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Transcript of Dr. John Pratt

Date: September 16, 2025

Case: Therabody, Inc. -v- Hyperice IP Subco, LLC (PTAB)

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

THERABODY, INC.,	)	
	)	
PETITIONER,	)	CASE NO.:
	)	PGR2024-00053
VS.	)	
	)	U.S. PATENT NO.
HYPERICE IP SUBCO, LLC,	)	11,857,482
	)	
PATENT OWNER.	)	
_____	)	

DEPOSITION
DR. JOHN PRATT
TUESDAY, SEPTEMBER 16, 2025
LOS ANGELES, CALIFORNIA

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REPORTED BY MICHAEL CAGLIATA
CSR #14491, RPR

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Deposition of

DR. JOHN PRATT, held in person:

Witness Location:

610 NEWPORT CENTER DRIVE, 17TH FLOOR
NEWPORT BEACH, CALIFORNIA 92660

Pursuant to Notice, before Michael
Cagliata, Registered Professional Reporter, and
Certified Shorthand Reporter No. 14491 in and for the
State of California.

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A P P E A R A N C E S

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Transcript of Dr. John Pratt
Conducted on September 16, 2025

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P R O C E E D I N G S

* * * *

MR. BERG: Bradley Berg, counsel for
Therabody Inc., the petitioner in this matter, and
for the witness, John Pratt.

MR. KELLAR: Kyle Kellar of Womble Bond
Dickinson, counsel for patent owner Hyperice in these
two matters.

EXAMINATION BY MR. KELLAR

Q. Would you please state your name for the
record, sir?

A. John Dilworth Pratt.

Q. Is it okay if I refer to you as Dr. Pratt
today?

A. That's fine.

Q. Have you ever been deposed before?

A. Yes.

Q. When was your most recent deposition?

A. I think it might have been in the district
court case for Hyperice versus Therabody, but I'm not
positive on that.

Q. Is there anything impacting your ability to
testify truthfully today?

A. No.

Q. I'll assume you understand my question

1 unless you ask for clarification; is that fair?

2 A. Yes.

3 Q. Do you understand that your testimony today
4 is for both PGR matters? PGR2024-53 and PGR2025-13?

5 A. I do.

6 Q. Because this deposition is covering two
7 matters, it'll be important that we have clarity of
8 the record. So if at any point you have any question
9 as to which proceeding a question pertains to, please
10 let me know. Okay?

11 A. Okay.

12 Q. And if I refer to the patents at issue, do
13 you understand that to refer to both the '482 and
14 '082 patents?

15 A. I do.

16 Q. Also, if I refer to a posita, do you
17 understand that to mean a person of ordinary skill in
18 the art?

19 A. Yes.

20 Q. Do you understand that this deposition,
21 along with your declarations, form your formal
22 testimony in these two PGR matters?

23 A. I do.

24 Q. Under U.S. patent office rules, you're not
25 permitted to discuss the substance of your testimony

1 with counsel during breaks. When we return from a
2 break, I may ask if you discussed the substance of
3 your interview from time to time. Lastly, I try to
4 take a break about every hour or so. If at any time
5 you need a break, please let me know. But I do ask
6 that if there's any question pending, you answer that
7 question before we break; is that fair?

8 A. Yes.

9 Q. How did you prepare for your deposition
10 today?

11 A. I reviewed certain documents and met with
12 counsel yesterday.

13 Q. Did you discuss this matter or your pending
14 depositions with anyone other than your attorneys?

15 A. No.

16 Q. Did you review any documents or things
17 outside of the papers and exhibits of record in this
18 proceeding?

19 A. I don't believe so. I believe it was just
20 the records of the proceeding, the court documents.
21 That kind of thing.

22 Q. Did you conduct any Internet searches, for
23 example, when preparing for this deposition?

24 A. I don't believe so.

25 Q. Dr. Pratt, I'm handing you what's been

1 previously marked as Exhibit 1002 in PGR2024-53. Are
2 you familiar with that document I just handed you?

3 A. Yes.

4 Q. Is that your expert report or expert
5 declaration that was submitted in PGR2024-53?

6 A. Yes.

7 Q. Dr. Pratt, I'm handing you what's been
8 previously marked as Exhibit 1003 in the same PGR
9 proceeding. Are you familiar with the document I
10 just handed you?

11 A. Yes.

12 Q. And what is the document I just handed you
13 as Exhibit 1003?

14 A. It's my CV on a whit format.

15 Q. Is that an up to date version of your CV?

16 A. My CV may exist in a couple of formats. I
17 don't know by looking at this and comparing it
18 side-by-side with the one I keep on my laptop whether
19 it's exactly the same or not, but for all intents and
20 purposes it looks to be the same. My CV hasn't
21 changed in years.

22 Q. You agree it appears to be complete and up
23 to date?

24 A. It appears to be complete and up to date.

25 Q. Currently, are you a full-time litigation

1 consultant?

2 A. No.

3 Q. What is your current occupation?

4 A. Well, I'm in private practice as a
5 litigation consultant, but it's only part-time. I'm
6 semiretired.

7 Q. Other than doing litigation consulting, are
8 you -- do you have any other occupations or sources
9 of income?

10 A. Oh, yes.

11 Q. Any sources of income that result from
12 doing work as opposed to retirement income, for
13 example?

14 A. Well, I collect royalties, for example, on
15 an invention of mine.

16 Q. What is your litigation consulting --
17 strike that. Does your litigation consulting have a
18 particular focus or subject matter focus?

19 A. Up until a couple of years ago it was
20 primarily personal injury, products liability type
21 cases. For the last several years, a few years ago I
22 stopped taking on products liability cases. I have
23 one left. There's a trial in December. All the
24 other -- I'm just taking on intellectual property
25 type cases.

1 Q. And what types of intellectual property
2 cases do you take on?

3 A. Well, patent infringement PGR's, IDR's,
4 U.S. ITC, declaratory judgments, trade secrets.

5 Q. Is it fair to say your litigation
6 consulting focuses on latches and fasteners?

7 A. I wouldn't say it focuses on latches and
8 fasteners, although I do have latch and fastener
9 cases that I work and have worked.

10 Q. Do latches and fastener cases form a
11 majority of the litigation consulting that you
12 undertake?

13 A. I'm not sure I understand your question.
14 If your question is for cases that I've worked on,
15 for example, for the last five years, how many of
16 those involve fasteners or latches? Is that
17 basically your question?

18 Q. Is the majority of the work you undertake
19 as a litigation consultant focused on latches and
20 fasteners?

21 A. I don't think it is.

22 Q. You also do litigation consulting in the
23 area of exploding kitchen appliances; correct?

24 A. Well, that was products liability cases.

25 Q. Was that a recent engagement or not recent

1 engagement?

2 A. Well, I've done over 150 cases involving
3 defective pressure cookers. I have one left. That's
4 a trial in Nebraska in December.

5 Q. To clarify, when I said exploding kitchen
6 appliances, I was referring to the exploding pressure
7 cooker cases. Thank you for that clarification.
8 Turning now to your professional background. When
9 you were employed, your work exclusively focused on
10 fasteners; correct?

11 A. You mean when I was employed in industry as
12 an employee?

13 Q. Yes. Separate from your litigation
14 consulting.

15 A. Well, focused on developing proprietary
16 fasteners, the tools to install them, and the tools
17 and methods for producing them.

18 Q. Were you primarily focused on the
19 development of threaded fasteners and associated
20 tools?

21 A. At one time.

22 Q. Do you recall your employment with a
23 company called Cherry Textron?

24 A. Yes.

25 Q. What was your role at Cherry Textron while

1 you were employed?

2 A. I was there for 12 years. I think after
3 2 years I was made the vice president of research and
4 development. I think I was hired as director or
5 something like that, but I spent the bulk of the
6 12 years as the VP of research and development. My
7 role was to develop proprietary fasteners, and it
8 involved also tooling to make the fasteners, methods
9 to make the fasteners, tooling to install them,
10 participation in domestic and international standards
11 organizations.

12 Q. Were the fasteners and associated tooling
13 you developed at Cherry Textron focused on military
14 and aerospace applications?

15 A. It focused on for the most part aerospace.
16 Not entirely. There was a period of time where I
17 also had responsibility for the industrial,
18 automotive goods and hardware. For the most of my
19 time it was aerospace, which would be commercial and
20 military, both.

21 Q. When you say, "white goods", what do you
22 mean?

23 A. Washing machines, refrigerators,
24 snowmobiles.

25 Q. So during your time at Cherry Textron, you

1 primarily focused on fasteners for aerospace but also
2 spent some time developing fasteners for appliances?
3 Is that a fair characterization?

4 A. Appliances and automotive and sports
5 equipment.

6 Q. When you say, "sports equipment", are you
7 referring to the fasteners for track and field shoes?

8 A. Well, that's one of them. Yes.

9 Q. What other fasteners for sports equipment
10 were you involved with developing?

11 A. The sports equipment wasn't entirely
12 fasteners. These were quarter turner quick release
13 cleats for golf, baseball, football footwear. Quick
14 change or quarter turn in-line skate axles for
15 in-line skates. We developed an in-line -- I mean, a
16 titanium insole for work with -- experimentation by
17 Michael Johnson for Nike. In fact, we had a Nike RND
18 contract that went on for a little over a year to do
19 work for them on sports equipment. So it wasn't
20 entirely fasteners. As much as you would
21 characterize a replaceable cleat in a football shoe
22 as a fastener.

23 Q. And approximately what timeframe were you
24 working on those -- the sports equipment?

25 A. Approximately 1996 through 1998.

1 Q. What was your involvement -- strike that.
2 Can you explain your involvement with the development
3 of tools for fasteners that you testified about
4 previously?

5 A. Well, I testified about two types of tools.
6 Tools to install fasteners and tools to manufacture
7 fasteners. So I'm not sure which one you're asking
8 me about.

9 Q. Thank you for clarifying. The tools for
10 installing fasteners. What was your involvement with
11 the development of tools for installing fasteners?

12 A. It depends on the organization I was with
13 at the time, but when I was at Olympic fastening
14 systems, I was product engineer for the air-driven,
15 air over hydraulic power guns for installing blind
16 rivets, and what we call the nose pieces. These are
17 the tools that fit on the end of the handheld
18 air-driven tool for installing different types of
19 rivets of different sizes. At Monogram it was,
20 again, responsibility for the product engineering of
21 the existing fastener installation tool line as well
22 as developing new tools for some of the new fasteners
23 that we came up with, or updating the tools. Just
24 product engineering.

25 At Cherry Textron, I don't think I did much

1 installation tool development. I did oversee the
2 tool development group. So I was responsible for the
3 installation tools, air over hydraulic handheld
4 tools. Drill motors and things like that, things you
5 would pick up at Home Depot for installing different
6 types of rivets. The actual engineering was done by
7 people under me at that point.

8 At Hartwell Aerospace, my last position as
9 an employee, I'm not sure we did any tools there. I
10 did some inspection tools for the post 9/11 cock pit
11 door latches that we developed, but that was about
12 it. Then, in private practice, when I retired from
13 the industry in 2017 I went back to work for industry
14 developing new products, new fasteners and the tools
15 to install them. So I was back again to Monogram,
16 this time not as an employee but as a consultant, to
17 develop specialty clamps and the tools to install the
18 specialty clamps for Monogram. Electric tools in
19 that case.

20 Q. Was your involvement with the development
21 of tools for installing fasteners focused on the
22 adapter ends between the tool and the fastener?

23 A. Probably most of it was focused on what
24 I'll call right now as the end effector. It goes on
25 the end of the tool. Although, I did develop from

1 scratch, for example, Olympics, I think it was the
2 RV60. It was a large air-driven tool for installing
3 lock bolts, develop pumps, a backpack containing
4 pumps for installing large diameter pin and collar
5 fasteners and culverts. So I did some prime mover
6 work as well.

7 Q. What years were you employed at Monogram?

8 A. About '79 through '89, I think. It's on my
9 CV. '79 through '88.

10 Q. Okay. And you said you went back to
11 Monogram as a consultant at some point after your
12 employment there completed?

13 A. Yes.

14 Q. Can you turn to page 3 of your CV,
15 Exhibit 1003, please?

16 A. Okay.

17 Q. On page 3 of your CV you list a number of
18 patents of which you are at least one inventor;
19 correct?

20 A. Yes.

21 Q. I would say your patents, but I don't want
22 to imply ownership. So patents that you have some
23 inventive contribution on; correct?

24 A. Yes.

25 Q. I'm going to hand you what's going to be

1 marked as a patent owner's Exhibit 2012.

2 (Exhibit 2012 marked for identification.)

3 Q. Are you familiar with the document I just
4 handed you?

5 A. Well, somewhat. I haven't looked at it in
6 years.

7 Q. Are you listed as the sole inventor on this
8 patent?

9 A. I am.

10 Q. Can you turn to claim 6 of this patent?
11 Just for the record, we're discussing U.S. patent
12 8,348,566. Let me know when you get to claim 6,
13 please.

14 A. I'm there.

15 Q. Okay. Claim 6 reads, "the blind fastener
16 of claim 1 wherein said leading edge portion further
17 comprises a substantially rounded edge."

18 Do you see that recitation?

19 A. I do.

20 Q. What is your understanding of the
21 substantially rounded edge as recited in that claim
22 6?

23 A. Well, in the context of this patent I would
24 have to go back and read claim 1 and then scan
25 through the specifications to find out where it talks

1 about the leading edge before I could answer that.

2 Q. Okay. You're free to do so. Please do.

3 A. Okay.

4 Q. You're free to review the document as you
5 see fit, but I will say that the leading edge is
6 introduced at column 3, approximately line 25.
7 Again, you're free to review the document.

8 A. Thank you. Okay. Do you have a question,
9 then?

10 Q. In your opinion, how would a person of
11 ordinary skill in the art understand the claim term,
12 "substantially rounded edge", as recited in claim 6
13 of this '566 patent?

14 A. Well, a person of ordinary skill in the art
15 for these types of fasteners would understand that if
16 the leading edge is not rounded, it could damage the
17 laminate into which it's installed. That would be
18 common knowledge for fastener engineers familiar with
19 these types of fasteners.

20 Q. Turning to column 3 of the same patent,
21 beginning at approximately line 26.

22 A. Hang on a minute.

23 Q. It reads, "leading edge 54 has a rounded
24 cross-section as illustrated." Is it your
25 understanding that that disclosure of the leading

1 edge 54 is the same leading edge as recited in claim
2 6?

3 A. Yes.

4 Q. Is it your opinion that the disclosure of
5 the leading edge 54 having a rounded cross-section
6 adequately supports the recited language of a
7 substantially rounded edge as recited in claim 6?

8 MR. BERG: Objection to form.

9 THE WITNESS: To one of ordinary skill in
10 the art for these types of fasteners, it does.

11 Q. We can set that document aside. There's
12 going to be some paper today. This is going to be
13 Exhibit 2010.

14 (Exhibit 2010 marked for identification.)

15 Q. Dr. Pratt, you've just been handed what's
16 been marked as Exhibit 2010, which is U.S. patent
17 10,557,490. Do you see that document?

18 A. I do.

19 Q. Do you understand this patent to be a
20 patent covering a treatment element attachment
21 system?

22 A. Yes.

23 Q. At the cover page at number 71, do you see
24 the applicant to be Theragun, LLC?

25 A. I do.

1 Q. Are you aware that Theragun subsequently
2 changed its name to Therabody?

3 A. I wasn't.

4 Q. I'll represent to you that Theragun,
5 subsequent to the issuance of this patent, changed
6 its name to Therabody. Can you turn to claim 3 of
7 this '490 patent, please?

8 A. I'm there.

9 Q. Claim 3 reads, "the treatment assembly of
10 claim 2 wherein the first and second flat surfaces of
11 the female attachment member are substantially
12 parallel to one another."

13 Do you see that?

14 A. I do.

15 Q. My question is, how would a person of
16 ordinary skill in the art understand flat surfaces
17 being substantially parallel to one another as
18 recited in this '490 patent?

19 MR. BERG: Objection to form.

20 THE WITNESS: Yeah, I would have to go
21 through the specification again.

22 Q. You're free to do so, Dr. Pratt. You're
23 free to review the entire document. I will point
24 your attention to column 9, beginning at the top and
25 proceeding to about line 30, to focus your attention.

1 Feel free to review the document.

2 A. Okay. In looking at the illustrations,
3 claim 3, and the text that you pointed out in column
4 9 only, but not the entire patent specification, or
5 having done a comprehensive analysis, I see the
6 purpose for the flat surfaces 92 on the female
7 attachment member. Could you repeat your question,
8 please?

9 Q. How would a person of ordinary skill in the
10 art understand flat surfaces being substantially
11 parallel to one another as recited in the '490
12 patent?

13 A. Well, the portion of that text that you
14 pointed out on column 9 tells a person of ordinary
15 skill in the art that it needs to cooperate with the
16 male flat surfaces and prevent rotation. So I think
17 that it tells me what the purpose of the flats are.
18 It tells me that they need to be close enough in size
19 to prevent rotation, but yet they need to slide
20 together so that the balls that are in the male
21 surface can enter into the recesses in the female
22 part. So it tells me how -- it gives me, as a person
23 of ordinary skill in the art, the tool I need to
24 decide how parallel they need to be.

25 Q. But the two flat surfaces don't need to be

1 absolutely parallel or perfectly parallel; correct?

2 A. Well, perfectly parallel would still mean
3 substantially, but they just need to be parallel
4 enough to perform the function that's stated in
5 column 9. They need to interface well with the male
6 flats without -- while not enabling rotation between
7 the two.

8 Q. Separate from the '490 patent, you can put
9 that aside if you so wish, are you familiar with the
10 term cylindricity?

11 A. I'm sorry?

12 Q. Are you familiar with a term
13 "cylindricity"?

14 A. I've never heard that term.

15 Q. This will be Exhibit 2017.

16 (Exhibit 2017 marked for identification.)

17 Q. You've just been handed what's been marked
18 as Exhibit 2017, which is a print out from the
19 website, engineeringessentials.com, titled GD and T
20 cylindricity. Do you see that document?

21 A. I do.

22 Q. Does this refresh your recollection as to
23 what the term cylindricity means?

24 MR. BERG: Objection to form.

25 THE WITNESS: Well, I never had a

1 recollection to begin with. I don't think I've ever
2 heard this term before.

3 Q. When you developed fasteners for your
4 previous employers, was a relevant concern how
5 cylindrical the fastener needed to be?

6 A. In some cases it was important, yes.

7 Q. And would you assign the fastener a certain
8 cylindrical tolerance in designing the fastener?

9 A. We would specify in terms of, for example,
10 run out. There would be a diametrical tolerance.
11 For example, on a precision bolt, say, .375 plus or
12 minus .0001, ten thousands of an inch.

13 Q. That's essentially a tolerance that allows
14 the fastener in this case to still perform its
15 function without being perfectly cylindrical;
16 correct?

17 A. Correct. There's a tolerance on
18 cylindrical parts, cylindrical fasteners for use in
19 aerospace so that they meet the performance
20 requirements.

21 Q. Is that because in manufacturing fasteners,
22 in this case, it's impossible to create a perfectly
23 cylindrical fastener?

24 A. Well, I don't know if it's impossible, but
25 certainly the machine shops that produce aerospace

1 fasteners all need to have a tolerance. I mean,
2 there might be special labs that provide parts for
3 NASA that might be willing to get a lot better than
4 what Monogram or Cherry Textron could get, but
5 generally our most precise fasteners had a tolerance
6 of I think plus or minus 1 or 2 tenths.

7 Q. Is developing that tolerance a standard
8 task for a design engineer?

9 A. It can be. If a fastener designer -- I
10 presume you mean for a fastener engineer you mean a
11 fastener designer. Someone designing the fastener.

12 Q. Yes.

13 A. For multipiece fasteners, which is my area
14 of expertise, it's up to the fastener designer to
15 tolerance things so that they all fit together and
16 perform as required. But generally the overall
17 envelope, the outside part, the part that the
18 customer sees that has to fit his hole in a wing or a
19 fuselage, generally the customer will specify how
20 much tolerance they're willing to accept on a
21 vendor's product.

22 Q. Why don't we take a short break before we
23 move onto the next topic?

24 MR. BERG: Sure. Sounds great.

25 (Recess taken.)

1 Q. Dr. Pratt, did you bring anything with you
2 to the deposition today?

3 A. The only thing I have with me is something
4 that counsel prepared for me to bring up. Typos on
5 my declaration.

6 Q. Okay. Let's get into it. Might as well
7 get into it before we get into your declaration. Are
8 there any errors in your declaration that you would
9 like to correct, Dr. Pratt?

10 A. There are.

11 Q. Go ahead. What are the errors you would
12 like to correct today?

13 A. Two of them are broken links.
14 Paragraph 151.

15 Q. Sorry, Dr. Pratt. Not to interrupt. Can
16 you clarify which expert -- which declaration you're
17 referring to? You can refer to the patent number in
18 the upper right-hand corner if that's easier.

19 A. It's the '482 declaration. Paragraph 151.

20 Q. Okay. What's the error in paragraph 151?

21 A. Well, it's a broken link.

22 Q. Okay.

23 A. It should read, section VII.B.1.

24 Q. Okay. Are there any other errors in this
25 '482 declaration you would like to correct?

1 A. Yes. Paragraph 176.

2 Q. Okay.

3 A. Again, it's another broken link. It should
4 be Section VII.A.2.

5 Q. Are there any other errors in this '482
6 expert report you would like to correct?

7 A. Yes.

8 Q. Okay. Next?

9 A. Paragraph 117.

10 Q. Okay. Paragraph 117. What is the area you
11 would like to correct?

12 A. Let me get there. It's 118, actually.
13 Sorry. It's 118.

14 Q. Okay. What's the error you would like to
15 correct in paragraph 118?

16 A. There's a word, not, that's missing on the
17 third line. Right now the third line reads,
18 "disclosed embodiment of the quick release system is
19 a substantially cylindrical pocket."

20 Q. What's the error to be corrected?

21 A. It should say, is not a substantially
22 cylindrical pocket. I have that written down on
23 this.

24 Q. Okay. When did you recognize the error in
25 paragraph 118?

1 A. A few days ago when I was reviewing the
2 court documents, including my declaration.

3 Q. Okay. Do you know which day?

4 A. I don't.

5 Q. More than a week ago?

6 A. Yeah. I think it would have been.

7 Q. More than two weeks ago?

8 A. I think it was in the previous month. The
9 latter part of the previous month. Late August, I
10 think, is when I was doing a lot of my review on
11 this.

12 Q. Are you familiar with percussive massagers,
13 Dr. Pratt?

14 A. I'm familiar with some, yes.

15 Q. How are you familiar with some percussive
16 massagers?

17 A. Well, I own a percussive massager that I've
18 used -- I had a knee replacement surgery a few years
19 back. I used it on my thigh.

20 Q. And why did you use the percussive
21 massager?

22 A. Because it was recommended by a physical
23 therapist to do something with the muscles.

24 Q. In your opinion generally, what is a
25 percussive massager?

1 MR. BERG: Objection to form.

2 THE WITNESS: It's a tool that imparts
3 percussive forces to parts of the body.

4 Q. When you say, "percussive force", do you
5 mean a relatively strong force?

6 MR. BERG: Objection to form.

7 THE WITNESS: I don't think it has to be
8 strong force. I guess it's going to depend on which
9 part of the body you're using it on.

10 Q. Is every impact a percussive impact in your
11 opinion?

12 MR. BERG: Objection to form.

13 Q. Let me rephrase the question. Is every
14 impact, regardless of strength, a percussive impact
15 in your opinion?

16 MR. BERG: Objection to form.

17 THE WITNESS: I have to suppose that the
18 force with which a massage head impacts the skin or
19 the body could be so light as to not be perceived as
20 a percussive impact. My massager, the one that I
21 have is -- exerts a pretty good force against the
22 body. It depends on how hard you're pressing the
23 tool against the body as well. It's not all in the
24 tool itself. It depends on how aggressively it's
25 being pushed against the body.

1 Q. Do you agree that percussive massagers are
2 characterized as devices designed to provide deep
3 muscle massage?

4 MR. BERG: Objection to form.

5 THE WITNESS: I understand that some
6 percussive massagers are marketed for deep muscle
7 massage. I don't know that all are.

8 Q. Are you aware of percussive massagers that
9 are not marketed for deep muscle massage?

10 A. The marketing of massagers is not an area
11 of expertise of mine.

12 Q. Dr. Pratt, I'm handing you what's been
13 previously marked as Exhibit 1001 in PGR2024-53. Do
14 you recognize the document I just handed you?

15 A. I do.

16 Q. Is that the '482 patent that is the subject
17 of the PGR2024-53?

18 A. Yes.

19 Q. Referring to column 1, approximately lines
20 23, do you see -- I'll wait for you to turn there.

21 A. Okay.

22 Q. Do you see under background where the
23 patent states, "this invention relates generally to
24 medical devices and more particularly to a deep
25 muscle stimulating device used to increase muscle

1 metabolism, increase the lactic acid cycle, and
2 relieve pain"?

3 Do you see that text?

4 A. Yes.

5 Q. Do you agree that that text describes a
6 percussive massager? Strike that. Do you agree that
7 the patents at issue are directed to percussive
8 massagers that provide deep muscle massage?

9 A. I agree that that text that you just read
10 says that.

11 Q. You agree that the '482 patent states,
12 "this invention relates generally to medical devices
13 and more particularly to a deep muscle stimulating
14 device"?

15 Do you agree that that text describes a
16 percussive massager to provide deep muscle massage?

17 A. Yes.

18 Q. Dr. Pratt, I'm handing you what's been
19 previously marked as Exhibit 1005. It was marked
20 with that exhibit number in both proceedings. Are
21 you familiar with the document I just handed you?

22 A. I am.

23 Q. And what is the document I just handed you?

24 A. It's one of the prior art references cited
25 by Therabody.

1 Q. Are you familiar with this reference?

2 A. I am.

3 Q. If I refer to this reference as Mabuchi,
4 will you understand what I'm referring to?

5 A. Yes.

6 Q. Do you agree that Mabuchi is directed to a
7 beauty treatment device?

8 A. Yes. I agree that as it says in the field
9 of the invention that, "this invention relates
10 generally to a beauty treatment device, more
11 specifically to a beauty treatment device having a
12 space guide that permits an actuator to repeatedly
13 reciprocate and control motion of the actuator,
14 wherein the patten repeatedly pats a skin surface
15 being treated at a given rate."

16 Q. And the text you just read from Mabuchi
17 appears in column 1 under background of the
18 invention; correct?

19 A. Correct.

20 Q. In preparing your declaration, did you
21 become familiar with the entirety of the Mabuchi
22 reference?

23 A. Yes.

24 Q. If you could move down in Mabuchi, column
25 1. Move down to approximately line 23. It begins

1 with, on the other hand. Do you see that text?

2 A. I see it.

3 Q. Can you read that text? Those two
4 sentences, please.

5 A. "On the other hand, the conventional
6 patting device which is intended mainly for the
7 massage of the muscular tissues, not for beauty
8 treatment of the skin. In this sense, the
9 conventional patting device belongs to the category
10 of massager."

11 Q. Do you understand that disclosure in
12 Mabuchi to be contrasting the inventive beauty
13 treatment device from massagers?

14 A. Well, basically it's saying to me that the
15 conventional patting device belongs to the category
16 massager, not for the beauty treatment of the skin.

17 Q. And you would agree that at line 6 in
18 column 1 Mabuchi states, "this invention relates
19 generally to a beauty treatment device"; correct?

20 MR. BERG: Objection to form.

21 THE WITNESS: Yes, that's what it says.

22 Q. So do you understand that passage beginning
23 in column 1, line 23, of Mabuchi to be contrasting
24 Mabuchi's beauty treatment device to a conventional
25 patting device that belongs to the category of

1 massager?

2 MR. BERG: Objection to form.

3 THE WITNESS: Well, as it says -- it says,
4 mainly. It doesn't say exclusively or only. "On the
5 other hand, the conventional patting device which is
6 intended mainly for the massage of muscular tissues,
7 not for beauty treatment of the skin."

8 It doesn't rule out that a conventional
9 massager would be used for beauty treatment of the
10 skin. I think intended mainly is a key part of that
11 sentence.

12 Q. So do you understand this passage of
13 Mabuchi to be contrasting devices intended for
14 massage of the muscular tissue with devices for
15 beauty treatment of the skin?

16 A. I think there's some comparison. I don't
17 know that it's necessarily contrasting, because it
18 doesn't rule out that the conventional massager would
19 be used for beauty treatment of the skin.

20 Q. That's your testimony despite Mabuchi
21 saying, quote, "not for beauty treatment of the
22 skin"; correct?

23 MR. BERG: Objection to form. Sorry.

24 THE WITNESS: I think you need to read that
25 whole sentence and every word in it. It says,

1 "intended mainly for the massage of muscular
2 tissues." It says, "conventional patting equipment
3 is used mainly -- intended mainly for massage of the
4 muscular tissues." It doesn't say only.

5 Q. But you agree Mabuchi goes on to state, not
6 for beauty treatment of the skin; correct?

7 A. That's still part of the sentence that
8 says, "intended mainly for the massage of muscular
9 tissues intended mainly not for beauty treatment of
10 the skin."

11 It's not explicit that it rules out
12 treatment of the skin. I think it's very important
13 to read that accurately and not try to spin it. It
14 says what it says. Intended mainly. It doesn't say
15 intended only.

16 Q. Do you agree that the space guide described
17 as element 5 in Mabuchi is a key component of
18 Mabuchi's beauty treatment device? Strike that. Are
19 you familiar with the space guide described as
20 element 5 in Mabuchi?

21 A. I am.

22 Q. Do you agree that the space guide number 5
23 is a key component of Mabuchi's beauty treatment
24 device?

25 MR. BERG: Objection to form.

1 THE WITNESS: I'm not sure what you mean by
2 key. It's an important component. It's a component
3 of the beauty device, for sure.

4 Q. But you agree that Mabuchi states in the
5 field of the invention, it describes a beauty
6 treatment device having a space guide as the
7 invention; correct?

8 A. I'm sorry. Repeat your question.

9 Q. Looking at column 1, line 6, do you agree
10 that Mabuchi characterizes its invention, quote,
11 "this invention", end quote, as more specifically a
12 beauty treatment device having a space guide? Does
13 that disclosure provide background to understand if
14 the space guide is a key component of Mabuchi's
15 beauty treatment device?

16 A. Well, that disclosure in and of itself
17 doesn't tell me that the space guide is important or
18 a key component. It just tells me that it has a
19 space guide. It doesn't tell me that it's essential
20 to the operation or its function.

21 Q. Is it your opinion that the space guide is
22 not essential to Mabuchi's beauty treatment device?

23 A. I didn't say that.

24 Q. Is it your opinion that the space guide is
25 essential to Mabuchi's beauty treatment device?

1 A. It's described as being essential for
2 patting the skin. So there's no question about that.
3 Without -- it couldn't be a skin patten as described
4 in Mabuchi without the space guide.

5 Q. Did you consider the effect of the space
6 guide in preparing your opinion?

7 A. I'm not sure what you mean by, "effect of
8 the space guide."

9 Q. Your earlier testimony was, it's described
10 as being essential for patting the skin with
11 reference to Mabuchi's space guide. So my question,
12 did you consider the effect of the space guide in
13 preparing your opinion?

14 A. Do you mean to ask me whether I considered
15 the function of the space guide?

16 Q. Yeah. Did you consider the function of the
17 space guide in Mabuchi's beauty treatment device in
18 preparing your opinion?

19 A. Yes.

20 Q. In your opinion, what is the function of
21 the space guide in Mabuchi?

22 A. During treatment, as described in Mabuchi,
23 the leading edge of the space guide would be held
24 against the skin. The biassing spring member in the
25 massage head would be compressed between two

1 different states. Basically, it would not extend
2 outside of the space guide as the machine was
3 reciprocating.

4 Q. So the space guide limits the depth to
5 which Mabuchi's end piece can extend into a user's
6 body?

7 A. When it's held against the body, yes.

8 Q. And the space guide exists to prevent
9 Mabuchi's beauty treatment device from acting as a
10 massager; correct?

11 A. I disagree.

12 Q. Is it your opinion that the space guide
13 helps Mabuchi act as a massager?

14 A. I'm not sure we can characterize it as
15 helping act as a massager, but the Mabuchi device
16 when held against the skin, and as described in his
17 preferred embodiments, exerts an oscillating force
18 with the massage head against the skin, even if the
19 space guide is held up against the skin. Depending
20 on the part of the body that it's being applied to,
21 the massage head could extend a little bit past the
22 end of the space guide, or not.

23 Q. Turning to Figure 5 of Mabuchi. Figure 5
24 of Mabuchi shows the reciprocating assembly fully
25 extended, but the patten assembly 6 does not extend

1 beyond the end of the space guide; correct?

2 A. In Figure 5 that's what is shown. Yes.

3 Q. I believe you testified earlier that that's
4 a result of both the space guide element 5 and the
5 spring inside the patter assembly; correct?

6 A. Not only that. It's also a function of
7 what it's up against. For example, if in Figure 5
8 I'm holding this up against a wall, a flat surface is
9 not going to yield. It's going to look like
10 Figure 5. If I'm holding it up against somebody's
11 cheek, number 6 will extend past number 5 by some
12 small amount, depending on the resiliency of whatever
13 it's up against.

14 Q. Do you agree that the space guide 5 and the
15 spring element within the patter assembly operate
16 together to limit the depth to which the patter
17 assembly reaches into a user's skin?

18 A. By the "patter assembly", are you talking
19 component 6?

20 Q. Correct. Component 6.

21 A. Because your question needs to be in
22 relation to what? By how much it goes into the
23 user's skin relative to the end of number 5?
24 Otherwise, the question wouldn't make any sense to
25 me.

1 Q. Yeah. Do you agree that the space guide 5
2 and the spring within the patter assembly operate
3 together to limit the depth to which the patter
4 assembly extends into the user's skin beyond the end
5 of the space guide 5?

6 A. They play a role. It's not the only thing
7 that plays a role. The resiliency of the skin or
8 whether it's up against the cheek or the forehead
9 play a role as well. But yes, they do play a role in
10 that.

11 Q. So overall, they play a role in limiting
12 the depth to which the patter assembly can extend
13 into the user's skin?

14 A. Correct.

15 Q. Did you consider the effect of the spring
16 element number 7 in the patter assembly in preparing
17 your opinion?

18 A. Yes.

19 Q. The space guide 35 and the spring within
20 the patter assembly operate together to prevent
21 Mabuchi's device from providing a deep muscle
22 massage; correct?

23 A. No, they don't. It depends on how strong
24 the spring is.

25 Q. Does Mabuchi disclose how strong the spring

1 is?

2 A. I don't recall if he gives a spring rate.

3 Q. Do you agree that the illustrated
4 embodiments show the spring having a resiliency so
5 that it does not -- so that the patter assembly does
6 not extend beyond the end of the space guide? For
7 example, in Figure 5?

8 MR. BERG: Objection to form.

9 THE WITNESS: No, I disagree.

10 Q. Does Mabuchi describe adjusting the
11 resiliency of the spring?

12 A. No. Not that I recall.

13 Q. So taking the embodiment of Mabuchi shown
14 at Figure 5, would the resiliency of the spring
15 within the patter assembly 6 need to be adjusted for
16 Mabuchi to act as a massager?

17 A. Would it need to be adjusted? Well, it
18 would depend on what you're using it for. If you're
19 using it to massage a soft part of your body versus
20 whether you want to use it for deep muscle massage,
21 the resiliency of the spring would have to be
22 adjusted accordingly.

23 Q. These adjustments are within the context of
24 Mabuchi operating as a beauty treatment device and
25 not a massager; correct?

1 A. I'm not sure what you mean by that. The
2 device shown in figures 3, 4, and 5 function as a --
3 well, can function as a percussive massager for
4 either skin beauty treatment or for deep muscle
5 massage depending on, again, the stiffness of the
6 spring 11.

7 Q. Do you agree that with respect to the
8 embodiment in Figure 5 of Mabuchi, the effective
9 stroke length of the patter assembly as experienced
10 by the user is zero?

11 A. Well, no. The stroke length wouldn't be
12 zero because the starting point would be Figure 2 to
13 Figure 5. There's going to be a small -- it may not
14 extend past the end of the guide 5, but it's still
15 going to be a small stroke length in the embodiment
16 figures shown in 2 through 5.

17 Q. My question was, the stroke length
18 effective as to the user is effectively zero when the
19 patter assembly does not extend beyond the end of the
20 space guide; correct?

21 A. Well, if it's up against something hard,
22 you know, a bone or the wall or a table, as the
23 piston reciprocates, number 6 won't extend past
24 number 5.

25 Q. So when the massage device of Mabuchi is

1 held against a user's face, the effective stroke
2 length of the patter assembly as to the user is zero
3 because the patter assembly does not extend beyond
4 the end of the space guide; correct?

5 MR. BERG: Objection to form.

6 THE WITNESS: No, I disagree. It depends
7 on whether it's on something like a cheek, because
8 it's very soft, or a forehead. It depends on how
9 stiff the spring is. Figure 5, a person of ordinary
10 skill in the art would recognize that Figure 5 is an
11 absolute hard stop for Item Number 6. There are a
12 few areas of the body that are a hard stop.

13 Q. I'd like to turn your attention to column 4
14 of Mabuchi, approximately line 27.

15 A. Okay.

16 Q. Beginning on the right it says, "if the
17 skin surface being treated exists at the open end
18 face of the space guide 5, the patter assembly 6
19 cannot protrude from the space guide as shown in
20 Figure 4."

21 Do you see that text?

22 A. I do.

23 Q. So do you agree that Figure 5 is showing
24 the result of Mabuchi being held against the skin
25 surface being treated?

1 A. Well, let me read that myself. Well, I see
2 what it says. Again, a person of ordinary skill in
3 the art would recognize that that's a function not
4 only of the spring and of the space guide 5, it's the
5 function of how stiff the material is, the skin, the
6 face, the body portion that number 6 is bearing up
7 against, irrespective of what that text says.

8 Q. Do you agree that in Mabuchi the spring is
9 designed so that the patter assembly 6 do not
10 protrude from the space guide in response to the
11 user's skin being treated?

12 A. I don't think you can put it all on the
13 spring.

14 Q. What other components of Mabuchi would be
15 involved?

16 A. It would be whatever 6 is bearing up
17 against.

18 Q. But you agree that Mabuchi states, "the
19 skin surface being treated is sufficient to prevent
20 the patter assembly from protruding from the space
21 guide"; correct?

22 A. I would agree that if the skin surface is
23 stiffened up to prevent it from penetrating into the
24 skin, then it would look like number 5. Figure 5.

25 Q. This will be Exhibit 2031.

1 (Exhibit 2031 marked for identification.)

2 Q. Dr. Pratt, you've just been handed what's
3 been marked as Exhibit 2031. Are you familiar with
4 this document?

5 A. Yes.

6 Q. Is this document your declaration that was
7 submitted in a related district court proceeding?

8 A. Yes.

9 Q. And by related, you understand I'm
10 referring to involving these same patents; correct?

11 A. Yes.

12 Q. Can you please turn to paragraph 43?

13 A. Okay.

14 Q. Can you read the first sentence of
15 paragraph 43, please?

16 A. "A posita would understand from the
17 applicant's statements during prosecution of the '482
18 patent that a connector or system configured to
19 secure or insert a massage head, while the system
20 reciprocates a predetermined stroke length at the
21 first speed, end quotes, is one that does not require
22 rotational alignment to do so."

23 Q. Have you applied that same understanding of
24 the '482 patent to these PGR proceedings?

25 A. Yes.

1 Q. You can set that document aside. Going
2 back to your declaration, Exhibit 1002, can you turn
3 to paragraph 113, please? I'll give you a moment to
4 pull that up.

5 A. Paragraph?

6 Q. 113.

7 MR. BERG: This is in the '482?

8 MR. KELLAR: This is in the '482. Yes,
9 correct. Just so the record is clear, I have not
10 introduced the other expert report at this time.

11 THE WITNESS: I'm there.

12 Q. The last sentence of your declaration at
13 paragraph 113 states, "because the connecting
14 mechanism", and this is referring to Mabuchi, "is
15 configured such that a user does not need to
16 carefully control the angular orientation or spatial
17 positioning of the patten assembly in relation to the
18 head of the actuator during attachment, a posita
19 would understand that this is configured to secure
20 while the actuator is reciprocating."

21 Is that what the last sentence of
22 paragraph 113 says?

23 A. Let me read it myself. Thank you. Okay.
24 That's what it says. Yes.

25 Q. Is it true you used the term "carefully

1 control" because the user does need to account for
2 the angular orientation and spatial positioning of
3 the patter assembly in relation to the actuator head
4 during attachment in Mabuchi?

5 A. Could you repeat that, please?

6 Q. Can you read it back?

7 (Read back.)

8 Q. That's incorrect. Can you read that one
9 more time, Michael? I'll just re-ask the question.
10 Is it true you used the term "carefully control"
11 because the user does need to account for the angular
12 orientation and for the spatial positioning of the
13 patter assembly in relation to the actuator head
14 during attachment in Mabuchi?

15 A. No. I'm saying Mabuchi doesn't require
16 that control. I'm saying Mabuchi doesn't have to
17 control the angular orientation or spatial
18 positioning.

19 Q. A user still needs to provide some control,
20 though; correct?

21 A. Well, he needs to be able to stick the
22 actuator head inside the tool.

23 Q. So there is -- so looking at Figure 18 of
24 Mabuchi.

25 A. Hang on. I'm there.

1 Q. Actually, Figure 19 of Mabuchi is more
2 clear. You agree that a user has to position the
3 patter assembly 6 so that the actuator head is
4 aligned with the opening in the patter assembly 6 to
5 receive the actuator head; correct?

6 A. I mean, if you're going to attach the
7 massage head to the massage gun to the tool, of
8 course you have to take part A and stick it into part
9 B. If you go to brush your teeth and you stick your
10 tooth brush into your eye, you shouldn't be brushing
11 your teeth.

12 Q. Then, do you agree that the user needs to
13 ensure that the magnets in the patter assembly are
14 particularly aligned with respect to the magnets in
15 the actuator to allow for attachment?

16 A. No.

17 Q. Turning back to your declaration,
18 Exhibit 1002.

19 A. Which is to say that I disagree with that
20 statement, not that I wasn't aware of it.

21 Q. That's fine. I'm looking at paragraph 61
22 of your report, if I can find it. It's on page 25,
23 if that's helpful. In paragraph 61 of your report,
24 you describe the particular magnets used in Mabuchi;
25 correct?

1 A. Let me read it. Yes.

2 Q. You describe that in Mabuchi, the composite
3 magnetic assemblies are comprised of radially
4 oriented alternating portal magnets. North, south,
5 north, south; correct?

6 A. Yes.

7 Q. And then, you go on to describe that based
8 on the alignment -- strike that. Based on the
9 rotation of the massage head, the patter assembly is
10 disconnected from the actuator; correct?

11 A. Yes.

12 Q. So the particular magnetic pole alignment
13 in Mabuchi provides a disconnection alignment;
14 correct?

15 A. Well, it provides an orientation in which
16 they would disconnect. Yes.

17 Q. And beyond just disconnecting, they would
18 be repulsed by each other; correct?

19 A. At a given orientation, yes. They would be
20 repulsed from each other.

21 Q. So when a user is attempting to attach the
22 patter assembly 6 to the actuator in Mabuchi, the
23 user needs to ensure that the magnets are not
24 arranged in this disconnection alignment; correct?

25 A. No.

1 Q. Can you explain why not?

2 A. This arrangement allows the magnets -- even
3 if I've got, say, north facing magnets on the piston
4 and north facing magnets -- north coming to north.
5 They would repel each other. They automatically jerk
6 around and rotate automatically. So all the user has
7 to do is stick it in there. If it's not aligned for
8 attraction it would automatically twist around due to
9 the magnetic fields. I was able to prove this
10 because I bought magnets that are magnetized in that
11 way. So I was able to convince myself and
12 demonstrate how this works.

13 Q. Did you buy those magnets particularly for
14 this assignment?

15 A. I didn't charge the company for them. I
16 just bought them for my own knowledge because I was
17 curious.

18 Q. Did you describe them in your expert
19 report?

20 A. No.

21 Q. So if the actuator is always twisting to be
22 connected to or attracted to -- sorry. Strike that.
23 So if the patten assembly is always twisting to be
24 attracted to the magnets in the actuator, as you
25 testified, how could they be separated from each

1 other?

2 A. Well, a person of ordinary skill in the art
3 would understand that if my right-hand represents the
4 tool and my left-hand represents the massage head, if
5 I twist the massage head some small amount so that
6 north is aligned with north, there's a torque trying
7 to rotate them back. You have to exert a little
8 force, obviously, to overcome to magnetic attraction.
9 Once you do, that repulsive force kicks in and pulls
10 you away. Of course the magnetic attraction to pull
11 them together is inversely proportional to the square
12 of the distance. Once I twist it then it
13 automatically comes out. When I go to put it in, all
14 I have to do is get it close and it'll let go of it
15 and it automatically orients itself so that it
16 attaches.

17 Q. Do you agree that there is one alignment at
18 least where the magnetic forces are exactly opposite
19 and they would not twist to attract each other?

20 A. No, I disagree. They would always twist to
21 attract.

22 Q. There's never an alignment where the
23 magnets are exactly oppositely aligned to repulse
24 each other?

25 A. Well, if you're asking can I orient them

1 such that they're not allowed to twist by really
2 holding on to it, preventing the rotation somehow?
3 Maybe with a wrench or something. Sure. You could
4 put two magnets together that would repel each other,
5 whether it's in a massage device or just two square
6 magnets that you pick up at Home Depot. As soon as
7 you let go of them, they're going to attract each
8 other.

9 Q. Turning back to the '482 patent,
10 Exhibit 1001. Can you turn to Figure 6, please?

11 A. I'm there.

12 Q. Do you agree that the magnetic pole
13 alignment as shown in Figure 6 of the '482 patent is
14 different than the magnetic pole arrangement in
15 Mabuchi? I'll ask a slightly different question. Do
16 you agree that the Figure 6 of the '482 patent does
17 not use the radially oriented magnetic pole alignment
18 that's used in Mabuchi?

19 A. I would agree that Figure 6 of the '482
20 patent shows a similar but not necessarily identical
21 magnet arrangement as shown in Mabuchi.

22 Q. And how is it not necessarily identical in
23 your opinion?

24 A. Well, you can obviously look at the
25 figures. The figures are different.

1 Q. Is it because in Figure 6 of the '482
2 patent the poles are aligned in the direction of
3 connection between the massage head and the piston?

4 A. They appear to be that way. Poles appear
5 to be oriented on the -- along the central axis.

6 Q. Do you agree that's different than how the
7 poles are arranged in the magnets of Mabuchi?

8 A. It appears to be different. Yes.

9 Q. Do you agree that the magnets as arranged
10 in Figure 6 of the '482 patent could be connected and
11 disconnected regardless of alignment between the
12 massage head and the piston?

13 A. The magnets of the '482 patent as shown in
14 Figure 6 can be attached or detached irrespective of
15 the alignment.

16 Q. The magnetic arrangement in Figure 6 of the
17 '482 patent doesn't have the same disconnection
18 arrangement that Mabuchi has with respect to its
19 magnets; correct?

20 A. Well, they're similar. Mabuchi has two
21 ways to disconnect. One is by rotating the massage
22 head in relation to the piston. Rotating it
23 90 degrees, it automatically disengages itself. Just
24 pull it out just like you do with Danby in the '482.

25 Q. In Figure 6 of the '482 patent, if you

1 rotate the massage head 90 degrees, the magnets do
2 not repulse each other; correct?

3 A. Correct.

4 Q. In your opinion, would a user replace the
5 patter assembly 6 in Mabuchi with the space guide 5
6 in place?

7 A. Is the question would or could? If your
8 question is could --

9 Q. Let's turn to Figure 8 of Mabuchi.

10 A. I was trying to answer your previous
11 question.

12 Q. We'll come back to that. We'll strike that
13 question.

14 A. Okay. Figure 8.

15 Q. Are you familiar with the embodiment shown
16 in Figure 8 of Mabuchi?

17 A. Yes.

18 Q. Do you understand this embodiment to use a
19 push button 13 to release the patter assembly from
20 the actuator?

21 A. I do.

22 Q. Could a user replace the patter assembly as
23 shown in Figure 8 of Mabuchi with the space guide 5
24 in place?

25 A. Well if there's an access hold in space

1 guide 5 to access the button, of course.

2 Q. Are you aware of any access hole in the
3 space guide disclosed in Mabuchi?

4 A. I don't recall seeing reference to an
5 access hole to access the button.

6 Q. Do you agree that generally a user would
7 remove the space guide 5 when replacing the patter
8 assembly 6 in Mabuchi?

9 MR. BERG: Objection to form.

10 THE WITNESS: Well, that would depend on
11 how easy it was to remove the space guide 5. That's
12 not the only way to get access to the patter assembly
13 in Mabuchi, depending on the embodiment.

14 Q. Do you agree that as to the embodiments
15 that have a push button, for example, Figure 8 of
16 Mabuchi, the space guide must be removed to replace
17 that embodiment of the patter assembly?

18 A. Well, I can't tell by looking at Figure 8
19 because I don't know where the space guide 5 would
20 fall or what it would look like for that embodiment.

21 Q. Turning to Figure 3, for example, you see
22 generally where the patter connection mechanism 12 is
23 indicated; correct?

24 A. I see that.

25 Q. And in Figure 3, is the patter mechanism 12

1 surrounded by the space guide 5?

2 A. It is.

3 Q. Does that help you understand where, for
4 example, the push button 13 in Figure 8 of Mabuchi is
5 located with respect to the space guide?

6 A. Not necessarily because I don't know if
7 Figure 3 is the same embodiment as Figure 8. I have
8 to look at the patent. Give me a few minutes. Okay.
9 What is your question again, please?

10 Q. Could a user replace the patter assembly as
11 shown in Figure 8, which includes the push button 13,
12 while the space guide 5 is in place?

13 A. Well, if there was an access hole or some
14 way to access the button. Yes.

15 Q. And if there is no access hole, then must
16 the space guide 5 be removed?

17 A. Well, I don't -- if your question is, if
18 the button is up inside the space guide 5 like the
19 embodiment shown in figures 3, 4, and 5 without an
20 access hole, then I don't know how -- I don't even
21 know if 5 is removable. I don't know how it would be
22 changed unless 5 is removable. I do know that
23 Mabuchi says that it's easily changed.

24 Q. But Mabuchi doesn't describe changing the
25 patter assembly 6 while leaving the space guide 5 in

1 place; correct?

2 A. I don't believe he does.

3 Q. Turning to the embodiment of Figure 18 of
4 Mabuchi. Is it your testimony that a user could
5 attach that embodiment of the patter assembly to the
6 actuator with the space guide 5 in place?

7 A. Yes.

8 Q. How would a user be able to align the
9 opening in the patter assembly with the actuator
10 inside the space guide 5? Strike that. When
11 attempting to install the patter assembly 6 over the
12 actuator 4 while the space guide is in place, a
13 user's view inside the space guide would be blocked
14 by the cushion number 8; correct?

15 A. I thought you were talking about --

16 Q. I'm referring to the embodiment of the
17 patter assembly 18.

18 A. Yes.

19 Q. But I'm referring to Figure 4, for example,
20 to understand the configuration of the patter
21 assembly with respect to the space guide. Does that
22 help your understanding? For example, if a user were
23 to attempt to attach the patter assembly 6 to the
24 actuator 4 with the space guide in place, their view
25 inside the space guide would be blocked by the

1 cushion number 8; correct?

2 A. Depending on the position of the fly wheel
3 or the piston, whether it's back as in Figure 2 or
4 forward as in Figure 4, the wheel could be obstructed
5 depending on how far 6 is sticking out in front of 5.
6 I mean, in this illustration it's sticking out, if we
7 were to scale this about an eighth of an inch, that
8 could be an inch or a half-inch. Who knows. So even
9 to the extent that the view might be obstructed for
10 particular detailed design on this, the angle and
11 alignment of the axes would probably not be too
12 difficult to ascertain. I don't see it being an
13 issue.

14 Q. A user would have to grasp the patter
15 assembly 6 around elements 7 and 8 to attach it to
16 the actuator while the space guide is in place;
17 correct?

18 A. Yeah. You're still talking about the
19 embodiment in 18?

20 Q. Yeah. I'm referring to the embodiment in
21 Figure 18 but I'm using Figure 4 to illustrate the
22 relationship between the patter assembly and the
23 space guide.

24 A. I don't think it would be a problem because
25 you've got the actuator head on the shaft 4, that as

1 soon as magnet number 44 gets on the bullet nose of
2 shaft 4, at that point, head 6 is still protruding
3 quite a bit out of the hole. Once that magnet 44
4 makes contact with shaft 4's bullet nose, you don't
5 need to worry about alignment anymore. It's self
6 aligning at that point.

7 Q. I'm referring to the issue of aligning the
8 actuator 4 with the opening in element 10 in Mabuchi,
9 looking at Figure 18, for example.

10 A. Well, I don't think you understand how this
11 works, then. Because the hole in 10, 10 is attached
12 to 15. 10 and 15 are together. I mean, they don't
13 come apart. The user doesn't take them apart and
14 separate them. So 15 is attached to 10. 46 is
15 attached to 15. 44 is attached to 46. So the end of
16 the massage head assembly is the face, the right-hand
17 face in Figure 18 of magnet 44. Once the right-hand
18 face of 44 comes onto the bullet nose of shaft 4,
19 that thing is aligned. At that point, that head
20 number 6 is way outside of number 5.

21 Q. So maybe Figure 19 is a better example.
22 Before the magnets can be brought into close contact,
23 the actuator 4 needs to be positionally aligned with
24 the opening in elements 15 and 10; correct? I'm not
25 referring to angular alignment. I'm just referring

1 to positional alignment.

2 A. It has to be positionally aligned with the
3 opening in magnet number 44.

4 Q. If this connection were made with the space
5 guide 5 in place, a user would not be able to see
6 that connection take place; correct?

7 A. A blind man can still brush his teeth
8 without poking the toothbrush in his eyeball. This
9 is not rocket science. This is taking the massage
10 head, putting it in the hole. The bullet nose on the
11 end of shaft 44 acts as an alignment feature. It
12 can't be any more helpful. I don't know how you
13 could screw that up.

14 Q. But you agree that the space guide 5 would
15 hide the insertion of actuator 4 into flange 15 from
16 the user's view; correct?

17 A. Not necessarily. Once the massage head is
18 fully installed, you won't be able to see actuator 4.
19 As soon as the right-hand face of magnet 44 comes
20 into contact with the bullet nose on piston 4, at
21 that point I've got to believe that you still have
22 plenty of visibility from the user's perspective.
23 Mabuchi makes it very clear that it's easy to
24 replace. A person of ordinary skill in the art would
25 understand that making it difficult to replace by

1 hiding the alignment features or making it difficult
2 to align wouldn't be able to call it easy to replace
3 the message head.

4 Q. It's easy to replace if the space guide 5
5 is removed; correct?

6 A. Well, it doesn't say you have to remove the
7 space guide.

8 Q. You agree that for some of the other
9 embodiments, the space guide 5 must be removed;
10 correct?

11 A. I don't agree with that.

12 Q. We discussed earlier the embodiment in
13 Figure 8 that has the push button 13. Is it your
14 opinion that the push button 13 can be activated by a
15 user when the space guide 5 is in place?

16 A. If the space guide 5 has an access hole,
17 yes.

18 Q. Let's go off the record.

19 MR. BERG: Okay.

20 (Recess taken.)

21 Q. Dr. Pratt, I'm handing you what's been
22 previously marked as Exhibit 1007. It was marked
23 that way in both proceedings. Are you familiar with
24 this document?

25 A. I am.

1 Q. And is this document the Pivaroff reference
2 that you discussed in your report?

3 A. Yes.

4 Q. Okay. And if I refer to it as Pivaroff,
5 will you understand that I'm referring to this
6 patent?

7 A. Yes.

8 Q. Do you agree that Pivaroff is directed to a
9 deep muscle stimulator device?

10 A. Yes.

11 Q. Looking at column 1, approximately line 21,
12 Pivaroff states, "the known prior art devices do not
13 reach deep enough into the muscle tissues to provide
14 the necessary relief for many persons."

15 Do you see that disclosure?

16 A. I do.

17 Q. And do you understand that disclosure of
18 Pivaroff to be criticizing earlier devices that did
19 not have sufficient stroke length to provide relief
20 for people?

21 MR. BERG: Objection to form.

22 THE WITNESS: Yeah. For many people, yes.

23 Q. Okay. So do you agree that Pivaroff's
24 design is to remedy this deficiency in the prior art
25 by reaching into the deep muscle tissue of a patient?

1 A. Well, using percussion and mechanical
2 vibrations, yes.

3 Q. In that same column around line 25 it says,
4 "there exists a need in the art for a deep muscle
5 stimulator such as the present invention which uses
6 percussion and mechanical vibrations that reach deep
7 into the muscle tissue."

8 Do you see that disclosure?

9 A. I do.

10 Q. What's your understanding of "reach deep
11 into the muscle tissue", as used in Pivaroff?

12 A. Meaning that this tool can stimulate the
13 tissues deeper into the body than existing massagers.

14 Q. But you agree that Pivaroff says, "reach
15 deep into the muscle tissue", not just stimulate;
16 correct?

17 A. Well, I don't understand reaching deep to
18 mean that it penetrates the skin.

19 Q. Do you understand it to mean that it pushes
20 further into a user's body than prior art devices?

21 A. Well, not necessarily. It could push
22 further in. It certainly provides deeper massage
23 action.

24 Q. And Pivaroff's design is different than
25 Mabuchi's because Mabuchi is designed for surface

1 beauty treatment of the skin; correct?

2 A. Well, Mabuchi teaches a beauty treatment
3 device.

4 Q. And Pivaroff teaches a deep muscle
5 stimulator device; correct?

6 A. That's correct.

7 Q. And do you agree that those are two
8 different purposes?

9 A. Those are two different applications of a
10 percussion massager.

11 Q. A percussion massager can be used for
12 beauty treatment. Is my understanding of your
13 testimony correct?

14 A. A person of ordinary skill in the art would
15 understand that Mabuchi could be just as effective at
16 deep muscle massage as Pivaroff as a function of how
17 stiff the spring is, how much throw or stroke was
18 provided. It's a reciprocating percussion device.

19 Q. So you're saying Mabuchi could be modified
20 to function or operate similar to Pivaroff?

21 A. I don't think Mabuchi has to be modified.
22 It could be configured in the same way that any of
23 these devices are configured. It doesn't require
24 modification.

25 Q. You discussed changing the stroke length

1 and increasing the spring pressure in the patten
2 assembly; correct?

3 A. Well, more accurately, by choosing a spring
4 pressure and choosing a stroke length one of ordinary
5 skill in the art can provide, in my opinion, the same
6 deep muscle massage with Mabuchi that one could with
7 Pivaroff.

8 Q. Does Pivaroff disclose any structure or
9 element similar to in function the space guide in
10 Mabuchi?

11 A. Pivaroff does not.

12 Q. Do you recall from your review of Pivaroff
13 referencing to the loose granular material contained
14 within the head 44?

15 A. In my report or in Pivaroff?

16 Q. My apologies. Do you recall from your
17 understanding of Pivaroff its reference to the loose
18 granular material contained within the head 44?

19 A. Yes.

20 Q. And in your opinion, what is the purpose of
21 the loose, granular material contained within the
22 head 44?

23 A. As I sit here today, I don't recall. I
24 would have to go back and review the patent again.

25 Q. All right. Let's take a look at column 3

1 of Pivaroff, beginning at line 24. Again, feel free
2 to review Pivaroff to the extent you need to to feel
3 comfortable.

4 A. Okay. I read 24 through 30.

5 Q. Does this provide you with an understanding
6 of the loose granular materials within the head as
7 described in Pivaroff?

8 A. I don't know what you mean by does it
9 provide me with an understanding.

10 Q. Did you review the entirety of Pivaroff in
11 preparing your declaration?

12 A. Yes.

13 Q. Are you aware that Pivaroff describes the
14 head 44 being filled with loose granular material?

15 A. I do.

16 Q. In your opinion, what is the purpose of the
17 loose granular material filled within the head in
18 Pivaroff?

19 A. Its function seems to be somewhat
20 misunderstood because although no explanation can be
21 given for these surprising and unexpected results, it
22 appears that somehow the movement of the mixed grains
23 of material within the interior hollow chamber during
24 reciprocating motion is transferred to the patient's
25 body in an effective deep muscle area. So Pivaroff

1 didn't seem to understand why that works or how it
2 works.

3 Q. Do you agree that the loose granular
4 material within the head would increase the
5 percussive force on a patient's body?

6 A. I don't know that it does, and I don't know
7 that Pivaroff claims that it does either.

8 Q. After reviewing Pivaroff, you don't
9 understand the benefit of the loose granular material
10 within the head 44 of Pivaroff?

11 A. I don't understand. You lost me on one
12 word.

13 Q. So after reviewing Pivaroff, you don't
14 understand the proposed benefit of the loose granular
15 material within the head 44?

16 A. No. I understand what Pivaroff says the
17 benefit is.

18 Q. Do you think Pivaroff is incorrect in the
19 benefit of the loose granular material?

20 A. I don't have an opinion one way or the
21 other as to whether he's correct. Pivaroff himself
22 says he doesn't know why. He says no explanation can
23 be given for these surprising and unexpected results.

24 Q. Do you agree that the loose granular
25 material would move back and forth within the head

1 itself as the head reciprocates?

2 A. It could, unless it's packed solid.

3 Q. If you could turn to column 2, line 60.

4 Pivaroff states, "the granular material is loosely
5 held within the hollow head and only fills between
6 one-quarter and one-half of the volume of the inner
7 chamber, and preferably about one-third."

8 Do you see that disclosure in Pivaroff?

9 A. No. Where is that?

10 Q. Column 2, line 60.

11 A. Yes, I see that.

12 Q. Do you see that Pivaroff describes that the
13 head is only partially filled with this loose
14 granular material?

15 A. I do.

16 Q. Do you understand now that the loose
17 granular material would move within the hollow head
18 44 as the head reciprocates?

19 A. If it's loosely packed as described in
20 column 2, yes.

21 Q. And as the head 44 reaches the farthest
22 extent of its travel and comes to a stop, that loose
23 granular material would increase the force by
24 impacting the inner face of the hollow head; correct?

25 A. I would say that it's possible, but from a

1 mechanics viewpoint, referring to figures 3, 4, and 5
2 of Pivaroff, the mechanics of this flywheel piston
3 connection is such that maximum acceleration of the
4 piston, in other words the rate at which it's
5 accelerating, increases from Figure 3 to 4. In other
6 words, it's speeding up. At Figure 3, that piston's
7 not moving at all. In Figure 4, it's moving as fast
8 as it can go. The most acceleration occurs somewhere
9 between figures 3 and 4. Maximum acceleration begins
10 at Figure 3. When it's rotated 90 degrees as in
11 Figure 4, it's no longer accelerating. Now it starts
12 to decelerate. The maximum speed is as at Figure 4.

13 At Figure 5, the speed of the piston in the
14 downward direction here is zero again. It's starting
15 to accelerate in the opposite direction. So without
16 further analysis, and I'm not going to do it here
17 during the deposition, I can't say that loose
18 material is going to act like a battering ram when it
19 reaches the position of Figure 5. Because of the
20 changing acceleration and velocities, that loose
21 material, by the time it gets near 5, may already be
22 at the front end of Item 44, the massage head. So no
23 slamming would take place at that point. That would
24 require some more analysis.

25 Q. And you haven't conducted that analysis to

1 date, have you?

2 A. On the slamming question, I have not.

3 Q. You haven't conducted any analysis of the
4 movement of the loose material within the head 44
5 Pivaroff; correct?

6 A. Correct.

7 Q. Dr. Pratt, I'm handing you what's been
8 previously marked as Exhibit 1002 in PGR2025-13.
9 This is your other expert report. Just for
10 completeness, I'm going to hand you what's been
11 previously marked as Exhibit 1001 in PGR2025-12. Are
12 you familiar with the two documents I just handed
13 you, Dr. Pratt?

14 A. I am.

15 Q. Is the first document I handed you,
16 Exhibit 1002, your declaration provided in PGR2025-13
17 regarding the '082 patent?

18 A. Yeah. But interestingly it has the same
19 exhibit number as the '482 declaration.

20 Q. Yeah. We'll need to be careful of that
21 because they are the same exhibit number but in
22 different proceedings. So for the remainder of the
23 deposition until I state otherwise, we'll assume
24 reference to Exhibit 1002 or your declaration will be
25 regarding the '082 patent.

1 A. Okay.

2 Q. Is that understood?

3 A. That's fine.

4 Q. Okay. If at any point you have any
5 question, please let me know. Then, the second
6 document I handed you, are you familiar with that
7 document?

8 A. Yes.

9 Q. Okay. And is that the '082 patent at issue
10 in PGR2025-13?

11 A. Yes.

12 Q. Do you understand that the substance of the
13 two patents at issue in these proceedings are the
14 same?

15 A. I lost you.

16 Q. Do you understand that separate from the
17 claims of the two patents at issues, the disclosures
18 of the two patents at issue, do you understand them
19 to be the same?

20 A. Well, they're similar. The '082 and '482
21 cover different aspects.

22 Q. So you understand the claims of the two
23 patents to be different, but my question is about the
24 disclosure or the description of the two patents. Do
25 you understand the description of the two patents to

1 be the same?

2 A. The specification portions are the same.
3 Yes.

4 Q. There we go. Yes. A better term. I'm
5 handing you Exhibit 1009. This was marked the same
6 in both proceedings. Are you familiar with
7 Exhibit 1009 that I just handed you, Dr. Pratt?

8 A. I am.

9 Q. Okay. What is Exhibit 1009?

10 A. It's a patent publication U.S.
11 2007/0150004A1 to Colloca. C-O-L-L-O-C-A. U.S.
12 2007/0150004.

13 Q. If I refer to this patent document as
14 Colloca, will you understand what I'm referring to?

15 A. Yes.

16 Q. Okay. Do you understand Colloca to be
17 directed to a chiropractic adjusting instrument?

18 A. I do.

19 Q. Are you familiar with chiropractic
20 adjusting instruments?

21 A. Outside of this case, I'm not.

22 Q. Have you ever had a chiropractor use an
23 adjusting device on you personally?

24 A. No.

25 Q. Did you do any research to better

1 understand with what a chiropractic adjustment
2 instrument is in preparing your report?

3 A. Other than reading Colloca, no.

4 Q. Do you understand that the chiropractic
5 adjusting instrument described in Colloca is designed
6 to move bones?

7 A. Well, I don't dispute that. I'm not
8 surprised by that. It's what a chiropractor does.

9 Q. So in your opinion, the device described in
10 Colloca is designed for use by a chiropractor to move
11 a patient's bones?

12 MR. BERG: Objection to form.

13 THE WITNESS: I think that's certainly one
14 application of the Colloca device. I wouldn't rule
15 out other applications.

16 Q. Okay. But Colloca you agree is
17 specifically directed to a chiropractic adjustment
18 device to move bones; correct?

19 A. That's what he says in the abstract. I
20 would have to go back and look at the field of
21 invention. In the field of invention, Colloca
22 relates to the field of adjusting instruments and
23 methods. Particularly, it involves the field of
24 electric mechanical manipulation/adjusting
25 instruments used to apply controlled dynamic forces

1 to the human body. More particularly, the invention
2 has an improved force time wave form and sensor
3 controlled pulse mode.

4 Q. Turning to paragraph 9 of Colloca it
5 states, "another disadvantage referring to prior art
6 devices, is that they do not create adjusting
7 instruments that have a wave form attuned to the
8 nature of the body to allow more bone movement and
9 more neural receptor stimulation with less force."

10 Do you see that disclosure in Colloca?

11 A. I do.

12 Q. Does that provide more insight into what
13 Colloca's referring to in paragraph 1 with respect to
14 the wave form?

15 A. Well, it provides some insight. I don't
16 know that it provides very much information. I mean,
17 the field of the invention, it says what it says.

18 Q. And Colloca describes in paragraph 9, for
19 example, the need for a modified wave form to allow
20 for more bone movement; correct?

21 A. To allow for more bone movement and more
22 neural receptor stimulation with less force. Yes.

23 Q. Okay. So do you understand Colloca's
24 invention to be related to a device designed to move
25 bones?

1 A. Well, the invention is defined by the
2 claims. So if you want to point me to a particular
3 claim, I'd be happy to tell you what the invention
4 is.

5 Q. Do you understand -- strike that. Do you
6 understand the disclosure of Colloca to be directed
7 to a chiropractic adjustment tool with a particular
8 wave form to allow more bone movement?

9 A. Yes. Described in the background of the
10 invention and the field of the invention. That's
11 what Colloca claims.

12 Q. Let's turn to paragraph 129 of your expert
13 declaration in PGR2025 it'll have the '082 patent
14 number in the upper right-hand corner.

15 A. What was the paragraph again?

16 Q. 129.

17 A. Okay.

18 Q. At the end of paragraph 129 in your
19 declaration, is that a proposed -- strike that. At
20 the bottom of paragraph 129, is that a diagram of how
21 Mabuchi would be modified in view of Colloca?

22 A. Yes.

23 Q. And that's how Mabuchi would be modified in
24 view of Colloca to read on the claims of the '082
25 patent; correct?

1 A. The specific claims. Correct.

2 Q. Referring to this modified figure of
3 Mabuchi in your report, the actuator 4 has been
4 modified such that the coupling 14 including the
5 magnets are moved to the distal end of the actuator;
6 correct?

7 A. Yes. Well, it's at the distal end. I
8 can't say it was moved. But it's at the distal end
9 as opposed to being set back from the distal end?

10 Q. And modified Mabuchi in your report, the
11 actuator 4 no longer extends into the patter assembly
12 6; correct?

13 A. Correct.

14 Q. All right. Turning to page 55 of your
15 report. I'm going to use this just to refer to
16 figures 18 and 19 of Mabuchi for convenience. Do you
17 see figures 18 and 19 in Mabuchi on page 55 of your
18 report?

19 A. Yes.

20 Q. So in unmodified Mabuchi -- do you
21 understand what I mean when I say unmodified Mabuchi?

22 A. Yes.

23 Q. The actuator head 4 extends into the patter
24 slide tube 10; right?

25 A. Yes.

1 Q. Okay. And that's shown in Figure 18;
2 correct?

3 A. Yes.

4 Q. In that assembled configuration, the
5 actuator stabilizes the patter slide tube 10;
6 correct?

7 A. Yes.

8 Q. And then, during use Mabuchi -- strike
9 that. In Mabuchi, during use of the device, element
10 9 reciprocates back and forth along the slide tube
11 10; correct?

12 A. Yes.

13 Q. And as element 9 reciprocates, it moves
14 closer to the actuator head 4A; correct?

15 A. I don't see 4A.

16 Q. My apologies. 4A refers to the actuator
17 head, but 4A is not particularly called out in figure
18 8. I'm referring to the actuator head. I'll restate
19 the question. During use, as the actuator 4
20 reciprocates, element 9 of the patter assembly
21 reciprocates separately over element 10 to become
22 closer to the actuator 4; correct?

23 A. Yes.

24 Q. And during that motion, the actuator 4 acts
25 to stabilize both elements 9 and 10; correct?

1 A. Well, actuator 4 stabilizes that whole
2 assembly.

3 Q. Which would include element 9 as well?

4 A. Which would include element 9 as well.
5 Yes.

6 Q. Turning back to modified Mabuchi on page 60
7 at the bottom of paragraph 129. In modified Mabuchi,
8 there is no stabilizing element that extends into the
9 spring 11; correct?

10 A. That's correct.

11 Q. So for that reason, the reciprocating
12 element 9 also doesn't benefit from the stabilization
13 of the actuator 4 in unmodified Mabuchi; correct?

14 A. Well, it benefits from that portion of 10
15 that is inside the cavity of Item 4. So it just -- I
16 don't want to say a mirror image of unmodified
17 Mabuchi, but rather than having 4 going through the
18 massage head we have the massage head going into the
19 piston 4. It's the same effect.

20 Q. Don't you agree that the actuator 4 being
21 within the spring 11 provides increased stabilization
22 compared to when the actuator is not inside spring
23 11?

24 A. The stabilization would be equivalent on
25 unmodified Mabuchi, and the modified Mabuchi is shown

1 on page 60 of my report. There would be no
2 difference.

3 Q. So your testimony is that the location of
4 the actuator inside spring 11 or entirely outside of
5 spring 11 provides the same stabilization of the
6 patter assembly?

7 A. No. What I said was that the stabilization
8 provided by the modified Mabuchi would be no
9 different than the stabilization provided in the
10 unmodified Mabuchi.

11 Q. So you don't agree that the actuator being
12 within the patter assembly 6 in the spring 11
13 provides increased stability compared to not having
14 the actuator over the patter assembly?

15 A. I'm not going to answer that question. I
16 told you. You're trying to twist the thing. There's
17 only two embodiments shown here: The unmodified
18 Mabuchi and the modified Mabuchi. The modified
19 Mabuchi is configured to provide the same
20 stabilization as the unmodified Mabuchi, Figure 18.

21 Q. So your testimony is regardless of the
22 location of the actuator, whether it is within the
23 patter assembly 6 or protruding from the end of the
24 patter assembly 6, it provides the same stabilizing
25 effect?

1 A. Well, for the fourth time, the unmodified
2 Mabuchi shown in Figure 18 has the same stabilization
3 as the modified Mabuchi shown in page 60 of my
4 report.

5 Q. So modified Mabuchi, your testimony is
6 element 9, as it reciprocates over top of element 10
7 is going to be just as stabilized in modified Mabuchi
8 as in unmodified Mabuchi?

9 A. Yes.

10 Q. Colloca doesn't describe an impact head
11 having an independently reciprocating element like
12 Mabuchi; correct?

13 A. Actually, in a way it does. In figures 7
14 and 8 of Colloca.

15 Q. It has multiple separately reciprocating
16 elements?

17 A. Well, the holder 130. I can't remember
18 what Colloca calls 130, but it's the thing into which
19 the massage head is inserted. The thrust nose piece
20 130 is itself spring loaded. It's not the same as
21 Mabuchi, but --

22 Q. It's not the same as Mabuchi because it's
23 internal to Colloca's device?

24 A. Well, it's a little different than Mabuchi,
25 but it is a spring loaded device that may have some

1 separate, independent movement.

2 Q. I'm going to hand you what's been
3 previously marked as Exhibit 114 in both proceedings.
4 Are you familiar with what I just handed you as
5 Exhibit 114?

6 A. I am.

7 Q. Exhibit 114 is U.S. patent 3,007,504 to
8 Clark; correct?

9 A. Yes.

10 Q. If I refer to this as Clark, will you
11 understand I'm referring to Exhibit 1014?

12 A. Yes.

13 Q. Clark is not directed to or describe a
14 percussive massager; correct?

15 A. It does not.

16 Q. Clark does not describe reciprocal motion;
17 correct?

18 A. I don't believe it does.

19 Q. Clark is directed to rotational movement;
20 correct?

21 A. Well, a person of ordinary skill in the art
22 would understand it's directed to rotational
23 movement, and Clark may even say that, but Clark is
24 really directed to magnetic attachment of tool bits
25 to a holder.

1 Q. I'm going to turn to paragraph 183 of your
2 expert report. The same expert report with the OA2
3 patent referenced in the upper right-hand corner.

4 A. I'm there.

5 Q. Paragraph 183 of your report describes
6 Clark and includes Figure 3 from Clark; correct?

7 A. Yes.

8 Q. And then, turning the page on page 88.
9 There's an image titled "Pivaroff, Figure 5, modified
10 in view of Clark." Do you see that?

11 A. I do.

12 Q. And that's how Pivaroff could be modified
13 in view of Clark to read on the challenged claims;
14 correct?

15 A. Yes.

16 Q. Did you consider the entirety of Clark in
17 preparing your expert report?

18 A. Yes.

19 Q. Looking at Figure 3 of Clark on page 87 of
20 your report. Do you see cylindrical member 13?

21 A. Yes.

22 Q. Is there any element in modified Pivaroff
23 as shown on page 88 that corresponds to the
24 cylindrical member 13 of Clark?

25 A. No.

1 Q. Going back to page 87. Do you see the
2 magnetically permeable member 19 shown in Figure 3 of
3 Clark?

4 A. I do.

5 Q. Is there any element in modified Pivaroff
6 that corresponds to the magnetically permeable member
7 19 of Clark?

8 A. No. Not to the Figure 3. No.

9 Q. Returning to Figure 3 of Clark, do you see
10 the magnetically non-permeable shell 18?

11 A. I see it.

12 Q. And turning to page 88 of your report. Is
13 there any element in modified Pivaroff that
14 corresponds to the magnetically non-permeable shell
15 18 in Clark?

16 A. No.

17 Q. Is there any other documents or things you
18 considered in preparing your two expert reports?

19 A. Well, yeah. Back to Clark. Page 88 of
20 Pivaroff, Figure 5, modified in view of Clark, more
21 closely corresponds to Figure 5 of Clark, which
22 doesn't have those other items that you talked about.

23 Q. You're not relying on Figure 3 of Clark as
24 shown in your report, but Figure 5 of Clark, is that
25 your testimony?

1 A. Well, I showed Figure 3 in my report. If
2 you look at Pivaroff modified in Figure 5, it more
3 closely aligns with figure 5 of Pivaroff than it does
4 with all the components of Figure 3. The bottom line
5 is that Pivaroff teaches magnetic attraction to a
6 holder. It's that simple.

7 Q. Are you referring to Clark?

8 A. Clark teaches magnetic attraction.

9 Q. Clark is also directed to magnetically
10 retaining a screw as well as the work piece holder;
11 correct?

12 A. That's right.

13 Q. Clark has a specific design that imparts
14 the magnetic force from the magnet and focuses it on
15 the screw at the end of the work piece holder;
16 correct?

17 A. That's one of the embodiments. Yes.

18 Q. Turning back to modified Pivaroff on
19 page 88. There is no screw or bolts to be held by
20 the end piece in Pivaroff; correct?

21 A. No. The corresponding part being held is
22 the hollow head 44.

23 Q. And that's held magnetically to the magnet?

24 A. Yes. It's actually the head cap element 48
25 that is attached to the magnet, but that's part of

1 the hollow head.

2 Q. Are you aware that in Pivaroff, the hollow
3 body 46 and cap 48 are formed from titanium?

4 A. They could be. A person of ordinary skill
5 in the art, however, if he was going to use magnets
6 to attach it would use something that was magnetic,
7 like mild steel.

8 Q. So a person of ordinary skill in the art
9 would need to not only modify the structure of
10 Pivaroff based on Clark, but would also need to
11 modify the materials of Pivaroff? Is that your
12 testimony?

13 MR. BERG: Objection to form.

14 THE WITNESS: Well, at least the material
15 of the hollow head cap element 48.

16 Q. And Pivaroff does not describe any sort of
17 magnetic connection; correct?

18 A. Pivaroff does not.

19 Q. Are you aware that Therabody previously
20 characterized the Mabuchi reference in prosecuting
21 one of its own patents?

22 A. No.

23 Q. Are you aware that Therabody sought to
24 patent a magnetically connected massager attachment
25 in the year 2022?

1 A. I'm not.

2 MR. KELLAR: I actually have no further
3 questions.

4 MR. BERG: Let's take a quick break and see
5 if I have any recross.

6 (Recess taken.)

7 MR. BERG: All right. I've got no
8 questions for Dr. Pratt. I need a rough but no
9 expedite.

10 (Proceedings concluded at 12:04 P.M.)

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DECLARATION UNDER PENALTY OF PERJURY

I, DR. JOHN PRATT, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken September 16, 2025; that I have made such corrections as appear noted on the Deposition Errata Page attached hereto and signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this _____ day of _____,
2025, at _____,
California.

DR. JOHN PRATT

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF LOS ANGELES)

4 I, Michael Cagliata, Certified
5 Shorthand Reporter No. 14491, do hereby
6 Certify:

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

13 I further certify that the adverse party,
14 THERABODY, INC., was represented by counsel
15 at the deposition.

16 I further certify that the deposition of
17 DR. JOHN PRATT, occurred at the offices of
18 O'Melveny & Myers, LLP 610 Newport Center
19 Drive, 17th Floor, Newport Beach, California
20 92660 on Tuesday September 16, 2025 commencing
21 at 9:05 A.M. to 12:04 p.m.

22 I further certify that I am not related to
23 any of the parties to this action by blood
24 or marriage, I am not employed by or an attorney
25 to any of the parties to this action, and that I
am in no way interested, financially or otherwise,
in the outcome of this matter.

Witness my hand this 16th day of September,
2025.

M. Cagliata

Michael Cagliata, CSR #14491, RPR
Certified Shorthand Reporter
In and for the State of California

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