

Transcript of Dr. John Pratt, Volume 2

Date: January 7, 2026
Case: Therabody, Inc. -v- Hyperice IP Subco, LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THERABODY, INC.,	)	
	)	
Petitioner,	)	CASE NO.
	)	PGR2024-00053
vs.	)	
	)	PATENT NO.
HYPERICE IP SUBCO, LLC,	)	11,857,482
	)	
Patent Owner.	)	VOLUME 2
	)	
_____	)	

DEPOSITION OF DR. JOHN PRATT

NEWPORT BEACH, CALIFORNIA

WEDNESDAY, JANUARY 7, 2026

10:02 A.M. - 12:51 P.M.

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STENOGRAPHICALLY REPORTED BY:

CHERYL ASADA

CA CSR NO. 13496

JOB NO. 613455

VIDEOTAPED DEPOSITION OF DR. JOHN PRATT, VOLUME 2, PAGES 89-172, TAKEN AT 610 NEWPORT CENTER DRIVE, SEVENTEENTH FLOOR, NEWPORT BEACH, CALIFORNIA 92660, ON BEHALF OF THE PATENT OWNER, COMMENCING AT 10:02 A.M. AND CONCLUDING AT 12:51 P.M., ON WEDNESDAY, JANUARY 7, 2026, BEFORE CHERYL ASADA, CALIFORNIA CERTIFIED SHORTHAND REPORTER NO. 13496.

* * *

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I N D E X

W I T N E S S:

DR. JOHN PRATT PAGE
EXAMINATION BY MR. KELLAR 92

INFORMATION REQUESTED:

(NONE)

QUESTIONS INSTRUCTED NOT TO ANSWER:

(NONE)

PREVIOUSLY MARKED EXHIBITS:

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NEWPORT BEACH, CALIFORNIA

WEDNESDAY, JANUARY 7, 2026

10:02 A.M. - 12:51 P.M.

* * *

THE COURT REPORTER: In accordance with AB 3252, we are on the record. My name is Cheryl Asada, CSR No. 13496. I will now swear in the witness.

DR. JOHN D. PRATT,

HAVING BEEN DULY ADMINISTERED AN OATH,

WAS THEREUPON EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I do.

THE COURT REPORTER: Thank you.

EXAMINATION

BY MR. KELLAR:

Q. Good morning.

A. Good morning.

Q. Can you please state your name for the record.

A. John Dillworth Pratt.

Q. All right. Is there anything affecting your ability to testify truthfully today?

A. No.

Q. Do you recall our previous deposition in these two matters?

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A. I do.
Q. And just for clarity, you understand that your testimony today applies to both PGR2024-53 and PGR2025-13. Correct?
A. Yes.
Q. And you understand that your testimony here today, along with your written testimony and your previous deposition, forms the whole of your testimony in these two proceedings?
A. I do.
Q. Because this deposition will cover two proceedings and two patents, I want to make sure that there's clarity when we're discussing one patent versus another. So please, if you have any questions if one of my questions applies to one patent or the other in this case, please let me know. Okay?
A. Okay.
Q. And if I refer to "the patents at issue" or "the patents," do you understand that to refer to both patents at issue in the two proceedings?
A. I do.
Q. And then do you understand that the word "POSITA" means person of ordinary skill in the art?
A. I do.
Q. And if I present a question and you proceed to

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answer that question, I'll assume that you understand, unless you ask for clarification.

Is that okay?

A. Yes.

Q. How did you prepare for your deposition today?

A. I reviewed the patents at issue in this case and the prior art, and also my declarations in support of the -- Therabody's reply to the -- reply brief.

Q. Did you discuss these two matters with anyone other than your attorneys in preparing for your deposition?

A. No.

Q. Did you review any documents outside of what's been presented in these two proceedings in preparing for your deposition?

A. No.

Q. Did you conduct any Internet searches?

A. In preparing for this deposition? The answer is "no."

Q. Did you conduct any Internet searches in preparing either one of your declarations?

A. I may have.

Q. Do you recall what search terms you may have used?

A. I don't.

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Q. I'm going to hand you some papers that have -- may be relevant to today's deposition. I don't want today to be a memory test, so the first document I'll be handing you is your declaration in PGR2024-53 as Exhibit 1033.

(Exhibit 1033 was previously marked.)

BY MR. KELLAR:

Q. Again, I'm just going to hand these to you so we can have a smoother process.

The next document I'm going to hand you is your declaration in -- your reply declaration in PGR2025-13, Exhibit 1033.

THE WITNESS: Excuse me, can we lower the blinds for that one window?

MR. BERG: I can do that.

THE WITNESS: Because I -- that's fine. Thank you.

MR. KELLAR: And then to continue, just so we have them, the next document will be U.S. Patent Number 11,857,482, Exhibit 1001, which is the patent at issue in the 2024 PGR.

(Exhibit 1001 was previously marked.)

MR. KELLAR: I know this is a lot of paper.

The last one, U.S. Patent 11,938,082, this is the patent at issue in the 2025 PGR, also Exhibit 1001.

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BY MR. KELLAR:

Q. Again, Dr. Pratt, I don't intend for today to be a memory test. So as you need to refer to those documents, or if you have any questions where something may be found, please let me know and I will work with you to locate that in those documents.

A. Okay.

Q. The first document I want to discuss today is the '482 patent, if you would pull that document to the front.

Do you recall your testimony in your reply declaration discussing the statement of intended use in the '482 patent?

A. I don't.

Q. Okay. If you want to pull forward your reply declaration for the '482 patent, I'll direct your attention to Paragraph 10.

A. I'm there.

Q. Okay. On Page 4, the last sentence -- the first -- and I'm reading from your declaration. Quote (as read):

> "The first citation patent owner makes to the specifications is merely a statement of intended use and purpose in the background section."

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Do you see that?
A. I do.
Q. And then quoting the '482 patent, it says (as read):
"This invention relates generally to medical devices, and more particularly to a deep muscle stimulating device."
And then it continues on from there.
Do you see that?
A. I do.
Q. Is a deep muscle stimulating device an apparatus?
A. Yes.
Q. Is a deep muscle stimulating device an -- a use?
A. Yes.
Q. Is a deep muscle stimulating device a physical object, in your opinion?
A. It can be.
Q. Can any device be a deep muscle stimulating device?
MR. BERG: Objection to form.
THE WITNESS: I don't think any device can be a deep muscle stimulating device.
///

BY MR. KELLAR:

Q. And then preceding -- looking back at your declaration, quoting again from the '482 patent, "A deep muscle stimulating device," and then it says, "used to." And then it lists three actions.

Do you see that?

A. I do.

Q. What do you understand the tr- -- the transition "used to" in the '482 patent to mean?

MR. BERG: Objection to form.

THE WITNESS: Well, it just describes the application of the device.

BY MR. KELLAR:

Q. Is it describing how to use the deep muscle stimulating device?

A. I don't think it's describing how to use it so much as it's describing what it's used for.

Q. And then, according to the '482 patent, what is the deep muscle stimulating device used for?

A. Well, it says it's used to increase muscle metabolism, increase the lactic acid cycle, and to relieve pain.

Q. So do you understand this passage of the '482 patent to mean that the use for the deep muscle stimulating device is to, quote, "increase muscle

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metabolism, increase the lactic acid cycle, and relieve pain," end quote?

MR. BERG: Objection to form.

THE WITNESS: Well, that's what's stated in the '482 patent, yes.

BY MR. KELLAR:

Q. And you agree with that statement in the '482 patent?

MR. BERG: Objection to form.

THE WITNESS: Well, I don't disagree with it. It -- it says what it says.

BY MR. KELLAR:

Q. Moving on to Paragraph 11 of your reply declaration, next you refer to the '482 patent at Column 7, Lines 20 to 23.

Do you see that citation in your reply declaration?

A. I do.

Q. I'm reading from your reply declaration that's quoting the '482 patent. It says, quote (as read):

"In some instances, it may be desirable to adjust the throw or stroke length of the massaging head to work on larger or smaller muscle groups or deeper or shallower points of stress or soreness

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in the muscles."

Do you see that?

A. I see that.

Q. Do you understand -- strike that.

In your review of the '482 patent, does it refer to massaging any body part other than muscles?

A. Not that I recall as I sit here today.

Q. Is it your understanding that the '482 patent is exclusively directed to massaging muscles?

MR. BERG: Objection to form.

THE WITNESS: Well, as we said a few minutes ago, it's directed -- its -- its use is to increase muscle metabolism, increase the lactic acid cycle, and to relieve pain. I don't recall anything in the '482 patent that says it's exclusively for muscle massage.

BY MR. KELLAR:

Q. But you also don't recall anything in the '482 patent discussing something other than muscle massage. Correct?

A. Correct.

Q. And then, turning back to the quote I read from paragraph 11 discussing work -- and I'm quoting from the '482 (as read):

"Work on larger or smaller muscle groups or deeper or shallower points of

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stress or soreness in the muscles."

Do you see that?

A. I see that.

Q. Now, in this description from the '482 patent, there's a capability to massage larger or deeper muscles. Correct?

A. Well, I think more accurately, it just discloses that the stroke length, the massaging head can be changed depending on whether the intent is to work on larger or smaller muscle groups or deeper or shallower points of stress.

Q. And that's describing some instances of the disclosed device that has adjustable throw or stroke length. Correct?

A. Well, it says it may be necessary to adjust the throw or the stroke length. It doesn't -- it doesn't say that the tool has an adjustable throw length.

Q. If you would turn to the '482 patent, Column 7, beginning around Line 23, please.

A. I'm there.

Q. Okay. You see the beginning of that paragraph is the sentence we were just discussing. Correct? "In some instances..."?

A. Yes.

Q. And then the following sentence in the

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'482 patent begins (as read):

"Figure 7 illustrates an exemplary embodiment of a lost motion system 700."

Do you see that?

A. I see that.

Q. Are you familiar with what a lost motion system is?

A. Well, I would understand it to be a system to adjust the output of a device or mechanism.

Q. So for example, a deep muscle massaging device disclosed in the '482 patent that includes this lost motion system would have an adjustable stroke length within a single device. Correct?

A. Quite possibly, yeah. I haven't analyzed what's disclosed in the '482 in that regard, but I understand it is now.

Q. Do you recall from your earlier declaration in these matters characterizing Mabuchi as a, quote, "percussive massager"?

A. I do, yes.

Q. Do you recall in your earlier declaration characterizing the device of Harris as a percussive massager?

A. I do not.

MR. KELLAR: I'm going to hand you what's been

previously marked as Exhibit 1006. This is U.S. Patent 6,432,072.

(Exhibit 1006 was previously marked.)

BY MR. KELLAR:

Q. Give you a moment to review that.

A. Okay. Yes, I recall this.

Q. When I refer to Harris, do you understand that I'm referring to this '072 patent? Is that fair?

A. Yes.

Q. Okay. And now is your recollection refreshed as to the Harris reference?

A. I don't recall my testimony with respect to the Harris reference.

MR. KELLAR: I'm going to hand you what's been previously marked as Exhibit 1002 in PGR2024-53. This is your initial declaration in this matter.

(Exhibit 1002 was previously marked.)

BY MR. KELLAR:

Q. If you would turn to paragraph 128 of Exhibit 1002, please.

A. I'm there.

Q. Okay. The second sentence in paragraph 128 of Exhibit 1002 reads, quote, (as read):

"Both Mabuchi and Harris describe percussive massage devices," end quote.

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Does that refresh your recollection as to characterizing the device of Harris as a percussive massage device?

A. Well, it doesn't refresh my recollection, but I see here that that's what I wrote, yes.

Q. Sitting here today, do you understand Harris to describe a percussive massager or a percussive massage device?

A. Yes.

Q. Indeed, the title of the Harris patent is, quote, "Handheld percussive massager with adjustable nodes." Correct?

A. Yes.

Q. Would the title alone of Harris indicate to you that it is referring to a percussive massager?

A. Yes.

Q. Do you see at Number 22 on the cover page of the Harris patent where it says "Filed"? It's in the left-hand column about halfway down on the cover page.

A. I see that.

Q. It says "Filed January 21st, 2000."

Do you see that?

A. I do.

Q. Do you understand that to mean that this patent was filed as an application on January 21st, 2000?

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A. Yes.
Q. Do you agree that at least as of the year 2000, percussive massagers were known in the relevant art?
A. Yes.
Q. Do you understand that as of the year 2000, a person of ordinary skill in the art would understand what a percussive massager is?
MR. BERG: Objection to form.
THE WITNESS: Well, I think, more accurately, a person of ordinary skill in the art at the time that the Harris application was filed would understand Harris to be characterized as a percussive massager.
BY MR. KELLAR:
Q. So as of at least 2000, or very shortly thereafter, Harris would be known to one of ordinary skill in the art. Correct?
A. Yes.
Q. If you would please turn to Column 1 of the Harris patent, beginning at the background of the invention.
A. I'm there.
Q. I'm quoting from Harris starting at Line 15. Quote (as read):
"Handheld vibrating massagers are well-known in the art."

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Skipping one sentence.

Quoting again (as read):

" Also known in the art are handheld percussive massagers."

Do you see those two passages?

A. I do.

Q. What is your understanding of how a vibrating massager differs from a percussive massager based on these passages in Harris?

MR. BERG: Objection to form.

MR. KELLAR: Strike that.

BY MR. KELLAR:

Q. Do you understand Harris as separately describing vibrating massagers from percussive massagers?

A. Well, he appears to be differentiating vibratory massaging -- massagers from percussive -- percussive massagers.

Q. And then, moving down to the summary of the invention, quoting again (as read):

"It is therefore an object of the present invention to provide a handheld massager having both vibratory and percussive massage capabilities and including a vibratory massage head and a pair of percussive massage nodes suitable

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to deliver an effective therapeutic massage to the various contours of the body."

Do you see that?

A. I do.

Q. Do you understand Harris as providing different structures within the same handheld massage -- massager to provide separately vibratory and percussive massage?

A. That's what he's saying in the summary of the invention, yes.

Q. When you were preparing your declaration, did you investigate how Harris provides the separate vibratory and percussive massage capabilities?

A. I didn't investigate that for today's deposition. I don't recall whether I did that in prep- -- in preparation for writing my declaration.

I do recall having an understanding of the mechanics of how the Harris device works at the time.

MR. KELLAR: I'm going to handing -- hand you now what's been marked Exhibit 1007. This is U.S. Patent 6 -- 6,824,962 to Pivaroff.

(Exhibit 1007 was previously marked.)

BY MR. KELLAR:

Q. Dr. Pratt, are you familiar with this document?

A. I am.

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Q. Do you recall in your prior declaration characterizing Pivaroff as a percussive massage device?
A. Not specifically.
Q. Referring back to Exhibit 1002, your first declaration in the 2024 PGR, please turn to Paragraph 148.
A. I'm there.
Q. Yeah. The first sentence of Paragraph 148 reads (as read):

"Like Mabuchi and Harris, Pivaroff describes a percussive massage device," end quote.

Do you see that passage?
A. Yes.
Q. Does that refresh your recollection as to whether you characterized Pivaroff as a percussive massage device?
A. Yes.
Q. Has your position regarding Pivaroff as a percussive massage device changed since your original declaration?
A. No.
Q. Looking at the cover of Pivaroff, specifically the abstract, the abstract reads, quote (as read):

"A deep muscle stimulating device,"

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and then further down says, "so as to provide deep muscle tissue with kinetic forms of percussion and concussion vibration so as to benefit damaged muscles in a patient."

Do you see that pa- -- passage?

A. I do.

Q. What is your understanding of "kinetic forms of percussion and concussion vibration is used" in Pivaroff?

A. I don't recall.

Q. Do you agree that Pivaroff is separately describing percussion and vibration?

A. Well, you see, in the abstract, he seems to characterize them as two different things.

Q. Two different -- the two different things being percussion and concussion vibration?

A. Yes.

Q. And then turning to column one of the Pivaroff reference, beginning at, "Description of related art."

A. I'm there.

Q. The second paragraph under "Description of related art" reads, quote (as read):

"However, the known devices either do not vibrate at high enough speeds and/or do not provide sufficient force to reach

deep muscle tissues," end quote.

Do you see that passage?

A. I do.

Q. What is your understanding of "do not vibrate at high enough speeds" as used in Pivaroff?

MR. BERG: Objection. Form.

THE WITNESS: Well, I'm not sure what you're asking me. He -- it's whatever he wrote. I would just be reading whatever he wrote.

BY MR. KELLAR:

Q. Is it your opinion that the deep muscle stimulator device described in Pivaroff vibrates?

A. Not from this passage.

Q. All right. So moving down to the summary of the invention, the second sentence under "Summary of the invention" reads (as read):

"It is a particular object of the present invention to provide an improved deep muscle stimulation device, which provides deep muscle tissue with kinetic forms of percussion," period, end quote.

Do you see that passage?

A. I do.

Q. How does Pivaroff provide kinetic forms of percussion?

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A. Well, it provides the percussion through the means of a selenoid. It causes a massage head to reciprocate.

Q. The next sentence of Pivaroff reads, quote (as read):

"It is another particular object of the present invention to provide an improved deep muscle stimulation device which provides deep muscle tissue with concussion vibration to provide improved benefits for patients," period, end quote.

Do you see that passage?

A. No, not yet.

Q. It begins approximately Line 34.

A. Yes, I see that.

Q. In your opinion, how does the device of Pivaroff provide concussion vibration?

A. I don't recall. I have to go back to the Pivaroff patent.

Q. Is it provided by the same selenoid you discussed earlier?

MR. BERG: Objection to form.

THE WITNESS: Like I said, unless I go back and review the Pivaroff, I wouldn't be able to answer that

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question.
BY MR. KELLAR:
Q. Okay. I'll draw your attention to Column 3, Line -- beginning around 47. Column 3, Line 47.
A. I'm there.
Q. It says, quote (as read):
"This rotational speed is transferred to a reciprocating motion, as shown by Arrow 56 in Figure 3, whereby the Head 44 is quickly reciprocated back and forth to provide sufficient percussion and mechanical vibrations against a portion of a patient to which it is applied by a user to provide the deep muscle tissue within the patient's body with kinetic forms of percussion and concussion vibration," period.
Do you see that sentence?
A. I do.
Q. Does that provide you with a better understanding of how the device of Pivaroff provides percussion and concussion vibration?
A. Oh, yes. Through -- by means of cycling the selenoid.
Q. And cycling a selenoid is what moves the head

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back and forth. Correct?

A. Correct.

Q. So by moving the head back and forth against a patient's body, it's your opinion that both percussion and concussion vibration are provided to the patient. Correct?

A. Well, according to Pivaroff.

Q. Do you disagree with Pivaroff?

A. I don't disagree with what he's written. It is difficult, though, to reverse the stroke on a selenoid because of any con- -- occurrence.

Q. How does percussion differ from mechanical vibrations in your opinion?

A. Well, I understand percussion is genuinely perceived to be a force against -- in the case of massage tools like this, forces exerted against the body, normal -- normal to the surface of the body, impacting it anywhere between light forces and heavy forces, or shallow penetration to deep penetration.

So it's the repeated impact of the skin or the body or the object with this massage head versus -- vibration doesn't have to be normal to the surface. Doesn't have to be deep, strong, fast, or slow, and it doesn't even have to be normal to the surface. It can be sideways, lateral, transverse movements of the massage

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head against the body.

Q. Do you agree that Pivaroff describes that the reciprocating head provides both percussion and mechanical vibrations?

A. That's what Pivaroff says, yes.

Q. And again, do you disagree with Pivaroff's description of its reciprocating head providing percussion and mechanical vibration?

A. I don't.

Q. Your earlier testimony about your understanding of percussion -- strike that.

Do you believe a person of ordinary skill in the art in the year 2013 would have the same understanding of percussion as you just testified?

A. I haven't seen any evidence or documents that would provide that same understanding to one of ordinary skill in the art in that time frame.

Q. This is despite Pivaroff being issued in the year 2004, well before the year 2013?

MR. BERG: Objection to form.

THE WITNESS: Well, Pivaroff obviously would've been available through to a person of ordinary skill in the art.

BY MR. KELLAR:

Q. So would the descr- -- would the description of

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percussion in the context of a deep muscle stimulator device, as used in Pivaroff, guide the understanding of percussive massage in the year 2013 to a POSITA?

MR. BERG: Objection to form.

THE WITNESS: Yeah. I'm not sure there's enough in Pivaroff to differentiate between vibration and percussion.

BY MR. KELLAR:

Q. You agree that Pivaroff, however, chooses to separately refer to percussion and vibration. Correct?

A. Yes, he does.

Q. But it's your testimony in Pivaroff that there's no difference between percussion and vibration, as used in Pivaroff?

MR. BERG: Objection to form.

THE WITNESS: I didn't say that. I think -- I don't think there is enough in Pivaroff to disclose to a person of ordinary skill in the art what the differences are. I don't think there's a clear distinction between -- in Pivaroff between what constitutes vibration versus what constitutes percussion massage.

BY MR. KELLAR:

Q. Going back to Harris, Exhibit 1006.

Is it your opinion that there's enough in Harris to provide an understanding to a POSITA, the

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difference between vibrating massage and percussive massage?

A. Well, again, Harris -- Harris talks about them as two different things. But there's -- just like Pivaroff, I don't think there's enough in Harris to draw a clear dividing line between, "This is the definition of vibration and this is" -- "massage, and this is the definition of percussive massage" or "This is where percussive massage begins. This is where percussion begins."

Q. That's your testimony, despite Harris describing different elements of its massager as providing vibratory massage versus percussive massage. Correct?

MR. BERG: Objection to form.

THE WITNESS: It is.

BY MR. KELLAR:

Q. Turning to -- turning back to your reply declaration in the 2024 PGR, Exhibit 1033. I'm going to ask you to turn to Paragraph 17.

A. I'm there.

Q. The last sentence of Paragraph 17 reads, quote (as read):

"However, if a construction is required, the term should be construed

consistent with the scope of the '482 patent and the extrinsic evidence available to a POSITA in 2013: 'A massage device whose piston and massage head reciprocates back and forth,'" end quote.

Do you see that sentence?

A. You misread it.

Q. Can you please correct me?

A. Yeah. You said, "The '482 patent." It actually reads "the '082 patent."

MR. BERG: I think -- I think you're looking --

MR. KELLAR: You might be in the --

MR. BERG: Yeah, I think he's in this -- this declaration.

MR. KELLAR: My apologies. They have the same exhibit number, so I'll do my best to keep the deposition about the '482 declaration for now, and then be more clear when I transition.

I believe it should still be Paragraph 17.

THE WITNESS: It's not. It's -- Paragraph 17 is, like, two sentences.

MR. BERG: Oh, sorry. This -- this is your original declaration.

MR. KELLAR: I think we got too many -- too

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many papers. Let's take -- let's take a moment to get situated here. I want to make sure we're looking at the same thing, so -- I appreciate you bringing that to my attention. We'll get it straightened out.

MR. BERG: There you go.

THE WITNESS: Okay. Exhibit 1033, Exhibit 012?

MR. KELLAR: Yes. Thank you.

Exhibit 1033. The last sentence of Paragraph 17.

THE WITNESS: Yeah. Still says "'082."

MR. BERG: Where are you looking?

THE WITNESS: Right here.

I think he's -- I think he's probably talking about this -- this one.

MR. BERG: '482.

THE WITNESS: 0013. I don't know if I have that one.

MR. KELLAR: Can we go off the record?

MR. BERG: Yeah, let's do.

(Recess.)

MR. KELLAR: We can go back on the record.

BY MR. KELLAR:

Q. Dr. Pratt, again looking at Paragraph 17 of your supplemental declaration regarding the '482 patent --

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A. Yes.
Q. -- the last sentence reads (as read):
"However, if a construction is required."
Do you see that?
A. I do.
Q. And that's referring to a construction of the term "percussive massager." Correct?
A. Yes.
Q. And it's your testimony here that the construction of the term "percussive massager" would be, quote, "a massage device whose piston and massage head reciprocates back and forth," end quote.
Do you see that?
A. Yes.
Q. Do you agree that these features of a massage device whose piston and massage head reciprocates back and forth are already recited within the body of Claim 34 of the '482 patent?
A. I'd have to look at the '482 patent.
Q. In the '482, the top of Column 12 reads (as read):
"Wherein the motor is configured to cause the piston to reciprocate at a first speed."

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Do you see that?
A. I do.
Q. In your opinion, is that the same as "whose piston and massage head reciprocates back and forth"?
A. Yes.
Q. So in your opinion, your proposed construction of percussive massager reiterates features that are already recited within the body of Claim 34. Correct?
A. Yes.
Q. Your proposed construction of a massage device whose piston and massage head reciprocates back and forth could cover a device having a piston that reciprocates along a user's skin surface rather than into and out of. Correct?
A. It could, yes.
Q. Can you please turn to Page 35 of your supplemental declaration in the '482 -- for the '482 patent?
A. Paragraph 35?
Q. Sorry. Page 35.
A. Okay.
Q. It will be the middle of Paragraph 57.
A. I'm there.
Q. Okay. You see the portion of this page where a claim listed as currently amended is copied in to your

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declaration?

A. Yes.

Q. And then, looking at that Claim 1 listed on Page 35, halfway down reads (as read):

"A pushrod assembly operatively connected to the motor wherein the pushrod assembly comprises a reciprocating shaft having a distal end and an attachment member coupled to the distal end of the reciprocating shaft."

Do you see that?

A. Yeah. Let me -- let me read it.

Q. Okay.

A. Yes, I see that.

Q. So would the device described in this Claim 1 on Page 35 of your supplemental declaration meet your requirements for a percussive massager as you've construed that term?

MR. BERG: Objection to form.

THE WITNESS: I think more accurately is that this device would share a feature with that of a percussion massager. It wouldn't necessarily be a percussion massager if it's not providing percussion forces against the skin or the body.

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BY MR. KELLAR:

Q. In the '482 patent, you've proposed construing the term "percussive massager" as a massage device whose piston and massage head reciprocates back and forth. Correct?

A. Correct.

Q. And then, in this Claim 1, we have a reciprocating shaft and an attachment member or reciprocating attachment -- two different elements -- attach to the reciprocating shaft.

Do you agree?

A. Yeah. But I think there has to be more than just going back and forth.

Q. What else is required beyond going just back and forth?

A. Well, it needs to -- needs to function as a massager.

MR. KELLAR: We've been going for about an hour or so. We can take a break now if you'd like, or I have maybe 15 more minutes on this topic.

THE WITNESS: I'm fine.

MR. KELLAR: I'm going to hand you an excerpt of Exhibit 1004 due to the length of this exhibit.

This is --

MR. BERG: Thank you for not bringing the

entire thing.

MR. KELLAR: Yes. As it's over 2,000 pages if I were to print the entire thing.

Exhibit 1004 is the prosecution history of the application that matured into the '482 patent.

BY MR. KELLAR:

Q. Do you recall reviewing this exhibit in preparing your testimony in these cases?

A. As I sit here today, I don't recall.

Q. Are you familiar with the term "prosecution history" in the context of a patent?

A. I am.

Q. Is it fair to say the prosecution history represents the back-and-forth between the applicant and the patent owner in the process of receiving a patent?

A. Yes.

Q. So turning to -- I'll have to use -- well, I use the exhibit page number. It will be 2229.

A. I'm there.

Q. It says -- under the heading, "Detailed action," it says (as read):

"This office action is in response to the filing of the application on 2/25/2022. Since the initial filing, no claims have been amended, added, or

canceled."

Do you see that?

A. I do.

Q. So do you understand this office action we're looking at to be the first office action issued against the '367 application?

A. Yes.

MR. BERG: Objection, form.

MR. KELLAR: And turning to Page 2236, please. I'll wait for you to get there.

THE WITNESS: I'm there.

BY MR. KELLAR:

Q. The third paragraph down begins with (as read):

"Therefore, it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to turn the saw of Meyer into a percussive massager by placing a removable massaging head into the connection mechanism as taught by Instructables to create an inexpensive percussive massager."

Do you see that passage?

A. I do.

Q. Do you have an understanding why the patent

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examiner would refer to a percussive massager in the first office action?

A. I don't.

Q. Is it your understanding, based on this office action, that the patent examiner believed that a person of ordinary skill in the art would understand what a percussive massager is before the effective filing date of the claimed invention?

MR. BERG: Objection to form.

THE WITNESS: I don't know. I haven't analyzed this prosecution history or this interaction between the applicant and the patent office.

BY MR. KELLAR:

Q. You agree this passage that we're looking at in the office action refers to what's obvious to -- well, quote, "obvious to one of ordinary skill in the art before the effective filing date of the claimed invention."

You agree with that?

A. Well, this passage is saying that the examiner says it would have been obvious to one of ordinary skill in the art, that Meyer could be modified into a percussive massager by placing a replaceable -- a removable massaging head into the connection mechanism.

Q. So it follows from that understanding that a

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person of ordinary skill in the art would understand what a percussive massager is before the effective filing date. Correct?

MR. BERG: Objection to form.

THE WITNESS: Well, in the opinion of the patent examiner, yes.

BY MR. KELLAR:

Q. You can set that office action aside.

I'm going to pass to you what's -- what's been marked Exhibit 1026, which is Stedman's Medical Dictionary, 28th Edition.

(Exhibit 1026 was previously marked.)

BY MR. KELLAR:

Q. Do you recall reviewing this medical dictionary in preparing your supplemental declaration?

A. I don't specifically recall looking at this.

Q. If you need to refresh your recollection, Paragraph 19 of your supplemental declaration regarding the '482 patent includes citations to this exhibit.

A. Yeah, I do -- I do recall that I made reference to this in my report and also to two others.

Q. So turning to Page 3 of Exhibit 1026, we have the definition of massage as listed at the upper left-hand portion of that page.

A. Well, just a minute. Page 3 of Exhibit 1026?

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Q. 1026, yes. Stedman's Medical Dictionary.
A. Okay. I'm there.
Q. Do you see the definition of massage in the top left?
A. Yes.
Q. And then I'll quote -- the definition of massage is, quote (as read):
"A method of manipulation of the body or part of the body by rubbing, pinching, kneading, or tapping."
Do you see that?
A. I see that.
Q. Is it your understanding that rubbing, pinching, kneading, or tapping refer to different levels of force applied in a massage?
MR. BERG: Objection to form.
THE WITNESS: They can apply to different levels of force.
BY MR. KELLAR:
Q. Do you agree that kneading implies more force than rubbing?
A. Not necessarily.
Q. What's your understanding of the term "kneading"?
MR. BERG: Objection to form.

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THE WITNESS: Yeah, a lot of squeezing of the soft tissue.

BY MR. KELLAR:

Q. Do you agree that kneading implies pushing or folding muscle tissue?

A. I don't know what you mean by folding or pushing, but I've had massage on my shoulder and left arm that I would describe as involving a lot of kneading by a very strong masseuse. So --

Q. Why would you -- my apologies. Were you done?

A. Yeah, I'm done.

Q. Well, why would you classify that massage that you just described as a kneading-type massage?

A. Well, it was kind of like kneading a pile of dough for -- like you would do if you were making bread, just a lot of squeezing and moving material around. Takes a lot of strength in the hands. I think, for the most part, it's to release the lactic acid in the muscles.

Q. And then moving down in the same -- same page, same exhibit, there's different types of massage that are listed under the original definition. For example, closed-chest, external cardiac, gingival.

Do you see those?

A. Are you looking at the triggers?

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Q. The -- the subheadings below "massage."
A. Yes, I see those.
Q. The last subheading below "massage" is "vibratory."
Do you see that?
A. I see that.
Q. And I'll quote the definition of vibratory in the context of massage. Quote (as read):
"Rapid tapping of a surface using a soft-tipped device," end quote.
In your opinion, does the term "rapid," as used in that definition, imply the speed?
A. Not so much the speed, I think, as the frequency.
Q. What's the difference between speed and frequency?
A. Well, frequency would be the inverse of the distance between the peaks of -- you know, if we had a force versus time plot; whereas speed, of course, would be how fast the massage head or whatever is doing the therapy comes into contact with whatever is being massaged. But they are two different things.
Q. So is frequency related to the force applied?
A. No. For example, if our applicator was a selenoid hooked up to a wall socket where electricity

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cycles at 60 Hertz, so the selenoid would cycle back and forth or impact the skin at 60 cycles a second. Right? That's the frequency.

The speed at which it's moving is a little different than the frequency. It could be moving -- if the amplitude is small, the speed does have to be very large. If it's a large amplitude, the speed could be quite large.

Q. So would "rapid" refer to, for example, a reciprocating speed of a selenoid?

A. No. Rapid doesn't have anything to do, necessarily, with the speed. It has to do, like I said a minute ago, with the frequency. The time -- the timing of the taps. I mean --

Q. In the context of taps per minute --

A. Taps per minute, yes.

Q. And then following the word "rapid," the definition says (as read):

"Tapping of a surface using a soft-tipped device."

Do you see that?

A. Yeah. Again, you're on --

Q. The definition of "vibratory massage."

A. The tapping of the -- what is your question?

Q. So in the context of vibratory massage, it's

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limited to tapping of a surface. And you agree that kneading is not used in the definition of vibratory massage. Correct?

MR. BERG: Objection to form.

THE WITNESS: Yeah. Vibratory massage is not defined in terms of kneading.

BY MR. KELLAR:

Q. According to the Stedman's Medical Dictionary, vibratory massage is defined in the context of tapping. Correct?

A. Rapid tapping of a surface using a soft-tipped device.

Q. Turning to Page 4 of Exhibit 1026, just the next page over, on the upper right-hand side, we have a definition of "percussion."

A. I see it.

Q. The second definition is, quote (as read):

"A form of massage consisting of repeated blows or taps of varying force," end quote.

Do you see that?

A. Not yet.

Yes.

Q. That definition of "percussion" doesn't describe a device, for example. Right?

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A. Correct.
Q. Okay. All right. You can set that exhibit aside.
I'm handing you now what's been marked Exhibit 1027.
MR. BERG: Thanks.
(Exhibit 1027 was previously marked.)
BY MR. KELLAR:
Q. This is the Oxford Dictionary of English, third edition. This was also cited at Paragraph 19 of your supplemental declaration.
Do you recall reviewing this document?
A. Vaguely, yes.
Q. On Page 3 of Exhibit 1027, I'll direct your attention to the definition of "massage." It occurs in the middle column, two-thirds of the way down.
A. Yeah, I see it.
Q. And quoting from this document, definition of massage is, quote (as read):
"The rubbing or kneading of muscles and joints of the body with the hands, especially to relieve tension or pain."
Do you see that?
A. I do.
Q. So this definition is referring to manual

massage. Correct?
A. Yes.
Q. It doesn't, for example, refer to a device. Correct?
A. Correct.
Q. In fact, moving down within the definition, as a derivative, we see "massager," noun.
Do you see that?
A. Yes.
Q. And then there's no definition of "massager" within this document, is there?
A. Not that I see.
Q. What do you understand by, in the definition of massage, "to relieve tension or pain"?
A. I understand it's to free up the lactic acid from the muscles. You asked whether there was a definition of "massager." Indirectly, there is. It's a masseur, up in the upper right-hand side, third item down. Noun. It's a person who provides passages professionally.
Q. Moving on to Page 4 of Exhibit 1027. Draw your attention to the definition of "percussion," middle column, maybe one-third of the way down.
A. I see it.
Q. Okay. The second definition of percussion is,

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quote (as read):

"The striking of one solid object with or against another with some degree of force," end quote.

What do you understand to mean "one solid object with or against another"?

Is a solid object something that resists impact?

MR. BERG: Objection to form.

THE WITNESS: Well, matter exists as a gas, liquid, or a solid. There would be some resistance to impact, yes. Some force would be transmitted.

BY MR. KELLAR:

Q. Is it your opinion that the "some degree of force," as used in this definition, is any degree of force?

A. I don't think there's a limitation on how large or how small the force needs to be.

Q. So any degree of force, in your opinion, would satisfy the definition of "percussion" in this document?

MR. BERG: Objection to form.

THE WITNESS: I'm not aware of any limitation on the degree of force.

BY MR. KELLAR:

Q. What about the word "striking," as used in that

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definition? What do you understand by the word "striking"?

A. Coming into con- -- two objects coming into contact with one another.

Q. So "striking" could mean simply two objects merely touching each other, in your opinion?

A. Coming into contact with a -- a force at the interface as a result of the contact.

Q. With any degree of force, or some notable force?

A. Well, I'm not aware of any threshold either on the upper side or the lower side.

Q. So for example, me gently setting this can down on the table would be considered percussion by this definition.

Do you agree?

MR. BERG: Objection to form.

THE WITNESS: I doubt that a person of ordinary skill in the art would consider that you're -- that that was a percussive impact.

BY MR. KELLAR:

Q. Is that because I gently set the can on the table?

A. I think so, yes.

THE COURT REPORTER: I'm sorry, before we move

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on, may we take a break?

MR. KELLAR: Yeah, off the record.

MR. BERG: Yep.

(Recess.)

MR. KELLAR: Back on the record.

BY MR. KELLAR:

Q. I'm handing you what's been previously marked Exhibit 1028, Mosby's Medical Dictionary. Again, this is one of the documents that was cited at Paragraph 19 of your supplemental declaration.

(Exhibit 1028 was previously marked.)

BY MR. KELLAR:

Q. Turning to Page 3 of Exhibit 1028, draw your attention to the definition of "massage" at the upper left corner.

A. I'm there.

Q. Okay. I'll read from the document, quote (as read):

"The manipulation of the soft tissue of the body through stroking, rubbing, kneading, or tapping to increase circulation, improve muscle tone, and to relax the patient," end quote.

Is it your understanding that stroking, rubbing, kneading, or tapping, as used in this

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definition, refers to different levels of force applied in the massage?

MR. BERG: Objection to form.

THE WITNESS: Well, that would be my expectation, yes.

BY MR. KELLAR:

Q. For example, kneading implies more force than tapping, for example. Correct?

MR. BERG: Objection to form.

THE WITNESS: That's been my experience.

BY MR. KELLAR:

Q. Moving on to Page 4 of this Exhibit 1028. Draw your attention to the definition of "percussion," near the bottom left.

A. I see it.

Q. You see before the definition, there's, in brackets, the Latin base of the term "percussion."

Do you see that?

A. I do.

Q. And the Latin base, which I won't try to pronounce, is "to strike hard."

Do you see that?

A. I do.

Q. Do you agree that percussion involves hard strikes of the body?

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MR. BERG: Objection to form.

THE WITNESS: No. Rather, I'd -- I would agree that hard strikes to the body might comprise one form of massage or percussion.

BY MR. KELLAR:

Q. And then, moving into the full definition of percussion, the document reads, quote, "a technique and physical examination."

Do you understand the physical examination to refer to a medical examination?

A. Yes.

Q. That can be set aside.

Is it your understanding that a kneading-type massage is generally a deeper massage than a tapping massage?

MR. BERG: Objection to form.

THE WITNESS: Well, that would be my experience, yes.

BY MR. KELLAR:

Q. We're going to switch topics a little bit here. I'll bring your attention to Paragraph 29 of your supplemental declaration in the '482 patent. Actually, sorry, Paragraph 28.

A. In the '482?

Q. The '482 supplemental declaration.

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Paragraph 28 begins with, quote (as read):

"But Claim 34 describes a configuration in which it is the" -- quote -- 'first massaging head' -- end quote -- "that receives the quick release connector."

Do you see that?

A. I do. Yes.

Q. In the quotation of "receives," you've added the "s" in brackets.

Do you see that?

A. Yes.

Q. Is it your understanding that Claim 34 as recited is, in relevant part, quote, "Wherein the first massaging head has a substantially cylindrical pocket to receive the quick release connector."

A. Yes.

Q. But in your quote, you've changed "to receive" to "receives." Correct?

A. Correct.

Q. In your opinion, is the term "receives" an active act?

A. I'm not sure what you mean by the question. I --

Q. Moving down -- my apologies.

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A. Yeah.
Q. Moving to Paragraph 29, you said, quote (as read):
"That is used in the '482 patent when the piston receives the shaft of the massaging head, it means when the shaft of the massaging head is inserted into the hollow end bore of the piston," end quote.
So my question is: "Receives" with an "s" you've defined as an active act, in this case the act of inserting something into something else. Correct?
A. I don't disagree with that.
Q. But the claim, Claim 34, doesn't use the word "receives," does it?
A. It does not.
Q. Instead, Claim 34 says "to receive." Right?
A. Yes.
Q. Do you agree that "to receive" indicates the capability of receiving?
A. Yeah, let me get 34 in front of me.
Q. Yeah, of course.
A. Okay. What is your question?
Q. As recited in Claim 34, quote, "Wherein the first massaging head has a substantially cylindrical

pocket to receive the quick release connector," end quote, "to receive" indicates a capability rather than an active act. Correct?

A. I think that's probably right.

Q. And then, just generally, let's say you receive a gift. In your opinion, what does it mean to receive a gift? Does it mean, for example, to take possession of a gift?

MR. BERG: Objection to form.

THE WITNESS: I think that would apply, yes.

BY MR. KELLAR:

Q. It doesn't necessarily mean you receive it into your body, does it?

A. Yeah. It doesn't mean I receive it into my body.

Q. Unless it's a treat, for example.

Moving to Paragraph 30 of your supplemental declaration.

A. I'm there.

Q. You state at the end of -- at the -- near the bottom of this page, Page 18, Paragraph 30 (as read):

"The Pocket 622 does not" -- quote -- "receive Magnet 624 or any part of the quick release connector,'" end quote.

Do you see that?

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A. I do.
Q. Do you agree that the Pocket 622 is designed to receive the Magnet 624 at some point?
A. Yes. At some point, the Pocket 622 is configured to -- or adapted to accept Magnet 624.
Q. Do you also agree that the Pocket 622 is positioned so that the Magnet 624 is arranged to come into contact with the Magnet 606?
A. Yes.
Q. Moving on to Page 20, it will be the middle of Paragraph 32.
A. I'm there.
Q. Okay. Let's see. About halfway down, the sentence begins with, quote (as read):
"Thus, Claim 34 only has one" -- quote -- 'quick release connector' -- end quote -- "and that connector is located at the distal end of the piston."
Do you see that?
A. I do.
Q. So it's your opinion that Claim 34 is limited to a single quick release connector?
MR. BERG: Objection to form.
THE WITNESS: Well, Claim 34 says that the quick release connector is located at the distal end of

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the piston.
BY MR. KELLAR:
Q. Your written testimony here says (as read):
"Thus, Claim 34 only has one quick release connector and that connector is located at the distal end of the piston."
So my question is: Do you agree that your testimony is Claim 34 only has one quick release connector?
MR. BERG: Objection to form.
THE WITNESS: I think Claim 4 -- Claim 34 is only requiring one quick release connector. It's not -- it's not describing a multipiece or two-piece quick release connector.
BY MR. KELLAR:
Q. Based on your background, do you agree that quick release connectors are generally two-part connectors?
A. In general, quick release connectors that I'm familiar with typically involve -- I'm going to call them a male part and a female part -- the connector and the connectee, so to speak.
Q. And the male and female part are designed to fit together. Correct?
A. Yes.

Q. So even if Claim 34 has only one quick release connector, you would understand it to also have a male and a female part within that one quick release connector. Correct?

MR. BERG: Object to form.

THE WITNESS: Well, that would -- that would generally be the case or sometimes be the case, but, for example, referencing back to the Clark patent that I talked about in my earlier reports, the quick release connector could be the magnet. It could be a one-sided thing. The other thing doesn't have to be a -- another magnet. It could be just a ferromagnetic piece of steel or piece of iron, something magnetic that would be attracted to the magnet.

BY MR. KELLAR:

Q. So even in the Clark example, the second piece needs to be magnetic for the quick release connector to work. Correct?

A. That's right.

Q. For example, the Clark patent couldn't attach a piece of paper. Right?

A. Well, think -- think in terms of a refrigerator magnet. The quick release connector for attaching your kid's drawings to the refrigerator would just be the magnet. You wouldn't consider the refrigerator to be

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the -- the second half of the quick release connector.

Q. But the refrigerator is an important component in that connection scheme. Right?

A. Yes.

Q. For example, you couldn't use the magnet on drywall.

A. Correct.

Q. Do you recall the Mabuchi patent?

A. I do.

Q. Do you recall in Mabuchi there's two magnets; one within the patter assembly and one on the actuator? Correct?

A. Yes.

Q. In your opinion, does Mabuchi have only one quick release connector or does Mabuchi have more than one quick release connector?

A. Well, the quick release connector in Mabuchi is comprised of two magnets.

Q. And it's your opinion that the two magnets of Mabuchi fall within the scope of Claim 34 of the '482 patent. Right?

A. Well, they fall within the scope of a -- of the limitation for a quick release connector.

Q. And specifically as recited in Claim 34 of the '482 patent?

A. Yes.
Q. Are you familiar with what's called a "right cylinder shape"?
A. That term sounds familiar.
Q. If I described a right cylinder as a cylinder having sides extending at 90 degrees from the bases, would that refresh your recollection?
A. Yes.
Q. Are you familiar with an oblique cylinder shape?
A. I might be if you described it.
Q. If I described an oblique cylinder as a cylinder with sides that slant at an angle other than 90 degrees with respect to the bases, would that refresh your -- refresh your recollection?
A. Yes.
Q. Are you familiar with an elliptical cylinder?
A. I can imagine what one would be, but it's not something I've dealt with.
Q. Would it -- would an elliptical cylinder be a cylinder with elliptical bases and a corresponding elliptical cross section?
A. It could be.
Q. Do you agree that these three types of cylinders that we've discussed are all -- fall within the

family of a cylindrical shape?

A. Not -- not the elliptical one.

Q. Why not the elliptical one?

A. Well, because an ellipse is not cylindrical.

Q. So it's your opinion that a cylindrical shape is limited to having circular bases?

A. Yeah, I don't think I said that.

Q. My question is: Is an elliptical cylinder a type of cylinder?

A. I'm not sure that all cylinders necessarily had to have a cylindrical cross section.

MR. KELLAR: Handing you what's been previously marked Exhibit 2010 in this proceeding, which is U.S. Patent 10,5 -- 557,490.

(Exhibit 2010 was previously marked.)

BY MR. KELLAR:

Q. Just so you're able to follow along, this was discussed at Paragraph 44 of your supplemental declaration, this Exhibit 2010.

Based on your written testimony in your report, you said (as read):

> "Perfectly parallel would still mean substantially in the context of this '490 patent."

Do you still agree with that testimony?

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MR. BERG: Objection to form.

THE WITNESS: I haven't seen any reason to change that opinion.

BY MR. KELLAR:

Q. So turning to Claim 6 of this '490 patent that's on the very last page, Column 12.

A. I'm there.

Q. Claim 6 reads (as read):

"Wherein the first and second flat surfaces of the female attachment member are substantially parallel to one another, and the first and second opposing flat surfaces of the male attachment member are substantially parallel to one another."

Do you see that?

A. I do.

Q. How out of parallel could the first and second flat surfaces of these attach- -- of the female attachment member be while still falling within the scope of Claim 6?

MR. BERG: Objection to form.

THE WITNESS: Yeah. In my experience, with using the term "substantially," it would seem to me and to a person of ordinary skill in the art that if the

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parallel surfaces -- if those surfaces could no longer perform their function that requires them to be parallel, if they're so far out parallel that they can't do what they're supposed to do, then they're no longer substantially parallel.

BY MR. KELLAR:

Q. So for example, if the male attachment member had a slightly larger opening, the flat surfaces of the female attachment member -- sorry. Strike that.

I mixed them up. Starting over.

So if the female attachment member had a slightly larger opening than the male attachment member's size, you would expect that more out-of-parallel surfaces would be acceptable. Correct?

A. That would seem so, yes.

Q. And that's a matter of tolerancing the connection?

A. Yes. There may be other performance attributes other than just staying together that are important. If fitting together was the only attribute that was of interest, then the answer to your question is "yes."

Q. Hand you the Mabuchi patent previously marked as Exhibit 1005.

(Exhibit 1005 was previously marked.)

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BY MR. KELLAR:

Q. Dr. Pratt, are you familiar with this Mabuchi patent?

A. I am.

Q. Looking at the "Summary of the Invention" section in Column 1 of the Mabuchi patent. I'll wait for you to get there.

A. I'm there.

Q. Each paragraph of the summary of invention starts with, quote (as read):

"It is an object of this invention to provide a beauty treatment device."

And then it goes on to describe certain attributes of that beauty treatment device. So in -- in Line 31, Line 35, quote (as read):

"It is another object of this invention to provide a beauty treatment device."

Around Line 43, quote (as read):

"It is still another object of this invention to provide a beauty treatment device."

And then this repeats itself again at Line 47.

From this summary of the invention, do you agree that Mabuchi is specifically and exclusively

directed to a beauty treatment device?

MR. BERG: Objection to form.

THE WITNESS: I agree -- I agree it's -- relates generally to a beauty treatment device.

BY MR. KELLAR:

Q. And you agree that Mabuchi doesn't summarize his invention as anything other than a beauty treatment device. Correct?

A. Yeah. He does not summarize his invention as anything other than a beauty treatment device.

Q. Looking at Paragraph 48 of your supplemental declaration regarding the '482 patent. I'll wait for you to pull that up.

A. I'm there.

Q. The last sentence in Paragraph 48 reads (as read):

"Likewise, the disclosure of patter assemblies tailored by shape or size to the treatment area aligns with the recognized use of the interchangeable heads (e.g., flat, ball, cone, fork) selected to target different muscle groups and different objectives including percussive massage," end quote.

Now, your reference to, quote, "including

percussive massage" does not come from Mabuchi. Correct?

A. Well, it comes from a description of what Mabuchi does and how it works.

Q. But it doesn't come from the description what Mabuchi is. Correct?

MR. BERG: Objection to form.

THE WITNESS: Well, Mabuchi doesn't describe itself as a percussive massager.

BY MR. KELLAR:

Q. Okay. And you would also agree that Mabuchi doesn't describe its being used as a percussive massager. Correct?

MR. BERG: Objection to form.

THE WITNESS: Well, it describes the function, what its function is, which is consistent with that of a percussive massager by repeatedly tapping the skin.

And as we saw --

BY MR. KELLAR:

Q. So Mabuchi's function is to operate as a percussive massager, in your opinion?

A. Well, that's what it says: "Repeatedly tapping the skin." And as we saw in the medical references that we looked at earlier, percussion can involve things like kneading, rubbing, and tapping.

Q. Is it your opinion that Mabuchi provides

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kneading of muscle tissue?

A. It is not.

Q. Does Mabuchi provide tapping of a user's skin?

A. It does.

Q. And does Mabuchi ever expressly describe operating as a percussive massager?

A. It doesn't use the term that it operates as a percussive massager. But the action that it describes it having is consistent with the definition of "percussion," as we saw in the medical references earlier.

Q. In Paragraph 51 of your supplemental declaration -- and I'll wait for you to pull that up.

A. I'm there.

Q. Point 3 in the first sentence says, quote (as read):

> "Mabuchi adds" -- italicized and bolded -- "other features to make the device appropriate for beauty treatment on a user's face," period.

What are those other features that Mabuchi adds to makes the device appropriate for beauty treatments on a user's face?

A. Well, there's a couple of things. One is the -- I think it's called the space guide. It's Item Number 5 in Figure 1. It also includes a resilient

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number --, Item Number 11 in Figure 1. And Item Number 8 in Figure 1, which is that cushioned surface that -- it comes in contact with the skin. It impacts the skin.

Q. And discussing, first, the space guide you mentioned. Mabuchi, at the very beginning of the field of the invention, says, quote (as read):

"More specifically" -- let me start over.

It says, quote (as read):

"This invention relates," and then continues later, "more specifically to a beauty treatment device having a space guide that permits an actuator to repeatedly reciprocate."

Do you see that disclosure in Mabuchi?

A. No. Where are you at?

Q. It's Column 1, Lines 6 through 8, approximately.

A. Let me get there.

I'm there.

Q. Do you see where it says, quote (as read):

"More specifically to a beauty treatment device having a space guide"?

A. Yes.

Q. Is it your understanding, based on the early

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introduction and characterization of the invention as having a space guide, that the space guide is a critical feature of Mabuchi's beauty treatment device?

A. Well, define "critical."

Q. Is it -- is it important to the operation and intended use of Mabuchi's beauty treatment device?

MR. BERG: Objection to form.

THE WITNESS: I think -- I think it's important to the described operation and -- and use, as are all the other features, including the motor, the resilient member, the cushion.

BY MR. KELLAR:

Q. But you agree that it's describing, quote, "this invention," and more specifically, the inventor chose to focus on a beauty treatment device having a space guide, period.

Does that indicate to you that the space guide is the most important aspect of Mabuchi's beauty treatment device?

MR. BERG: Objection to form.

THE WITNESS: Yeah. I'm not sure it's the most important aspect.

BY MR. KELLAR:

Q. Is there a more important aspect of Mabuchi's beauty treatment device other than the space guide?

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MR. BERG: Objection to form.

THE WITNESS: I think all the parts are important. The motor, the links, the piston.

BY MR. KELLAR:

Q. But you agree the inventor chose to specifically focus on the space guide in the field of the invention. Correct?

A. Well, he says what he says on the field of the invention, yes.

Q. You agree the inventor doesn't say, "More specifically, a beauty treatment device having a motor," for example?

A. No, he doesn't say that.

Q. What happens to Mabuchi's beauty treatment device -- strike that.

Is it your understanding that the space guide, 5, in Mabuchi can be removed from the beauty treatment device?

A. Well, Mabuchi doesn't describe how to remove it.

Q. Is it your opinion that the space guide is permanently affixed to Mabuchi's beauty treatment device?

A. I don't have an opinion one way or the other.

Q. Do you agree that Mabuchi does not expressly describe the patter assembly being changed while the

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piston reciprocates -- sorry -- while the actuator reciprocates?

A. Yeah. Mabuchi does not describe attachment or removal of the massage head while it reciprocates.

Q. And Mabuchi doesn't describe whether the space guide needs to be removed or not for changing the patter assembly. Correct?

A. He doesn't describe changing the patter assembly during operation, other than to say that it's easy to attach and remove.

Q. But it being easy to attach and remove isn't necessarily related to attaching and removing while the actuator is reciprocating, does it?

A. It could. Mabuchi doesn't address that.

MR. KELLAR: Take a break?

MR. BERG: Yeah.

Do you want to take --

MR. KELLAR: We can go off the record.

(Recess.)

MR. KELLAR: We can go back on the record as soon as you're ready.

BY MR. KELLAR:

Q. Going back to Mabuchi, can you turn to Column 8, beginning about Line 40?

A. I'm there.

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Q. Beginning at Line 40, Mabuchi reads, quote (as read):

"The changing of the Patter Assembly 6 can be easily accomplished since the Actuator 4 and the Patter Assembly 6 are automatically disconnected merely by turning each other," end quote.

What's your understanding of "automatically disconnected merely by turning each other"?

A. Well, by rotating one with respect to the other.

Q. Does "automatically disconnected" refer to the magnets repulsing each other?

A. Yes.

Q. Mabuchi doesn't state that the actuator and Patter Assembly 6 need to be pulled apart; rather, the disconnection is automatic merely by turning. Correct?

A. Yes.

Q. If the patter assembly and actuator are disconnected merely by turning each other, what would prevent those two components from simply self-aligning and reconnecting?

A. Well, they will without restraint, so if you grab -- if one were to grab the -- the massage head rigidly and rotate it a little bit to misalign the pulls

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on the magnets, it would automatically separate, but if all you did was somehow use your fingers to rotate it without restraining it rotationally, it would probably just realign.

Q. So it's -- it's a matter of how firmly someone grasps the patter assembly, in your opinion?

A. Yes. That's true with any magnets. If you had two magnets, similarly-sized magnets, they will do that. I think your own expert, Ms. Morrill, acknowledged that, that unless you're restraining them somehow, they will automatically flip over and self-align.

Q. But if they're restrained -- for example, if they're grasped firmly, as you testified, that'll prevent the self-alignment?

A. Well, if they're grasped firmly enough to keep them from realigning on their -- on their own, yes.

Q. Turning to Paragraph 66 of your supplemental declaration -- and I'll let you get there before I continue.

A. I'm there.

Q. The last sentence says (as read):

"Indeed, it is common knowledge that bringing two magnets in close proximity will cause the magnets to self-align."

Now, as we just discussed, the self-alignment

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is in the context of at least one of the magnets being only loosely grasped by a user, for example. Correct?

A. Well, nonrestrained in some manner, yeah.

Q. Is it, in your opinion, relevant to how the magnets in Mabuchi would self-align, as you testified, if the Patter Assembly 6 is attached to the actuator while the actuator is reciprocating?

A. I'm not sure I can parse that question. Can you -- I ask you to do it again.

Q. That's fine.

So the example in your declaration of two magnets being brought into close proximity implies two magnets slowly being brought together for self-alignment. Correct?

A. Well, slowly or quickly, but in proximity to one another.

Q. Now, that behavior would change if one of the magnets was quickly reciprocating back and forth. Correct?

A. It could.

Q. Because the time for the self-alignment is -- is limited to when the Actuator 4 is at the furthest-most part of its stroke. Correct?

A. I'm not sure how reciprocation would impact the ability to self-align. I have not -- I have not analyzed

that part.

Q. Let's turn briefly to your other declarations regarding the '082 patent.

Looking at -- and I know we're switching gears here to discuss the '082 patent, so please let me know if you need a moment, but I'm looking at Paragraph 74 of your supplemental dec- -- declaration regarding the '082 patent.

A. Okay.

Q. So this portion of your supplemental declaration is discussing Pivaroff in view of Clark.

Do you agree?

A. Yes.

Q. Are you familiar with Clark?

A. I am.

Q. Do you want to see a copy of Clark or --

A. Well, it depends on what you're going to ask me.

Q. Let's just get -- let's just get it out of the way.

MR. KELLAR: I'm handing you what's been marked Exhibit 1014, U.S. Patent 3,007,504 to Clark.

(Exhibit 1014 was previously marked.)

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BY MR. KELLAR:

Q. Going back to your supplemental declaration at Paragraph 74, halfway through Paragraph 74, it reads (as read):

"The engineering problems implicated are, one, secure retention under dynamic loading."

Do you see that?

A. No. I'm on Page 46.

Q. Sorry. Paragraph 74?

A. Paragraph -- oh, 74. Okay.

Q. Of your declaration -- of the '082 declaration.

A. Okay. Engineering problems.

MR. BERG: Yeah.

MR. KELLAR: Okay.

THE WITNESS: Okay. Yes.

BY MR. KELLAR:

Q. So in the context of the '082 patent, the dynamic -- the secure retention under dynamic loading is in the context of reciprocating back and forth. Correct?

A. Yes.

Q. But in Clark, there is no reciprocating back-and-forth motion. Correct?

A. That's correct.

Q. Clark, instead, deals with rotational movement.

Does it not?

A. That's correct.

Q. And then turning to -- I'll give you Page 50 of the supplemental declaration regarding the '082. It'll be the second part of Paragraph 79.

A. Okay.

Q. The last sentence of Paragraph 79 reads, quote (as read):

"In fact, a POSITA would understand that the cylindrical Number 13 is not critical and can be removed to modify Pivaroff as shown below," end quote.

Do you see that sentence?

A. Okay.

Q. What's your basis for stating that the cylindrical Number 13 of Clark is, quote, "not critical and can be removed"?

A. Well, it's not critical to the force with which the metal bit would be attached to the magnet.

Q. Looking at Clark Exhibit 1014, do you find it relevant that in each Figures 1, 5, 3, and 4, Element 13 is included?

A. Well, Element 13 is used to actually rotate -- transmit the rotational forces to the bit, to the tool bit. So --

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Q. Element 13 in Clark is critical. Correct?

MR. BERG: Objection, form.

THE WITNESS: Critical if you want to draw the screw, not critical if you want to attach the bit to the magnet. The whole reason for referencing Clark is for attachment, not for driving screws or rotating something. It's...

BY MR. KELLAR:

Q. But without the cylindrical Number 13, Clark wouldn't be able to drive screws, for example?

A. Right. But you could attach the bits to the magnet without 13.

Q. Is that shown in Figure 4, for example, where 18 is inserted into 13?

A. 18? Well, it has nothing -- the whole -- the whole rationale for referencing Clark was quick release attachment of tools using magnets, not some innovative way to drive screws.

MR. KELLAR: Why don't we take a ten-minute break?

MR. BERG: Okay.

MR. KELLAR: Off the record.

(Recess.)

MR. KELLAR: Are we back on the record?

///

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BY MR. KELLAR:

Q. Dr. Pratt, can you turn to Figure 7 of Mabuchi, please? That's Exhibit 1005.

A. I'm there.

Q. Figure 7 illustrates an embodiment of Mabuchi that replaces the spring patter assembly with a cushion member. Correct?

A. Yes.

Q. Do you see in Figure 7 that when the cushion member is fully extended or at the end of its stroke, it does not fully protrude out from the Space Guide 5?

A. Well, a good portion of it does, yes.

Q. But the -- the base of it does not. Correct.

A. Correct.

Q. So for example, a user wouldn't be able to grasp the Cushion Member 8A to separate it from the Actuator 4 without removing the space guide. Correct?

MR. BERG: Objection, form.

THE WITNESS: Not necessarily. It depends on how far it's sticking out from the space guide.

BY MR. KELLAR:

Q. But 8A indicates a soft pliable cushion member. Correct?

A. It does.

Q. So is it your opinion that a user would be able

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to simply grasp the soft cushion member and separate that patter assembly from the Actuator 4?

A. It depends on how soft it is.

Q. Turning to Figure 4, for example, do you agree that in Figure 4, the spring patter assembly embodiment shows the Base 7 extending out of the Space Guide 5?

A. Yes.

Q. Is it your testimony that to remove the patter assembly in Figure 4, a user would use their fingers around the back of the Base 7 to separate it from the Actuator 4?

A. Well, I don't think you'd necessarily have to get your fingers behind Item 7 to stop it from going back in to put -- separate it; just merely need to grab the outer periphery of 7 and turn it, rotate it slightly.

Q. And a user, in your opinion, could do this even while the Actuator 4 is reciprocating?

A. Yes.

Q. Turn back to Pivaroff, Exhibit 1007.

A. I'm there.

Q. On Page 5 of Pivaroff, there is a table of mixtures.

I'll wait until you -- till you get there.

A. I'm there.

Q. Pivaroff says -- and I'm just beginning at the

top of this page midsentence (as read):

"Below, in tabular form, are various preferred mixtures of the same, in grains, which preferably total between approximately 335 to about 500 grains."

Do you see that?

A. I do.

Q. Does Pivaroff ever explain when to use one of the mixtures listed in the table versus another mixture listed?

A. Not that I recall.

Q. Instead, in the next paragraph, Pivaroff says (as read):

"In particular, it has been found that improved and extraordinary results are obtained from one of the above listed mixtures."

Correct?

A. Yes.

Q. Turning to Claim 1 of Pivaroff, about halfway down, there's a paragraph that begins with, "The titanium head being attached."

A. Yes.

Q. It says, quote (as read):

"The titanium head being attached to a

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linkage means coupled to the finger."

Are you familiar what the finger is in Pivaroff?

A. As I sit here today, I don't, you know, recall what that is.

Q. You're free to review the document, but in Column 2, around Line 43, the finger is listed with Number 32.

A. Yes.

Q. Do you agree that the finger is Element 32 that extends from the offset cam Element 30 shown, for example, in Figure 6?

A. Well, whether I agree with it or not, that's what Pivaroff says.

Q. So going back to Claim 1, Pivaroff says (as read):

"The titanium hollow head being attached to the linkage means coupled to the finger."

Do you know what the "linkage means" is referring to that's coupled to the finger in Claim 1, Pivaroff?

MR. BERG: Objection to form.

THE WITNESS: Well, I'd have to go back through the patent and tie his nomenclature to each of their

components. But 32, we would normally call a crank pin. He calls it a finger.

BY MR. KELLAR:

Q. Going back to Column 2, there's -- and I'm at Line 44. Begins with "the reciprocating Link 35" -- or sorry -- "the reciprocating Link 34."

Do you believe that the recited "linkage means" is referring to the reciprocating Link 34?

A. Like I said a moment ago, I would have to go back through and link his nomenclature to each of these item numbers before I can answer -- answer that kind of question.

Q. Looking at Figure 6, do you agree that the reciprocating Link 34 is the element coupled to the Finger 32?

A. Yes.

Q. And Element 34 is what converts the rotational movement of Finger 32 into reciprocal movement. Correct?

A. Yes.

MR. KELLAR: Let's go off the record.

MR. BERG: Okay.

(Recess.)

MR. KELLAR: I have no further questions.

MR. BERG: And I have no questions.

THE COURT REPORTER: Great. And, Mr. Berg, may

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I confirm that you ordered a certified copy, a realtime feed, and a rough draft today.

MR. BERG: Yes.

THE COURT REPORTER: Thank you.

(Whereupon, at the hour of 12:51 p.m., the proceedings concluded.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, DR. JOHN D. PRATT, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition, taken on JANUARY 7, 2026; that I have made any corrections, additions, or deletions to reflect my accurate testimony; that my transcript is a true and accurate transcription of my testimony.

Signed at _____, _____.
(City) (State)

_____ _____
DR. JOHN D. PRATT (Date)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, CHERYL ASADA, CSR No. 13496, do hereby certify:

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

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

I further certify that the deposition of DR. JOHN D. PRATT, occurred at the offices of O'Melveny & Myers, LLP 610 Newport Center Drive, 17th Floor, Newport Beach, California 92660 on Wednesday January 7, 2026 commencing at 10:02 a.m. to 12:51 p.m.

I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney 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.

Dated this 14TH day of JANUARY, 2026.

_____
CHERYL ASADA, CSR 13496

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