

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SIMPSON STRONG-TIE)
COMPANY INC.,)
)
Petitioner) Case No.
) PGR2024-00050
V.)
) U.S. Patent No.
COLUMBIA INSURANCE) 11,920,339
COMPANY,)
)
Patent Owner)
-----)

ZOOM DEPOSITION OF WILLIAM ANDREW FENNELL
San Francisco, California
Thursday, September 18, 2025
Volume 1

Reported by:
LORI M. BARKLEY
CSR No. 6426
Job No. 7596987

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Zoom deposition of William Andrew Fennell
taken at San Francisco, California, beginning at 9:00
a.m. and ending at 2:58 p.m. on Thursday, September 18,
2025 before Lori M. Barkley, Certified Shorthand
Reporter No. 6426.

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I N D E X

WITNESS

ANDREW FENNELL

PAGE

Examination by Mr. Schroeder

5

PREVIOUSLY MARKED EXHIBITS

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1 San Francisco, California, Thursday, September 18, 2025

2 9:00 a.m.

3
4
5 THE REPORTER: Lori Barkley, CSR No. 6426. Mr.
6 Fennel, could you please raise your right hand so I can
7 swear you in.

8
9 WILLIAM ANDREW FENNELL,
10 having been administered an oath, was examined and
11 testified as follows:

12
13 EXAMINATION

14
15 BY MR. SCHROEDER:

16 Q. Hello, Mr. Fennel. If you could, could you
17 please state your name and address for the record?

18 A. Certainly. It's William Andrew Fennell,
19 F-E-N-N-E-L-L. My work address is 144 Mayhew,
20 M-A-Y-H-E-W, Way in Walnut Creek, California, 94597.

21 Q. As we sit here today, is there any reason that
22 you would not be able to testify truthfully today?

23 A. No.

24 Q. I know firsthand that you have sat in
25 depositions previously, a number of them that I may have

1 been the deposing attorney.

2 So just to kind of go over the ground rules so
3 that we can at least say we mentioned them.

4 So you understand that I'll be asking questions.
5 The court reporter will be writing them down. I believe
6 she even admonished us beforehand to make sure that we
7 do not talk over each other, correct?

8 A. Yes.

9 Q. All right. And you understand that if you don't
10 understand anything that I ask or if I phrase a question
11 where you would like clarification, that you will ask me
12 to either clarify or indicate that you don't understand
13 the question, correct?

14 A. Yes.

15 Q. And to the extent that you actually answer a
16 question, I can assume that you understood it, correct?

17 A. Yes.

18 Q. I'll try to take breaks every hour or so, you
19 know, as any other time. If there's some reason we need
20 a break before I request one, please just let me know.

21 I may or I would ask, though, that if you do so,
22 that we do not leave a question open. And I might also
23 ask that if I'm very close to a breaking point, if we
24 could try to reach that breaking point.

25 But at the same time, if there's a reason why

1 you need a break sooner than that breaking point, I will
2 certainly accommodate that.

3 A. That's fine. Thank you.

4 Q. You're here today testifying as an expert on
5 behalf of Simpson Strong-Tie; is that correct?

6 A. Yes.

7 Q. And I believe in your first declaration in this
8 matter that you identified that your compensation was
9 \$425 an hour; is that correct?

10 A. I don't recall whether it was 425 or 475, one of
11 those.

12 Q. And you've testified as an expert on behalf of
13 Simpson previously, correct?

14 A. Yes.

15 Q. And when I say previously, not just in the
16 current proceeding but in other proceedings, correct?

17 A. Yes.

18 Q. And in particular, when were you first engaged
19 by Simpson Strong-Tie?

20 A. I believe it was 2019.

21 Q. If I refer to the matter that you were engaged
22 back in 2019 as the '510 Patent PGR, will you understand
23 what I am discussing?

24 A. Yes.

25 Q. In the '510 Patent PGR, you submitted multiple

1 declarations; is that correct?

2 A. I believe so, yes.

3 Q. And you also sat for multiple depositions; is
4 that correct?

5 A. I believe so.

6 Q. Then you were involved in another post-grant
7 proceeding on the '867 patent PGR; is that correct?

8 A. Yes.

9 Q. And in that proceeding, you submitted multiple
10 declarations; is that correct?

11 A. Yes.

12 Q. Also in that post-grant-review proceeding, you
13 would have sat for at least one deposition; is that
14 correct?

15 A. Yes.

16 Q. And then there were a series of three
17 post-grant-review proceedings regarding what I would
18 call the '626 patent; is that correct?

19 A. Yes.

20 Q. And there were three proceedings regarding the
21 '626 patent, right?

22 A. Yes.

23 Q. You submitted a declaration in each one of those
24 proceedings, correct?

25 A. I did.

1 Q. And then this current proceeding is with respect
2 to the '339 patent; is that correct?

3 A. Yes.

4 Q. And you've previously submitted a declaration --
5 actually I'll rephrase.

6 You have now submitted two declarations in the
7 current proceeding, correct?

8 A. Yes.

9 Q. And you previously were deposed with respect to
10 this proceeding, correct?

11 A. Yes.

12 Q. You also submitted a expert report in the
13 federal district court regarding a patent proceeding
14 again regarding the '510 patent; is that correct?

15 A. Yes.

16 Q. And you also sat for a deposition with respect
17 to that expert report; is that correct?

18 A. Yes.

19 Q. And then more recently, you have been involved
20 in another in federal district court case in the
21 Northern District of California regarding the '867
22 patent; is that correct?

23 A. Yes.

24 Q. And you submitted an expert report on claim
25 construction probably about a month and a half ago in

1 that proceeding; is the correct?

2 MS. HOLOUBEK: Objection, relevance. You may
3 answer.

4 THE WITNESS: Yes.

5 BY MR. SCHROEDER:

6 Q. And in that proceeding, you were also deposed,
7 correct?

8 A. Yes.

9 Q. So between all these proceedings and all these
10 declarations and all the depositions, approximately how
11 many hours have you performed services for Simpson
12 Strong-Tie?

13 MS. HOLOUBEK: Objection, scope.

14 THE WITNESS: I have no idea at this point.

15 BY MR. SCHROEDER:

16 Q. And you were compensated in each of those,
17 correct?

18 MS. HOLOUBEK: Objection, scope.

19 THE WITNESS: Yes. As with all my clients, I'm
20 paid on an hourly basis.

21 BY MR. SCHROEDER:

22 Q. Now the expert report that you're here to
23 discuss is 195 pages, correct?

24 A. Yes.

25 Q. How many hours did you spend putting this

1 declaration together?

2 A. I don't know the actual number. If you started
3 at 100 hours, start with 100 hours.

4 Q. Can you repeat that? I'm not sure I heard that
5 correctly.

6 A. I ultimately said upwards of 100 hours.

7 Q. Upwards of 100 hours on just this declaration?

8 A. Yes.

9 Q. And would upward of 100 hours be typical for the
10 other declarations that you submitted?

11 MS. HOLOUBEK: Objection, scope, relevance.

12 THE WITNESS: I don't recall.

13 BY MR. SCHROEDER:

14 Q. Since 2019, how much have you been compensated
15 by Simpson for your expert -- for your work as an
16 expert?

17 A. I have no idea at this point.

18 Q. So if this declaration here was approximately
19 100 hours, at \$425 an hour, this declaration alone would
20 be in the ballpark of \$42,000; is that correct?

21 MS. HOLOUBEK: Objection, relevance.

22 THE WITNESS: Yes.

23 BY MR. SCHROEDER:

24 Q. Would it be reasonable to -- let me rephrase
25 that.

1 Would the amount that you have been compensated
2 by Simpson since 2019 be over or under \$1 million?

3 MS. HOLOUBEK: Objection, relevance.

4 THE WITNESS: I don't know how many hours I've
5 spent collectively on Simpson.

6 BY MR. SCHROEDER:

7 Q. How about would the amount that you have been
8 compensated by Simpson be over or under half a million
9 dollars?

10 MS. HOLOUBEK: Objection, relevance.

11 THE WITNESS: Yeah, again, I have no idea. I
12 pitch up to work every year. I work a lot. Simpson is
13 just one of my clients.

14 BY MR. SCHROEDER:

15 Q. A client that you've done a lot of work for,
16 correct?

17 MS. HOLOUBEK: Objection, form.

18 THE WITNESS: Well, yeah, now that I've been
19 working for them for six years. Whether that qualifies
20 as a lot, I have clients I have worked for over 20
21 years. So whether they sneak into the top 10, I don't
22 know.

23 BY MR. SCHROEDER:

24 Q. Over the past six years, would they be in the
25 top 10?

1 MS. HOLOUBEK: Objection, relevance.

2 THE WITNESS: Maybe.

3 BY MR. SCHROEDER:

4 Q. How about in the past year alone, would Simpson
5 be in the top 10 clients?

6 MS. HOLOUBEK: Objection, relevance.

7 THE WITNESS: Maybe.

8 BY MR. SCHROEDER:

9 Q. You have Exhibit 1068 in front of you, correct?

10 A. I do.

11 Q. Do you recognize Exhibit 1068?

12 A. Yes.

13 Q. What is Exhibit 1068?

14 A. It's my most recent declaration in this '339
15 matter.

16 Q. And this is your declaration I asked if it was
17 195 pages long, correct?

18 A. It is.

19 Q. And if you turn to page 195, that is your
20 signature at the end, correct?

21 A. Yes. That's the electronic signature I applied.

22 Q. If you could please turn to page 14 of your
23 declaration.

24 A. I'm there.

25 Q. And at 14, you have a section of your

1 declaration that starts with or has a heading
2 understanding of the law; is that correct?

3 A. Yes.

4 Q. Starting at paragraph number 10, you have a
5 listing of your understanding of the law; is that
6 correct?

7 A. Yes.

8 Q. Now you are not an attorney; is that correct?

9 A. I am not an attorney.

10 Q. And so your understanding of the law was
11 provided to you by Simpson's attorneys; is that correct?

12 A. On this matter, yes.

13 Q. Did you do any independent research into the
14 legal issues that are listed starting at paragraph 10
15 through paragraph 20?

16 A. No.

17 Q. So for your recitation of your understanding of
18 these legal concepts, does your recitation in paragraphs
19 10 through paragraphs 20 reflect your full understanding
20 of these concepts?

21 MS. HOLOUBEK: Objection, form.

22 MR. SCHROEDER: Let me rephrase that.

23 Q. So in paragraphs 10 through 20, you recite your
24 understanding of various legal concepts, correct?

25 A. Yes.

1 Q. Is your understanding of these legal concepts
2 fully represented within these paragraphs?

3 A. Generally, yes.

4 Q. And you do not have any understanding as to
5 these legal concepts that you have not represented in
6 these paragraphs, correct?

7 MS. HOLOUBEK: Objection, form.

8 BY MR. SCHROEDER:

9 Q. You may answer even though she objected to form.

10 A. Again, generally, yes, this is my understanding
11 of the law as explained to me by Simpson's counsel.

12 I only hesitate because there are other legal
13 principles that I have learned about during prior
14 matters such as anticipation.

15 But I have not applied that within this
16 particular declaration. So for this declaration, I
17 think this covers my understanding of the legal concepts
18 involved as explained to me patiently by Simpson's
19 counsel.

20 Q. And understanding that there might be concepts
21 that aren't anywhere in this declaration, for instance,
22 anticipation, to the extent that you might express your
23 understanding of the law elsewhere in this declaration,
24 for instance, with respect to nexus, is your recitations
25 that you include here your full understanding?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: Yes. Similarly, later in this
3 declaration, I needed an understanding of nexus which
4 again Simpson's lawyers were patient to explain to me to
5 enable me to complete my analysis.

6 BY MR. SCHROEDER:

7 Q. So did you do any independent research to
8 understand the legal concept of nexus?

9 A. No.

10 Q. If you could turn to page 57. I'm sorry,
11 paragraph 57. And let me know when you're there.

12 A. I'm there.

13 Q. Actually look back up one page to page 32, you
14 have a heading, "Cullen's, Yamaguchi's and Robinson's
15 hanger must be mounted before installing Bundy's drywall
16 to access the hangers back flange mounting holes."

17 Is that correct?

18 A. That's correct.

19 Q. And so in this section or subsection, you're
20 discussing that in order to be able to install the
21 hangers, you would need to have access to mounting holes
22 on the hangers, correct?

23 A. For those three that I referenced, yes.

24 Q. And of those three, on page 33 kind of the
25 bottom of paragraph 57, there is an image, correct?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: Yes. On page 33, there is an
3 annotated image. This is all within my section where I
4 start describing prior art combinations as part of my
5 obviousness analysis.

6 So on page 33, I have annotated something from
7 Exhibit 1004, that's the Cullen, C-U-L-L-E-N, patent.
8 And it's figure one that I've added coloring and
9 annotations to.

10 BY MR. SCHROEDER:

11 Q. And in particular, this is one of the three
12 hangers that you're discussing that you would need to
13 have access to the mounting holes, correct?

14 MS. HOLOUBEK: Objection, form.

15 THE WITNESS: That's correct, Cullen, Yamaguchi,
16 Y-A-M-A-G-U-C-H-I, and Robinson, R-O-B-I-N-S-O-N, those
17 three hangers I would install prior to any drywall
18 installation.

19 And I would utilize the holes in the back flange
20 for mounting directly to a frame wall.

21 BY MR. SCHROEDER:

22 Q. Right. And I want to start by focusing on
23 Cullen and then I'll move to the other ones.

24 So just to understand, we'll discuss the other
25 ones here in a few minutes. But I want to first look at

1 Cullen.

2 And the mounting holes that you are discussing
3 with respect to Cullen, which is this image other page
4 33, are the -- are numbered 70 and 68; is that correct?

5 A. Yes.

6 Q. And your position is that you're discussing why
7 or how you would have to have access to these mounting
8 holes if you were to install the hanger first and then
9 the sheathing, correct?

10 MS. HOLOUBEK: Objection, form.

11 THE WITNESS: That's correct. I would have the
12 holes against the front face of the framed wall top
13 plates. And these would be a direct connection
14 utilizing the holes you enumerated.

15 BY MR. SCHROEDER:

16 Q. Cullen, as we see it here, also has top flanges,
17 correct?

18 A. It does.

19 Q. And could those top flanges be extended similar
20 to how they're extended in Bundy, B-U-N-D-Y?

21 MS. HOLOUBEK: Objection, form.

22 THE WITNESS: In my combination, they could be
23 extended -- those top flanges, yes.

24 BY MR. SCHROEDER:

25 Q. There is nothing preventing those top flanges

1 from being extended, correct?

2 A. No. Just the practical width of the top plate.

3 Q. There is nothing physically preventing this
4 hanger from being installed over sheathing; is that
5 correct?

6 A. Hypothetically, it could be. However, in my
7 combination that I was motivated to arrive at, having a
8 direct connection to the wall in my opinion would be
9 better.

10 Q. But if the hanger were installed over sheathing,
11 that would be similar to how Bundy is installed,
12 correct?

13 MS. HOLOUBEK: Objection, incomplete
14 hypothetical. Objection (inaudible).

15 THE WITNESS: I already answered that for
16 counselor.

17 BY MR. SCHROEDER:

18 Q. I don't believe you did. I asked if you were to
19 install it over the sheathing, it would be similar to
20 the installation that is taught by Bundy, correct?

21 MS. HOLOUBEK: Objection, incomplete
22 hypothetical.

23 THE WITNESS: Yes. Bundy does have vertical
24 flanges for which fasteners pass through that are in
25 front of drywall.

1 Cullen in your hypothetical could do that.
2 However, that's not the way I've used it in my
3 combinations utilizing the prior art.

4 I think it makes far more sense to plant this
5 thing correctly against the frame wall, utilize the
6 frame holes, and install any subsequent sheathing in
7 front of the back flanges with the holes.

8 BY MR. SCHROEDER:

9 Q. Going back, though, to the concept of if the
10 Cullen hanger were installed over the sheathing, would
11 those mounting holes be accessible?

12 MS. HOLOUBEK: Objection, scope. And incomplete
13 hypothetical.

14 BY MR. SCHROEDER:

15 Q. You may answer.

16 A. Hypothetically, yes, they would be accessible.

17 Q. Turning the page, we have two images on page 34,
18 correct?

19 A. Yes.

20 Q. And the image on top is from Exhibit 1007,
21 correct?

22 A. It is.

23 Q. And it has been annotated, correct?

24 A. It has. I've colored it in. And I've added
25 additional callouts.

1 Q. And 1007, I believe we talked about just a
2 minute ago, is referred to as the Yamaguchi patent in
3 your declaration, correct?

4 A. It is.

5 Q. So this is another hanger that you are saying if
6 the hanger were to be installed prior to sheathing, that
7 the mounting holes would not be accessible?

8 MS. HOLOUBEK: Objection, form.

9 THE WITNESS: Can you repeat your question,
10 please.

11 BY MR. SCHROEDER:

12 Q. So my question is let's say that you are saying
13 if the -- that must be mounted before installing. Or
14 let me rephrase that.

15 This is another hanger that you are saying must
16 be mounted before installing sheathing otherwise the
17 mounting holes would not be accessible?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: That's right. I'm saying that I
20 have to put this thing high against the wall, utilize
21 the wall, then I can start covering things up with
22 drywall at some later stage.

23 BY MR. SCHROEDER:

24 Q. My first question is what does the cutout for in
25 the drywall look like for this hanger?

1 MS. HOLOUBEK: Objection, form.

2 MR. SCHROEDER: Let me rephrase it.

3 Q. What does your proposed cutout in the drywall
4 look like for this hanger?

5 And I'm just making sure: Are you still
6 formulating your response?

7 THE WITNESS: The cutout for the drywall would
8 notch for the width of the seat down to the depth of the
9 inclined shoulders of the Yamaguchi hanger on both
10 sides.

11 It would allow for a central portion of the
12 sheetrock to extend the full height behind the seat.

13 BY MR. SCHROEDER:

14 Q. So in the proposed cutout that you -- or the
15 cutout that you had proposed, would the back flange as
16 it is labeled here on page 34 be exposed?

17 A. I think I answered --

18 MS. HOLOUBEK: Objection, form. John, it
19 cutout. So I don't know if your actual question made it
20 onto the record.

21 BY MR. SCHROEDER:

22 Q. I was actually saying I thought I heard
23 something. But I didn't know if he was actually
24 answering.

25 A. Initially, as I mentioned the drywall is notched

1 for the width of the back flanges down to the depth of
2 the inclined shoulders so that the drywall when glued up
3 from below would initially leave the back flanges
4 exposed from the front post.

5 In my combination, I would probably treat those
6 with some other fire retardant material.

7 Q. So my followup question is if you're already
8 notching the drywall as you're proposing, would you be
9 able to install that drywall on the wall and then
10 install the hanger over that drywall?

11 MS. HOLOUBEK: Objection, form.

12 MR. SCHROEDER: I'll even clarify.

13 Q. Install that hanger using the exact same notches
14 over the drywall?

15 MS. HOLOUBEK: Objection, form.

16 THE WITNESS: I'm not sure. In your
17 hypothetical combination, counselor, probably is the
18 answer. But in reality it's so much better if you mount
19 the hanger first as in my combination, utilize the holes
20 for direct connection to the frame wall, in this case
21 complete the framing operations.

22 And then install drywall as notched, install any
23 supplemental fire resistant retardants or fire stopping
24 needed for detailing purposes.

25 ///

1 BY MR. SCHROEDER:

2 Q. But if you were to pre-notch the drywall just
3 like you were going to notch it to slide it in place,
4 and install the drywall on the wall frame, there would
5 be part of the wall frame that would be exposed through
6 those notches, correct?

7 MS. HOLOUBEK: Objection, form. Incomplete
8 hypothetical.

9 THE WITNESS: The sheet metal back flanges would
10 cover the framing where there wasn't drywall or fire
11 resistant material to begin with.

12 BY MR. SCHROEDER:

13 Q. I think I'm asking a little different question.
14 We're talking about order of installation here.

15 And your position is if you were to install the
16 sheathing first, you would not be able to access the
17 wall to have the hanger secured to the wall.

18 And I'm asking if you were to use the exact same
19 notches in the drywall and install the drywall first,
20 prior to the hanger, would there be portions of the wall
21 exposed through the notches?

22 MS. HOLOUBEK: Objection, form. Incomplete
23 hypothetical.

24 THE WITNESS: I don't have an answer here to
25 your question because the extension portion is logically

1 brings that sheetrock out in front of the back flanges
2 are hard against the wall in my opinion.

3 BY MR. SCHROEDER:

4 Q. Once again, we're talking about the order
5 installation. And you're saying that the order of
6 installation has to be that the hanger goes in first and
7 then the sheathing because otherwise, the back flange
8 would be covered by the -- or otherwise you would not
9 have access to the back flanges through the mounting
10 holes.

11 And I'm asking about the cutouts in the
12 sheathing and whether we would still have access to
13 those back flanges regardless of the order of
14 installation?

15 MS. HOLOUBEK: Objection, form. And incomplete
16 hypothetical.

17 THE WITNESS: Yeah. I'm trying to stay true to
18 the intended function of Cullen's holes in the back
19 flanges, which are direct connect to framing.

20 And once I start covering them up with fire
21 resistant materials or, in fact, as your suggesting,
22 bring them forward in space for drywall, I lose the
23 ability to direct connect using those holes.

24 BY MR. SCHROEDER:

25 Q. I feel like we're talking past each other.

1 So you are proposing putting notches in the
2 drywall that would be the width of the back flanges,
3 correct?

4 MS. HOLOUBEK: Objection, form.

5 THE WITNESS: Yes.

6 BY MR. SCHROEDER:

7 Q. So if there are notches in the drywall that are
8 the width of back flanges and have the same spacing as
9 the back flanges, if you were to install that drywall
10 first onto the wall, you would still be able to install
11 the hanger secured to the wood framing, correct?

12 MS. HOLOUBEK: Objection, form. Incomplete
13 hypothetical.

14 THE WITNESS: In your hypothetical, I would be
15 installing fasteners away from Cullen's -- I'm sorry,
16 Yamaguchi's intent, where there's holes -- fasteners
17 would then be going through sheetrock.

18 BY MR. SCHROEDER:

19 Q. Let me just -- if there's notches in the drywall
20 that are the width of the back flange and aligned with
21 the back flanges, why would the fasteners have to go
22 through any sheathing?

23 Wouldn't you just be able to install that back
24 flange flush against that top plate?

25 MS. HOLOUBEK: Objection, form, incomplete

1 hypothetical.

2 THE WITNESS: This hypothetical of yours is not
3 making any sense to me, counselor.

4 I've annotated the extension portion in my
5 combination to show where the sheathing is installed.
6 And now I've also described the order of installation.

7 So not sure how to help you with this
8 hypothetical. It's not making sense to me.

9 BY MR. SCHROEDER:

10 Q. I'll be honest, I don't find your hypothetical
11 to make sense to me --

12 MS. HOLOUBEK: Objection, counselor, that
13 is badgering --

14 MR. SCHROEDER: I get it. But he hasn't
15 truthfully answered the question.

16 MS. HOLOUBEK: Objection, counselor,
17 mischaracterization.

18 BY MR. SCHROEDER:

19 Q. All right. Mr. Fennell, you're proposing
20 cutting notches in the drywall regardless of the order
21 of installation, correct?

22 MS. HOLOUBEK: Objection, form. And asked and
23 answered.

24 THE WITNESS: Yeah. And I've already helped you
25 as best I can on this one, counselor.

1 BY MR. SCHROEDER:

2 Q. I'm going to keep asking until I actually get
3 the answer to the question I asked rather than telling
4 me the answer to the question I didn't ask.

5 MS. HOLOUBEK: Objection, form.

6 BY MR. SCHROEDER:

7 Q. You are proposing cutting notches in the drywall
8 in order to install the drywall after the hanger,
9 correct?

10 MS. HOLOUBEK: Objection, form. Asked and
11 answered.

12 THE WITNESS: Again, yes, I'm utilizing the
13 holes in the Yamaguchi hanger the way they're intended
14 to be attached directly to a wall. And in my
15 combination, I then complete framing and install
16 drywall.

17 BY MR. SCHROEDER:

18 Q. I am asking about the drywall. I'm not asking
19 about the hanger with this question.

20 You are proposing cutting notches in the
21 drywall, correct?

22 MS. HOLOUBEK: Objection, form. And asked and
23 answered.

24 THE WITNESS: Once the hangers are on the wall,
25 there is only one way for me to get my drywall to

1 protect the wall framing.

2 And that is to notch the drywall to the width of
3 the blue-colored back flanges there, down to a depth of
4 the inclined shoulders.

5 The drywall can then be moved up to compact the
6 underside of the shoulders. As we've discussed, there
7 will be exposed front phases of the back flanges.

8 But the important part of the discussion here is
9 I've utilized the holes in a way that I think that it
10 must be used to direct connect to wood framing.

11 BY MR. SCHROEDER:

12 Q. So in particular, though, if you were to take a
13 piece of sheathing with the exact same notches cut in
14 it, could you insert the back flanges of the hangers
15 through those notches?

16 MS. HOLOUBEK: Objection, incomplete
17 hypothetical.

18 THE WITNESS: So now you're asking me to
19 hypothetically switch up my installation sequence here
20 and put the hanger in after some drywall's framed
21 against the wall.

22 BY MR. SCHROEDER:

23 Q. That is what I've been asking for the past 15
24 minutes.

25 MS. HOLOUBEK: Objection, form. Badgering.

1 THE WITNESS: In my combination, which is what
2 this is, the combination section, it's all about trying
3 to complete the framing so that drywall can happen
4 later.

5 There's all sorts of other assumption in here
6 about why I'm doing it in this order that you're leaving
7 out of these hypothetical.

8 But I guess in the hypothetical you're
9 isolating, yes, I could squeeze it back through the
10 hole, the notches that I've created.

11 BY MR. SCHROEDER:

12 Q. Thank you. In addition to squeezing it through
13 the notches you've created, could the top flange of this
14 hanger be extended?

15 MS. HOLOUBEK: Objection, incomplete
16 hypothetical and form.

17 THE WITNESS: As we mentioned with Cullen, yes,
18 the top flange could be extended. However, with my
19 combination, I don't need to.

20 BY MR. SCHROEDER:

21 Q. And as we've discussed with Cullen, is there
22 anything physically preventing this hanger from being
23 installed over sheathing without any notches over the
24 installed sheathing?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: To be able to utilize the holes as
2 intended with Yamaguchi for a direct connection, yes, I
3 want that directly against the frame wall.

4 And then I'm going to complete my framing
5 operations. Then I'll think about drywall.

6 The rest is just your hypothetical that you're
7 coming up with.

8 BY MR. SCHROEDER:

9 Q. But is there anything physically presenting the
10 hanger from being installed over the sheathing?

11 MS. HOLOUBEK: Objection, asked and answered.

12 THE WITNESS: Not sure I can do any more to help
13 you.

14 BY MR. SCHROEDER:

15 Q. Would there be any obstruction that would
16 prevent the hanger from being installed over the
17 sheathing?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: The combination I have meets the
20 desire where I want to install the framing first, then
21 sequence the drywall later.

22 BY MR. SCHROEDER:

23 Q. Is that a, no, there is no obstruction?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: It's a type of obstruction. It's

1 my method that my combination has that, yes, it's a
2 criteria in my mind to do what I can to complete the
3 framing first before installing drywall.

4 BY MR. SCHROEDER:

5 Q. But Bundy doesn't teach completing the framing
6 first before installing drywall, correct?

7 MS. HOLOUBEK: Objection, form.

8 THE WITNESS: That's not how I'm using Bundy in
9 this combination.

10 BY MR. SCHROEDER:

11 Q. Would you agree that in 2012, there was an
12 emerging trend towards pre-rocking?

13 A. That's my understanding, yes.

14 Q. So the description of putting the hanger over
15 the sheathing, would that qualify as pre-rocking?

16 MS. HOLOUBEK: Objection, form.

17 THE WITNESS: Yes. Yeah. There's a couple of
18 documents that speak to this. The declaration of
19 Simpson Mann Hensen (phonetic). And there's also a
20 Gypsum Association bulletin that also describes
21 contemporaneously the emerging trend of pre-rocking.

22 BY MR. SCHROEDER:

23 Q. Moving on to Robinson, which is the bottom image
24 on page 34.

25 Do you still have that in front of you?

1 A. Yes.

2 Q. And in Robinson, we already have a fairly
3 lengthy top flange, correct?

4 MS. HOLOUBEK: Objection, form.

5 THE WITNESS: Yes.

6 BY MR. SCHROEDER:

7 Q. Would there be any reason that Robinson could
8 not physically be installed over sheathing?

9 MS. HOLOUBEK: Objection, incomplete
10 hypothetical.

11 THE WITNESS: You know as I explained with the
12 other ones and as I've written out in length in my
13 declaration here -- paragraph 58, for example -- since I
14 wanted to access those holes true to the original intent
15 of the hangers, have a direct connection to wood
16 framing.

17 BY MR. SCHROEDER:

18 Q. And if the hanger were installed over the
19 sheathing, would the mounting holes be accessible?

20 MS. HOLOUBEK: Objection, incomplete
21 hypothetical.

22 THE WITNESS: Hypothetically, yes. But I just
23 point you back to paragraph 58 -- you can include 59 and
24 60 for that matter -- direct connection is better in my
25 combined analysis. Reasons provided in the declaration.

1 BY MR. SCHROEDER:

2 Q. And going back to Cullen, would every
3 application in which Cullen might be used require
4 drywall to be installed around the hanger?

5 MS. HOLOUBEK: Objection, form.

6 THE WITNESS: I believe so.

7 BY MR. SCHROEDER:

8 Q. So every application in which Cullen would be
9 used, would have drywall installed around it.

10 Is that your answer?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: Well, you said every application.
13 So that's a pretty wide net there.

14 So Cullen, as we know, was set up to be used in
15 a decking application. Or it could be used for
16 attaching wood framing perpendicular to another element,
17 another frame element.

18 So in my combination, I have the joist spaced
19 away from the wall utilizing the optional base or seat
20 into the channel-shaped portion.

21 But when subsequently drywall is notched and
22 installed with my combination, the drywall would be
23 covering the back flanges of Cullen, which is why I need
24 to pre-install holes through the back flange that are
25 subsequently covered up by sheetrock.

1 BY MR. SCHROEDER:

2 Q. So my question, though, is are there
3 applications in which Cullen would be used that would
4 not require sheathing to be installed around?

5 I believe you mentioned decking, correct?

6 MS. HOLOUBEK: Objection, form.

7 THE WITNESS: Well, if you had a hypothetical
8 installation of Cullen where there's no sheathing, then
9 there's no hypothetical coverup with sheathing.

10 BY MR. SCHROEDER:

11 Q. And it wouldn't even be a hypothetical because
12 Cullen describes using it with decking, correct?

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: It's what I just described.

15 BY MR. SCHROEDER:

16 Q. What about if Cullen was used in wall framing of
17 non-fire barrier walls such as the walls maybe that are
18 located in my home?

19 MS. HOLOUBEK: Objection, form. And incomplete
20 hypothetical.

21 BY MR. SCHROEDER:

22 Q. Let me ask a little different question. For
23 non-firewall construction, is it common to terminate the
24 sheathing below the joists?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: You lost me there. Try again,
2 please.

3 BY MR. SCHROEDER:

4 Q. All right. You acknowledged that drywall is
5 used on walls that are not requiring a 2R fire-rated --
6 let me rephrase that.

7 Would you agree with me that drywall is used in
8 many applications?

9 A. Sure.

10 Q. For instance, in the room that you are located
11 in right now where there is drywall on the wall and
12 there is drywall on the ceiling, do you know if the
13 drywall on the wall would continue up past the ceiling?

14 MS. HOLOUBEK: Objection, form. Speculation.

15 THE WITNESS: Yeah, I'd be speculating.

16 BY MR. SCHROEDER:

17 Q. In single-family residential homes, is it common
18 to continue the drywall on the wall up past the joists
19 of each floor level?

20 A. It depends.

21 Q. Let me ask the question slightly differently.

22 In single-family homes, is it uncommon to
23 terminate the drywall on the wall below the joist of the
24 floor above it at the ceiling?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: It depends.

2 BY MR. SCHROEDER:

3 Q. I asked if it was uncommon. I didn't ask it for
4 a specific hypothetical. Are there situations where
5 that is done?

6 MS. HOLOUBEK: Objection, form.

7 THE WITNESS: It depends.

8 BY MR. SCHROEDER:

9 Q. Are there any situations in which drywall is
10 terminated at the ceiling rather than continuing up past
11 the drywall on the ceiling?

12 A. Yes.

13 Q. Are those situations uncommon?

14 MS. HOLOUBEK: Objection, form.

15 THE WITNESS: Depends.

16 BY MR. SCHROEDER:

17 Q. What does it depend on?

18 A. Depends on where you are in the country. And
19 what demands are on that wall.

20 Q. If the wall was between a family room and a
21 living room of a single-family residence in the State of
22 California, would it be uncommon?

23 MS. HOLOUBEK: Objection, form. Objection,
24 incomplete hypothetical.

25 THE WITNESS: It depends.

1 BY MR. SCHROEDER:

2 Q. Are there any applications of Yamaguchi in which
3 drywall would not be required to be installed around the
4 hanger?

5 MS. HOLOUBEK: Objection, form.

6 THE WITNESS: If Yamaguchi was hypothetically
7 being used where there was no drywall to be applied to
8 the wall, then it would not have drywall covering
9 Yamaguchi.

10 BY MR. SCHROEDER:

11 Q. In the usage view that Yamaguchi provides, it's
12 Exhibit 1007, if you have it in front of you, you can
13 look at that.

14 In the usage view, what type of wall is the
15 Yamaguchi hanger attached to?

16 MS. HOLOUBEK: Objection, form.

17 MR. SCHROEDER: I believe that in Exhibit
18 1007 -- I believe it is page five that I am asking him
19 about.

20 THE WITNESS: Yes, the usage view, which has a
21 caption on the prior page, shows the Yamaguchi hanger
22 with a carry member attached to a wood sill with some
23 type of bearing wall underneath it.

24 BY MR. SCHROEDER:

25 Q. And would that bearing wall be a foundation

1 wall?

2 A. It could be. It could be just any type of
3 bearing wall.

4 Q. Is it common to put some type of beam like this
5 on top of a wood frame stud wall?

6 MS. HOLOUBEK: Objection, form.

7 THE WITNESS: Could be.

8 BY MR. SCHROEDER:

9 Q. It could be? Or it is common?

10 MS. HOLOUBEK: Objection, form.

11 THE WITNESS: It could be.

12 BY MR. SCHROEDER:

13 Q. So you're disputing that this is a foundation
14 wall that's being shown?

15 MS. HOLOUBEK: Objection, form. Objection,
16 mischaracterization.

17 THE WITNESS: I thought I was pretty clear
18 before when I said it. It could be a foundation wall.
19 It could be just any type of bearing wall.

20 BY MR. SCHROEDER:

21 Q. If it were a foundation wall, would it be common
22 to leave that foundation wall uncovered or at least not
23 covered by sheathing?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: It depends.

1 BY MR. SCHROEDER:

2 Q. I'm not asking the converse question of if it's
3 common to finish a basement or is it uncommon to have
4 unfinished basements?

5 MS. HOLOUBEK: Objection, form.

6 THE WITNESS: It depends.

7 BY MR. SCHROEDER:

8 Q. Do you have a basement in your home?

9 MS. HOLOUBEK: Objection, relevance. Scope.

10 THE WITNESS: Actually, no, I don't have a
11 basement.

12 BY MR. SCHROEDER:

13 Q. Have you ever been in an unfinished basement?

14 MS. HOLOUBEK: Objection, relevance and scope.

15 THE WITNESS: Yes. I've been in many unfinished
16 basements. I've been in many finished basements.

17 BY MR. SCHROEDER:

18 Q. So you would agree with me that it is not
19 uncommon for a basement to be unfinished?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: Again, it depends.

22 BY MR. SCHROEDER:

23 Q. I have just a few more questions. Then I think
24 we're going to be at a natural breaking point. I don't
25 know if another ten minutes would be okay.

1 A. I'm fine.

2 Q. All right. Moving to paragraph 60, you state
3 (as read):

4
5 That a POA would have understood
6 that securing the back flange of
7 Cullen's, Yamaguchi's, and Robinson's
8 hangers directly against the wall
9 member provides the most stability for
10 the hanger by having the back flange
11 flush against a sturdy wall member
12 rather than brittle drywall.

13
14 Is that correct?

15 MS. HOLOUBEK: Object to the form.

16 BY MR. SCHROEDER:

17 Q. And if I misstated it, please feel free to
18 reread it on the record.

19 A. I'll just quickly give you paragraph 50 from my
20 declaration here. (As read):

21
22 I disagree because a skilled
23 artisan would not want to deviate from
24 the intended attachment interface
25 between the back flange of Cullen's,

1 Yamaguchi's and Robinson's hangers and
2 the wall member.

3
4 Q. Can you keep reading the next sentence because
5 that's the one I was trying to quote.

6 A. There are a series of references that it picks
7 up. (As read):

8
9 Based on my experience in the
10 field, a POSA would have understood
11 that securing the back flange of
12 Cullen's, Yamaguchi's and Robinson's
13 hangers directly against the wall
14 member provides the most stability for
15 the hanger by having the back flange
16 abut against a sturdy wall member
17 rather than brittle drywall.

18 Moreover, a POSA, would have been
19 motivated to secure the back flange of
20 Cullen's, Yamaguchi's, and Robinson's
21 hangers directly against the wall
22 member rather than indirectly through
23 the drywall to reduce the length of
24 fasteners needed for securing the
25 hanger to the wall.

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Q. Now I want to go back one sentence and ask you to maybe articulate a little bit more as to why having the hanger directly against the wall member provides the most stability for the hanger?

MS. HOLOUBEK: Objection, form.
BY MR. SCHROEDER:

Q. Can you explain for me the physics as to why you want the wall member or why you want the hanger directly against that wall member?

MS. HOLOUBEK: Objection, form.

THE WITNESS: The fasteners in wood framing particularly with a steel-side member, are stronger if they are directly connecting the steel element to the wood element without having to cantilever through a brittle intermediate material such as drywall.

BY MR. SCHROEDER:

Q. Is this because there would be forces trying to make that hanger rotate or move in some way?

MS. HOLOUBEK: Objection, form.

THE WITNESS: There's possibly some cantilever action that would be at work. However, each of these hangers usually travel in pairs. There will be a -- in most cases and commonly -- a reciprocal hanger at the other end securing the other end of the spanning member.

1 So it will depend on the design situation. But,
2 again, the primary structural reason is to have the
3 fastener go directly from steel element to wood element
4 without something soft in between.

5 BY MR. SCHROEDER:

6 Q. Would the actual surface of the back flange to
7 surface of the top plate assist in making it more
8 secure?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: Yes. Having the direct connect
11 between the back flange and the front face of the top
12 plate is ideal.

13 BY MR. SCHROEDER:

14 Q. How much would the hanger itself weigh?

15 MS. HOLOUBEK: Objection, form.

16 THE WITNESS: Less than a bread box.

17 BY MR. SCHROEDER:

18 Q. Let's try to put that in, you know, rough
19 poundage that the average person might understand.

20 Would it be maybe around five pounds?

21 MS. HOLOUBEK: Objection, form. Incomplete
22 hypothetical.

23 THE WITNESS: It's likely less than five pounds,
24 yes.

25 ///

1 BY MR. SCHROEDER:

2 Q. So the hanger itself isn't very heavy, correct?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: It's relative.

5 BY MR. SCHROEDER:

6 Q. So the primary weight and force that is being
7 carried or transferred would be the result of the joist
8 that the hanger is carrying, correct?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: In design situations, the working
11 load weighted on the hanger is what governs its
12 structural selection, yes.

13 BY MR. SCHROEDER:

14 Q. And that working load is coming from the
15 structural member that's being supported, correct? It's
16 -- let me rephrase that.

17 That working load is being transferred to the
18 hanger and to the supporting wall via the structural
19 member that the hanger is supporting, correct?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: It depends on the design situation
22 that the designer is using the hanger in.

23 You have to take into account the number of
24 fasteners, the species of wood, load durations, there's
25 a number of things that govern the design that in its

1 simplest form it really is the weighted load being
2 opposed by the carrying member.

3 BY MR. SCHROEDER:

4 Q. When you say the carrying member, is that the
5 wall assembly or is that the joist or beam, what we're
6 calling structural member in the claim terms?

7 MS. HOLOUBEK: Objection, form.

8 THE WITNESS: It would be the perpendicular
9 element being received into the channel-shaped portion
10 of the hanger.

11 MR. SCHROEDER: Off the record.

12

13 (Recess taken.)

14

15 BY MR. SCHROEDER:

16 Q. Welcome back. Before we get started again, did
17 you talk to anybody during break regarding the substance
18 of your testimony so far?

19 A. I did not.

20 Q. Moving on in the declaration, can you turn to
21 paragraph 61?

22 A. Yes.

23 Q. And within paragraph 61, at the bottom of the
24 page, there's a sentence which starts with, "here patent
25 owner appears to focus on attachment to the masonry

1 veneer wall M rather than Allan's frame wall F.

2 Do you see that?

3 A. I do.

4 Q. And in particular, when you are discussing
5 that -- I'm going to share my screen because I did not
6 provide this document in the list.

7

8 (Whereupon a discussion was held off the
9 record.)

10

11 So I want to frame that question first. You
12 state -- and I'll try to quote this exactly, "here
13 patent owner appears to focus on attachment to the
14 masonry veneer wall M rather than Allan's frame wall F."

15 Is this statement that you are making here at
16 the bottom of page 36 carrying on to page 37 with
17 regards to the argument that you see starting on -- I
18 believe it is page 47 of the patent owner's response?

19 MS. HOLOUBEK: Objection, form. Objection,
20 speculation. Objection, foundation.

21 MR. SCHROEDER: I'm asking if what he's stating
22 here is trying to paraphrase or trying on to interpret
23 the argument that is on the screen.

24 So it's not really a foundational issue or
25 speculation. I'm actually asking him if this is what he

1 was basing his argument on.

2 MS. HOLOUBEK: Well, I maintain my objection to
3 foundation. I maintain -- and I also object to
4 speculation and form.

5 THE WITNESS: I think the best way to answer
6 your question, counselor, is to give you the citations
7 from the patent owner's response that I referred to in
8 paragraph 61 of my declaration.

9 And that summarizes what my understanding of the
10 response was so that I then was able to give you my
11 opinion.

12 Which starts with the title box here bullet
13 point two, says Allan teaches installing drywall after
14 mounting a structural connector to a wall in my opinion.

15 So if we start with paragraph 61 (as read):
16

17 Patent owner alleges that Alan
18 fails to teach inserting the drywall
19 between the frame wall and the
20 component of the wall anchor because
21 Allan inserts the installation layer
22 before securing the anchors outstanding
23 leg to the masonry veneer wall.
24

25 And that references from the patent owner's

1 reply was 44 to 49 and 62 to 63. That's my
2 understanding of what I'm responding to in this
3 declaration.

4 BY MR. SCHROEDER:

5 Q. I'll scroll up. What I want to know is where in
6 the patent owner's response, the patent owner mentions
7 the masonry veneer wall --

8 (Reporter Clarification.)

9 What I want to know is where in the patent
10 owner's response, it mentions the masonry veneer wall M.

11 MS. HOLOUBEK: My objection --

12 BY MR. SCHROEDER:

13 Q. So I'm going to scroll up to page 44 and let him
14 see where it states it there.

15 I mean and -- really I think my issue is -- I'm
16 taking issue with I feel like there's been
17 mischaracterization of our argument --

18 MS. HOLOUBEK: Objection to characterizing and
19 putting a patent owner's arguments into the record.

20 Also I want the record to reflect that the
21 witness is being asked to review the patent owner's
22 response a few lines at a time on a screen as opposed to
23 having a paper copy.

24 I want the record to reflect that. So objection
25 to form.

1 MR. SCHROEDER: You know what, I'll just go
2 ahead and withdraw this line of questioning because I
3 don't think we're going to get anywhere with it.

4 BY MR. SCHROEDER:

5 Q. Turning to paragraph 63. Let me know when
6 you're there.

7 A. I am, counselor.

8 Q. And within here you're quoting from your first
9 declaration, correct?

10 A. I am, yes.

11 Q. And you state, "first as explained in my first
12 declaration," then the direct quote to your first
13 declaration, "Bundy teaches receiving drywall between a
14 hanger's channel-shaped portion and the front surface of
15 a top plate to shield the wall frame."

16 Do you see that?

17 A. I do.

18 Q. I know I stopped the quote. I want to focus on
19 the record "receiving."

20 What do you mean by the word receiving?

21 MS. HOLOUBEK: Objection, form. Objection,
22 mischaracterization.

23 THE WITNESS: I did use the term receiving. It
24 is intended here to describe how a supported structural
25 member in a channel shape is outboard of a framed wall.

1 And that the structure of the hanger is such
2 that drywall could be received between the carrying
3 member and the frame wall.

4 BY MR. SCHROEDER:

5 Q. Unfortunately I feel like you used the word
6 receive to define the word receiving.

7 Let me ask a little different question.

8 Do you agree that the drywall in Bundy is
9 installed after the hanger's already installed?

10 I'm sorry. I misstated that.

11 Do you agree that the drywall is not inserted
12 after the hanger is installed?

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: I think that's correct. In the
15 installation instructions of Bundy call for drywall
16 first. And true to the pre-rocking desire at the time,
17 Bundy would go up and over without disturbing the
18 drywall.

19 BY MR. SCHROEDER:

20 Q. And so when you used the word "receiving" in
21 this paragraph, you're not trying to indicate that the
22 drywall is being inserted after the hanger is already in
23 place?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: No. I'm not trying to infer

1 sequencing here. I'm just simply saying that it is part
2 of the assembly.

3 BY MR. SCHROEDER:

4 Q. Do you consider an object to be received if you
5 build a structure around that object?

6 MS. HOLOUBEK: Objection, form, and incomplete
7 hypothetical.

8 THE WITNESS: Generally, yes.

9 BY MR. SCHROEDER:

10 Q. So to you "received" does not indicate an order
11 of what was there first?

12 MS. HOLOUBEK: Objection, form.

13 THE WITNESS: Let me first remind you that I'm
14 using Bundy as part of a combination here. And it is
15 secondary to me when talking Bundy about sequence.

16 I think we've agreed that -- and I've
17 acknowledged that drywall comes first if we're actually
18 talking sequence.

19 But to me, "receive" means that it's integral.
20 It's between the channel-shaped portion of the hanger
21 and the connection portion at the wall.

22 BY MR. SCHROEDER:

23 Q. If you could turn to paragraph 73.

24 Let me know when you're there.

25 A. I am there at paragraph 73, counsel.

1 Q. Do you know if Cullen's discusses what motion is
2 used in order to put the drywall in place?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: Well, as I annotated on page 46 of
5 my declaration, drywall that would be used on the face
6 of a wall would be notched for the extension portion.

7 And the specific motion would be a sliding up
8 into place of the drywall around the extension portion
9 that has been notched.

10 BY MR. SCHROEDER:

11 Q. Does Cullen actually describe "sliding" the
12 drywall?

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: I don't recall at this time.

15 BY MR. SCHROEDER:

16 Q. Would other motions other than "sliding" the
17 drywall also be feasible?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: It's really a performance-based
20 function here as to what type of verb is selected,
21 counselor.

22 The drywall is ultimately going to be on the
23 face of the wall. And the little notch needs to be
24 positioned such that it goes around the extension
25 portion of the Cullen's hanger.

1 So, yeah, I would say it slid up around the
2 extension portion. But I guess you could say pushed as
3 well.

4 BY MR. SCHROEDER:

5 Q. Well, in particular, you know, you could have it
6 where the drywall is brought essentially parallel to the
7 wall frame and just put flush and just put flush to the
8 wall, you could -- would that be one way that the
9 drywall could be installed where basically rather than
10 sliding it up, drywall could be held up and then pushed
11 into the wall or against the wall?

12 MS. HOLOUBEK: Objection, form. Objection,
13 incomplete hypothetical.

14 THE WITNESS: The key to my combination here in
15 what Cummings discloses is a hanger is on the wall.
16 It's already there.

17 And now I've had to notch the drywall to fit
18 around the extension portion that's protruding. I have
19 to take the drywall from the position below, slide it up
20 over the extension portion.

21 BY MR. SCHROEDER:

22 Q. Why does it have to be from a position below?
23 Why can't it be from a position at level?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: Because the extension portion is

1 sticking down like a keel under a boat. I can't put the
2 drywall all the way to the top of the wall and say slide
3 it sideways.

4 I would be bumping into the extension flanges.
5 I need to have the drywall from below sliding up around
6 the extension flange.

7 BY MR. SCHROEDER:

8 Q. Well, rather than installing the drywall to rest
9 the bottom piece of the drywall on the surface, whether
10 it's a lip of a piece of drywall below it or the ground,
11 depending on which direction the drywall is running.

12 And then basically tilt the drywall into place?

13 MS. HOLOUBEK: Objection, form, and incomplete
14 hypothetical.

15 THE WITNESS: Sure. Sliding may well involve a
16 little bit of tilting here. The installers are going to
17 be grabbing this sheet of drywall and aiming at the
18 extension flange with the notch and sliding it up
19 perhaps with a bit of tilting involved.

20 That was the action I believe you were asking
21 about.

22 BY MR. SCHROEDER:

23 Q. I'm asking about sliding in particular because
24 those are your words, sliding.

25 MS. HOLOUBEK: Occupation, form.

1 THE WITNESS: Sure, sliding. I stand by
2 sliding. Sliding is good.

3 BY MR. SCHROEDER:

4 Q. Does the Cummings patent itself actually use the
5 word sliding?

6 A. As I mentioned before, I don't recall?

7 Q. Is Cummings one of the exhibits you have printed
8 out, I believe it's Exhibit 1032?

9 A. Okay. I have that reference in front of me.

10 Q. And I'm asking if the word "sliding" is found in
11 that reference?

12 MS. HOLOUBEK: Objection, form.

13 THE WITNESS: I specifically referenced Cullen
14 4, lines 27 to 41. And I got the word sliding there.

15 However, the reference text covers my prior
16 discussion of getting a sheet of drywall positioned
17 around the extension flange of the Cummings hanger that
18 preexists on the wall.

19 BY MR. SCHROEDER:

20 Q. But it just uses the word "placed up." It
21 doesn't require a sliding motion, correct?

22 MS. HOLOUBEK: Objection, form.

23 THE WITNESS: In the mind of -- in my opinion or
24 that of a POSITA, it's the same.

25 I used a slightly different acronym there, court

1 reporter, POSITA, P-O-S-I-T-A. Earlier I used POSA,
2 P-O-S-A, the same.

3 BY MR. SCHROEDER:

4 Q. And just to be clear like if -- if the drywall
5 were to be tilted up where kind of the bottom edge of
6 the drywall was kind of put in place first and it was
7 walked up like where it was basically tilted, it
8 wouldn't actually be doing a sliding motion, would it?

9 MS. HOLOUBEK: Objection, form. Incomplete
10 hypothetical.

11 THE WITNESS: Yeah. In the hypothetical, it
12 depends, counselor. If the sheet was oriented length
13 wise to the wall versus standing vertically, no, I still
14 think this placement -- my use of the term sliding is
15 fine and is what I believe is disclosed in the Cummings
16 reference text.

17 BY MR. SCHROEDER:

18 Q. If you could turn to paragraph 84. Are you
19 there?

20 A. I am.

21 Q. So I'm going to let you read page (sic) 84. I
22 want to ask a question about it.

23 A. Okay. I've read it.

24 Q. So on page 84 -- or paragraph 84 of your
25 declaration, you're stating that it's your understanding

1 that the patent owner is contending that planar plates
2 includes de minimis bends at the end of the plate,
3 correct?

4 A. Yes.

5 Q. Am I correct in that you disagree with the
6 patent owner as to whether the de minimis bends at the
7 end of the plate are part of the planar plate; is that
8 correct?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: Elsewhere in my declaration, I do
11 -- I believe that the planar plates are exclusive of the
12 bends.

13 However, if as in page 10 of the patent owner's
14 rely that I have referenced here, the bends are referred
15 to as de minimis, then this axis that's being claimed,
16 it would apply to prior art Cullen as I've annotated
17 here on page 51 of my declaration within paragraph 84.

18 I've just simply adopted that if patent owner
19 maintains the bend to be de minimis, then this axis
20 works for the Cullen prior art with my analysis, is the
21 opinion I'm trying to express.

22 BY MR. SCHROEDER:

23 Q. All right. So to unpack that a little bit, if
24 the patent appeal board were to disagree with the patent
25 owner regarding whether the planar plates includes the

1 de minimis bends at the end, would you actually maintain
2 your disagreement?

3 MS. HOLOUBEK: Occupation, form and speculation.

4 MR. SCHROEDER: Let me rephrase that.

5 Q. So in paragraph 84, you are disagreeing that
6 there's an axis that cannot both extend along Cullen's
7 sidewall 30 and that would be normal to Cullen's
8 backplate 12 due to the bend defined between Cullen
9 sidewall 30 and the backplate 12, correct?

10 MS. HOLOUBEK: Objection, form. And
11 mischaracterization.

12 MR. SCHROEDER: Let me ask a slightly different
13 question.

14 Q. In paragraph 84, you start out by trying to
15 explain your understanding of the patent owner's
16 argument, correct?

17 A. I stated here (as read):

18
19 The patent owner contends that an
20 axis cannot extend along Cullen's
21 sidewall 30 and perpendicular to
22 Cullen's backplate 12 due to a bend
23 that's defined between Cullen's
24 sidewall 30 and the backplate, part
25 number 12.

1

Q. Right.

2

A. I disagree.

3

Q. Okay. Yeah. I was going to say the very next sentence is just two words: "I disagree."

4

Is your disagreement contingent on patent owner being successful in arguing that the planar plates include de minimis bends at the ends of the plate?

6

7

8

MS. HOLOUBEK: Objection, form.

9

THE WITNESS: Yeah. It's an either/or. It is contingent that if you folks persuade the board that those bends are de minimis, then this axis does then continue from side plates to back plates striking it normal to the plane.

10

11

12

13

14

BY MR. SCHROEDER:

15

Q. And if patent owner does not succeed in that, do you stand on your disagreement?

16

17

MS. HOLOUBEK: Objection, form. Incomplete hypothetical.

18

19

BY MR. SCHROEDER:

20

Q. Let me ask the question a little bit differently. Maybe you already answered it.

21

22

When you say you disagree with the patent

23

owner's position that you recite in that first

24

paragraph, is your disagreement contingent on whether or

25

1 not the planar plates is interpreted to include the de
2 minimis bends at the end of the plate?

3 MS. HOLOUBEK: Objection, form. Asked and
4 answered.

5 THE WITNESS: What I said before was that
6 earlier in my declaration, planar plates, planar, do not
7 include bends.

8 But if you slide forward here into paragraph 84,
9 if you folks are right that these bends are truly de
10 minimis, then this axis that's been annotated on here,
11 it works.

12 And all that ignores a little bend. But I
13 believe that bend is there and does separate the
14 extension portion from the back flange.

15 BY MR. SCHROEDER:

16 Q. So your disagreement, though, with the first
17 sentence is only to the extent patent owner is
18 successful in its other argument.

19 MS. HOLOUBEK: Objection, form. Asked and
20 answered.

21 THE WITNESS: I don't think I can improve on how
22 I said it in 84, counselor.

23 BY MR. SCHROEDER:

24 Q. I'm just basically trying to say if you are --
25 if the Patent Trial Appeal Board agrees with you that

1 the planar plates does not include the bends, are you
2 still in disagreement with patent owner's position in
3 the first three lines of paragraph 84?

4 MS. HOLOUBEK: Objection, form. Objection,
5 speculation.

6 THE WITNESS: If the Board agrees the bends are
7 not de minimis, then, yeah, I don't need paragraph 84
8 anymore.

9 BY MR. SCHROEDER:

10 Q. You don't need it? Or you don't have a
11 disagreement with that first three sentences --

12 (Speaking simultaneously.)

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: I think my opinion is at the
15 beginning of my declaration about plantar plates covers
16 any opinion I have.

17 BY MR. SCHROEDER:

18 Q. I guess I'm going to ask the question just a
19 little bit more directly.

20 If the Board agrees with you that the planar
21 plates does not include de minimis bends at the ends of
22 the plate, would you agree with the patent owner
23 specifically regarding that there would not be an axis
24 that can both extend along Cullen sidewall 30 and that
25 would be normal to Cullen's backplate 12?

1 MS. HOLOUBEK: Objection, form. Asked and
2 answered.

3 THE WITNESS: I think the bottom line here is
4 that that axis is normal to the backplate as shown on my
5 Cullen diagram here.

6 I think I still disagree with the patent owner
7 about this de minimis bend discussion.

8 BY MR. SCHROEDER:

9 Q. So where exactly would that axis extend along
10 Cullen's sidewall and still be normal to the backplate?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: As annotated in figure 2 at the
13 bottom of page 51 of my declaration. That black arrow
14 that's there, that's the axis.

15 That black arrow is tracking along the sideplate
16 of the channel-shaped portion and the extension portion.
17 And then striking the backplate at a perpendicular or
18 normal angle.

19 BY MR. SCHROEDER:

20 Q. When you say "along," are you saying that it is
21 coextensive with the sidewall? Or are you saying that
22 that axis is spaced away from that sidewall?

23 MS. HOLOUBEK: Objection, form.

24 THE WITNESS: I mean, diagrammatically it's on
25 the inside face of the sidewall that is part of the

1 channel-shaped portion and the extension portion.

2 MR. SCHROEDER: Can the court reporter repeat
3 that because I'm not sure I caught.

4

5 (Whereupon the record was read by the reporter
6 as follows:

7 "A. I mean, diagrammatically it's on the
8 inside face of the sidewall that is part of the
9 channel-shaped portion and the extension portion.")

10

11 BY MR. SCHROEDER:

12 Q. When you're saying it's on the inside face, are
13 you saying that it is actually on the face itself? Or
14 is it separated from the face at all?

15 MS. HOLOUBEK: Objection, form.

16 THE WITNESS: Well, if that black arrow was a
17 piece of string, it would be but inboard of the
18 channel-shaped portion. And could also be contacting
19 the surface of the channel-shaped portion. If that
20 helps.

21 BY MR. SCHROEDER:

22 Q. Well, I mean, the axis would in theory not have
23 any thickness, correct? It would be kind of just a line
24 so to speak with no thickness, correct?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: It depends. I guess if you're
2 setting up that axis to be more of a plane that has some
3 imaginary thinness, then sure. But I annotated it like
4 a big arrow, like a piece of string.

5 That is how I visualize the directionality and
6 the interpretation of axis to a POSITA trying to read
7 these plans and figure out what they mean.

8 BY MR. SCHROEDER:

9 Q. So would the axis have a thickness? Or would it
10 be more like a plane that doesn't have a thickness?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: Well, if it doesn't have some sort
13 of thickness as I've annotated it here -- recalling none
14 of these drawings were to scale, then I might have
15 attempted to stick it up the front in the indefinite
16 section of my report.

17 But right now, this is how I envision it as a
18 POSITA would understand the axis.

19 BY MR. SCHROEDER:

20 Q. So you believe a POSITA would understand the
21 axis to have a thickness?

22 MS. HOLOUBEK: Objection, form. Objection,
23 mischaracterization.

24 THE WITNESS: I believe a POSITA would diagram
25 an axis that is normal to the back flange yet extend

1 along a sidewall to look just like I've annotated it.
2 And it would have the thickness of the pen or whatever
3 my annotation tool is.

4 BY MR. SCHROEDER:

5 Q. So if your annotation tool is a Sharpie marker,
6 it could be a couple millimeters thick?

7 MS. HOLOUBEK: Objection, form.

8 THE WITNESS: Sure.

9 BY MR. SCHROEDER:

10 Q. And if it were a paint brush, it could be a
11 couple inches thick?

12 MS. HOLOUBEK: Objection, form.

13 THE WITNESS: In the hypothetical, yes.

14 BY MR. SCHROEDER:

15 Q. You are aware that the claim itself -- that the
16 claim actually talks about that axis is normal to the
17 planar surface of the backplate, correct?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: Yes.

20 BY MR. SCHROEDER:

21 Q. So in particular that axis would have to
22 actually be it not just normal to any portion of the
23 backplate, but to be normal to the surface of the
24 backplate, correct?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: Yes.

2 BY MR. SCHROEDER:

3 Q. And would you agree that because there is a bend
4 in the corner, that if the axis lacked a thickness and
5 that access were to be on the actual surface of that
6 sidewall, that it would hit the corner or the -- yeah,
7 it would hit the rounded corner between the backplate
8 and that sidewall?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: In answering your question, I'm
11 looking at my annotated figure 2 for Cullen at the
12 bottom of page 51.

13 And which is included helpfully, I might add, to
14 show how Cullen discloses claim 25. Yeah, with this
15 thickness of the axis, I can both track along the
16 sidewall part 30 and then strike perpendicular or normal
17 the front face of the back flange part 12.

18 BY MR. SCHROEDER:

19 Q. That's because the thickness of the axis would
20 be greater than the curvature in between those two
21 components?

22 MS. HOLOUBEK: Objection, form.

23 THE WITNESS: Yes. It would be taking on all of
24 the de minimis-ness of the bends.

25 MR. SCHROEDER: This is probably an okay

1 stopping point.

2

3 (Recess taken.)

4

5 BY MR. SCHROEDER:

6 Q. Just before we get going again, did you talk to
7 anyone during the break regarding the substance of your
8 testimony?

9 A. I did not.

10 Q. In which case we will continue.

11 If you could turn to paragraph -- kind of start
12 with paragraph 90. I believe it's page 56.

13 A. Yes. I'm there, counselor.

14 Q. And starting at page 56, you are addressing
15 Simpson's internal testing of its DHU and DHUTF hangers.
16 And opining that it would not deter a skilled artisan
17 from mounting Cullen's, Yamaguchi's and Robinson's
18 hangers before installing drywall, correct?

19 A. Exactly.

20 Q. And at the bottom of paragraph 90, you're
21 explaining neither of these hangers -- and when you say
22 neither of these hangers, you're referring to Simpson's
23 DHU and Simpson's DHUTF hanger that were tested by
24 Simpson are equivalent to the hangers disclosed in
25 Cullen, Yamaguchi and Robinson; is that correct?

1 A. That's correct.

2 Q. So my first question to you is do you know if
3 the Cullen hanger was ever produced?

4 A. I don't know.

5 Q. Maybe the next question might be obvious from
6 that first answer. But are you aware of anyone testing
7 the Cullen hanger to determine whether or not it would
8 be able to hold a joist at a distance from the wall?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: I don't know whether anybody
11 tested Cullen with joists away from wall. I have my own
12 opinions and optimism.

13 BY MR. SCHROEDER:

14 Q. But you're not aware of anyone that's actually
15 done that test, correct?

16 MS. HOLOUBEK: Objection, form.

17 THE WITNESS: That's correct.

18 BY MR. SCHROEDER:

19 Q. Do you know if the Yamaguchi hanger was ever
20 created?

21 A. Same.

22 Q. This answer's probably obvious from your last
23 answer. But do you know if anyone has ever tested the
24 Yamaguchi hanger to determine whether or not it could
25 hold a joist that is spaced a distance from a wall?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: Again, same as with Cullen, I
3 don't know whether anybody's tested it. I just have my
4 own opinions and optimism.

5 BY MR. SCHROEDER:

6 Q. Understanding that you're not aware of them
7 actually having been tested, would you expect that there
8 would be a load at which the sidewalls on the Cullen
9 hanger would fail if the joist was held away from the
10 wall?

11 MS. HOLOUBEK: Objection, form. And incomplete
12 hypothetical.

13 THE WITNESS: There are a number of limit states
14 that would constitute fail. And they will all be
15 associated with a load.

16 BY MR. SCHROEDER:

17 Q. And do you know what the total amount of load or
18 force would be to reach those limit states where the
19 sidewalls would fail?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: I have an anticipated order of
22 magnitude that -- along with my optimism or my
23 combination, would be an acceptable load for working,
24 the safe working load, which are separated by factors of
25 safety from an ultimate where you might actually be

1 hitting limit states that would be called failure.

2 BY MR. SCHROEDER:

3 Q. But you're not aware of any tests that have been
4 performed to confirm whether or not the wall
5 configuration in which you are proposing would achieve
6 those loads?

7 MS. HOLOUBEK: Objection, form.

8 THE WITNESS: No. Just my opinion on an
9 anticipated order of magnitude.

10 BY MR. SCHROEDER:

11 Q. And you haven't used any type of software to
12 calculate what those loads would be, correct?

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: No. I'm using my experience as a
15 product specifier in guiding my opinion.

16 BY MR. SCHROEDER:

17 Q. Same thing for the Yamaguchi hanger. Would you
18 agree that there would be a load at which the hanger
19 would deform?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: Yes. There's going to be a load
22 that bends the Yamaguchi hanger into a shape that we
23 call a failure.

24 BY MR. SCHROEDER:

25 Q. As you sit here right now, do you know what that

1 load or force would be that would result in the hanger
2 deforming?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: It depends.

5 BY MR. SCHROEDER:

6 Q. What does it depend on?

7 A. The depth of the hanger. The gauge of the metal
8 of my combined hanger. The species of wood abut hanger.
9 Whether I have any other detailing or
10 reenforcements of the frame wall. The distance that the
11 end of the joist is away from the face of the wall.
12 Loading rate, load duration, load magnitude.

13 As I say, it depends.

14 Q. Included in your answers, you mentioned the
15 distance that the member was spaced from the wall.

16 Why would that distance matter?

17 MS. HOLOUBEK: Objection, form.

18 THE WITNESS: Because as part of my obvious
19 analysis, I am taking prior art hangers and utilizing
20 natural opportunities to incorporate fire resistant
21 sheathing for example.

22 BY MR. SCHROEDER:

23 Q. Specifically what would -- why would that
24 distance matter in terms of -- how would that distance
25 affect the failure? Or the rate of failure or the

1 amount of force required for failure?

2 MS. HOLOUBEK: Objection, form.

3 THE WITNESS: Generally, the governing limit
4 state on hangers is downward deflection. And
5 eccentricity such as the distance of the seat away from
6 the face of the wall.

7 BY MR. SCHROEDER:

8 Q. So would increasing the distance away from the
9 wall reduce the amount of the load that could be
10 carried?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: If all other criteria were held
13 constant, yes.

14 BY MR. SCHROEDER:

15 Q. If you move on in your declaration to paragraph
16 98. Actually, let's start at 97.

17 A. Okay.

18 Q. All right. So in the first sentence of
19 paragraph 97, you identify different planes that are
20 within the level of skill in the art to provide
21 different load ratings.

22 A. I do.

23 Q. And included in that list would be modifying the
24 dimensions of the hanger. What do you mean by modifying
25 the dimensions of the hanger?

1 A. Well, the full sentence, which might help us, is
2 (as read):

3
4 Furthermore, it is well within the
5 level of ordinary skill in the art to
6 modify the dimensions of the hanger
7 such the gauge of the hanger or the
8 height of the extension portion to
9 provide a different load rating.

10
11 Q. So let's start with the gauge. Would you go
12 with a -- now a gauge is -- a lower gauge is actually
13 thicker, right?

14 A. That's correct.

15 Q. And so would a lower gauge -- would going to a
16 lower gauge increase the cost of the hanger?

17 MS. HOLOUBEK: Objection, form.

18 THE WITNESS: Probably, yes.

19 BY MR. SCHROEDER:

20 Q. And then another item that you mentioned is the
21 height of the extension portion, correct?

22 MS. HOLOUBEK: Objection, form.

23 THE WITNESS: Yes.

24 BY MR. SCHROEDER:

25 Q. And in particular in order to get a higher load

1 rating, you would increase the height of that extension
2 portion; is that correct?

3 A. It depends. But generally yes.

4 Q. And would increasing the height of the extension
5 portion require the use of more material?

6 A. Yes.

7 Q. And using more material would increase the cost,
8 correct?

9 A. Yes.

10 Q. Would you agree that a person of skill in the
11 art would consider the cost of a hanger as either a
12 motivating factor or a disincentivizing factor when
13 combining teachings of prior art references?

14 MS. HOLOUBEK: Objection, form.

15 THE WITNESS: Well, yes and no, counselor.
16 Because POSITAS, engineers, are always trying to
17 optimize a design to make -- to be both economical and
18 efficient.

19 In this case, a deeper hanger that might give a
20 higher load can carry bigger members and be more
21 valuable to a customer. And that's the yes part.

22 As I mentioned earlier, I have an optimism and a
23 order of magnitude of what loads my combined hanger is
24 going to carry that makes it both viable and feasible.

25 Viable that it carries enough load that you can

1 use it. And feasible that it's not so expensive that
2 you wouldn't make it.

3 BY MR. SCHROEDER:

4 Q. And if you could, is one of the exhibits that
5 you have with you Exhibit 1048, the declaration of
6 Mr. Evans?

7 A. I have that exhibit in front of me.

8 Q. If you could, turn to paragraph 10, paragraph 10
9 of Mr. Evans' declaration.

10 A. Yes. I'm there.

11 Q. Can you read paragraph 10 out loud?

12 A. (As read):

13

14 Since doing research that
15 considered a number of criteria along
16 with the overall performance of the
17 prospective prototypes before deciding
18 to release the DU hangers, one of the
19 primary drivers of Simpson's decision
20 to proceed with a solution that
21 required the drywall to be installed
22 before the hanger was caulked.

23 The DU-type solution was
24 significantly less costly to
25 manufacture due to the amount of steel

1 needed and the tooling required and
2 thus could be sold for much less than
3 the options that could be installed
4 before the drywall.

5
6 It goes on.

7 BY MR. SCHROEDER:

8 Q. You got the part that I was most interested in.
9 So would you agree that Simpson found the cost
10 of trying to design a hanger that would install before
11 the drywall to be prohibitive?

12 MS. HOLOUBEK: Objection, form.

13 THE WITNESS: I missed the last few words of
14 your question, counselor.

15 MR. SCHROEDER: Let me see if I can state it
16 again. I'm not sure I'll get exactly what I said.

17 Do you agree, actually I will ask it a little
18 different because I don't think I can repeat it.

19 Do you agree that Simpson considered the cost of
20 the hanger when designing their DU hangers.

21 MS. HOLOUBEK: Objection, form.

22 THE WITNESS: I take Mr. Evans at his word in
23 his declaration here. No reason to doubt that.

24 I also had in my mind the context of the DU
25 development where both Mr. Evans and Mr. Hensen, where

1 they were trying to honor the context of pre-rocking
2 that we discussed a little earlier or mentioned at
3 least.

4 And the fact that pre-rocking minimized
5 disturbance to drywall and hence led to development of
6 this what seemed like economical DU hanger.

7 BY MR. SCHROEDER:

8 Q. He does mention that the cost was a primary
9 driver, correct?

10 MS. HOLOUBEK: Objection, form.

11 THE WITNESS: In the sentence you isolated, yes.
12 However in context -- I quickly read the preceding
13 paragraphs and there's references to not disturbing the
14 drywall.

15 And as I mentioned, I also have in my mind
16 context from Hensen about pre-rocking.

17 BY MR. SCHROEDER:

18 Q. Going back to your declaration, could you turn
19 to paragraph 101?

20 A. Yes.

21 Q. And within paragraph 101, I believe it's
22 probably the second sentence, you state, "for example,
23 Simpson's DG/DGB/DGH hangers correspond to the shape of
24 Cullen's hanger."

25 Is that correct?

1 A. Yes.

2 Q. The question I have for you, do you know when
3 the DG, DGB and DGH hangers were released?

4 MS. HOLOUBEK: Objection, form.

5 THE WITNESS: Not off the top of my head.
6 Somewhere in the mountain, I would find that answer.
7 But I don't know off the top of my head.

8 BY MR. SCHROEDER:

9 Q. If I were to mention 2017, would that ring a
10 bell?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: It wouldn't surprise me.

13 BY MR. SCHROEDER:

14 Q. And so the DH or the DG, DGB and DGH hangers
15 would not have been around for a person of ordinary
16 skill in the art to have considered in December of 2013,
17 correct?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: Well, that's correct. I mean, if
20 those only sprung up into the market in 2017, yes,
21 that's later than the analysis window at the end of year
22 2013.

23 However, hangers with sidewalls have been around
24 for decades. And in my opinion and in my experience,
25 would have been analogous to prior art Cullen in forming

1 my opinion of this anticipated order of magnitude, safe
2 working load.

3 BY MR. SCHROEDER:

4 Q. Now in all the -- strike that.

5 Did the DG, DGB, and DGH hangers get released
6 after MiTeck's FWH hanger was released?

7 MS. HOLOUBEK: Objection, form.

8 THE WITNESS: I think so.

9 BY MR. SCHROEDER:

10 Q. In fact, I'm not aware exactly where it is in
11 your report as I sit here right now. But I believe you
12 mentioned the FWH hanger was released in 2014; is that
13 correct?

14 MS. HOLOUBEK: Objection, form.

15 THE WITNESS: Yeah. I believe it's in my
16 report. It's also in Hensen's declaration.

17 BY MR. SCHROEDER:

18 Q. So if the DG, DGB, and DGH hangers were released
19 in 2017 and the firewall or MiTeck's FWH hangers were
20 released in 2014, MiTeck's FWH hangers would have been
21 on the market for approximately three years at that
22 point; is that correct?

23 A. Sure. 17 minus 14 is three.

24 Q. And then on page 68, you have a prospective view
25 of the Yamaguchi hanger, Exhibit 1007. And then a

1 photograph of Simpson's DGT hanger; is that correct?

2 A. I do.

3 Q. And are you aware of when the DGT hanger was
4 released?

5 A. It was later, again. I don't know the specific
6 year.

7 Q. Would it have been either 2023 or 2024?

8 A. That wouldn't surprise me.

9 Q. So in that case, the DGT hanger was released
10 almost a decade after the priority date of the patent at
11 issue?

12 A. Again, yeah, '23-'24 is ten years or a decade
13 later than 2013.

14 Q. So a person of skill in the art would not have
15 had the DGT hanger to consider in December of 2013?

16 MS. HOLOUBEK: Occupation, form.

17 THE WITNESS: That's correct. I'll refer you to
18 my prior answer about hangers with sidewalls existing
19 for decades that in my opinion would have been obvious
20 to a POSITA to utilize just like I have in these reports
21 to install on a wall first, install framing, complete
22 framing, and then integrate drywall and have viable,
23 safe working loads.

24 BY MR. SCHROEDER:

25 Q. And the DGT hanger was introduced not just

1 almost a decade after the priority date but almost a
2 decade after MiTeck's FWH hanger; is that correct?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: I think I acknowledged that a
5 couple questions ago.

6 BY MR. SCHROEDER:

7 Q. So when Simpson developed the DG, DGB and DGH
8 hanger, they already had the FWH hanger, which was a
9 commercially viable product, correct?

10 MS. HOLOUBEK: Objection, form. Calls for
11 speculation.

12 THE WITNESS: Yeah. So I've been informed on
13 this area by the declarations of Hensen and Evans. And
14 have no reason to doubt that chronology and background
15 as described by those gentlemen.

16 BY MR. SCHROEDER:

17 Q. And you would agree that the DG, DGH, and DGB
18 hangers are not exact replicas of the Cullen hanger,
19 correct?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: I partially agree. They are not
22 exact replicas.

23 However, the disclosures of those hangers teach
24 me what in my opinion are obvious for the combinations
25 I've arrived at and reported on in my declaration.

1 BY MR. SCHROEDER:

2 Q. If you could turn to paragraph 108.

3 A. Okay.

4 Q. Within paragraph 108, do you mention use of
5 hangers with firewall assemblies?

6 A. Yes. I discuss firewall assemblies as --
7 similarly I have references to other consultants that
8 have provided declarations.

9 Q. And you also have reference to Allan,
10 ArchRecord, and Commins, correct?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: It's a big paragraph, yes.

13 BY MR. SCHROEDER:

14 Q. Do you know if Allan mentions firewall
15 assemblies anywhere?

16 THE WITNESS: Allan teaches the use of
17 sheathing. And then it's that element of Allan that I
18 rely upon in my combination analysis, both the sheathing
19 and sequencing of the sheathing.

20 BY MR. SCHROEDER:

21 Q. But Allan doesn't discuss fire rating or trying
22 to create a firewall assembly, correct?

23 MS. HOLOUBEK: Objection, form.

24 THE WITNESS: Not explicitly. It simply
25 mentions the sheathing and the sequencing options that I

1 believe Allan's focus is more upon energy rather than
2 fire resistivity.

3 That is to say, select teaching, you know, for
4 the combination purposes, sheathing also serves the dual
5 function of providing fire resistance.

6 BY MR. SCHROEDER:

7 Q. How about Commins? Does Commins discuss fire
8 rating or firewall assemblies?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: Similar. Not explicitly. It
11 simply discusses sheathing and how it can be integrated
12 onto a frame wall. The sheathing in this case can be
13 serving a fire resistive purpose or a cosmetic one or an
14 acoustic one.

15 BY MR. SCHROEDER:

16 Q. So the last sentence of this paragraph, you have
17 a quote from Mr. Nelson and you also have some
18 citations.

19 In particular, the last sentence states, "Mr.
20 Nelson also acknowledged that joist hangers were
21 installed before drywall installation."

22 Do I have that correct?

23 A. Yes.

24 Q. Do you know if Mr. Nelson was discussing the use
25 of joist hangers in connection with firewall assemblies?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: I quoted him as saying, "installed
3 before drywall installation."

4 I wasn't quite finished.

5 I similarly quoted above in the paragraph Mr.
6 Holmes, who is also talking about a type 3 construction
7 that didn't quite hear about what a skilled artisan
8 would "complete the framing and then you would cut holes
9 in the drywall ... and then slide the drywall into
10 place."

11 I believe they're talking about fire resistive
12 assemblies, using the drywall to fit in and around
13 hangers such as the prior art.

14 BY MR. SCHROEDER:

15 Q. And you believe that's what Mr. Nelson was
16 discussing, too?

17 MS. HOLOUBEK: Objection, form.

18 THE WITNESS: As I sit here right now, yes.

19 BY MR. SCHROEDER:

20 Q. All right. I am going to represent to that I am
21 sharing right now, Exhibit 1049 that you are referencing
22 there.

23 And in particular, your citation starts at 27,
24 line one. I'm actually backing up to 26, line 20.

25 So this is capturing the question immediately

1 before where you start your citation.

2 The question states, "okay, setting aside fire
3 walls, wasn't it a common practice to frame and roof a
4 building before installing drywall."

5 I objected to form. And then your counsel then
6 rephrased the question. Or actually then the witness
7 stated can you be more specific at which point your
8 counsel rephrased the question.

9 "So prior to 2014 and just in typical building
10 construction, were joist hangers ever installed before
11 drywall installation."

12 Answer, yes.

13 So this first quote that you're citing or the
14 first place that you're citing, the question
15 specifically was typical building construction excluding
16 drywalls, correct?

17 MS. HOLOUBEK: Objection, form.

18 THE WITNESS: I'm sorry. I may cut through
19 whatever your pending question is.

20 BY MR. SCHROEDER:

21 Q. So a second ago, you indicated to me that you
22 believe that Mr. Nelson was discussing firewall
23 assemblies.

24 And based off of just the part of the transcript
25 I just read including what you cited, would you agree

1 that he was actually not discussing firewall assemblies?

2 MS. HOLOUBEK: Objection, form.

3 THE WITNESS: Yes. I mis-recalled my reference
4 there, so drywall, drywall. Yeah, the question was
5 specifically not talking about a firewall. It was
6 talking about regular drywall. So I stand corrected.

7 BY MR. SCHROEDER:

8 Q. And if we even go down the page to your second
9 citation, the question he was asked was, "okay so prior
10 to 2014, MiTeck's joist hangers would be installed
11 before drywall installation; is that correct." Answer:
12 "In non-firewall assemblies, yes."

13 MS. HOLOUBEK: Objection, form.

14 BY MR. SCHROEDER:

15 Q. Once again, Mr. Nelson was very explicitly
16 discussing non-firewall assemblies, correct?

17 A. Yes. Both of those I now see were non-firewall.
18 I stand corrected. There's nothing more to add.

19 Q. I'm going to stop sharing my screen there.

20 Now your statement in paragraph 108 does not
21 acknowledge that he was not discussing firewall
22 assemblies, correct?

23 MS. HOLOUBEK: Objection, form.

24 THE WITNESS: Not explicitly. In context, my
25 opinion in explaining my combination methodology. And

1 my focus here was on hangers before drywall.

2 BY MR. SCHROEDER:

3 Q. If you could turn to paragraph 111.

4 A. Okay.

5 Q. And let me know once you've read it.

6 A. Okay.

7 Q. We had a deposition a couple weeks ago on
8 September 5th, 2025, correct?

9 MS. HOLOUBEK: Objection, form, foundation.

10 MR. SCHROEDER: I'll get there.

11 MS. HOLOUBEK: My objection stands.

12 BY MR. SCHROEDER:

13 Q. Do you recall me deposing you a couple of weeks
14 ago?

15 A. Yes.

16 Q. Are you struggling whether or not it was
17 specifically September 5th?

18 MS. HOLOUBEK: Objection, form. Objection,
19 mischaracterization.

20 THE WITNESS: Yes. It was a couple weeks ago.
21 It probably was in September.

22 BY MR. SCHROEDER:

23 Q. All right. Do you remember us discussing
24 extension portions at that time?

25 MS. HOLOUBEK: Objection, scope.

1 THE WITNESS: Probably, yes.

2 BY MR. SCHROEDER:

3 Q. So within paragraph 111 here, you state that (as
4 read):

5
6 A person of skill in the art would
7 have understood that each of Cullen's,
8 Yamaguchi's, and Robinson's hangers are
9 configured to extend through drywall
10 because the extension portion of each
11 hanger defines a space between the
12 hangers panel-shaped portion and
13 connection portion that would receive
14 drywall.

15
16 MS. HOLOUBEK: Objection, form. Is there a
17 question?

18 MR. SCHROEDER: I'm asking if that's what it
19 says?

20 THE WITNESS: That is what it says.

21 BY MR. SCHROEDER:

22 Q. And when I deposed you a couple of weeks ago, I
23 asked you would every hanger necessarily include a
24 component that would qualify as an extension portion.

25 And your answer to me was (as read):

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It's hard to say, counselor. I mean, it's so front of mind right now that I think of extension portion and I think of an opportunity to install sheathing.

The hanger gives me the structural opportunity to integrate sheathing. And that becomes the extension portion.

Does every theoretical hypothetical hanger out there have an extension portion? Unlikely. So I'm not sure that answers your question.

Do you recall testifying as to that?

MS. HOLOUBEK: Objection, form, scope, relevance.

THE WITNESS: It sounds like me. And sounds pretty persuasive when you read it out.

BY MR. SCHROEDER:

Q. And then after you stated that, I showed you some figures from the Temper Construction manual.

Do you recall that?

MS. HOLOUBEK: Objection, scope.

THE WITNESS: I do.

1 BY MR. SCHROEDER:

2 Q. And you recall being familiar with that
3 reference at the time, correct?

4 MS. HOLOUBEK: Objection, scope. Objection,
5 form.

6 THE WITNESS: Yes. I recognize that text that
7 those were drawn from.

8 BY MR. SCHROEDER:

9 Q. I'm going to share my screen with you again in a
10 second.

11 MS. HOLOUBEK: Are we getting close to a point
12 where we can take a break? It's been another hour.

13 MR. SCHROEDER: Yes. We are. Let me finish
14 this line of questioning. Then we'll break.

15 Q. I am sharing my screen with you right now.
16 Hopefully you see it.

17 A. Yes. I see some historical hangers.

18 MS. HOLOUBEK: I'll object on foundation. And
19 let the record reflect that an unnamed exhibit is being
20 shown on the screen, a portion of an unnamed exhibit.

21 MR. SCHROEDER: I will represent to you that
22 this is Exhibit 2147.

23 Mr. Fennel you recognize these -- this figure
24 that I have on the screen, correct.

25 MS. HOLOUBEK: Objection, scope.

1 THE WITNESS: I did then, I do now. I just
2 refer you back to my prior deposition transcript,
3 counselor, where I mean today to talk about my current
4 declaration.

5 BY MR. SCHROEDER:

6 Q. Well, this relates to your current declaration
7 because you said -- you're saying that a person of skill
8 in the art would recognize extension portions in Cullen,
9 Yamaguchi and Robinson. So this is related.

10 MS. HOLOUBEK: Objection, form, scope.

11 BY MR. SCHROEDER:

12 Q. So when I showed you this figure a couple weeks
13 ago and I directed you to figure A, which is -- I'll get
14 my cursor out of there. It's the top-left figure; is
15 that correct?

16 A. Okay.

17 Q. Do you recall me asking you if you could
18 identify an extension portion on this top-left figure?

19 MS. HOLOUBEK: Objection, scope. Objection,
20 relevance.

21 THE WITNESS: From memory from a couple weeks
22 ago without the benefit of a transcript in front of me,
23 I think I said I would drag my finger down the inside
24 corner of where the channel meets the back flange.

25 And that would be the portion where I would

1 integrate drywall if I was motivated to. And hence that
2 would be the extension portion.

3 BY MR. SCHROEDER:

4 Q. That's pretty close to what you testified to. I
5 will take that answer. Then you did the same thing for
6 exhibit B, correct?

7 MS. HOLOUBEK: Objection, scope, form.

8 THE WITNESS: Yeah, again, I used my fat fingers
9 to define a hypothetical extension portion where I could
10 integrate sheathing in front of the vertical flanges
11 there.

12 BY MR. SCHROEDER:

13 Q. And I believe you did the same thing with figure
14 C as well, correct?

15 MS. HOLOUBEK: Objection, form, scope.

16 THE WITNESS: I honestly don't recall at this
17 time.

18 BY MR. SCHROEDER:

19 Q. So not only are you saying as you state in
20 paragraph 111 (as read):

21

22 That a POSA would have understood
23 that each of Cullen's, Yamaguchi's and
24 Robinson's hangers are configured to
25 extend through drywall because the

1 extension portion of each hanger
2 defines a space between the hanger's
3 channel-shaped portion and connection
4 portion that would receive drywall.

5
6 You're also saying that these prior art hangers
7 shown in figures A, B, and C on the screen would also
8 have extension portions, correct.

9 MS. HOLOUBEK: Objection, form and scope.

10 THE WITNESS: Well, I looked to the structure of
11 the individual hanger to see whether it helps identify a
12 logical extension portion where I could integrate
13 sheathing.

14 But in your hypothetical here looking at these
15 older hangers, again, I'm looking at the front because I
16 put in a joist, secure it on the seat and leave enough
17 room to integrate some drywall.

18 Sure, if that's the exercise we're doing right
19 now.

20 MR. SCHROEDER: I think that we are at a
21 stopping point for a break.

22

23 (Whereupon at the hour of 12:50 P.M., a
24 luncheon recess was taken. The
25 deposition was resumed at 1:25 P.M.,

1 the same persons being present.)

2

3 BY MR. SCHROEDER:

4 Q. Welcome back. While we were on break, did you
5 talk to anyone about the contents of your testimony
6 today?

7 A. I did not.

8 Q. All right. Onward. If you could, turn to
9 paragraph 114 of your declaration.

10 A. Okay.

11 Q. And if you want, I'll cut to the chase.

12 Starting on the third line you have a sentence,
13 "nowhere does Cullen describe that a joist must abut the
14 back flange of the hanger to mount the joist to the wall
15 assembly."

16 Do you see that?

17 A. Yes.

18 Q. As far as you're aware, did I quote that
19 correctly?

20 A. You did.

21 Q. Would you agree that Cullen does describe
22 embodiments that the joist is abutted to the back flange
23 of the hanger?

24 A. The artwork depicts that, counselor. Figure 3
25 on page 76 indeed shows a joist that goes all the way

1 back to the support member.

2 Q. Right. So you're quibble when you state this is
3 that Cullen just doesn't describe that it must be that
4 way, the word "must" being the emphasis?

5 MS. HOLOUBEK: Objection, form.

6 THE WITNESS: Right. One of the figures from
7 memory does not contain the little barbs that are on the
8 inside face between the extension portion and the back
9 flanges.

10 (Inaudible) convenience if you don't have
11 optional seat in the channel-shaped portion.

12 But as we described previously and elsewhere in
13 this report, I take advantage of that seat in
14 combination to bring the joist away from the wall.

15 Understand that's in my mind the POSITA reads
16 this and it's disclosed clearly that that remains an
17 option to leave a gap between the framing member,
18 support member and the carried perpendicular member.

19 BY MR. SCHROEDER:

20 Q. When you say that it leaves the option, does it
21 actually describe that option at any point?

22 MS. HOLOUBEK: Objection, form.

23 THE WITNESS: Not explicitly, counselor. I
24 think it might have been my first deposition to this
25 matter and with your colleague, we had long discussions

1 about the holes in the side of the extension portion and
2 the bearing lengths and how a POSITA would be motivated
3 to modify or utilize Cullen in such a way that there was
4 a gap that permitted drywall.

5 BY MR. SCHROEDER:

6 Q. But Cullen itself does not discuss that option,
7 correct?

8 MS. HOLOUBEK: Objection, form.

9 THE WITNESS: I didn't say it is explicitly
10 written there. But the deletion of the barbs is
11 indicative to me and suggestive.

12 Similarly, when the barbs get deleted, the side
13 panels get beefier particularly with that optional seat.

14 BY MR. SCHROEDER:

15 Q. And the version that doesn't have the barbs is
16 actually the version shown in figure 3; is that correct?

17 A. Yes. Figure one for comparative purposes does
18 show the barbs.

19 And the shape of the side panels before it
20 transitions to the extension portion is different than
21 as shown in figure 2 where it's got a deeper gusset
22 between the side panel and the extension portion.

23 And you can see in figure 2, the barbs are no
24 longer there. And that is the same shaped side panel
25 extension panel in figure 3.

1 So I think we're saying the same thing.

2 Q. Right. And even in figure 2 where it doesn't
3 have a barb, it's got that little top tab 86, correct?
4 Actually might be 84. It's small.

5 A. It is 84. And, yes, they both have that little
6 top tab that in my report I describe my motivation to
7 extend that top tab outwards.

8 Q. And Cullen does not describe extending that top
9 tab outwards beyond what's shown there, does it?

10 A. Not explicitly in this artwork. It does
11 recognize that there are multiple usages for Cullen
12 beyond just simply decking.

13 Q. So Cullen doesn't actually at any point recite
14 an embodiment where the joist is actually separated from
15 either the wall assembly or whatever -- I'll rephrase.

16 Does Cullen at any place within the text of
17 Cullen describe an embodiment in which the joist is
18 installed but is not installed abutting that back
19 flange?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: Yeah. Not explicitly.

22 BY MR. SCHROEDER:

23 Q. Would you agree that the fundamental purpose of
24 a hanger is to transfer the load from a load-bearing
25 structural member to the supporting wall structure?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: Yes.

3 BY MR. SCHROEDER:

4 Q. And would you agree amongst many ways that you
5 could probably break out hangers in different
6 classifications -- but one way that you can classify
7 hangers is you can separate them into top-flange hangers
8 and face-mount hangers?

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: Yes. That's a common distinction.

11 BY MR. SCHROEDER:

12 Q. Would you agree that the principle of operation
13 is different between a top-flange hanger and a
14 face-mounted hanger?

15 MS. HOLOUBEK: Objection, form.

16 THE WITNESS: No. They're all in the same
17 family of light-gauge connectors to help with a complete
18 load (inaudible).

19 BY MR. SCHROEDER:

20 Q. Would you agree that, for instance, if you were
21 to take a top-flange hanger such as the -- if you look
22 at -- actually, strike my question.

23 I'm going to direct you to Exhibit 1001, figure
24 2. Have you previously argued that if you were to cut
25 off the top flange or the top flanges 74 of the hanger

1 shown in figure 2 that the hanger would not be
2 operational?

3 MS. HOLOUBEK: Objection, form and scope.

4 THE WITNESS: I don't recall at this time. I
5 mean I can see the basis why I might have in that there
6 are no attachment holes shown in the back flange. And
7 to enable figure 2 to work, you would need the top
8 flanges.

9 But if you've got a reference in front of you
10 citing my prior opinions, I'll see if I still agree with
11 myself, counselor.

12 BY MR. SCHROEDER:

13 Q. But as that figure is shown, if you were to cut
14 off that top flange, would you be able to attach the
15 hanger to the wall?

16 MS. HOLOUBEK: Objection, form and scope.

17 THE WITNESS: Not without some fastener holes in
18 the back flange is my initial thought.

19 BY MR. SCHROEDER:

20 Q. Would you agree that one way in which the
21 principal of operation might be different between the
22 top-flange hanger and a face-mounted hanger is the
23 manner in which the load is transferred from the hanger
24 to the supporting wall member?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: Generally, yes. However it
2 depends on the individual hangers of which there are a
3 myriad of variations.

4 BY MR. SCHROEDER:

5 Q. Would you agree for any hanger that the load
6 path that is used isn't of itself one of its principles
7 of operation?

8 MS. HOLOUBEK: Objection, form.

9 THE WITNESS: If in a purely unmodified way, I
10 agree with you because you're probably using tabulated
11 values from the manufacturer.

12 But if you're in a modification mode, like I am
13 when I'm combining hangers, then I have possibilities
14 for taking the basic hanger and modifying it while still
15 honoring its principal modes of operation.

16 BY MR. SCHROEDER:

17 Q. If you can move on in your declaration to
18 paragraph 123. I'll give you a minute to refamiliarize
19 yourself with that paragraph.

20 A. Okay.

21 Q. And just to be clear, this section is titled,
22 "There is Not a Nexus Between the Claimed Invention and
23 Patent Owner's Products and Installation Method."

24 And in paragraph 123, you start the
25 discussion -- and it actually continues past that

1 regarding what you are identifying as unclaimed
2 features; is that correct?

3 MS. HOLOUBEK: Object to form.

4 THE WITNESS: It actually starts with paragraph
5 122. But, yes, 123 continues the nexus discussion.

6 BY MR. SCHROEDER:

7 Q. And it continues past there for quite a number
8 of pages even. I'm not going to say paragraphs. But
9 I'll go on with pages.

10 A. Yep. Goes on for days.

11 Q. So one of the unclaimed features that you're
12 identifying is back-to-back extension flanges, correct?

13 MS. HOLOUBEK: Objection, form.

14 THE WITNESS: Yes.

15 BY MR. SCHROEDER:

16 Q. And is it your opinion that back-to-back
17 extension flanges are a critical feature of the FWH
18 hanger?

19 MS. HOLOUBEK: Objection, form.

20 THE WITNESS: I don't know it's critical. But
21 it's important.

22 BY MR. SCHROEDER:

23 Q. Now earlier today we discussed the DG series
24 hangers, correct?

25 A. We did.

1 Q. Do you have Exhibit 2133 in front of you?

2 A. Yes.

3 Q. And what is Exhibit 2133?

4 A. Exhibit 2133 is a Simpson product literature
5 document. The version I have has four pages describing
6 the DG series hangers installation methods and
7 advertised working loads.

8 Q. And looking at the second page of the document,
9 there's an image of three hangers there. The one on the
10 left is the DG, the one in the middle is DGB. And the
11 one on the right is DGH.

12 Do you see that?

13 A. I do.

14 Q. Would you agree that each of those three hangers
15 have an extension flange?

16 MS. HOLOUBEK: Objection, form.

17 MR. SCHROEDER: Let me rephrase that even.

18 Q. Would you agree that each of those hangers has
19 two extension flanges?

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: Yes.

22 BY MR. SCHROEDER:

23 Q. Are the extension flanges on the DG, DGB and DGH
24 in a back-to-back arrangement?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: They are parallel to each other
2 but spaced apart. They don't contact each other in a
3 true back-to-back way.

4 BY MR. SCHROEDER:

5 Q. And to the extent that back-to-back extension
6 flanges were critical features, these hangers would not
7 have those features, correct?

8 MS. HOLOUBEK: Objection, scope and relevance.
9 And incomplete hypothetical.

10 THE WITNESS: As an engineer and a POSITA, I
11 would assume the back-to-back nature would give a
12 composite-type action that I would think would be
13 helpful in providing load-carrying capacity.

14 In my space, the path extension flanges I too
15 find ways to derive load-carrying capacity that makes my
16 combination viable. It's just not in the back-to-back
17 way like your FWH.

18 BY MR. SCHROEDER:

19 Q. And as far as you're aware the DG, DGB, and DGH
20 hangers were commercially available hangers, correct?

21 MS. HOLOUBEK: Objection, scope. Objection,
22 form.

23 THE WITNESS: Yes. I think they were available.
24 I'm not sure whether they still are.

25 ///

1 BY MR. SCHROEDER:

2 Q. I don't believe they are. And would you agree
3 that when they were commercially available, they were
4 directly competitive with the FWH hanger?

5 MS. HOLOUBEK: Objection, scope. Objection
6 form.

7 THE WITNESS: Yeah. I haven't been asked to
8 opine on if they're competitors of MiTeck.

9 BY MR. SCHROEDER:

10 Q. But you are opining on whether or not the
11 back-to-back arrangement of the extension flanges was an
12 important unclaimed feature, correct?

13 MS. HOLOUBEK: Objection, mischaracterization.
14 Objection, form.

15 THE WITNESS: Yes.

16 BY MR. SCHROEDER:

17 Q. And in front of you, you're looking at a set of
18 hangers that does not have that back-to-back
19 arrangement, correct?

20 MS. HOLOUBEK: Objection, form. Objection,
21 scope.

22 THE WITNESS: As I acknowledge, these have a gap
23 between the parallel extension flanges.

24 BY MR. SCHROEDER:

25 Q. [REDACTED]

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MS. HOLOUBEK: Objection, form, scope. Calls
for speculation.

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THE WITNESS: To the extent I've seen industry
feedback in -- as part of my secondary evidence analysis
as far as my obvious analysis, I haven't seen anything,
counselor, that persuades me away from my combination
analysis.

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So where I was using prior art to build a hanger
to simply carry a joist, incorporate drywall and allow
for hanger installation first, I haven't seen anything
in the sales characterizations that would dissuade me
from my identify prior art constructions.

BY MR. SCHROEDER:

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MS. HOLOUBEK: Objection to scope, speculation,

1 foundation and form.

2 THE WITNESS: [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

24 BY MR. SCHROEDER:

25 Q. Could you turn to page 8 of your declaration.

1 A. Okay.

2 Q. And this is the list of materials you
3 considered, correct?

4 A. Yes.

5 Q. And if you look in the list at Exhibit 2055 you
6 will get the declaration of the Dwight J. Duncan, CFA.

7 Do you see that on the list?

8 A. I do.

9 Q. The fact that it in this list means that was
10 provided to you, correct?

11 A. Yes.

12 Q. The fact that was in the list means that you
13 reviewed it?

14 A. At some point, yes.

15 Q. Also on this list, a little further down, as
16 Exhibit 2075 you have expert report of Kenneth S.

17 Serwin, PhD.

18 Do you see that?

19 A. I do.

20 Q. The fact that that is in the list means it was
21 provided to you, correct?

22 A. Yes.

23 Q. And the fact that was in the list means you
24 reviewed it, correct?

25 A. At some point, yes.

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BY MR. SCHROEDER:

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Q. If you turn to Exhibit 2134.

12

A. Can you remind me what spectrally that looks like?

13

14

Q. It's going to look a lot like 2133 that you looked at just a minute ago. It's just the DGF series instead of the DG series.

15

16

17

MS. HOLOUBEK: Counsel, if I may, it looks like the version here (inaudible). Never mind.

18

19

BY MR. SCHROEDER:

20

Q. Did you find it?

21

A. Yes.

22

23

Q. All right. Like I said very similar on the cover, almost the exact same angle of photograph, might have even been the exact same angle.

24

25

So this is a similar brochure to the one you

1 just looked at a minute ago for the DG series. But
2 instead it's for the DGF series, correct?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: Yes.

5 BY MR. SCHROEDER:

6 Q. And on the second page, you have images of the
7 DGF, DGHF and DGBF; is that correct?

8 A. Yes.

9 Q. Just asking, have you ever held a DGF in your
10 hands?

11 MS. HOLOUBEK: Objection, form. Objection,
12 scope.

13 THE WITNESS: I don't know. I might have. I
14 spend a lot of time in my connective department of my
15 hardware shop. But I honestly don't know.

16 BY MR. SCHROEDER:

17 Q. Do you know off the top of your head if you ever
18 held a DGHF in your hands?

19 MS. HOLOUBEK: Objection, scope.

20 THE WITNESS: Same.

21 BY MR. SCHROEDER:

22 Q. How about a DGBF? Have you held one of those?

23 MS. HOLOUBEK: Objection, form. Scope.

24 THE WITNESS: Yeah. That's a definite not sure.

25 ///

1 BY MR. SCHROEDER:

2 Q. How about a MiTeck FWH hanger?

3 MS. HOLOUBEK: Objection, form and scope.

4 THE WITNESS: I'm reasonably sure I have not
5 held a FWH.

6 BY MR. SCHROEDER:

7 Q. So you're today making an opinion as to whether
8 or not the FWH hanger has a nexus to the claimed
9 invention when you have not actually ever held the FWH
10 in your hand, correct?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: The basis for my lack of nexus
13 opinion is written clearly in my declaration where it
14 discusses back-to-back-ness, interruption of fire
15 ratings, and installation sequence.

16 I can read all those pages into the record if
17 you wanted to. But I don't think you want that.

18 BY MR. SCHROEDER:

19 Q. Returning to Exhibit 2134, does the DGF have two
20 extension flanges?

21 MS. HOLOUBEK: Objection, scope.

22 MR. SCHROEDER: Michelle, if you want, you can
23 just have a running objection to the scope.

24 MS. HOLOUBEK: Running objections are not
25 allowed under rules. I will continue to object per

1 question.

2 MR. SCHROEDER: All right.

3 THE WITNESS: Yes. There are two extension
4 flanges. They are parallel and spaced in the DGF as
5 pictured on page 2 of Exhibit 2134.

6 BY MR. SCHROEDER:

7 Q. How about the DGHF?

8 MS. HOLOUBEK: Objection, scope.

9 THE WITNESS: Same answer.

10 BY MR. SCHROEDER:

11 Q. How about the DGBF?

12 MS. HOLOUBEK: Objection, scope.

13 THE WITNESS: Same answer.

14 BY MR. SCHROEDER:

15 Q. All right. Do you have to Exhibit 2135 in front
16 of you?

17 A. Yes.

18 Q. And Exhibit 2135 is a brochure for Simpson's DGT
19 and DGHT hanger; is that correct?

20 A. Yes.

21 Q. And it only shows a drawing of the DGT hanger.
22 And says DGHT is similar kind of at the top-left figure
23 on the first page; is that correct?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: There are images of DGHT on the

1 same page, counselor. In this one in the middle shows a
2 skewed version. And then there's a tiny, tiny version
3 down on the bottom left of DGHT as well.

4 BY MR. SCHROEDER:

5 Q. All right. But as far as the regular non-skewed
6 and not shown in a installed version, it shows a DGT in
7 the top left, correct?

8 MS. HOLOUBEK: Objection, form.

9 THE WITNESS: Yes.

10 BY MR. SCHROEDER:

11 Q. And says DGHT similar right below that, correct?

12 A. It does.

13 Q. Does the DGT hanger that you see on this page
14 have back-to-back extension flanges?

15 MS. HOLOUBEK: Objection, scope. Objection,
16 form.

17 THE WITNESS: No. There's spacing between the
18 respective extension portions.

19 BY MR. SCHROEDER:

20 Q. And to the extent the DGT hanger has been a
21 commercially successful hanger, would the purchasers of
22 that hanger have found the lack of back-to-back
23 extension flanges to be critical?

24 MS. HOLOUBEK: Objection, scope, form,
25 speculation?

1 THE WITNESS: As discussed before despite the
2 presence in my file of sales literature and declarations
3 of others, I don't recall anything persuasive enough to
4 shift me off my prior art combinations used in my
5 obviousness analysis.

6 BY MR. SCHROEDER:

7 Q. I'm trying to focus on nexus here. And in
8 particular on the nexus, did the customers who purchased
9 this DGT find a lack of back-to-back extension flanges
10 to be so critical they decided to purchase something
11 else?

12 MS. HOLOUBEK: Objection, form, scope, calls for
13 speculation.

14 THE WITNESS: I will stick with my prior answer,
15 counselor. To the extent I understand the nexus, it's
16 written here in paragraph 123 and beyond.

17 BY MR. SCHROEDER:

18 Q. Another item that you identified in paragraph
19 123 is the alleged unclaimed feature of cutting a slat
20 in drywall; is that correct?

21 A. That's correct.

22 Q. Assuming you still have with Exhibit 2135 in
23 front of you, if you go to the second page at the bottom
24 in the middle, it shows drywall notches, correct?

25 MS. HOLOUBEK: Objection, form.

1 THE WITNESS: It does.

2 BY MR. SCHROEDER:

3 Q. And so the DGT and DGHT series require something
4 other than a slot to be cut in the drywall, correct?

5 MS. HOLOUBEK: Objection, form. Objection
6 scope.

7 THE WITNESS: Well, it requires the notches as
8 shown in the bottom middle of Exhibit 2135 to allow for
9 the extension portion and the back flanges to connect to
10 the wall prior to drywall.

11 BY MR. SCHROEDER:

12 Q. Would you agree that the fact that your client
13 released a product that did not require back-to-back
14 flanges and did not require that the cutout -- or that
15 the opening in the drywall only be a slot indicates that
16 your client did not find those two features to be
17 critical?

18 MS. HOLOUBEK: Objection, form, scope, calls for
19 speculation.

20 THE WITNESS: As I mentioned earlier today, I've
21 been informed on product development from the
22 declarations of Hensen and Evans.

23 Beyond that, I would be speculating.

24 BY MR. SCHROEDER:

25 Q. Would you agree that one of your combinations

1 that you are proposing of the prior art is a Yamaguchi
2 reference in which the extension flanges would not be
3 back to back and in which the opening in the drywall
4 would be larger than a slot?

5 MS. HOLOUBEK: Objection, form and scope.

6 THE WITNESS: Earlier in my declaration, I
7 struggled with finding dimensions that helped define the
8 slot. In fact, I opined that it's indefinite.

9 BY MR. SCHROEDER:

10 Q. But the combinations that you have proposed do
11 not require back-to-back extension flanges, correct?

12 MS. HOLOUBEK: Objection, scope and form.

13 THE WITNESS: That's correct. Each of my prior
14 art combinations had extension flanges that are spaced.

15 BY MR. SCHROEDER:

16 Q. So you yourself did not find back-to-back
17 extension flanges to be critical?

18 MS. HOLOUBEK: Objection, form and scope.

19 THE WITNESS: As I said before, I recognize them
20 as important and that they can derive a composited action
21 I would anticipate. But I wouldn't call them critical.

22 BY MR. SCHROEDER:

23 Q. Moving on to paragraph 143.

24 A. Okay.

25 Q. Is it your understanding that in order to

1 establish a nexus, the claimed feature must be the sole
2 reason for commercial success?

3 MS. HOLOUBEK: Objection, form.

4 THE WITNESS: Paragraph 143 has echoes back in
5 123 where we were a moment ago. And if I read (as
6 read):

7
8 I do not believe that the patent
9 owner should be entitled to a
10 presumption of nexus to its secondary
11 considerations evidence because its FWH
12 product and installation method are not
13 coextensive with the patented
14 invention.

15 Based on my review of the patent
16 owner's evidence of secondary
17 considerations, it was not the
18 installation sequence alone that drove
19 the demand for MiTeck's FWH hanger.

20 Instead it was the ability to
21 install drywall after mounting the
22 hanger without creating disruptions in
23 the firewall assembly, which is
24 attributable to the unclaimed feature
25 of cutting a slot in the drywall to

1 receive the hanger's back-to-back
2 extension flanges.

3
4 Jump forward to 143, I believe it's those
5 multiple features of the hanger that have provided the
6 basis for the commercial success opinions of others such
7 as the sales statistics that follow, summarized in
8 paragraph 144.

9 BY MR. SCHROEDER:

10 Q. So my question's a little different, though.

11 My question is, is it your opinion that in order
12 for a feature to provide a nexus, whether by presumption
13 or by actual consumer comments things like that, that
14 that feature must alone be the driver of consumer
15 demand?

16 MS. HOLOUBEK: Objection, form.

17 BY MR. SCHROEDER:

18 Q. And in particular, I point you to paragraph 144,
19 where you have "alone" in italics.

20 MS. HOLOUBEK: Objection, form.

21 THE WITNESS: Well, as you point out, my
22 paragraph 144 has the summarizing the patent owner's
23 assertions that it was the installation sequence alone
24 for the "primary driver for consumer demand."

25 That's page 83 of your patent owner reply.

1 I note that in paragraph 144, 145, 146, the
2 various statistics presented by Mr. Alley so that
3 there's actually a multitude of features that the FWH
4 that were actually behind consumers' preferences towards
5 the FWH product.

6 BY MR. SCHROEDER:

7 Q. So my question goes a little more towards your
8 understanding of the law. Is whether or not the Nexus
9 is required to be the primary driver versus merely a
10 primary driver?

11 MS. HOLOUBEK: Objection, form.

12 THE WITNESS: Well, if we looked back at
13 paragraph 136, I have a basis there for why I believe
14 the Nexus does not exist.

15 And if I just read that briefly. (As read):
16

17 Second, patent owner does not
18 establish a Nexus between it's evidence
19 of secondary consideration and the
20 claimed invention because it's evidence
21 of secondary considerations rely on a
22 feature that was already well known in
23 the art -- cutting and installing
24 drywall after mounting a structural
25 connector.

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I mean, this is my legal understanding of how you derive a Nexus or how you show that one's not appropriate.

BY MR. SCHROEDER:

Q. So are saying that the claim is anticipated not just merely obvious?

MS. HOLOUBEK: Objection, form, mischaracterizes.

THE WITNESS: Paragraph 137 just carries on and actually summarizes that I've been informed by Simpson counsel that objective evidence of non-obviousness lacks a Nexus if it exclusively relates to a feature that was known in the prior art.

And as I discussed in 136, cutting and installing drywall after the installation of a structural connector has been around for ages, long before the 2013 study period.

BY MR. SCHROEDER:

Q. But you acknowledge that the claim limitations themselves specify various features of the hanger, order of installation, including cutting, sheathing and sliding it in place.

And that the claim is a combination of all those items, correct?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: What I'm saying is combination of
3 all of those things was the survey results presented by
4 Alley in my paragraph 144 showed consumer favor for the
5 combination of those features claimed or otherwise for
6 any perceived preference for the FWH.

7 BY MR. SCHROEDER:

8 Q. I do want to talk with your analysis of Alley's
9 survey. Do you have any formal training in consumer
10 surveys?

11 A. I've taken the standard statistics classes that
12 most engineers receive. There will be a treatment of
13 surveys and statistics.

14 In my professional career, committees I have
15 been on have conducted surveys of our membership and
16 practitioners to arrive at findings that relate to
17 either the state of the art or the state of the
18 practice.

19 So I think generally yes. Certainly when it
20 comes to what we're talking about here, the little
21 silver hangers --

22 (Reporter Clarification.)

23 -- little silver connectors that are part of a
24 timber structure load path.

25 I feel quite comfortable discussing surveys,

1 survey techniques and in fact doing that afterwards.

2 Q. So my question though is do you have formal
3 training regarding consumer surveys?

4 You mentioned you took a statistics class in
5 undergraduate. Beyond that, do you have formal
6 training?

7 MS. HOLOUBEK: Objection, mischaracterizes.
8 Asked and answered.

9 THE WITNESS: Yeah. I refer you to my previous
10 answer.

11 BY MR. SCHROEDER:

12 Q. Do you have any formal training in aggregating
13 consumer data?

14 A. I feel very comfortable aggregating all sorts of
15 data, whether it comes from consumers or data loggers.

16 I'm not sure what else you're getting at.

17 Q. Do you have work experience specifically in the
18 market research industry?

19 A. I market my own company virtually daily trying
20 to keep my people busy. I also operate in an
21 professional environment where I compare notes with my
22 colleagues about what they do to market their particular
23 services to the marketplace.

24 So I think in a very real world practical sense,
25 I believe I have work experience.

1 Q. Do you consider yourself to be an expert in
2 market research?

3 MS. HOLOUBEK: Objection, scope.

4 THE WITNESS: Well, for the basis of reviewing
5 Alley's survey data and incorporating that into my
6 obviousness analysis, I do.

7 BY MR. SCHROEDER:

8 Q. Do you consider yourself an expert that is
9 qualified to testify regarding consumer surveys?

10 MS. HOLOUBEK: Objection, form, scope.

11 THE WITNESS: Yeah. I just answered and gave
12 you the guidelines for why I consider myself competent
13 to offer the opinions I have in this declaration with
14 respect to these survey questions.

15 BY MR. SCHROEDER:

16 Q. If the survey that Mr. Alley performed regarded
17 toothpaste, would you consider yourself an expert to
18 opine on it?

19 MS. HOLOUBEK: Objection, scope and relevance.

20 THE WITNESS: I'm looking at these questions
21 here. And they're not too taxing: "I would be much
22 more likely to purchase, request or specify a product
23 with this feature."

24 Every trade conference I go to, counselor, has
25 booths full of people trying tell me why their product

1 is awesome and should be specified.

2 This doesn't take maximum amount of expertise to
3 generate these questions, interpret the answers to these
4 questions, or tabulate the percentages.

5 I'm pretty comfortable within this subject
6 matter area for the purposes of an engineer offering a
7 POSITA opinion on secondary evidence.

8 BY MR. SCHROEDER:

9 Q. But you're not providing testimony as to your
10 opinion regarding the technical aspects. You're
11 providing an opinion regarding the work performed by a
12 survey --

13 MS. HOLOUBEK: The --

14 BY MR. SCHROEDER:

15 Q. I am going to ask you the next question. Do you
16 have any experience in designing consumer surveys?

17 MS. HOLOUBEK: Objection, scope, relevance.

18 THE WITNESS: I've described before how
19 committees I have been on have constructed surveys of
20 practitioners to help guide our professional practice.

21 From memory, I recall one where we were
22 discussing diaphragm flexibility in timber structures
23 and how various jurisdictions were allowing
24 practitioners to interpret the code.

25 Yes. I have experience in designing surveys to

1 derive answers.

2 BY MR. SCHROEDER:

3 Q. When did you have that experience? What year?

4 MS. HOLOUBEK: Objection, scope and relevance.

5 MR. SCHROEDER: This goes to his qualifications.

6 He's clearly unqualified under Daubert --

7 MS. HOLOUBEK: Objection. Mischaracterization
8 and putting your legal argument on the record. I still
9 object to scope and relevance.

10 THE WITNESS: The diaphragm survey that I
11 referred to, I believe, was in the early 2000s.

12 BY MR. SCHROEDER:

13 Q. So 20 years ago?

14 MS. HOLOUBEK: Objection, harassment.

15 BY MR. SCHROEDER:

16 Q. Did you read any books as to consumer survey
17 design?

18 MS. HOLOUBEK: Objection, scope and relevance.

19 THE WITNESS: I don't believe so.

20 BY MR. SCHROEDER:

21 Q. Have you ever read any literature regarding
22 theories on conducting consumer surveys?

23 MS. HOLOUBEK: Objection, scope and relevance.

24 THE WITNESS: Yeah. I think I've offered
25 everything I can on this subject to you.

1 BY MR. SCHROEDER:

2 Q. Do you have any familiarity as to how surveys
3 use open-ended questions as compared to close-ended
4 questions?

5 MS. HOLOUBEK: Objection, scope, relevance.

6 THE WITNESS: I have an engineer's working
7 experience in how to ask questions. Most often there
8 are building officials that you could ask a question to
9 get the answer you want.

10 And so I've seen other practitioners asking what
11 I would consider unfair questions. And I could spot
12 them.

13 So an example just for the sake of chatting
14 here, if I wanted to get a minimal scope of work on a
15 retrofit project, I might ask a building official
16 whether I need to do a code upgrade if I am simply
17 replacing a handrail.

18 And I'll probably get an answer, no, replace in
19 like kind.

20 Versus if I used a more technical term that I'm
21 replacing a bunch of dry rot in the entire guardrail, I
22 may well be triggering a code upgrade.

23 There's an art to asking questions that at least
24 within my world as an engineer or a POSITA
25 I feel very comfortable and qualified with.

1 BY MR. SCHROEDER:

2 Q. Are you aware of the limits in attempting to
3 quantify responses to open-ended questions in surveys?

4 MS. HOLOUBEK: Objection, scope, relevance and
5 form.

6 THE WITNESS: I'm not sure I can help you beyond
7 what I've already offered.

8 BY MR. SCHROEDER:

9 Q. Have you considered whether open-ended questions
10 invite off-topic responses?

11 MS. HOLOUBEK: Objection, scope, relevance, and
12 form.

13 THE WITNESS: Yep. Not sure I can help you.

14 BY MR. SCHROEDER:

15 Q. Have you considered whether or not open-ended
16 questions indicate that the subject of the survey
17 understood the question?

18 MS. HOLOUBEK: Objection, scope, relevance and
19 form.

20 THE WITNESS: Yeah. Not sure I can help you.

21 BY MR. SCHROEDER:

22 Q. Have you considered whether or not open-ended
23 questions result in answering fatigue by the respondent?

24 MS. HOLOUBEK: Objection, scope, relevance, and
25 form.

1 THE WITNESS: Well, certainly my students when I
2 was teaching timber classes would rarely use the added
3 fields for extra comment once when they filled out a
4 numerical bubble. I would get very few open-ended
5 responses beyond "awesome, 10 out of 10."

6 BY MR. SCHROEDER:

7 Q. Have you considered whether open-ended questions
8 produce or result in difficulties quantifying the
9 results?

10 MS. HOLOUBEK: Objection, scope, relevance and
11 form.

12 THE WITNESS: Yeah. I'm not sure I can help
13 you.

14 MR. SCHROEDER: I am almost done. I probably
15 have like ten more minutes. I don't know if you want me
16 to just plow through and finish. I'm assuming you
17 probably do?

18 THE WITNESS: Yeah, no. Are they all open-ended
19 questions, John?

20 BY MR. SCHROEDER:

21 Q. That's up to you. If you could you open or find
22 Exhibit 1071?

23 A. Found it.

24 Q. And do you recognize Exhibit 1071?

25 A. I do.

1 Q. What is Exhibit 1071?

2 A. This is one of my prior art references used in
3 my declaration here in my combination analysis of your
4 substitute claims.

5 Q. In particular -- I don't know if I'm saying this
6 name right, Kanai.

7 Is that how you would pronounce it?

8 A. Yes, counselor.

9 Q. And if you scroll to the second page, the image
10 on the bottom, let me know when you are there.

11 A. I am there.

12 Q. And this image on the bottom is what they're
13 referring to as a usage state; is that correct?

14 A. Yes. Again, the labeling is above the figure in
15 question.

16 Q. And is -- from what you can tell this wall
17 assembly shown here a wood-framed wall?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: Some sort of bearing element. The
20 translation refers to a girder. But it could be a
21 bearing wall such as a foundation.

22 BY MR. SCHROEDER:

23 Q. And I understand that there might not be a whole
24 lot of words to this reference. Does this reference
25 identify drywall anywhere?

1 MS. HOLOUBEK: Objection, form.

2 THE WITNESS: Not explicitly.

3 BY MR. SCHROEDER:

4 Q. When I say it doesn't identify drywall, it
5 doesn't identify any of the other common names that
6 might be used for drywall such as wallboard or gypsum
7 board; is that correct?

8 MS. HOLOUBEK: Objection, form.

9 THE WITNESS: No. It doesn't. However, in my
10 combination analysis for obviousness, I see clearly the
11 opportunity to identify an extension portion where I can
12 incorporate drywall once framing is complete.

13 BY MR. SCHROEDER:

14 Q. And this reference doesn't refer to fire ratings
15 or fire separation walls anywhere, does it?

16 MS. HOLOUBEK: Objection, form.

17 THE WITNESS: No. Not explicitly. And I have
18 to trust in the translation.

19 BY MR. SCHROEDER:

20 Q. If I'm looking at this figure at the bottom of
21 page 2, the usage state I believe it calls it, at the
22 very top, there is some dotted lines that are extending
23 towards the right.

24 Do you see that?

25 A. Yes.

1 Q. Is your interpretation that dashed line, the
2 dotted line that you're seeing there is the top of a
3 structural member such as a joist?

4 MS. HOLOUBEK: Objection, form.

5 THE WITNESS: Yes-ish. These -- there are two
6 horizontal dashed lines that more or less line up with
7 top and bottom of the hanger.

8 I think that is suggestive of a -- like a
9 carried member supported in the channel-shaped portion.

10 BY MR. SCHROEDER:

11 Q. And towards the bottom of the figure there's
12 also another dashed line right there almost even but
13 slightly above the very bottom of that hanger, correct?

14 MS. HOLOUBEK: Objection, form.

15 THE WITNESS: Yes. That bottom dotted line
16 would be suggestive of the elevation at the bottom of
17 the joist.

18 BY MR. SCHROEDER:

19 Q. And in particular, on that bottom line there, I
20 see it's -- if I look on the other side of the hanger, I
21 see one dash that is lined up with the rest of that
22 line; is that correct?

23 MS. HOLOUBEK: Objection, form.

24 THE WITNESS: Yes. It looks like the artist has
25 continued that dashed line across to intersect with the

1 face of whatever that bearing element is.

2 BY MR. SCHROEDER:

3 Q. If you could, could you find Exhibit 1008,
4 Tsukamoto, T-S-U-K-A-M-O-T-O?

5 A. Yes. Exhibit 1008.

6 Q. And for Exhibit 1008, it shows a usage view as
7 figure 5 and figure 6; is that correct? I don't know if
8 it calls it usage view but...

9 MS. HOLOUBEK: Objection, form.

10 THE WITNESS: On page 3 of translation it says
11 figure 5 is a cross-sectional view. Figure 6 is a
12 cross-sectional view showing an example of attachment
13 condition.

14 BY MR. SCHROEDER:

15 Q. But whereas figures 1 through 4 are showing just
16 the hanger, figure 5 is showing the hanger in use,
17 correct?

18 MS. HOLOUBEK: Objection, form.

19 THE WITNESS: Yeah. Five and 6 show carried
20 elements sitting in the channel-shaped portion.

21 BY MR. SCHROEDER:

22 Q. And the wall assembly that's shown in figure 5,
23 is that a foundation wall?

24 MS. HOLOUBEK: Objection, form.

25 THE WITNESS: In the translation, that is

1 sitting on element number 8. And the translation does
2 call that a foundation in this patent.

3 I in combination land have just deemed it just
4 any bearing-type wall. And in fact I would interchange
5 that with a wood-frame wall.

6 BY MR. SCHROEDER:

7 Q. Does Tsukamoto have any mention of drywall?

8 A. Not explicitly.

9 Q. Does Tsukamoto have any mention of fire rating
10 or firewalls?

11 A. Not explicitly.

12 MR. SCHROEDER: I have no further questions as
13 to the direct. I may have redirect. But I am passing
14 the witness.

15 MS. HOLOUBEK: Take five minutes.

16

17 (Recess taken.)

18

19 MS. HOLOUBEK: I have no questions.

20 MR. SCHROEDER: All right.

21 MS. HOLOUBEK: We'll close it up.

22

23

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25

1 STATE OF CALIFORNIA) ss.

2 COUNTY OF LOS ANGELES)

3
4 I, Lori M. Barkley, CSR No. 6426, do hereby
5 certify:

6 That the foregoing deposition proceedings were
7 taken before me at the time and place therein set forth
8 and were recorded stenographically by me, and were
9 thereafter transcribed under my direction and
10 supervision, and that the foregoing pages contain a
11 full, true and accurate record of all proceedings and
12 testimony to the best of my skill and ability.

13 I further certify that I am neither counsel for
14 any party to said action, nor am I related to any party
15 to said action, nor am I in any way interested in the
16 outcome thereof.

17 IN WITNESS WHEREOF, I have subscribed my name
18 this 24th day of September, 2025.

19 
20

21 LORI M. BARKLEY, CSR No. 6426
22
23
24
25

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

September 25, 2025

William Andrew Fennell
andy@ergroup.org

Case Name: Simpson Strong-Tie Company, Inc. v. Columbia Insurance
Company

Veritext Reference Number: 7596987

Deposition Date: 9/18/2025

Dear Sir/Madam:

Enclosed you will find a transcript of your deposition.

As the reading and signing have not been expressly
waived, please review the transcript and note any
changes or corrections on the errata sheet
included, indicating the page, line number, change and
reason for the change. Sign at the bottom of the sheet
in the presence of a notary and forward the errata sheet
back to us at the address shown above or email to
production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of
this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7596987

CASE NAME: Simpson Strong-Tie Company, Inc. v. Columbia
Insurance Company

DATE OF DEPOSITION: 9/18/2025

WITNESS' NAME: William Andrew Fennell , Volume 1

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date William Andrew Fennell , Volume 1

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 7596987

CASE NAME: Simpson Strong-Tie Company, Inc. v. Columbia
Insurance Company

DATE OF DEPOSITION: 9/18/2025

WITNESS' NAME: William Andrew Fennell , Volume 1

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
well as the reason(s) for the change(s).

I request that these changes be entered
as part of the record of my testimony.

I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
testimony and be incorporated therein.

Date

William Andrew Fennell , Volume 1

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They have listed all of their corrections
in the appended Errata Sheet;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

PAGE/LINE(S) /	CHANGE	/REASON
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[illegible]

DAY OF _____, 20____.

Commission Expiration Date

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