

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

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SMITH & NEPHEW, INC.,

Petitioner,

vs.

IPR Case No.  
IPR2013-00629

BONUTTI SKELETAL INNOVATIONS LLC,

Patent Owner of  
US Patent No.  
7,806,896 to Bonutti

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DATE: Monday, August 25, 2014

TIME: 8:57 a.m.

EXAMINATION BEFORE TRIAL of SCOTT  
SCHOIFET, held at the office of Davidson Davidson  
& Kappel, LLC, 485 Seventh Avenue, New York, New  
York, before Christina Diaz, a Certified Realtime  
and Registered Merit Reporter and Notary Public  
of the State of New York.

**S&N EXHIBIT 1031**  
**S&N v. BSI**  
**IPR2013-00629**

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

2

3

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1 A P P E A R A N C E S: (Continued)

2

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13 ALSO PRESENT:

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15 SALLEAN BROWN, Videographer

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24

25

1 S. Schoifet

2 THE VIDEOGRAPHER: This is tape number 08:56:36AM  
3 one of the videotaped deposition of 08:56:42AM  
4 Dr. Scott D. Schoifet in the matter Smith & 08:56:46AM  
5 Nephew, Inc. versus Bonutti Skeletal 08:56:52AM  
6 Innovations LLC in the United States Patent 08:56:56AM  
7 and Trademark Office before the Patent Trial 08:57:02AM  
8 and Appeal Board, number 0286868-00188. 08:57:03AM

9 This deposition is being held at the 08:57:13AM  
10 law firm of Davidson Davidson & Kappel LLC, 08:57:16AM  
11 485 Seventh Avenue, New York, New York on 08:57:20AM  
12 Monday August 25th, 2014 at approximately 08:57:25AM  
13 8:57 a.m. 08:57:28AM

14 My name is Sallean Browne from the firm 08:57:30AM  
15 of Capital Reporting Company and I am the 08:57:33AM  
16 legal video specialist. The court reporter 08:57:35AM  
17 is Christina Diaz in association with 08:57:38AM  
18 Capital Reporting Company. 08:57:41AM

19 Will counsel please introduce 08:57:42AM  
20 themselves. 08:57:45AM

21 MR. CAVANAUGH: Dave Cavanaugh for 08:57:46AM  
22 Wilmer Hale representing Smith & Nephew. 08:57:49AM  
23 And just for the record, the correct case 08:57:52AM  
24 number is IPR2013-00629 which I think was 08:57:54AM  
25 misspoken. And with me from Wilmer Hale 08:58:02AM

1 S. Schoifet

2 also is Mike Smith and Jake Oyloe. 08:58:06AM

3 MR. APICELLI: And I am Sam Apicelli 08:58:11AM

4 with Duane Morris. I'm here representing 08:58:13AM

5 Wright Medical Technology. 08:58:16AM

6 MR. KAPPEL: Cary Kappel, Davidson 08:58:17AM

7 Davidson & Kappel on behalf of the patent 08:58:20AM

8 owner Bonutti Skeletal Innovations. 08:58:23AM

9 MR. HENRIQUES: I'm Alex Henriques with 08:58:27AM

10 Desmarais LLP on behalf of Bonutti Skeletal 08:58:29AM

11 Innovations.

12 MR. PETROFF: David Petroff, Davidson 08:58:33AM

13 Davidson & Kappel, patent owner. 08:58:35AM

14 THE VIDEOGRAPHER: Will the court 08:58:36AM

15 reporter please swear in the witness. 08:58:40AM

16 S C O T T S C H O I F E T, called as a witness,

17 having been first duly sworn by a Notary Public

18 of the State of New York, was examined and

19 testified as follows:

20 EXAMINATION BY

21 MR. CAVANAUGH: 08:58:47AM

22 Q Good morning. 08:58:47AM

23 A Good morning. 08:58:50AM

24 Q Could you state your name for the 08:58:51AM

25 record, please. 08:58:53AM

1 S. Schoifet

2 A It's Scott David Schoifet. 08:58:54AM

3 Q And you understand that your testimony 08:58:56AM

4 is under oath today? 08:58:58AM

5 A Yes. 08:58:59AM

6 Q And you understand the process of a 08:58:59AM

7 deposition. I'll be asking you questions today? 08:59:02AM

8 A Yes. 08:59:06AM

9 Q And I would like, if you could, audible 08:59:07AM

10 answers when you -- when I've completed a 08:59:11AM

11 question, if you could answer the question to the 08:59:17AM

12 best of your ability, is that understood? 08:59:18AM

13 A Yes. 08:59:20AM

14 Q Now, if I ask a question and you do not 08:59:20AM

15 understand the question, please let me know and 08:59:31AM

16 I'll try to rephrase it. But if I've asked the 08:59:34AM

17 question and you don't ask me to -- if you don't 08:59:38AM

18 say that you have not understood it, I'm going to 08:59:42AM

19 presume you understand the question. 08:59:46AM

20 Is that okay? 08:59:48AM

21 A I will try to clarify if I don't 08:59:49AM

22 understand. 08:59:51AM

23 Q I understand. Thank you. 08:59:51AM

24 Throughout the day as we go through 08:59:53AM

25 this deposition if you feel like you need a 09:00:01AM

1 S. Schoifet

2 break, just please let me know, we'll take a 09:00:04AM

3 break. The only thing I would ask is that you 09:00:05AM

4 answer the question that's pending before we take 09:00:07AM

5 a break. Okay? 09:00:11AM

6 A Sure. 09:00:12AM

7 Q Do you have any questions about the 09:00:17AM

8 procedure of a deposition before we start? 09:00:21AM

9 A No. 09:00:23AM

10 Q Is there any reason why you can't 09:00:24AM

11 provide your full and complete testimony today? 09:00:27AM

12 A No. 09:00:31AM

13 Q Are you on any medications that would 09:00:32AM

14 impact your ability to provide full and complete 09:00:35AM

15 answers? 09:00:38AM

16 A No. 09:00:38AM

17 Q Did you do anything to prepare for this 09:00:38AM

18 deposition? 09:00:48AM

19 A What do you mean by "prepare"? 09:00:53AM

20 Q I mean just the use of the word 09:00:55AM

21 "prepare" in the normal course of things. In 09:00:59AM

22 advance of activity to familiarize yourself with 09:01:01AM

23 whatever is going to happen at an event? 09:01:06AM

24 A I did. 09:01:08AM

25 Q What did you do to prepare for this 09:01:10AM

1 S. Schoifet

2 deposition? 09:01:12AM

3 A I read the documents supplied. 09:01:13AM

4 Q And what else? 09:01:23AM

5 A I read the documents supplied, had 09:01:28AM

6 discussions, formulated my thoughts and ideas and 09:01:31AM

7 put them together into the declaration that you 09:01:39AM

8 have in front of you. 09:01:41AM

9 Q Okay. My question is a little bit 09:01:44AM

10 different than what I think you might be 09:01:46AM

11 answering. My question relates to what you did 09:01:48AM

12 to prepare for today's deposition and not what 09:01:52AM

13 you might have done to prepare for your 09:01:54AM

14 declaration. 09:01:56AM

15 A I was under the assumption that today 09:02:00AM

16 we were talking about the declaration. 09:02:02AM

17 Q We will talk about your declaration 09:02:03AM

18 absolutely. 09:02:06AM

19 A Okay. 09:02:06AM

20 Q And we'll have a number of questions 09:02:06AM

21 relating to that. 09:02:08AM

22 A Okay. 09:02:08AM

23 Q But my question more specifically is 09:02:09AM

24 related to what you did to prepare for your 09:02:11AM

25 testimony today. 09:02:16AM



1 S. Schoifet

2 A My testimony is about the declaration 09:02:20AM  
3 so I'm not certain what sort of special 09:02:22AM  
4 preparation I should have had. Those are my 09:02:25AM  
5 thoughts and ideas, so that's what we're going to 09:02:29AM  
6 discuss. I don't see why I needed special 09:02:31AM  
7 preparation. 09:02:33AM

8 Q Did you meet with your attorneys or the 09:02:34AM  
9 attorneys for sir -- for Dr. Bonutti, for the 09:02:36AM  
10 patent owner in preparation for this deposition? 09:02:42AM

11 MR. KAPPEL: Objection. 09:02:47AM

12 On the basis of privilege, I'm going to 09:02:51AM  
13 caution you not to reveal the contents of 09:02:53AM  
14 any communication with counsel. If you can 09:02:57AM  
15 answer that question without revealing the 09:03:00AM  
16 contents of any communication, you may do 09:03:03AM  
17 so. 09:03:07AM

18 A I had discussions with my attorneys. 09:03:08AM

19 BY MR. CAVANAUGH: 09:03:18AM

20 Q And just for my clarification, is the 09:03:18AM  
21 patent owner representing you or are you 09:03:21AM  
22 operating as a consultant for the patent owner? 09:03:25AM

23 A I'm a consultant. 09:03:29AM

24 Q About how many times did you meet with 09:03:36AM  
25 the attorneys for the patent owner in preparation 09:03:48AM

1 S. Schoifet

2 for this deposition? 09:03:51AM

3 A By "meeting" you mean personal 09:03:53AM

4 meetings? 09:03:56AM

5 Q Personal meetings, yes. 09:03:56AM

6 A Not many. 09:04:01AM

7 Q Less than three? 09:04:04AM

8 A It's hard to say. Certainly less than 09:04:10AM

9 ten. 09:04:12AM

10 Q But you don't know whether it was less 09:04:12AM

11 than three? 09:04:14AM

12 A I would have to really go back and see 09:04:15AM

13 how many personal meetings, but it was probably 09:04:17AM

14 around that. 09:04:19AM

15 Q And how recently were these personal 09:04:22AM

16 meetings? 09:04:24AM

17 A Probably about five minutes ago. 09:04:26AM

18 Q Were there any others? 09:04:29AM

19 A There were -- certainly it's my 09:04:33AM

20 recollection at least one other meeting. 09:04:38AM

21 Q When did that occur? 09:04:41AM

22 A I think it was probably last week or 09:04:46AM

23 the week before. 09:04:49AM

24 Q And without revealing the content of 09:04:50AM

25 the conversation as your lawyer -- as Mr. Kappel 09:04:56AM

1 S. Schoifet

2 has instructed you, can you tell me how long you 09:05:01AM

3 met with the attorneys for the patent owner? 09:05:05AM

4 A I can't remember exactly. It was 09:05:11AM

5 probably a couple hours. 09:05:13AM

6 Q In the course of the preparation for 09:05:29AM

7 this deposition did you review the patent at 09:05:31AM

8 issue here, the Bonutti patent? 09:05:38AM

9 A There are a lot of Bonutti patents. 09:05:41AM

10 Q Okay. 09:05:45AM

11 A Which one are we discussing? 09:05:45AM

12 Q The one that's described in 09:05:46AM

13 your declaration which I think is the 09:05:47AM

14 '896 patent? 09:05:49AM

15 A It is the '896. 09:05:50AM

16 MR. KAPPEL: Objection. 09:05:51AM

17 BY MR. CAVANAUGH: 09:05:56AM

18 Q So did you discuss the '896 patent? 09:05:56AM

19 Actually, strike that. 09:06:00AM

20 Did you review the '896 patent in 09:06:01AM

21 connection with your preparation for this 09:06:03AM

22 deposition? 09:06:06AM

23 MR. KAPPEL: Objection to form. 09:06:06AM

24 A I have the '896 patent, I did read 09:06:11AM

25 through it, correct. 09:06:14AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 09:06:16AM

3 Q You looked at the patent claims? 09:06:16AM

4 A I did. 09:06:22AM

5 Q Did you look at any prior art in 09:06:23AM

6 connection with the preparation of this 09:06:26AM

7 deposition? 09:06:30AM

8 A I did. 09:06:31AM

9 Q Which ones? 09:06:32AM

10 A The ones that were supplied which was 09:06:35AM

11 Turner, Scorpio, Stulberg, Delp. 09:06:38AM

12 Q Did you review any board decisions? 09:06:46AM

13 MR. KAPPEL: Objection. Form. 09:06:55AM

14 A What do you mean by "board decisions"? 09:06:58AM

15 Do you mean the patent history? 09:07:00AM

16 BY MR. CAVANAUGH: 09:07:02AM

17 Q You're familiar with the proceeding of 09:07:02AM

18 the inter partes' review, correct? 09:07:13AM

19 MR. KAPPEL: Objection. Form. 09:07:14AM

20 A You have to clarify that. 09:07:16AM

21 BY MR. CAVANAUGH: 09:07:19AM

22 Q Did you understand the proceeding 09:07:19AM

23 that's going on that we're talking about today? 09:07:21AM

24 MR. KAPPEL: Objection. Form. 09:07:24AM

25 A Again, you would have to clarify. I'm 09:07:26AM

1	S. Schoifet	
2	not an attorney.	09:07:29AM
3	BY MR. CAVANAUGH:	09:07:35AM
4	Q Why don't I give you your declaration.	09:07:35AM
5	I'm going to show you what's already	09:08:11AM
6	been marked as Exhibit 2004 in this proceeding.	09:08:13AM
7	A Thank you.	09:08:20AM
8	Q I would like you to turn to paragraph 9	09:08:27AM
9	if you would.	09:08:29AM
10	A I have it.	09:08:43AM
11	Q Can you go to subsection G?	09:08:44AM
12	A I'm in subsection G.	09:08:54AM
13	Q Did you look at Decision on Institution	09:08:57AM
14	or Institution Decision in connection with the	09:09:00AM
15	preparation of your deposition today?	09:09:04AM
16	A I did.	09:09:06AM
17	Q Did you bring any documents with you	09:09:16AM
18	today?	09:09:17AM
19	A I did not.	09:09:18AM
20	Q Did you speak with anyone else about	09:09:27AM
21	today's deposition?	09:09:29AM
22	MR. KAPPEL: Objection.	09:09:30AM
23	On the grounds of privilege I would	09:09:37AM
24	again caution the witness not to reveal the	09:09:38AM
25	content of any communications with counsel.	09:09:42AM

1 S. Schoifet

2 A Can you repeat the question, please? 09:09:47AM

3 BY MR. CAVANAUGH: 09:09:49AM

4 Q Sure. Did you speak with anyone else 09:09:50AM

5 about today's deposition? 09:09:52AM

6 MR. KAPPEL: Objection. Form also. 09:09:54AM

7 A By "anyone else" you mean besides my 09:09:56AM

8 counsel? 09:09:58AM

9 BY MR. CAVANAUGH: 09:09:59AM

10 Q Besides the counsel for the patent 09:09:59AM

11 owner. 09:10:06AM

12 MR. CAVANAUGH: This is unclear to me. 09:10:07AM

13 Are you representing him? 09:10:08AM

14 MR. KAPPEL: I guess -- I think the 09:10:09AM

15 confusion here is did you speak to anyone 09:10:10AM

16 else. Else -- he's confused as to else who. 09:10:12AM

17 I mean, he doesn't speak to himself, so he 09:10:18AM

18 must -- if you say, did you speak to anyone 09:10:20AM

19 else, I don't think he understands how 09:10:21AM

20 you're defining "else." Else who, other 09:10:23AM

21 than you or other than who? 09:10:26AM

22 MR. CAVANAUGH: Other than the people 09:10:27AM

23 that we've already established that you've 09:10:28AM

24 spoken with. Mr. Kappel, and the firm? 09:10:30AM

25 MR. KAPPEL: I think that's the basis 09:10:35AM

1 S. Schoifet

2 of his confusion. I can't speak for him. 09:10:37AM

3 So go ahead. 09:10:41AM

4 MR. CAVANAUGH: Just stepping aside, 09:10:45AM

5 like, are you representing him or is he a 09:10:47AM

6 consultant for Bonutti Skeletal Innovations 09:10:49AM

7 because he's represented stated that he's -- 09:10:57AM

8 that you're representing him in this 09:11:00AM

9 deposition? 09:11:01AM

10 MR. KAPPEL: We are defending him in 09:11:02AM

11 this deposition. He's a consultant expert 09:11:05AM

12 witness for Bonutti Skeletal Innovations. 09:11:09AM

13 BY MR. CAVANAUGH: 09:11:12AM

14 Q So did you meet with anyone else? 09:11:12AM

15 A Again, by "meet with," do you mean did 09:11:15AM

16 I have a sit-down discussion about the case? 09:11:20AM

17 Q Okay.

18 A Because my wife knows I'm doing this. 09:11:23AM

19 Does that -- 09:11:25AM

20 Q Well, we've established that your wife 09:11:25AM

21 knows now. 09:11:27AM

22 Anyone else? Any colleagues? 09:11:28AM

23 A Colleagues are aware that I'm an expert 09:11:34AM

24 witness. But did I have a discussion with them? 09:11:36AM

25 The answer would be no. 09:11:38AM

1 S. Schoifet

2 Q This next question is a little bit 09:11:46AM

3 different. I've asked you if you met with anyone 09:11:51AM

4 else in preparation for this deposition. 09:11:53AM

5 Now my question is different. Did you 09:11:56AM

6 meet with anyone else other than Mr. Kappel and 09:11:59AM

7 his colleagues about the preparation of your 09:12:04AM

8 declaration? 09:12:08AM

9 A I did not. 09:12:11AM

10 Q You met with no one else other than 09:12:12AM

11 Mr. Kappel and his colleagues in connection with 09:12:18AM

12 the preparation of your declaration? 09:12:21AM

13 A Correct. 09:12:25AM

14 Q Have you ever spoken with anyone at 09:12:38AM

15 Bonutti Skeletal Innovations about anything in 09:12:40AM

16 connection with this case? 09:12:44AM

17 A Nothing in connection with this case. 09:12:49AM

18 Let me clarify that. What do you mean by "in 09:12:54AM

19 connection with this case"? Do you mean about 09:12:56AM

20 the facts of the case or about the fact of 09:12:59AM

21 whether I am participating in this case? 09:13:01AM

22 Q Well, let's take it one step at a time. 09:13:06AM

23 Have you talked to anyone at Bonutti 09:13:11AM

24 Skeletal Innovations at all? 09:13:15AM

25 A At what time frame are you talking 09:13:22AM



1 S. Schoifet

2 about? 09:13:24AM

3 Q Ever. 09:13:24AM

4 A Yes. 09:13:29AM

5 Q When did you talk to folks at Bonutti 09:13:30AM

6 Skeletal Innovations? 09:13:37AM

7 A I spoke with -- years ago I met 09:13:37AM

8 Dr. Bonutti when I was learning the minimally 09:13:44AM

9 invasive procedures. 09:13:47AM

10 Q And do you recall about when that was? 09:13:54AM

11 A About 2002, I believe. It could be 09:13:57AM

12 2003. 09:14:02AM

13 Q Was that the only contact you had with 09:14:14AM

14 Bonutti Skeletal Innovations? 09:14:18AM

15 MR. KAPPEL: Objection. Regarding the 09:14:20AM

16 use of Bonutti Skeletal Innovations LLC as a 09:14:23AM

17 corporate reference. 09:14:31AM

18 A I have never been in contact with 09:14:33AM

19 Bonutti Skeletal Innovations. 09:14:36AM

20 BY MR. CAVANAUGH: 09:14:47AM

21 Q So you met Dr. Bonutti in 2002 or 2003; 09:14:47AM

22 is that correct? 09:14:50AM

23 A Correct. 09:14:51AM

24 Q Have you had other meetings with 09:14:51AM

25 Dr. Bonutti? 09:14:56AM

1 S. Schoifet

2 A I've never had another meeting with 09:14:56AM  
3 Dr. Bonutti. 09:14:58AM

4 Q Are you aware that Dr. Bonutti has -- 09:15:02AM  
5 so after -- strike my previous portion of a 09:16:43AM  
6 question. 09:16:47AM

7 So after 2002 or 2003 you have never 09:16:47AM  
8 met with Dr. Bonutti again? 09:16:53AM

9 A The original question was did I have a 09:16:54AM  
10 meeting with him. I have seen him. 09:16:56AM

11 Q Oh, so seeing someone and meeting with 09:16:59AM  
12 someone is different? 09:17:00AM

13 A Correct. 09:17:01AM

14 Q Okay. To your mind what does seeing 09:17:02AM  
15 someone mean? 09:17:06AM

16 A He was at the same meeting as me. 09:17:07AM

17 Q So you can see someone across the room? 09:17:09AM

18 A Correct. 09:17:12AM

19 Q And what does a meeting entail? 09:17:13AM

20 A It would be like the American Academy 09:17:17AM  
21 of Orthopaedic Surgeons, you know, a general 09:17:20AM  
22 group meeting. Teaching -- I have done a lot of 09:17:24AM  
23 teaching for Stryker. So he may be attending the 09:17:28AM  
24 same teaching programs. 09:17:30AM

25 Q And that's a meeting? 09:17:33AM

1 S. Schoifet

2 A I consider that -- in orthopedics 09:17:34AM  
3 that's considered a meeting. 09:17:38AM

4 Q Did you meet with Dr. Bonutti at these 09:17:40AM  
5 meetings or -- what I want to understand is the 09:17:42AM  
6 difference in your view of what seeing someone is 09:17:45AM  
7 and meeting with someone because you seem to be 09:17:48AM  
8 making a distinction between those. 09:17:53AM

9 A My -- are you asking me my opinion of a 09:17:57AM  
10 meeting, is a sit-down and having a discussion or 09:17:59AM  
11 a conversation with someone. That would be a 09:18:01AM  
12 meeting. 09:18:04AM

13 Q So have you met with Dr. Bonutti? 09:18:05AM

14 A I had a conversation with Dr. Bonutti, 09:18:07AM  
15 is that your question? 09:18:09AM

16 Q My question is have you met with him? 09:18:10AM

17 MR. KAPPEL: Objection. 09:18:13AM

18 BY MR. CAVANAUGH: 09:18:15AM

19 Q You've just said to me what you believe 09:18:15AM  
20 your understanding is of what a meeting is. 09:18:17AM

21 A Correct. 09:18:19AM

22 Q Right? 09:18:20AM

23 A (Nodding affirmatively). 09:18:20AM

24 Q And my question is, have you met with 09:18:21AM  
25 Dr. Bonutti? 09:18:23AM

1 S. Schoifet

2 A I met with Dr. Bonutti in 2002 and I 09:18:23AM  
3 had -- I've had a couple friendly conversations 09:18:33AM  
4 with Dr. Bonutti at a meeting, shook his hand, 09:18:35AM  
5 such as that. 09:18:38AM

6 Q And about when did these friendly 09:18:40AM  
7 conversations happen? 09:18:43AM

8 A Probably about two over the course 09:18:45AM  
9 of -- maybe three over the course of ten years. 09:18:47AM

10 Q Are you being compensated for your time 09:19:28AM  
11 today? 09:19:29AM

12 A I am. 09:19:30AM

13 Q And what is your hourly compensation? 09:19:31AM

14 A \$1,250. 09:19:33AM

15 Q That's \$1,250 per hour? 09:19:38AM

16 A Correct. 09:19:41AM

17 Q And about how many hours have you spent 09:19:43AM  
18 in connection with this case? 09:19:49AM

19 MR. KAPPEL: Objection. Form. 09:19:53AM

20 A I don't know exactly how many hours. I 09:19:54AM  
21 haven't calculated. 09:19:59AM

22 BY MR. CAVANAUGH: 09:20:04AM

23 Q Can you give me a round number? 09:20:04AM

24 A An estimate, probably around 30. 09:20:06AM

25 Q Can you tell me how many hours of those 09:20:15AM

1 S. Schoifet

2 30 hours you spent preparing for your 09:20:19AM  
3 declaration? 09:20:23AM

4 A I would like to amend that answer 09:20:25AM  
5 because I'm including hours with other cases that 09:20:27AM  
6 are involved with Bonutti Skeletal. So if we're 09:20:30AM  
7 just talking about the IPR, it's not 30 hours. 09:20:33AM

8 Q Okay. How many hours would it be in 09:20:36AM  
9 your amended answer? 09:20:43AM

10 A Probably closer to 15 to 20 is my 09:20:45AM  
11 guess. 09:20:50AM

12 Q And that would be considering the 09:20:51AM  
13 issues related to the '896 patent, the one that 09:20:54AM  
14 we're -- 09:20:59AM

15 A Yes. 09:21:01AM

16 Q And how many hours did you spend 09:21:02AM  
17 preparing your declaration that was submitted in 09:21:07AM  
18 this case? 09:21:10AM

19 A I can't recall exactly how many hours. 09:21:15AM  
20 A significant part of those hours I'm sure, but I 09:21:17AM  
21 wouldn't be able to clarify that for you. 09:21:20AM

22 Q So ten to fifteen? The significant 09:21:22AM  
23 part would be, you know, more than half? 09:21:26AM

24 A Well, what do you mean by "prepare"? 09:21:30AM

25 Q The declaration. 09:21:31AM

1 S. Schoifet

2 A Do you mean the writing of it? 09:21:33AM

3 Q I think preparing a declaration 09:21:34AM

4 includes the writing of it. What other parts of 09:21:39AM

5 preparing the declaration would you include? 09:21:42AM

6 A The review of it. 09:21:46AM

7 Q So the writing of it and the review of 09:21:47AM

8 it. How many hours do you think writing it and 09:21:49AM

9 reviewing it took you? 09:21:51AM

10 A I still review it and reread it, so I 09:21:59AM

11 would say a large portion of those hours were 09:22:02AM

12 involved with that. 09:22:04AM

13 Q Okay. And when you say "a large 09:22:06AM

14 portion," can you kind of quantify? You 09:22:07AM

15 mentioned 15 to 20 hours total before. How much 09:22:10AM

16 -- what is a large part of 15 to 20 hours? 09:22:14AM

17 A To me the entire what we're talking 09:22:19AM

18 about here revolves around the declaration. 09:22:22AM

19 Everything I've done revolves around the 09:22:25AM

20 declaration, so it's hard for me to parse out 09:22:26AM

21 exactly what you're asking me, what part of this 09:22:29AM

22 case is the review of the declaration or the 09:22:31AM

23 writing of it. This is all about the 09:22:33AM

24 declaration. My thoughts and ideas. So all 15 09:22:37AM

25 hours involved the declaration. 09:22:41AM

1 S. Schoifet

2 Q Now, before you signed the declaration, 09:22:44AM

3 do you have that in mind, at some point you 09:22:53AM

4 signed the declaration? 09:22:56AM

5 A Correct. 09:22:57AM

6 Q My question is, before you signed the 09:22:59AM

7 declaration, how much time did you spend in 09:23:01AM

8 preparation of the declaration, writing it, 09:23:07AM

9 reviewing it as you've said? 09:23:09AM

10 A Without reviewing any log that I have, 09:23:14AM

11 I can't give you the exact hours. It would be a 09:23:16AM

12 wild guess. 09:23:21AM

13 Q But it's less than 15 hours? 09:23:30AM

14 A I've worked on this for -- I said 15 to 09:23:32AM

15 20 hours, so it has to be less than that. 09:23:38AM

16 Q But you can't tell me, like, whether 09:23:41AM

17 you spent a morning, an afternoon, two days, 09:23:44AM

18 three days on this declaration? 09:23:48AM

19 A I have a log at home of hours I spent. 09:23:50AM

20 Q And you've billed for your time 09:23:55AM

21 associated with preparing this declaration, 09:23:58AM

22 correct? 09:24:01AM

23 A Correct. 09:24:01AM

24 Q And you've been paid? 09:24:02AM

25 A For that? 09:24:03AM

1 S. Schoifet

2 Q For your time. 09:24:05AM

3 A I've submitted invoices. 09:24:08AM

4 Q And who pays your invoices? 09:24:13AM

5 A I actually can't remember who the check 09:24:17AM

6 is from truthfully. 09:24:26AM

7 Q Do you know if it's from Mr. Kappel's 09:24:30AM

8 firm? 09:24:32AM

9 A I do not know. I sign the back of the 09:24:32AM

10 check and I hand it to my wife. I'm a good 09:24:35AM

11 husband. 09:24:40AM

12 Q Did you meet with Mr. Kappel or any of 09:24:45AM

13 his colleagues in person prior to reviewing and 09:24:48AM

14 preparing the declaration? 09:24:53AM

15 A I did not. 09:24:59AM

16 Q Did you speak with them on the phone 09:25:11AM

17 prior to preparing -- 09:25:14AM

18 A I did speak to them on the phone. 09:25:17AM

19 Q About how long did you speak with them 09:25:19AM

20 on the phone? 09:25:21AM

21 A I can't recall. There were numerous 09:25:21AM

22 conversations on the telephone. Again, I have a 09:25:28AM

23 log, not with me. 09:25:29AM

24 Q About how many is numerous 09:25:32AM

25 conversations? 09:25:35AM



1 S. Schoifet

2 A I can't recall. Many. 09:25:38AM

3 Q More than three? 09:25:41AM

4 A More than three. Less than 100. 09:25:42AM

5 Q Less than ten? 09:25:45AM

6 A I can't be more specific than I just 09:25:47AM

7 was. 09:25:49AM

8 Q So more than three and less than 100? 09:25:50AM

9 A Right. 09:25:53AM

10 Q You have an active practice in 09:25:54AM

11 orthopedic surgery, correct? 09:26:01AM

12 A I do. 09:26:04AM

13 Q And yet you can't tell me with any more 09:26:10AM

14 specificity between three meetings and 100 09:26:15AM

15 meetings in this meeting with Mr. Kappel and his 09:26:17AM

16 colleagues? 09:26:23AM

17 MR. KAPPEL: Objection. 09:26:23AM

18 A I'm trying to be accurate. I'm under 09:26:25AM

19 oath. 09:26:27AM

20 BY MR. CAVANAUGH: 09:26:37AM

21 Q Did you write the declaration? 09:26:37AM

22 A What do you mean by "write the 09:26:42AM

23 declaration"? 09:26:45AM

24 Q Did you formulate opinions that are 09:26:46AM

25 reflected in the declaration? 09:26:59AM

1 S. Schoifet

2 A I've attested to this, these are my 09:27:02AM  
3 thoughts and opinions in this declaration. 09:27:05AM

4 Q Did you write out your thoughts? 09:27:07AM

5 MR. KAPPEL: Objection. Form. 09:27:14AM

6 A By "write out," did I handwrite, did I 09:27:16AM  
7 type this document? Is that the question? 09:27:19AM

8 BY MR. CAVANAUGH: 09:27:20AM

9 Q Did you write out your thoughts, typed 09:27:20AM  
10 out would be another way of writing? 09:27:26AM

11 A Again, clarity. Do you mean did I sit 09:27:27AM  
12 and type out this declaration? Did I actually 09:27:32AM  
13 physically write this? Is that the question? 09:27:35AM

14 Q No. My question was different. Did 09:27:37AM  
15 you type out your thoughts regarding the opinions 09:27:38AM  
16 in your declaration? 09:27:41AM

17 MR. KAPPEL: Objection. 09:27:43AM

18 A A lot of this declaration are my 09:27:45AM  
19 thoughts and words. 09:27:47AM

20 BY MR. CAVANAUGH: 09:27:48AM

21 Q A lot of it is? 09:27:48AM

22 A (Nodding affirmatively). 09:27:49AM

23 Q So did you type out your thoughts when 09:27:51AM  
24 you were forming out your opinions? 09:28:00AM

25 MR. KAPPEL: Objection. Form. 09:28:02AM

1 S. Schoifet

2 A In this declaration, which represents 09:28:05AM

3 all my thoughts and ideas, a lot of it are things 09:28:09AM

4 that are my own words. This is a legal document, 09:28:12AM

5 so I wouldn't know what format to put it in. So 09:28:15AM

6 I did not type out the entire document to put it 09:28:20AM

7 into the proper legal format. Every idea, every 09:28:22AM

8 thought in here that I attested to is mine. 09:28:25AM

9 BY MR. CAVANAUGH: 09:28:33AM

10 Q So you stand behind your declaration? 09:28:33AM

11 A Correct. 09:28:35AM

12 Q As you say, a lot of the thoughts in 09:28:38AM

13 the declaration are your own? 09:28:40AM

14 MR. KAPPEL: Objection. 09:28:42AM

15 MR. CAVANAUGH: I am just repeating 09:28:44AM

16 what his testimony is. 09:28:46AM

17 MR. KAPPEL: That's the objection. 09:28:47AM

18 Mischaracterizes the testimony. 09:28:48AM

19 A Every thought and idea. What I said 09:28:51AM

20 was, a lot of the words in there are my own. 09:28:56AM

21 BY MR. CAVANAUGH: 09:29:23AM

22 Q Dr. Schoifet, have you been deposed 09:29:23AM

23 before? 09:29:41AM

24 A I recall years ago for a -- I was video 09:29:41AM

25 deposed in an orthopedic case. It was over 09:29:54AM

1 S. Schoifet

2 twenty years ago. I don't recall the details. 09:29:59AM

3 Q Do you have any recollection about what 09:30:01AM

4 the issue was? 09:30:15AM

5 A No, I do not. 09:30:16AM

6 Q Was it regarding medical malpractice? 09:30:18AM

7 A I don't believe so. 09:30:22AM

8 Q Was it involving intellectual property 09:30:23AM

9 issues? 09:30:34AM

10 A It was not. 09:30:34AM

11 Q Were you testifying as a fact witness? 09:30:35AM

12 MR. KAPPEL: Objection. Foundation. 09:30:47AM

13 A Again, I can't recall exactly, but I 09:30:49AM

14 think I was a -- testifying about my care of a 09:30:56AM

15 patient probably in a motor vehicle accident. 09:31:01AM

16 BY MR. CAVANAUGH: 09:31:09AM

17 Q Do you recall if you were a named party 09:31:09AM

18 in the litigation? 09:31:16AM

19 A I was not. 09:31:17AM

20 Q Are you familiar with the difference 09:31:18AM

21 between expert testimony and fact testimony in a 09:31:25AM

22 legal proceeding? 09:31:30AM

23 A Are you asking in a legal definition or 09:31:32AM

24 my lay -- what my interpretation is? 09:31:38AM

25 Q I'm asking if you are familiar with the 09:31:40AM

1 S. Schoifet

2 difference, and you know, if the answer is yes, 09:31:42AM

3 I'm going to ask what your understanding is. 09:31:44AM

4 A I would say I understand the 09:31:46AM

5 difference. 09:31:52AM

6 Q Okay. And you were testifying as a 09:31:55AM

7 fact witness in the prior proceeding? 09:31:57AM

8 A To be clear, we're talking about the 09:32:00AM

9 case I mentioned twenty years ago. 09:32:04AM

10 Q I understand. 09:32:06AM

11 A And that my memory is quite fuzzy on 09:32:07AM

12 all these details. 09:32:10AM

13 Q Okay. 09:32:11AM

14 A So then I'll clarify that by saying I 09:32:11AM

15 believe I was a fact witness. 09:32:14AM

16 Q Have you ever testified as an expert 09:32:19AM

17 before? 09:32:21AM

18 A I have not. 09:32:22AM

19 Q Have you ever been involved with a 09:32:39AM

20 patent dispute before? 09:32:52AM

21 A What do you mean by "before"? 09:32:55AM

22 Q Before your involvement in this 09:32:59AM

23 proceeding. 09:33:03AM

24 MR. KAPPEL: Objection to form. 09:33:04AM

25 A By "this proceeding" you mean the IPR? 09:33:06AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 09:33:09AM

3 Q The proceeding that we're here talking 09:33:09AM

4 about today, yes. 09:33:11AM

5 MR. KAPPEL: Objection. Form. 09:33:12AM

6 A I am an expert witness for Bonutti 09:33:14AM

7 Skeletal. So they have other cases besides this 09:33:23AM

8 IPR. 09:33:34AM

9 BY MR. CAVANAUGH: 09:33:42AM

10 Q Can you tell me what other cases you're 09:33:42AM

11 an expert witness on? 09:33:45AM

12 A Not actively. There's a case against 09:33:49AM

13 Depui. 09:33:55AM

14 Q Okay. 09:34:01AM

15 A And I believe Zimmer. 09:34:02AM

16 Q Have you provided expert declarations 09:34:16AM

17 in those proceedings? 09:34:18AM

18 A I believe I had for Depui. 09:34:22AM

19 Q And what about Zimmer? 09:34:31AM

20 A I have not. 09:34:35AM

21 Q Have you been deposed in the Depui 09:34:38AM

22 proceeding? 09:34:41AM

23 A I have not. 09:34:46AM

24 Q Do you anticipate being deposed? 09:34:47AM

25 MR. KAPPEL: Objection. 09:34:50AM

1 S. Schoifet

2 A I wouldn't be able to answer that. I 09:34:52AM

3 can't anticipate what's going to happen in a 09:34:55AM

4 legal case. 09:34:57AM

5 BY MR. CAVANAUGH: 09:35:06AM

6 Q Do you have any patents that you're a 09:35:06AM

7 named inventor on? 09:35:08AM

8 A I'm sorry. I couldn't hear that. 09:35:09AM

9 Q Do you have any patents in which you're 09:35:11AM

10 a named inventor? 09:35:13AM

11 A No. 09:35:15AM

12 Q Have you ever been asked to review the 09:35:24AM

13 validity of a patent? If I use the term "patent 09:35:26AM

14 claim," would you understand what I'm saying? 09:35:29AM

15 Strike that. 09:35:33AM

16 If I use the term "patent claim," would 09:35:33AM

17 you understand what I'm saying? 09:35:35AM

18 A Yes, I would. 09:35:40AM

19 Q Have you ever reviewed the validity of 09:35:42AM

20 a patent claim before? 09:35:44AM

21 MR. KAPPEL: Objection. Foundation. 09:35:48AM

22 A Would you -- before this Bonutti 09:35:52AM

23 Skeletal case? 09:35:53AM

24 BY MR. CAVANAUGH: 09:35:53AM

25 Q This proceeding. This '629 proceeding. 09:35:53AM

1 S. Schoifet

2 A Before this IPR? 09:35:56AM

3 Q Right. 09:35:57AM

4 A I have reviewed a patent claim before. 09:35:58AM

5 Q The validity of a patent claim? 09:36:01AM

6 A I need to know what the legal 09:36:04AM

7 definition of "validity of a patent claim" is to 09:36:06AM

8 answer that properly. 09:36:09AM

9 Q So you don't have a working 09:36:15AM

10 understanding of what the validity of a patent 09:36:17AM

11 claim is? 09:36:20AM

12 A I know in orthopedic standpoint what 09:36:20AM

13 valid and validity, but I also know that in legal 09:36:23AM

14 proceedings they may carry different definitions. 09:36:26AM

15 Q Are you familiar with the conditions 09:36:44AM

16 for patentability? 09:36:45AM

17 MR. KAPPEL: Objection. Outside the 09:36:47AM

18 scope of direct. 09:36:49AM

19 A Again, I can render orthopedic 09:36:51AM

20 definitions. I wouldn't want to give you a legal 09:36:55AM

21 definition. 09:36:58AM

22 BY MR. CAVANAUGH: 09:37:00AM

23 Q Do you know if a patent claim could be 09:37:00AM

24 valid if it's not novel? 09:37:08AM

25 MR. KAPPEL: Objection. Outside the 09:37:10AM



1 S. Schoifet

2 scope of direct. 09:37:12AM

3 A You would have to again explain what 09:37:14AM

4 you mean by "novel." 09:37:16AM

5 BY MR. CAVANAUGH: 09:37:18AM

6 Q So you have no understanding of what 09:37:18AM

7 novelty is in a patent context? 09:37:20AM

8 MR. KAPPEL: Objection. 09:37:21AM

9 A As an expert, I'm prepared to give you 09:37:22AM

10 my orthopedic expertise. I'm not -- I don't feel 09:37:25AM

11 that I'm qualified to give you the legal 09:37:30AM

12 definitions that you're saying. 09:37:34AM

13 BY MR. CAVANAUGH: 09:37:37AM

14 Q Do you have an understanding of what 09:37:37AM

15 obviousness would be in the content of a patent 09:37:40AM

16 case? 09:37:42AM

17 A I do. 09:37:42AM

18 Q And what is that understanding? 09:37:44AM

19 A Obvious is what would be obvious to a 09:37:45AM

20 person skilled in the art. We're speaking of 09:37:48AM

21 orthopedics. 09:37:53AM

22 Q And where did you get your 09:37:57AM

23 understanding of obviousness? 09:37:57AM

24 MR. KAPPEL: Objection. On the basis 09:37:59AM

25 of privilege I will caution the witness not 09:38:04AM

1 S. Schoifet

2 to reveal the contents of any communication 09:38:06AM

3 with counsel. 09:38:09AM

4 A Obvious -- the definition of "obvious" 09:38:12AM

5 to me is what is obvious to a person at the time 09:38:21AM

6 frame that this was -- when these patents were 09:38:26AM

7 made as somebody who is skilled in, we said 09:38:30AM

8 orthopedics or biomechanics or things that would 09:38:33AM

9 be pertinent to this patent. 09:38:36AM

10 BY MR. CAVANAUGH: 09:38:38AM

11 Q But what are some of the considerations 09:38:38AM

12 for obviousness in this determination as you're 09:38:39AM

13 describing? 09:38:45AM

14 MR. KAPPEL: Objection. Outside the 09:38:47AM

15 scope of direct. 09:38:50AM

16 A I'm not sure what you mean by "the 09:38:52AM

17 consideration." Can you clarify that question 09:38:53AM

18 for me? 09:38:55AM

19 BY MR. CAVANAUGH: 09:38:56AM

20 Q Sure. You've mentioned about 09:38:56AM

21 obviousness. Do you understand what obviousness 09:38:57AM

22 is in the context of these references? 09:38:59AM

23 A (Nodding affirmatively). 09:39:03AM

24 Q I just want to understand what kind of 09:39:04AM

25 considerations go into that determination, 09:39:09AM

1 S. Schoifet

2 whether or not something is obvious. 09:39:12AM

3 A Well, if you're skilled in the art, if 09:39:13AM

4 it's obvious is what's apparent right there in 09:39:17AM

5 front of you. Is it obvious. 09:39:21AM

6 Q So in this case obviousness and 09:39:32AM

7 apparent are synonyms? 09:39:34AM

8 MR. KAPPEL: Objection. 09:39:36AM

9 Mischaracterizes testimony. 09:39:37AM

10 A It's not correct that they are 09:39:40AM

11 synonyms. It's correct that you mischaracterized 09:39:43AM

12 my testimony. Obvious is obvious. I mean, we 09:39:46AM

13 can read the definition from the dictionary. 09:39:48AM

14 BY MR. CAVANAUGH: 09:40:02AM

15 Q And where did you get your 09:40:02AM

16 understanding of what obviousness is? 09:40:03AM

17 A Probably from all my education. 09:40:06AM

18 Q And in a patent context, where did you 09:40:11AM

19 get your understanding of what obviousness is? 09:40:13AM

20 A I'm not sure what you mean by "in a 09:40:15AM

21 patent context." This discusses what obvious is 09:40:23AM

22 as obvious to a person skilled in this state of 09:40:29AM

23 the art. Is there a special -- special question 09:40:32AM

24 that you have about "obvious"? 09:40:38AM

25 Q I have a lot of them. So when you 09:40:39AM

1 S. Schoifet

2 indicate in your declaration in numerous places 09:40:47AM

3 that references "cannot be combined" and you take 09:40:50AM

4 the position that one skilled in the art wouldn't 09:40:57AM

5 combine them, where did you get develop your 09:41:01AM

6 understanding of whether or not those references 09:41:08AM

7 could be combined? 09:41:12AM

8 MR. KAPPEL: Objection to form. 09:41:13AM

9 A That's a complicated question. Could 09:41:19AM

10 you break that down for me? 09:41:21AM

11 BY MR. CAVANAUGH: 09:41:22AM

12 Q You're familiar with your declaration, 09:41:22AM

13 correct? 09:41:24AM

14 A Absolutely. 09:41:24AM

15 Q Okay. Your declaration identifies 09:41:24AM

16 certain references, correct? 09:41:26AM

17 A Correct. 09:41:27AM

18 Q And they identify certain references -- 09:41:28AM

19 certain references may be combined and in your 09:41:34AM

20 opinion they cannot be combined; is that correct? 09:41:36AM

21 MR. KAPPEL: Objection to form. 09:41:40AM

22 A In this we determined whether or not 09:41:45AM

23 they could be combined to disclose the invention 09:41:49AM

24 and they cannot be combined. It would not 09:41:53AM

25 disclose the invention of -- 09:41:55AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 09:41:57AM

3 Q I'm sorry. I'm speaking over. Please 09:41:57AM

4 continue to answer your question. 09:41:59AM

5 A No. I'm done. 09:42:00AM

6 Q And where did you get that 09:42:02AM

7 understanding that you just articulated? 09:42:03AM

8 A The understanding of whether or not 09:42:07AM

9 that's what I assumed I was hired to render my 09:42:14AM

10 opinion of whether these inventions could be put 09:42:19AM

11 together to disclose what was in claim 1. That 09:42:24AM

12 was the purpose of my expert testimony. 09:42:28AM

13 Q When were you hired for your expert 09:42:36AM

14 opinion? 09:42:49AM

15 MR. KAPPEL: Objection. Foundation. 09:42:50AM

16 A Are you referring to the IPR I assume? 09:42:57AM

17 BY MR. CAVANAUGH: 09:42:59AM

18 Q I'm referring to this IPR, yes. 09:42:59AM

19 A I can't remember exactly. It must have 09:43:01AM

20 been six months ago, maybe less. 09:43:07AM

21 Q Do you know if it was before or after 09:43:18AM

22 February? 09:43:20AM

23 A February of what year? 09:43:23AM

24 Q 2014. 09:43:28AM

25 A I would be guessing. 09:43:31AM

1 S. Schoifet

2 Q And before you were hired on as an 09:43:34AM  
3 expert to make this determination which you just 09:43:36AM  
4 articulated, did Mr. Kappel or his colleagues 09:43:39AM  
5 share with you the references? 09:43:46AM

6 MR. KAPPEL: Objection. 09:43:48AM

7 A By "share" you mean did I receive -- 09:43:51AM  
8 receive them in paper or electronic form? 09:43:55AM

9 BY MR. CAVANAUGH: 09:43:57AM

10 Q That would be correct, yes. 09:43:57AM

11 A Again, could you just repeat the 09:43:58AM  
12 question. Were you asking -- was it the time 09:44:03AM  
13 frame? What was the question again, please? 09:44:05AM

14 Q Before you were hired on as a 09:44:07AM  
15 consultant, did Mr. Kappel or one of his 09:44:09AM  
16 colleagues send to you, share with you, the 09:44:14AM  
17 references? 09:44:17AM

18 MR. KAPPEL: Objection. Form. 09:44:18AM

19 A To the best of my knowledge, I received 09:44:22AM  
20 the references after I was hired. 09:44:23AM

21 BY MR. CAVANAUGH: 09:44:31AM

22 Q So you were hired before you formulated 09:44:31AM  
23 an opinion whether or not these references would 09:44:34AM  
24 be combined in order to render the invention? 09:44:42AM

25 A The confusing part when you use the 09:44:45AM

1 S. Schoifet

2 term "hired" is I was hired as a consultant by 09:44:47AM

3 Bonutti Skeletal before this IPR. 09:44:50AM

4 Q So maybe that's -- so Bonutti Skeletal 09:44:57AM

5 is who you have been -- who you're consulting 09:44:59AM

6 for? 09:45:03AM

7 A Correct. 09:45:03AM

8 Q If I use that term, do you understand 09:45:04AM

9 what I'm saying with Bonutti Skeletal? 09:45:05AM

10 A Correct. 09:45:07AM

11 Q Okay. So with Bonutti Skeletal, as 09:45:09AM

12 Mr. Kappel identified, some other issue with 09:45:15AM

13 Bonutti Skeletal Innovations -- with Bonutti 09:45:17AM

14 Skeletal as you understand it, when did you sign 09:45:19AM

15 on with them as a consultant? 09:45:22AM

16 MR. KAPPEL: Objection. 09:45:25AM

17 A When did I sign on with Bonutti 09:45:26AM

18 Skeletal? It would probably be about within a 09:45:31AM

19 year I believe. 09:45:39AM

20 BY MR. CAVANAUGH: 09:45:40AM

21 Q Within a year from now? 09:45:40AM

22 A I believe that's fairly accurate. I 09:45:44AM

23 don't have the exact date so I'm giving you an 09:45:46AM

24 estimate. 09:45:48AM

25 Q And did someone from Bonutti Skeletal 09:45:50AM

1 S. Schoifet

2 contact you or did Mr. Kappel contact you or one 09:45:52AM  
3 of his colleagues? 09:45:56AM

4 MR. KAPPEL: Objection. 09:45:56AM

5 A With regards to the IPR, I just want to 09:46:01AM  
6 be clear. Are we talking about the IPR? 09:46:04AM

7 BY MR. CAVANAUGH: 09:46:06AM

8 Q Right now we're talking about the 09:46:06AM  
9 consulting arrangement because you wanted to 09:46:07AM  
10 clarify about the IPR and the consulting. So my 09:46:09AM  
11 question is, when did you begin your relationship 09:46:13AM  
12 with Bonutti Skeletal? 09:46:17AM

13 A It's about a year ago, I believe. 09:46:18AM

14 Q About a year ago? 09:46:20AM

15 A (Nodding affirmatively). 09:46:21AM

16 Q And my question follow on was and is, 09:46:22AM  
17 did Mr. Kappel or one of his colleagues contact 09:46:24AM  
18 you or did someone from Bonutti Skeletal contact 09:46:28AM  
19 you? 09:46:31AM

20 MR. KAPPEL: Objection. Form. 09:46:32AM

21 A The Stryker -- and I have to think 09:46:33AM  
22 about this. Stryker was the -- recommended me as 09:46:42AM  
23 an expert because of my history of working with 09:46:46AM  
24 them in minimally invasive procedures from 2003 09:46:53AM  
25 on. 09:46:59AM



1 S. Schoifet

2 BY MR. CAVANAUGH: 09:47:01AM

3 Q And who did Stryker recommend you to? 09:47:01AM

4 MR. KAPPEL: Objection. 09:47:06AM

5 A Stryker would have recommended me to 09:47:09AM

6 Dr. Bonutti. 09:47:12AM

7 BY MR. CAVANAUGH: 09:47:14AM

8 Q So did Dr. Bonutti contact you in order 09:47:14AM

9 to establish a consulting relationship or was 09:47:17AM

10 there someone else that contacted you to 09:47:20AM

11 establish a consulting relationship? 09:47:22AM

12 A Stroock and Stroock was the original 09:47:23AM

13 attorneys. 09:47:25AM

14 Q Okay. So did someone from Stroock and 09:47:26AM

15 Stroock contact you in order to establish a 09:47:29AM

16 consulting relationship between you and Bonutti 09:47:32AM

17 Skeletal? 09:47:37AM

18 A At the time I received phone calls from 09:47:37AM

19 Bonutti Skeletal and Stroock and Stroock to my 09:47:41AM

20 secretary. 09:47:43AM

21 Q Okay.

22 A And I can't with great clarity tell you 09:47:45AM

23 the order of which they occurred. 09:47:51AM

24 Q Do you recall who from Bonutti Skeletal 09:47:56AM

25 gave you a call? 09:48:03AM

1 S. Schoifet

2 A It was Dr. Bonutti. 09:48:04AM

3 Q Do you recall whether you spoke with 09:48:08AM

4 him on the phone? 09:48:10AM

5 A I do. 09:48:10AM

6 Q And did you speak with him on the 09:48:11AM

7 phone? 09:48:12AM

8 A I did. 09:48:13AM

9 Q How long did that conversation go on? 09:48:13AM

10 A Probably about thirty seconds to a 09:48:19AM

11 minute. 09:48:21AM

12 Q And what did you discuss, if you 09:48:21AM

13 recall? 09:48:24AM

14 A He asked if I would be interested in 09:48:24AM

15 being an expert for his case. He informed me 09:48:28AM

16 that my name came up from Stryker and would I be 09:48:33AM

17 willing to do it. 09:48:39AM

18 Q And did you say yes? 09:48:44AM

19 A I did. 09:48:45AM

20 Q Did you say yes to Dr. Bonutti? 09:48:46AM

21 A I did. 09:48:48AM

22 Q Did you establish an hourly rate with 09:48:48AM

23 Dr. Bonutti? 09:48:51AM

24 A I did not. 09:48:52AM

25 Q With whom did you establish an hourly 09:48:55AM

1 S. Schoifet

2 rate? 09:48:58AM

3 A Stroock and Stroock. 09:48:58AM

4 Q So what was the presenting consulting 09:49:07AM

5 issue that Stroock and Stroock provided you? 09:49:11AM

6 A I believe it was the Depui case they 09:49:17AM

7 started with. 09:49:21AM

8 Q Are there other circumstances where 09:49:25AM

9 you're engaged as a consultant to provide 09:50:03AM

10 consulting services for arthro -- why don't we 09:50:10AM

11 say total knee arthroplasty? 09:50:18AM

12 A I am a consultant, orthopedic 09:50:22AM

13 consultant. Let's clarify. Is that what you are 09:50:24AM

14 asking? 09:50:27AM

15 Q Actually, I was more specific to total 09:50:27AM

16 knee arthroplasty, but why don't we say 09:50:30AM

17 orthopedic and then I'll be more specific in a 09:50:32AM

18 moment. 09:50:34AM

19 A Okay. I am a consultant for 09:50:35AM

20 orthopedics in total knee arthroplasty. 09:50:36AM

21 Q With whom do you consult? 09:50:42AM

22 A I consult with Stryker. 09:50:43AM

23 Q Does your consulting with Stryker 09:50:55AM

24 involve evaluation of products? 09:51:00AM

25 A It does. 09:51:07AM

1 S. Schoifet

2 Q Does your consulting with Stryker 09:51:12AM  
3 involve the evaluation of products yet to be 09:51:16AM  
4 launched? 09:51:20AM

5 A It does. 09:51:23AM

6 Q Are there any other companies which you 09:51:33AM  
7 provide consulting services for? 09:51:36AM

8 A There are not. 09:51:41AM

9 Q Do you advertise products on behalf of 09:51:49AM  
10 Stryker? 09:51:53AM

11 A What do you mean by "advertise"? 09:51:54AM

12 Q Do you let your name be used in 09:51:56AM  
13 connection with promotional -- product 09:52:04AM  
14 promotional activity on behalf of Stryker? 09:52:07AM

15 MR. KAPPEL: Objection to form. 09:52:11AM

16 A I'm not sure what you mean by 09:52:11AM  
17 promotional material. 09:52:13AM

18 BY MR. CAVANAUGH: 09:52:15AM

19 Q Have you authored by articles relating 09:52:15AM  
20 to the products that you've evaluated for 09:52:17AM  
21 Stryker? 09:52:22AM

22 A I have not authored any articles with 09:52:24AM  
23 regard to those products. 09:52:26AM

24 Q So you mentioned your involvement with 09:52:50AM  
25 this IPR occurred about -- started about six 09:52:52AM

1 S. Schoifet

2 months ago? 09:52:55AM

3 A That's my best recollection, correct. 09:52:56AM

4 Q And when did you start your meetings -- 09:53:02AM

5 strike that. 09:53:13AM

6 When did Stroock and Stroock -- strike 09:53:15AM

7 that. 09:53:28AM

8 When did you begin meeting with 09:53:28AM

9 Mr. Kappel or his colleagues about this IPR? 09:53:29AM

10 A I would just like to clarify again 09:53:38AM

11 "meeting." You mean did I meet with them 09:53:41AM

12 personally? 09:53:44AM

13 Q Personally, on the phone. 09:53:45AM

14 A Probably shortly after I was going to 09:53:50AM

15 work with the IPR. I can't, again, give you 09:53:55AM

16 exact dates. 09:53:58AM

17 Q But not longer than six months ago? 09:54:01AM

18 A No. It was within that time frame. 09:54:03AM

19 Q Did you meet with the folks at Stroock 09:54:05AM

20 and Stroock about this IPR? 09:54:07AM

21 A I had phone conversations with them. 09:54:11AM

22 Not about this IPR. Let me amend that. I meant 09:54:14AM

23 about the Depui case. 09:54:18AM

24 Q Okay.

25 A Stroock and Stroock was not involved in 09:54:20AM

1 S. Schoifet

2 the IPR. 09:54:31AM

3 Q Okay. Do you recall when you formed 09:54:36AM

4 your opinion about the subject matter of this 09:54:46AM

5 IPR? 09:54:48AM

6 A Time? 09:54:50AM

7 Q Yes. 09:54:53AM

8 A Time frame? 09:54:55AM

9 Q When? 09:54:55AM

10 A After I reviewed the data, the papers 09:54:56AM

11 and the claim. 09:54:59AM

12 MR. KAPPEL: We've been going about an 09:55:24AM

13 hour. Whenever you -- I'm not saying this 09:55:26AM

14 minute, but whenever is a good time to give 09:55:29AM

15 the doctor a few-minute break. 09:55:31AM

16 MR. CAVANAUGH: Sure. Why don't we go 09:55:33AM

17 a few more minutes and then we'll finish up 09:55:35AM

18 this little section. 09:55:37AM

19 BY MR. CAVANAUGH: 09:55:38AM

20 Q You mentioned your rate is \$1,250 an 09:55:39AM

21 hour. And does your compensation at all depend 09:55:50AM

22 on the outcome of this case? 09:55:53AM

23 A No. No. It does not. 09:55:54AM

24 Q Any other companies other than Stryker 09:56:03AM

25 and now Bonutti Skeletal that you do consulting 09:56:07AM

1	S. Schoifet	
2	work for?	09:56:10AM
3	A There are not.	09:56:12AM
4	Q Have you had any involvement with Smith	09:56:31AM
5	& Nephew outside the context of this IPR?	09:56:34AM
6	A You have to clarify "involvement."	09:56:36AM
7	Q Do you know who Smith & Nephew is?	09:56:40AM
8	A I do.	09:56:42AM
9	Q Have you had any meetings with Smith &	09:56:44AM
10	Nephew?	09:56:46AM
11	A No.	09:56:46AM
12	Q Have you used any Smith & Nephew	09:56:48AM
13	products?	09:56:53AM
14	A I'm sure I have.	09:56:54AM
15	Q Do you know which products you have	09:56:58AM
16	used?	09:57:00AM
17	A I couldn't recall.	09:57:00AM
18	Q Do you know if they were in the --	09:57:02AM
19	instead of total knee arthroplasty, I'm just	09:57:07AM
20	going to use TKA. If I use the word "TKA," will	09:57:09AM
21	you understand what I'm saying?	09:57:14AM
22	A Happily.	09:57:15AM
23	Q Okay. So were the products -- do you	09:57:16AM
24	recall whether or not the products were related	09:57:18AM
25	to TKA products?	09:57:20AM

1 S. Schoifet

2 A I've done, including my fellowship, 09:57:22AM

3 probably close to 10,000 joint replacements. So 09:57:26AM

4 in my fellowship I may very well have used Smith 09:57:29AM

5 & Nephew products. 09:57:32AM

6 Q You mentioned 10,000 TKAs? 09:57:35AM

7 A Probably close to that. 09:57:39AM

8 Q If you were to kind of indicate which 09:57:42AM

9 products you used the most of in that 10,000, can 09:57:46AM

10 you do that? 09:57:52AM

11 A I can. 09:57:52AM

12 Q What products do you use the most? 09:57:53AM

13 A Stryker. 09:57:55AM

14 Q And after Stryker? 09:58:02AM

15 A With regards to TKA? 09:58:04AM

16 Q (Nodding affirmatively). 09:58:08AM

17 A I have used Zimmer. 09:58:08AM

18 Q Okay. 09:58:16AM

19 A I have used Depui. I used Osteonics. 09:58:17AM

20 And I believe I used Smith & Nephew in my 09:58:30AM

21 fellowship. 09:58:33AM

22 Q Is it fair to say that you use Stryker 09:58:45AM

23 products more than 75 percent of the time? 09:58:48AM

24 A Correct. 09:58:50AM

25 Q More than 85 percent of the time? 09:58:52AM



1 S. Schoifet

2 A Over my course of my career? In the 09:58:54AM  
3 last year? Could you...? 09:58:59AM

4 Q Sure. But why don't you -- you 09:59:00AM  
5 mentioned 10,000 -- 09:59:01AM

6 A (Nodding affirmatively). 09:59:02AM

7 Q -- so I would imagine that's over the 09:59:02AM  
8 course of your career? 09:59:05AM

9 A Correct. 09:59:05AM

10 Q Let's start there and then I'm going to 09:59:06AM  
11 ask you in the last year. 09:59:08AM

12 A Okay. 09:59:10AM

13 Q So of the 10,000 is it fair to say that 09:59:11AM  
14 75 percent have been Stryker? 09:59:14AM

15 A I helped design a lot of the 09:59:16AM  
16 instruments and such for Stryker and helped 09:59:21AM  
17 consult on the design of the implants and the 09:59:24AM  
18 instrumentation, so I use them preferentially. 09:59:28AM

19 Q So the answer is yes. It is more than 09:59:37AM  
20 75 percent? 09:59:39AM

21 A Yes. 09:59:39AM

22 Q And in the last year, would it be more 09:59:40AM  
23 than 75 percent Stryker products? 09:59:47AM

24 A I use the Stryker products more than 75 09:59:50AM  
25 percent of the time, correct. 09:59:52AM

1 S. Schoifet

2 Q Would it be more than 85 percent over 09:59:54AM  
3 the last year? 09:59:57AM

4 A I preferentially used them because I 09:59:58AM  
5 think it's a better-designed implant and I helped 10:00:02AM  
6 design the instrumentation for the minimally 10:00:05AM  
7 invasive and helped work on the implant design 10:00:09AM  
8 for the uncemented knee. So I like to use those 10:00:11AM  
9 products, yes. 10:00:15AM

10 Q Do you receive any compensation for 10:00:17AM  
11 using Stryker products? 10:00:20AM

12 A I do not. 10:00:21AM

13 Q So is it fair to say that over 90 10:00:22AM  
14 percent of your -- the last year you used Stryker 10:00:38AM  
15 products? 10:00:40AM

16 A For totals. 10:00:40AM

17 Q For totals, total knee? 10:00:42AM

18 A Correct. 10:00:43AM

19 Q And what products would those be that 10:00:55AM  
20 you recommend and use? 10:00:59AM

21 A The Triathlon total knee. 10:01:00AM

22 Q Do you currently use any computer 10:01:14AM  
23 assisted alignment features in connection with 10:01:16AM  
24 the Triathlon? 10:01:23AM

25 A I do not. 10:01:25AM

1 S. Schoifet

2 Q Do you use any computer assisted design 10:01:35AM  
3 features in connection with the Triathlon? 10:01:38AM

4 MR. KAPPEL: Objection. 10:01:40AM

5 A At present? 10:01:43AM

6 BY MR. CAVANAUGH: 10:01:45AM

7 Q The answer is at present now and then 10:01:45AM  
8 I'm going to go back into your 10,000 extra -- 10:01:47AM  
9 your 10,000 TKAs? 10:01:51AM

10 A I don't know. 10:01:51AM

11 Q So in your 10,000 TKAs did you ever use 10:01:56AM  
12 computer assisted alignment techniques? 10:02:02AM

13 A You have to clarify that, what you mean 10:02:08AM  
14 by "computer assisted alignment." 10:02:10AM

15 Q What part of "computer assisted 10:02:14AM  
16 alignment" don't you understand? 10:02:17AM

17 A Do you mean using a -- such as 10:02:18AM  
18 described in Stulberg, for instance? 10:02:21AM

19 Q For instance, yes. That would be an 10:02:23AM  
20 example of one. 10:02:25AM

21 A I have not. 10:02:25AM

22 Q What about one like in Delp? 10:02:27AM

23 A I have not. 10:02:29AM

24 Q So in none of your 10,000 TKAs you've 10:02:31AM  
25 used a computer assisted alignment such as 10:02:34AM

1 S. Schoifet

2 described in Stulberg or Delp? 10:02:38AM

3 A I had been trained in them in labs, but 10:02:41AM

4 I did not deem them necessary to get a 10:02:45AM

5 satisfactory and well aligned total knee. So I 10:02:48AM

6 did not use them in the surgical procedures in 10:02:52AM

7 the approximately 10,000 that I've performed. 10:02:58AM

8 Q Describe for me your training in labs 10:03:05AM

9 regarding computer assisted alignment. 10:03:09AM

10 A Back in 2004 and '05, Stryker would 10:03:14AM

11 have labs. They would have quadriceps sparing 10:03:19AM

12 minimally invasive, and they would also have -- 10:03:26AM

13 (Reporter requested clarification)

14 THE WITNESS: I'm sorry.

15 A Quadriceps sparing total knee 10:03:28AM

16 replacements, and they would concomitantly have a 10:03:28AM

17 computer assisted total knee replacement. 10:03:35AM

18 BY MR. CAVANAUGH: 10:03:46AM

19 Q And you observed those in the lab? 10:03:46AM

20 A I observed them. I tried out the -- 10:03:49AM

21 but I did not use them during an actual 10:03:53AM

22 procedure. 10:04:03AM

23 Q Because if I understood your testimony, 10:04:03AM

24 you could get satisfactory results without them? 10:04:05AM

25 A I could get satisfactory results and 10:04:10AM

1 S. Schoifet

2 alignment without them, correct. 10:04:12AM

3 Q Does Stryker offer any computer 10:04:29AM

4 assisted alignment products? 10:04:32AM

5 MR. KAPPEL: Objection. Foundation. 10:04:42AM

6 A I don't use them so I don't think I 10:04:44AM

7 could give you an answer for that. 10:04:47AM

8 BY MR. CAVANAUGH: 10:04:53AM

9 Q You don't use them, I understand. Do 10:04:53AM

10 you know if any computer assisted alignment 10:05:01AM

11 products are available from Stryker? 10:05:03AM

12 A I would not know that. They were at 10:05:06AM

13 one time when I did the training labs. Whether 10:05:09AM

14 they have them today, I can't give you an answer 10:05:11AM

15 for that. 10:05:14AM

16 Q Can you tell me how long your training 10:05:33AM

17 was in the computer assisted alignment techniques 10:05:35AM

18 at Stryker? 10:05:41AM

19 A Usually the lab would be for -- the 10:05:43AM

20 course would last a day. The lab would be about 10:05:48AM

21 a three-hour portion of the course, and there 10:05:50AM

22 were multiple courses that I had been to when 10:05:53AM

23 they were there. 10:05:56AM

24 Q So multiple courses? About three? 10:06:04AM

25 A I can't -- it's a long time ago. 10:06:09AM

1 S. Schoifet

2 Q But three hours in the lab over 10:06:13AM

3 multiple? 10:06:15AM

4 MR. KAPPEL: Objection. 10:06:18AM

5 Mischaracterizes testimony. 10:06:19AM

6 MR. CAVANAUGH: I'm just trying to 10:06:21AM

7 understand, like, how much experience 10:06:23AM

8 Dr. Schoifet has with computer assisted 10:06:26AM

9 alignment techniques. 10:06:28AM

10 A I do not use computer assisted 10:06:30AM

11 alignment techniques. 10:06:33AM

12 BY MR. CAVANAUGH: 10:06:34AM

13 Q And the last time you were trained in 10:06:34AM

14 them is 2003? 10:06:36AM

15 A I wasn't trained in them. I used them 10:06:44AM

16 and I thought that they were -- gave you no 10:06:47AM

17 advantage overdoing the quadriceps sparing with 10:06:50AM

18 traditional alignment so I didn't use it. I 10:06:53AM

19 think that's what I said originally. 10:06:57AM

20 Q You're sure about the time frame of 10:07:15AM

21 2003 where you were trained in the computer 10:07:17AM

22 assisted -- 10:07:20AM

23 A No. That's when I started working 10:07:21AM

24 doing quadriceps sparing. It was from 2004 on I 10:07:23AM

25 became a consultant with Stryker, and somewhere 10:07:26AM

1 S. Schoifet

2 after that they were having computer labs and 10:07:29AM

3 minimally invasive labs combined, and I don't 10:07:33AM

4 know the exact dates. 10:07:38AM

5 Q Do you remember the products you used 10:07:44AM

6 when you were -- when you observed the computer 10:07:48AM

7 assisted alignment techniques? 10:07:53AM

8 A I do. 10:07:56AM

9 Q More generally related to your 10:08:06AM

10 involvement with this particular IPR, did you 10:08:10AM

11 conduct any searches with regard to documents, 10:08:13AM

12 searches for documents? 10:08:17AM

13 A With regard to this? 10:08:21AM

14 Q (Nodding affirmatively). 10:08:23AM

15 A I did. 10:08:23AM

16 Q Can you describe those searches? 10:08:24AM

17 A I was interested in the geometric total 10:08:26AM

18 knee. 10:08:30AM

19 Q What did you search to satisfy your 10:08:34AM

20 interest in geometric total knee? 10:08:37AM

21 A To my recollection at the time that I 10:08:39AM

22 was entering practice that was deemed a failed 10:08:42AM

23 and archaic total knee. So I wanted to see the 10:08:45AM

24 literature about the outcomes and survivorship of 10:08:50AM

25 that prosthesis to confirm what I had suspected. 10:08:55AM

1 S. Schoifet

2 Q Did you ultimately find some documents? 10:09:01AM

3 A I ultimately found a review from 10:09:05AM

4 Dr. Coventry, 1988. I reviewed the ten-year 10:09:09AM

5 follow-up, found a 69 percent survivorship. 12 10:09:13AM

6 percent complication rate. 10:09:19AM

7 Q Were there other articles that you 10:09:23AM

8 found relating to the geometric total knee? 10:09:25AM

9 A That's the one that came up every time 10:09:29AM

10 in my search. 10:09:31AM

11 Q My question is different. Were there 10:09:33AM

12 other articles that you found regarding the 10:09:35AM

13 geometric total knee? 10:09:40AM

14 A When I did my search there were some 10:09:42AM

15 referring to the original Turner article, but 10:09:45AM

16 those were the two that came up primarily, and I 10:09:49AM

17 can't recall any other articles besides. 10:09:52AM

18 Q Were there other outcomes, articles 10:09:54AM

19 that described outcomes from the geometric total 10:09:58AM

20 knee? 10:10:01AM

21 A None that I was able to find in the 10:10:01AM

22 literature. 10:10:03AM

23 Q Would it surprise you if there are 10:10:05AM

24 other articles that described the outcomes for 10:10:07AM

25 the geometric total knee? 10:10:09AM



1 S. Schoifet

2 A 1988? I don't know if I would be 10:10:10AM  
3 surprised. 10:10:21AM

4 Q So you would expect that there would be 10:10:21AM  
5 other articles or there would be multiple 10:10:23AM  
6 articles about outcomes on a particular 10:10:25AM  
7 procedure, correct? 10:10:27AM

8 MR. KAPPEL: Objection. Form. 10:10:28AM

9 A You would have to know how many of 10:10:33AM  
10 those knees were done and who was doing them. I 10:10:34AM  
11 wouldn't be able to answer that question. 10:10:38AM

12 BY MR. CAVANAUGH: 10:10:40AM

13 Q Did you search for articles where the 10:10:40AM  
14 surgery was described as successful? 10:10:44AM

15 A My search said geometric total knee. 10:10:47AM

16 Q So in your estimation, would that turn 10:10:55AM  
17 up articles that indicate whether it was 10:10:57AM  
18 successful or whether -- and whether it was 10:11:01AM  
19 unsuccessful? 10:11:03AM

20 A It would turn up all articles regarding 10:11:03AM  
21 geometric total knee that are in the midline 10:11:06AM  
22 database. 10:11:09AM

23 Q But you don't know whether there are 10:11:20AM  
24 other articles that may have said that the 10:11:22AM  
25 geometric total knee was successful? 10:11:25AM

1 S. Schoifet

2 MR. KAPPEL: Objection. 10:11:27AM

3 A The geometric total knee we're talking 10:11:30AM

4 about, we're looking to it in how it pertains to 10:11:32AM

5 the 2000, 2003 time frame. So I was interested 10:11:35AM

6 in long-term survivorship of it, and that was the 10:11:38AM

7 article that came up. 10:11:42AM

8 BY MR. CAVANAUGH: 10:11:54AM

9 Q We'll probably explore that a little 10:11:54AM

10 bit more later on today. 10:11:56AM

11 Did you search for any devices in 10:11:58AM

12 connection with your work on this case? 10:12:02AM

13 A I did not search for any devices. 10:12:08AM

14 Q In your report you talk about a Scorpio 10:12:24AM

15 device which you had taken some pictures of, done 10:13:04AM

16 some analysis of. 10:13:09AM

17 How did you get that device? 10:13:10AM

18 A I used that device when I started doing 10:13:13AM

19 Scorpio knees, and I asked the Stryker rep to get 10:13:15AM

20 me a Scorpio anterior referencing guide. 10:13:20AM

21 Q So that's not a search for a device? 10:13:25AM

22 A I asked my rep to get me a device I 10:13:28AM

23 already knew existed, just to be clear. 10:13:31AM

24 Q Were there any other devices which you 10:13:38AM

25 reviewed or requested in connection with this 10:13:41AM

1 S. Schoifet

2 IPR? 10:13:49AM

3 A No. 10:13:54AM

4 Q And just so I'm clear on what your last 10:13:58AM

5 answer was, your Stryker rep gave you the device 10:14:00AM

6 that your expert -- that your declaration 10:14:09AM

7 describes? 10:14:12AM

8 A The declaration described the device 10:14:13AM

9 that I had used previously in 2003 and I asked 10:14:17AM

10 him to obtain one for me, that is correct. 10:14:20AM

11 Q Do you know if it's the same device 10:14:24AM

12 that you used in 2003 or a different device than 10:14:26AM

13 the one you used in 2003? 10:14:31AM

14 A You would expect from Stryker from 10:14:32AM

15 using that set that it would be an identical 10:14:35AM

16 device to the one I used. It might not be the 10:14:38AM

17 same device, but it should be identical. 10:14:41AM

18 Q And did you do anything to confirm that 10:14:48AM

19 it was identical with the device that you would 10:14:51AM

20 have used in 2003? 10:14:52AM

21 A More than looking at it, recognize it 10:14:54AM

22 for what it was and compare it to the pictures 10:14:56AM

23 that were in the manual, no. 10:14:59AM

24 Q But you did look at it and compare it 10:15:02AM

25 to the pictures in the manual and you satisfied 10:15:03AM

1 S. Schoifet

2 yourself that it was identical to the one that 10:15:05AM

3 recall using in 2003? 10:15:10AM

4 A The one that I recall using in 2003, 10:15:12AM

5 correct. 10:15:16AM

6 Q Did you identify any differences at 10:15:16AM

7 all? 10:15:18AM

8 A I did not. 10:15:18AM

9 MR. KAPPEL: Mr. Cavanaugh, we're now I 10:15:24AM

10 think at about an hour and fifteen. 10:15:26AM

11 MR. CAVANAUGH: I think it's a great 10:15:28AM

12 time for a break. 10:15:29AM

13 THE VIDEOGRAPHER: The time is 10:16 10:15:30AM

14 a.m. and we are going off the record. 10:15:32AM

15 (Recess) 10:15:55AM

16 THE VIDEOGRAPHER: The time is 10:27 10:26:23AM

17 a.m. and we are back on the record. 10:26:54AM

18 BY MR. CAVANAUGH: 10:26:55AM

19 Q Dr. Schoifet -- 10:26:56AM

20 A Schoifet. I accept almost anything. 10:27:02AM

21 Q I apologize. 10:27:07AM

22 A Quite all right. 10:27:08AM

23 Q Dr. Schoifet, we were talking about 10:27:09AM

24 designing TKA systems and you indicated that you 10:27:12AM

25 had some experience in designing TKA systems; is 10:27:15AM

1 S. Schoifet

2 that correct? 10:27:20AM

3 MR. KAPPEL: Objection. 10:27:20AM

4 BY MR. CAVANAUGH: 10:27:23AM

5 Q This is what experience -- let me ask 10:27:24AM

6 the question differently then if you're 10:27:25AM

7 hesitating. What experience do you have in 10:27:27AM

8 designing TKA systems? 10:27:29AM

9 A I helped design the Scorpio minimally 10:27:30AM

10 invasive instrument set, anterior referencing 10:27:34AM

11 instrument set, the Triathlon anterior 10:27:38AM

12 referencing minimally invasive instrument set, 10:27:41AM

13 and I've done design work with Stryker for the 10:27:46AM

14 Tritanium Triathlon uncemented total knee. 10:27:50AM

15 Q About when did the Scorpio minimally 10:28:00AM

16 invasive set be designed? 10:28:07AM

17 A I don't know when it was designed. I 10:28:09AM

18 became aware of it in 2003 after I observed 10:28:15AM

19 Dr. Bonutti use it. 10:28:19AM

20 Q I'm sorry. I misunderstood. I thought 10:28:25AM

21 you said you helped design the Scorpio minimally 10:28:27AM

22 invasive system? 10:28:32AM

23 A That's correct. But not the -- I made 10:28:32AM

24 additions. That may be more clarity. I made 10:28:37AM

25 additions to the set as I started using it for 10:28:40AM

1 S. Schoifet

2 Stryker. 10:28:43AM

3 Q What kind of additions did you make to 10:28:44AM

4 the set? 10:28:46AM

5 A I designed a protective plate for the 10:28:47AM

6 patella when you don't invert the patella so you 10:28:52AM

7 don't damage the cut surface. 10:28:56AM

8 Q Anything else? 10:28:59AM

9 A For that set, not that I recall. 10:29:02AM

10 Q And about when did you design the 10:29:03AM

11 protective plate for preserving the patella? 10:29:05AM

12 A Probably around 2004. 10:29:08AM

13 Q Was that your first design experience 10:29:18AM

14 with TKA systems? 10:29:20AM

15 A Yes. 10:29:33AM

16 Q And what did you do in designing the 10:29:34AM

17 Triathlon system? 10:29:36AM

18 A I worked with the engineers to modify 10:29:36AM

19 and make corrections that would simplify and 10:29:41AM

20 better secure the blocks. I was involved in 10:29:44AM

21 trying them, make sure they were functional. 10:29:50AM

22 Q About when did you do that? Oh, I'm 10:29:54AM

23 sorry -- 10:29:56AM

24 A I also helped write the procedure 10:29:57AM

25 manual. That's all. I was a contributor in the 10:30:00AM

1 S. Schoifet

2 procedure manual. 10:30:03AM

3 Q The procedure manual, is that also 10:30:04AM

4 known as a technique guide or is that different? 10:30:07AM

5 MR. KAPPEL: Objection. 10:30:10AM

6 A I would consider them close. They may 10:30:10AM

7 use different terms for them. 10:30:20AM

8 BY MR. CAVANAUGH: 10:30:22AM

9 Q And so what does a procedure guide do? 10:30:22AM

10 A In this case with the Triathlon, which 10:30:24AM

11 is the one I'm familiar with, it instructs the 10:30:27AM

12 surgeons on how to properly use the instruments 10:30:30AM

13 that were designed. It may also instruct them in 10:30:33AM

14 techniques for carrying out those procedures. 10:30:36AM

15 Q And a surgeon would typically look to 10:30:41AM

16 the procedure to understand what he or she should 10:30:44AM

17 be doing in the procedure? 10:30:49AM

18 MR. KAPPEL: Objection. Outside the 10:30:50AM

19 scope of direct. 10:30:52AM

20 A The procedure guide would be to -- if 10:30:53AM

21 you were going to be using new instruments to 10:30:58AM

22 familiarize in proper orientation, a way to hook 10:31:00AM

23 them together and how to use them. 10:31:04AM

24 BY MR. CAVANAUGH: 10:31:14AM

25 Q Are you familiar with the term surgical 10:31:14AM

1 S. Schoifet

2 technique guides? 10:31:17AM

3 A I am. 10:31:19AM

4 Q What does that term mean to you? 10:31:19AM

5 A In that case it would involve the -- 10:31:25AM

6 you know, the technique for performing the 10:31:29AM

7 surgery. In the Stryker mode, the guide mostly I 10:31:33AM

8 recall I was mostly involved with the 10:31:41AM

9 instrumentation. 10:31:43AM

10 Q You also mentioned the Tritanium. What 10:31:56AM

11 design work did you do with the -- strike that. 10:31:59AM

12 For the Triathlon can you help me 10:32:01AM

13 understand when you did your design work, design 10:32:06AM

14 contributions to the Triathlon? 10:32:09AM

15 A I would have to know the release date 10:32:11AM

16 of the instrumentation, but it was in the year 10:32:13AM

17 before the release of the new instrumentation I 10:32:17AM

18 was assisting most. 10:32:19AM

19 Q Was it after 2004? 10:32:21AM

20 A It was after 2004. 10:32:22AM

21 Q And the Tritanium, what design work did 10:32:29AM

22 you do with the Tritanium? 10:32:33AM

23 A Tritanium is Triathlon's new released 10:32:35AM

24 uncemented tibular base plate for the Triathlon 10:32:39AM

25 system. 10:32:43AM



1 S. Schoifet

2 Q And what design work did you do with 10:32:44AM  
3 that? 10:32:47AM

4 A I helped them actually with -- I was 10:32:47AM  
5 given various different models for securing the 10:32:52AM  
6 fixation, what a surgeon would find gives the 10:32:55AM  
7 most secure fit. I was involved with trying out 10:33:01AM  
8 different models of it. That's probably a 10:33:05AM  
9 majority of what I assisted them with. 10:33:12AM

10 Q Would it be safe to say that -- sorry. 10:33:23AM  
11 Strike that. 10:33:27AM

12 Would it be accurate to say that with 10:33:27AM  
13 the Tritanium, you evaluated the models that 10:33:31AM  
14 other people came up with? 10:33:34AM

15 MR. KAPPEL: Objection. Outside the 10:33:37AM  
16 scope of direct. 10:33:38AM

17 A No. I helped come up with some of the 10:33:39AM  
18 models. 10:33:43AM

19 BY MR. CAVANAUGH: 10:33:45AM

20 Q Again, do you recall around which year 10:33:45AM  
21 you worked with the Tritanium system? 10:33:50AM

22 A I don't recall how long it was in 10:33:56AM  
23 development for. It's probably been in 10:33:59AM  
24 development for two to three years and just 10:34:01AM  
25 recently released. So somewhere in that time 10:34:04AM

1 S. Schoifet

2 frame. 10:34:07AM

3 Q After 2010? 10:34:07AM

4 A It could have been around that time. 10:34:09AM

5 Again, I'm going to preface that I'm not 100 10:34:15AM

6 percent sure. They'll start design work 10:34:18AM

7 sometimes long before that release. 10:34:20AM

8 Q But none of the design experience that 10:34:22AM

9 you've described is before 2004; is that correct? 10:34:25AM

10 A That's correct. 10:34:29AM

11 Q If I use the term intramedullary 10:34:43AM

12 alignment rod, would you understand what I mean 10:34:47AM

13 -- what I'm saying? 10:34:49AM

14 A I only chuckle because I don't think a 10:34:49AM

15 single lawyer has pronounced that properly. It's 10:34:52AM

16 okay. 10:34:56AM

17 Q How would you pronounce it?

18 A It's okay. Intramedullary. 10:34:57AM

19 Q Medullary? 10:34:58AM

20 A Yes.

21 Q If I use the word IM alignment rod, 10:34:58AM

22 would that be sufficient? 10:35:00AM

23 A I would be happy with that. 10:35:01AM

24 Q Okay. And for an extra medullary 10:35:03AM

25 alignment rod I'm going to use the term EM. Is 10:35:07AM

1 S. Schoifet

2 that -- 10:35:11AM

3 A EM would be fine. 10:35:12AM

4 Q So you'll understand when I use IM, I 10:35:14AM

5 mean intramedullary alignment rod -- 10:35:18AM

6 A Yes.

7 Q -- and EM I mean extramedullary 10:35:21AM

8 alignment rod? 10:35:24AM

9 Following up on your computer assisted 10:35:33AM

10 TKA experience with Stryker, that experience 10:35:37AM

11 happened after 2004, correct? 10:35:43AM

12 A I'll preface that by my experience with 10:35:46AM

13 it would be seeing it in the lab, yes. 10:35:51AM

14 Q But you never used a computer assisted 10:35:57AM

15 TKA in an operation? 10:36:02AM

16 A I didn't feel at the time and still 10:36:05AM

17 today that computer assisted added much to the 10:36:08AM

18 technique or outcomes, so I have not. 10:36:12AM

19 Q Have you ever evaluated computer 10:36:21AM

20 assisted TKA systems? 10:36:25AM

21 A Except for the time I used it in the 10:36:27AM

22 lab, no. 10:36:32AM

23 Q Are you aware whether companies have 10:36:32AM

24 computer assisted TKA systems currently? 10:36:38AM

25 A I would not know the answer to that 10:36:41AM

1 S. Schoifet

2 since I don't use them. 10:36:45AM

3 Q With your TKA operations did you 10:36:49AM

4 typically use an IM alignment rod? 10:36:56AM

5 MR. KAPPEL: Objection. 10:37:00AM

6 A It would be part of what I use. 10:37:00AM

7 BY MR. CAVANAUGH: 10:37:02AM

8 Q And with your TKA systems that you use, 10:37:02AM

9 do you use an EM alignment rod? 10:37:04AM

10 A It would be part of what I use as well. 10:37:06AM

11 Q Is it correct to say that in a given 10:37:11AM

12 surgery, a TKA, you would either have an IM rod 10:37:15AM

13 or an EM rod or are there sometimes where you 10:37:21AM

14 would use both? 10:37:24AM

15 MR. KAPPEL: Objection. Form. 10:37:25AM

16 A In the way I do a knee replacement, we 10:37:27AM

17 would use both. 10:37:33AM

18 BY MR. CAVANAUGH: 10:37:38AM

19 Q Are there others that do not use both? 10:37:38AM

20 A You would have to ask the others. 10:37:41AM

21 Q Okay. And why do you use both? 10:37:43AM

22 A There's different reasons. You can use 10:37:46AM

23 them for alignment, and you can use them for 10:37:50AM

24 fixation. 10:37:52AM

25 Q Do you use one for alignment and the 10:37:57AM

1 S. Schoifet

2 other for fixation? 10:37:59AM

3 A They're not independent of each other. 10:38:01AM

4 Q So you use both for alignment and 10:38:04AM

5 fixation? 10:38:07AM

6 A They both offer that, yes. 10:38:07AM

7 Q So both the IM rod and the EM rod offer 10:38:09AM

8 both alignment and fixation? 10:38:12AM

9 A Correct. 10:38:13AM

10 Q And would that be equally true in the 10:38:18AM

11 2000 to 2003 time frame? 10:38:22AM

12 A That would be equally true. 10:38:25AM

13 Q Have there been developments in IM rods 10:38:32AM

14 since 2000 to 2003? 10:38:37AM

15 MR. KAPPEL: Objection to form. 10:38:40AM

16 A There is a current iteration called the 10:38:41AM

17 flexible IM rod that's not rigid that Stryker 10:38:49AM

18 offers. 10:38:54AM

19 BY MR. CAVANAUGH: 10:38:54AM

20 Q So aside from the flexibility, the IM 10:38:54AM

21 rod is pretty much the same as it was? 10:38:57AM

22 A Correct. 10:38:59AM

23 Q What about the EM rod, have there been 10:39:00AM

24 developments in the EM rod? 10:39:03AM

25 MR. KAPPEL: Objection. Form. 10:39:04AM

1 S. Schoifet

2 A I don't know if there were 10:39:10AM

3 developments, but the one I've used has remained 10:39:11AM

4 relatively similar. 10:39:17AM

5 BY MR. CAVANAUGH: 10:39:20AM

6 Q When you say "relatively similar," you 10:39:20AM

7 know, what are changes that you would identify? 10:39:23AM

8 A Each extra medullary rod has an ability 10:39:25AM

9 to adjust it in multiple planes and the mechanism 10:39:28AM

10 of adjustment and how you fix the adjustment may 10:39:31AM

11 have been altered. 10:39:34AM

12 Q So the function of the EM rod is 10:39:39AM

13 largely the same and the particular mechanism 10:39:41AM

14 that's used to adjust it has changed over time? 10:39:45AM

15 MR. KAPPEL: Objection to form. 10:39:53AM

16 A They're pretty much the same. It may 10:39:54AM

17 be, you know, rather it has a screw to hold the 10:40:06AM

18 adjustment or it snaps in notches. So they 10:40:08AM

19 perform the same function pretty much. 10:40:16AM

20 BY MR. CAVANAUGH: 10:40:22AM

21 Q So the EM rods from 2000 to 2003 are 10:40:22AM

22 pretty much the same as the EM rods that you use 10:40:26AM

23 today? 10:40:34AM

24 A The rods are the same. The devices 10:40:34AM

25 holding them may alter. 10:40:37AM

1 S. Schoifet

2 Q And you make the distinction between 10:40:44AM

3 the devices holding the rods. What do you mean 10:40:47AM

4 by the "devices holding the rods"? 10:40:49AM

5 A Well, the rod is the rod. There may be 10:40:51AM

6 a peg at the top to hold it to the tibia. 10:40:54AM

7 There's usually an ankle clamp that holds it to 10:40:57AM

8 the ankle, and they may vary. 10:41:01AM

9 Q Is that a characteristic of EM rods 10:41:03AM

10 that there is kind of a place to hold it on -- 10:41:06AM

11 you use the tibia example, the top of the tibia 10:41:12AM

12 and on the bottom on the ankle. Is that a 10:41:15AM

13 characteristic of an EM rod is that there are two 10:41:21AM

14 locations where it is -- where it's held in 10:41:24AM

15 place? 10:41:27AM

16 MR. KAPPEL: Objection to form. 10:41:27AM

17 A Typically in the what I'm -- my 10:41:28AM

18 knowledge of the designs I've used, that is 10:41:35AM

19 correct.

20 BY MR. CAVANAUGH: 10:42:54AM

21 Q I would like you to turn to paragraph 10:42:54AM

22 10 of your declaration. You can review it 10:42:56AM

23 silently. 10:43:03AM

24 A (Witness reviewing document). 10:43:05AM

25 Yes. 10:43:09AM

1 S. Schoifet

2 Q And in this paragraph you describe that 10:43:10AM  
3 the Scorpio anterior resection system includes 10:43:21AM  
4 three parts. The A/R anterior skim cutting 10:43:24AM  
5 guide, the alignment cutting guide, and an IM 10:43:29AM  
6 rod; is that correct? 10:43:32AM

7 A Correct. 10:43:32AM

8 Q And you rely on photographs that you 10:43:34AM  
9 provided in your declaration which have been 10:43:39AM  
10 marked as Exhibit 2005, and I would like to give 10:43:44AM  
11 those to you now. 10:43:47AM

12 A Is that a question? 10:43:48AM

13 Q I'm giving you some exhibits. 10:43:49AM

14 A You said I relied on the photographs, 10:43:52AM  
15 is what you said, that you're giving me which 10:43:54AM  
16 would be a mischaracterization. I had the actual 10:43:59AM  
17 guide. 10:44:02AM

18 Q Okay. And you took some pictures of 10:44:02AM  
19 the guide, didn't you? 10:44:04AM

20 A I did not take the pictures. 10:44:05AM

21 Q Oh, you didn't. Okay. Who took the 10:44:07AM  
22 pictures? 10:44:09AM

23 A I believe the attorneys took the 10:44:09AM  
24 pictures. 10:44:10AM

25 Q The attorneys took the pictures. Okay. 10:44:10AM



1 S. Schoifet

2 A I used the guide. 10:44:12AM

3 Q You used the guide. When did you use 10:44:13AM

4 the guide? 10:44:16AM

5 A Well, I used the guide when I looked at 10:44:16AM

6 it and wrote the declaration, and I used the 10:44:19AM

7 guide in 2003. 10:44:22AM

8 Q But not the same guide? 10:44:22AM

9 A I would say it's an identical guide, 10:44:24AM

10 but I can't say it was the guide I used in 2003. 10:44:27AM

11 Q Okay.

12 A That would be a stretch. 10:44:30AM

13 Q Okay. And did you instruct the 10:44:31AM

14 attorneys which pictures to take? 10:44:34AM

15 A I did not instruct the attorneys. 10:44:37AM

16 Q And did you tell them what pictures 10:44:42AM

17 would be useful for your opinion? 10:44:44AM

18 A I did not. 10:44:46AM

19 MR. KAPPEL: Objection. 10:44:46AM

20 A That would be a discussion I had with 10:44:46AM

21 the attorneys so it would be privileged 10:44:51AM

22 information, would it not? 10:44:54AM

23 BY MR. CAVANAUGH: 10:44:57AM

24 Q I don't believe the conversations that 10:44:57AM

25 you have with your -- with Bonutti Skeletal's 10:45:00AM

10:45:03AM

10:45:05AM

10:45:06AM

10:45:09AM

10:45:11AM

10:45:13AM

10:45:15AM

10:45:18AM

10:45:19AM

10:45:19AM

10:45:21AM

10:45:23AM

10:45:23AM

10:45:24AM

10:45:28AM

10:45:28AM

10:45:31AM

10:45:32AM

10:45:35AM

10:45:37AM

10:46:08AM

10:46:12AM

10:46:15AM

25 picture, but I don't see that in my declaration,

1 S. Schoifet

2 so -- that one. I think it's in there somewhere. 10:46:18AM

3 It's not in this paper I have in front of me, 10:46:22AM

4 these five pictures. 10:46:25AM

5 Q Do you recall seeing that picture 10:46:25AM

6 before? 10:46:26AM

7 A I do recall seeing that picture. 10:46:27AM

8 Q And about when did you see these 10:46:31AM

9 pictures for the first time? 10:46:34AM

10 A Well, I saw the actual guide -- 10:46:37AM

11 Q My question is different, Dr. Schoifet. 10:46:39AM

12 When did you see these pictures for the first 10:46:42AM

13 time? 10:46:44AM

14 A I can't recall the exact date I 10:46:44AM

15 received the pictures. 10:46:46AM

16 Q Do you recall if it was before or after 10:46:56AM

17 you signed your declaration? 10:46:58AM

18 A I do. 10:47:02AM

19 Q And...? 10:47:02AM

20 A It was before. 10:47:03AM

21 Q Okay. Now, you've mentioned a couple 10:47:08AM

22 times that you've reviewed a Scorpio device; is 10:47:10AM

23 that correct? 10:47:15AM

24 A When you say "reviewed a Scorpio 10:47:15AM

25 device," that doesn't have a meaning to me 10:47:22AM

1 S. Schoifet

2 orthopedically. 10:47:24AM

3 Q Okay. When you say you saw the Scorpio 10:47:25AM

4 device, like, you characterize to me how you 10:47:27AM

5 looked at it. 10:47:29AM

6 Did you have a device in your hands? 10:47:32AM

7 A I had a device in my hands. 10:47:34AM

8 Q Okay. And what did you do with that 10:47:36AM

9 device? 10:47:38AM

10 A I examined it. 10:47:38AM

11 Q What did you do to examine the device? 10:47:39AM

12 A I wanted to see that it was the same 10:47:40AM

13 device as the one depicted which it was, and I 10:47:43AM

14 wanted to look at the cutting guide surfaces to 10:47:47AM

15 ensure that there was a single cutting guide 10:47:51AM

16 surface on the bone side which it had, and to 10:47:55AM

17 review my knowledge of that device. 10:47:57AM

18 Q But that device is not an exhibit in 10:48:06AM

19 your report, is it? 10:48:09AM

20 A By "exhibit," you mean did we attach 10:48:11AM

21 the actual device to my piece of paper? I'm not 10:48:20AM

22 sure what you mean. 10:48:23AM

23 Q You don't know what an exhibit is? 10:48:23AM

24 A I do know what an exhibit is. 10:48:25AM

25 Q Okay. So --

1 S. Schoifet

2 A This is -- to me this is the device, so 10:48:27AM  
3 that's why I'm confused. 10:48:29AM

4 Q Well, you were making a distinction 10:48:30AM  
5 between the device itself and the pictures, 10:48:33AM  
6 right? 10:48:36AM

7 MR. KAPPEL: Objection to form. 10:48:36AM

8 A I don't recall making a distinction. 10:48:37AM  
9 These are pictures of the device I held in my 10:48:38AM  
10 hand. 10:48:40AM

11 BY MR. CAVANAUGH: 10:48:40AM

12 Q Okay. And the pictures are an exhibit, 10:48:40AM  
13 right? 10:48:43AM

14 A Understood. 10:48:43AM

15 Q The device is not an exhibit, correct? 10:48:45AM

16 MR. KAPPEL: Objection. Form. 10:48:47AM

17 A Right. So my -- so we are -- have 10:48:48AM  
18 these pictures that are a representation of the 10:48:53AM  
19 device, right. 10:48:55AM

20 BY MR. CAVANAUGH: 10:48:56AM

21 Q That your attorneys took, correct? 10:48:56AM

22 A Correct. Of the device that I had, 10:48:58AM  
23 correct. 10:49:11AM

24 Q And you convinced yourself that this 10:49:11AM  
25 was the Scorpio device that you had used in -- 10:49:14AM

1 S. Schoifet

2 earlier? 10:49:19AM

3 MR. KAPPEL: Objection to form. 10:49:19AM

4 A I didn't convince myself. It was the 10:49:20AM

5 device that I used identical to it. 10:49:24AM

6 BY MR. CAVANAUGH: 10:49:30AM

7 Q If you turn to the second page of the 10:49:30AM

8 exhibit, unfortunately they're not numbered which 10:49:33AM

9 by the rules they should be numbered, but on the 10:49:36AM

10 second page of the exhibit -- 10:49:38AM

11 A Can I see yours so we make sure we're 10:49:40AM

12 talking about the same one? 10:49:42AM

13 Q (Indicating). 10:49:44AM

14 A That's fine. 10:49:45AM

15 Q It says, "A/R Anterior Skim Cutting 10:49:49AM

16 Guide." What does that mean? 10:49:51AM

17 A It would be for the anterior 10:49:53AM

18 referencing set. 10:49:55AM

19 Q So what does that anterior referencing? 10:49:57AM

20 A Surgically it's how you reference your 10:50:02AM

21 cut on the femur, whether you use the posterior 10:50:04AM

22 condyles or the anterior surface of the femur. 10:50:07AM

23 Q Okay. And that helps a surgeon know 10:50:11AM

24 what he should be doing with the device? 10:50:15AM

25 A No. 10:50:17AM

1 S. Schoifet

2 Q No? 10:50:20AM

3 A No. It tells them what the device is. 10:50:20AM

4 It's an anterior referencing cutting guide. 10:50:24AM

5 Q And there's also a notation at the 10:50:26AM

6 bottom of a picture, Dr. Ong; is that correct? 10:50:28AM

7 Do you see that? 10:50:33AM

8 A That's correct. 10:50:33AM

9 Q Okay. And who is Dr. Ong? 10:50:34AM

10 A Dr. Ong is a surgeon, an orthopedic 10:50:36AM

11 surgeon. 10:50:40AM

12 Q Do you know of Dr. Ong? 10:50:42AM

13 A I know of Dr. Ong. 10:50:44AM

14 Q Okay. And do you know if this is -- 10:50:45AM

15 why would his name be on this device? 10:50:48AM

16 MR. KAPPEL: Objection to form. 10:50:52AM

17 A I'm not sure I can answer that question 10:50:56AM

18 of why it would be on his device -- this guy's 10:50:57AM

19 device. 10:51:01AM

20 BY MR. CAVANAUGH: 10:51:01AM

21 Q You testified earlier that you got this 10:51:01AM

22 device from your Scorpio rep? 10:51:03AM

23 A (Nodding affirmatively). 10:51:05AM

24 Q And it has another doctor's name on it? 10:51:06AM

25 A (Nodding affirmatively). 10:51:08AM

1 S. Schoifet

2 Q And just I'm curious about why another 10:51:09AM  
3 doctor's name would be on it. 10:51:11AM

4 A I can speculate. I know that we -- 10:51:12AM  
5 when we were at Memorial Hospital, we would stamp 10:51:15AM  
6 that -- if we had a device in our possession for 10:51:17AM  
7 a period of time and we would get occasional 10:51:20AM  
8 loaner devices that would be similar, you might 10:51:23AM  
9 stamp your name on the ones that are supposed to 10:51:25AM  
10 remain in your hospital and the ones that should 10:51:29AM  
11 be sent out with the loaner sets. And at some 10:51:31AM  
12 point this may have underwent that. That's being 10:51:35AM  
13 speculative. It's a possibility. 10:51:38AM

14 Q So can we call this Dr. Ong device? 10:51:40AM

15 A No. 10:51:42AM

16 Q Why not? 10:51:42AM

17 A It's an anterior referencing cutting 10:51:43AM  
18 guide. 10:51:48AM

19 Q If the -- Dr. Ong obviously used this 10:51:48AM  
20 device? 10:51:52AM

21 MR. KAPPEL: Objection. 10:51:52AM

22 BY MR. CAVANAUGH: 10:51:52AM

23 Q It doesn't say Dr. Schoifet, does it? 10:51:52AM

24 A I don't recall. I can't testify 10:51:55AM  
25 whether Dr. Ong actually used the device. It has 10:51:56AM



1 S. Schoifet

2 his name on it. If the name Memorial Hospital 10:51:59AM

3 was on the device, they wouldn't use it either. 10:52:05AM

4 Q Do you know if this is a standard 10:52:23AM

5 Scorpio A/R guide? 10:52:26AM

6 A I have to know what you mean by 10:52:27AM

7 "standard." 10:52:29AM

8 Q You indicated that you confirmed that 10:52:31AM

9 it was something identical to what you had 10:52:33AM

10 considered before -- by what you had used before? 10:52:36AM

11 A Correct. 10:52:39AM

12 Q And I just -- is it a standard device? 10:52:39AM

13 Did you use a standard device before, do you 10:52:44AM

14 recall? 10:52:46AM

15 A This is -- it's a non MIS anterior 10:52:46AM

16 referencing cutting guide. 10:52:51AM

17 Q If you look at page 7 of this 10:53:08AM

18 exhibit -- 10:53:10AM

19 A I'll just confirm pictures with you 10:53:16AM

20 again if you don't mind. 10:53:18AM

21 Q This is page 7. I'm going to need 10:53:20AM

22 Exhibit 1009, the Scorpio guide. 10:53:28AM

23 I'm going to give you what's been 10:53:43AM

24 marked already as Smith & Nephew Exhibit 1009. 10:53:45AM

25 We'll be talking a little bit about it throughout 10:53:48AM

1 S. Schoifet

2 the rest of the day. If you need take a moment 10:53:51AM

3 to familiarize yourself with it, please do so. 10:54:05AM

4 A (Witness reviewing document). 10:54:07AM

5 Q Can you go to page 9 of the exhibit you 10:55:58AM

6 just went through, the Scorpio guide. And I'd 10:56:02AM

7 like you to compare the illustrations on page 9 10:56:07AM

8 with page 7 of the pictures that your attorneys 10:56:11AM

9 took of the device that you reviewed which is 10:56:15AM

10 marked as Exhibit 2005 I think. 10:56:18AM

11 A Let me make sure we have the same 10:56:29AM

12 picture. Is that it, confirming? 10:56:32AM

13 Q (Nodding affirmatively). 10:56:33AM

14 A All right.

15 Q Now, there are some differences in the 10:56:36AM

16 picture that your attorneys took and the device 10:56:37AM

17 depicted on page 9, aren't there? 10:56:40AM

18 A There's additional pieces in figure -- 10:56:42AM

19 we're talking figure 14, correct? 10:56:52AM

20 Q Figure 14 and 15. 10:56:54AM

21 A And 15. There's additional pieces that 10:56:56AM

22 are attached to it, correct. 10:56:58AM

23 Q There are other differences too, aren't 10:56:58AM

24 there? 10:57:01AM

25 MR. KAPPEL: Objection to form. 10:57:01AM

1 S. Schoifet

2 A Yes. 10:57:02AM

3 BY MR. CAVANAUGH: 10:57:18AM

4 Q Okay. And what are the differences you 10:57:18AM  
5 see? 10:57:22AM

6 A The pins in this case are in the device 10:57:22AM  
7 that fix it in place, and the knob is slightly 10:57:27AM  
8 different in shape. 10:57:33AM

9 Q So the pins and the knobs are 10:57:34AM  
10 different? 10:57:35AM

11 MR. KAPPEL: Objection. 10:57:36AM

12 Mischaracterizes testimony. 10:57:37AM

13 BY MR. CAVANAUGH: 10:57:39AM

14 Q I'm sorry. How would you characterize 10:57:39AM  
15 the differences, Mr. Schoifet? 10:57:40AM

16 A There's a difference in form. They 10:57:43AM  
17 perform the same function. There are pins 10:57:45AM  
18 included in here in this picture that were not 10:57:48AM  
19 included -- they look different than the pins 10:57:49AM  
20 that were included in figure 14. 10:57:51AM

21 Q Do you know if the device you used in 10:57:57AM  
22 2003 or '04, whenever you used it, looked more 10:58:03AM  
23 like the illustration in the Scorpio cutting 10:58:07AM  
24 guide or the pictures that your attorneys took? 10:58:12AM

25 MR. KAPPEL: Objection to form. 10:58:14AM

1 S. Schoifet

2 A As a surgeon I would be interested in 10:58:18AM

3 the cutting guide surface ensuring that I can 10:58:21AM

4 make a clean accurate cut. I wouldn't be 10:58:23AM

5 concerned whether the pin had a head or if the 10:58:27AM

6 knob was round or star shaped. So I would not be 10:58:29AM

7 able to recall that. 10:58:36AM

8 BY MR. CAVANAUGH: 10:58:39AM

9 Q When you said the devices were 10:58:39AM

10 identical, you didn't include those differences? 10:58:41AM

11 A As a surgeon we would be considered -- 10:58:47AM

12 concerned with how it's going to cut the bone, 10:58:49AM

13 and we would be concerned about the cutting guide 10:58:51AM

14 surface, the fixation with the intramedullary rod 10:58:54AM

15 and the ability to pin it. And if it performs 10:58:58AM

16 those functions, then it's an identical guide. 10:59:00AM

17 Q You mentioned a moment ago about the 10:59:25AM

18 slots associated with the guide? 10:59:27AM

19 MR. KAPPEL: Objection. 10:59:29AM

20 Mischaracterizes testimony. 10:59:30AM

21 BY MR. CAVANAUGH: 10:59:31AM

22 Q I'm sorry. Did you not mention the 10:59:31AM

23 slots? 10:59:34AM

24 A I did not. 10:59:34AM

25 Q Okay. Did you mention the cutting 10:59:37AM

1 S. Schoifet

2 guide surface? 10:59:38AM

3 A I did. 10:59:39AM

4 Q Okay. 10:59:40AM

5 When you inspected the device that was 10:59:47AM

6 -- from which the pictures were taken by your 10:59:54AM

7 attorneys, did you look at the alignment at the 10:59:56AM

8 cutting guides? 11:00:03AM

9 A I looked at the cutting guide surface. 11:00:06AM

10 Q Do you have a sense of -- I know you're 11:00:11AM

11 not an engineer, but throughout your design and 11:00:18AM

12 development work do you know how a device like 11:00:22AM

13 this would be constructed? 11:00:25AM

14 A Be it from a mold. I wouldn't want to 11:00:35AM

15 venture a guess. 11:00:39AM

16 Q So you don't know? You don't know how 11:00:39AM

17 it's made? 11:00:42AM

18 A No. 11:00:42AM

19 Q Have you ever made a cutting guide with 11:00:43AM

20 a cutting guide surface like this before? 11:00:46AM

21 A I assisted in the development of the 11:00:49AM

22 anterior referencing cutting guide for the 11:00:51AM

23 minimally invasive Triathlon knee. 11:00:54AM

24 Q My question is a little bit different 11:00:57AM

25 in the sense of have you ever made one of these? 11:01:00AM

1 S. Schoifet

2 MR. KAPPEL: Objection to form. 11:01:02AM

3 A I wasn't involved with design at that 11:01:03AM  
4 time.

5 BY MR. CAVANAUGH: 11:01:24AM

6 Q I'm going to show you what's already 11:01:24AM  
7 been marked by your attorneys as Exhibit 2007. 11:01:26AM

8 These are drawings that are provided with your 11:02:03AM  
9 expert report; is that correct? 11:02:06AM

10 A That's correct. 11:02:09AM

11 Q Who made these drawings? 11:02:09AM

12 A They look well drawn so it wasn't from 11:02:11AM  
13 me. 11:02:13AM

14 Q So someone not you made the drawings? 11:02:15AM

15 A Correct. 11:02:18AM

16 Q Did you tell someone what drawings to 11:02:18AM  
17 make? 11:02:24AM

18 A I did not make an instruction of what 11:02:27AM  
19 drawings to make. 11:02:29AM

20 Q Did you make an instruction on what 11:02:32AM  
21 views of any of the fixtures to -- I'm sorry. 11:02:34AM

22 Strike that. 11:02:39AM

23 Of the A/R guide -- did you make an 11:02:39AM  
24 instruction to create any views of the A/R guide? 11:02:46AM

25 A To my knowledge, this is a 11:02:51AM

1 S. Schoifet

2 representation of the A/R guide. 11:02:52AM

3 Q That's not my question. 11:02:57AM

4 A I know. 11:02:59AM

5 Q My question actually is related to did 11:03:00AM

6 you instruct someone to create the illustration 11:03:02AM

7 with this view of the A/R guide. 11:03:05AM

8 A As regards to this particular view, I 11:03:10AM

9 gave no instructions to make. 11:03:12AM

10 Q Let's turn the page then. This exhibit 11:03:14AM

11 also has two pages. The second page also has an 11:03:18AM

12 illustration. 11:03:23AM

13 Did you prepare that illustration? 11:03:24AM

14 A I did not draw that illustration. 11:03:25AM

15 Q Did you instruct someone to prepare an 11:03:27AM

16 illustration? 11:03:29AM

17 A I made no specific instructions with 11:03:30AM

18 regards to this. 11:03:32AM

19 Q Did you make any general instructions? 11:03:32AM

20 A I made no general instructions. 11:03:35AM

21 Q So your declaration includes pictures 11:03:43AM

22 that your attorneys took and drawings which you 11:03:45AM

23 did not instruct -- drawings which you did not 11:03:51AM

24 make? 11:03:55AM

25 MR. KAPPEL: Objection. 11:03:56AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 11:03:57AM

3 Q Right? 11:03:57AM

4 MR. KAPPEL: Form. 11:03:58AM

5 A Drawings are representations of the 11:03:59AM

6 guide in which they took pictures of. I had the 11:04:01AM

7 guide in my hand. I've used the guide. I 11:04:04AM

8 recognized these pictures as representations of 11:04:07AM

9 the guide. I've attested to that. 11:04:10AM

10 BY MR. CAVANAUGH: 11:04:14AM

11 Q And did you -- you didn't instruct 11:04:14AM

12 anyone to make these particular pictures, did 11:04:15AM

13 you? 11:04:18AM

14 MR. KAPPEL: Objection. Form. 11:04:18AM

15 A I made no specific instructions on how 11:04:20AM

16 to design the picture. 11:04:22AM

17 BY MR. CAVANAUGH: 11:04:23AM

18 Q Did you ask anyone to design a picture? 11:04:23AM

19 A I made no specific requests for the 11:04:26AM

20 design. 11:04:29AM

21 Q Did you make a general request? 11:04:30AM

22 A I made no general request -- 11:04:31AM

23 Q Okay.

24 A -- for design of a picture. 11:04:33AM

25 Q Just for your reference, every time you 11:04:34AM



1 S. Schoifet

2 say "specific," I'm going to ask about a general 11:04:36AM

3 because the way that you're answering the 11:04:38AM

4 question. So sorry for belaboring the point, but 11:04:41AM

5 you're -- you have not made it -- if I understand 11:04:47AM

6 your testimony correctly, you have not made a 11:04:50AM

7 general request that the illustrations be 11:04:51AM

8 created? 11:04:53AM

9 A Correct. 11:04:53AM

10 Q Did you confirm that the dimensions in 11:04:54AM

11 the drawing correspond to the device that you 11:04:59AM

12 reviewed? 11:05:03AM

13 A Did I -- you mean -- I need clarity on 11:05:09AM

14 that, what you mean by that. 11:05:12AM

15 Q Did you confirm the dimensions that are 11:05:14AM

16 represented in this drawing correspond to the 11:05:16AM

17 device that you've reviewed? 11:05:19AM

18 A Visually they are the same. 11:05:23AM

19 Q My question is about the dimensions of 11:05:29AM

20 the device. 11:05:32AM

21 MR. KAPPEL: Objection. Asked and 11:05:32AM

22 answered. 11:05:33AM

23 BY MR. CAVANAUGH: 11:05:36AM

24 Q Did you measure the device and measure 11:05:37AM

25 the drawing to confirm that the dimensions of the 11:05:39AM

1 S. Schoifet

2 drawing correspond to the dimensions of the 11:05:44AM

3 device that you've reviewed? 11:05:47AM

4 MR. KAPPEL: Objection to form. 11:05:49AM

5 A I've used this device. I held this 11:05:50AM

6 device in my hand. I've looked at the drawings, 11:05:53AM

7 and visually it's identical. 11:05:55AM

8 BY MR. CAVANAUGH: 11:06:01AM

9 Q So you have not measured the diagram 11:06:01AM

10 that someone else created to confirm that it 11:06:07AM

11 corresponds to the device that you reviewed in 11:06:09AM

12 connection with your report? 11:06:15AM

13 MR. KAPPEL: Objection to form. 11:06:15AM

14 A Visually, I have visually measured the 11:06:16AM

15 device. It appears to be the same. I've used 11:06:22AM

16 it. I've held it in my hand. It has the single 11:06:25AM

17 continuous cutting guide surface on the bony 11:06:28AM

18 side. It's got the triangular shape. It 11:06:31AM

19 visually measures to be the same identical 11:06:35AM

20 device. 11:06:38AM

21 BY MR. CAVANAUGH: 11:06:38AM

22 Q Did you use a ruler or other kind of 11:06:38AM

23 linear measurement device to confirm that the 11:06:41AM

24 device that's depicted in the drawing that you 11:06:45AM

25 didn't create correspond to the device that you 11:06:48AM

1 S. Schoifet

2 reviewed? 11:06:52AM

3 MR. KAPPEL: Objection to form. 11:06:52AM

4 A I didn't see the need to measure it 11:06:56AM

5 because visually it appeared to be identical. 11:06:59AM

6 BY MR. CAVANAUGH: 11:07:01AM

7 Q Okay. So the answer is no, you did not 11:07:01AM

8 use a measure to compare the dimensions of the 11:07:03AM

9 device in the illustration to the device that you 11:07:09AM

10 inspected? 11:07:13AM

11 A You just gave my answer and that's not 11:07:14AM

12 what I said. I said visually I measured it to be 11:07:16AM

13 identical and I felt it was identical. 11:07:19AM

14 Q So if -- but did you not use a scale -- 11:07:22AM

15 MR. KAPPEL: Objection to form. 11:07:27AM

16 BY MR. CAVANAUGH: 11:07:29AM

17 Q -- to measure the device? 11:07:29AM

18 A Visually it was an identical device. I 11:07:31AM

19 felt no need to go further than to visually 11:07:34AM

20 identify it was the same device I used in 2003. 11:07:37AM

21 It looked the same. Had the single cutting guide 11:07:40AM

22 surface across the bony side and the triangular 11:07:44AM

23 shape that you're envisioning right here. 11:07:47AM

24 Q If you would describe the process that 11:07:49AM

25 you used to measure visually. 11:08:02AM

1 S. Schoifet

2 A Visually I identified it as being 11:08:06AM

3 identical. It looks the same. I used the 11:08:09AM

4 device. It has the same single cutting guide 11:08:11AM

5 surface on the bony side. It has the triangular 11:08:14AM

6 area where you put the anterior skim cut guide, 11:08:17AM

7 and it looks like the one I held in my hand. 11:08:21AM

8 That's visually identifying it to be similar. I 11:08:24AM

9 felt it wasn't necessary. 11:08:26AM

10 Q So if the dimensions of the device from 11:08:30AM

11 one end to another were important to the case, 11:08:34AM

12 you could not confirm that that -- that that 11:08:37AM

13 measurement would correspond to the device that 11:08:41AM

14 you reviewed? 11:08:43AM

15 MR. KAPPEL: Objection to form. 11:08:44AM

16 A From a surgeon's standpoint the device 11:08:45AM

17 is identical visually in size, shape, form to the 11:08:49AM

18 one I held in my hand in 2003 and the one that we 11:08:54AM

19 took pictures of. 11:08:57AM

20 BY MR. CAVANAUGH: 11:08:58AM

21 Q But you didn't measure it? 11:08:58AM

22 A Visually I held them up and they looked 11:09:00AM

23 to be the same. 11:09:03AM

24 Q I think we have a break in the tape. 11:09:04AM

25 So why don't we take a break. 11:09:06AM

1 S. Schoifet

2 A Certainly. 11:09:07AM

3 MR. CAVANAUGH: And we'll take this up 11:09:08AM

4 in a moment. 11:09:09AM

5 THE VIDEOGRAPHER: The time is 11:09 11:09:10AM

6 a.m. on August 25th, 2014, and this 11:09:13AM

7 completes tape number one. 11:09:17AM

8 (Recess) 11:16:35AM

9 THE VIDEOGRAPHER: The time is 11:17 11:16:35AM

10 a.m. on August 25th, 2014 and this is tape 11:16:38AM

11 number two. 11:16:41AM

12 BY MR. CAVANAUGH: 11:16:41AM

13 Q Dr. Schoifet, during the break, did you 11:16:42AM

14 discuss your testimony with counsel for Bonutti? 11:16:46AM

15 A I did not. 11:16:48AM

16 Q Before the break we were talking about 11:16:52AM

17 Exhibit 2007, and I want to make sure I 11:16:56AM

18 understand what this diagram represents both on 11:17:04AM

19 page 1 and page 2 of Exhibit 2007. 11:17:08AM

20 What does it represent? 11:17:15AM

21 A It represents a two-dimensional picture 11:17:16AM

22 of the anterior referencing cutting guide from 11:17:19AM

23 Scorpio. 11:17:22AM

24 Q And you indicated that you confirmed 11:17:27AM

25 its measurements visually. If I'm getting it 11:17:29AM

1 S. Schoifet

2 wrong, I'm sure opposing counsel will let me 11:17:36AM

3 know. But you confirmed the measurements 11:17:39AM

4 visually with what device? That's what I don't 11:17:41AM

5 understand. 11:17:44AM

6 MR. KAPPEL: Objection. 11:17:44AM

7 BY MR. CAVANAUGH: 11:17:45AM

8 Q What you did you use to confirm in your 11:17:45AM

9 mind the measurements visually? 11:17:48AM

10 A The device that the photos were taken 11:17:52AM

11 of the anterior referencing cutting guide. 11:17:54AM

12 Q So just for clarity, this is the device 11:17:56AM

13 that has Dr. Ong's name on it, correct? 11:18:00AM

14 A Correct. 11:18:05AM

15 Q And did you have these pictures with 11:18:05AM

16 you when you were looking at Dr. Ong's device? 11:18:19AM

17 A I actually don't recall the order. I 11:18:23AM

18 can't answer that. 11:18:27AM

19 Q So when you reviewed -- when you 11:18:28AM

20 measured visually the depictions here, you can't 11:18:33AM

21 recall whether or not you had the device in front 11:18:38AM

22 of you? 11:18:43AM

23 A That's a device that I have used. It's 11:18:44AM

24 a device that I've held in my hand while I was 11:18:46AM

25 doing this declaration, and these drawings are 11:18:49AM

1 S. Schoifet

2 identical. They show the single cutting surface, 11:18:52AM

3 the triangular shape. Visually they're 11:18:56AM

4 identical. They remain identical visually to me 11:19:01AM

5 in my expert opinion. 11:19:05AM

6 Q Your expert opinion was not formed 11:19:06AM

7 though of comparing these diagrams to Dr. Ong's 11:19:08AM

8 device? 11:19:12AM

9 MR. KAPPEL: Objection to form. 11:19:13AM

10 A Visually this is a representation of 11:19:18AM

11 that device. 11:19:20AM

12 BY MR. CAVANAUGH: 11:19:23AM

13 Q Let's go to the second page of the 11:19:23AM

14 declaration, of the Exhibit 2007. What is this 11:19:26AM

15 depicting? Can you help me understand this? 11:19:30AM

16 A Let me make sure we're on the same 11:19:33AM

17 page. 11:19:37AM

18 Q The second page of Exhibit 2007 just 11:19:38AM

19 for clarity in the record. 11:19:40AM

20 A This is depicting the cutting guide 11:19:41AM

21 surface. 11:19:44AM

22 Q Okay. So how did you visually measure 11:19:48AM

23 this? 11:19:52AM

24 A Having used the device, I knew it had 11:19:53AM

25 an intramedullary rod holding it and a single 11:19:56AM

1 S. Schoifet

2 cutting guide surface on the bone side. I knew 11:19:59AM

3 it was angled in from having used it and having 11:20:03AM

4 seen the device, and it functions identically to 11:20:06AM

5 the device I used in 2003. 11:20:09AM

6 Q Did you compare the anterior surface of 11:20:14AM

7 the guide surface to the device? 11:20:22AM

8 MR. KAPPEL: Objection to form. 11:20:28AM

9 A Visually this looks just like the 11:20:33AM

10 device. From the photo side you can see what the 11:20:35AM

11 single cutting guide surface and you can see the 11:20:39AM

12 triangle on that. 11:20:42AM

13 BY MR. CAVANAUGH: 11:20:43AM

14 Q My question is different. Did you 11:20:43AM

15 measure the length of the cutting guide surface 11:20:44AM

16 in this diagram? 11:20:52AM

17 A As a surgeon I would be interested in 11:20:56AM

18 having a single continuous cutting guide surface 11:20:59AM

19 on the bone side. Not the length of that 11:21:01AM

20 triangle. 11:21:04AM

21 Q So the answer is no, you did not 11:21:04AM

22 measure it? 11:21:07AM

23 MR. KAPPEL: Objection. 11:21:07AM

24 Mischaracterizes testimony. 11:21:09AM

25 A Repeat your question, please. 11:21:11AM



1 S. Schoifet

2 BY MR. CAVANAUGH: 11:21:13AM

3 Q Did you measure the length of the guide 11:21:13AM

4 surface? 11:21:15AM

5 A The guide surface is the bony side. I 11:21:17AM

6 visually identified it. It was a single bony 11:21:21AM

7 guide surface or a cutting guide surface along 11:21:25AM

8 the bony side. So that I visually measured. If 11:21:26AM

9 that is your question, that's my answer. 11:21:29AM

10 Q And what about on the physician side. 11:21:33AM

11 Did you measure the guide surface on the 11:21:35AM

12 physician side? 11:21:37AM

13 MR. KAPPEL: Objection to form. 11:21:41AM

14 A Visually it looked identical to the 11:21:42AM

15 picture and the guide I held in my hand. 11:21:46AM

16 BY MR. CAVANAUGH: 11:21:48AM

17 Q How can you visually measure? Strike 11:21:48AM

18 that. 11:21:53AM

19 What is this depiction representing? 11:21:53AM

20 A This represents the anterior 11:21:57AM

21 referencing cutting edge surface showing it has 11:21:59AM

22 one continuous cutting guide surface along the 11:22:03AM

23 bony side. 11:22:05AM

24 Q Are you familiar with the term 11:22:06AM

25 "cutaway" in diagrams? 11:22:07AM

1 S. Schoifet

2 A I would imagine it's exactly what you 11:22:10AM  
3 say it is. You cut away. 11:22:12AM

4 Q Is this a cutaway drawing of the A/R 11:22:14AM  
5 guide? 11:22:18AM

6 A It appears to be, yes. 11:22:19AM

7 Q Okay. And so how did you visually 11:22:20AM  
8 measure the aspects of the cutting guides which 11:22:22AM  
9 are not observable from the top? 11:22:26AM

10 A If you insert a sawblade into that, you 11:22:30AM  
11 would know that there is an angle that the 11:22:33AM  
12 sawblade would go across at so that it exits from 11:22:35AM  
13 the opening on the physician side to a single 11:22:40AM  
14 cutting guide surface on the bony side. 11:22:44AM

15 Q So did you measure that angle that 11:22:47AM  
16 you've just described that a surgeon would know 11:22:50AM  
17 that is there? 11:22:54AM

18 A Whether that angle would exactly 11:22:54AM  
19 measure? I know that it comes in as an angle. I 11:22:56AM  
20 know it goes as a triangle, but I did not exactly 11:22:59AM  
21 measure that triangular angle, but I know that 11:23:02AM  
22 the shape was triangular having used it. 11:23:06AM

23 Q And so the triangular ends with a space 11:23:13AM  
24 at the distal end of the triangle, is that -- I'm 11:23:19AM  
25 sorry -- at the bone side of the triangle? 11:23:23AM

1 S. Schoifet

2 MR. KAPPEL: Objection. 11:23:25AM

3 BY MR. CAVANAUGH: 11:23:26AM

4 Q Is that -- do I understand the drawing 11:23:26AM

5 correct that there's kind of a space depicted 11:23:28AM

6 between the bone side edge of the guide surface 11:23:32AM

7 and the end of the triangle? 11:23:39AM

8 A What you're referring to is the 11:23:42AM

9 continuous cutting guide surface on the bony 11:23:44AM

10 side. 11:23:47AM

11 Q Can you write for me -- and I'm going 11:23:47AM

12 to have to -- 11:23:57AM

13 (Pause in the proceedings)

14 BY MR. CAVANAUGH:

15 Q Actually, we can do that later. Hold

16 on. I'll walk through it.

17 As you sit here today, can you tell me 11:24:21AM

18 whether that physician side end of the triangle 11:24:23AM

19 is three millimeters or 2.5 millimeters or less 11:24:29AM

20 or more? 11:24:34AM

21 A It's more than 2.5 millimeters. 11:24:40AM

22 Q Okay. And is it more or less than 2.5 11:24:46AM

23 centimeters? 11:24:50AM

24 A I would have to have a ruler to tell 11:24:51AM

25 you that. 11:24:53AM

1 S. Schoifet

2 Q What would you do with a ruler to tell 11:24:53AM  
3 me that? 11:24:55AM

4 A I would measure whether it was larger 11:24:56AM  
5 or smaller. 11:24:58AM

6 Q And did you measure with a ruler the 11:24:58AM  
7 distance between that end of the physician side 11:25:02AM  
8 end of the triangle with the device that you held 11:25:06AM  
9 in your hand that we're calling the Dr. Ong 11:25:10AM  
10 device? 11:25:13AM

11 MR. KAPPEL: Objection to, one, calling 11:25:13AM  
12 it the Dr. Ong device which he specifically 11:25:16AM  
13 said he objected to. Secondly, objection to 11:25:19AM  
14 form. 11:25:22AM

15 A Visually it's identical. I've used the 11:25:22AM  
16 device. I've seen the device. It has a single 11:25:28AM  
17 cutting guide surface. They look the same. They 11:25:31AM  
18 smell the same. They are the same to me. So 11:25:33AM  
19 that's how I was able to tell. 11:25:36AM

20 BY MR. CAVANAUGH: 11:25:38AM

21 Q But you don't know the distance on that 11:25:38AM  
22 side of the triangle, do you? 11:25:40AM

23 A The distance looked the same. 11:25:41AM

24 Q But you didn't measure it, correct? 11:25:44AM

25 A Visually it looked to be the same. 11:25:45AM

1 S. Schoifet

2 Q But you didn't use -- when I asked you 11:25:49AM

3 a moment ago how you would measure this, you said 11:25:51AM

4 you would take a ruler out and you would say, 11:25:54AM

5 well, what is the length of that triangle? 11:25:56AM

6 A I don't believe you asked me that 11:25:58AM

7 question. 11:26:00AM

8 Q Okay. Well, let me ask it now. 11:26:00AM

9 How would you measure that end of the 11:26:02AM

10 triangle? 11:26:04AM

11 A I measured it visually. 11:26:05AM

12 Q How would you -- today how would you 11:26:06AM

13 measure it? 11:26:09AM

14 A Visually. 11:26:09AM

15 Q When I asked what the length of the 11:26:14AM

16 triangle was, what did -- how would you tell what 11:26:16AM

17 the length of that triangle was? 11:26:22AM

18 A With my eye visually. 11:26:24AM

19 Q Okay. So you wouldn't be able to say 11:26:25AM

20 whether or not that is like 2.5 centimeters or 3 11:26:28AM

21 centimeters or 2 centimeters? 11:26:31AM

22 A They look the same as the guide I held 11:26:33AM

23 in my hand visually. They looked identical. 11:26:35AM

24 Q But you didn't measure it? 11:26:41AM

25 A Visually it looked the same. 11:26:42AM

1 S. Schoifet

2 Q But you don't recall whether or not you 11:26:44AM  
3 had the device in your hand when you looked at 11:26:47AM  
4 these drawings, correct? 11:26:48AM

5 A Visually it's identical. The device I 11:26:49AM  
6 used, I held in my hand, the single cutting guide 11:26:54AM  
7 surface, it has the intramedullary rod. Visually 11:26:55AM  
8 it's identical. 11:26:58AM

9 Q So did you confirm the dimension of the 11:26:59AM  
10 bone side of the triangle? 11:27:04AM

11 A Visually it looked the same. 11:27:05AM

12 Q But you didn't measure it with a ruler? 11:27:07AM

13 A Visually it looked the same as the 11:27:09AM  
14 cutting guide. The single guide surface -- 11:27:12AM

15 Q But you didn't measure --

16 A -- the one we gave you. 11:27:15AM

17 Q I'm sorry to interrupt. 11:27:16AM

18 But you didn't measure it with a ruler, 11:27:16AM  
19 correct? 11:27:19AM

20 A I measured it visually. 11:27:19AM

21 Q And just for the record, measuring it 11:27:23AM  
22 visually does not include measuring it with a 11:27:25AM  
23 ruler? 11:27:27AM

24 A I measured it visually. 11:27:27AM

25 Q And so the extent of the cutoff part of 11:27:35AM

1 S. Schoifet

2 the triangle, the distance between the cutoff 11:27:43AM

3 part of the triangle and the edge of the cutting 11:27:47AM

4 guide, I presume you also measured visually? 11:27:51AM

5 MR. KAPPEL: Objection to form. 11:27:57AM

6 A Visually it looks to be the same. 11:27:58AM

7 BY MR. CAVANAUGH: 11:28:00AM

8 Q But you did not measure it with a ruler 11:28:00AM

9 to confirm that? 11:28:05AM

10 A I measured it visually. 11:28:06AM

11 Q But you did not use a ruler to confirm 11:28:08AM

12 that measurement? 11:28:11AM

13 A Visually it looks the same. 11:28:11AM

14 Q Do you know if this is a scale drawing 11:28:19AM

15 of the cutting guide? 11:28:22AM

16 A I can't answer that. I don't know the 11:28:25AM

17 answer to that. Visually it looks to be the 11:28:26AM

18 same. 11:28:28AM

19 Q Is it the same size? 11:28:29AM

20 A Visually it looks to be very similar in 11:28:37AM

21 size. 11:28:40AM

22 Q But, again, you didn't measure it to 11:28:44AM

23 confirm that if it was a scaled diagram, that the 11:28:45AM

24 scale was correct? 11:28:49AM

25 A Visually it looks to be the same as the 11:28:52AM

1 S. Schoifet

2 guide. 11:28:53AM

3 Q So apart from visually measuring it, 11:28:55AM

4 you did nothing with this drawing, correct? 11:28:57AM

5 A Correct. I visually looked at the 11:28:59AM

6 drawing, correct. 11:29:06AM

7 Q And just so I'm clear, you compared 11:29:17AM

8 visually this diagram in Exhibit 2007 with the 11:29:20AM

9 device that you reviewed in connection with your 11:29:27AM

10 expert report? 11:29:30AM

11 A Correct. 11:29:32AM

12 Q And the device that you reviewed in 11:29:41AM

13 connection with your expert report was created 11:29:44AM

14 when, do you know? 11:29:47AM

15 MR. KAPPEL: Objection to form. 11:29:50AM

16 A I can't tell you the date that this 11:29:53AM

17 actual device was created but it is an identical 11:29:54AM

18 device. The cutting surfaces are identical to 11:29:58AM

19 the device that I used in 2003 with a single 11:30:01AM

20 cutting guide surface and the intramedullary rod 11:30:05AM

21 to affix the device in place. 11:30:08AM

22 BY MR. CAVANAUGH: 11:30:09AM

23 Q And how do you know that? 11:30:09AM

24 A The companies when they make their 11:30:11AM

25 instrumentation, if I was still doing anterior 11:30:14AM



1 S. Schoifet

2 referencing at Scorpio and I ordered a set, I 11:30:17AM

3 would expect to get the same set that I had in 11:30:19AM

4 2003. When surgeons order it, they expect to get 11:30:21AM

5 the same. If they got something different they 11:30:25AM

6 would stop using the product. 11:30:29AM

7 Q But you don't know that this is the 11:30:32AM

8 device from 2003? 11:30:34AM

9 A It's an identical device. 11:30:36AM

10 Q I don't know what basis you have for 11:30:43AM

11 saying it's an identical device. 11:30:45AM

12 A The cutting guide surface. It's a 11:30:46AM

13 single cutting guide surface. It's using an 11:30:49AM

14 intramedullary rod. It's the anterior 11:30:53AM

15 referencing. It's visualized in the anterior 11:30:56AM

16 referencing cutting guidebook and Stryker would 11:30:58AM

17 make the same instrumentation for that if I asked 11:31:01AM

18 for it today as if I asked for it in 2003. I 11:31:04AM

19 would expect the same instrumentation and an 11:31:07AM

20 identical cutting guide surface. 11:31:10AM

21 Q Do you recall what you now called the 11:31:12AM

22 continuous cutting guide surface was a part of 11:31:18AM

23 the device back in 2003? 11:31:21AM

24 A In 2003 you expected to have been a 11:31:23AM

25 single cutting guide surface because you would 11:31:26AM

1 S. Schoifet

2 want an accurate cut all the way across, and 11:31:28AM

3 that's what I expected and that's what it had. 11:31:30AM

4 Q But aside from saying it's identical, 11:31:42AM

5 you can't prove that it's identical? 11:31:45AM

6 MR. KAPPEL: Objection to form. 11:31:49AM

7 A Visually it's identical. The cutting 11:31:51AM

8 guide surface appears to be identical, and in my 11:31:54AM

9 expert opinion it's identical. 11:31:56AM

10 BY MR. CAVANAUGH: 11:31:57AM

11 Q Let's turn to an EM alignment rod. 11:32:19AM

12 You're familiar with the term "EM alignment," 11:32:24AM

13 correct? 11:32:27AM

14 A Yes, I am. 11:32:27AM

15 Q Is that a term that's recited in the 11:32:28AM

16 claim, do you recall? 11:32:29AM

17 MR. KAPPEL: Objection. I know we 11:32:30AM

18 previously defined EM. But we might want to 11:32:34AM

19 say it out loud because we're -- in the 11:32:37AM

20 beginning of this discussion so that we're 11:32:40AM

21 all clear on what EM refers to. 11:32:42AM

22 BY MR. CAVANAUGH: 11:32:46AM

23 Q Sure. Extramedullary alignment rod. 11:32:46AM

24 A Yes. 11:32:49AM

25 Q And we'll use the term EM alignment rod 11:32:49AM

1 S. Schoifet

2 for that. 11:32:54AM

3 A I'm fine with that. 11:32:54AM

4 Q Do you recall if that's a limitation in 11:32:57AM

5 the claim? 11:32:58AM

6 A Could you state the question, please. 11:32:59AM

7 Q Do you recall if the EM alignment rod 11:33:03AM

8 is a limitation in claim 1 that you've reviewed 11:33:05AM

9 for your expert report -- or for your expert 11:33:07AM

10 declaration? 11:33:09AM

11 A Is it a limitation, yes, it's included 11:33:10AM

12 in claim 1. 11:33:13AM

13 Q Is the EM alignment rod described at 11:33:15AM

14 all in the patent, do you recall? 11:33:19AM

15 MR. KAPPEL: Objection. Outside the 11:33:24AM

16 scope of direct. 11:33:26AM

17 A I read the patent quite a while ago. 11:33:31AM

18 It's an extensive patent, but I believe 11:33:34AM

19 extramedullary -- the term extramedullary is used 11:33:36AM

20 within the patent. 11:33:40AM

21 BY MR. CAVANAUGH: 11:33:51AM

22 Q I'm going to give you the patent just 11:33:51AM

23 so it's not a memory test. 11:33:53AM

24 A Thank you. 11:33:55AM

25 Q Can you turn to figure -- I'm handing 11:34:07AM

1 S. Schoifet

2 the witness right now Exhibit 1001 which is the 11:34:10AM

3 '896 patent which is the subject of this inter 11:34:15AM

4 partes' review and I would like you to turn to 11:34:20AM

5 figure 37 if you would. 11:34:23AM

6 Are you familiar where the figures are 11:34:26AM

7 in the patent? 11:34:28AM

8 A Yes, I am. 11:34:29AM

9 Q I will show you. (Indicating).

10 A Yes. Thank you. 11:34:31AM

11 Q Is that an illustration of an EM 11:34:41AM

12 alignment rod? 11:34:44AM

13 MR. KAPPEL: Objection. Form. 11:34:46AM

14 BY MR. CAVANAUGH: 11:34:50AM

15 Q Directing your attention to figure 37, 11:34:50AM

16 is that an illustration of an EM alignment rod? 11:34:52AM

17 A Yes, it is. 11:34:55AM

18 Q Is that described in the patent 11:34:57AM

19 specification at all? If I use the term "patent 11:35:04AM

20 specification," do you understand what I'm 11:35:06AM

21 talking about? 11:35:08AM

22 A Please clarify. 11:35:08AM

23 Q Okay. The words associated with the -- 11:35:11AM

24 kind of a patent are sometimes called the 11:35:14AM

25 specification, and for the purposes of today, 11:35:16AM

1 S. Schoifet

2 I'll use the term "specification" to describe the 11:35:19AM

3 words at the end of the -- 11:35:22AM

4 A Any words in the patent are 11:35:24AM

5 specifications, okay. 11:35:26AM

6 Q So do you know if the EM alignment 11:35:27AM

7 rod is described in the specification of the 11:35:35AM

8 patent? 11:35:39AM

9 A It is. 11:35:39AM

10 Q Do you have a recollection of where 11:35:39AM

11 that might be? 11:35:40AM

12 A It would be where they discuss figure 11:35:42AM

13 37. 11:35:44AM

14 Q So let's go to column 44. Okay. 11:35:44AM

15 Column 44 I think line 20 is where the 11:36:03AM

16 description of the figure 37 is. And if you want 11:36:05AM

17 to read for a moment 20 to 49, I'll have a few 11:36:15AM

18 questions about that disclosure. 11:36:19AM

19 MR. KAPPEL: Objection. Outside the 11:36:20AM

20 scope of direct. 11:36:21AM

21 BY MR. CAVANAUGH: 11:36:41AM

22 Q Just to line 49. 11:36:41AM

23 A Okay. 11:36:43AM

24 (Witness reviewing document). 11:36:46AM

25 Q So the specification describes the EM 11:37:04AM

1                   S. Schoifet

2   alignment rod as -- if you look at line 38 -- I                   11:37:07AM

3   just want to see if you agree with this                   11:37:14AM

4   description or if -- or not.                   11:37:16AM

5                   So line 37, "The foot or lower end of                   11:37:20AM

6   the hollow distal shaft is connected with the

7   midpoint between the palpable medial and lateral

8   malleoli by spring clamp 518."                   11:37:37AM

9                   And so do you see line 38?                   11:37:37AM

10          A       I do.                   11:37:40AM

11          Q       And would that be an anatomical                   11:37:41AM

12   landmark?                   11:37:44AM

13                   MR. KAPPEL:  Objection.  Form.                   11:37:44AM

14          A       The medial and lateral malleoli are                   11:37:46AM

15   anatomic --

16                   (Reporter requested clarification)

17          A       I'm sorry.  The medial and lateral

18   malleoli, M-A-L-L-E-O-L-I, they are anatomic                   11:37:57AM

19   landmarks.                   11:38:04AM

20   BY MR. CAVANAUGH:                   11:38:05AM

21          Q       And the other part of the EM alignment                   11:38:05AM

22   rod is described as -- it's described as                   11:38:14AM

23   connecting with the medial third of the tibial                   11:38:26AM

24   tubercle?                   11:38:30AM

25                   MR. KAPPEL:  Objection to form.                   11:38:33AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 11:38:33AM

3 Q Is that correct? 11:38:33AM

4 A You have to be more specific about the 11:38:34AM

5 other part. That doesn't tell me much. 11:38:35AM

6 Q Okay. So is the -- if you look at 11:38:37AM

7 figure 37 -- so there's -- we've already said 11:38:40AM

8 there's one anatomical landmark that is used? 11:38:46AM

9 A (Nodding affirmatively). 11:38:49AM

10 Q Is there a second anatomical landmark 11:38:50AM

11 that's used with the EM rod? 11:38:53AM

12 MR. KAPPEL: Objection to form. 11:38:55AM

13 Mischaracterizes testimony. 11:38:56AM

14 A Can you repeat the question, please. 11:38:58AM

15 BY MR. CAVANAUGH: 11:39:00AM

16 Q Sure. We've already established that 11:39:00AM

17 there's one alignment anatomic -- one anatomical 11:39:02AM

18 -- strike that. 11:39:07AM

19 We've already established that there's 11:39:07AM

20 one anatomical landmark. And my question is 11:39:09AM

21 whether there's a second anatomical landmark that 11:39:15AM

22 is identified in figure 47 -- 37 and described in 11:39:18AM

23 the specification? 11:39:22AM

24 A To be clear, I describe the lateral 11:39:23AM

25 malleolus and the medial malleolus as anatomical 11:39:26AM

1 S. Schoifet

2 landmarks, period. 11:39:30AM

3 Q My question is whether or not there is 11:39:31AM

4 a second anatomical landmark that's described and 11:39:32AM

5 used with the EM rod that's shown in figure 37? 11:39:38AM

6 MR. KAPPEL: Objection to form. 11:39:41AM

7 A Well, there will be a third anatomic 11:39:41AM

8 landmark which is the tibial tubercle. 11:39:48AM

9 BY MR. CAVANAUGH: 11:39:53AM

10 Q Is there a second anatomical landmark? 11:39:53AM

11 A The medial malleolus, and the next 11:39:55AM

12 would be the lateral malleolus, and the third 11:39:57AM

13 would be the tibial tubercle. 11:39:59AM

14 Q So there are three anatomical landmarks 11:40:01AM

15 that are identified and used with this EM 11:40:04AM

16 alignment rod, correct? 11:40:07AM

17 MR. KAPPEL: Objection. 11:40:07AM

18 Mischaracterizes testimony. 11:40:08AM

19 A There are three anatomical landmarks 11:40:09AM

20 that are mentioned in the patent. 11:40:12AM

21 BY MR. CAVANAUGH: 11:40:13AM

22 Q Okay. And are they used in connection 11:40:13AM

23 with this -- 11:40:15AM

24 A I haven't used this specific device. 11:40:18AM

25 Q Are they described in connection with 11:40:21AM



1 S. Schoifet

2 the device that's illustrated in figure 37? 11:40:25AM

3 MR. KAPPEL: Objection to form. 11:40:30AM

4 A Figure -- the patent describes a device 11:40:34AM

5 and mentions the anatomic landmarks. 11:40:37AM

6 BY MR. CAVANAUGH: 11:40:44AM

7 Q And how many anatomical landmarks are 11:40:44AM

8 used as described in the specification for figure 11:40:46AM

9 37? 11:40:49AM

10 MR. KAPPEL: Objection to form. 11:40:49AM

11 A Three are mentioned in the paragraphs 11:40:52AM

12 you pointed out. 11:40:55AM

13 BY MR. CAVANAUGH: 11:40:56AM

14 Q In your prior testimony I think I 11:40:56AM

15 understood you saying that, you know, the EM rod 11:41:00AM

16 hasn't changed that much in development from 2003 11:41:06AM

17 to today. Do I understand what your testimony 11:41:11AM

18 was earlier? 11:41:14AM

19 A The rod itself hasn't changed. The -- 11:41:15AM

20 and that characterizes -- it depends on what you 11:41:20AM

21 consider major changes, but the concept remains 11:41:23AM

22 that you line up an intramedullary alignment rod 11:41:25AM

23 with the tibia. The concept remains consistent. 11:41:30AM

24 Q And how is that done? Does it use one 11:41:33AM

25 anatomical landmark or two anatomical landmarks 11:41:36AM

1 S. Schoifet

2 or three as described in the specification? 11:41:38AM

3 MR. KAPPEL: Objection to form. 11:41:40AM

4 A This specification lists three anatomic 11:41:41AM

5 landmarks. 11:41:48AM

6 BY MR. CAVANAUGH: 11:41:49AM

7 Q And in your practice as a surgeon, do 11:41:49AM

8 you use three anatomic landmarks with your 11:41:51AM

9 alignment of the EM rod? 11:41:54AM

10 A In my -- 11:41:56AM

11 MR. KAPPEL: Objection to form. 11:41:56AM

12 A In my practice as a surgeon with the EM 11:41:58AM

13 rod I use -- we use multiple anatomic landmarks. 11:42:02AM

14 BY MR. CAVANAUGH: 11:42:09AM

15 Q Two or more anatomic landmarks? 11:42:09AM

16 A Two or more. 11:42:14AM

17 Q I would like you to turn to the Scorpio 11:42:35AM

18 technique guide if you would. Put the patent 11:42:58AM

19 aside for a moment. 11:43:01AM

20 And just to confirm so that we're on 11:43:18AM

21 the same page about where the Scorpio knee system 11:43:20AM

22 is used, could you go to page 3 of the design of 11:43:26AM

23 the technique guide which is Exhibit 1009. 11:43:34AM

24 And this is illustrating that the 11:43:42AM

25 Scorpio technique guide is a total knee 11:43:50AM

1 S. Schoifet

2 arthroscopy TKA device; is that correct? 11:43:53AM

3 MR. KAPPEL: Objection to form. 11:43:56AM

4 A I think the term you want is 11:43:57AM

5 arthroplasty not arthroscopy. 11:44:01AM

6 BY MR. CAVANAUGH: 11:44:04AM

7 Q Arthroplasty. So it's a TKA technique? 11:44:04AM

8 A This represents an exposure for a TKA 11:44:08AM

9 technique. 11:44:12AM

10 Q Now, if you look at figure 1, there's 11:44:14AM

11 an incision that's represented on the next page, 11:44:19AM

12 on page 3? 11:44:23AM

13 A Yes. 11:44:25AM

14 Q Can you tell which knee that is, 11:44:25AM

15 whether it's a left knee or a right knee? 11:44:29AM

16 A From figure 1 you cannot tell, but from 11:44:32AM

17 figure 3 you can infer. 11:44:34AM

18 Q And what can you infer from 11:44:36AM

19 figure 3? 11:44:38AM

20 A You can infer it's a left knee. 11:44:39AM

21 Q You've looked at both today and prior 11:44:48AM

22 to this deposition the surgical -- the Scorpio 11:44:51AM

23 technique Exhibit 1009. 11:44:56AM

24 Do you know if the technique guide 11:45:01AM

25 describes the TKA system being used on a right 11:45:09AM

1 S. Schoifet

2 knee? 11:45:14AM

3 MR. KAPPEL: Objection to form. 11:45:16AM

4 A From a surgeon's standpoint, the basic 11:45:16AM

5 technique would be the same for a right and a 11:45:27AM

6 left knee. 11:45:29AM

7 BY MR. CAVANAUGH: 11:45:29AM

8 Q So the system is the same for -- 11:45:29AM

9 basically the same for both knees? 11:45:32AM

10 A The cutting surfaces and such are the 11:45:34AM

11 same for both knees. 11:45:37AM

12 Q And, you know, a surgeon reviewing this 11:45:38AM

13 would be able to recognize that it would be -- 11:45:41AM

14 that this technique guide is applicable for both 11:45:50AM

15 right and left knees? 11:45:53AM

16 A Yes. 11:45:54AM

17 Q So there's no other surgical technique 11:45:55AM

18 about the right knee that's kind of not part of 11:45:58AM

19 this record? 11:46:00AM

20 MR. KAPPEL: Objection to form. 11:46:01AM

21 A I'm not aware of any specific for 11:46:05AM

22 right. There are changes that you would adapt 11:46:08AM

23 for a right knee with the guide for alignment 11:46:10AM

24 purposes, but the cutting guide surfaces would be 11:46:12AM

25 the same for a right and a left knee. 11:46:18AM

1 S. Schoifet

2 BY MR. CAVANAUGH: 11:46:20AM

3 Q If you look at page 6, it starts with a 11:46:20AM

4 femoral alignment guide. It says that the 11:46:23AM

5 alignment guide can be used with either a left or 11:46:30AM

6 a right knee, so... It can be set at 5 to 7 11:46:32AM

7 degrees? 11:46:38AM

8 MR. KAPPEL: Objection. What's the 11:46:40AM

9 question? 11:46:44AM

10 MR. CAVANAUGH: I'm looking to him to 11:46:45AM

11 get to the page. 11:46:47AM

12 BY MR. CAVANAUGH:

13 Q Are you at the page? 11:46:49AM

14 A Page 6, I am. 11:46:50AM

15 Q Would you agree that this is part of 11:46:57AM

16 the anterior resection cutting guide? 11:46:59AM

17 A Which part? Which figures, please? 11:47:02AM

18 Q Figure 8. 11:47:05AM

19 A Figure 8 is not part of the anterior 11:47:21AM

20 resection cutting guide. 11:47:25AM

21 Q What about figure 9? 11:47:27AM

22 A Figure 9 is. 11:47:29AM

23 Q It is? 11:47:30AM

24 A Figure 9 is. 11:47:30AM

25 Q Okay. And what about figure 10? 11:47:31AM

1 S. Schoifet

2 A Figure 10 is. 11:47:40AM

3 Q So figures 9 and 10 are the femoral 11:47:41AM

4 alignment guides? 11:47:46AM

5 A Correct. 11:47:47AM

6 MR. KAPPEL: Objection. 11:47:47AM

7 Mischaracterizes testimony. 11:47:48AM

8 A Figures 9 and 10, to clarify, are the 11:47:55AM

9 anterior referencing cutting guide set, the 11:47:58AM

10 instrumentation. It doesn't depict the cutting 11:48:02AM

11 guide surface.

12 BY MR. CAVANAUGH: 11:48:10AM

13 Q But there's only one anterior resection 11:48:10AM

14 guide that's used in the Scorpio system; is that 11:48:14AM

15 correct? 11:48:19AM

16 MR. KAPPEL: Objection to form. 11:48:19AM

17 A Yes. That's not clear. 11:48:21AM

18 BY MR. CAVANAUGH: 11:48:23AM

19 Q What's not clear? 11:48:23AM

20 A Your question. 11:48:24AM

21 Q There's only one anterior resection 11:48:25AM

22 guide -- is there another anterior resection 11:48:29AM

23 guide that's illustrated here? 11:48:31AM

24 A You're talking about the cutting guide 11:48:32AM

25 surface? The anterior referencing cutting guide 11:48:36AM

1 S. Schoifet

2 that we have is depicted as three parts. We 11:48:40AM

3 labelled them in the declaration. The 11:48:42AM

4 intramedullary rod, the other piece, and the 11:48:44AM

5 cutting guide surface. Those are the three. So 11:48:47AM

6 I would like you to just ask the question again 11:48:49AM

7 so I can answer it properly. 11:48:51AM

8 Q Of those three components, those three 11:48:52AM

9 components are used whether or not you are going 11:48:56AM

10 to have -- use a left -- going to operate on a 11:48:58AM

11 left knee or a right knee, correct? 11:49:01AM

12 A Correct. 11:49:03AM

13 Q So there's not a separate set of 11:49:08AM

14 components that's used for a left knee versus a 11:49:09AM

15 right knee? 11:49:13AM

16 A For this, for the anterior referencing 11:49:14AM

17 cutting guide set, there is not. 11:49:18AM

18 Q Okay. Thank you. 11:49:23AM

19 Are there two slots for the cutting 11:49:33AM

20 blade in front of the guide? 11:49:38AM

21 A There are two openings in the front. 11:49:39AM

22 Q And do those form cutting surfaces? 11:49:42AM

23 A They connect to the single cutting 11:49:45AM

24 guide surface on the bone side. 11:49:49AM

25 Q Can you clarify that for me. Where is 11:49:49AM

1 S. Schoifet

2 the connection on the cutting guide surface? 11:49:51AM

3 Maybe I misunderstood your answer. 11:49:56AM

4 A Picture two, which is your cutaway, 11:50:01AM

5 shows the connection from the two slots to the 11:50:04AM

6 single cutting guide surface. 11:50:07AM

7 Q I guess my question is really related 11:50:08AM

8 to figure 8 though. 11:50:10AM

9 A Figure 8. 11:50:16AM

10 MR. KAPPEL: Objection. 11:50:18AM

11 Mischaracterizes testimony. 11:50:18AM

12 BY MR. CAVANAUGH: 11:50:54AM

13 Q Figure 8 uses the term "slots." 11:50:54AM

14 Do you see that? 11:50:56AM

15 A Correct. 11:50:57AM

16 Q What's that word mean to you as someone 11:51:02AM

17 skilled in the art looking at the Scorpio 11:51:05AM

18 brochure? 11:51:07AM

19 A Just to be clear, that guide is not the 11:51:08AM

20 anterior referencing cutting guide. 11:51:10AM

21 Q I understand. 11:51:12AM

22 A Okay. 11:51:13AM

23 Q But what does that term "slot" mean to 11:51:14AM

24 you as someone skilled in the art? 11:51:16AM

25 A It's an opening in the front that is 11:51:18AM



1 S. Schoifet

2 longitudinal. 11:51:37AM

3 Q And when you say "longitudinal," what 11:51:39AM

4 do you mean by "longitudinal"? 11:51:41AM

5 A I'll clarify. It also could be 11:51:42AM

6 horizontal or angled, but it would be an opening 11:51:45AM

7 slot that has dimension. 11:51:47AM

8 Q You've just used the word "slot" in 11:51:50AM

9 defining "slot," so -- 11:51:53AM

10 A My opinion, the opening that has 11:51:53AM

11 dimension. 11:51:57AM

12 Q So looking at figure 15, the anterior 11:52:02AM

13 resection guide that's depicted in figure 15 is 11:52:17AM

14 the same one that would be used for a left knee 11:52:22AM

15 or a right knee; is that correct. 11:52:25AM

16 A That is correct. 11:52:26AM

17 Q Now, are these two openings to a 11:52:33AM

18 longitudinal extent, would those be slots? 11:52:39AM

19 A It's a two-dimensional picture, so 11:52:45AM

20 they're openings. 11:52:49AM

21 Q Okay. Do they have a longitudinal 11:52:52AM

22 extent? 11:52:55AM

23 A Well, they have width. 11:52:55AM

24 Q What do you mean "width"? 11:52:57AM

25 A Well, they go from left to right. Not 11:52:59AM

1 S. Schoifet

2 up and down. 11:53:02AM

3 Q So just so -- so I understand, your 11:53:05AM

4 description of width of this opening is from left 11:53:16AM

5 to right, correct? 11:53:23AM

6 A That is correct. 11:53:30AM

7 Q And that is the extent, at least as 11:53:38AM

8 depicted here, of the cutting surface? 11:53:42AM

9 A No. That is not correct. 11:53:45AM

10 Q Oh, okay.

11 A I'm sorry. I interrupted you. 11:53:47AM

12 Q At least as depicted here -- well, 11:53:49AM

13 actually, what is the purpose of that slot? 11:53:52AM

14 MR. KAPPEL: Objection. 11:53:54AM

15 Mischaracterizes testimony. 11:53:55AM

16 A That opening leads to the single 11:53:58AM

17 cutting guide surface on the bone side of the 11:54:00AM

18 guide. 11:54:02AM

19 BY MR. CAVANAUGH: 11:54:08AM

20 Q Okay. And is that opening used in 11:54:08AM

21 connection with part of the surgery? 11:54:11AM

22 A It is. 11:54:16AM

23 Q And what does that do? What is that 11:54:16AM

24 part of the surgery that that access opening 11:54:19AM

25 allows? 11:54:24AM

1 S. Schoifet

2 A That opening allows access of the 11:54:25AM  
3 sawblade to the single cutting guide surface on 11:54:30AM  
4 the bone side. 11:54:33AM

5 Q And is there another access opening on 11:54:36AM  
6 the left-hand side of this depiction in figure 11:54:40AM  
7 15? 11:54:46AM

8 A That opening is also part of the single 11:54:47AM  
9 cutting guide surface from the bone side. 11:54:50AM

10 Q So describe for me how you would make 11:54:54AM  
11 the anterior cut using kind of the left-hand 11:55:01AM  
12 portion -- I'm sorry. The anterior cut with the 11:55:06AM  
13 right-hand portion of the opening depicted in 11:55:09AM  
14 figure 15? 11:55:13AM

15 MR. KAPPEL: Objection. Foundation. 11:55:13AM

16 A Once the guide is secured with the 11:55:16AM  
17 intramedullary rod in position, you would use the 11:55:22AM  
18 openings on each side to access the single 11:55:24AM  
19 cutting guide surface on the bone side to get an 11:55:28AM  
20 accurate and complete and flat cut across the top 11:55:30AM  
21 of the femur. 11:55:34AM

22 BY MR. CAVANAUGH: 11:55:35AM

23 Q Now, if you were operating on a left 11:55:35AM  
24 knee, would you use one or both of the openings? 11:55:39AM

25 A You would use both of the openings 11:55:43AM

1 S. Schoifet

2 since they lead to the same single cutting guide 11:55:48AM

3 surface. They're meant to both be used to access 11:55:52AM

4 the entire cutting guide surface which is 11:55:54AM

5 necessary to give that accurate cut on the 11:55:57AM

6 anterior aspect of the femur. 11:56:00AM

7 Q So if I understood your testimony, the 11:56:04AM

8 surgery requires access of the cutter through 11:56:11AM

9 both openings in order to complete the resection; 11:56:15AM

10 is that correct? 11:56:17AM

11 A It requires use of the continuous 11:56:17AM

12 cutting guide surface on the back. 11:56:22AM

13 Q My question is different than that. 11:56:22AM

14 So let's prepare a hypothetical. 11:56:25AM

15 A (Nodding affirmatively). 11:56:29AM

16 Q First you're operating on a left knee? 11:56:30AM

17 A (Nodding affirmatively). 11:56:32AM

18 Q Can you tell me which opening that you 11:56:33AM

19 would start with in order to make the anterior 11:56:35AM

20 cut with the left knee? 11:56:40AM

21 A From a surgeon's standpoint it doesn't 11:56:41AM

22 make any difference which from side you start 11:56:43AM

23 with. 11:56:45AM

24 Q Can you tell me if you would use one 11:56:45AM

25 side or another? 11:56:47AM

1 S. Schoifet

2 A You would use both sides. 11:56:49AM

3 Q You would use both sides. Are both 11:56:51AM

4 sides required in order to complete the cut? 11:56:53AM

5 A The continuous cutting guide surface is 11:56:57AM

6 what's required on the bone side to complete the 11:56:59AM

7 cut. 11:57:03AM

8 Q My question is different than that. So 11:57:04AM

9 if you can focus on my question. 11:57:07AM

10 A (Nodding affirmatively). 11:57:08AM

11 Q So a surgeon operating on the left-hand 11:57:11AM

12 knee -- left side knee -- 11:57:15AM

13 A (Nodding affirmatively). 11:57:20AM

14 Q -- would access the left or the right 11:57:23AM

15 opening? Does it make a difference? 11:57:25AM

16 A Both. 11:57:27AM

17 Q Both. And so -- and your testimony is 11:57:27AM

18 that you would have to do both, you would have to 11:57:31AM

19 access it on the opening that we talked about on 11:57:33AM

20 the right and the opening that we talked about on 11:57:36AM

21 the left in order to complete the anterior cut? 11:57:40AM

22 MR. KAPPEL: Objection. 11:57:42AM

23 Mischaracterizes testimony. 11:57:43AM

24 A Can you repeat the question, please. 11:57:47AM

25 MR. CAVANAUGH: Could you the reporter 11:57:50AM

1 S. Schoifet

2 repeat the question, please. 11:57:51AM

3 (Question read) 11:57:54AM

4 A You would use both openings to access 11:58:20AM

5 the single cutting guide surface on the bone 11:58:24AM

6 side, yes. 11:58:26AM

7 BY MR. CAVANAUGH: 11:58:38AM

8 Q My question is different, though. Not 11:58:38AM

9 could you or would you. Is it necessary that you 11:58:40AM

10 use both openings on this anterior -- on the 11:58:44AM

11 illustrated in figure 15 to make the anterior 11:58:51AM

12 cut? 11:58:54AM

13 MR. KAPPEL: Objection. Form. 11:58:54AM

14 A The surgeon would use both openings to 11:58:58AM

15 access the single cutting guide surface to 11:59:04AM

16 complete the cut in the anterior aspect of the 11:59:06AM

17 femur. 11:59:10AM

18 BY MR. CAVANAUGH: 11:59:41AM

19 Q In your surgical practice do you use 11:59:41AM

20 both openings in order to complete the anterior 11:59:44AM

21 cut in a left-hand knee -- a left side knee? 11:59:47AM

22 A I have not used this guide since 2003, 11:59:53AM

23 but I can testify that I used both sides of the 11:59:57AM

24 guide when I used it. 12:00:01PM

25 Q Was it necessary to use both sides of 12:00:02PM

1 S. Schoifet

2 the guide? 12:00:05PM

3 A I used both sides of the guide to 12:00:05PM

4 access the single cutting guide surface to ensure 12:00:07PM

5 I got a flat cut across the anterior aspect of 12:00:09PM

6 the femur. 12:00:13PM

7 Q I would like to turn to paragraph 77 of 12:00:35PM

8 your report if you would. I would like to 12:00:37PM

9 understand your testimony that a person of 12:01:09PM

10 ordinary skill in the art in 2000 to 2003 would 12:01:14PM

11 clearly recognize from the figures that Scorpio 12:01:16PM

12 would not function as an anterior resection guide 12:01:18PM

13 if the center metal piece in front of the guide 12:01:22PM

14 surface extended all the way to the bone side of 12:01:25PM

15 the guide surface. 12:01:28PM

16 Do you see that testimony? 12:01:29PM

17 A I do. 12:01:30PM

18 Q And I would like to kind of focus your 12:01:30PM

19 attention on page 2 of Exhibit 2007. Can you 12:01:41PM

20 describe for me what your testimony is there? 12:01:50PM

21 MR. KAPPEL: Objection to foundation. 12:01:57PM

22 A My testimony states that a person of 12:01:58PM

23 ordinary skill in the art would recognize in the 12:02:08PM

24 figures that Scorpio would not function as an 12:02:10PM

25 anterior resection guide if the center metal 12:02:17PM

1 S. Schoifet

2 piece -- 12:02:19PM

3 (Reporter requested clarification)

4 A Not function as an anterior resection 12:02:19PM

5 guide if the center metal piece in front of the 12:02:20PM

6 guide surface extended all the way to the bone 12:02:20PM

7 side of the guide surface. 12:02:22PM

8 BY MR. CAVANAUGH: 12:02:29PM

9 Q You've made kind of a statement about 12:02:29PM

10 whether or not it would function if the center 12:02:36PM

11 metal piece in front of the guide surface 12:02:40PM

12 extended all the way to the bone side of the 12:02:43PM

13 guide surface. 12:02:46PM

14 Can you illustrate that and perhaps 12:02:47PM

15 this is as good of an illustration as any on -- 12:02:49PM

16 MR. CAVANAUGH: And what I'm going to 12:02:52PM

17 mark as exhibit Smith & Nephew 1022, and 12:02:53PM

18 just to describe it, it's a modified -- it's 12:03:03PM

19 a version of the Exhibit 2007 which is going 12:03:06PM

20 to include Dr. Schoifet's notations. 12:03:11PM

21 (Smith & Nephew Exhibit 1022, Two-page 12:03:17PM

22 Diagram, was marked for identification)

23 BY MR. CAVANAUGH: 12:03:32PM

24 Q Feel free to look at it. 12:03:32PM

25 I want you to -- in considering what 12:03:55PM



1 S. Schoifet

2 you say in paragraph 77, identify what it would 12:04:00PM

3 mean to have the center metal piece in front of 12:04:06PM

4 the guide surface extend all the way to the bony 12:04:09PM

5 side of the guide surface. Can you identify -- 12:04:12PM

6 A There's a continuous guide surface in 12:04:15PM

7 front of the metal piece. 12:04:17PM

8 Q So identify for me what it means to 12:04:19PM

9 extend all the way to the bone side of the 12:04:23PM

10 cutting -- the bone side of the guide surface. 12:04:27PM

11 MR. KAPPEL: Objection. On form. Are 12:04:29PM

12 you referring to the sentence previous 12:04:35PM

13 regarding Dr. Mabrey's deposition testimony 12:04:43PM

14 or are you asking him what would it mean for 12:04:46PM

15 that metal piece to go to the guide surface? 12:04:49PM

16 MR. CAVANAUGH: I'm asking for his -- 12:04:51PM

17 for understanding his testimony in his 12:04:56PM

18 paragraph 77 if the center piece in front of 12:04:58PM

19 the guide surface extended all the way to 12:05:01PM

20 the bone side of the guide surface. 12:05:03PM

21 Dr. Schoifet obviously has an understanding 12:05:06PM

22 of what that means because it's in his 12:05:08PM

23 declaration and I would like to understand 12:05:10PM

24 what his understanding of that phrase means. 12:05:12PM

25 MR. KAPPEL: And in that phrase you're 12:05:15PM

1 S. Schoifet

2 referring to his discussion of Dr. Mabrey's 12:05:17PM

3 testimony. That's what the paragraph says. 12:05:23PM

4 MR. CAVANAUGH: If you want to 12:05:33PM

5 testify -- 12:05:34PM

6 MR. KAPPEL: Just clarifying. 12:05:36PM

7 A Repeat the question, please. 12:05:38PM

8 BY MR. CAVANAUGH: 12:05:41PM

9 Q In paragraph 77 you say that if the 12:05:41PM

10 center metal piece in front of the guide surface 12:05:45PM

11 extended all the way to the bone side of the 12:05:48PM

12 guide surface. I want to understand what you 12:05:51PM

13 understand that to be? 12:05:54PM

14 A Do you want me to draw what Dr. Mabrey 12:05:56PM

15 said it was? 12:06:00PM

16 Q I would like to understand what you 12:06:04PM

17 think it is? 12:06:06PM

18 A What I think is there's a continuous 12:06:07PM

19 guide surface on the bony side and therefore 12:06:10PM

20 nothing extends all the way to the bony side 12:06:13PM

21 because there's a continuous guide surface from 12:06:16PM

22 end to end. That's what I understand. 12:06:18PM

23 Q Okay. So obviously you think that 12:06:20PM

24 there's a condition that the center metal piece 12:06:24PM

25 could extend all the way to the bone side of the 12:06:28PM

1 S. Schoifet

2 guide surface? 12:06:32PM

3 A I know that there's a continuous guide 12:06:32PM

4 surface -- 12:06:34PM

5 Q Okay.

6 A -- on the bony side and therefore the 12:06:34PM

7 piece does not extend all the way to that side. 12:06:37PM

8 I've seen the piece. I've held the piece. I've 12:06:39PM

9 used the piece. It does not. There's a single 12:06:42PM

10 bony guide surface, a single cutting guide 12:06:45PM

11 surface on the bony side of that piece. 12:06:48PM

12 Q And you've identified a single 12:06:51PM

13 continuous guide surface and you seem to 12:06:53PM

14 understand what the tip of the triangle is; is 12:06:59PM

15 that correct? I mean, you understand that 12:07:03PM

16 there's a tip to the triangle? 12:07:06PM

17 A Technically speaking it's not a 12:07:11PM

18 triangle. It doesn't extend all the way to the 12:07:14PM

19 continuous guide surface. Therefore, it's not a 12:07:16PM

20 triangle. 12:07:19PM

21 Q So what would you call it? 12:07:21PM

22 A It's the metal piece that holds the 12:07:24PM

23 anterior referencing skim guide. 12:07:30PM

24 Q So when you talk about the piece that 12:07:33PM

25 makes it not a triangle, that cutaway in what you 12:07:37PM

1                               S. Schoifet

2   call the continuous guide surface.                               12:07:41PM

3                               Do you see that piece?   Do you see that                               12:07:42PM

4   area?   12:07:44PM

5                               MR. KAPPEL:   Objection to form.                               12:07:44PM

6           A       I see a continuous cutting guide                               12:07:45PM

7   surface.   12:07:49PM

8   BY MR. CAVANAUGH:   12:07:49PM

9           Q       Can you draw for me the tip end of the                               12:07:49PM

10   triangle that you perceive is missing?                               12:07:52PM

11                               MR. KAPPEL:   Objection to form.                               12:08:00PM

12           A       There's nothing missing.   There's a                               12:08:00PM

13   continuous cutting guide surface and a metal                               12:08:03PM

14   piece that does not extend to it.   12:08:06PM

15   BY MR. CAVANAUGH:   12:08:11PM

16           Q       Can you tell me as you sit here today                               12:08:11PM

17   what the dimension of that little piece is?                               12:08:16PM

18           A       I cannot.   12:08:20PM

19           Q       Do you know if it's a millimeter?                               12:08:25PM

20                               MR. KAPPEL:   Objection to form.                               12:08:30PM

21           A       I know it is continuous across the                               12:08:31PM

22   entire bone side of the guide.   12:08:35PM

23   BY MR. CAVANAUGH:   12:08:37PM

24           Q       I am asking more about -- since you                               12:08:37PM

25   seem to -- the continuous guide surface, is there                               12:08:43PM

1 S. Schoifet

2 a point at which the -- let's decide on terms. 12:08:45PM

3 What do you want to call this right 12:08:54PM

4 here? 12:08:56PM

5 MR. KAPPEL: Objection to "right here." 12:08:56PM

6 MR. CAVANAUGH: The identified center 12:09:01PM

7 piece of the diagram. 12:09:05PM

8 MR. KAPPEL: Objection. To the term 12:09:07PM

9 "center piece." 12:09:10PM

10 MR. CAVANAUGH: Okay. 12:09:13PM

11 BY MR. CAVANAUGH:

12 Q Can I ask you then to -- and this is 12:09:14PM

13 going to take a little bit longer, but why don't 12:09:16PM

14 you identify kind of from the left-hand side to 12:09:21PM

15 right-hand side the various components that are 12:09:28PM

16 depicted here. Can you do that for me? If you 12:09:30PM

17 could write it down, please, that would be great. 12:09:37PM

18 A Well, it's already written down, 12:09:39PM

19 actually. There's a continuous cutting guide 12:09:40PM

20 surface. 12:09:45PM

21 Q Okay. And what about this piece right 12:09:45PM

22 over here? What would you call that on the 12:09:46PM

23 left-hand side? 12:09:48PM

24 A I would not necessarily -- I would call 12:09:48PM

25 that the end of the cutting guide. 12:09:49PM

1 S. Schoifet

2 Q Okay. The end of the cutting guide. 12:09:51PM

3 Maybe you could just label that. 12:09:53PM

4 A I'll put that. 12:09:54PM

5 Q And then is there another end to the 12:09:56PM

6 cutting guide? 12:09:57PM

7 A There is. 12:10:00PM

8 Q Can you label that? 12:10:02PM

9 A (Complying). 12:10:06PM

10 Q And then there's something in between 12:10:06PM

11 or something else that's represented in the 12:10:08PM

12 drawing? 12:10:10PM

13 A There is. 12:10:10PM

14 Q Okay. What else is that? 12:10:11PM

15 A That would be the mount for the 12:10:12PM

16 anterior skim cut. 12:10:14PM

17 Q And where would that be? 12:10:16PM

18 A That would be on top of the cutting 12:10:19PM

19 guide. 12:10:22PM

20 Q And can you identify that and label 12:10:23PM

21 it -- 12:10:26PM

22 A Not in this --

23 Q -- in the illustration? 12:10:27PM

24 A Oh, I can label it as a mount. I can't 12:10:28PM

25 label the top of the cutting guide in this 12:10:30PM

1 S. Schoifet

2 illustration. 12:10:32PM

3 Q The mount would be sufficient. 12:10:33PM

4 A (Complying). 12:10:37PM

5 Mount for skim cut guide. 12:10:41PM

6 Q Okay. So is there a -- are there any 12:10:54PM

7 other features that are represented in this 12:10:56PM

8 diagram? 12:11:01PM

9 A None that I'm aware of. 12:11:02PM

10 Q Is there a truncated triangle in this 12:11:06PM

11 diagram? 12:11:09PM

12 A The mount appears to be a section of 12:11:15PM

13 the truncated triangle. 12:11:19PM

14 Q Okay. So can you identify that as 12:11:20PM

15 being a truncated triangle? Go ahead. Use your 12:11:22PM

16 red pen. 12:11:32PM

17 A I understand. You asked me whether I 12:11:32PM

18 could do that, so I was -- not whether I would do 12:11:34PM

19 that; is that correct? 12:11:36PM

20 Q If you would write it down, that would 12:11:37PM

21 be much appreciated. 12:11:42PM

22 A (Complying). 12:11:44PM

23 Q So we can call this a truncated 12:12:00PM

24 triangle and you'll understand what it is in the 12:12:02PM

25 diagram? 12:12:05PM

1 S. Schoifet

2 A It's truncated to allow the continuous 12:12:06PM  
3 cutting guide surface. 12:12:09PM

4 Q But my question is whether or not when 12:12:11PM  
5 I use the term "truncated triangle" you 12:12:13PM  
6 understand what I'm talking about? 12:12:15PM

7 A It's a truncated triangle to allow the 12:12:17PM  
8 continuous cutting guide surface. That's how I 12:12:20PM  
9 understand it. 12:12:23PM

10 Q Okay. Because you -- actually, you 12:12:24PM  
11 used that term "truncated triangle." So that 12:12:25PM  
12 you're kind of struggling with terms right now is 12:12:27PM  
13 somewhat curious. 12:12:31PM

14 MR. KAPPEL: Objection. If you would 12:12:32PM  
15 like to point him to the portion of his dec 12:12:37PM  
16 where he talks about it, then maybe you 12:12:39PM  
17 would get a better answer. 12:12:41PM

18 MR. CAVANAUGH: Sure. In the next 12:12:42PM  
19 paragraph. 12:12:44PM

20 A Paragraph 78? 12:12:52PM

21 BY MR. CAVANAUGH: 12:12:54PM

22 Q That would be the next one. Yes. 12:12:54PM

23 A (Witness reviewing document). 12:13:24PM

24 I have read it. 12:13:25PM

25 Q So because you've used the term 12:13:25PM



1 S. Schoifet

2 "truncated triangle," can we agree that this 12:13:27PM

3 truncated triangle is what you're -- that's 12:13:31PM

4 illustrated in page 2 of Exhibit 2007 is what 12:13:35PM

5 you're referring to in paragraph 77? 12:13:41PM

6 A Correct. 12:13:44PM

7 Q Now -- 12:13:48PM

8 MR. KAPPEL: Objection. 12:13:48PM

9 Mischaracterizes the direct testimony. 12:13:51PM

10 A Paragraph 78. 12:13:54PM

11 MR. KAPPEL: Are you talking about 78 12:13:59PM

12 that you just had him read or 77 are you now 12:14:01PM

13 referring back to in this last question? 12:14:05PM

14 Because I think that's confusing. You just 12:14:06PM

15 asked him to read 78 and then in your 12:14:08PM

16 question you go back to 77. I want to make 12:14:10PM

17 sure the witness understands which paragraph 12:14:12PM

18 you're referring to. 12:14:14PM

19 MR. CAVANAUGH: Are there two truncated 12:14:17PM

20 triangles that we're talking about here? 12:14:19PM

21 Because I guess I'm confused with the 12:14:21PM

22 terminology that -- and the clarifications 12:14:22PM

23 that you're seeking, Mr. Kappel. 12:14:25PM

24 MR. KAPPEL: I'm seeking clarification 12:14:28PM

25 as to whether you're asking about 77 which 12:14:31PM

1 S. Schoifet

2 is discussing his understanding of 12:14:36PM

3 Dr. Mabrey's deposition testimony with 12:14:38PM

4 paragraph 78 which is discussing his 12:14:42PM

5 understanding of the Scorpio device that's 12:14:45PM

6 depicted in 2007. 12:14:50PM

7 I don't think you can make that 12:14:52PM

8 connection unless the witness wants to agree 12:14:55PM

9 that that's a connection that can be made. 12:15:00PM

10 BY MR. CAVANAUGH: 12:15:03PM

11 Q Is there a connection between 12:15:03PM

12 paragraph 77 and 78 in the device that you're 12:15:05PM

13 looking at? 12:15:07PM

14 MR. KAPPEL: Objection. Again 12:15:08PM

15 mischaracterizes the testimony. 12:15:09PM

16 A In 78 I'm describing what I see. In 77 12:15:16PM

17 I'm discussing my understanding of what 12:15:21PM

18 Dr. Mabrey was talking about. 12:15:22PM

19 BY MR. CAVANAUGH: 12:15:24PM

20 Q Well, let's see if we get to your 12:15:24PM

21 opinion. In 77 you actually say that a person of 12:15:25PM

22 ordinary skill in the art in 2000 to 2003 would 12:15:30PM

23 clearly recognize from the figures that Scorpio 12:15:36PM

24 would not function as an anterior resection 12:15:38PM

25 guide, and I have two questions. 12:15:42PM

1 S. Schoifet

2 The first one is, what is the basis for 12:15:45PM  
3 that opinion? 12:15:46PM

4 A The basis for that opinion is that you 12:15:51PM  
5 would expect a single cutting guide surface of 12:15:53PM  
6 width greater than the transverse -- 12:15:56PM

7 (Reporter requested clarification)

8 A Please ask the question again. I'll 12:16:03PM  
9 start slowly.

10 MR. CAVANAUGH: Perhaps you could just 12:16:05PM  
11 repeat the question. 12:16:06PM

12 (Question read) 12:16:39PM

13 A The basis for that opinion is one 12:16:39PM  
14 having used the guide having the extended 12:16:40PM  
15 single cutting guide surface you would expect 12:16:44PM  
16 to have a cutting guide surface longer than 12:16:46PM  
17 the width of the bone so that it would be flat 12:16:47PM  
18 across and even and accurate. And the diagrams 12:16:49PM  
19 in Scorpio, specifically figure 18 of which we 12:16:53PM  
20 haven't -- or excuse me, is that 16 or 18 -- I 12:16:58PM  
21 think it's 16 shows a single cutting guide 12:17:02PM  
22 surface going from end to end because that is 12:17:04PM  
23 what a surgeon would expect. That is what we've 12:17:07PM  
24 used, and that is what we would have at the time 12:17:10PM  
25 to get an accurate cut. 12:17:13PM

1 S. Schoifet

2 BY MR. CAVANAUGH: 12:17:25PM

3 Q Did you do any testing to confirm that 12:17:25PM

4 the Scorpio would not function as an anterior 12:17:31PM

5 resection guide if the center metal piece of the 12:17:33PM

6 front guide surface extended all the way to the 12:17:36PM

7 bone side of that surface? 12:17:39PM

8 A You need a single cutting guide surface 12:17:44PM

9 from end to end to complete the cut. So to not 12:17:46PM

10 have a single cutting guide surface would not be 12:17:50PM

11 able to get a complete and accurate cut. 12:17:53PM

12 Q My question is different than that. 12:17:55PM

13 Did you do any testing to confirm your opinion 12:17:56PM

14 that you present on paragraph 77 that the Scorpio 12:17:59PM

15 would not function as an anterior resection 12:18:03PM

16 guide? 12:18:06PM

17 A It's in my opinion that you would need 12:18:06PM

18 to have a single continuous cutting guide surface 12:18:10PM

19 and if you could not cut across the bone you 12:18:15PM

20 could not have a continuous cutting guide 12:18:18PM

21 surface. 12:18:21PM

22 Q Did you do any testing? 12:18:21PM

23 A I used that guide in 2003, and it has a 12:18:22PM

24 single continuous cutting guide surface. 12:18:28PM

25 Q Did the guide that you used extend all 12:18:31PM

1 S. Schoifet

2 the way to the bone side of the guide surface? 12:18:35PM

3 A Could you repeat the question? 12:18:38PM

4 Q Sure. Did the guys surface that you 12:18:40PM

5 used in 2003 which you just referenced extend -- 12:18:42PM

6 have a truncated triangle that extended all the 12:18:45PM

7 way to the bone side of the guide surface? 12:18:48PM

8 MR. KAPPEL: Objection. 12:18:50PM

9 Mischaracterization. 12:18:53PM

10 A That is a mischaracterization. It did 12:18:53PM

11 not go all the way to the bone side. It was a 12:18:55PM

12 continuous cutting guide. 12:18:57PM

13 BY MR. CAVANAUGH:

14 Q Okay. So --

15 A There's a continuous cutting guide 12:18:58PM

16 surface from end to end. The truncated triangle 12:19:00PM

17 ensures that there is a continuous cutting guide 12:19:03PM

18 surface on the bony side. That's my testimony. 12:19:05PM

19 Q But my question relates to whether or 12:19:07PM

20 not you tested a device that would demonstrate 12:19:10PM

21 that the Scorpio would not function as an 12:19:17PM

22 anterior resection guide? 12:19:19PM

23 MR. KAPPEL: Objection. Incomplete 12:19:23PM

24 hypothetical. 12:19:25PM

25 A That would be -- I would need to have 12:19:25PM

1 S. Schoifet

2 that device in hand to tell you whether or not it 12:19:27PM

3 would be useful. That's a hypothetical device. 12:19:29PM

4 I wouldn't know how to put that together or shape 12:19:32PM

5 it. 12:19:34PM

6 BY MR. CAVANAUGH: 12:19:35PM

7 Q So you would not be able to, without 12:19:35PM

8 looking at a device, determine whether or not a 12:19:38PM

9 Scorpio would function as an anterior resection 12:19:43PM

10 guide if the center metal piece in the front of 12:19:47PM

11 the guide surface extended all the way to the 12:19:49PM

12 bone side of the guide surface? 12:19:51PM

13 A If you did not have a continuous 12:19:55PM

14 cutting guide surface all the way to the bone 12:19:57PM

15 surface, you might not be able to complete the 12:19:59PM

16 cut and get a clean accurate anterior skim cut. 12:20:01PM

17 Therefore the cutting guide has a single 12:20:09PM

18 continuous cutting guide surface from end to end. 12:20:12PM

19 Q I guess my question is related to the 12:20:15PM

20 "would not function." And your answer just 12:20:18PM

21 previously said may not. And, you know, my 12:20:20PM

22 understanding of may not and would not function 12:20:26PM

23 is different. They're different answers. 12:20:29PM

24 So can you tell me what the basis of 12:20:31PM

25 your opinion that the Scorpio would not function 12:20:35PM

1 S. Schoifet

2 as an anterior resection guide if the center 12:20:38PM

3 metal piece in front of the guide surface 12:20:42PM

4 extended all of the way to the bone side of the 12:20:44PM

5 guide surface? 12:20:46PM

6 A You would not be able to complete the 12:20:46PM

7 cut without the continuous guide surface. It's 12:20:48PM

8 an essential notch. 12:20:53PM

9 Q So your testimony is that that space 12:20:54PM

10 created by the truncated triangle is necessary 12:21:00PM

11 for the Scorpio to function? 12:21:03PM

12 MR. KAPPEL: Objection. 12:21:05PM

13 Mischaracterizes testimony in paragraph 77. 12:21:06PM

14 A A single cutting guide surface ensures 12:21:11PM

15 that the two cuts -- the two -- the cuts from 12:21:13PM

16 either side of the Scorpio guide are parallel, 12:21:17PM

17 even, and that would function as a single cut. 12:21:20PM

18 That's why you make a single cutting guide 12:21:25PM

19 surface from end to end for an accurate cut. 12:21:27PM

20 BY MR. CAVANAUGH: 12:21:33PM

21 Q Have you ever created a device that has 12:21:33PM

22 an anterior resection guide -- have you ever 12:21:37PM

23 created an anterior resection guide where the 12:21:40PM

24 center metal piece in front of the guide surface 12:21:43PM

25 extends all the way to the bone side of the guide 12:21:46PM

1 S. Schoifet

2 surface? 12:21:48PM

3 A I have not created one. 12:21:50PM

4 Q Okay. And because you've not created 12:21:52PM

5 one, you've not tested one either, correct? 12:21:54PM

6 A I would not create one because it would 12:21:56PM

7 be a nonfunctional guide. There would be no 12:21:58PM

8 purpose to create a guide without a single 12:22:01PM

9 cutting guide surface that could ensure a clean 12:22:03PM

10 and accurate cut. So to test a nonfunctioning 12:22:05PM

11 device doesn't make any sense. 12:22:09PM

12 Q So your testimony is that you need both 12:22:10PM

13 sides of the cutting guide on both sides of this 12:22:12PM

14 truncated triangle in order to complete the 12:22:18PM

15 anterior resection cut, is that true? 12:22:21PM

16 MR. KAPPEL: Objection. 12:22:25PM

17 Mischaracterizes testimony. 12:22:25PM

18 A You need to access the continuous 12:22:26PM

19 cutting guide surface on the bone side and you 12:22:30PM

20 use both sides to do that. 12:22:33PM

21 MR. KAPPEL: I'm just going to take a 12:22:40PM

22 second. It's 12:30. I don't know when you 12:22:42PM

23 guys are thinking about lunch. 12:22:44PM

24 MR. CAVANAUGH: Maybe a few more 12:22:52PM

25 minutes and then we'll break for lunch. 12:22:54PM



1 S. Schoifet

2 BY MR. CAVANAUGH: 12:23:02PM

3 Q When you say access from both sides, 12:23:02PM

4 focusing on the physician's side of the guide 12:23:04PM

5 that's in Exhibit 2007, page 2, when you say 12:23:07PM

6 "both sides," do you mean on both sides of the 12:23:12PM

7 truncated triangle? 12:23:15PM

8 A Using both openings to access the 12:23:16PM

9 continuous cutting guide surface. 12:23:19PM

10 Q So your testimony is that one would 12:23:21PM

11 need both openings from the -- on the physician's 12:23:24PM

12 side in order to complete the anterior resection 12:23:29PM

13 cut? 12:23:32PM

14 A My answer is you would need access to 12:23:33PM

15 the continuous cutting guide surface and that 12:23:35PM

16 would utilize both sides. 12:23:38PM

17 Q I'm not sure I understand 12:23:52PM

18 your testimony. You need access on the 12:23:53PM

19 physician's side you need to use both 12:23:56PM

20 openings or a single opening to complete an 12:23:59PM

21 anterior resection cut? 12:24:01PM

22 MR. KAPPEL: Objection. Form. 12:24:03PM

23 A A surgeon would utilize both openings 12:24:07PM

24 to get access to the continuous cutting guide 12:24:09PM

25 surface on the bone side of the guide. 12:24:12PM

1 S. Schoifet

2 BY MR. CAVANAUGH: 12:24:15PM

3 Q If a surgeon only had half of the 12:24:15PM

4 resection guide, cutting from the truncated 12:24:27PM

5 triangle over to the left, for example, would 12:24:32PM

6 that provide sufficient access to the continue -- 12:24:37PM

7 what you call the continuous cutting guide 12:24:40PM

8 surface in order to complete a cut? 12:24:43PM

9 MR. KAPPEL: Objection. Incomplete 12:24:45PM

10 hypothetical. 12:24:47PM

11 A Can I see one? 12:24:47PM

12 BY MR. CAVANAUGH: 12:24:49PM

13 Q See one what? 12:24:49PM

14 A This guide you're describing so I can 12:24:51PM

15 answer accurately. 12:24:53PM

16 Q This is a hypothetical. Are you 12:24:57PM

17 familiar with hypotheticals? 12:24:59PM

18 A I'm familiar with hypotheticals. 12:25:01PM

19 Q Okay. And so in a hypothetical, there 12:25:02PM

20 are -- strike that. 12:25:20PM

21 So you can't answer whether or not 12:25:20PM

22 there is an ability using simply half of the 12:25:23PM

23 cutting guide -- of the resection guide in order 12:25:31PM

24 to complete an anterior cut? 12:25:35PM

25 MR. KAPPEL: Objection. Form. 12:25:37PM

1 S. Schoifet

2 A To render an expert opinion I would 12:25:38PM  
3 want to see the guide. 12:25:41PM

4 BY MR. CAVANAUGH: 12:25:49PM

5 Q Now, you called this a truncated 12:25:49PM  
6 triangle in Exhibit 2007, page 2. What 12:25:53PM  
7 if hypothetically someone were to extend 12:26:01PM  
8 that triangle to the distal end -- to the bone 12:26:03PM  
9 side of the guide surface? Do you have that 12:26:07PM  
10 hypothetical in mind? Can you put your mind 12:26:11PM  
11 around that? 12:26:15PM

12 A Functionally that wouldn't make any 12:26:15PM  
13 sense. You would want a continuous cutting guide 12:26:17PM  
14 surface to ensure an equal cut on both sides of 12:26:20PM  
15 the bone. 12:26:22PM

16 Q I'm not asking whether you it makes 12:26:23PM  
17 sense. What I'm asking you is if you can get it 12:26:25PM  
18 into your mind right now. Do you understand the 12:26:27PM  
19 hypothetical that I'm describing? 12:26:33PM

20 A I do. 12:26:34PM

21 Q Okay. And so in that hypothetical, is 12:26:34PM  
22 it your testimony that -- that the Scorpio device 12:26:42PM  
23 so modified would be nonfunctional? 12:26:46PM

24 A You would need a continuous cutting 12:26:48PM  
25 guide surface from end to end to ensure a clean 12:26:52PM

1 S. Schoifet

2 cut equal across the bones. If you have a 12:26:54PM

3 device, I could comment. 12:27:00PM

4 MR. CAVANAUGH: Maybe now is a good 12:27:21PM

5 time to break for lunch and then we'll pick 12:27:22PM

6 this up after lunch. 12:27:25PM

7 THE VIDEOGRAPHER: The time is 12:28 12:27:26PM

8 p.m. and we are going off the record. 12:27:28PM

9 (Lunch recess: 12:28 p.m.) 12:35:52PM

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1 S. Schoifet

2 AFTERNOON SESSION

3 1:29 p.m. 01:04:14PM

4 THE VIDEOGRAPHER: The time is 1:29 01:27:52PM

5 p.m. and we are back on the record. 01:28:55PM

6 EXAMINATION CONTINUED 01:28:57PM

7 BY MR. CAVANAUGH: 01:28:57PM

8 Q Good afternoon, Dr. Schoifet. 01:28:57PM

9 A Good afternoon. 01:29:00PM

10 Q As we ended before lunch, we were 01:29:01PM

11 talking about the -- I want to make sure I get it 01:29:08PM

12 right, a continuous cutting guide surface. 01:29:14PM

13 Do you remember that testimony? 01:29:20PM

14 A Yes. 01:29:21PM

15 Q Can you use Exhibit 2007, which is this 01:29:22PM

16 one right here that you've drawn on -- actually, 01:29:29PM

17 that's 1022 but you can use 1022 because it's a 01:29:32PM

18 representation of 2007 -- and, draw for me in 01:29:36PM

19 blue, if you would, the continuous guide surface. 01:29:44PM

20 A (Complying). 01:29:51PM

21 Might that be sufficient? 01:30:09PM

22 Q Yes. And so in your estimation -- 01:30:12PM

23 you've drawn some blue markings on Exhibit 1022 01:30:17PM

24 -- how would you define a continuous guide 01:30:21PM

25 surface? 01:30:24PM

1 S. Schoifet

2 A A guide surface is actually defined in 01:30:24PM

3 my declaration. Guide surface is a surface that 01:30:27PM

4 guides a cutting instrument, paragraph 21. 01:30:43PM

5 Q And what is a continuous guide surface? 01:30:47PM

6 A That would be a guide surface that's 01:30:49PM

7 continuous. 01:30:51PM

8 Q Help me understand what the word 01:30:54PM

9 continuous means in that regard. 01:30:56PM

10 A Continuous would mean there's no 01:30:58PM

11 separation. 01:31:01PM

12 Q No separation between what? 01:31:07PM

13 A Either side of the guide. It's a 01:31:08PM

14 continuous cutting guide surface from side to 01:31:13PM

15 side on the bone side of the cutting guide. 01:31:18PM

16 Q It's continuous because of what, 01:31:20PM

17 because of...? 01:31:23PM

18 A Per my drawing, I drew -- I drew it as 01:31:24PM

19 continuous. The blue goes from one side to the 01:31:27PM

20 other, and I drew along the cutting guide surface 01:31:29PM

21 as you requested. So the left side connects to 01:31:32PM

22 the right side and that makes it a continuous 01:31:34PM

23 cutting guide surface across the bone side of the 01:31:36PM

24 cutting guide. 01:31:42PM

25 Q I would like for you to use your red 01:31:55PM

1 S. Schoifet

2 pen and to complete the truncated triangle so 01:31:59PM

3 that it extends from the end of the truncated 01:32:04PM

4 triangle to the side -- the bone cutting side of 01:32:10PM

5 the guide. 01:32:16PM

6 A (Complying). 01:32:25PM

7 Q Now, if that were a metallic -- what 01:32:28PM

8 you just wrote in red is the completed portion of 01:32:30PM

9 the truncated triangle, and I would like you to 01:32:37PM

10 think through a hypothetical with me, if you 01:32:47PM

11 would. 01:32:48PM

12 You understand what a hypothetical is, 01:32:49PM

13 don't you, Doctor? 01:32:50PM

14 A I do understand what a hypothetical is. 01:32:51PM

15 Q Okay. So what I'd like you to do is 01:32:54PM

16 hypothesize that the triangle is not a truncated 01:32:59PM

17 triangle but a triangle that extends all the way 01:33:06PM

18 to the bone side of the cutting guide. 01:33:08PM

19 Can you do that for me? 01:33:15PM

20 A I have it right here. 01:33:16PM

21 Q So in that hypothetical is there a 01:33:17PM

22 guide surface associated with the cutting guide? 01:33:25PM

23 A Well, this is a hypothetical guide that 01:33:28PM

24 we don't actually have in hand. 01:33:30PM

25 Q That's not my question, sir. 01:33:33PM

1 S. Schoifet

2 A I know. 01:33:34PM

3 Q My question is: Is there a guide 01:33:35PM

4 surface associated with that hypothetical? 01:33:41PM

5 A There is a guide surface associated 01:33:42PM

6 with that hypothetical. 01:33:44PM

7 Q And with that hypothetical, is there a 01:33:48PM

8 continuous guide surface? 01:33:50PM

9 A With this hypothetical you do not have 01:33:54PM

10 a continuous guide surface. Might I also add 01:33:57PM

11 that we may have created a nonfunctioning cutting 01:34:18PM

12 guide so we do have a cutting guide that I've 01:34:22PM

13 commented doesn't have a continuous guide surface 01:34:26PM

14 that may very well not function for this 01:34:30PM

15 particular purpose in doing an anterior 01:34:33PM

16 referencing cut. 01:34:35PM

17 Q Yes. But you don't know that, sir, do 01:34:35PM

18 you? 01:34:37PM

19 A It's a hypothetical guide. I know that 01:34:37PM

20 if you have a continuous cutting guide surface 01:34:41PM

21 that you would ensure that you would have an 01:34:44PM

22 accurate cut across both. And I know with this 01:34:46PM

23 hypothetical guide you cannot ensure that and you 01:34:48PM

24 may very well have created a guide that is 01:34:51PM

25 nonfunctional. So I'm rendering an expert 01:34:53PM



1 S. Schoifet

2 opinion on a potentially nonfunctional cutting 01:34:55PM

3 guide. 01:34:58PM

4 Q Because it is -- doesn't have a 01:35:01PM

5 continuous guide surface, in your opinion? 01:35:04PM

6 A This one does not have a continuous 01:35:06PM

7 cutting guide surface and may very well be a 01:35:09PM

8 nonfunctioning cutting guide still requiring an 01:35:12PM

9 intramedullary rod but might very well be a 01:35:16PM

10 nonfunctioning cutting guide. 01:35:19PM

11 Q Okay. May well or would be 01:35:20PM

12 nonfunctioning? Those are different, sir. 01:35:22PM

13 A If you can produce the guide for me, I 01:35:23PM

14 can answer that question accurately. 01:35:26PM

15 Q So is your testimony that it would not 01:35:27PM

16 function or is your testimony that it may not 01:35:29PM

17 function? 01:35:31PM

18 A My testimony is that a continuous 01:35:32PM

19 cutting guide on the bony side ensures a complete 01:35:35PM

20 and accurate cut, and the hypothetical you gave 01:35:38PM

21 me may very well be a nonfunctioning cutting 01:35:40PM

22 guide? 01:35:42PM

23 Q But you don't know for sure whether it 01:35:42PM

24 would be functional or not, correct? 01:35:44PM

25 A I can answer that accurately if you 01:35:46PM

1 S. Schoifet

2 gave me the cutting guide. 01:35:47PM

3 Q But without the cutting guide you just 01:35:51PM

4 wouldn't know. In your expert opinion you 01:35:54PM

5 wouldn't be able to make an assessment whether or 01:35:55PM

6 not it would be a functioning device? 01:35:59PM

7 MR. KAPPEL: Objection. Form. 01:36:00PM

8 A In my expert opinion a continuous 01:36:03PM

9 cutting guide ensures that you're going to have a 01:36:05PM

10 clean and accurate cut across both surfaces which 01:36:08PM

11 is why this guide was designed with a continuous 01:36:11PM

12 cutting guide as were all -- 01:36:17PM

13 (Reporter requested clarification)

14 A This guide was designed as a continuous

15 -- with a continuous cutting guide to ensure you 01:36:18PM

16 would have a complete and accurate cut. It's to 01:36:18PM

17 what's to be expected. It's what was depicted in 01:36:21PM

18 the anterior referencing manual, and when I held 01:36:23PM

19 it in my hand, it a continuous guide surface. 01:36:26PM

20 BY MR. CAVANAUGH: 01:36:29PM

21 Q Now, my question is, would the 01:36:47PM

22 hypothetical function or would it not function? 01:36:48PM

23 And that's a yes or no. 01:36:54PM

24 MR. KAPPEL: Objection. Form. 01:36:55PM

25 A To render an expert opinion without the 01:36:58PM

1 S. Schoifet

2 guide, it would be very difficult. I know that a 01:37:02PM

3 continuous cutting guide surface on a guide like 01:37:04PM

4 this would ensure the cut. I know that the 01:37:07PM

5 hypothetical guide you're describing may be 01:37:09PM

6 nonfunctional. 01:37:11PM

7 BY MR. CAVANAUGH:

8 Q So it may be nonfunctional. You don't 01:37:12PM

9 know? 01:37:14PM

10 A I know that a continuous cutting guide 01:37:14PM

11 surface would ensure that the cut would be able 01:37:17PM

12 to be carried across to both sides and ensure an 01:37:19PM

13 accurate cut. I know that cutting guide surfaces 01:37:22PM

14 in the time in 2000, 2003 were long and wider 01:37:25PM

15 than the transverse dimension of the prosthesis 01:37:30PM

16 as is this one to ensure an accurate cut. 01:37:34PM

17 Q So I would like you to -- actually, let 01:37:38PM

18 me step it back. Looking at the Scorpio that's 01:37:40PM

19 depicted here -- 01:37:43PM

20 MR. KAPPEL: Objection, form. Which? 01:37:44PM

21 BY MR. CAVANAUGH: 01:37:52PM

22 Q Looking at the Scorpio that -- looking 01:37:52PM

23 at Exhibit 1022. 01:37:54PM

24 Do you have that in mind? 01:37:57PM

25 A It's right here. 01:37:58PM

1 S. Schoifet

2 Q Can you show me with an arrow where a 01:38:03PM  
3 surgeon would insert a cutting guide -- a cutting 01:38:08PM  
4 device into the guide? 01:38:13PM

5 MR. KAPPEL: I'm going to object. I 01:38:16PM  
6 don't think this is going to be a problem 01:38:22PM  
7 for you, but you've not got an exhibit which 01:38:23PM  
8 was first modified to show what he was 01:38:26PM  
9 indicating as a continuous guide surface. 01:38:32PM  
10 Now you've had him throw in a triangle, and 01:38:34PM  
11 now you're asking what a surgeon would do 01:38:37PM  
12 and it's unclear which of those three you're 01:38:40PM  
13 talking about. Is it 2007? Is it with the 01:38:43PM  
14 continuous guide surface or is it that? I 01:38:47PM  
15 don't understand from your question. 01:38:51PM

16 MR. CAVANAUGH: Mr. Kappel, you have 01:38:55PM  
17 been providing speaking objections all 01:38:57PM  
18 morning and now again this afternoon. 01:39:00PM

19 Are you aware of the rules about 01:39:03PM  
20 depositions in patent office proceedings? 01:39:05PM

21 MR. KAPPEL: I am. 01:39:10PM

22 MR. CAVANAUGH: Okay.

23 MR. KAPPEL: And I think I've made very 01:39:11PM  
24 limited objections. However, this exhibit 01:39:13PM  
25 is confusing and the basis of my objection. 01:39:16PM

1 S. Schoifet

2 MR. CAVANAUGH: If you continue to make 01:39:27PM  
3 speaking objections that are beyond the 01:39:28PM  
4 objections permitted by the rules I will 01:39:30PM  
5 stop the deposition and ask guidance from 01:39:33PM  
6 the board about your conduct during this 01:39:35PM  
7 proceeding. 01:39:37PM

8 Do you understand? 01:39:37PM

9 MR. KAPPEL: Sure. 01:39:38PM

10 BY MR. CAVANAUGH: 01:39:44PM

11 Q Looking at Exhibit 1022, do you have 01:39:45PM  
12 that in front of you? 01:39:46PM

13 A I do. 01:39:47PM

14 Q Can you show me where the surgeon would 01:39:48PM  
15 insert the cutting device into the cutting guide? 01:39:52PM

16 A I cannot. 01:39:57PM

17 Q Why not? 01:39:58PM

18 A It's a cutaway. 01:40:01PM

19 Q So there's no representation of where 01:40:03PM  
20 the cutting device would be inserted? 01:40:05PM

21 A Not on this drawing. 01:40:11PM

22 Q Okay. Is there a drawing that would be 01:40:12PM  
23 able to illustrate where a surgeon would put a 01:40:14PM

24 cutting device into the guide? 01:40:18PM

25 MR. KAPPEL: Objection. Form. 01:40:21PM

1 S. Schoifet

2 A I don't have such a drawing in front of 01:40:22PM  
3 me. We're talking about 1022. 01:40:26PM

4 BY MR. CAVANAUGH: 01:40:30PM

5 Q Is there a device that we've -- is 01:40:30PM  
6 there a drawing that we have discussed today that 01:40:32PM  
7 can illustrate where a surgeon would put a 01:40:35PM  
8 cutting device into the opening? 01:40:40PM

9 MR. KAPPEL: Objection to form. 01:40:44PM

10 A You would have referenced that from the 01:40:45PM  
11 Scorpio anterior referencing technique guide. 01:40:50PM

12 BY MR. CAVANAUGH: 01:40:54PM

13 Q Could you show me, please. 01:40:54PM

14 A Certainly. 01:40:55PM

15 (Witness reviewing document). 01:41:24PM

16 Figures 14, 15, and 16. 01:41:25PM

17 Q So using figure 14, 15 or 16, can you 01:41:33PM  
18 show me where a surgeon would put in the cutting 01:41:37PM  
19 device into the cutting -- into the guide 01:41:41PM  
20 surface? 01:41:49PM

21 A How would you like me to show you? 01:41:49PM

22 Q With an arrow. 01:41:51PM

23 A (Complying). 01:41:52PM

24 MR. CAVANAUGH: Let the record reflect 01:42:09PM  
25 that he's drawn two arrows on either side of 01:42:09PM

1 S. Schoifet

2 the physician's -- on the sides of the 01:42:15PM

3 physician's side of the device with spatial 01:42:21PM

4 arrows between the opening? 01:42:27PM

5 MR. KAPPEL: Objection. 01:42:29PM

6 BY MR. CAVANAUGH: 01:42:35PM

7 Q Is it your testimony that a surgeon 01:42:35PM

8 would need to access both sides of the device in 01:42:39PM

9 order to make the anterior cut using the anterior 01:42:45PM

10 resection guide? 01:42:49PM

11 A A surgeon would access both sides of 01:42:52PM

12 the guide to access the continuous guide surface 01:42:55PM

13 on the bony side to make a complete cut. 01:42:58PM

14 Q So the answer is yes? 01:43:11PM

15 A I gave my answer. 01:43:13PM

16 Q And maybe a yes or no would help 01:43:16PM

17 clarify the record. 01:43:19PM

18 MR. KAPPEL: Objection to form. 01:43:20PM

19 A A surgeon would enter from both sides 01:43:21PM

20 to access a continuous guide surface on the bony 01:43:24PM

21 side to make a complete and accurate cut. 01:43:27PM

22 BY MR. CAVANAUGH: 01:43:33PM

23 Q Now, a continuous guide surface, is 01:43:33PM

24 that a limitation in the claim or is it something 01:43:35PM

25 different than a limitation in the claim? 01:43:38PM

1 S. Schoifet

2 A Please define what the limitation of 01:43:42PM  
3 the claim means in reference to this continuous 01:43:45PM  
4 guide surface. 01:43:46PM

5 Q Don't you know what a limitation in the 01:43:47PM  
6 claim is? 01:43:51PM

7 MR. KAPPEL: Objection. 01:43:52PM

8 BY MR. CAVANAUGH: 01:43:52PM

9 Q Do you know what a limitation in a 01:43:52PM  
10 claim is? 01:43:54PM

11 A Sometimes I don't understand the legal 01:43:55PM  
12 jargon. I understand usually the other language. 01:43:57PM  
13 So if you could explain in a nonlegal term. I 01:44:01PM  
14 understand the terms, but oftentimes you'll use 01:44:04PM  
15 words we may not use as orthopedics. I'm here as 01:44:06PM  
16 an orthopedic expert so sometimes my knowledge of 01:44:10PM  
17 legal language not my knowledge of the actual 01:44:12PM  
18 topic you're talking about may be somewhat 01:44:15PM  
19 limited. So I'm asking you for some 01:44:18PM  
20 clarification so I may give you an honest expert 01:44:22PM  
21 opinion. 01:44:24PM

22 Q You reviewed claim one in preparation 01:44:28PM  
23 for your expert declaration, correct? 01:44:31PM

24 A I did. 01:44:33PM

25 Q And does claim 1 have the word 01:44:34PM



1 S. Schoifet

2 "continuous" in it? 01:44:40PM

3 A (Witness reviewing document). 01:44:41PM

4 It does not. 01:45:29PM

5 Q So why do you identify what you call a 01:45:30PM

6 continuous guide surface in your expert report? 01:45:45PM

7 MR. KAPPEL: Objection to form. 01:45:50PM

8 A I identified a continuous guide surface 01:45:54PM

9 because that's what there is on the Scorpio 01:45:56PM

10 anterior referencing cutting guide. That's what 01:45:59PM

11 you would expect as a surgeon, to have a complete 01:46:03PM

12 and accurate cut in the time frame of 2000 to 01:46:04PM

13 2003. You expected a cutting guide surface 01:46:07PM

14 longer than a transverse dimensions of the 01:46:10PM

15 prosthesis to get an accurate cut. That's what 01:46:12PM

16 the Scorpio guide has. That's what I used. 01:46:14PM

17 That's what we depicted in the pictures. So 01:46:18PM

18 that's an accurate, honest, expert representation 01:46:20PM

19 of the guide. 01:46:23PM

20 BY MR. CAVANAUGH: 01:46:26PM

21 Q My question was different. My question 01:46:26PM

22 is why you focus on the word "continuous guide 01:46:29PM

23 surface" -- or focus on the words "continuous 01:46:35PM

24 guide surface" as opposed to guide surface. 01:46:38PM

25 MR. KAPPEL: Objection to form. 01:46:40PM

1 S. Schoifet

2 A Okay. Because there is a continuous 01:46:40PM  
3 guide surface. 01:46:42PM

4 BY MR. CAVANAUGH: 01:46:45PM

5 Q The word in their construction -- I 01:46:45PM  
6 think it's expert -- it's in your declaration 01:46:48PM  
7 also, you identified it a moment ago in paragraph 01:46:50PM  
8 21, it identifies a guide surface, correct? 01:46:53PM

9 A (Nodding affirmatively). 01:46:57PM

10 Q You read it, I think, guide surface, a 01:46:58PM  
11 surface that guides a cutting instrument? 01:47:00PM

12 A (Nodding affirmatively). 01:47:04PM

13 Q Does Scorpio have a surface that guides 01:47:05PM  
14 a cutting instrument? 01:47:08PM

15 A Scorpio has a guide surface that guides 01:47:10PM  
16 a cutting instrument. 01:47:14PM

17 Q Thank you. 01:47:15PM

18 And before we move on this guide 01:48:10PM  
19 surface that Scorpio has, how do you know that 01:48:13PM  
20 it's wider in your opinion than the implant? 01:48:17PM

21 A I use the guide. I've held the guide. 01:48:25PM  
22 I've seen the guide. At the time in 2000 and 01:48:30PM  
23 2003 you expected cutting guides to give the most 01:48:33PM  
24 accurate cut you could, and at the time cutting 01:48:36PM  
25 guide surfaces were larger than the transverse 01:48:40PM

1 S. Schoifet

2 dimension of the prosthesis to ensure that. 01:48:44PM

3 Q But you never measured it, correct? 01:48:49PM

4 A Visually I measured it. 01:48:53PM

5 Q You visually measured it. And does 01:48:54PM

6 visually measuring something involve a ruler? 01:48:56PM

7 A Visually measuring it would involve 01:48:58PM

8 measuring it up against the prosthesis seeing 01:49:02PM

9 this is bigger. 01:49:06PM

10 Q So the guide surface that is in 01:49:09PM

11 Scorpio, we can agree that there's a guide 01:49:13PM

12 surface. I mean, I think we've established that, 01:49:15PM

13 correct? 01:49:16PM

14 MR. KAPPEL: Objection. Form. 01:49:16PM

15 A There's a continuous guide surface 01:49:17PM

16 along the bony edge. 01:49:20PM

17 BY MR. CAVANAUGH: 01:49:24PM

18 Q My question is: Is there a guide 01:49:24PM

19 surface? 01:49:29PM

20 A That answered the question. There's 01:49:29PM

21 a continuous guide surface along the bony 01:49:31PM

22 edge. 01:49:33PM

23 Q I would like a yes or no because I'm 01:49:33PM

24 asking you a yes-or-no question. 01:49:35PM

25 MR. KAPPEL: Objection to form. 01:49:36PM

1 S. Schoifet

2 BY MR. CAVANAUGH: 01:49:37PM

3 Q Is there are a guide surface? 01:49:37PM

4 A There is a continuous guide surface 01:49:39PM

5 along the bony edge. 01:49:41PM

6 Q Is there a guide surface? 01:49:43PM

7 MR. KAPPEL: Objection. Asked and 01:49:45PM

8 answered. 01:49:46PM

9 BY MR. CAVANAUGH: 01:49:47PM

10 Q You cannot answer that question yes or 01:49:47PM

11 no; is that correct? 01:49:49PM

12 A There's a continuous guide surface 01:49:50PM

13 along the bony edge. 01:49:51PM

14 Q Is there -- can you not answer that 01:49:52PM

15 question yes or no? 01:49:55PM

16 MR. KAPPEL: Objection. Argumentative. 01:49:55PM

17 A I answered the question. 01:49:56PM

18 BY MR. CAVANAUGH: 01:49:58PM

19 Q I'm asking you a question, can you not 01:49:58PM

20 answer the question yes or no? 01:50:00PM

21 MR. KAPPEL: Objection. Asked and 01:50:01PM

22 answered. 01:50:02PM

23 A Some questions are not to be answered 01:50:02PM

24 yes or no. There's a continuous guide surface is 01:50:05PM

25 the answer to your question. 01:50:08PM

1 S. Schoifet

2 BY MR. CAVANAUGH: 01:50:09PM

3 Q The guide -- continuous is not a part 01:50:09PM

4 of the claim and that's why I'm asking if there's 01:50:11PM

5 a guide surface, and I have a couple of follow-up 01:50:14PM

6 questions but you seem answer the same -- answer 01:50:16PM

7 different questions with the same words -- 01:50:19PM

8 MR. KAPPEL: Objection. 01:50:21PM

9 BY MR. CAVANAUGH: 01:50:21PM

10 Q -- and that's why I am asking you the 01:50:21PM

11 question again and seeking a yes-or-no answer. 01:50:23PM

12 A It's important that there's a 01:50:25PM

13 continuous guide surface to ensure that there's a 01:50:27PM

14 clean and accurate cut. So the fact that the 01:50:29PM

15 guide surface is continuous is important, and as 01:50:31PM

16 an expert I see that as a very important fact, 01:50:33PM

17 and therefore, I include it. 01:50:36PM

18 Q Okay. And so when you used this device 01:50:40PM

19 back in 2003, can you think back at that time? 01:50:43PM

20 A I can. 01:50:46PM

21 Q Did you think that it was a continuous 01:50:46PM

22 guide surface? 01:50:50PM

23 A I expected it to be a continuous guide 01:50:50PM

24 surface. 01:50:52PM

25 Q And how would you expect that? 01:50:52PM

1 S. Schoifet

2 A Because the state of the art at that 01:50:56PM

3 time was to have a guide surface that is wider 01:50:58PM

4 than a transverse dimension of the prosthesis. 01:51:01PM

5 Q And so --

6 A The pictures in the Scorpio guide 01:51:05PM

7 depict it with a continuous guide surface, and so 01:51:08PM

8 when I actually held it in my hand and found it 01:51:10PM

9 had one, it met my expectations. 01:51:13PM

10 Q But just so I'm clear, yes or no, does 01:51:16PM

11 Scorpio have a guide surface? 01:51:32PM

12 A There's a continuous guide surface. 01:51:32PM

13 Q So can you answer the question whether 01:51:35PM

14 or not it has a guide surface? 01:51:37PM

15 A It has a continuous guide surface which 01:51:39PM

16 answers your question. I stand by that. 01:51:41PM

17 Q If the board were to identify that the 01:51:47PM

18 guide surface was not continuous, would that 01:51:49PM

19 affect your opinion? 01:51:57PM

20 MR. KAPPEL: Objection. 01:51:58PM

21 A You would have to ask the board. 01:51:59PM

22 BY MR. CAVANAUGH: 01:52:01PM

23 Q No. I'm asking you what your opinion 01:52:01PM

24 is. 01:52:04PM

25 MR. KAPPEL: Objection. Outside the 01:52:04PM

1 S. Schoifet

2 scope of direct. 01:52:05PM

3 A It's a hypothetical. I can't answer 01:52:06PM

4 that. 01:52:08PM

5 BY MR. CAVANAUGH: 01:52:12PM

6 Q Let's go to the Turner reference. 01:52:12PM

7 Introducing the exhibit to the witness, Smith & 01:52:25PM

8 Nephew 1008. 01:52:28PM

9 Now, this is the reference that you 01:52:58PM

10 considered in drafting your declaration? 01:53:00PM

11 A This is a reference that I did use, 01:53:05PM

12 yes. 01:53:07PM

13 Q And do you recall looking at figure 8? 01:53:11PM

14 A Yes, I did. 01:53:19PM

15 Q Does figure 8 depict a cutting guide? 01:53:20PM

16 A Per our definitions it does. 01:53:45PM

17 Q And does figure 8 depict a cutting 01:53:48PM

18 guide surface? 01:53:52PM

19 A Figure 8 does show what appears to be 01:53:54PM

20 from that picture a cutting guide surface. 01:53:57PM

21 Q Okay. Do you have any reason to 01:53:59PM

22 dispute that that -- 01:54:01PM

23 A None. 01:54:03PM

24 Q -- shows a cutting guide surface? 01:54:04PM

25 A Just that it's a depiction of the guide 01:54:07PM

1 S. Schoifet

2 unlike the Scorpio which I actually had in my 01:54:10PM

3 hands. 01:54:13PM

4 Q And does the cutting guide surface have 01:54:17PM

5 dimensions? 01:54:34PM

6 A For it to be an object it would have to 01:54:37PM

7 have dimensions. 01:54:39PM

8 Q So if I were to use the word 01:54:41PM

9 "transverse dimension," would you understand what 01:54:44PM

10 I'm meaning? 01:54:48PM

11 A Yes. 01:54:49PM

12 Q Okay. Does the cutting guide that's 01:54:50PM

13 depicted in Turner have a transverse dimension? 01:54:55PM

14 A It has a transverse dimension that 01:55:01PM

15 would necessitate a freehand cut. 01:55:05PM

16 Q Well, my question is, does it have a 01:55:09PM

17 transverse dimension, period? 01:55:11PM

18 A It has such a narrow transverse 01:55:12PM

19 dimension that it gives an approximation of where 01:55:15PM

20 you would make your cut but would not physically 01:55:16PM

21 and accurately guide the blade through that cut. 01:55:18PM

22 That would require an eyeball or hand cutting 01:55:21PM

23 technique. 01:55:24PM

24 Q So when you say "transverse dimension" 01:55:41PM

25 -- that means the width of the cutting guide, 01:55:45PM



1 S. Schoifet

2 correct? 01:55:48PM

3 A Correct. 01:55:48PM

4 Q Okay. And that dimension, like, exists 01:55:51PM

5 here in figure 8, correct? 01:55:55PM

6 A There is a dimension there that exists 01:55:57PM

7 in figure 8. 01:55:59PM

8 Q And that transverse dimension is 01:56:00PM

9 greater or smaller than the transverse dimension 01:56:07PM

10 of the implant? 01:56:11PM

11 A It's so small that it actually doesn't 01:56:12PM

12 guide the sawblade very well, that you have to 01:56:15PM

13 use your eye to guide the sawblade. 01:56:17PM

14 MR. CAVANAUGH: My question is a 01:56:20PM

15 yes-or-no question, and perhaps the reporter 01:56:21PM

16 can repeat it. 01:56:23PM

17 (Question read) 01:56:23PM

18 MR. KAPPEL: Objection to form. 01:56:38PM

19 A And my answer is that the dimensions 01:56:42PM

20 are so much smaller than the implant that it does 01:56:44PM

21 not accurately guide the blade and you need to 01:56:47PM

22 make an eyeball cut or a hand cut to complete the 01:56:50PM

23 cuts depicted. 01:56:54PM

24 BY MR. CAVANAUGH: 01:56:56PM

25 Q So the transverse dimension is so small 01:56:56PM

1 S. Schoifet

2 you wouldn't be -- a surgeon wouldn't be able to 01:57:02PM

3 make the cut, is that your testimony? 01:57:04PM

4 A No. It gives you an approximation of 01:57:08PM

5 where you should make the cut, and it's up to the 01:57:11PM

6 surgeon to try to get close to that. By 01:57:13PM

7 definition that we have agreed to it is a cutting 01:57:19PM

8 guide surface. However, it is so small it leads 01:57:23PM

9 to such an inaccurate cut it requires the surgeon 01:57:27PM

10 to adjust his cut by his eye to try to make it at 01:57:30PM

11 the angle depicted. 01:57:35PM

12 Q When you say "small," like, small is 01:57:35PM

13 kind of a characterization. The transverse 01:57:37PM

14 dimension is too small in order for a cut to be 01:57:39PM

15 made? 01:57:43PM

16 MR. KAPPEL: Objection to form. 01:57:43PM

17 A It's so thin as to not guide the 01:57:48PM

18 sawblade. 01:57:50PM

19 BY MR. CAVANAUGH: 01:57:51PM

20 Q Interesting. Okay. 01:57:51PM

21 So you're saying that the guide surface 01:57:52PM

22 is thin, is that your testimony? 01:57:55PM

23 A It is of a narrow transverse dimension. 01:57:58PM

24 Q And regardless of what you think about 01:58:03PM

25 that narrow transverse dimension, we can agree 01:58:04PM

1 S. Schoifet

2 that that transverse dimension is smaller than 01:58:06PM

3 the implant, correct? 01:58:09PM

4 A So small as to lead to an inaccurate 01:58:11PM

5 cut performed by a surgeon. 01:58:14PM

6 Q I have a yes-or-no question pending. 01:58:16PM

7 So yes or no? 01:58:18PM

8 MR. KAPPEL: Objection. Form. 01:58:19PM

9 A That was my answer. 01:58:20PM

10 BY MR. CAVANAUGH: 01:58:21PM

11 Q No. I'm looking for a yes-or-no 01:58:21PM

12 answer. 01:58:24PM

13 A It is to small that it leads to an 01:58:24PM

14 inaccurate cut. 01:58:26PM

15 Q So the answer is yes? 01:58:26PM

16 A The answer is that it's so small that 01:58:28PM

17 it leads to an inaccurate cut. It requires the 01:58:30PM

18 surgeon to do an eyeball cut. It's in my 01:58:32PM

19 declaration. 01:58:39PM

20 Q Okay. So I would like to go back to 01:58:39PM

21 the patent if we may for a moment, and I think in 01:58:41PM

22 your declaration, you talk about a particular 01:58:49PM

23 figure and I would like to explore that with you 01:58:51PM

24 because you've talked about the thinness or 01:58:56PM

25 thickness of the device, the cutting guide. 01:58:58PM

1	S. Schoifet	
2	Perhaps if you go to figure 54.	01:59:08PM
3	A In my declaration?	01:59:11PM
4	Q No. Figure 54 in the patent. And you	01:59:13PM
5	describe figure 54 in your declaration at	01:59:24PM
6	paragraph 36. I would like to refer to that. So	01:59:27PM
7	this is certainly within the scope of what your	01:59:35PM
8	direct testimony is.	01:59:38PM
9	MR. KAPPEL: Objection to form.	01:59:42PM
10	A (Witness reviewing document).	01:59:43PM
11	Yes.	02:00:14PM
12	BY MR. CAVANAUGH:	02:00:15PM
13	Q Can you identify for me what the	02:00:15PM
14	cutting guide is or what illus- -- what reference	02:00:19PM
15	memo identifies the cutting guide?	02:00:24PM
16	A In figure 54?	02:00:25PM
17	Q Yes. In figure 54.	02:00:28PM
18	A It's a side cutting guide.	02:00:30PM
19	Q And does it have a reference numeral?	02:00:32PM
20	A Oh, I'm in guide 800. Is that what	02:00:35PM
21	you're referring to?	02:00:40PM
22	Q (Nodding affirmatively).	02:00:40PM
23	And can you tell me how thick -- strike	02:00:43PM
24	that.	02:00:50PM
25	Can you tell me what the transverse	02:00:50PM

1 S. Schoifet

2 dimension of this cutting guide is? 02:00:52PM

3 A This picture is not taken at an angle 02:00:54PM

4 that shows you the cutting guide surface. 02:01:02PM

5 Q So -- 02:01:07PM

6 A I would not be able to answer that 02:01:07PM

7 question from this photo. 02:01:09PM

8 Q Can you look at the disclosure that you 02:01:10PM

9 identify in column 70, 19 to 62, and tell me if 02:01:14PM

10 that can illuminate how -- what the transverse 02:01:20PM

11 dimension of the cutting guide is? 02:01:24PM

12 MR. KAPPEL: Objection to form. 02:01:27PM

13 A Can you refer me back to where you're 02:01:28PM

14 -- show me where you're referring to? I'm a 02:01:31PM

15 little confused with the numbers. 02:01:34PM

16 BY MR. CAVANAUGH: 02:01:37PM

17 Q Sure. Paragraph 36 in your 02:01:37PM

18 declaration? 02:01:39PM

19 A Of my declaration? 02:01:40PM

20 Q Right.

21 A Okay. And what are you referring to. 02:01:40PM

22 Q Okay. You identify certain parts of 02:01:40PM

23 the specification in your declaration, if you 02:01:42PM

24 recall, when you submitted it. Column 70, lines 02:01:44PM

25 19 to 62. Do you see those in your declaration? 02:01:49PM

1 S. Schoifet

2 A So would you like me to refer to those? 02:01:52PM

3 Q I would like you to refer to those, 02:01:56PM

4 yes, please. 02:02:00PM

5 A (Witness reviewing document). 02:02:03PM

6 19 to 62. Okay. 02:02:07PM

7 Q Would that tell someone skilled in the 02:02:09PM

8 art the transverse dimension of the cutting 02:02:12PM

9 guide? 02:02:15PM

10 A So I'm going to take time to reread 02:02:15PM

11 that. 02:02:18PM

12 (Witness reviewing document). 02:02:18PM

13 And how far up would you like me to 02:02:51PM

14 read? 02:02:53PM

15 Q How far did you identify in your 02:02:53PM

16 declaration? 02:02:55PM

17 A 62. 02:02:56PM

18 Q Okay. Did you finish 62? 02:02:57PM

19 A Not quite. I'm not that fast a reader 02:02:59PM

20 with this small type. 02:03:02PM

21 (Witness reviewing document). 02:03:04PM

22 Okay. 02:03:25PM

23 Q The question pending is whether or not 02:03:35PM

24 that part of the specification would tell someone 02:03:38PM

25 skilled in the art what the transverse dimension 02:03:41PM

1 S. Schoifet

2 of the cutting guide 800 is. 02:03:45PM

3           A     It did not tell me.                               02:03:47PM

4 Q The next part of that paragraph, you 02:03:52PM

5 identify column 70, lines 19 to 20 and column 71, 02:03:54PM

6 lines 4 to 5. 02:04:02PM

7 Do you see that? 02:04:05PM

8 A Yes. 02:04:05PM

9 Q Could you review those portions of your 02:04:06PM

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10  -- of the specification, please.                                02:04:09PM
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11 A (Witness reviewing document). 02:04:24PM

12 Q Let me know when you're finished. 02:04:31PM

13           A       Okay.

02:04:33PM

14 Q Do any of those other portions of the 02:04:58PM

15 specification which are identified in paragraph 02:05:01PM

16 38 that you just read indicate to someone skilled 02:05:04PM

17 in the art the transverse dimension of the 02:05:09PM

18 cutting guide 800? 02:05:10PM

19           A       They do not indicate a dimension.                                     02:05:11PM

20 MR. KAPPEL: Objection. Just note 02:05:16PM

21 paragraph 38 perhaps if you want to clarify. 02:05:25PM

22 BY MR. CAVANAUGH: 02:05:39PM

23 Q Oh, I apologize, I said 38. I meant 02:05:40PM

24 36, paragraph 36. 02:05:43PM

25           A       Thank you.

02:05:44PM

1 S. Schoifet

2 Q Thank you. 02:05:46PM

3 So how would someone skilled in the art 02:05:47PM

4 know the transverse dimension of this particular 02:05:59PM

5 cutting guide 800? 02:06:04PM

6 A Either by looking at it or having 02:06:05PM

7 pictures at a different angle. 02:06:09PM

8 Q But there are no pictures in different 02:06:11PM

9 angles that are provided in the specification; is 02:06:15PM

10 that correct? 02:06:18PM

11 A None that I'm aware of for that cutting 02:06:18PM

12 guide. 02:06:25PM

13 Q And would this cutting guide -- strike 02:06:25PM

14 that. 02:06:43PM

15 In looking at this diagram, can you as 02:06:43PM

16 a person skilled in the art identify whether this 02:06:53PM

17 transverse dimension is greater or less than the 02:06:56PM

18 cutting -- than the transverse dimension of 02:07:00PM

19 Turner? 02:07:03PM

20 A Just to be clear, we're not talking 02:07:05PM

21 about -- 02:07:07PM

22 MR. KAPPEL: Objection. Form. 02:07:07PM

23 A -- figure 54? 02:07:09PM

24 BY MR. CAVANAUGH: 02:07:10PM

25 Q Yes. 02:07:10PM



1 S. Schoifet

2 A You cannot tell the transverse 02:07:11PM  
3 dimension of the cutting guide surface from this 02:07:17PM  
4 picture. 02:07:20PM

5 Q So Turner could have a wider -- I'm 02:07:21PM  
6 sorry -- could have a larger transverse dimension 02:07:27PM  
7 than even the illustration in figure 54, correct? 02:07:30PM

8 A The pictures -- the drawings are made 02:07:35PM  
9 from a different angle, so Turner was not taken 02:07:38PM  
10 from the same angle as this. So the angle that 02:07:40PM  
11 the Turner picture was taken from, you can judge 02:07:43PM  
12 the cutting guide surface. 02:07:46PM

13 Q My question is, Turner could have a 02:07:48PM  
14 wider transverse dimension than the transverse 02:07:52PM  
15 dimension in figure 54, correct? 02:07:56PM

16 A I can answer that based on the 02:07:57PM  
17 pictures. The picture here is parallel to the 02:08:00PM  
18 cutting guide surface so you have no idea of the 02:08:03PM  
19 width or lateral dimensions of the cutting 02:08:06PM  
20 surface whereas the Turner picture is not taken 02:08:09PM  
21 at that same angle. If it was taken at that same 02:08:12PM  
22 angle, then you would not be able to make an 02:08:14PM  
23 accurate cut at all. It wouldn't be as described 02:08:17PM  
24 in the Turner guide. 02:08:19PM

25 Q So it needs some transverse dimension 02:08:23PM

1 S. Schoifet

2 in order to make an accurate cut, correct? 02:08:26PM

3 A I need to clarify. If what? We're 02:08:27PM

4 talking about multiple guides here. I need to 02:08:33PM

5 know which guide you're talking about with that 02:08:35PM

6 question. 02:08:37PM

7 Q Sure. Any guide would need a 02:08:38PM

8 transverse dimension in order to make a cut, 02:08:39PM

9 correct? 02:08:41PM

10 A You would need -- to make an accurate 02:08:41PM

11 cut, you would need a transverse dimension. 02:08:44PM

12 Q And accuracy is really important to 02:08:48PM

13 these surgeries, correct? 02:08:50PM

14 A Accuracy is important to these 02:08:51PM

15 surgeries more so to the computer assisted of 02:08:56PM

16 which my declaration is about, but accuracy is 02:08:59PM

17 important to all surgeons at some level, yes. 02:09:03PM

18 Q So you would want to know how thick or 02:09:05PM

19 how wide your transverse dimension is, correct? 02:09:08PM

20 MR. KAPPEL: Objection to form. 02:09:10PM

21 A As an orthopedic surgeon skilled in the 02:09:11PM

22 art you would want your transverse dimension to 02:09:18PM

23 be able to guide the surface of the sawblade in 02:09:20PM

24 an accurate manner. The Turner cutting guide is 02:09:24PM

25 so small that it requires you to make an eyeball 02:09:27PM

1 S. Schoifet

2 cut. 02:09:31PM

3 BY MR. CAVANAUGH: 02:09:31PM

4 Q Did you ever see a Turner guide in 02:09:31PM

5 person? 02:09:36PM

6 A I have not. 02:09:36PM

7 Q Have you ever witnessed a Turner 02:09:37PM

8 surgery that's described in the Turner guide? 02:09:41PM

9 A I have not. I have performed eyeball 02:09:45PM

10 cuts with different guide -- different alignment 02:09:53PM

11 devices, so I'm familiar with the term of how 02:09:57PM

12 inaccurate an eyeball cut can be with one of the 02:10:00PM

13 guides like this, but I didn't actually use the 02:10:03PM

14 Turner. So I have had experience. 02:10:06PM

15 Q Have you ever talked to anyone who used 02:10:07PM

16 the Turner device as part of your preparation for 02:10:09PM

17 your declaration? 02:10:11PM

18 A Probably most of them are dead. 02:10:15PM

19 Dr. Coventry is for sure. That device has really 02:10:18PM

20 not been used for many years. By 1988 it had 02:10:21PM

21 pretty much been shown to have a significantly 02:10:24PM

22 poor track record, 69 percent survivorship at ten 02:10:27PM

23 years, multiple complications. The concepts 02:10:31PM

24 behind the arc of curvature -- 02:10:34PM

25 Q Sir, sir, you're not answering my 02:10:36PM

1 S. Schoifet

2 question. 02:10:38PM

3 A I'm answering your question about 02:10:38PM

4 whether anybody would use it. I'm telling you 02:10:40PM

5 why they would not. 02:10:42PM

6 Q No. I asked you if you had spoken with 02:10:43PM

7 anyone. 02:10:45PM

8 A And my answer was that nobody was using 02:10:46PM

9 such an archaic outmoded device at the time and I 02:10:50PM

10 was explaining to you why it was archaic and 02:10:53PM

11 outmoded --

12 Q That's a different --

13 A -- but you interrupted me. 02:10:54PM

14 Q That's a different answer to my 02:10:55PM

15 question, and I would from a -- if we hope to get 02:10:58PM

16 out of here today and not call the board, I would 02:10:59PM

17 like you to answer my questions, not think of 02:11:02PM

18 your own answers to random questions that are not 02:11:05PM

19 being asked. 02:11:08PM

20 MR. KAPPEL: Objection. Form. 02:11:10PM

21 BY MR. CAVANAUGH: 02:11:13PM

22 Q Is that okay? 02:11:13PM

23 A You may ask your questions. I'll 02:11:14PM

24 answer them honestly and as capably as I can. 02:11:16PM

25 Q Okay. I have a question. My question 02:11:20PM

1 S. Schoifet

2 is: Have you spoken with anyone who has used the 02:11:21PM  
3 Turner device? 02:11:23PM

4 A And my answer is that by the time I 02:11:25PM  
5 reached practice no one was using the device so 02:11:28PM  
6 there was no one to speak to. 02:11:30PM

7 Q So you've spoken with no one who has 02:11:32PM  
8 used the Turner device? 02:11:34PM

9 A I've read the literature on the Turner 02:11:35PM  
10 device. 02:11:37PM

11 Q Okay. You haven't seen the Turner 02:11:37PM  
12 device? 02:11:40PM

13 A No one was using the Turner device 02:11:40PM  
14 because it's such an archaic outmoded device. 02:11:42PM

15 Q My question is whether you have seen 02:11:46PM  
16 the Turner device. Have you seen the Turner 02:11:47PM  
17 device? 02:11:49PM

18 A By having -- 02:11:50PM

19 MR. KAPPEL: Objection. 02:11:50PM

20 A I need clarification. By having seen 02:11:50PM  
21 it, I've certainly seen the depictions of it. 02:11:53PM  
22 I've seen the photographs. I've seen X-rays of 02:11:56PM  
23 it. 02:11:58PM

24 BY MR. CAVANAUGH: 02:11:58PM

25 Q If -- 02:11:58PM

1 S. Schoifet

2 A I'm answering your question, sir. I've 02:11:59PM  
3 seen X-rays of it. I've actually read the manual 02:12:01PM  
4 about it, but I have not held it in my hands. I 02:12:04PM  
5 have held in -- actually, I've held one in my 02:12:06PM  
6 hands that had been removed from somebody from a 02:12:09PM  
7 history museum of archaic arthroplasty devices, 02:12:11PM  
8 but I haven't seen one actually in a person. 02:12:17PM

9 Q I don't understand. Removed from...? 02:12:20PM

10 A When they fail as most of these devices 02:12:21PM  
11 did, you must remove them from the knee and some 02:12:23PM  
12 surgeons kept these older pieces available so you 02:12:27PM  
13 could see what it looked like, sort of a history 02:12:30PM  
14 of failed prosthesis. 02:12:32PM

15 Q But the guide surface doesn't stay in 02:12:33PM  
16 the body, does it, or is it your testimony that 02:12:36PM  
17 it does? 02:12:38PM

18 A I was talking about the geometric 02:12:39PM  
19 prosthesis. 02:12:41PM

20 Q I'm talking about the guide. 02:12:42PM

21 A I've not seen the guide. 02:12:44PM

22 Q Okay. So not having seen the guide, do 02:13:10PM  
23 you have any basis to say that the transverse 02:13:12PM  
24 dimension in figure 7 is too small? 02:13:15PM

25 MR. KAPPEL: Objection. 02:13:20PM

1 S. Schoifet

2 BY MR. CAVANAUGH: 02:13:21PM

3 Q Your testimony earlier was -- 02:13:21PM

4 MR. KAPPEL: Objection. 02:13:23PM

5 Mischaracterizes testimony. 02:13:23PM

6 A I have used cutting guides to do an 02:13:25PM

7 eyeball cut with such small surfaces as that and 02:13:31PM

8 they lead to a very inaccurate cut. 02:13:34PM

9 BY MR. CAVANAUGH: 02:13:36PM

10 Q Okay. You've used the term "eyeball 02:13:36PM

11 cut" several times. Can you show me where Turner 02:13:38PM

12 calls this an eyeball cut? 02:13:43PM

13 A The phrase "eyeball cut" or freehand 02:13:48PM

14 cut is a surgeon's term for using a cutting guide 02:13:52PM

15 surface that requires you to use your eye to 02:13:54PM

16 complete the cut where the guide does not 02:13:56PM

17 physically guide the blade throughout the entire 02:13:58PM

18 cut. It tells you approximately where your cut 02:14:02PM

19 should be. 02:14:04PM

20 Per our definition, this is actually a 02:14:05PM

21 cutting guide surface for the agreed upon 02:14:07PM

22 definition, and I'm clarifying that it's such a 02:14:10PM

23 narrow dimension that it requires you to use your 02:14:14PM

24 eye as best you can to try to complete the angle 02:14:16PM

25 they're asking for. This just gives you an 02:14:19PM

1 S. Schoifet

2 approximation. 02:14:21PM

3 Q My question was whether or not 02:14:22PM

4 "eyeball" is used in the Turner reference. 02:14:23PM

5 A To a certain --

6 Q Can you answer that question? 02:14:26PM

7 A I did. I said it's a surgeon's 02:14:27PM

8 reference, eyeball cut or handheld cut to 02:14:29PM

9 describe the cut that's made when you have a 02:14:32PM

10 device where the cutting surface is so narrow 02:14:33PM

11 that it doesn't guide the blade. That was my 02:14:37PM

12 answer. 02:14:39PM

13 Q So the answer is no? 02:14:39PM

14 A Once again, I'll repeat my answer. An 02:14:40PM

15 eyeball cut is a -- and a handheld cut is a 02:14:43PM

16 surgeon's description when you have a cutting 02:14:46PM

17 guide surface that is so narrow that it only 02:14:49PM

18 approximates the cut and needs you to complete it 02:14:51PM

19 by hand leading to an inaccurate cut. Certainly 02:14:54PM

20 inaccurate with pertaining to computer 02:14:57PM

21 navigation. 02:14:59PM

22 Q But the word "eyeball" doesn't appear 02:15:07PM

23 in Turner -- the Turner article, correct? 02:15:09PM

24 MR. KAPPEL: Objection. Form. 02:15:12PM

25 A It's a surgeon's description of the 02:15:13PM



1 S. Schoifet

2 type of cut, handheld or eyeball cut when the 02:15:18PM

3 cutting guide surface is so narrow that it leads 02:15:20PM

4 to an inaccurate cut where you need to

5 approximate --

6 (Reporter requested clarification)

7 THE WITNESS: Sorry.

8 A The cutting guide surface is so narrow 02:15:29PM

9 that it doesn't guide the sawblade across the 02:15:31PM

10 cut. It leads to an approximation of the cut 02:15:33PM

11 that you must complete using your hand and your 02:15:35PM

12 eye to get as close as possible. 02:15:38PM

13 MR. CAVANAUGH: We're going to need to 02:15:47PM

14 take a break because we're ending the 02:15:49PM

15 videotape. But what I would like you to do 02:15:51PM

16 while we're on break is see if you can find 02:15:53PM

17 the word "eyeball" in the reference. 02:15:56PM

18 MR. KAPPEL: Objection. If you want 02:16:00PM

19 the witness to take action, you should do so 02:16:01PM

20 on the record. We can do that when we 02:16:04PM

21 return if you want him to read through the 02:16:07PM

22 term.

23 THE WITNESS: I'm on break. If we're 02:16:08PM

24 taking a break, I'm on break. 02:16:09PM

25 THE VIDEOGRAPHER: Okay. The time is 02:16:11PM

1	S. Schoifet	
2	2:16 p.m. on August 25th, 2014. This	02:16:11PM
3	completes tape number two.	02:16:14PM
4	(Recess)	02:16:17PM
5	THE VIDEOGRAPHER: The time is 2:23	02:22:28PM
6	p.m. on August 25th, 2014. This is tape	02:23:00PM
7	number three.	02:23:03PM
8	BY MR. CAVANAUGH:	02:23:03PM
9	Q Before you took your break, Doctor, we	02:23:04PM
10	were talking about the Turner reference. I was	02:23:12PM
11	wondering if you might be able to take a moment	02:23:14PM
12	to look at the Turner reference to see if this	02:23:16PM
13	"eyeball" word is in the Turner reference?	02:23:20PM
14	A Would you like me to read this entire	02:23:23PM
15	-- I want to be 100 percent certain, so I'll read	02:23:24PM
16	the entire thing to make sure I don't miss	02:23:27PM
17	anything.	02:23:30PM
18	Q If you feel that you need to read it	02:23:30PM
19	for complete accuracy --	02:23:34PM
20	A I do.	02:23:36PM
21	Q -- please do so.	02:23:37PM
22	A (Witness reviewing document).	02:23:38PM
23	I have completed it. Just for clarity,	02:29:37PM
24	please repeat the question.	02:29:41PM
25	Q Does the word "eyeball" occur in the	02:29:42PM

1 S. Schoifet

2 Turner reference? 02:29:45PM

3 A They describe an eyeball cut in the 02:29:46PM

4 Turner reference. 02:29:49PM

5 Q That's not my question, sir. My 02:29:50PM

6 question is: Does the word "eyeball" occur in 02:29:52PM

7 the reference? 02:29:54PM

8 A Eyeball is a surgeon's description of a 02:29:55PM

9 handheld cut and they actually describe that in 02:29:57PM

10 here. You asked me to review it, so may I read 02:30:01PM

11 that into the record? 02:30:04PM

12 Q Your attorney will have an opportunity 02:30:05PM

13 to clarify any testimony that you would like 02:30:07PM

14 clarified. 02:30:11PM

15 A Well, you asked me if it was in here 02:30:12PM

16 and it is in here. 02:30:14PM

17 Q Sir, sir, I've asked you a question. 02:30:15PM

18 Your attorney is going to have an opportunity to 02:30:17PM

19 ask you questions but right now, I'm going to ask 02:30:19PM

20 you some questions. 02:30:22PM

21 Is that suitable? 02:30:25PM

22 A Could you just repeat the original 02:30:26PM

23 question you asked me? 02:30:28PM

24 Q Is the word "eyeball" -- does the word 02:30:29PM

25 "eyeball" appear in the Turner reference is what 02:30:31PM

1 S. Schoifet

2 the original question was, and you... 02:30:34PM

3 A And my answer was there is a 02:30:37PM

4 description of an eyeball cut, but the actual 02:30:39PM

5 word "eyeball" does not appear in here. 02:30:42PM

6 Q But we do know that there's a guide 02:30:45PM

7 surface in Turner, we can agree on that, correct? 02:30:48PM

8 A According to our description of what a 02:30:50PM

9 guide surface is that we agreed upon, it has a 02:30:53PM

10 guide surface that's so small that it requires an 02:30:55PM

11 eyeball cut or a handheld cut as described in 02:30:58PM

12 Turner in actually the article itself that we 02:31:01PM

13 have in evidence. 02:31:04PM

14 Q Thank you. 02:31:06PM

15 A You're welcome. 02:31:08PM

16 Q Let's look at paragraph 17 and 18 in 02:31:10PM

17 your declaration. Do you see the first sentence 02:31:23PM

18 in your paragraph 17? 02:31:54PM

19 A Yes. 02:31:58PM

20 Q "Prior to the methods disclosed in the 02:31:59PM

21 '896 patent, knee replacement" -- 02:32:09PM

22 (Reporter requested clarification)

23 MR. CAVANAUGH: Sorry.

24 BY MR. CAVANAUGH:

25 Q "Prior to the methods disclosed in the

1 S. Schoifet

2 '896 patent, knee replacement surgery was 02:32:11PM

3 invasive and involved a relatively long 02:32:12PM

4 incision." That's what it says, correct? 02:32:14PM

5 A Yes, it does. 02:32:17PM

6 Q And what is a relatively long incision? 02:32:18PM

7 A 12 to 18 inches was typical. 02:32:21PM

8 Q And are you aware of knee replacement 02:32:26PM

9 surgery that would use the length of incision 02:32:33PM

10 that was less than 12 inches? 02:32:40PM

11 MR. KAPPEL: Objection. Outside the 02:32:41PM

12 scope of direct. 02:32:42PM

13 A At the time I was not aware of any 02:32:46PM

14 other than the method we described here. 02:32:48PM

15 BY MR. CAVANAUGH: 02:32:50PM

16 Q Are you aware now that there were? 02:32:50PM

17 A In the timeframe -- the modern 02:32:55PM

18 timeframe there are, but at the time frame we're 02:32:59PM

19 talking with the patents, I was not. 02:33:01PM

20 Q But are you aware that there existed in 02:33:02PM

21 the 2000 to 2003 time frame of knee replacement 02:33:06PM

22 surgeries with an incision of less than 12 02:33:14PM

23 inches? 02:33:16PM

24 A To my knowledge -- 02:33:16PM

25 MR. KAPPEL: Objection. Outside the 02:33:16PM

1 S. Schoifet

2 scope of direct. 02:33:17PM

3 A To my knowledge, I did not know of any. 02:33:18PM

4 BY MR. CAVANAUGH: 02:33:20PM

5 Q Do you know of any now? Do you know of 02:33:20PM

6 any now that existed in the 2000 to 2003 time 02:33:23PM

7 frame? 02:33:25PM

8 MR. KAPPEL: Objection. Outside the 02:33:26PM

9 scope of direct. 02:33:30PM

10 A I do not. 02:33:31PM

11 BY MR. CAVANAUGH: 02:33:32PM

12 Q Okay. You also mentioned in paragraph 02:33:32PM

13 17 that everting the patella was moved from its 02:33:58PM

14 normal position and everted. Can you describe 02:34:07PM

15 what that is? 02:34:09PM

16 A I would like to read that to ensure its 02:34:10PM

17 accuracy: "Part of the patella is everted when 02:34:12PM

18 it is turned over or flipped over so that the 02:34:26PM

19 underside of the patella is exposed and facing 02:34:28PM

20 outward from the femur and tibia. Everting the 02:34:29PM

21 patella was necessary to move the patella 02:34:31PM

22 sufficiently out of the way so the instruments 02:34:33PM

23 including cutting blocks used to guide 02:34:36PM

24 instruments for shaping bones to receive implants 02:34:38PM

25 could be properly positioned on the femur and 02:34:41PM

1 S. Schoifet

2 tibia." 02:34:44PM

3 Q Is that one of the -- is everting the 02:34:46PM

4 patella one of the reasons why knee replacement 02:34:49PM

5 surgery was considered invasive in the 2000 to 02:34:52PM

6 2003 timeframe? 02:34:56PM

7 MR. KAPPEL: Objection. Outside the 02:34:58PM

8 scope of direct. 02:34:58PM

9 A Everting the patella was -- it wasn't 02:35:02PM

10 necessarily everting the patella. It was the 02:35:05PM

11 cutting of the quadriceps to evert the patella 02:35:07PM

12 that was considered to be invasive. 02:35:11PM

13 BY MR. CAVANAUGH: 02:35:14PM

14 Q In the 2000 to 2003 timeframe are you 02:35:14PM

15 aware of knee replacement surgery that would not 02:35:28PM

16 evert the patella? 02:35:39PM

17 MR. KAPPEL: Objection. Outside the 02:35:41PM

18 scope of direct. 02:35:42PM

19 A By the end of 2003, I was aware there 02:35:45PM

20 were minimally invasive techniques. 02:35:49PM

21 BY MR. CAVANAUGH: 02:35:56PM

22 Q And how does that answer the question? 02:35:56PM

23 A You asked if I was aware of any 02:35:57PM

24 techniques that did not evert the patella and I 02:35:59PM

25 was aware of techniques, Dr. Bonutti's 02:36:02PM

1 S. Schoifet

2 techniques, for instance, that didn't evert the 02:36:05PM

3 patella in the timeframe 2003. You said 2000 to 02:36:07PM

4 2003, so in November of 2003 I performed my first 02:36:10PM

5 quad sparing. So I was clearly aware of the 02:36:13PM

6 technique at that time, so I believe that 02:36:15PM

7 answered your question. 02:36:19PM

8 Q Are you aware that other people had 02:36:27PM

9 done knee replacement surgery without everting 02:36:30PM

10 the patella prior to 2000? 02:36:33PM

11 MR. KAPPEL: Objection. Outside the 02:36:37PM

12 scope of direct. 02:36:38PM

13 A I was not aware at that time that there 02:36:41PM

14 were other people doing it. 02:36:43PM

15 MR. CAVANAUGH: Why don't we take five 02:37:46PM

16 minutes and then we'll see how much further 02:37:47PM

17 we'll go. 02:37:49PM

18 THE VIDEOGRAPHER: The time is 2:38 02:37:50PM

19 p.m. We're going off the record. 02:37:51PM

20 (Recess) 02:47:12PM

21 THE VIDEOGRAPHER: The time is 2:47 02:47:12PM

22 p.m. and we are back on the record. 02:47:20PM

23 BY MR. CAVANAUGH: 02:47:21PM

24 Q I have a couple of final questions, 02:47:22PM

25 sir. And I would like a yes-or-no answer. 02:47:26PM



1	S. Schoifet	
2	Have you ever been convicted of a	02:47:30PM
3	crime?	02:47:32PM
4	A No.	02:47:32PM
5	Q Have you ever plead no contest to a	02:47:33PM
6	crime?	02:47:36PM
7	A No.	02:47:37PM
8	Q Have you ever been accused of any sort	02:47:37PM
9	of professional misconduct?	02:47:42PM
10	A No.	02:47:44PM
11	Q Have you testified at any professional	02:47:44PM
12	misconduct hearings?	02:47:47PM
13	A No.	02:47:49PM
14	Q Have you ever been involuntarily	02:47:54PM
15	terminated from any position?	02:47:56PM
16	A No.	02:47:58PM
17	Q Have you ever been asked to resign from	02:47:58PM
18	a position?	02:48:00PM
19	A No.	02:48:01PM
20	MR. CAVANAUGH: That's all we have.	02:48:03PM
21	MR. KAPPEL: Give us five minutes to	02:48:05PM
22	figure out if we have anything more.	02:48:07PM
23	MR. CAVANAUGH: Sure.	02:48:09PM
24	THE VIDEOGRAPHER: The time is 2:48	02:48:09PM
25	p.m. We are going off the record.	02:48:11PM

1 S. Schoifet

2 (Recess) 02:56:15PM

3 THE VIDEOGRAPHER: The time is 2:56 02:56:15PM

4 p.m. and we are back on the record. 02:56:28PM

5 MR. KAPPEL: We have no questions. 02:56:29PM

6 THE WITNESS: Thank you. 02:56:33PM

7 MR. CAVANAUGH: Thank you for your time 02:56:34PM

8 today. 02:56:35PM

9 THE VIDEOGRAPHER: The time is 2:57 02:56:36PM

10 p.m. on August 25th, 2014, and this 02:56:39PM

11 completes the videotaped deposition of 02:56:41PM

12 Dr. Scott D. Schoifet. 02:56:44PM

13 (Whereupon, at 2:57 p.m., the  
14 deposition of SCOTT SCHOIFET was concluded.)

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## C E R T I F I C A T E

3

STATE OF NEW YORK )

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) ss.

COUNTY OF NEW YORK )

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6

I, Christina Diaz, a Certified

7

Realtime and Registered Merit Reporter and Notary

8

Public within and for the State of New York, do

9

hereby certify:

10

That SCOTT SCHOIFET, the witness

11

whose deposition is hereinbefore set forth, was

12

duly sworn by me and that such deposition is a

13

true record of the testimony given by such

14

witness.

15

I further certify that I am not

16

related to any of the parties to this action by

17

blood or marriage and that I am in no way

18

interested in the outcome of this matter.

19

IN WITNESS WHEREOF, I have hereunto

20

set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

21

22

23

\_\_\_\_\_  
CHRISTINA DIAZ, CRR, RMR, CSR, CLR

24

25

My Commission Expires: February 28, 2014

## 1 I N D E X

2	WITNESS	EXAMINATION BY	PAGE
3	Scott Schoifet	Mr. Cavanaugh	5

4

5

6

## 7 E X H I B I T S

8 (Exhibits attached to transcript)

9	SMITH & NEPHEW	DESCRIPTION	PAGE
10	1022	Two-page Diagram	128

11

12

13

14 REQUESTS FOR PRODUCTION - NONE -

15 INSERTED INFORMATION - NONE -

16 INSTRUCTIONS TO CERTIFY - NONE -

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## 1 E R R A T A S H E E T

2 Case Name: Smith & Nephew, Inc. vs. Bonutti  
Skeletal Innovations, LLC

3 Depo Date: Monday, August 25, 2014

4 Deponent: Scott Schoifet

5 Page/Line Now Reads Should Read Reason

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Deponent: Scott Schoifet

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