teeth, for
19 example; right?

20 A. Correct.

21 Q. Go to the next page, please. Page 6 of the
22 exhibit, it says, Single edentulous integrated bite.

1 Can you explain what that is, Mr. Banks?

2 A. I can. Often, as you can see, this is an
3 upper pin guide. And the lower has poor occlusion,
4 meaning minimal number of teeth, there's no teeth in
5 the back, in the posterior. So it would be
6 difficult to complete that procedure we talked about
7 earlier where you put the pin guide in and then just
8 simply close the patient down to hold it in
9 position. In this -- in this scenario, the denture
10 could tip. It's -- just it's -- it doesn't have a
11 real predictable method of holding the upper and
12 lower together. And so on the pin guide, we design
13 a negative of the lower teeth so that a patient is
14 gonna bite into this device just like they would
15 have bit into their denture, habitual bite into
16 their denture, trying to repeat the way the patient
17 functions.

18 Q. When you say negative of the lower teeth,
19 what does that mean?

20 A. Just imagine, like, almost a female-male
21 relationship where the lower teeth are actually
22 going into a mold on the pin guide so that those

1 teeth on the lower have a place to perch and help
2 support the pin guide.

3 Q. So the mold is -- you're saying it's a
4 negative of the lower teeth?

5 A. Yes. Kind of a mold, almost like an
6 impression of the lower teeth, but it's all acrylic
7 built into the pin guide.

8 Q. And it surrounds those lower teeth so
9 that --

10 A. It's mostly just for the incisal edges. It
11 wouldn't necessarily go around the teeth, maybe just
12 around the service the teeth, but just to make sure
13 the lower teeth or whatever we're working with, the
14 teeth fit into it into a predictable position to
15 maintain --

16 Q. Like a bite plate?

17 A. Bite plates are often flat. Think about --
18 think about a dental impression, you know, where you
19 take the impression out and there's the teeth inside
20 of it. So we would use a part of that to digitally
21 put that with the pin guide.

22 Q. Okay. So just to make sure I understand,

1 you have a negative of the lower teeth is kind of
2 used with that upper denture to ensure that there's
3 a good fit when there's an occlusion; is that right?

4 A. Yes. And it's -- correct. Correct.

5 MR. FEIGELSON: That's all the questions
6 that I have today for you, Mr. Banks. I thank you
7 for your time.

8 I don't know, Counsel, if you have questions
9 you want to follow up with.

10 MR. KARISH: I'm not gonna ask the witness
11 any questions.

12 MR. FEIGELSON: All right. Counsel, do you
13 want to make your appearance on the record?

14 MR. KARISH: Sure. My name is Marc Karish.
15 I represent Watson Guide IP, LLC in this proceeding,
16 as well as CHROME GuidedSMILE and Alan Banks.

17 MR. FEIGELSON: Thank you again for your
18 time, Mr. Banks.

19 (Off the record at 11:23 a.m.)
20
21
22

ACKNOWLEDGMENT OF DEPONENT

I, ALAN BANKS, do hereby acknowledge that I
have read and examined the foregoing testimony, and
the same is a true, correct, and complete
transcription of the testimony given by me and any
corrections appear on the attached errata sheet
signed by me.

(DATE)

(SIGNATURE)

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

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

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

13
14 I further certify that the adverse party,
15 WATSON GUIDE IP, LLC, was represented by counsel at
16 the deposition.

17
18 I further certify that the deposition of
19 ALAN BANKS occurred virtually, via Zoom
20 videoconference, on Monday June 23, 2025, commencing
21 at 9:01 a.m. CST to 11:23 a.m. CST.

22

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

7
8 IN WITNESS WHEREOF, I have hereunto set my
9 hand and affixed my notarial seal this 8th day of
10 July, 2025.

11
12
13 My commission expires: February 28th, 2028
14

15 *Liffey M. Rutledge*
16

17 _____
18 NOTARY PUBLIC IN AND FOR THE
19 STATE OF ILLINOIS
20
21
22