

INTER PARTES REVIEW PROCEEDING IPR2015-01167

PATENT OWNER'S EXHIBIT 1507

DEPOSITION TRANSCRIPT OF RYAN WHITE

APRIL 27, 2016

In the Matter of:

ACCO Brands Corporation, et al.

vs.

Think Products, Inc., et al.

Ryan White

April 27, 2016



Court Reporting Solutions

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

ACCO Brands Corporation Case IPR2015-01167
and ACCO Brands USA LLC, Patent 8,717,758
Petitioner,

v.

Think Products, Inc.,

Patent Owner.

ACCO Brands Corporation
and ACCO Brands USA LLC
Petitioner,

v.

Case IPR2015-01168
Patent 8,837,144

Think Products, Inc.,

Patent Owner.

DEPOSITION OF RYAN WHITE
April 27, 2016, 9:07 a.m.
Wyndham Boston Beacon Hill
5 Blossom Street
Boston, Massachusetts 02114

Reported by: Dana Welch, CSR, RPR, CRR, CRC
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I N D E X

WITNESS: RYAN WHITE

EXAMINATION: PAGE:

BY MR. VODOPIA 5

BY MR. WEINER 170

BY MR. VODOPIA 189

EXHIBITS MARKED:

NO. DESCRIPTION PAGE:

Exhibit 2001, Supplemental Declaration of 20

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Findings Provided in the IPR, Rob Mahaffey

NOTATIONS:

Hearing before Judges Pollock and Rice. 165

Exhibits retained by reporter.

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

2 RYAN WHITE, sworn

3 EXAMINATION

4 BY MR. VODOPIA:

5 Q. Good morning, Ryan. My name is
6 John Vodopia. I'm one of the attorneys
7 representing Think Products, the patent owner in
8 this case. I'm going to be asking you a number of
9 questions.

10 The court reporter will take down
11 everything we say, so your answers need to be
12 verbal.

13 A. Uh-huh.

14 Q. Non-gestural and nod of the head or other
15 type of gesture won't work well.

16 If any of the questions I ask you are not
17 clear, please let me know, I'll rephrase the
18 question. Any answer you give in response to a
19 question, I will take it to mean you understood my
20 question and your answer was in response to it.

21 If you don't know or have an answer to any
22 of the questions -- or don't have an answer to any
23 of the questions, please do not guess. An answer
24 "I don't know" is an acceptable answer.

25 A. Okay.

1 Q. Ryan, do you understand that your
2 testimony today is being used in connection with
3 the proceedings that are held before the U.S.
4 Patent and Trademark Office?

5 A. I do.

6 Q. Yes, so I skipped one.

7 MR. SCHINDLER: No, you didn't.

8 Q. Please state your name and address for the
9 record.

10 A. Ryan White. That's 15 Oakwood Road,
11 Acton, Massachusetts.

12 Q. Ryan, can we start with your educational
13 background after high school.

14 A. Yeah. I went to Wentworth Institute of
15 Technology where I earned a Bachelor of Science
16 Degree in Industrial Design in 2001.

17 Q. And can you tell me your employment
18 history, I guess, beginning in 2001.

19 A. I worked at Insight New Product
20 Development, a Chicago-based industrial design
21 firm, but I worked in their Boston office. Then
22 went on to Item New Product Development in
23 Providence, Rhode Island before moving out to San
24 Francisco and becoming employed with Kensington
25 where I --

1 Q. And when was that?

2 A. 2004, I moved out to California. So
3 either end of 2004, beginning of 2005. I was with
4 them for roughly eight years, I believe four of
5 which were remote.

6 I moved back here. And then I was an
7 independent industrial designer for several years
8 before taking a job with Staples, which is, I
9 believe, the last position on here.

10 Since this declaration, I have accepted a
11 new position as associate vice president of design
12 at Mass Mutual.

13 Q. So what was your position when you started
14 with Kensington in 2004?

15 A. I was an industrial designer, so I led
16 three of their six categories.

17 Q. And what did you do there?

18 A. Industrial design at Kensington was
19 anything from preliminary engineering mockups to
20 aesthetic development of form factors, material
21 selection, and brand elements.

22 Q. And so that was your entry level position.
23 Did you -- were you promoted at some point?

24 A. Several times. Within two years I became
25 a senior industrial designer. Within a year after

1 that, I became a lead industrial designer, and a
2 year after that I became the global design manager.

3 Q. And so that was in 2008, global design
4 manager?

5 A. I believe the design manager position came
6 in 2010. 2008 was when I was lead for the security
7 category.

8 Q. Uh-huh. So about 2010.

9 And when did you move and do it remotely?

10 A. 2008, I moved back here.

11 Q. Oh, okay.

12 A. And that's the same time.

13 Q. And does that mean you worked at home?

14 A. Yeah.

15 Q. The whole time? Sometimes you would --

16 A. About a week a month I'd be in Vancouver
17 working with the security team.

18 Q. Oh, and so I thought you were in San
19 Francisco. You were in Vancouver?

20 A. The security team was mainly based in
21 Vancouver.

22 Q. Okay. Great.

23 And when did you stop working for
24 Kensington?

25 A. I believe it's 2011 or 2012.

1 Q. And what were the circumstances behind
2 that?

3 A. New opportunity.

4 Q. Oh, so did you leave Kensington?

5 A. Yes.

6 Q. And what was the new opportunity?

7 A. A company offered me an R&D team to do
8 exploratory work to enter into new markets in
9 verticals.

10 Q. In verticals?

11 A. Different channels. I guess I'll just be
12 specific. The company sold a specific product in a
13 specific channel, retail, and they wanted to get
14 into B2B.

15 Q. And what was the product?

16 A. It was tablet accessories and iPhone
17 accessories.

18 Q. And what was the name of the company?

19 A. Speculative Products Group, but they're
20 known as Spec.

21 Q. And how long were you with them?

22 A. One year.

23 Q. So that was until 2012?

24 A. I believe it was 2012.

25 Q. And how long did you work for them?

1 A. One year.

2 Q. One year? So 2013.

3 And where did you go in 2013?

4 A. I went independent.

5 Q. Meaning you're an independent consultant?

6 A. Yeah.

7 Q. And you were an independent consultant

8 from 2013 on?

9 A. I think it was 2012 --

10 Q. 2012, yeah?

11 A. -- until 2014.

12 Q. And then I know you mentioned it before.

13 Could you --

14 A. Then I went to Staples.

15 Q. Staples, yeah.

16 And are you with Staples now?

17 A. No, I'm not.

18 Q. When did you leave Staples?

19 A. December 31st of 2015.

20 Q. Oh, so pretty relatively recently?

21 A. Yes.

22 Q. And why did you leave Staples?

23 A. A new opportunity.

24 Q. And what was the new opportunity?

25 A. To run a labs innovation team for Mass

1 Mutual.

2 Q. And that's -- and where is that, in
3 Boston?

4 A. That's here in Boston, yes.

5 Q. And what do you do? What is your -- could
6 you tell me more about your position running the
7 lab's innovation team for Mass Mutual?

8 A. Uh-huh. My team is responsible for
9 evaluating market, user, and business trends to
10 predict ideal business offerings 18 months to
11 five years out. So we are forward looking. Our
12 concepts are then evaluated by the executive board
13 and then loaded into the product roadmap for the
14 development team to build out.

15 Q. Good.

16 Since 2012 when you stopped working for
17 Kensington directly, have you done any other work
18 for ACCO or Kensington?

19 A. I have.

20 Q. And could you tell me what that was?

21 A. I did some brand work for their launch of
22 their ClickSafe, so sales collateral.

23 Q. And when was that?

24 A. Well, I believe that was 2013.

25 Q. And were you a paid consultant --

1 A. I was.

2 Q. -- for ClickSafe?

3 And were you paid by the hour?

4 A. I did a flat rate.

5 Q. What does that mean?

6 A. They asked for specific deliverables, I
7 told them how much it would cost and when I could
8 get it turned around or delivered to them, and that
9 was the agreement we had.

10 Q. And was that in 2013 only?

11 A. I believe so.

12 Q. And did you do any work for them in 2014?

13 A. No.

14 Q. 2015?

15 A. No.

16 Q. Were you -- do you have any patents in
17 your name that are owned by Kensington or...

18 A. Yes.

19 Q. And any pending patent applications?

20 A. I'm not positive. I don't believe so.

21 With Kensington, I don't believe so.

22 Q. Right.

23 So since you left Kensington, have you --
24 have you had to review any patent-related documents
25 and sign any patent-related --

1 A. Yes.

2 Q. And are you paid for that?

3 A. No.

4 Q. No.

5 And so the last time you were paid for --
6 by Kensington was sometime in 2013?

7 A. Yes.

8 Q. And you're being -- are you being paid for
9 this work, this --

10 A. (No verbal response.)

11 Q. And are they paying you as a consultant?

12 A. I'm not quite sure how to answer that one.

13 Q. Okay. Are they paying you as an expert
14 witness?

15 A. Yes.

16 Q. Okay. Good.

17 And can you tell me the rate of
18 compensation?

19 A. 230 on an hourly basis.

20 Q. And can you tell me about how many hours
21 you've put in up until today in this matter?

22 A. I could not off the top of my head. I
23 mean, I really don't --

24 Q. Guess? A hundred?

25 A. No.

1 Q. 50?

2 A. I couldn't tell you with any accuracy.

3 Q. But less than a hundred?

4 A. Yes.

5 Q. Less than 50?

6 A. I'm not positive.

7 Q. Okay. Great.

8 Have you -- is this your first deposition?

9 A. It is.

10 Q. Good.

11 And I want to jump back to Kensington.

12 Before you left, did you know Robert Mahaffey when
13 you worked at Kensington?

14 A. Yes.

15 Q. And what was your business relationship
16 with Robert Mahaffey?

17 A. When I joined, Rob was a project manager
18 and I worked on several projects that he managed.
19 Later on, he managed the security projects, and I
20 believe his role was split between project and
21 product manager, and that was the team that I was
22 the lead industrial design for.

23 Q. How often did you speak with Mr. Mahaffey
24 when you worked with Kensington -- for Kensington?

25 A. I would probably say close to every single

1 day.

2 Q. So you worked pretty close to him?

3 A. Yeah.

4 Q. Okay. Did you know Robert Humphrey when
5 you worked at Kensington?

6 A. Yes.

7 Q. And what was your relationship -- your
8 business relationship with Robert Humphrey?

9 A. In 2008, when they reformed the security
10 team, I believe his title was senior director of
11 product for security. So in essence, he was our
12 internal client. He represented the business side
13 of the security team.

14 Q. I think I get it.

15 So you were sort of engineering and you
16 worked for -- they were the client internal?

17 A. Correct.

18 Q. Got it, yeah.

19 Did you speak with Mr. Humphrey frequently
20 during your work in security?

21 A. I did.

22 Q. About as much as you spoke to
23 Mr. Mahaffey?

24 A. No.

25 Q. Okay. Did you know Christopher Franey

1 when you worked at Kensington?

2 A. I did.

3 Q. And did you speak with him frequently?

4 A. Define "frequently," please.

5 Q. Well, I mean as frequently as you spoke to
6 Mr. Humphrey.

7 A. No.

8 Q. No.

9 What was your relationship with
10 Mr. Franey?

11 A. He was the CEO of Kensington.

12 Q. CEO of Kensington, oh, okay, at that time?

13 A. Yeah.

14 Q. And is he now the president of ACCO
15 Brands?

16 A. I believe so.

17 Q. And do you know when he made that jump
18 from CEO?

19 A. I do not.

20 Q. Okay. Great.

21 Do you understand that there are two inter
22 partes actions that are the focus of this
23 deposition, the first being directed to U.S. Patent
24 Number 8,717,758 to Peter Allen? Do you --

25 A. That's one, right?

1 Q. Yes.

2 A. Yes.

3 Q. And that was in the first I took.

4 And the second -- I'll finish the question
5 then. U.S. Patent Number 8,837,144 to Peter Allen.

6 A. Yes.

7 Q. And I'd like to from this point on refer
8 to them as the '144 patent and the '758 patent,
9 respectively.

10 A. That will work for me.

11 Q. So I realize that sometimes I may refer to
12 the prosecution of the applications that led to
13 those patents. If I refer -- if I refer to
14 something that occurred in the file wrapper of the
15 '144 patent or in the file wrapper of the '758
16 patent, will you assume that I'm referring to the
17 application that -- the respective applications
18 that eventually evolved into these patents?

19 MR. SCHINDLER: Essentially we'll call it
20 the '144 application.

21 MR. WEINER: Objection. There should be
22 only one attorney asking the questions today.

23 MR. SCHINDLER: Fine.

24 A. So I --

25 Q. I'm just going to use the shorthand. It's

1 a little awkward to keep referring to the
2 application that evolved into the '144 patent or
3 the '758 patent, and so I was hoping to just cut
4 that short. We'll take care of it as we move on.

5 A. Okay.

6 Q. You get it, though.

7 Do you understand the patent process?

8 A. I do.

9 Q. So you understand that one files a patent
10 application, it's prosecuted before the patent
11 office, and hopefully it eventually issues as a
12 U.S. patent?

13 A. Yes.

14 Q. Okay. Good.

15 And you understand that that back and
16 forth between the patent office in a pending
17 application is referred to the patent prosecution?

18 A. Yes.

19 Q. And the record of that prosecution is
20 referred to the file history?

21 A. Yes.

22 Q. Good.

23 In preparation of your testimony today,
24 can you tell me what things you reviewed? When I
25 say "things," I mean documents, pictures, videos,

1 devices, et cetera.

2 A. We reviewed a number of things, so I might
3 not be able to supply you off the top of my head
4 with a complete list. '758, '144, of course. We
5 went back through the file history. I believe in
6 my initial deposition we -- my declaration, we
7 referenced Murray, Chen, I believe we did Cheng, so
8 several patents, the board's decision as well as
9 Rob Mahaffey's declaration or supplemental
10 declaration, I'm not sure if it was his first, but
11 it was, I guess just his declaration.

12 Q. Right. I think it's his declaration or
13 first declaration.

14 A. Uh-huh.

15 Q. I believe you had a first declaration and
16 then a supplemental declaration in both of the
17 IPRs?

18 A. Yep, yes.

19 Q. Mr. Mahaffey was deposed on March 21st,
20 2016. Did you review Mr. Mahaffey's deposition
21 transcript in preparation for this deposition?

22 A. Yes.

23 Q. You did.

24 Did you review Mr. Mahaffey's March 21st
25 deposition transcript prior to preparing your

1 supplemental declarations of March 30th, 2016?

2 A. Yes.

3 Q. Do you mention it in your declaration,
4 your supplemental declaration?

5 A. Supplemental, yes.

6 Q. You do mention it in your supplemental
7 declaration.

8 You know, I'd like to -- I'd like to give
9 you a copy of your supplemental declarations,
10 there's one each for both IPRs, if you'll bear with
11 me a second.

12 Okay. So the first is for the '758
13 patent?

14 A. Yeah.

15 Q. And we can introduce this as the first
16 exhibit.

17 (Exhibit 2001, Supplemental Declaration of
18 Ryan White (01167), marked for identification.)

19 MR. VODOPIA: So the first exhibit
20 concerning the '758 patent is 2001.

21 MR. SCHINDLER: Right.

22 MR. VODOPIA: Right. And then the next
23 exhibit --

24 MR. WEINER: I'm sorry. So the record is
25 clear, what are you saying is Exhibit 2001?

1 MR. VODOPIA: The Supplemental Declaration
2 of Ryan White dated --

3 MR. SCHINDLER: March 30th.

4 MR. VODOPIA: -- March 30th, 2016 --

5 MR. SCHINDLER: For patent number '758.

6 MR. VODOPIA: -- signed, executed.

7 MR. WEINER: That's what's been --

8 COURT REPORTER: We can't all talk at the
9 same time.

10 MR. SCHINDLER: Identify the patent
11 number, identify also the IPR if you have to.

12 MR. VODOPIA: Okay. So this first
13 Exhibit 2001 is the Supplemental Declaration of
14 Ryan White, executed by Mr. White on March 30th,
15 2016. It is directed to IPR2015-01167 and U.S.
16 Patent Number 8,717,758.

17 I'd like to introduce the second
18 supplemental declaration of Ryan White, also
19 executed by Mr. White on March 30th, 2016 in the
20 co-pending IPR2015-01168 and that's directed to
21 U.S. Patent Number 8,837,144, and --

22 MR. WEINER: Objection. I have a couple
23 of objections. First, there's no document marked
24 second supplemental declaration. There is a
25 supplemental declaration of Ryan White. Also, I

1 object to your marking the supplemental declaration
2 of Ryan White that's previously been marked
3 Exhibit 1024 in IPR 2015-1167. I object to
4 remarking that with a second exhibit number because
5 under the rules of the Patent Trial and Appeal
6 Board, exhibits shall not be submitted more than
7 once and they shall not be numbered more than once.
8 So I think we should proceed with the actual
9 exhibit numbers that already exist on those
10 documents that have been filed with the PTAB.

11 MR. SCHINDLER: The problem is we have two
12 exhibits with the same number then.

13 MR. WEINER: We do have the same number
14 and they both are uniquely identified by IPR number
15 on the front page of the exhibit.

16 MR. SCHINDLER: So call one 1024-1167 and
17 1024-1168, then that's more numbers.

18 MR. VODOPIA: And so I think this is just
19 a formal matter that Mr. Weiner's bringing up --

20 MR. SCHINDLER: Okay. We'll do it this
21 way --

22 MR. VODOPIA: -- so I think we're okay to
23 proceed.

24 (Exhibit 2002, Supplemental Declaration of
25 Ryan White (01168), marked for identification.)

1 MR. WEINER: And just for the record, I
2 object to the identification of Exhibit 2002 in
3 connection with what's already previously been
4 marked as Exhibit 1024 and IPR2015-1168 as
5 inconsistent with the board's rules.

6 BY MR. VODOPIA:

7 Q. You're good?

8 A. Yes.

9 Q. Okay. Ryan, did you refer to reviewing
10 Mr. Mahaffey's deposition testimony in your
11 supplemental declarations, either Exhibit 2001 or
12 2002?

13 A. I did.

14 Q. And where was that?

15 A. Section B of 01167, I believe. Yeah. I
16 reviewed Mr. Mahaffey's discussion.

17 Q. Hold on a second. Section B, yeah?

18 A. Page 4. Top of page 4, section B, 10, I
19 reviewed Mr. Mahaffey's discussion.

20 Q. It refers to Mr. Mahaffey's declaration,
21 paragraphs 19 to 29. And I asked you if you
22 reviewed Mr. Mahaffey's deposition testimony.

23 A. Oh, I'm sorry. I must have been mistaken.
24 I was thinking did I review his declaration in
25 preparation for this.

1 Q. Okay. Got it.

2 Ryan, did you review Mr. Mahaffey's
3 deposition testimony?

4 A. No.

5 Q. No, you didn't.

6 Why not?

7 A. We had discussed it with counsel, the
8 conversations, the way it went, things like that.
9 I'm not sure it would have added value to my
10 supplemental. I'm not positive.

11 Q. Can you tell me what was discussed with
12 counsel?

13 MR. WEINER: Objection. And I would
14 just -- the witness may answer the question. I
15 just want to caution the witness not to reveal any
16 confidential attorney work product in connection
17 with responding.

18 A. Specifically, not word for word, we
19 discussed where there was discrepancies between
20 what content we had reviewed, patents, things like
21 that, and how Mr. Mahaffey approached it and his
22 description of certain elements.

23 Q. But you didn't see the deposition
24 testimony, Mr. Mahaffey's deposition testimony?

25 A. No, I did not.

1 Q. So is it fair to say that counsel for ACCO
2 presented whatever you know of that deposition
3 testimony?

4 MR. WEINER: Objection, misstates the
5 witness' testimony.

6 A. I'm not positive I would say it's fair to
7 say. I'm not quite sure how to respond to that.

8 Q. So did counsel for ACCO send you a copy of
9 the transcript?

10 A. I do not believe so.

11 Q. Did counsel for ACCO make a copy of the
12 transcript for your review?

13 A. I don't believe so.

14 Q. Do you think Mr. Mahaffey's deposition
15 transcript is something that would be important for
16 you to see as an expert offering opinions in these
17 proceedings?

18 MR. WEINER: Objection, vague, calls for
19 speculation.

20 A. My role is to review the patents, so Rob's
21 opinion really wouldn't affect my view of this as
22 an expert witness.

23 Q. What were you hired by ACCO to do?

24 A. Could you clarify that question for me?

25 Q. What is your role here today?

1 Sorry, not today.

2 What was your role as an expert for ACCO?

3 A. I'm sorry, I still don't understand.

4 Q. What were you retained to do in these
5 IPRs?

6 A. Review the patents, review supplied patent
7 paperwork, and kind of give my professional view of
8 how the claim language might read to an expert.

9 Q. And have you done that before?

10 MR. WEINER: Objection, vague.

11 A. It's -- it's a tough question. As an
12 industrial designer, we're often hired to review
13 patents. Have I been hired to do it as an expert
14 witness? No.

15 Q. Have you been hired to review patents?

16 A. Can you clarify, for this?

17 Q. No.

18 I mean, you said that as an industrial
19 designer that you've been hired to review patents
20 and I asked a very similar question, have you been
21 hired to review patents?

22 A. I've been hired to design products that
23 may require me digging around and seeing if there's
24 patents out there.

25 Q. And have you done that?

1 A. I have.

2 Q. Have you done it more than once?

3 A. Yes.

4 Q. And could you tell me more? Can you tell
5 me why a patent might be significant in that
6 respect?

7 A. It would show us where not to go.

8 Q. Good.

9 And what would you review -- what would
10 you review in the patent to determine where not to
11 go?

12 A. My background is not in drafting or
13 applying or litigation around patents, so to the
14 best of my ability, I would read it and interpret
15 it as an industry expert and say to the best of my
16 knowledge, here's what this means and then we would
17 consult with professional counsel beyond that.

18 Q. Would you review the claims?

19 A. To the best of my ability.

20 Q. Would you construe the claims.

21 A. No. I don't think I would make that
22 statement.

23 Q. Can you tell me what construing claims
24 means in your understanding?

25 A. My assumption is basically go through,

1 read it, and start to make assumptions as to what
2 they're proposing or protecting in the description.

3 Q. I was referring actually to the claims.
4 Have you construed patent claims?

5 A. I'm not sure I understand then.

6 Q. You're not --

7 MR. WEINER: And I object to the question
8 as vague.

9 Q. Do you know what patent claims are for?

10 A. I have my interpretation.

11 Q. I wonder if you'd identify that for the
12 record.

13 A. My assumption is you're outlining the
14 specifics of the intellectual property that you're
15 trying to secure, what makes it unique or novel.

16 Q. Good.

17 Do you know the law of claim construction?

18 A. I do not.

19 MR. VODOPIA: I'd like to introduce ACCO
20 Brands Exhibit 1021 in the '144 patent, which is
21 IPR2015-1168. I guess you can identify these as
22 Exhibit 2003 as well. This is your original
23 declaration and the '144 patent. I'm sorry. This
24 is the later of the two patents.

25 (Exhibit 2003, Declaration of Ryan White

1 (01168), marked for identification.)

2 MR. WEINER: And I object to marking this
3 exhibit as 2003 because it's previously been marked
4 Exhibit 1021 in IPR2015-1168.

5 Q. And then --

6 MR. WEINER: I'm sorry. Let me just
7 finish my objection.

8 MR. VODOPIA: Sure.

9 MR. WEINER: I also object to questions
10 about Exhibit 1021, Declaration of Brian White, in
11 either IPR as outside the scope of the supplemental
12 declaration for which Mr. White is having his
13 cross-examination deposition taken.

14 MR. VODOPIA: Good point.

15 MR. SCHINDLER: Well, we don't agree with
16 the objection but it's on the record.

17 MR. VODOPIA: So I'd like to introduce the
18 second Exhibit 1021. I'd like to mark this as
19 2004. It's the second Exhibit 2001 from ACCO
20 Brands for IPR2015-01167 and it's concerning U.S.
21 Patent Number 8,717,758.

22 MR. WEINER: And I object to marking
23 Exhibit 2004 for the same reason I objected to
24 marking Exhibit 2003. I also object to the
25 questions about that.

1 MR. SCHINDLER: Yeah. Let's agree that
2 you object to the exhibit number here, it's a
3 continuing objection, so we don't have to raise it
4 every time.

5 (Exhibit 2004, Declaration of Ryan White
6 (01167), marked for identification.)

7 MR. WEINER: I object to marking
8 Exhibit 2004 for the same reason that I objected to
9 remarking the other previous exhibits that have
10 been marked. And I also object to questions about
11 Exhibit 2004 or 1021 for the same reason I objected
12 to questions about Exhibit 1021 from the 1168 IPR.

13 BY MR. VODOPIA:

14 Q. Ryan, in your supplemental declaration
15 concerning the '758 patent at paragraph 13, you
16 disagree -- I'm sorry -- did you read paragraph 13?

17 A. Yeah.

18 Q. What paragraph 13 states is, "I disagree
19 with Mr. Mahaffey's proposed constructions of
20 captive security rod as indicated in paragraphs 19
21 and 20 of his declaration."

22 A. Uh-huh, yes.

23 Q. But you just testified that you didn't
24 understand what claim construction means.

25 MR. WEINER: Objection, misstates the

1 witness' testimony.

2 A. I don't recall making that statement.

3 Q. You don't recall making that statement?

4 A. Saying that I don't understand?

5 Q. Yes.

6 A. Or saying that I don't know the laws? I
7 believe wasn't that the question?

8 Q. Yeah, do you understand --

9 MR. VODOPIA: Would you mind reading back
10 Mr. Mahaffey's response -- Mr. White's response.

11 (Whereupon, the record was read as
12 follows: Question: "Do you know the law of claim
13 construction?"

14 Answer: "I do not.")

15 Q. Do you understand how to construe claims?

16 A. No, I do not.

17 Q. At paragraph 13 you write, you state, "I
18 disagree with Mr. Mahaffey's proposed construction
19 of captive security rod as indicated in paragraph
20 19 of his declaration."

21 Do you know what you meant by this
22 paragraph?

23 A. Yes.

24 Q. What did you mean?

25 A. This isn't claim construction. This is

1 his proposed constructions of a captive security
2 rod. So in his description, I'm disagreeing with
3 how he is proposing the construction of a captive
4 security rod.

5 Q. And you, in your understanding, your
6 paragraph 13, you're talking about construction or
7 a building of a captive security rod, that's what
8 you're disagreeing with?

9 A. His description --

10 MR. WEINER: Objection, misstates the
11 witness' testimony.

12 A. Can you repeat that?

13 Q. Yes.

14 Ryan, how could you understand -- how
15 could you disagree if you don't understand what
16 claim construction is?

17 MR. VODOPIA: Strike that.

18 Q. Can you explain to me what you mean by
19 construction in this paragraph?

20 A. He's identifying key elements that make up
21 a captive security rod and that description is what
22 I'm disagreeing with, the description of the
23 elements and how they work with each other.

24 Q. How can you disagree with a proposed claim
25 construction if you don't understand the law of

1 claim construction?

2 A. I don't disagree with claim construction.
3 I disagree with Mr. Mahaffey's construction of
4 captive security rod.

5 Q. Good.

6 In paragraph 14 you say "Mr. Mahaffey's
7 proposed constructions ignore claim language other
8 than the last three words 'captive security rod'?"

9 A. Uh-huh.

10 Q. What did you mean by that?

11 A. I'm not sure what else I can add beyond
12 this.

13 I guess, could you rephrase the question?

14 Q. No. I'd like you to just answer that
15 question.

16 You say "Mr. Mahaffey's proposed
17 constructions ignore claim language other than the
18 three words 'captive security rod.'"

19 What did you mean by that?

20 A. I'm still not sure of what you're asking.
21 At this point I would have to make an assumption.
22 I don't feel comfortable answering that.

23 MR. WEINER: I just want to remind the
24 witness on the record, please take whatever time
25 you need to review the document that's in front of

1 you before you answer the question about what's in
2 that document.

3 Q. Ryan, would you read the next sentence in
4 paragraph 14, the second sentence, out loud, for
5 the record?

6 A. So you want me to start with "however"?

7 Q. No, "Mr. Mahaffey's declaration."

8 A. "Mr. Mahaffey's declaration states that he
9 reviewed the files for each IPR proceeding as well
10 as all patents referenced in his declaration."

11 Q. And the next sentence?

12 A. "However, Mr. Mahaffey's testimony does
13 not refer to any claim language other than the
14 words 'captive security rod" and his testimony
15 nowhere indicates or suggests that he has
16 considered any other claim language or even that he
17 is familiar with the other language in the claims
18 under review."

19 Q. And what do you mean by that?

20 A. When reviewing Rob's declaration and
21 evaluating the terminology he uses versus what's in
22 the claim language itself, I saw a large
23 disconnect.

24 Q. And what was that disconnect.

25 A. The description that Rob gives,

1 Mr. Mahaffey gives for a captive security rod
2 doesn't align with what is shown in the claim
3 language that I reviewed.

4 Q. Could you say that again?

5 MR. WEINER: Could the court reporter read
6 it back, please.

7 (Whereupon, the record was read as
8 follows: Answer: "The description that Rob gives,
9 Mr. Mahaffey gives for a captive security rod
10 doesn't align with what is shown in the claim
11 language that I reviewed.")

12 MR. VODOPIA: Would you mind reading that
13 back again.

14 (Whereupon, the record was read as
15 follows: Answer: "The description that Rob gives,
16 Mr. Mahaffey gives for a captive security rod
17 doesn't align with what is shown in the claim
18 language that I reviewed.")

19 Q. Ryan, do you know what a claim limitation
20 is?

21 A. Specifically, no.

22 Q. Ryan, did you construe the claims of the
23 two patents at issue here, the '758 and the '144
24 patent?

25 A. Can you define "construe"?

1 Q. Did you go through the claims and
2 understand what the claim terms mean in the context
3 of the patent itself?

4 A. I'm not positive how to respond to this.
5 I would -- with the experience or the understanding
6 of an attorney, no. From my viewpoint, I felt
7 fairly comfortable within reason.

8 Q. Did you write this supplemental
9 declaration?

10 A. This is built off of working sessions with
11 counsel where I would give the input my view, how I
12 would look at something, how I would read through
13 something, and counsel aided in making sure that
14 the structure and construction of it was in line
15 with expectations at a legal level.

16 Q. Did counsel explain to you what claim
17 construction means?

18 A. Yes.

19 MR. VODOPIA: Can we take a break. Do you
20 mind?

21 MR. WEINER: Sure.

22 (Proceedings interrupted at 9:59 a.m. and
23 reconvened at 10:04 a.m.)

24 BY MR. VODOPIA:

25 Q. Ryan, I'd like to direct your attention to

1 your declaration of April 30th, 2015 as relates to
2 the '758 patent, which is 01167. I believe this
3 was the -- one of the two Exhibits 1021. I think
4 it may be identified as Exhibit 2001 in this one.
5 We'll just leave it as one of the two 1021 exhibits
6 from the IPR 01167. I'd like to direct your
7 attention to page 14, the section D identified as
8 "Claim Construction."

9 A. Uh-huh.

10 Q. Did you write this?

11 A. This is from conversations with counsel.

12 MR. WEINER: And I don't want to
13 interrupt, I just want to make sure I understand
14 what you're talking about. It's printed page 14 in
15 the middle of the page but the actual exhibit
16 numbering page is page 15 of 105?

17 Q. Did you write this, Ryan?

18 MR. WEINER: Objection, asked and
19 answered.

20 MR. VODOPIA: Would you read back his
21 answer.

22 (Whereupon, the record was read as
23 follows: Answer: "This is from conversations with
24 counsel.")

25 Q. Ryan, I'd like you to answer my question.

1 Did you write this?

2 A. I did not type it.

3 Q. Good, that's what I meant.

4 A. Okay.

5 Q. Yeah. So you didn't prepare the document?

6 MR. WEINER: Objection, misstates the
7 witness' testimony.

8 Q. Did you prepare this document? Did you
9 prepare this section, Claim Construction?

10 A. This is -- this is from the work that we
11 did with counsel. This is --

12 Q. Did you prepare this section? I was
13 looking for a yes-or-no answer.

14 A. No.

15 Q. No.

16 Could you read paragraph 32 for the
17 record.

18 A. "In my opinion and as discussed below,
19 POSA would understand that the broadest reasonable
20 interpretation of the claim terms listed below are
21 as follows."

22 Q. What is POSA?

23 A. A person of ordinary skill in the art.

24 Q. The following two and a half pages
25 identify -- could you tell me what's identified at

1 page 14, the first -- the sections in the middle
2 referring to the '758 and the '144 claims? What
3 claims are referred to?

4 MR. WEINER: Objection, outside the scope
5 of the second supplemental declaration that is the
6 subject of this deposition.

7 MR. VODOPIA: He's just making a record.

8 THE WITNESS: Oh, okay. So this is
9 where --

10 Q. Let me just interrupt you. If Mr. Weiner
11 directs you not to answer, don't answer. But if he
12 doesn't direct you not to answer, don't let it --
13 that's just making a record.

14 A. Okay.

15 Q. Okay.

16 A. When we list 758144, this is where we're
17 looking at the two of these.

18 Q. Sorry. What do you mean by "two of
19 these"?

20 A. At the two patents.

21 Q. Oh, gotcha, yeah.

22 A. And this is going through and basically
23 seeing if everything is in alignment with what I
24 would understand as a POSA.

25 Q. And do you know how many claims there are

1 in the '758 patent?

2 A. Not off the top of my head. I mean, I
3 could look if you'd like me to.

4 Q. Sure.

5 MR. VODOPIA: We can introduce those two
6 patents for the record at this point.

7 This exhibit is the '758 patent, which is
8 the patent that we're discussing. We're discussing
9 your declaration with reference to the '758 patent
10 right now. I mean, these are -- this patent, U.S.
11 patent number 8,717,758, is identified as ACCO
12 Brands Exhibit 1001 in IPR2015-1167.

13 (Exhibit 2005, U.S. Patent 8,717,758,
14 marked for identification.)

15 MR. WEINER: Objection to renumbering of
16 exhibits.

17 Q. Ryan, do you see how many claims there are
18 in the '758 patent?

19 A. Yes.

20 Q. And how many is that?

21 A. There appears to be 16.

22 Q. And at page 14 of your declaration you
23 refer to claims 1 to 15.

24 A. Uh-huh.

25 Q. Why are claims 1 to -- why did you

1 identify claims 1 to 15, again, at page 14?

2 A. I would need some time to review, just to
3 make certain.

4 Q. Okay.

5 A. So 1 through 15 or 2 through 15 reference
6 other claims, whereas 16 doesn't. So 1 through 15
7 are, in essence, captured here (indicating) and
8 from my standpoint.

9 Q. And what do you mean by "captured here"?

10 A. So when we have the claim term and then,
11 you know, viewing this from a standpoint of POSA,
12 kind of taking these and saying here's what we mean
13 by that, here's -- I don't want to call it a
14 definition, here's my understanding of what is
15 claimed here.

16 Q. And did you -- did you do the same for
17 claim 16?

18 MR. WEINER: Objection. Continued
19 objection to these questions about Mr. White's
20 first declaration that is not the subject of his
21 deposition and objection to the question as vague.

22 A. I'm not sure what you're asking.

23 Q. Well, what did you do here for claims 1 to
24 15, what did you do?

25 A. Well, I went through the claims to see

1 what they were referencing and the fact that
2 they're all tying back to 1, 6 ties back to 5,
3 they're all calling back on previous claims, so to
4 me --

5 Q. Did you look at the claim language?

6 A. I interpreted the claim language. I'm not
7 a lawyer.

8 Q. Did you look at claim 1?

9 A. Yes.

10 Q. Where is this -- where is this text in the
11 left-hand column, Claim Term, where is that taken
12 from?

13 A. I believe it is claim 1 and then I believe
14 it's line 28.

15 Q. Now, why is claim 16 not construed?

16 MR. WEINER: Objection, misstates the
17 witness' testimony.

18 Q. Did you construe claim 16?

19 MR. WEINER: Objection, outside the scope
20 of the supplemental declaration.

21 A. No.

22 (Clarification by the reporter.)

23 Q. Did you construe claim 16?

24 MR. WEINER: Objection, vague.

25 A. I'm not sure how to answer that. Earlier

1 I explained that I didn't claim to construe
2 anything, or depending on your definition of
3 construe, I reviewed it, and then as an industry
4 expert viewing it through the eyes of a POSA, made
5 my assessment. If that qualifies as construed,
6 then...

7 Q. Well, let's say it was your process, your
8 process, whatever you just articulated, did you
9 apply that process to claim 16?

10 A. I did.

11 Q. And can you tell me where that's
12 identified here?

13 A. It's -- oh, in this table?

14 Q. Uh-huh.

15 MR. WEINER: Objection, misstates the
16 witness' testimony. Objection, outside the scope
17 of the supplemental declaration.

18 A. It's not in here.

19 Q. Good.

20 Did you apply your process to claim 16?

21 A. I'm just reviewing this to make -- jog my
22 memory.

23 I can't recall off the top of my head. I
24 know we reviewed it, but I'm not sure to what depth
25 that we took it apart. Do you know what I mean?

1 Q. Do you agree that there's nothing of the
2 sort in this writing --

3 A. I'm not sure.

4 Q. -- here in this claim chart?

5 MR. WEINER: Objection, vague.

6 A. I guess I'm not sure what you're asking.

7 Q. Did you -- is it identified in this chart,
8 your process with respect to claim 16 of the '758
9 patent?

10 A. I'm still not clear. Are you asking if my
11 process is included in here?

12 Q. Well, you identified that you applied your
13 process to claims 1 to 15.

14 A. Uh-huh.

15 Q. And I just want to make clear for the
16 record whether you did or you did not in this
17 document for claim 16.

18 A. I'm not trying to be difficult. Quite
19 honestly, I'm not sure --

20 Q. Well, maybe you can point out to me where
21 you did do it, if you did do it. Where is it here
22 if you did do it?

23 A. 16 isn't included in here.

24 Q. Okay. Good. That's good.

25 MR. WEINER: Objection, vague.

1 Q. Why not?

2 MR. WEINER: Are you referring just to
3 paragraph 32?

4 Q. Why not?

5 A. I can't recall. I'm not positive.

6 Q. Do you know what claim 16 is?

7 MR. WEINER: Objection, vague.

8 Q. Do you know what the difference between
9 claim 16 and claim 1, broadly?

10 A. I believe I do. Again, from the
11 standpoint of POSA or a designer, an expert in the
12 field, I believe I have an understanding.

13 Q. What type of claim is claim 1?

14 MR. WEINER: Objection, vague.

15 A. Yeah, I'm not really sure what you're
16 asking.

17 Q. Well, would you mind taking a look at
18 claim 1 of the '758 patent.

19 A. Uh-huh, I have it here.

20 Q. And would you mind reading the first three
21 lines of claim 1.

22 A. "A locking assembly for securing a
23 portable electronic device having at least one
24 housing to a substantially immovable object the
25 locking assembly comprising."

1 Q. And would you mind reading the first three
2 lines of claim 16.

3 A. "A method for securing a portable
4 electronic device having a horsing [sic] to a
5 substantially immovable object utilizing a locking
6 assembly, the locking assembly comprising a captive
7 security rod or spike formed with an anchoring
8 end" --

9 Q. I mean, you can keep reading if you like
10 but that's enough. I just wanted to get a flavor
11 for the claims.

12 Do you believe that a POSA would
13 understand the difference between these claims?

14 A. I would believe so, yes.

15 Q. And what type of claims are they?

16 A. I'm not sure what you're -- what you're
17 asking. Are you asking for the specific term, or
18 are you asking what they're describing?

19 Q. Well, there are different types of claims,
20 Ryan. And I was wondering if you can identify a
21 difference in type between claim 1 and claim 16.

22 A. Can I give you the answer from the
23 viewpoint of a POSA?

24 Q. Yes.

25 A. Claim 1 seems to be describing the product

1 or the solution itself; whereas, claim 16 seems to
2 be describing the application of that solution.

3 Q. Do you believe it's the -- claim 16 is
4 applying -- is the application of the solution of
5 claim 1?

6 A. I would say yes.

7 Q. Did you verify that?

8 MR. WEINER: Objection, vague.

9 Q. Have you studied the two claims?

10 A. I've reviewed the two claims. I'm not a
11 lawyer, so to the best of my ability from the
12 viewpoint of a POSA, yes, I reviewed them.

13 Q. Do you understand the difference between
14 apparatus claims and method claims, from a
15 viewpoint of a POSA?

16 A. Yes.

17 MR. VODOPIA: I'd like to introduce the
18 second patent, the '144 patent, which is identified
19 as exhibit -- as ACCO Brands Exhibit 1003. It's
20 for IPR2015-011 11 -- 116 -- 1168. We need to
21 identify these as exhibit numbers for today because
22 there seems to be an error in the identification of
23 the -- of ACCO Brands Exhibit 1003. It indicates
24 that it's for IPR2015-01167, where instead, it's
25 actually just a typo, it's IPR2015-0111168 [sic],

1 so...

2 MR. WEINER: For the record, I don't
3 believe there's any error. The same exhibit number
4 was used in both IPRs, the same patent is of record
5 in both IPRs, and I would object to giving it a
6 different exhibit number today.

7 MR. VODOPIA: Yes.

8 Q. Ryan, is the '144 patent, is it the focus
9 of the IPR 01167 or the focus of IPR 01168?

10 A. I'd have to just check.

11 Q. Would you mind?

12 A. So what were those numbers again?

13 Q. 01167.

14 A. Yeah.

15 Q. And 01168.

16 A. So 01167 you're asking what?

17 Q. I'm asking if the '144 patent is the
18 patent at issue in 01167.

19 A. I believe so. I don't -- yes.

20 Q. Ryan, would you mind taking a look at your
21 declaration for the '144 patent.

22 A. Okay.

23 Q. And can you tell me what IPR that
24 declaration for the '144 patent is directed to?

25 MR. WEINER: Are you referring to the

1 declaration or the supplemental declaration?

2 MR. VODOPIA: I'm referring to both. I'm
3 referring to the declaration.

4 A. And you're asking what IPR number is
5 against the patent 8,837,144?

6 Q. Exactly, yep.

7 A. 2015-01168.

8 Q. Right.

9 And can you identify the IPR number for
10 that patent (indicating)?

11 MR. WEINER: Objection, vague.

12 What are you referring to?

13 MR. VODOPIA: Let the record show that the
14 witness pointed out to counsel for ACCO what I was
15 referring to.

16 MR. WEINER: Well, let me just make sure
17 the record is clear. What the witness has in his
18 hand is Exhibit 1003 from IPR2015-1167.

19 Q. And could you tell me, is the '144 patent
20 associated with the 67 or the 68 IPR?

21 MR. WEINER: Objection, vague as to what
22 associated means.

23 Q. Ryan, do you think there might be an error
24 on the face of this patent with reference to the
25 IPR number?

1 A. Potentially. I'm not sure how you're --
2 you're numbering exhibits. It seems to be --

3 Q. Well, it's ACCO's exhibit.

4 A. Okay.

5 Q. Do you think there could be an error
6 there, a simple error?

7 A. Potentially.

8 Q. Good, great. Thank you.

9 And then here it is. We need to identify
10 this. This is the patent. We need to identify
11 that as the next exhibit number. I'm sorry. I've
12 lost track of them, so...

13 (Exhibit 2006, U.S. Patent 8,837,144,
14 marked for identification.)

15 MR. WEINER: And continued objection to
16 renumbering of exhibits that have already been
17 marked previously and filed with the board.

18 MR. VODOPIA: I just wanted to correct the
19 error in the face of the '144 patent, which is
20 identified as Exhibit 1003.

21 MR. WEINER: Objection, misstates the
22 contents of the record. Exhibit 1003 was filed in
23 both IPRs, both in 1167 and in 1168, with the
24 identical exhibit number because it's pertinent
25 information for both IPRs, both the 1167 and both

1 the 1168. So there are two copies of Exhibit 1003,
2 one in each IPR.

3 Q. And so I want to direct you to, again,
4 still on page 14 of the declaration for the '758
5 patent, why do you identify -- I'm sorry. Tell me
6 when you're there.

7 A. Uh-huh.

8 Q. Under the heading "'144 Claims" --

9 A. Yeah.

10 Q. -- "1 to 13," why do you identify 1 to 13
11 at the top of that section?

12 MR. WEINER: Objection, outside the scope
13 of the supplemental declaration.

14 A. Again, these seem to have a lot of overlap
15 in the claims that we had identified at '758 when
16 trying to, you know, outline a reasonable
17 interpretation as far as a POSA views it.

18 Q. Okay. This section to the left where it's
19 number 1 that's starts "wherein the locking
20 device" --

21 A. Uh-huh.

22 Q. -- is that claim language in claims 1 to
23 13?

24 A. I would have to review. I'll have to show
25 you where.

1 So I believe I've identified where if
2 that's what you wanted me to point out.

3 Q. Well, I was wondering if the language set
4 out here is the same language in both claims 1 to
5 15 of the '758 patent and 1 to 13 of the '144
6 patent.

7 A. Am I allowed to make a note on this even
8 though it's marked as an exhibit? What I'd like to
9 do is compare the two just to be certain, or I
10 can --

11 Q. Yeah, I don't think it's a good idea to
12 mark up the exhibit.

13 A. Okay.

14 Q. I'm afraid I'd give you mine but I've
15 marked it up.

16 A. I'll figure it out.

17 MR. WEINER: Can you read the question
18 back, please.

19 (Whereupon, the record was read as
20 follows: Question: "I was wondering if the
21 language set out here is the same language in both
22 claims 1 to 15 of the '758 patent and 1 to 13 of
23 the '144 patent.")

24 A. Can you clarify for me? I guess hearing
25 it again, I don't want to assume that you're asking

1 me something. So if you could clarify for me, that
2 would be great.

3 Q. What part didn't you understand?

4 A. When I heard it reread, it sounded as
5 though you could be asking a vague question of are
6 the claims in '144 the same as the claims in '758 1
7 through 15.

8 Q. I can say it again. The text to the left
9 identifies number 1, that text, is that in claim 1
10 of the '758 patent and claim 1 of the '144 patent?

11 A. I just want to check one thing.

12 Yes, it's in both of these.

13 Q. And do you believe the scope of the
14 respective claims are the same?

15 MR. WEINER: Objection, vague.

16 A. Could you --

17 Q. Yes.

18 Do you understand what I mean when I say
19 claim scope?

20 A. Again, I have my interpretation. It's
21 probably not as accurate as yours.

22 Q. You, but you can -- you can just answer
23 and I'll probe it if it's an issue.

24 What is your understanding of the term --
25 the phrase "claim scope"?

1 A. I would imagine that this is everything
2 covered within the claims.

3 Q. And do you believe that the claim scope of
4 claim 1 of the '758 patent is equivalent to the
5 claim scope of claim 1 of the '144 patent?

6 MR. WEINER: Objection, vague.

7 A. I believe claim 1 in both of these is very
8 similar.

9 Q. Did you ever identify the differences, if
10 there are any?

11 A. Specifically to claim 1, or does that also
12 include dependent claims?

13 Q. No. Let's just focus on claim 1.

14 MR. WEINER: Objection, outside the scope
15 of the supplemental declaration.

16 A. I reviewed them both, and when comparing
17 them, the take-away was that they were very
18 similar.

19 Q. Did they have any different language?

20 MR. WEINER: Objection, outside the scope
21 of the supplemental declaration. This was all
22 covered in the initial declaration.

23 A. There's slight variation in the way it's
24 written.

25 Q. Do you think differences in claim language

1 are significant in a POSA's construction of claims?

2 MR. WEINER: Objection, vague.

3 A. Again, I'm not really sure what you're
4 asking me.

5 Q. Did you assess the differences in the
6 claim language of each of these claims that we're
7 referring to?

8 A. I identified where there were differences
9 as I read through it. If once reading through
10 claim 1 of '758 and '144, if my take-away is that
11 they're describing the same thing from a POSA
12 standpoint, I viewed them as being very much the
13 same.

14 Q. Did you make a record of the identified
15 differences?

16 A. I believe that's in my first declaration.

17 Q. Which we're reviewing right now.

18 A. Okay. Would you like me to --

19 Q. Yes. The differences between the claims,
20 yes.

21 A. So page 16, I believe it is.

22 Q. Yes.

23 A. Paragraph 33, I reference '144. 1 cites
24 an identical term except the claim also includes
25 the word "installed" before security rod. So

1 that's the discrepancy that I just wanted to double
2 check just now.

3 Q. Thank you.

4 Is that the only difference?

5 MR. WEINER: Objection, vague.

6 A. I believe so.

7 Q. Did you assess -- did you compare claims 1
8 and 16 of the '758 patent?

9 MR. WEINER: Objection, vague, outside the
10 scope of the supplemental declaration.

11 A. You're asking me if in '758 I compared
12 claim 1 to claim 16?

13 Q. Uh-huh.

14 A. I --

15 Q. Did you review these?

16 A. Yes. I believe we already went over that,
17 though, didn't we?

18 Q. Did you review these patents in
19 preparation for your supplemental declaration?

20 A. I reviewed these patents for my initial
21 declaration and then again for the supplemental.

22 Q. Good.

23 Did you identify the differences between
24 claim 1 of the '758 and claim 16 of the '758
25 patent?

1 A. No, I don't believe I did.

2 Q. Did you think it was important for your
3 work as an expert witness?

4 MR. WEINER: Objection, vague.

5 A. I felt it was important to review all of
6 the claims. I'm -- again, my legal experience, I
7 don't think I would have compared claims against
8 other claims within a specific set of claims. My
9 assumption is -- I don't know. I know I reviewed
10 it; I know we went through it.

11 Q. Is it safe to assume then that you're not
12 sure of the differences, if any, between those two
13 claims?

14 A. No. We -- we -- again, we just discussed
15 that a little while ago. So I understand the
16 difference. So again, I'm not really sure what
17 you're asking.

18 Q. Actually, I was responding to your
19 testimony where you said you're not sure if you
20 compared claims 1 and 16 of the '758 patent.

21 So maybe I misunderstood you. Let me try
22 to keep it simple and just ask you the question
23 again at the risk of being redundant.

24 Did you compare claims 1 and 16 of the
25 '758 patent?

1 A. Yes.

2 Q. And did you identify any differences
3 between them?

4 MR. VODOPIA: Let me retract that.

5 Q. Did you identify any differences in the
6 claim language of these two?

7 MR. VODOPIA: Let me retract that.

8 Q. Did you identify any different claim terms
9 between the two?

10 A. Captured in my supplemental declaration or
11 my declaration?

12 Q. Either one.

13 A. No. Off the top of my head, no.

14 Q. Did you apply your process to claim 20 of
15 the '144 patent?

16 MR. WEINER: Objection, vague.

17 A. So again, very similar to '758 --

18 Q. So Ryan, I don't mean to be -- I needed a
19 yes or no with that.

20 MR. WEINER: Objection, the witness should
21 feel free to use more than one word in responding
22 if the witness feels it's appropriate.

23 A. I reviewed it in context of the claims,
24 but I can't say for sure off the top of my head if
25 I reference any differences within my initial

1 declaration or my supplemental declaration.

2 Q. Did you include it in this claim
3 construction section that you prepared?

4 A. Page 16 of Exhibit 1021 or today or 2004?

5 Q. In the chart. I was referring to the
6 chart.

7 A. Page number to Exhibit 2004 as of today's
8 exhibit? What? Can you just give me a reference
9 so I'm looking at the right chart?

10 Q. Page 14 --

11 A. Yeah.

12 Q. -- '144 claims, is number 20 of the '144
13 patent identified in this chart anywhere?

14 A. No, it is not.

15 Q. Is there any reason that it's not
16 identified in the chart?

17 A. Specifically, not that I can think of.

18 Q. Did you think claim 20 was important?

19 A. From my viewpoint, claim 20 doesn't apply
20 unless 1 through 19 were in effect. So it's
21 looking at it from a standpoint of a POSA. I
22 understand you're trying to protect the
23 descriptions in the initial claims. So no, I
24 didn't compare it back to 20 because, to me, 20 is
25 how you use 1.

1 Q. So let me ask you a question about what
2 you just said: Do you mean that claim 20 of the
3 '144 patent is the same as claim 1?

4 A. That's not what I said.

5 Q. Oh. Is claim 20 of the '144 patent the
6 same -- have the same scope as claim 1 of the '144
7 patent?

8 MR. WEINER: Objection, outside the scope
9 of both the initial declaration and the
10 supplemental declaration.

11 A. They're very similar to me. I understand
12 the differences, but...

13 Q. I wonder if you could identify the
14 differences.

15 MR. WEINER: Objection, asked and
16 answered.

17 A. From the viewpoint of a POSA, this talks
18 about a locking assembly, claim 1, for securing a
19 portable electronic device, go to claim 20, a
20 method for securing a portable electronic device.
21 I mean, there's just a lot of overlap between the
22 two. There might be discrepancies in terminology
23 from a legal standpoint, but from a POSA, there's a
24 lot of overlap.

25 Q. When you say discrepancies from a legal

1 standpoint, what do you mean?

2 A. I note the weight that is placed on
3 certain terms. Do I know what those specific terms
4 are? No.

5 Q. So in your understanding, could the scope
6 be different under the law?

7 A. It could.

8 MR. WEINER: Objection, calls for
9 speculation.

10 Q. Thank you.

11 Ryan, the column on the left in the claim
12 chart --

13 A. Uh-huh.

14 Q. -- in D --

15 MR. WEINER: Objection, vague.

16 Which claim chart are you referring to?

17 Q. Was that language extracted from the
18 claims of the '758 patent?

19 A. Page 14 --

20 Q. Through 16.

21 A. Through 16, and you're asking me if the
22 section marked "claim term" to the right of number
23 1, if that was pulled from the claims of '758.

24 Q. Yes.

25 MR. WEINER: Objection, asked and

1 answered.

2 A. If we keep -- I feel like we keep going
3 over the same things. I believe I answered that.

4 Q. Okay. Sorry.

5 MR. WEINER: After my objection, you can
6 go ahead and answer, though.

7 A. Okay. Yes.

8 Q. And did you -- is there any excerpts from
9 claims of the '144 patent in this claims chart,
10 this claim construction chart?

11 A. Is that a different way of asking me if
12 '144 contains the claim term we've identified here
13 in --

14 Q. No.

15 I just want to know if there's --

16 MR. WEINER: Objection, misleading.

17 Q. -- if there's any language in this
18 section, the claim term section --

19 A. Claim terms?

20 Q. -- that comes from the claims of the '144
21 patent.

22 A. Yes.

23 Q. Which parts?

24 MR. WEINER: Objection, vague.

25 A. Claim 1, line 27, I believe, "Wherein the

1 locking device is configured with an opening to
2 receive the locking," and it goes on.

3 Q. What are you reading from? In your right
4 hand there.

5 A. Exhibit 1003 from ACCO Brands,
6 Exhibit 2006 from today, page 55.

7 Q. Which patent is that?

8 A. '144.

9 Q. '144, good, yeah.

10 I'm sorry. Go right ahead.

11 A. You want me to continue reading it?

12 Q. Yeah. So I was wondering -- let's get
13 specific. This excerpt at page 14, number 1 --

14 A. Yeah.

15 Q. -- is that from the '758 patent or the
16 '144 patent?

17 MR. WEINER: Objection, asked and
18 answered.

19 A. Yes. This claim term is in '144.

20 Q. Which claim term?

21 A. Page 14 or page 15 of 105 of Exhibit 1021,
22 claim term, "Wherein the locking device is
23 configured with an opening to receive the locking
24 end of the captive security rod." And then
25 Exhibit 1003, page 55, column 19, line 27, "Wherein

1 the locking device is configured with an opening to
2 receive the locking end of a captive security rod."
3 I believe those are the same.

4 Q. Ryan, I'm looking at claim 1 of the '144
5 patent and I'm looking above that portion, and I
6 see it says -- said "captive security rod." And
7 above that there's a clause that introduces captive
8 security rod. I don't see them here.

9 A. You don't see what here?

10 Q. I don't see them -- sorry. I don't see
11 them in your declaration at page 14. I don't see
12 that language "captive security rod" and then the
13 clause that qualifies it, said "captive security
14 rod."

15 Is there any reason you didn't include it?

16 MR. WEINER: Objection, vague.

17 A. I felt it was -- it was -- "obvious" might
18 not be the right word. I felt that it was implied
19 based on the context and from the viewpoint of a
20 POSA what a captive security rod was, and then I
21 believe the board came back with their definition,
22 which was in line with what I had assumed a captive
23 security rod would be.

24 Q. But you didn't put it in the claim
25 construction part of your declaration.

1 A. Okay.

2 MR. WEINER: Objection, outside the scope
3 of the supplemental declaration.

4 Q. Why is that?

5 A. I didn't feel that it was -- it needed to
6 be described. I felt as though it was captured in
7 the claim language kind of, again, I don't want to
8 say obvious, but to a person with experience in
9 this field, you would read that and kind of just
10 keep running with it.

11 Q. Right.

12 So you didn't think there would be an
13 issue with -- did you think -- did you think that
14 there would not be an issue with the construction
15 of captive security rod?

16 MR. WEINER: Objection, vague.

17 A. Could you rephrase that so that I'm just
18 positive what you're asking me?

19 Q. Do you -- did you think that it was not
20 important to construe captive security rod?

21 A. I don't think I would say that. I think
22 it's more of I read claim 1. It has the
23 description. And to me, it -- I don't know, it
24 just made sense.

25 Q. What made sense?

1 A. The description of a captive security rod.

2 Q. And you didn't feel it was important in
3 the context of the inter partes reviews.

4 MR. WEINER: Objection, vague.

5 A. I don't know how to answer that. Again,
6 reading this and seeing the description here was in
7 line with what I had imagined a captive security
8 rod to be from when I was designing locks, and then
9 that was confirmed when the board came back with
10 their description of a captive security rod as
11 well.

12 Q. Now, did you -- had you seen the board's
13 decision when you prepared this document?

14 MR. WEINER: Objection, vague as to which
15 document you're talking about.

16 Q. The document in front of you?

17 MR. WEINER: Objection, vague.

18 Q. Your declaration.

19 A. I'll have to double check just to be
20 certain, but I believe I saw the --

21 MR. WEINER: And objection, outside the
22 scope of the supplemental declaration.

23 A. I just want to make sure I'm not getting
24 confused with all these documents. Let me just
25 review real quick.

1 Your question was, did I see the board's
2 decision prior to my initial declaration? No.

3 Q. In consideration of the documents that you
4 reviewed in preparation for this deposition today,
5 do you believe there's an issue in the claim
6 construction of captive security rod?

7 MR. WEINER: Objection, vague as to issue.

8 A. I'm not -- I'm not positive what you're
9 asking. I don't --

10 Q. Well, do you believe that the construction
11 of captive security rod is clear?

12 MR. WEINER: Objection, vague.

13 A. The written description as in --

14 Q. No, just you construed the --

15 A. I didn't construe.

16 Q. Yeah, I guess you didn't.

17 You didn't construe captive security rod?

18 A. Not to your definition, I don't think. I
19 evaluated it from a standpoint of a POSA. I don't
20 want to say I construed it because I'm assuming
21 that that carries a certain requirement.

22 Q. Good. Fair enough.

23 Did you construe from the viewpoint of a
24 POSA claim 20 of the '144 patent?

25 A. Again, I wouldn't say I construed. I

1 interpreted it from the standpoint of a POSA, yes,
2 I evaluated claim 20.

3 Q. But you did not put it in the claim chart
4 of the declaration at issue that we're reviewing
5 right now?

6 MR. WEINER: Objection, misstates the
7 contents of the document. Claim 20 is in several
8 claim charts of the declaration. The
9 exact language of it is right there in the claims
10 charts.

11 MR. SCHINDLER: Objection to counsel for
12 ACCO testifying.

13 Q. So do you see it here?

14 MR. VODOPIA: Would you read the question
15 back to Mr. White.

16 (Whereupon, the record was read as
17 follows: Question: "But you did not put it in the
18 claim chart of the declaration at issue that we're
19 reviewing right now?")

20 A. And that's in reference to claim 20 and
21 you're asking me if it's in the chart Exhibit 1021,
22 page 14?

23 Q. Your assessment as a POSA?

24 MR. WEINER: Objection, misstates the
25 witness' testimony, misstates the contents of the

1 declaration.

2 A. It's not in the table between the pages of
3 14 and 16 in Exhibit 1021.

4 Q. Ryan, are the -- is your declaration that
5 you prepared concerning the '758 patent the same as
6 your declaration prepared with respect to the '144
7 patent?

8 MR. WEINER: Objection, outside the scope
9 of the supplemental declaration.

10 A. There's -- again, this is one of those
11 questions where there's clearly differences between
12 the two, so I'm not sure what you're asking.

13 Q. I want to know if there are any
14 differences between the two. Can you point them
15 out to me?

16 MR. WEINER: And I remind the witness take
17 whatever time you need to review before you answer
18 the question. These declarations are over a
19 hundred pages, take whatever time you need to
20 review them.

21 A. I just want to get clarification because I
22 don't want to run the risk of treating this
23 lightly.

24 Q. So I'd say, I agree with Michael, take a
25 all the time you need.

1 A. Okay. And this is beyond the obviousness
2 of reference --

3 Q. I mean one says one patent and one says
4 the other on its face. I mean substantively.

5 A. This is, again, I'm not a lawyer, so I'm
6 not sure what --

7 Q. I understand.

8 A. And we're only referencing the initial
9 declaration, not the supplemental?

10 Q. We're not.

11 A. So in quickly reviewing these just to
12 confirm and with the disclaimer that there are
13 clearly differences referencing patents and page
14 numbers and all of that, '758 and '144 from the
15 eyes of a POSA are very similar because '758 is a
16 continuation. They have the same, maybe I
17 shouldn't say continuation. They -- they share the
18 same, like they're almost built off of each other,
19 is how I interpret it.

20 Q. You know what? That makes sense.

21 MR. WEINER: Could the court reporter read
22 the question back, please, I might have missed
23 something there. Could you read back the previous
24 question.

25 (Whereupon, the record was read as

1 follows: Question: "I want to know if there are
2 any differences between the two. Can you point
3 them out to me?")

4 MR. WEINER: Maybe go back one more. I
5 want to make sure I understand what was supposed to
6 be compared there.

7 (Whereupon, the record was read as
8 follows: Question: "Is your declaration that you
9 prepared concerning the '758 patent the same as
10 your declaration prepared with respect to the '144
11 patent?")

12 MR. WEINER: Okay. I move to strike the
13 witness' answer as nonresponsive.

14 MR. VODOPIA: I object to Mr. Weiner --

15 MR. SCHINDLER: Motion to --

16 MR. VODOPIA: -- taking part of the --
17 it's my deposition, so you can't strike anything.
18 You can make a motion to exclude.

19 MR. WEINER: I withdraw that. Let me
20 restate that.

21 MR. VODOPIA: Sure.

22 MR. WEINER: I object to the witness'
23 answer as nonresponsive.

24 MR. VODOPIA: I found it was quite
25 responsive.

1 And so, could you read back Mr. White's
2 answer.

3 (Whereupon, the record was read as
4 follows: Answer: "So in quickly reviewing these
5 just to confirm and with the disclaimer that there
6 are clearly differences referencing patents and
7 pages numbers and all of that, '758 and '144 from
8 the eyes of a POSA are very similar because '758 is
9 a continuation. They have the same, maybe I
10 shouldn't say continuation. They -- they share the
11 same, like they're almost built off of each other,
12 is how I interpret it.")

13 Q. Ryan, my question was whether or not your
14 declarations were the same. Were you referring to
15 your declarations or were you referring to the
16 patents?

17 A. I'm referring to the declarations, that's
18 what I was reviewing when you asked, right?

19 Q. Uh-huh.

20 A. I had to reference both sets of patents
21 and that's captured here in the table, so to me,
22 table, page 15 of 105, Exhibit 1021 --

23 Q. Page 15, yeah.

24 A. It says 14 in the middle but it says 15 in
25 the corner. So this is the table that we've been

1 discussing.

2 Q. Yeah.

3 A. So when you asked if these were similar,
4 to me looking at the claim terms and referencing
5 across both, yes.

6 Q. Is this claim construction chart that
7 you're viewing right now in the declaration -- in
8 your declaration for the '758 patent, is that claim
9 chart the same as in your declaration for the '144
10 patent?

11 A. I would have to double check.

12 They appear to be.

13 Q. No differences? Are there any
14 differences?

15 A. Not that I can see other than what they're
16 in reference to.

17 Q. Okay. Ryan, I'd like to move to paragraph
18 34 of your declaration concerning the '758 patent.

19 A. Paragraph 34, is that what you said?

20 Q. Yes.

21 MR. WEINER: Objection, outside the scope
22 of the supplemental declaration.

23 Q. Ryan, you say that "the feature of the
24 invention recited in terms 1 and 2 is not depicted
25 in any of the Figures 1 to 65."

1 You mean Figures 1 to 65 of the patent, of
2 the '758 patent?

3 A. I would have to check.

4 That's correct.

5 Q. And so I'd like to direct your attention
6 to Figure 29 and element 110.

7 A. Of '758?

8 Q. Yes.

9 A. Figure 29?

10 Q. Yes.

11 A. Yes.

12 Q. Is element 110 a locking device?

13 A. It appears to be a lock, yes.

14 Q. Would you call it a locking device?

15 A. It's part of a lock assembly.

16 Q. Do you feel that a POSA would find lock
17 different than locking device?

18 MR. WEINER: Objection, vague.

19 A. To me those descriptions sound the same,
20 but they're not because without the other part, you
21 don't have a lock, you just have part of a lock.

22 Q. And so you construe this to mean -- if you
23 look to the right, did you construe this to be the
24 locking device has an opening into which a captive
25 security rod fits?

1 MR. WEINER: Objection, vague.

2 A. Uh-huh. Not the captive security rod. I
3 knew -- hold on, let me get to the --

4 So you're on page 15 in the claim
5 construction table?

6 Q. Yes.

7 MR. WEINER: Could you repeat the
8 question?

9 Q. You know, I'd like to -- actually, I'd
10 like to move on. I'd like to ask you a slightly
11 different question about --

12 A. Okay.

13 Q. -- element 110 in Figure 29. Do you know
14 how element 110 of Figure 29 works?

15 A. It's for illustrative purposes, I can't
16 make an assumption.

17 Q. So you didn't understand that when you
18 made your -- when you prepared your declarations?

19 A. I understand that this is representing a
20 lock. Do I know if it's a disc or a pin or a
21 tumbler? No.

22 Q. Can you tell me how you interpreted it for
23 the purposes of your expert witness testimony?

24 A. It was drawn assembly-wise, pins stacked,
25 plates, a space for a brand mark on the front, and

1 I believe they were trying to use the visual cues
2 of the original Master lock assemblies, so they're
3 trying to have someone make a connection. This is
4 similar to how a padlock might work.

5 Q. And does something go in that end on the
6 face in the perspective view with the circle?

7 A. In this?

8 Q. In 110 that's shown.

9 A. Yes.

10 Q. And if you insert it in, do you expect it
11 to lock somehow?

12 MR. WEINER: Objection, calls for
13 speculation.

14 A. I would imagine so.

15 Q. And is that how you interpreted it when
16 you assessed this document for your testimony here
17 today?

18 A. My assessment was that the proposal here
19 is 286 interfaces with 110 through that hole.

20 Q. Good.

21 And does 286 lock in that hole?

22 A. 110 locks. 286 gets captured in a lock.

23 Q. And is 286 captured when 110 locks?

24 A. I would say 286 engages and triggers the
25 lock mechanism.

1 Q. Good.

2 Would you say trigger -- when you say
3 "trigger," do you mean activate?

4 A. Engage. It might require a key to
5 activate, but I'm sure there's a --

6 Q. Do you believe activate is what we're
7 talking about here?

8 MR. WEINER: Objection, vague.

9 A. Activate the lock mechanism?

10 Q. (No verbal response.)

11 A. I would -- I could see that, yes, 286
12 activates 110.

13 Q. Do you see a key in the figure, Figure 29
14 of the '758 patent?

15 A. I do not.

16 Q. Do you believe that when lock 110 is
17 activated, does it grasp the end of element 286?
18 Pardon me.

19 When 286 is inserted into the hole in
20 element 110 and 110 is activated, does it grasp?

21 A. That appears to be what they're proposing,
22 yes.

23 Q. Good.

24 And lock?

25 A. That would be an assumption. I don't know

1 if you would need a key, but you said there is no
2 key.

3 Q. And I just want to turn back to paragraph
4 34. You said that the feature of the invention
5 recited in term 1 is not depicted.

6 Is that -- so that's not -- is --

7 A. That's not a captive security rod.

8 Q. Sorry. I see the feature in that claim
9 chart the locking device. I believe we were
10 discussing the locking device.

11 A. "Wherein the locking device is configured
12 with an opening to receive a locking end of a," no.

13 Q. Oh, you don't see the locking device in --

14 A. I see the locking device.

15 Q. And so that clause is about the locking
16 device, no? The "wherein the locking device is
17 configured with an opening to receive the locking
18 end of the captive security rod to activate the
19 locking mechanism, wherein the activation," which I
20 assume is directed to the locking mechanism,
21 "causes the locking mechanism to securely grasp the
22 locking end and, thereby, lock the security rod and
23 the portable electronic device to a locking
24 device."

25 Isn't that -- isn't element 110 a locking

1 device as stated in the claim --

2 MR. WEINER: Objection, asked and
3 answered.

4 Q. -- in that portion of the claim language?

5 A. Potentially, yeah.

6 Q. Okay. So then the locking device is shown
7 in the figures?

8 MR. WEINER: Objection, misstates the
9 witness' testimony.

10 A. Potentially this could be one embodiment
11 of a locking device, yes.

12 Q. Good.

13 So then do you stand by your testimony at
14 page --

15 MR. WEINER: Objection to the answer as
16 nonresponsive.

17 Q. -- paragrapher 34.

18 COURT REPORTER: I'm sorry.

19 THE WITNESS: Yeah, I didn't catch that
20 either.

21 Q. Sorry.

22 Do you stand by your testimony at
23 paragraph 34? "The feature of the invention
24 recited in terms 1 and 2 is not depicted in any of
25 the patent Figures 1 to 65."

1 A. So I'm -- could you repeat that, because
2 I'm not --

3 MR. VODOPIA: So -- could you read that
4 back to the witness.

5 THE WITNESS: Sorry.

6 COURT REPORTER: I can read everything
7 except for the part that you read.

8 (Whereupon, the record was read by the
9 reporter.

10 A. So I guess I'm still not clear. Are you
11 asking me -- I wish we could just have a
12 conversation. I'm sorry. I'm trying not to be
13 difficult.

14 Q. I'm focusing on the locking device.

15 A. Okay.

16 Q. I'm focusing on the locking device. You
17 didn't construe the captive security rod. I'm
18 looking at the part of the claim chart where you
19 construed the locking device.

20 MR. WEINER: Objection, misstates the
21 witness' testimony, misstates the contents of the
22 document. Term 1 includes the terms "locking
23 device" and captive security rod as a single term.

24 MR. SCHINDLER: Objection. ACCO's
25 attorney is testifying.

1 Q. So we just went through this and you said
2 that the feature of the invention recited in term 1
3 is not found in any of the drawing figures and we
4 just went through it and you identified a locking
5 device as per your construction. And I just wanted
6 to know if you -- if that first sentence of
7 paragraph 34, if that's still accurate.

8 MR. WEINER: Objection, misstates the
9 witness' testimony.

10 A. I'm not sure how to answer that. I'm not
11 trying to be difficult.

12 Q. No, it's okay.

13 You testified that there was no locking
14 device in any of the drawing figures?

15 MR. WEINER: Objection, misstates the
16 witness' testimony.

17 A. That's not what I was --

18 Q. Would you read your testimony at that
19 first sentence.

20 A. First sentence of paragraph 34?

21 Q. Yes.

22 A. Can I also read the following sentences?

23 Q. Well, let's just go one at a time here.

24 Do you mind?

25 A. Promise we'll get to the second one?

1 Q. I will not make any promises. But we can
2 read that first sentence, if you wouldn't mind.

3 A. Okay.

4 MR. WEINER: And I'd remind the witness to
5 consider his testimony in full context, and if you
6 need to read the whole paragraph, read the whole
7 paragraph.

8 MR. SCHINDLER: Objection --

9 MR. VODOPIA: Yeah, come on, please.

10 MR. SCHINDLER: -- ACCO's counsel is
11 coaching the witness.

12 MR. VODOPIA: Yeah. Michael, we'll get
13 through this then if you just take it easy.

14 A. "The feature of the invention recited in
15 terms 1 and 2 is not depicted in any of the patent
16 figures 1 through 65. However, based on the claim
17 language, a POSA would understand that the broadest
18 reasonable interpretation of these terms would be
19 the same as indicated above."

20 Q. Good.

21 And indicated above was you construed the
22 locking device?

23 A. I did not construe the locking device.

24 Q. What did you construe right here, to the
25 left --

1 A. I didn't construe anything.

2 Q. Right.

3 You assessed the locking device. You set
4 it out in the claim construction. Sorry. Let me
5 ask you some questions.

6 Is D Claim Construction a claim
7 construction section?

8 A. That's what it is titled, yes.

9 Q. And is this at page 14 in the middle of
10 the page, is that claim term construed in that box
11 in this section?

12 A. In the claim term or the construction box?

13 Q. In the claim term -- in the whole row,
14 including the construction box.

15 A. Again, I am not going to say it's
16 construed. In the claim term box, that's the term
17 that I pulled from the claim and then my
18 interpretation of the construction of it.

19 Q. Ryan, is this your work product?

20 A. I'm not sure what you're asking.

21 Q. Did you write this?

22 MR. WEINER: Objection, asked and
23 answered.

24 A. I did not physically type it. This is
25 from the meetings that I had with ACCO's counsel

1 and then I had several revisions and work sessions
2 to make sure that it captures my viewpoint of this.

3 Q. Was this term here, was this term in the
4 left term 1? What was -- what was the point of
5 this term? What were you trying to assess here?
6 Were you trying to assess the locking device?

7 MR. WEINER: Objection, vague.

8 A. I'm not positive what you're asking.

9 Q. What's in the construction section?
10 What's set out in that construction section next to
11 term 1?

12 A. So by "set out," you mean...

13 Q. Written.

14 A. Just --

15 Q. What element is referred to?

16 A. So this is in reference to the locking
17 device.

18 Q. Good.

19 And I want to turn back to paragraph 34.
20 Is the lock -- and I want to ask you a question
21 about that first sentence of 34.

22 A. Uh-huh.

23 Q. Is a locking device found in any of the
24 patent Figures 1 to 65?

25 MR. WEINER: Objection, vague.

1 Q. Ryan, I can direct you to one in
2 particular. Is a locking device depicted in
3 Figure 29?

4 MR. WEINER: Objection, vague.

5 A. It could be viewed as a locking device if
6 you're referencing 110.

7 Q. Did you answer yes?

8 A. I think the important part of 34 is what
9 follows that sentence, so I feel like my words are
10 being taken out of context. If I can't read all of
11 it, I shouldn't have to read part of it.

12 Q. But you did read all of it.

13 And I just wanted to ask you if there's a
14 locking device shown in Figure 29 of the '758
15 patent and I was just hoping you would answer me
16 yes or no.

17 A. Yes.

18 Q. Thank you.

19 MR. VODOPIA: Do you mind if we take a
20 break?

21 MR. WEINER: No. Sure.

22 (Proceedings interrupted at 11:25 a.m. and
23 reconvened at 11:35 a.m.)

24 BY MR. VODOPIA:

25 Q. Ryan, do you understand the patent office

1 rules prohibit you from discussing your testimony
2 with counsel for ACCO --

3 A. I do.

4 Q. -- from the start of the deposition till
5 the end of the deposition?

6 A. I do.

7 Q. Yes.

8 And were you discussing your testimony
9 with Mr. Weiner in this break?

10 A. I was not.

11 Q. Good.

12 I just want to jump back, when you were --
13 when you dis -- you testified that you discussed
14 with counsel for ACCO Mr. Mahaffey's deposition
15 testimony; is that correct?

16 A. Yes.

17 Q. And I believe you testified that there was
18 a copy of the deposition testimony.

19 A. I was --

20 MR. WEINER: Objection, misstates the
21 witness' testimony.

22 Q. Is that correct?

23 A. I don't -- I can't recall specifically. I
24 think I confused declaration and deposition, but I
25 thought we had cleared that up.

1 Q. Oh. So we did but that was with respect
2 to your written testimony, I believe, as
3 distinguished from his declaration, that is
4 Mr. Mahaffey's declaration of January 15th, 2016.
5 I believe we also talked about his deposition
6 testimony of March 21st, 2016. I may be confused.

7 Did you discuss Mr. Mahaffey's March 21st,
8 2016 testimony with counsel for ACCO?

9 A. Yes.

10 Q. You did?

11 Did you see a copy of that testimony
12 during your discussion?

13 A. I had a chance to review. I don't know if
14 it was word for word a transcript, but I got a
15 report. Oh --

16 Q. That's okay, I wanted to ask you another
17 question anyway --

18 A. Yes.

19 Q. -- so it's sort of collateral.

20 A. To the best of my knowledge, it was a
21 transcript from a third-party. There's no way for
22 me to --

23 Q. Good.

24 Did you discuss Exhibit A to that -- to
25 that Mahaffey deposition testimony?

1 MR. WEINER: Objection, vague as to what
2 Exhibit A is.

3 A. I need to see a copy of it.

4 Q. Do you recall seeing an Exhibit A?

5 A. I've seen many Exhibit A's since starting
6 this. I don't want to give you an answer until I
7 get a chance to review.

8 Q. Okay. Fair enough.

9 MR. VODOPIA: I'd like to introduce an
10 exhibit. This is Exhibit A of Mr. Mahaffey's
11 March 21st, 2016 deposition testimony.

12 MR. WEINER: Are you marking that with an
13 exhibit number now?

14 MR. SCHINDLER: Might as well.

15 MR. VODOPIA: Might as well.

16 (Exhibit 2007, Simplified Explanation of
17 Findings Provided in the IPR, Rob Mahaffey, marked
18 for identification.)

19 MR. WEINER: I object to this as hearsay,
20 not relevant, outside the scope of Mr. White's
21 declaration and supplemental declaration, and lack
22 of foundation.

23 Q. Would you read the title to the document?

24 A. "Simplified Explanation of Findings
25 Provided in the IPR."

1 Q. And the next paragraph.

2 A. "Prepared by Rob Mahaffey in support of
3 findings in IPR."

4 Q. Did you see this document? Have you seen
5 this document before?

6 A. I have not seen the PowerPoint.

7 MR. WEINER: And I'd remind the witness,
8 please take your time to review the document --

9 MR. VODOPIA: Hold on, please. Let the
10 witness answer.

11 MR. SCHINDLER: Objection. Stop coaching
12 the witness.

13 MR. VODOPIA: Michael, please. Come on,
14 please.

15 A. I've not seen -- when I say a PowerPoint,
16 I'm referring to some of the imagery. I have seen
17 his definitions -- his interpretations of
18 definitions, his reference material, what he's
19 claiming as, I don't want to call it by the wrong
20 term, I don't want to call it claim construction,
21 but I've seen his interpretation of what he sees in
22 the claim language, and then his trans -- his view
23 of what's captured in the drawings, the
24 illustrations or figures.

25 MR. WEINER: Objection, nonresponsive.

1 Q. What have you not seen, which pages?

2 A. The imagery.

3 Q. How about page 3? Sorry.

4 A. You tell me. (Indicating.)

5 Q. Oh, okay.

6 A. Page 4.

7 Q. So that's like the fourth page, the thrust
8 load?

9 A. I've seen --

10 Q. So actually, I just want to know what you
11 haven't seen. And so this imagery at the fourth
12 page in -- I'm sorry, it's not numbered -- you
13 haven't seen that imagery. Is there anything else
14 you haven't seen?

15 A. I don't recall seeing (indicating) a list
16 of patents with circles.

17 Q. Second to last page?

18 MR. WEINER: Which page are you referring
19 to?

20 THE WITNESS: Page 21 and 22.

21 A. I don't know if it's a formatting thing or
22 what, but I don't remember seeing some of this
23 imagery.

24 Q. Okay. Fair enough.

25 Ryan, we provided you with a supplemental

1 declarations -- your supplemental declarations in
2 both of the IPRs. Are they the same?

3 A. These would appear to be the same.

4 Q. Okay. In those supplemental declarations,
5 do you refer back to your first declarations?

6 A. Yes, several times.

7 Q. Good.

8 I'd like to change the pace a little bit
9 and I'd like to go back to the '758 patent. I
10 believe we reviewed one figure and I'd like to
11 bring your attention to Figure 28D.

12 I'd like to focus your attention on
13 element marked 286, and I'd like -- and I want to
14 know if you agree --

15 MR. VODOPIA: Let me retract that.

16 Q. Is the element marked 26 [sic] anchored to
17 the element marked 516 in Figure 28D?

18 A. The element marked 286?

19 Q. Yes.

20 A. No.

21 Q. No, it's not anchored?

22 A. Nope.

23 Q. And how do you construe the term
24 "anchored"?

25 A. It has to be affixed, and I believe in the

1 claim language it says affixed to at last one part
2 of the housing. So to me, I read that as the
3 captive security rod -- in order to be a captive
4 security rod, one side needs to be anchored or
5 affixed to the housing, it also has to live in that
6 fixed housing during, obviously, but also, before
7 or in between I think they used the word
8 "deployment."

9 Q. You know, I think you're getting to the
10 claim language and I was really trying to keep it
11 simpler. I wanted to know if you thought when
12 you're looking at Figure 28D is 286 anchored to
13 housing 516.

14 A. No.

15 Q. No.

16 Do you believe that 286 can be removed
17 from that housing?

18 A. Yes.

19 Q. Now, does it appear that 286 is locked in
20 lock 110?

21 A. It looks to be in what we said earlier
22 appeared to be a locking device, yes.

23 Q. So would you agree that the only way to
24 remove 286 from housing 516 is to unlock the lock
25 and retract it out of the housing?

1 A. Yes.

2 Q. So the state of that element to 86 right
3 now, would you agree that it's locked to the
4 locking device?

5 A. Is 286 locked to 110?

6 Q. In Figure 28D.

7 A. It appears as though they're locked
8 together.

9 Q. Okay. Does it appear without -- wait.
10 Without unlocking 110 as it appears to be in
11 Figure 28D, can 286 be removed from that housing?

12 MR. WEINER: Objection, asked and
13 answered.

14 A. Operating under the assumption that the
15 anchor end of this assembly is set up correctly?

16 Q. Um, I just want you to answer my question.

17 A. I don't feel as though I can answer the
18 question without -- without knowing the complete
19 setup.

20 Q. From what you see, though, without knowing
21 the complete setup?

22 A. It looks as though the intent is to have
23 286 lock to 110.

24 Q. And do you believe that when locked --
25 when 286 is locked to 110, it can be removed from

1 that housing?

2 A. I don't think it's affixed to the housing.

3 Q. No.

4 But do you believe it can be removed from
5 the housing? I used a different word.

6 A. I don't think it's -- 286 doesn't live in
7 the housing. So yes, you could --

8 Q. You don't see 286 is -- sorry. Go ahead.

9 A. You could remove 286 and 110 from the
10 housing.

11 Q. And would you have to unlock 110 first?

12 A. No.

13 Q. Oh, so you don't believe 110 is locked?

14 What if I ask you to presume that 110 is
15 locked?

16 A. I would still say you could remove 286 and
17 110 from the housing.

18 Q. How?

19 A. You push on the cable and then 286 and 110
20 are no longer considered inside of the housing
21 because they're not anchored to the housing.

22 Q. And do you see -- is there a part of 286
23 on both sides of the housing?

24 A. In this illustration, yes.

25 Q. Do you think that's significant?

1 A. Not really.

2 Q. You don't think it's -- is that part of
3 your presumption that you can push 286 through the
4 housing?

5 A. There's -- in the description of this part
6 which I believe is a locking ferrule, there's no
7 description of a stopper or a restricter or a
8 collar or anything. So my assumption is if
9 90 percent of the ferrule can fit through that
10 opening, then the rest of it can fit through as
11 well. It shows the cable and the locking ferrule
12 go through 235 down here, so why couldn't the
13 entire ferrule pass through 516.

14 MR. VODOPIA: You know, I'd like to strike
15 that as nonresponsive.

16 MR. WEINER: Objection, the witness can
17 offer an explanation as he sees fit to respond to
18 the questions.

19 Q. Is element 286 as shown in the figure
20 confined within element marked 516?

21 A. I wouldn't say yes to that. I'd have to
22 go with no.

23 Q. Oh, so it's -- good.

24 You don't agree that it's confined in
25 Figure 28D, as shown in Figure 28D that it's

1 confined?

2 MR. WEINER: Objection, vague.

3 A. Are you asking me if --

4 Q. I'm asking you.

5 A. Can you rephrase it just so that I'm
6 clear?

7 Q. Sorry.

8 A. Yeah.

9 Q. Do you agree that element 286 in
10 Figure 28D is confined in housing 516?

11 A. I'd have to ask you again to rephrase it.
12 That's the same way you asked it last time.

13 Are you asking if the way it's drawn, or
14 are you asking my assumption as to how I interpret
15 this?

16 Q. I'm asking how it's drawn.

17 A. It's drawn as though there's a ferrule
18 exposed on each side of the housing.

19 MR. VODOPIA: Would you read my question
20 back to him?

21 I just want to strike that as
22 nonresponsive.

23 (Whereupon, the record was read as
24 follows: Question: "Do you agree that element 286
25 in Figure 28D is confined in housing 516?")

1 A. I wouldn't say it's confined.

2 Q. So that -- okay. All right.

3 Would you -- are you saying that as shown
4 in Figure 28D, element 286 is not confined in
5 housing 516?

6 A. No.

7 Q. As shown in Figure 28D, is element
8 286 is -- limited in movement within element --
9 within housing 516?

10 A. Can you -- can you clarify or expand on
11 what you mean by "limited"?

12 Q. Can it move vertically?

13 A. What position is the laptop in? Like
14 that's -- we can't use vertically.

15 A. Axially, radially? If we want to --

16 Q. Radially.

17 A. No. It can't.

18 Well, what orientation? So I'm not trying
19 to be difficult, I promise.

20 Q. No, no. That's okay.

21 A. It's not fastened, secured. It's not
22 anchored. It's passing through and it can slide --

23 Q. Why do you think it can slide?

24 A. Because the ferrule goes over the cable,
25 therefore, the OD, outside diameter, of the ferrule

1 is larger than the OD of the cable.

2 Q. But how do you know it can slide?

3 A. Because it slides in the previous image.

4 Q. How do you know it can't slide -- how do
5 you know it can slide beyond the end of element
6 286? Is that a presumption, is what I'm saying.
7 Are you making a presumption?

8 A. When I read through the claim language,
9 nowhere in there did it mention that kind of --

10 Q. Is there anywhere that it says --

11 COURT REPORTER: I'm sorry, I didn't get
12 the end of your answer.

13 A. This is where a conversation would be
14 ideal.

15 Looking at the claim language, the captive
16 security rod has two features.

17 Q. Sorry. I'm not talking about the claim
18 language.

19 A. I'm just trying --

20 Q. I just want to talk about the figure.

21 A. -- to answer your question.

22 Q. Is there anywhere that it says that that
23 element 286 can slide all the way through?

24 A. No.

25 Q. Good.

1 Let's move on. Would you say that in
2 Figure 28D, element 286 is partially in the housing
3 516?

4 A. Can -- can you clarify, when you say
5 "housing," do you mean a housing assembly or
6 housing as in a component of an assembly?

7 MR. VODOPIA: You know I complicated it.
8 Let me rephrase the question.

9 Q. When you're looking at Figure 28D, would
10 you agree that element 286 is partially in element
11 516?

12 A. This is a difficult question because a
13 POSA would assume that that is an intentional
14 pass-through, which means it has an opening to --

15 MR. VODOPIA: Look, strike that.

16 Q. I want to know from this figure, not what
17 a POSA thinks. I'm interested in what you have to
18 say --

19 A. Okay.

20 Q. -- Ryan.

21 Now, I want to know, is element 286
22 partially in element 216? If you can't answer it,
23 say I'm not able to answer that.

24 A. I can answer it --

25 Q. Please do.

1 A. -- in context.

2 Q. I just want you to answer it. Okay, if
3 you -- I'm sorry. I'm being impatient. Forgive
4 me.

5 A. I design locks. I don't -- I don't
6 litigate. Sorry.

7 Q. You don't construe?

8 A. Right, I don't construe.

9 This is the preceding illustration to this
10 (indicating). This --

11 Q. I want to talk about Figure 28D, Ryan. I
12 want to know if as shown in Figure 28D, is element
13 286 partially in element 516? What you see.

14 A. I'd have to say no, then.

15 Q. Oh, so good, no problem. I was hoping for
16 an answer and that's good enough.

17 I don't know if it was okay as well.

18 A. No. I would have to go with no.

19 Q. No, okay.

20 Would you say that element 286 is
21 partially out of element 516 in Figure 28D, just
22 what you're seeing right now, Ryan?

23 A. No.

24 Q. No, good, okay.

25 Would you agree that the end of element

1 286 as shown in Figure 28D of the '758 patent could
2 be called a locking end?

3 MR. WEINER: Objection, vague.

4 A. I can't see. Could we -- could we
5 reference 28C?

6 Q. Sure.

7 A. So on 28C, you're asking if --

8 Q. I'm asking about 28D right now. I want to
9 know if element 286 has an end that's locked in the
10 lock. So --

11 A. As drawn?

12 MR. VODOPIA: I'll just rephrase it.

13 Q. As shown in Figure 28D, do you believe
14 there's an end of element 286 locked in lock 110?

15 A. If I can't reference 28C, then I have to
16 assume --

17 Q. No, I just want to see --

18 A. -- yes.

19 Q. Okay. Good. Thank you.

20 MR. WEINER: Objection, and caution the
21 witness not to speculate.

22 If you need to review another figure, then
23 review what --

24 MR. VODOPIA: Too late right?

25 MR. WEINER: -- then reference any other

1 figure you'd like to.

2 MR. VODOPIA: Too late.

3 Q. So actually, I'd like to turn to
4 Figure 28C. You know what, I think you're way
5 ahead of me.

6 Does that drawing show element 286 outside
7 of elements 516?

8 A. It does.

9 Q. And element 110?

10 A. It does.

11 Q. Looking at the drawing, would you
12 understand that element 286 is designed to enter
13 one side of element 516?

14 A. Um, I don't know. I don't know how to
15 answer that.

16 Q. No, that's okay.

17 You're not able to identify whether
18 element 286 in Figure 28C appears to -- appears to
19 pass through --

20 MR. VODOPIA: Sorry. Strike that.

21 Q. You've answered, that's fine.

22 You're not able to identify whether or not
23 element 286 goes through 516 from that drawing,
24 Figure 28C?

25 A. I -- I -- it doesn't pass -- it doesn't

1 enter one side. It's designed as a pass-through,
2 so I don't know. I'd have to say no.

3 Q. Okay. Let me probe it a little more. Do
4 you believe that there's two sides to element 516?

5 A. Yes.

6 Q. Do you believe element 286 is intended to
7 enter one side of 516?

8 A. Can you --

9 Q. Yeah, I'll give you -- can I give you --

10 A. Can you rephrase "enter"?

11 Q. Let's jump back to Figure 28D. Do you
12 think the first end of element 286 in Figure 28C,
13 when we move to Figure 28B -- 28D, do you believe
14 it's passed through the first side of element 516?

15 A. Yes.

16 Q. Yes.

17 And so would you agree that Figure 28C,
18 that that first end of 286 and those dashed lines
19 that go through opening 517 into the opening in
20 lock 110, do you believe that that's the path that
21 that element 286 is intended to take?

22 A. Yes.

23 Q. Good.

24 Do you believe that when element 286
25 passes through the first side of 516, that it will

1 pass through the second side as well, the other
2 side?

3 A. That would be my assumption.

4 Q. And turning to Figure 28D, would you say
5 that the portion of 286 on the other side, on the
6 back side of 516, is shown protruding from the back
7 side of 516?

8 A. I would have to say no.

9 Q. Huh, okay, fair enough.

10 So looking at -- looking at -- would you
11 agree that Figure 28D shows elements 28 -- 286 and
12 110 engaged?

13 A. That's what I would be left to assume.

14 Q. Would you agree that Figure 28C shows
15 these two elements, that is elements 286 and 110,
16 prior to engagement?

17 A. Yes.

18 Q. Would you agree that Figure 28C shows all
19 the same elements as shown in drawing Figure 28D
20 with the exception of through-hole 517 in 28C?

21 A. So we're quite literally just looking at
22 the illustration and saying are all the elements on
23 28C in 28D with the exception of 517?

24 Q. To the best of your understanding.

25 A. No.

1 Q. Okay. What's different?

2 A. 28C, 286, you can see the -- what I'm
3 assuming is the locking end of that ferrule.

4 Q. Good. I see. I agree with you.

5 I see that you can see it in 28C, but in
6 28D it's captured in the lock.

7 Do you agree?

8 A. That's how I would read these drawings.

9 Q. Do you understand how a shackle engages in
10 a locking mechanism of a padlock?

11 A. Again, is there a specific padlock that
12 you're referencing?

13 Q. No. Just a padlock in general, it has a
14 shackle, and my understanding is that the shackle
15 engages in an opening -- in a locking opening of
16 the padlock and I was wondering if you understood
17 that.

18 A. Without further description, I wouldn't be
19 able to answer.

20 Q. Okay. So you're not able to tell me.

21 Are you able to tell me how a padlock
22 works?

23 A. You'd have to specify what you're looking
24 for, whether it's combination, a disc style, a
25 tumbler. I could design it for you, but without

1 further description, I can't explain how it works.

2 Q. Well, is there a locking shackle in a
3 padlock?

4 A. In the iconic like a Master lock padlock,
5 typically there's a locking shackle, yes.

6 Q. In a Master lock padlock, how does the
7 shackle lock?

8 A. There's an undercut.

9 Q. In the shackle?

10 A. In the shackle.

11 Q. Uh-huh.

12 A. And it passes into the opening usually
13 displacing a sprung mechanism, could be a disc,
14 could be a rod, moving it out of the way to allow
15 the shackle to pass through and then engaging in
16 the undercut which prevents it from being
17 retracted.

18 Q. Looking at Figures 28C and 28D, could
19 locking mechanism -- sorry -- could element 110
20 operate the same way as an iconic Master lock
21 padlock?

22 A. It could, but without seeing the key or if
23 there is a key, I wouldn't be able to say with
24 100 percent accuracy.

25 Q. Do you understand what I mean when I say

1 embodiments with respect to patents?

2 A. I have my interpretation.

3 Q. And what is your interpretation?

4 A. Almost like an assembly. So when you say
5 here's a design or a configuration, that is very
6 similar to this one, but you might massage it based
7 on the outcome that you're looking for. So in one
8 embodiment you can get option A or option B in the
9 second embodiment.

10 Q. Good.

11 In your understanding, are claims in a
12 patent limited to what's shown in a particular
13 embodiment?

14 A. I'm not -- I'm not positive. I'm shown
15 that term is an issue for me because I would rely
16 on the claim language more than the figures. The
17 other thing is I'm not -- my background isn't in
18 legal, so I couldn't give you a confident answer.

19 Q. Fair enough.

20 Do you believe the claim language is more
21 important than the figures?

22 A. I believe I would start with the claim
23 language and then see if that's reinforced with the
24 figures or illustrations.

25 Q. And do you believe there has to be a

1 figure that shows the claim?

2 MR. WEINER: Objection, vague.

3 A. No, I don't -- I'm not positive. I don't
4 know. I don't know how to answer that one. I'm
5 not sure.

6 Q. Okay. And just to beat it to death, I was
7 going to ask you the same question with respect to
8 the text: Do you believe that the -- there must be
9 an exact description -- sorry -- there must be an
10 exact description in the text that describes the
11 claim -- the claims?

12 A. I would imagine, so I would -- my
13 expectations -- not being a patent attorney or
14 working in the patent office, my expectations would
15 be the written word is going to be more, I don't
16 want to call it accurate -- illustrations are open
17 to interpretation. So my assumption is there has
18 to be -- you can't show contradicting things in
19 your claim language versus your figures. So you
20 wouldn't necessarily -- I -- I guess I'm not
21 comfortable answering that. I don't know.

22 Q. So can the scope of the claims be broader
23 than what's shown in the drawn figures?

24 MR. WEINER: Objection, vague.

25 A. Again, this falls under the -- I don't

1 know the rules, I don't know the laws around to
2 what degree. I would imagine there is potentially
3 room for things that are considered obvious, that
4 would be my assumption. Other than that, I would
5 imagine it's pretty specific.

6 Q. And can the scope of the claims be broader
7 than the text in a patent?

8 MR. WEINER: Objection, vague.

9 A. I wouldn't know.

10 Q. In your assessment or in the Claims
11 Construction section in your declarations from
12 April 30th, 2015, did you find it was -- did you
13 find -- do you think it would have been important
14 to understand this -- that concept?

15 MR. WEINER: Objection, outside the scope
16 of the supplemental declaration and vague.

17 A. I don't believe -- I don't believe that's
18 what I was brought in to focus on. My focus was
19 from a POSA's standpoint. From an industry's
20 expert, how would you evaluate this? What is your
21 thoughts? How would you move through this? Are
22 these similar; are these dissimilar? I don't think
23 it was setting up legal positioning. I'm not your
24 guy for that.

25 Q. So in that claim construction, did you

1 assess the scope of the claims?

2 A. Can --

3 MR. WEINER: Objection, asked and
4 answered.

5 A. This is the same thing we went around to
6 previously. Do you want to expand on assess?

7 Q. Your process. I think we used the word
8 "your process" kind of in lieu of using the term
9 "construe."

10 A. Uh-huh.

11 Q. So you didn't look to -- is it accurate to
12 say that you didn't look to the scope of the claims
13 in your assessment?

14 MR. WEINER: Objection, misstates the
15 witness' testimony.

16 A. Again, this is -- I would consider it
17 jargon or terminology that I'm not familiar with.

18 Q. Uh-huh.

19 A. I'm not sure how to answer that.

20 Q. Can I assume no?

21 A. No. I didn't say no. I said I don't know
22 specifically that terminology we've discussed right
23 now off the top of my head. I don't feel
24 comfortable saying yes or no. It aligns with what
25 I perceive your definition is --

1 Q. Fair enough, Ryan.

2 A. -- so I don't feel comfortable answering.

3 Q. Did counsel for ACCO explain to you what
4 claim construction means?

5 A. Yes.

6 Q. And you're not sure if you did that?

7 A. No. I didn't say that.

8 I said --

9 Q. Did you construe the claims, Ryan?

10 A. I did not construe the claims. I did not
11 construe any of the -- construe the claims. I
12 interpreted the claims as --

13 Q. When counsel for ACCO explained to you
14 what claim construction means --

15 A. Yep.

16 Q. -- did you think it was important?

17 A. Yes.

18 Q. But you didn't construe the claims?

19 A. Without you giving me your definition of
20 construe, I'm not going to say yes or no to that.

21 Q. Give me their definition of construe.

22 A. Off the top of my head, I'm not going to
23 be able to say it word for word, so I don't feel
24 comfortable repeating it.

25 MR. WEINER: Objection, outside the scope

1 of the supplemental declaration.

2 Q. So you won't answer my question?

3 A. I'm not sure. I don't know.

4 Q. Okay. Fair enough.

5 I'd like to bring you back, I think we're
6 at Figure 30 before. Oh, no, we weren't at Figure
7 30. I'd like to go to Figure 30 now of the '758
8 patent.

9 A. Uh-huh.

10 Q. I'd like to direct your attention to
11 element 291. Is element 291 a captive security
12 rod?

13 A. No.

14 Q. Is element 291 anchored to the housing?

15 A. It appears to be.

16 Q. Is anchor -- sorry -- is element 291
17 partially in the housing?

18 A. It appears to be.

19 Q. Is it partially out of the housing?

20 A. It appears to be.

21 Q. Okay. Good.

22 I'm sorry, Ryan, I'm going to switch gears
23 again to follow my questioning.

24 I'd like to turn now to your supplemental
25 declaration. I believe they're functionally

1 equivalent, they're just -- they're formally
2 different because -- let's talk about the
3 supplemental declaration directed to the '758
4 patent.

5 In paragraph 21 -- paragraphs 21 and 22 of
6 the supplemental declaration, you refer to the '758
7 patent and you refer to comments by the patent
8 attorney, his name is Al Walker who prosecuted this
9 patent before the U.S. Patent and Trademark Office.
10 And paragraphs 21 and 22 of your supplemental
11 declaration refer to his comments made during
12 the -- in an amendment.

13 Do you agree?

14 A. This is from the file from the patent
15 history?

16 Q. It is, yeah.

17 A. Yeah.

18 Q. You state that the patent owner -- you say
19 that "the patent owner acknowledged that the
20 captive security rod at issue must be stored in the
21 housing during non-use and between deployments:

22 A. Uh-huh.

23 Q. Can you tell me where he said that in this
24 text that you've reproduced in paragraph 21 of your
25 supplemental declaration?

1 MR. WEINER: I didn't realize this before
2 but I object to what's been marked as Exhibit 2001,
3 that the original exhibit contains some
4 highlighting in paragraph 21 that apparently has
5 been omitted at least on the copy that I have.

6 THE WITNESS: Uh-huh.

7 MR. WEINER: Do you have a clearer copy
8 for the witness?

9 THE WITNESS: I don't have any of the
10 highlights, so --

11 Q. Now, do you have -- the first sentence at
12 the bottom of page 8 is highlighted.

13 A. Yeah.

14 Q. And the sentence in the paragraph -- part
15 of the sentence in the paragraph at the bottom of
16 page 9 is highlighted and there's a bit of
17 highlighting at page 10.

18 MR. WEINER: Can you repeat that, counsel?
19 I want to make sure I know exactly what was
20 highlighted in the original.

21 MR. VODOPIA: I'll tell you exactly what
22 was highlighted. Let me read it into the record so
23 it's clear for you, Michael.

24 MR. WEINER: Okay. Thank you.

25 MR. VODOPIA: You're quite welcome.

1 "Therefore, also, Murray's rectangular
2 T-shaped locking member 124 is stored out of the
3 housing 137 during non-use and between
4 deployments."

5 And then at page 9, "In applicant's
6 amended independent claims 1 and 22, the locking
7 rod is partially stored in the computer housing
8 during non-use."

9 MR. WEINER: I'm sorry. What was that
10 again?

11 MR. VODOPIA: That was at the bottom of
12 page 9.

13 MR. WEINER: And can you just back up for
14 a second. You had stated before that the witness
15 shouldn't mark up the exhibits but I still object
16 to having an exhibit that's not accurate in front
17 of him even if you read the differences.

18 MR. VODOPIA: You can object to that
19 twice. I mean, I think that the one before
20 might --

21 MR. SCHINDLER: Why don't the witness
22 underline the part that's highlighted --

23 MR. VODOPIA: Would you mind
24 underlining --

25 MR. SCHINDLER: -- and we'll understand

1 the underlining is equivalent to the highlighting.

2 MR. WEINER: Here.

3 A. Thanks. All right.

4 Q. And then there's the last part.

5 MR. WEINER: Can you read me the first
6 part. Let's see if we can get this straight.

7 MR. VODOPIA: Oh, sorry. Tell me when
8 you're finished.

9 Q. Would you like me to read it again?

10 A. Slowly.

11 Q. Bottom of the page 8. "Therefore, also,
12 Murray's rectangular T-shaped locking member 124 is
13 stored out of the housing 137 during non-use and
14 between deployments."

15 The next section that's highlighted is the
16 bottom of page 9. It's in that last paragraph
17 which bridges 9 and 10, and what it says is, the
18 highlighted part is, "In applicant's amended
19 independent claims 1 and 22, the locking end is
20 partially stored in the computer housing during
21 non-use."

22 The rest of the highlighting section is in
23 the last clause of that paragraph transitioning
24 pages 8 and 9 and that text -- that highlighted
25 text is "wherein, the locking end of the captive

1 security rod is received into the locking
2 mechanism."

3 A. Okay.

4 Q. And so would you read back my question, my
5 original question?

6 (Portions of the record read.)

7 MR. VODOPIA: Why don't I -- why don't I
8 just repeat the question to the best of my
9 recollection.

10 Q. At paragraph 21, you state, "As argued by
11 the patent owner in the file history, that the
12 patent owner acknowledged that the captive security
13 rod must be stored in the housing during non-use
14 and between deployments."

15 And what I wanted to know is, in that
16 testimony including anywhere in that highlighted
17 testimony, where is that found?

18 A. I'm not sure what you're asking.

19 MR. WEINER: Take your time.

20 Can you repeat the question then?

21 A. Are you talking about where did I find
22 this?

23 Q. So let me repeat the question. You say
24 that Mr. Walker said that during non-use and
25 between deployments the captive security rod must

1 be stored in the housing. And I was wondering
2 where you found that statement.

3 A. So this is -- I don't know if it's in
4 here.

5 MR. WEINER: Are you looking for another
6 exhibit?

7 A. No. It is part of the preparation
8 material. This is from the file history.

9 Q. It's repeated. You wrote it here. You
10 wrote what he said in paragraph 21. It's the
11 indented part that we just highlighted part of.
12 You articulated all of his testimony right here and
13 you said what's in it, and I want to know right
14 here in this testimony, where did he say that?

15 A. So this was -- this was pulled from -- I
16 don't know the name of the document. I don't know
17 how to answer. Off the top of my head, I don't
18 remember the name of the document that I
19 referenced.

20 Q. Right.

21 And would you agree that that text was
22 pulled from the document that you don't remember
23 the name of?

24 A. That would be the point of origin for me.
25 I don't know --

1 Q. Sir --

2 A. That's the point of origin for me.

3 Q. Did you write this?

4 MR. WEINER: Objection, asked and
5 answered.

6 Q. No, right?

7 A. I did not type this, no.

8 Q. Okay.

9 A. But this is discussions with counsel.

10 Q. So is this your words, those five lines in
11 the beginning of paragraph 21 before Mr. Walker's
12 testimony -- before Mr. Walker's excerpt?

13 MR. WEINER: Objection, asked and
14 answered.

15 A. This section here?

16 Q. You understand what that -- would you read
17 that for the record, 21?

18 A. This is the part we just read?

19 Q. No. The part above that.

20 A. "As argued by the patent owner in the file
21 history, Murray fails to disclose a captive
22 security rod which the patent owner acknowledged
23 must be stored in the housing during non-use and
24 between deployments and must include a locking end,
25 such that the locking end of the captive security

1 rod is received into the locking mechanism."

2 Q. And I want to know where -- did you write
3 that?

4 A. No, I did not type this.

5 Q. Did you understand it?

6 A. I have my understanding of it.

7 Q. Good.

8 A. I'm assuming --

9 Q. So good. Because I want to know what you
10 meant when you said that the patent owner said that
11 "the captive security rod must be stored in the
12 housing during non-use and between deployments."
13 Can you find it in the extracted testimony that
14 you're referring to here in those first five lines,
15 can you tell me where Mr. Walker said "must be
16 stored in the housing during non-use and between
17 deployments"?

18 A. No, not right now.

19 Q. Okay.

20 A. No.

21 Q. Do you believe that Mr. Walker said that?

22 A. In reference to them amending an
23 application in order to secure a patent, yes.

24 Q. Would you mind reading through and it's
25 not that long and would you mind finding where

1 Mr. Walker said that.

2 A. And you want me to read through --

3 Q. Yes. Take all the time you need. I want
4 you to identify where Mr. Walker said that "the
5 captive security rod must be stored in the housing
6 during non-use and between deployments."

7 A. I can't recall the document that this came
8 from. I can't --

9 Q. It's right here. This excerpt is from the
10 document it came from, it's your writing.

11 A. No.

12 I'm not -- I'm not sure how to answer
13 this.

14 Q. That's fine. Let me ask you a different
15 question.

16 Which claims of the '758 patent include
17 the limitation "must be stored in the housing
18 during non-use and between deployments"?

19 A. "Said captive security rod, partially in
20 said at least one housing and partially out of said
21 at least one housing during and before locking
22 use."

23 Q. Okay. And so my question was, which
24 claims in the '758 patent include the limitation,
25 quote, must be stored in the housing during non-use

1 and between deployments?

2 MR. WEINER: Objection, misstates the
3 witness' testimony and asked and answered.

4 A. I'm not sure what you're asking.

5 Q. Is that limitation found in any of the
6 claims of the '758 patent?

7 MR. WEINER: Objection, asked and
8 answered.

9 MR. VODOPIA: No, he didn't answer it.

10 A. And what is the phrase specifically so I
11 can go through this.

12 Q. "Must be stored in the housing during
13 non-use and between deployments." It's the second
14 and third line --

15 A. Uh-huh.

16 Q. -- of paragraph 21. You don't have to
17 write it down, it's already written down.

18 A. No. I just wanted to make sure.

19 Q. Okay. Sorry.

20 A. And it's not "must be stored."

21 Yeah, I don't know if I'll be able to
22 answer. Without my reference notes and stuff, it's
23 hard for me to navigate through these.

24 Q. Did you make reference notes, Ryan?

25 A. Yeah.

1 Q. Can you supply me a copy of those notes?

2 A. I don't have them.

3 MR. WEINER: Objection. We're not --
4 discovery is closed. We're not producing
5 documents.

6 Q. Can you send them -- can you send them?
7 Did you use those notes to prepare for today's
8 deposition?

9 A. I used those notes for the initial
10 deposition. The second deposition was in
11 response -- the supplemental was in response to
12 Mahaffey.

13 Q. So did you use them for the supplemental
14 declaration?

15 A. No. I referenced my initial deposition
16 for my supplemental and Mahaffey's --

17 MR. SCHINDLER: You mean declaration, not
18 deposition.

19 A. Sorry. Declaration.

20 Q. Were you able to find the language that
21 you were looking for in the claims of the '758
22 patent?

23 A. Not at initial glance, no.

24 Q. My next question is whether or not that
25 language is in the claims of the '144 patent. Is

1 that language in the claims of the '144 patent?

2 MR. WEINER: Objection, vague.

3 Could you repeat back the last question,
4 please.

5 (Whereupon, the record was read as
6 follows: Question: "My next question is whether
7 or not that language is in the claims of the '144
8 patent. Is that language in the claims of the '144
9 patent?")

10 Q. Ryan, let me qualify that: When I said
11 "that language," I mean "must be stored in the
12 housing during non-use and between deployments" as
13 the same exact language that you searched the '758
14 patent for. I want to know if that exact same
15 language is in any of the claims of the '144
16 patent?

17 A. Uh-huh.

18 Q. Is that clear?

19 A. Yeah, I understand.

20 Q. Thank you.

21 Ryan, I know that you're in the middle of
22 one question, but can I ask you, can you identify
23 where the claims are in the patent?

24 A. Claims are in the back.

25 Q. Can you show them to me?

1 A. I believe they start on --

2 Q. And do you understand the question?

3 A. I do. I believe I do. That's part of the
4 problem with today. I believe I understand but
5 that's not really what we're here for.

6 Q. So is it safe to say that that language
7 might not be in those claims?

8 A. I don't know if it's safe to say. I
9 haven't found it yet.

10 Q. Okay. I'd like to move on. But I'd like
11 to stay with that paragraph 21. I'd like to ask
12 you a separate question.

13 MR. WEINER: And before we get into that
14 counsel, would this be a good time to take a break
15 if you're going to move on from that or...

16 Q. I'm going to move on from that question,
17 but I'd like to stay with that same paragraph that
18 we've been discussing for the last 20 or
19 30 minutes.

20 MR. WEINER: Because it's almost 1:00. I
21 just thought it would be a good time for a break
22 soon.

23 MR. VODOPIA: Yeah, let me just finish up
24 about this paragraph, then let's take a break.
25 Does that work for you?

1 MR. WEINER: Is that okay with you?

2 THE WITNESS: That's fine.

3 Q. Okay. So I just wanted to say that what
4 this excerpt is about, it's referred to in patent
5 lingo, in patent terminology as the file history.

6 A. Uh-huh.

7 Q. So for example, in the exchange between
8 Mr. Walker, who was the attorney of record in the
9 patent application before the patent office that
10 eventually issued as the '758 patent.

11 A. And the board.

12 Q. Well, more like just the examiner, it
13 didn't get to the board yet.

14 A. Yes.

15 Q. And so we refer to that as the file
16 history. And so statements made by an attorney of
17 record are important, can be important. So
18 statements -- the file history essentially broadly
19 can be important. And do you believe me when I
20 tell you that what you've set out there, what
21 you've authored there in paragraph 21 is part of
22 the file history, not your comments, but what you
23 referred to? I'm just clearing up terms. That's
24 the file history. Like what Walker said --

25 A. Right.

1 Q. -- we can refer to as the file history.
2 Will you understand that when I say file history?

3 A. Yeah. I reviewed this with the
4 illustrations of --

5 Q. Got it. The whole thing -- the whole
6 thing is about --

7 A. Yeah.

8 Q. In other words, all the statements
9 Mr. Walker made are part of the file history and so
10 they are part of the -- when you interpret claims,
11 like you look at the whole shooting match. You
12 know what I mean? The file history. And I just
13 want to ask you a question with respect to the file
14 history.

15 For example, you extracted part of the
16 file history and put it in this supplemental
17 declaration. And I want to know if it's your
18 understanding that statements made by the
19 prosecuting attorney, i.e., Mr. Walker, during the
20 file history, can statements made by the
21 prosecuting attorney add a limitation to the patent
22 claims?

23 MR. WEINER: Objection, calls for
24 speculation, vague and misleading.

25 A. I'm not positive. Again, I'm not a

1 lawyer, so I don't know if they carry that power.

2 Q. Is it your understanding when interpreting
3 claim language in patent office proceedings that
4 the claim language should be accorded the broadest
5 reasonable interpretation?

6 A. Yes.

7 Q. Good.

8 MR. VODOPIA: We can take a break now.

9 (Proceedings interrupted at 12:52 p.m. and
10 reconvened at 1:39 p.m.)

11 BY MR. VODOPIA:

12 Q. Ryan, I want to bring you back to your
13 testimony with regard to the iconic Master lock.
14 You discussed its operation, which I thought was
15 pretty clear. And I'd like to direct your
16 attention to Figure 30 of the '758 patent and ask
17 you a question in that respect, in particular to
18 element 291 therein.

19 A. Okay.

20 Q. Do you see that element 291, it's actually
21 shown in two places, do you see that it's got a
22 knob on top, a knob at the part that's not in
23 either of the housings in their respective
24 locations?

25 A. Yeah. I see a change in geometry.

1 Q. Right.

2 Now, could lock 110 accept element 291 in
3 the same way that lock 110 could accept element 286
4 in Figures 29C and 29D as we discussed before?

5 MR. WEINER: Objection, calls for
6 speculation.

7 MR. SCHINDLER: I think it's 28C and D,
8 isn't it?

9 Q. Forgive me, I meant 28C and D.

10 MR. WEINER: Could you repeat the
11 question?

12 MR. VODOPIA: Yes.

13 Could you read the question back?

14 (Whereupon, the record was read as
15 follows: Question: "Now, could lock 110 accept
16 element 291 in the same way that lock 110 could
17 accept element 286 in Figures 29C and 29D, as we
18 discussed before?")

19 MR. WEINER: And I'll read my objection,
20 calls for speculation.

21 A. That's not how I would read it.

22 Q. Element 291 has a knob?

23 A. Uh-huh.

24 Q. And I want you to consider inserting the
25 knob end into lock 110. Would the spring loaded

1 mechanism, if it went -- if the knob end went past
2 it and it -- and it moved radially, would you be
3 able to remove that part from the lock?

4 MR. WEINER: Objection, calls for
5 speculation.

6 A. You would have to modify 291 as drawn
7 right here, heavily, to achieve that.

8 Q. How?

9 A. Without specifications, I can't give you
10 an exact list of modifications needed, but based on
11 the drawings here, it doesn't read as though that's
12 intended in any -- it's not even hinted at that the
13 lock would interface with 291.

14 Q. And I understand that there's no --
15 there's no such description that says that 291
16 would operate in lock 110. But you see the way I
17 look at it is that the -- the portion just below
18 the knob, when you look at that outer diameter, is
19 the equivalent of an annular groove or a radial
20 groove in the outer diameter of, for example,
21 element -- element --

22 MR. SCHINDLER: 286.

23 Q. Sorry.

24 -- 286.

25 And so it's the same as a notch. Is it

1 the same as a notch functionally for the locking
2 mechanism?

3 A. I don't have enough to go on here. It
4 would be a total assumption and I would still say
5 no, it doesn't function the same.

6 Q. Would you say it's possible?

7 A. With heavy modifications, yes.

8 Q. And what modifications?

9 A. Well, for starters, the way it's drawn,
10 the holes that the 286 or 299 pass through and
11 interface with seem to be consistent throughout all
12 the illustrations and figures.

13 Q. Sorry. I'm talking about 291.

14 A. I'm viewing everything in context. If
15 Figure 30 and 31 relate to each other, then I'm
16 going to view them that way and that's how I get my
17 feedback. I don't know how else to do it.

18 Otherwise --

19 Q. Do you see 291?

20 A. Yes.

21 Q. In Figure 31?

22 A. Yes. Right here in Figure 30, I see 291.

23 Q. Yes.

24 A. I'm referencing 299 in Figure 31, which
25 interfaces with the lock which would be the same as

1 286.

2 Q. Yeah. So I want to focus on Figure 30.

3 A. I might be getting there in a roundabout
4 way but I assure you I'm getting there.

5 Q. Yeah, okay. Go ahead. Yeah.

6 A. So the way it's illustrated throughout is
7 consistent until you try to get the illustration of
8 291 inside of the opening of 110. There's a huge
9 discrepancy there, scale wise.

10 Q. So is it correct, am I understanding your
11 testimony that element 291 would not go into the
12 opening in lock 110?

13 A. That would be my assumption.

14 Q. Why? Because you think that the diameter
15 is too big?

16 A. There's the diameter. There's the front
17 end of it.

18 Q. The front end of it?

19 A. Of the top of that larger portion where
20 the OD is larger than the OD of the under portion
21 with the transverse haul.

22 Q. Well, it's no, so...

23 A. It isn't tapered to move plates or a
24 sprung member out of the way.

25 Q. So let's turn back to Figure 28D -- 28C,

1 sorry. 28C is probably better.

2 What's the difference between the top --
3 the forward part of 286 and the forward part of
4 291.

5 A. 286 is a locking ferrule and it has a
6 ramped engagement end on the lock end, so by having
7 a taper or a ramp on it, it helps displace the
8 engagement mechanism inside the locking device and
9 then the spring has that return on the undercut, on
10 the underside.

11 Q. I see.

12 And I was focusing on the undercut. Would
13 the undercut hold it the same way?

14 A. It all comes down to geometry.

15 Q. Well, do you think it could hold it the
16 same way?

17 MR. WEINER: Objection, vague, calls for
18 speculation.

19 A. If I could heavily modify the geometry of
20 291, I could potentially get it to fit into 110
21 depending on what 110 mechanism is.

22 Q. And when you say "heavily modify the
23 geometry," you mean add a taper?

24 A. No.

25 Q. What do you mean?

1 A. Change the OD of 291 to interact with the
2 ID of 110. Change the height of the undercut to
3 match the height of the engagement mechanism in the
4 locking device. That hole would create a flat
5 spot, that transverse hole would create a flat spot
6 which would allow the lock to key --

7 Q. Like a notch?

8 A. -- which means you could operate at the
9 same time.

10 Q. Like a notch?

11 A. Yeah.

12 Q. But isn't that the way it works? Isn't
13 that the way you explained it to work, that a notch
14 was required when it's locked?

15 A. No.

16 MR. WEINER: Objection, misstates the
17 witness' testimony.

18 A. That's not how I phrased it at all.

19 Q. Is it your testimony that the way that the
20 lock -- the Master lock works is that there's a
21 spring-loaded mechanism, that when a locking
22 element, a shackle, one end of the shackle is
23 inserted into the opening, it pushes the
24 spring-loaded locking mechanism away to allow entry
25 past the spring-loaded locking mechanism, and then

1 if there's a -- if there's a notch in the shackle,
2 the spring-loaded mechanism can spring back and it
3 actually does spring back and that's the locking
4 function. Is that correct?

5 A. That's the description I gave earlier.

6 Q. Could that notch be a hole?

7 A. It could.

8 Q. Okay. Could it be just a one portion of a
9 radial groove?

10 A. Yes.

11 Q. Okay. Good. That's all I wanted to know.
12 Actually, I can move on. Thank you.

13 I think we touched on this before, but I
14 want to ask if you're familiar with the "limitation
15 said captive security rod partially in said at
16 least one housing and partially out of said at
17 least one housing during and before locking use,"
18 which is found in claim 1 of the '758 patent.

19 A. Yes.

20 Q. Now, do you understand that to be a
21 structural feature?

22 A. Which feature are you referring to?

23 Q. That "wherein," that clause, "said captive
24 security rod partially in said at least one housing
25 and partially out of said at least one housing

1 during and before locking use."

2 Do you see that as a structural limitation
3 in the claim language in the language of claim 1 of
4 the '758 patent?

5 MR. WEINER: Objection, vague.

6 Q. Or a functional limitation?

7 MR. WEINER: Objection, vague.

8 A. It -- it all depends on the desired
9 embodiment.

10 Can you rephrase that for me?

11 Q. Sure.

12 Does that limitation that we've just read,
13 does that describe structure of the apparatus claim
14 or a function of the apparatus claim?

15 A. I would imagine it's function.

16 Q. Is that limitation in claim 20 of the '144
17 patent?

18 A. They're not worded the same.

19 Q. Does claim 21 of the '144 patent include
20 that limitation?

21 A. I would have to say in this exact
22 configuration, no, it doesn't show up in 21 --
23 20 -- claim 20 of patent '144.

24 Q. Do you recall in your review of
25 petitioner's reply in the -- in the IPR directed to

1 the '144 patent, do you recall indicating that
2 claim 1 is representative of claim 20?

3 MR. WEINER: Objection, misleading,
4 assumes facts in evidence, the witness did not
5 testify that he reviewed the reply.

6 Q. Did you review the reply?

7 A. Can you clarify which reply, just so
8 I'm --

9 Q. The reply in IPR2015-01168.

10 A. Can you tell me the inventor's name on
11 that?

12 Q. Peter Allen.

13 MR. SCHINDLER: I think you're referring
14 to the petitioner's reply filed April 1st, that's
15 what John's referring to.

16 Q. Oh, right, yes, I'm sorry. I may not have
17 been clear. I meant the petitioner's reply, the
18 written -- the writing that counsel for ACCO Brands
19 submitted.

20 MR. SCHINDLER: On April 1st of this year.

21 A. And this is for '144?

22 Q. Yes, it is, it's for the '144.

23 MR. WEINER: And objection to asking the
24 witness if he's seen a document without providing
25 him a document so he knows what he's talking about.

1 Q. So I asked you -- I was asking you about
2 footnote 2, page 3 of the reply, which I'm unable
3 to put in front of you right now. Actually, I have
4 a copy of it, but there is -- there is some
5 highlighting on some other pages that are not
6 pertinent -- which is not pertinent to the instant
7 questioning.

8 You know what, let me direct your
9 attention to claim 1 of the '144 patent, which is
10 actually the patent itself. The limitation that I
11 read, is that found in claim 1 of the '144 patent?

12 A. Can you reread that limitation?

13 Q. Sure.

14 "Said captive security rod partially in
15 said at least one housing and partially out of said
16 at least one housing during and before locking
17 use."

18 A. And you're asking if that's contained in
19 claim 1 of the '144?

20 Q. Yeah, of the '144 patent.

21 A. It is.

22 Q. It is.

23 But it's not contained in -- is it correct
24 that you testified that it's not contained in claim
25 20?

1 A. Not in the same wording. So I guess, no.

2 Q. Is there any similar wording in claim 20
3 that would include that limitation -- that would
4 indicate that claim 20 includes that limitation?

5 A. Claim 20 from '758 or '144?

6 Q. '144.

7 A. So I would read in claim 1, you want me
8 to -- what line?

9 Q. I want you to determine -- you've
10 testified that claim 1 of the '744 patent includes
11 the limitation?

12 A. The '144 patent or '744.

13 Q. There's no '744. It's '144.

14 MR. WEINER: Or '758.

15 Q. There's a '758 and a '144. I'm talking
16 about the '144.

17 A. '744 came up. I just want to make sure
18 it's -- I'm having a hard enough time.

19 Q. No, no. I -- don't worry. I'm not
20 jumping on you.

21 A. So '144, claim 1, you want me to look
22 at --

23 Q. I want you -- you testified that claim 1
24 of the '144 patent included that limitation; is
25 that correct?

1 A. And the limitation that you're calling out
2 is?

3 MR. VODOPIA: You want to read that
4 limitation back to him.

5 COURT REPORTER: I'm not sure what you
6 want read.

7 Q. It starts with, "Said captive security rod
8 partially in."

9 COURT REPORTER: Yes. And when you read
10 it, I couldn't understand what you said, so you'll
11 just have to reread it.

12 MR. VODOPIA: Oh, yes, I'll read it again.

13 Q. "Said captive security rod partially and
14 said at least one housing and partially out of said
15 at least one housing during and before locking
16 use."

17 A. So as written, specifically as that, no,
18 it does not appear in claim 20.

19 Q. Do you believe that claims 1 and 20 have
20 the same scope?

21 A. I wouldn't imagine they have the same
22 scope.

23 Q. Is that because they don't -- because
24 claim 20 does not include that limitation and claim
25 1 does?

1 A. No.

2 Q. No?

3 A. No. Because the content to me reads
4 differently.

5 Q. Do you think that that limitation is
6 significant to the reading of claim 1?

7 MR. WEINER: Objection, vague.

8 A. I think when establishing the
9 configuration of the device being described here, I
10 think that language is important in claim 1.

11 Q. Good.

12 And you agree it's not in claim 20?

13 A. Right.

14 Q. Okay. I want to direct your attention to
15 claim 1 of the '758 patent. And you testified
16 before concerning claim 1 of the '758 patent that
17 it did not include the limitation must be stored in
18 the housing during non-use and between deployments;
19 is that correct?

20 A. Can you repeat that one more time for me?

21 MR. VODOPIA: Can you repeat that one.

22 (Whereupon, the record was read as
23 follows: Question: "I want to direct your
24 attention to claim 1 of the '758 patent. And you
25 testified before concerning claim 1 of the '758

1 patent that it did not include the limitation must
2 be stored in the housing during non-use and between
3 deployments; is that correct?")

4 A. I believe that's correct.

5 Q. I'd like to direct your attention to claim
6 8 of the '758 patent. Would you read claim 8 for
7 the record?

8 A. "The locking assembly" --

9 MR. WEINER: Objection, relevant.

10 A. "The locking assembly as set forth in
11 claim 1 wherein the locking end of the captive
12 security rod operates to collapse into at least one
13 of the housing during non-use."

14 Q. Do you believe that limitation is included
15 in claim 1?

16 MR. WEINER: Objection, vague.

17 A. I'm not sure.

18 Q. Okay. Did counsel for ACCO explain to you
19 what the patent-related theory of claim
20 differentiation is?

21 MR. WEINER: Objection, vague and
22 misleading and outside the scope of the witness'
23 testimony.

24 A. I'm sure we covered it. Off the top of my
25 head, I can't recite what the definition is.

1 Q. Can you say it in your own words what it
2 means?

3 A. I just -- I'm not sure how to answer that.

4 Q. Does Figure 30 of the '758 patent show an
5 element, a captive security rod 291?

6 A. Figure 30?

7 Q. Uh-huh.

8 A. You're asking me if 291 is a captive
9 security rod?

10 Q. I'm asking if -- I didn't finish the
11 question actually.

12 Does Figure 30 show that a captive
13 security rod, 291, that can be stored in a housing
14 during non-use?

15 A. I would believe so based on the arrow
16 indicators.

17 Q. Do you consider the construction of the
18 claim term captive security rod necessary to the
19 construction of the claims in the '758 patent?

20 MR. WEINER: Objection, vague and
21 misleading.

22 A. Could I get clarification on that? Could
23 I get that rephrased so that...

24 Q. Do you think what, quote, captive security
25 rod is is important to this investigation?

1 A. Yes.

2 Q. Does your April 30th, 2016 supplemental
3 declaration construe captive security rod?

4 MR. SCHINDLER: You got the dates mixed
5 up.

6 MR. VODOPIA: Sorry.

7 Q. March 30th, 2016, supplemental --

8 A. I don't know if I would label it as
9 construe, but my interpretation was in alignment
10 with what the board had weighed in. They kind of
11 put a definition out there because they felt it was
12 important to the case.

13 Q. So no?

14 MR. WEINER: Objection, misstates the
15 witness' testimony.

16 A. No. I didn't say no. I built off of what
17 they had. I added to it, I believe, and I can find
18 it. Page 4 of 19, paragraph 7.

19 MR. VODOPIA: Strike that. Strike that as
20 nonresponsive.

21 MR. WEINER: Let the witness continue his
22 answer.

23 MR. VODOPIA: He's being nonresponsive. I
24 asked him --

25 MR. WEINER: Let him answer.

1 MR. VODOPIA: I asked him what he --

2 MR. WEINER: Don't stop the witness from
3 responding.

4 Q. I asked you whether or not you construe
5 the captive security rod. I want to know.
6 Yes-or-no? Anything else is nonresponsive.

7 MR. WEINER: The witness can answer in
8 more than one word.

9 MR. VODOPIA: No, he can't. No, he can't.

10 MR. WEINER: And if you don't permit him
11 to --

12 MR. VODOPIA: He can't answer. I'm asking
13 him a yes-or-no question.

14 MR. WEINER: -- then we're going to
15 contact the board to get instructions from them.

16 MR. VODOPIA: I want to know whether or
17 not he construed it.

18 Q. Just answer me simply, yes or no?

19 MR. WEINER: Objection, asked and
20 answered, vague and misleading.

21 A. If you can give me the description of
22 construed as you're putting it, I can give you an
23 answer.

24 Q. I want you to interpret construed as set
25 forth in your declaration in the section D,

1 Construction of Claims. That's where you swore,
2 you signed it at the end, and said this is my
3 writing, this is my declaration. That section is
4 the claim construction section. I want you --
5 whatever you did there, that's what I'm talking
6 about here.

7 Now, did you or did you not construe it
8 there?

9 A. I don't --

10 MR. WEINER: Objection.

11 Is your question directed to the
12 declaration or the supplemental declaration?

13 Q. Ryan?

14 MR. WEINER: Vague and misleading.

15 A. Can you point out --

16 Q. Can you point out? Can you point out in
17 your declaration where you construed that term
18 captive security rod?

19 A. In my declaration or my supplemental?

20 Q. Either one.

21 A. In the supplemental, I can point out where
22 I built off of the board's.

23 Q. No. I want to know where you construed
24 it. There's a construction section. Did you
25 construe it in your declaration from April 30th,

1 2015 regarding either the '144 or the '758 patents?

2 A. I wouldn't say that I included the word
3 "construed" in here.

4 Q. Hold on a second. Ryan, it says --

5 MR. WEINER: And I just want to remind the
6 witness on the record to review the document before
7 answering the question.

8 Q. -- claim construction --

9 MR. SCHINDLER: Objection. ACCO's
10 attorney is coaching the witness.

11 Q. Ryan, I mean, look at page 14?

12 A. 14 of supplemental?

13 Q. Yeah -- no, the declaration.

14 A. Yeah.

15 Q. It says you construed the claims.

16 A. I don't see where it says I construed the
17 claims.

18 Q. Now, is that because you didn't construe
19 the claims?

20 A. I don't know what you mean by "construe."

21 Q. Well, you don't understand.

22 And did counsel for ACCO explain to you
23 what construed means?

24 A. As I stated earlier, I'm sure they did.

25 Q. You just don't recall; is that correct?

1 A. I don't recall right now.

2 Q. Okay. No problem. We'll move on.

3 In paragraph 15 of your supplemental
4 declaration, you state that Mr. Mahaffey ignores --
5 sorry. Tell me when you're there. It's paragraph
6 15.

7 A. Yeah.

8 Q. You state that Mr. Mahaffey ignores claim
9 language including, quote, (3) that the captive
10 security rod is captive in the housing partially in
11 the housing and partially out of the housing before
12 and during locking use.

13 A. Uh-huh.

14 Q. Is the portion of that phrase, quote, is
15 captive, being used as a noun or a verb?

16 MR. WEINER: Objection, compound, vague
17 and misleading.

18 A. I'm not really sure of the question.
19 You're asking me if "is captive," if that's being
20 used as a noun or a verb?

21 Q. Yes. In the claim.

22 MR. WEINER: Objection, compound, vague
23 and misleading, irrelevant.

24 A. I'm not really sure how to answer that.
25 I'm not sure.

1 Q. Okay. So in a portion of that, that
2 excerpt from your supplemental declaration, it says
3 "is captive partially in the housing and partially
4 out of the housing," does that mean it's held
5 captive? Is it a verb? Or is it a noun? Again,
6 is captive.

7 MR. WEINER: Objection, compound, vague.

8 A. I'm not sure how to answer that.

9 Q. Fair enough.

10 Ryan, in claim 1 of the '758 patent,
11 there's a phrase "passed through the at least one
12 housing to anchor the captive security rod
13 thereto."

14 A. What line is that?

15 Q. You know, I think it is line 6.

16 A. '758 patent.

17 MR. WEINER: What claim were you referring
18 to?

19 MR. VODOPIA: Claim 1.

20 A. Claim 1 in '758?

21 Q. Yeah.

22 A. Line 6?

23 Q. It's lines 5 and 6 -- sorry -- lines 5 and
24 6 of the claim language. Lines in the column,
25 columns 22 and 23 of column 19.

1 A. And the question was? I'm sorry.

2 Q. I just wanted to direct your attention to
3 that portion and I want to know how you define --
4 what your understanding of the term therein in that
5 portion anchor. Can you tell me?

6 A. What they're describing here as an anchor,
7 or what my belief of an anchor is?

8 Q. No. I want to know what your
9 understanding of the meaning of the term "anchor"
10 is.

11 A. In relation to this or just in general?

12 Q. Well, first, let's do in general.

13 A. So I would imagine general in terms of
14 locks and security, the anchor is -- it's what
15 you're locking something to, so it could either be
16 the item in which you lock your device or precious
17 item to, to prevent it from going away as an
18 anchor, but then it takes on a different meaning
19 when you look at components and how they're
20 anchored. So I think that there would be two
21 different ways of using it.

22 Q. So in terms of the phrase that I read and
23 I'll repeat it again, I'll read it again, "passed
24 through the at least one housing to anchor the
25 captive security rod thereto."

1 A. Uh-huh.

2 Q. Is that referring to the electronic
3 device, or is that referring to the captive
4 security rod?

5 A. I would imagine that's referring to the
6 electronic device.

7 Q. And so even though it refers to anchor the
8 captive security rod thereto, you think that to
9 anchor the captive security rod, what's meant is to
10 anchor the electronic device?

11 A. No. I'm saying general at a high level --

12 Q. No, no.

13 A. -- we're talking security --

14 Q. Good, yep.

15 A. -- anchoring is what you attach your
16 tablet, your laptop, you're anchoring to something,
17 that's high level. Then I want into further detail
18 to say, but when you talk about a component,
19 anchoring takes on a different meaning.

20 Q. And so would you say that that phrase
21 "passed through the at least one housing to anchor
22 the captive security rod thereto," are they talking
23 about anchoring the captive security rod or
24 anchoring the electronic device?

25 A. At first read you'd imagine it's to anchor

1 the security rod. I'm assuming you don't want to
2 talk about the figures.

3 Q. No. I just wanted to know about that
4 language about -- actually, so I've been using this
5 word "construe" and that's why I'm now using the
6 word "mean." You know, construe and mean are sort
7 of similar. And I just want to know if you've
8 got -- if we're speaking about the same -- we're
9 talking in terms of the same -- we have the same
10 understanding of what it means to anchor a captive
11 security rod.

12 A. Uh-huh. But you didn't ask if they were
13 talking specifically about an anchor security rod.

14 Q. No, but you answered my questions.

15 A. Okay.

16 Q. You were able to answer my questions,
17 right?

18 Well, you did answer my questions, so
19 let's move on.

20 Do you understand what the meaning of the
21 phrase "locking use" in claim 1 is?

22 A. And where are you seeing that? What line?

23 Q. I'm seeing that in column 19, line 27, I
24 think it is.

25 A. Uh-huh. Okay.

1 Q. They use the phrase locking use. The
2 claim uses the phrase locking use.

3 A. Okay.

4 Q. Do you understand what that means?

5 A. I would imagine so, yeah.

6 Q. Could you tell us?

7 A. My assumption is that's the same as saying
8 when in use, and an in use for a lock is when the
9 lock is engaged.

10 Q. Good.

11 And when you expand that locking use to
12 include during and before locking use, as used, I
13 guess, in 26 and 27, can you tell me your
14 understanding of that phrase "during and before
15 locking use," 26 and 27 of column 19?

16 MR. WEINER: Objection, vague.

17 A. I'm sorry. Can you repeat that again? 26
18 and 27.

19 Q. If I point you to column 19, lines 26 and
20 27, the part of the claim 1 that says "during and
21 before locking use," do you know what that means?

22 A. I have my interpretation of it.

23 Q. Can you tell us for the record.

24 A. It's basically saying that it is partially
25 out, so on the outside of at least one of the

1 housings, during and prior to engaging the lock.

2 Q. Good.

3 And I want to direct your attention to,
4 let's see, claim 20, the first element of claim 20
5 which is at line 44 of column 20.

6 MR. WEINER: What patent are you referring
7 to?

8 MR. VODOPIA: The same one we're talking
9 about.

10 MR. WEINER: The '758?

11 MR. VODOPIA: Were we just talking about
12 the '758?

13 THE WITNESS: Yes.

14 MR. VODOPIA: Thanks, Ryan.

15 Q. And I wanted to direct you to that first
16 line, "securedly fixing." Can you give me your
17 understanding of that term, "securedly fixing"?

18 A. Claim 20 for '758?

19 Q. Exactly, yeah. Uh-huh.

20 A. Am I losing my mind?

21 MR. SCHINDLER: No, no, no. Claim 16 of
22 the '758.

23 MR. VODOPIA: I'm sorry. Yeah, you're
24 right.

25 MR. SCHINDLER: Claim 16, sorry about

1 that.

2 THE WITNESS: Okay.

3 MR. VODOPIA: That was my fault. And at
4 the end of the day, you're probably losing your
5 mind and it will be thoroughly lost by the end of
6 the day, mine as well.

7 MR. WEINER: Can you repeat the question,
8 please.

9 MR. VODOPIA: Yes.
10 Would you mind?

11 (Whereupon, the record was read as
12 follows: Question: "And I wanted to direct you to
13 that first line, "securedly fixing." Can you give
14 me your understanding of that term, "securedly
15 fixing"?)

16 A. So securedly fixing in this case is in
17 reference to basically engaging the captive
18 security rod or spike to the device that you're
19 trying to prevent from walking away. This could be
20 done in many ways.

21 So if you have a specific question.

22 Q. Actually, I just wanted to know your
23 definition of securedly fixing. And did you say
24 that securedly fixing is equivalent to engaging?

25 MR. WEINER: Objection, misstates the

1 witness' testimony.

2 MR. VODOPIA: Would you read back the
3 first sentence of Ryan's response.

4 (Whereupon, the record was read as
5 follows: Answer: "So securedly fixing in this
6 case is in reference to basically engaging the
7 captive security rod or spike to the device that
8 you're trying to prevent from walking away."

9 A. So security --

10 Q. So, no, that's good. I just want to move
11 on.

12 A. Okay.

13 Q. I'd like to turn now to the claims of the
14 '144 patent. Forgive me for jumping around, but I
15 guess I'm just doing it.

16 (Off-the-record discussion held.)

17 Q. I'm looking at -- I'd like to direct your
18 attention to claim 1 of the '144 patent and the
19 first use of captive security rod which starts at I
20 think it's line 19 of column 19. What it says is
21 "a captive security rod having a locking end and an
22 anchoring end wherein the anchoring end is
23 installed in the at least one housing to anchor the
24 captive security rod thereto."

25 Had you read this before?

1 A. Yeah.

2 Q. And is it your understanding that their
3 use -- that the claimed use of the term "installed"
4 is equivalent to the term anchored?

5 A. I don't know if I can make that stretch.

6 Q. What's your understanding broadly of the
7 term installed?

8 A. So --

9 Q. Just broadly, not even necessarily in
10 terms of the claim language. We can get to the
11 claim language, but first I'd just like to hear
12 your understanding of just the word, you know,
13 again, outside the scope even of like the
14 definition of installed.

15 A. Taken out of context and I'm not -- I
16 can't respond to that.

17 Q. Okay. Do you ever use the word
18 "installed" in your common language?

19 A. I manage to get that out.

20 Q. What's your understanding of it in terms
21 of your colloquial use?

22 A. So it would be the act of inserting
23 something in an assembly or to an assembly.

24 Q. Okay. Good.

25 And in terms of the claim language, at 21,

1 that phrase, the last portion of that phrase is "to
2 anchor the captive security rod thereto."

3 Is that -- that phrase, "to anchor the
4 captive security rod thereto," is that referring to
5 installed? Does that refer back to installed in
6 the claim language?

7 A. Potentially. I'm not sure.

8 Q. And the next clause of the claim that
9 starts with "said captive security rod," that's at
10 line 23 of column 19, says, "Said captive security
11 rod being captive partially in said at least one
12 housing after installation and partially out of
13 said at least one housing during and before locking
14 use."

15 And is your understanding of installation
16 as used in that claim clause equivalent to anchor?

17 MR. WEINER: Objection, vague.

18 A. It all depends on who is doing the
19 installation and at what point. Is it the user?
20 Is it the manufacturer?

21 Q. I'd like to direct your attention to claim
22 14 of the '144 patent, which is in column 20. The
23 first element in that claim at line 18 of column 20
24 refers to a "captive security rod or spike."

25 Were you aware of that?

1 A. I'm aware that they reference that, yes.

2 Q. And what do you think they mean by
3 "captive security rod or spike"?

4 A. I'm not sure. I'm not sure what you're
5 asking.

6 MR. VODOPIA: Let me rephrase the
7 question.

8 Q. Do you believe that the claim is
9 suggesting they're equivalent or their use in the
10 claim is equivalent?

11 MR. WEINER: Objection, vague, misleading.

12 A. I don't know if I would say they're
13 equivalent. No.

14 Q. Okay.

15 MR. VODOPIA: Can we take a five-minute
16 break.

17 THE WITNESS: Yeah.

18 MR. VODOPIA: Is that okay, Michael?

19 MR. WEINER: Sure.

20 (Proceedings interrupted at 2:33 p.m. and
21 reconvened at 2:37 p.m.)

22 BY MR. VODOPIA:

23 Q. Ryan, in your understanding, are the
24 elements shown in drawings in a patent to scale?

25 A. My assumption is they have to be within

1 reason. I'm sure there's some forgiveness.

2 Q. So can I interpret your answer is not
3 always?

4 A. I think that's fair.

5 Q. Okay. Great.

6 I want to go back to your employment with
7 Kensington for a few last questions. And I wanted
8 to ask you if you're aware that between 2008 and
9 2010 Think Products met with Kensington.

10 A. I was aware.

11 Q. Are you aware that Think Products met with
12 Robert Humphrey?

13 MR. WEINER: Objection, outside the scope
14 of the declaration and supplemental declaration.

15 A. It would have to be an assumption at that
16 point. I know they had been speaking with
17 Rob Mahaffey.

18 Q. Rob Mahaffey.

19 How about Christopher Franey?

20 A. Again, I'd have to just make an
21 assumption, so I'm not sure.

22 Q. Do you know if they discussed Think
23 Products' intellectual property?

24 A. I believe so, yes.

25 Q. Do you know if they discussed Think

1 Products' ideas concerning locking portable
2 electronic devices such as laptops?

3 MR. WEINER: Objection, outside the scope
4 of the declaration and supplemental declaration.

5 A. That would be my assumption. That's the
6 business that Kensington is in, that's their
7 market.

8 Q. Is Kensington a division of ACCO?

9 A. Yes.

10 MR. VODOPIA: No more questions.

11 MR. WEINER: Let's go off the record.
12 Take a few minutes. I'm going to have some
13 redirect.

14 (Proceedings interrupted at 2:39 p.m. and
15 reconvened at 2:40 p.m.)

16 BY MR. VODOPIA:

17 Q. In your understanding are you allowed to
18 discuss your testimony with Mr. Weiner?

19 A. Not --

20 MR. WEINER: Objection, vague.

21 A. To the best of my knowledge, no, I'm not
22 allowed to discuss it today.

23 Q. And do you intend to discuss any of your
24 prior testimony with Mr. Weiner?

25 MR. WEINER: Objection, calls for attorney

1 work product.

2 A. I hadn't planned on it.

3 MR. WEINER: And calls for speculation.

4 MR. VODOPIA: Fair enough. Thank you.

5 (Proceedings interrupted at 2:41 p.m. and
6 reconvened at 3:19 p.m.)

7 (The following proceedings ensued in a
8 telephone conference.)

9 PTAB REPRESENTATIVE: How may I help you?

10 MR. VODOPIA: We'd like a conference with
11 the board on a pair of inter partes reviews. I can
12 give you the number.

13 PTAB REPRESENTATIVE: Okay. The problem
14 is the paralegals at the moment are unavailable.

15 MR. SCHINDLER: We need to speak to the
16 Administrative Law Judge.

17 MR. VODOPIA: Can we speak with --

18 PTAB REPRESENTATIVE: I can't transfer you
19 to your judge. I have to let the paralegals do
20 that.

21 MR. VODOPIA: Okay.

22 MR. SCHINDLER: When will they be
23 available?

24 PTAB REPRESENTATIVE: I'm not sure. I
25 think they're in a meeting.

1 MR. VODOPIA: Well, can you have them call
2 us back then?

3 MR. SCHINDLER: We need a ruling. We're
4 going to need a ruling.

5 MR. VODOPIA: We need a ruling.

6 PTAB REPRESENTATIVE: Okay. Your name?

7 MR. VODOPIA: My name is John Vodopia.

8 PTAB REPRESENTATIVE: Wait a minute, John.
9 And spell your last name.

10 MR. VODOPIA: V as in Victor, o, d as in
11 David, o, p as in Peter, i-a.

12 PTAB REPRESENTATIVE: And your number?

13 MR. SCHINDLER: (phone number
14 redacted pursuant to MA 201 CMR 17.00.)

15 PTAB REPRESENTATIVE: And pertaining to
16 what case?

17 MR. VODOPIA: IPR 2015 --

18 PTAB REPRESENTATIVE: 2015.

19 MR. VODOPIA: -- dash 01167.

20 PTAB REPRESENTATIVE: 67.

21 And you want a conference --

22 MR. VODOPIA: There's a second one.

23 MR. SCHINDLER: There's two of them.

24 MR. VODOPIA: There's actually two. The
25 second one, the only difference is the 7 is an 8

1 for the second one.

2 PTAB REPRESENTATIVE: Okay. Okay. 01168.

3 MR. VODOPIA: We're doing depositions and
4 we need a ruling.

5 MR. SCHINDLER: We're going to need a
6 ruling.

7 PTAB REPRESENTATIVE: Okay. I'll send
8 them an e-mail because I don't know exactly what to
9 do in this case. Do you have a name of one of the
10 judges?

11 MR. VODOPIA: Yes. I have the name of
12 each of them. The first is Richard E. Rice.

13 PTAB REPRESENTATIVE: Okay. Richard...

14 MR. VODOPIA: E. Rice.

15 PTAB REPRESENTATIVE: E. Rice.

16 MR. VODOPIA: Yeah. E is the middle
17 initial of his middle name.

18 PTAB REPRESENTATIVE: Yeah, okay.

19 MR. VODOPIA: And then the second is
20 Scott A. Daniels.

21 PTAB REPRESENTATIVE: A. Daniels.

22 MR. VODOPIA: And then the third is
23 Robert A. Pollock, P-o-l-l-o-c-k.

24 PTAB REPRESENTATIVE. Okay. Then I'll
25 see --

1 MR. VODOPIA: Thank you very much.

2 (Proceedings interrupted at 3:22 p.m. and
3 reconvened at 3:44 p.m.)

4 (Telephone conference, voice mail.)

5 MR. VODOPIA: This is John Vodopia. I'm
6 calling about a ruling in IPR2015-016 -- 01167 and
7 IPR2015-01168. We are doing depositions and we
8 have an issue that we need to discuss and, again,
9 have a ruling on. My phone number is .

10 (Phone number redacted pursuant to MA 201
11 CMR 17.00.)

12 (Proceedings interrupted at 3:45 p.m. and
13 reconvened at 3:50 p.m.)

14 (The following proceedings ensued during a
15 telephone conference.)

16 MR. VODOPIA: This is John Vodopia.

17 JUDGE POLLOCK: This is Judge Pollock.

18 Would you hold, please, I'm going to try
19 to get Judge Rice on the line. We've been having
20 technical difficulties.

21 MR. VODOPIA: Certainly.

22 JUDGE POLLOCK: All right. Are the
23 parties on?

24 MR. VODOPIA: Yes.

25 Judge Rice, Judge Pollock, this is

1 John Vodopia. We're in the midst of a deposition
2 in the two IPRs and I just wanted to let you know
3 that the court reporter is taking down this
4 testimony.

5 JUDGE POLLOCK: Okay. Who else is on the
6 line, Mr. Vodopia?

7 MR. SCHINDLER: My name is
8 Edwin Schindler, and with John Vodopia we represent
9 the patent owner, Think Products.

10 MR. VODOPIA: Also on the line is
11 Michael Weiner, counsel for petitioner.

12 MR. SCHINDLER: The petitioner is ACCO
13 Brands.

14 JUDGE POLLOCK: Mr. Vodopia, you requested
15 this call. What seems to be the issue?

16 MR. VODOPIA: The deposition was for
17 ACCO's expert witness, and the deposition was
18 completed at 2:41 p.m. And what occurred then is
19 that counsel for petitioner ACCO Brands left the
20 room and took a tablet with the realtime transcript
21 and his notes and the witness and went in another
22 room for 38 minutes prior to redirect. And we
23 found some issues earlier in the day with respect
24 to communications between the witness and counsel
25 for ACCO Brands and we feel that there should be no

1 redirect at this point, that Mr. Weiner has coached
2 the witness.

3 JUDGE POLLOCK: All right. Mr. Weiner.

4 MR. WEINER: Yes, Your Honors. First of
5 all, let me just clarify the record. There has
6 been absolutely no coaching of the witness at any
7 time today. I very carefully followed the board's
8 rules and did not discuss the witness' testimony at
9 any time during the cross-examination. My
10 understanding is that after the cross-examination
11 is complete prior to redirect, it is permissible
12 for counsel to discuss the testimony with the
13 witness, of course, with no coaching or no telling
14 the witness how to testify, of course that's not
15 permitted.

16 But I did discuss his cross-examination
17 testimony with him and, in fact, I can cite a case
18 from a prior ruling from a different panel that
19 expressly permitted this and that's IPR2013-00358,
20 paper 37, that's January 28th, 2014, Schott Gemtron
21 v. SSW. We had a dispute about this exact issue
22 and we brought it to the attention of the board and
23 they issued this paper that said that is
24 permissible. So relying on that authority, I
25 wanted to go ahead and proceed with my redirect.

1 JUDGE POLLOCK: Anything else,
2 Mr. Vodopia?

3 MR. VODOPIA: No.

4 JUDGE POLLOCK: I'm going to put you on
5 hold while I discuss this with Judge Rice.

6 (Proceedings interrupted at 3:55 p.m. and
7 reconvened at 3:58 p.m.)

8 JUDGE POLLOCK: Gentleman, are we still on
9 the line?

10 MR. SCHINDLER: Yes, Your Honor.

11 MR. VODOPIA: Yes, Your Honor.

12 MR. WEINER: Yes. This is Mr. Weiner.

13 THE COURT: Is the court reporter is
14 there?

15 COURT REPORTER: Yes. Yes, sir.

16 MR. VODOPIA: Yes.

17 JUDGE POLLOCK: Is the court reporter
18 still there in the room?

19 COURT REPORTER: Yes, sir, I am.

20 JUDGE POLLOCK: Okay. Thank you.

21 All right. I'm going to let the redirect
22 proceed and suggest that Mr. Vodopia enter the
23 objection on the record.

24 Anything else, gentlemen?

25 MR. VODOPIA: No.

1 MR. SCHINDLER: That's it. Thank you,
2 Your Honor.

3 MR. WEINER: Thank you, Your Honor.

4 JUDGE POLLOCK: Thank you. Good day.

5 EXAMINATION

6 BY MR. WEINER:

7 Q. Mr. White --

8 MR. VODOPIA: Michael, let me just object
9 for the record moving forward. And Mr. Weiner and
10 Mr. White left the room for 38 minutes after direct
11 examination with a tablet including the realtime
12 transcript. In my understanding, they discussed
13 the realtime transcript and that there was likely
14 coaching by Mr. Weiner at that time before they
15 returned for cross.

16 MR. SCHINDLER: For redirect.

17 MR. WEINER: Okay. And I want to state on
18 record that I object to that characterization.
19 There was absolutely no coaching of the witness at
20 any time during the day today. I also want to
21 state on the record that during the break, I'm not
22 sure if 38 minutes is correct, but let the record
23 reflect I also visited the restroom during that
24 time but so the court reporter doesn't have to
25 worry about it, I did not bring the tablet into the

1 restroom. I left that in a clean area in a
2 conference room. So that was --

3 MR. VODOPIA: And I was wondering what you
4 discussed for 38 minutes minus the time it took you
5 to visit the restroom without the tablet.

6 MR. WEINER: I'm going to proceed with my
7 redirect. I'm not going to engage in a discussion
8 with you on the record.

9 EXAMINATION

10 BY MR. WEINER:

11 Q. Mr. White, I have a question for you about
12 what was marked Exhibit 2007 today. It also has an
13 exhibit sticker that says Exhibit A.

14 Do you have that in front of you?

15 A. Yes.

16 Q. Do you recall when counsel asked you
17 questions about this document today?

18 A. Yes.

19 Q. And do you recall counsel asked you if you
20 had seen this document before today?

21 A. Yes.

22 Q. And during the break, did you have a
23 chance to take another look at this exhibit?

24 A. I did.

25 Q. After reviewing this exhibit during the

1 break, I want to ask you again, was your testimony
2 correct when you testified before that you had seen
3 this document prior to today?

4 A. No.

5 Q. And why was it that you testified earlier
6 today that you had seen this document?

7 A. I was referring to the content in it, and
8 I believe some of the imagery, I guess -- I
9 didn't -- I referred to it as PowerPoint.

10 Q. What page are you referring to?

11 A. Pick one.

12 Q. Well, there is a page in front of you,
13 what page are you referring to?

14 A. Page 5.

15 Q. Okay. Page 5 has some figures that look
16 familiar to you, right?

17 A. Yes.

18 Q. Figures from the McDaid patent?

19 A. Yep.

20 Q. But you've never seen those figures
21 organized as on this page 5 of Exhibit 2007, right?

22 A. Right.

23 Q. You've never see those pages with a fist
24 in the lower right-hand corner region of this
25 document, right?

1 MR. SCHINDLER: Objection, leading
2 question.

3 MR. WEINER: Let me rephrase the question.

4 Q. Have you ever seen this particular page
5 with a fist in the lower right-hand corner along
6 with figures from the McDaid patent?

7 A. No.

8 Q. And likewise, for the other pages of the
9 document, you've never seen these particular
10 pages --

11 MR. SCHINDLER: Objection, leading
12 question.

13 Q. Have you ever seen any of these pages
14 before?

15 A. Not with the annotation and the graphics.

16 Q. Okay. Thank you.

17 A. So, no.

18 Q. Mr. White, do you recall when counsel
19 asked you some questions today about claim
20 construction?

21 A. Yes.

22 Q. And do you recall counsel asked you if you
23 had construed terms in the claims of the two Think
24 Products patents?

25 A. Yes.

1 Q. And do you recall testifying that you had
2 not construed terms of the claims before?

3 A. Yes. I don't know if that was the exact
4 wording, but yes.

5 Q. Okay. Now, I'd like to direct your
6 attention to your first declaration. It's
7 Exhibit 1021. It's also been remarked improperly
8 as Exhibit 2004.

9 A. Uh-huh.

10 Q. And I'd like to direct your attention to
11 section D beginning with paragraph 32. And I'd
12 like you to just quickly take a look at paragraphs
13 32 up through 43. So please quickly review those
14 and then I'll ask a question on it.

15 MR. VODOPIA: Which document are you
16 referring to, which IPR document?

17 MR. WEINER: Exhibit 1021, which is
18 identical in both IPRs.

19 A. And you're asking for?

20 Q. Please review paragraphs 32 through 43.

21 A. Through 43?

22 Q. Yes.

23 A. Okay.

24 Q. You can take whatever time you need, but
25 I'm just asking you to briefly review that so you

1 have the context in mind when I ask you a question.

2 A. Okay.

3 Okay.

4 Q. Now, after thinking about this issue
5 during the break and taking a look at your
6 declaration testimony, was your testimony correct
7 when you stated before that you had never construed
8 claims of the two Think Products patents?

9 A. No, it wasn't correct. I mean --

10 Q. Well, why did you testify that you hadn't
11 construed the terms before?

12 A. I haven't referred to what I did as
13 construe. I used construction over and over. I
14 mean, there is a section here where I say
15 "construe," but for the most part, I refer to my
16 interpretation as a construction. So when I heard
17 construe, my concern was that it was, not a trap,
18 but like it was wordsmithing to get me to say
19 something that I --

20 Q. Were you confused by the term "construe"?

21 A. Yes.

22 MR. SCHINDLER: Objection to a leading
23 question.

24 Q. Let me ask you a question another way:
25 Did you interpret various terms from the Think

1 Products patents in connection with preparing your
2 declaration?

3 A. Yes.

4 Q. And are your interpretations of the terms
5 listed under the column with the heading
6 "Construction" in paragraph 32?

7 A. They are, yes.

8 Q. And do the other paragraphs discuss your
9 reasons for the construction?

10 A. 33 to 43?

11 Q. Right.

12 A. Yes.

13 Q. Of the patent claims that you reviewed,
14 did you construe or interpret every single word of
15 those claims?

16 A. No.

17 Q. Why did you not construe or interpret some
18 of the words of the claims?

19 A. Some of it didn't seem necessary. From
20 the description or viewing it as a POSA, it just
21 didn't seem necessary to identify everything.

22 Q. In connection with preparing your
23 supplemental declaration, did you review
24 Mr. Mahaffey's declaration?

25 A. His -- yes, I reviewed his declaration.

1 Q. Okay. You haven't looked at that exhibit
2 today, right?

3 A. No.

4 Q. Counsel didn't provide a copy of that to
5 you today?

6 A. No.

7 Q. Do you recall, without looking at it, if
8 Mr. Mahaffey had discussion of claim construction
9 or interpretation in his declaration?

10 A. Can you repeat that?

11 Q. Do you recall, without looking at
12 Mr. Mahaffey's declaration, if the declaration
13 included some discussion of claim construction or
14 interpretation?

15 A. I believe so, yes.

16 Q. And did you agree with Mr. Mahaffey's
17 construction of the terms that he discussed in his
18 declaration?

19 MR. VODOPIA: Objection, vague and
20 unclear. You got to identify the terms.

21 Q. Go ahead and answer if you can.

22 A. Um, I would say no, I didn't agree with
23 the claims '758 and '144.

24 Q. My question was, did you agree with
25 Mr. Mahaffey's interpretation of the terms of the

1 claims?

2 A. Okay. No.

3 Q. Okay. Thank you.

4 And I'd like to direct your attention to
5 the supplemental declaration, that's Exhibit 1024
6 in both IPRs.

7 A. Uh-huh, yeah.

8 Q. And you recognize this -- do you recognize
9 this document?

10 A. I do.

11 Q. You testified about this earlier today,
12 right?

13 A. Uh-huh, yes.

14 Q. And I'd like you to -- I'd like to direct
15 your attention to paragraph 10 in that declaration.

16 A. Okay.

17 Q. Can you just read that one paragraph into
18 the record?

19 A. "I reviewed Mr. Mahaffey's discussion of
20 the construction of captive security rod and I
21 disagree with Mr. Mahaffey's opinion on this
22 issue."

23 Do I have to read the paragraph?

24 Q. No. No, that's fine, just the one
25 paragraph.

1 And is that still your testimony today,
2 that you disagree with Mr. Mahaffey's opinions on
3 the issue as discussed in paragraph 10?

4 A. Yes.

5 Q. Okay. Now I'd like to move ahead a few
6 paragraphs to paragraph 15 of your supplemental
7 declaration.

8 Do you recall looking at that earlier
9 today?

10 A. Yeah.

11 Q. Okay. And can you just read that into the
12 record, too. I want to make sure the record is
13 clear. I want to ask you a question about that,
14 paragraph 15.

15 A. "For example, Mr. Mahaffey ignores the
16 claim language stating that the captive security
17 rod has two ends, a locking end and an anchoring
18 end, that the anchoring end anchors the captive
19 security rod to the housing, and that the captive
20 security rod is captive in the housing, partially
21 in the housing and partially out of the housing,
22 before and during locking use. Mr. Mahaffey's
23 proposed constructions are inconsistent with the
24 claim language."

25 Q. Now, in particular, I have a question

1 about item 3 that states that "the captive security
2 rod is captive in the housing, partially in the
3 housing and partially out of the housing, before
4 and during locking use."

5 Do you recall counsel asking you questions
6 about that today?

7 A. Yes.

8 Q. And do you recall looking in various
9 claims of the two Think Products patents to see if
10 that language was in there?

11 A. Yes.

12 Q. Is that exact language in all the claims?

13 A. No. But that's what I was looking for.

14 Q. Well, would you agree that even the claims
15 that don't have the exact same language still
16 require the captive security rod to be captive in
17 the housing --

18 MR. SCHINDLER: Objection, leading
19 question.

20 Q. -- partially in the housing and partially
21 out of the housing, before and during locking use?

22 A. If it doesn't have to be word for word,
23 then yes, I could identify where in the claims this
24 is coming from.

25 Q. Well, let me ask you to look at a couple

1 of the claims so you can explain what you're
2 testifying about. Let's start with the '144
3 patent, that's Exhibit 1003, it's also been
4 relabeled 2006. Okay. Why don't you take a look
5 at claim 1 of the '144 patent.

6 And can you identify if claim 1 has
7 language that requires the captive security rod to
8 be captive in the housing, partially in the housing
9 and partially out of the housing, before and during
10 locking use?

11 A. Column 19, line 23 said, "Captive security
12 rod being captive partially in said at least one
13 housing after installation and partially out of
14 said at least one housing during and before locking
15 use after installation."

16 Q. Let's go to the next independent claim.
17 How about claim 14. Do you find similar language
18 in claim 14?

19 A. So it's like a combination, claim 14, line
20 roughly 17 or 18. "Captive security rod or spike
21 having a locking end and an anchor end, said
22 anchoring end of said captive security rod or spike
23 configured for installing to the at least one
24 housing by anchoring to the portable electronic
25 device through at least one housing."

1 And then skipping down to line 36, "Said
2 captive security rod or spike wherein said
3 installed captive security rod or spike is
4 positioned in a recess in the at least one housing
5 during non-use and said small knob protrudes from
6 the at least one housing during non-use."

7 Q. Okay. How about the next independent
8 claim, that's claim 20. Do you recall testifying
9 about claim 20?

10 A. Yeah.

11 Q. Now, do you find any similar language in
12 claim 20 that we just discussed?

13 A. It's column 21, line 6, "Securely
14 installing the anchoring end of the security rod or
15 spike to the portable electronic device in the
16 housing, attaching another end of the cable to the
17 substantially immovable object."

18 Q. Okay. Thank you.

19 Now I have questions -- kind of the same
20 question about the independent claims of the '758
21 patent, that's Exhibit 1001 in both IPRs. It's
22 been relabeled 2005.

23 Do you have that?

24 A. I do.

25 Q. First let's start with claim 1, the first

1 independent claim. Is there some language in claim
2 1 of the '758 that requires the captive security
3 rod to be captive in the housing, partially in the
4 housing and partially out of the housing, before
5 and during locking use?

6 A. Line 25, column 19, "Said captive security
7 rod partially in said at least one housing and
8 partially out of said at least one housing during
9 and before locking use."

10 Q. Okay. How about claim 16, do you see any
11 language in claim 16 that also requires the captive
12 security rod to be captive in the housing partially
13 in the housing and partially out of the housing
14 before and during locking use?

15 A. Line 37, column 20, "By a protruding end,
16 said captive security rod being captive partially
17 in said at least one housing and partially out of
18 said at least one housing during and before locking
19 use."

20 Q. Okay. Thank you.

21 Now, if you could turn back to your
22 supplemental declaration, Exhibit 1024, I have a
23 question about that.

24 A. Okay.

25 Q. And in particular, I wanted to direct your

1 attention to paragraph 21.

2 Do you recall testifying about paragraph
3 21 earlier today?

4 A. I do.

5 Q. Just to make sure the record is clear, I'd
6 ask you if you could read the text, just the first
7 five lines at the beginning of paragraph 21. Don't
8 read the long quote after that but if you could
9 just read those first five lines.

10 A. "As argued by the patent owner in the file
11 history, Murray fails to disclose a captive
12 security rod which the patent owner acknowledged
13 must be stored in the housing during non-use and
14 between deployments and must include a locking end
15 such as or such that the locking end of the captive
16 security rod is received into the locking
17 mechanism."

18 Q. Okay. You recall testifying about that
19 before today?

20 A. I do.

21 Q. And following that there's a long quote
22 from the file history; is that correct?

23 A. Yes.

24 Q. And I just want to make sure, the copy you
25 have you've inserted the underlining in place of

1 the highlighting that was in the original document;
2 is that correct?

3 A. I have.

4 Q. It looks like you inserted some
5 underlining in that copy of the document, right?

6 A. Right. So I underlined what we read off
7 as what was previously highlighted.

8 Q. Okay. I wanted to make sure you had the
9 correct copy of that in front of you because there
10 are two supplemental declarations, I didn't know if
11 you had underlined both of them. But you
12 understand that that underlined text was actually
13 highlighted in the original copy that was filed,
14 right?

15 A. Yes.

16 Q. Do you recall counsel asked you today what
17 was the basis for your statement in paragraph 21
18 that the patent owner acknowledged the captive
19 security rod must be stored in the housing during
20 non-use and between deployments?

21 MR. VODOPIA: Objection, that's not what
22 was asked.

23 MR. WEINER: Let me restate that.

24 Q. Do you recall counsel asking you about
25 what support there was for your statement in

1 paragraph 21 that "as argued by the patent owner in
2 the file history, Murray fails to disclose a
3 captive security rod which the patent owner
4 acknowledged must be stored in the housing during
5 non-use and between deployments"?

6 A. Off the top of my head, I don't remember
7 the specific question, but that sounds about right.

8 MR. SCHINDLER: Objection, speculation.

9 Q. Do you recall generally being asked about
10 that language?

11 A. Yes.

12 Q. And during the break, did you have a
13 chance to look at this language in paragraph 21
14 again?

15 A. Yes.

16 Q. And after considering that language during
17 the break, can you explain your basis for that
18 statement that the patent owner -- in the file
19 history the patent owner stated that Murray fails
20 to disclose a captive security rod which the patent
21 owner acknowledged must be stored in the housing
22 during non-use and between deployments?

23 A. So I'm -- I guess I'm not certain what the
24 question is because that sounded like an answer.

25 MR. WEINER: Well, let me restate that.

1 Q. I'm re-asking the question that I believe
2 was asked by counsel for the patent owner before.

3 My question is, what support do you have
4 for your statement that "as argued by the patent
5 owner in the file history, Murray fails to disclose
6 a captive security rod which the patent owner
7 acknowledged must be stored in the housing during
8 non-use and between deployments"?

9 A. So that's here in the file history.

10 MR. SCHINDLER: Where is it, where in the
11 file history?

12 THE WITNESS: See, that's the thing.
13 It's --

14 MR. WEINER: Counsel, you'll have a chance
15 to do your recross. Don't interrupt the witness.

16 A. So this is where the confusion was. My
17 assumption was you wanted me to produce it but it
18 was already something I have.

19 Q. You thought I wanted you to produce
20 something, or are you saying you were confused
21 before?

22 MR. VODOPIA: At the break.

23 THE WITNESS: No, earlier, when I was
24 asked about where did I get this from, I didn't
25 realize I could reference my own document. I

1 thought you wanted to see --

2 Q. Please look at me, answer me.

3 A. So to answer your question, page 9 at the
4 bottom, so it says, "In contrast, as an applicant's
5 amended independent claims 1 and 22, the locking
6 rod is partially stored in the computer housing
7 during non-use, wherein the captive security rod
8 being captive partially in said at least one
9 housing and partially out of said at least one
10 housing during and before locking use and wherein
11 the locking end of the captive security rod is
12 received into the locking mechanism."

13 Q. Okay. Thank you.

14 I'd like to direct your attention to the
15 '144 patent, that's Exhibit 1003, and it's also
16 been remarked Exhibit 2006, okay?

17 Do you have that in front of you?

18 A. Yes.

19 Q. All right. In particular, I wanted to ask
20 you about Figure 30. That's on page 28 of 56 of
21 the document.

22 A. Okay.

23 Q. And do you recall testifying about
24 Figure 30 earlier today?

25 A. Yes.

1 Q. Is your understanding that Figure 30 in
2 the '144 patent is identical to Figure 30 in the
3 '758 patent?

4 A. Yes.

5 Q. So my question is, I asked you originally
6 about the '144 but you understand that it also
7 applies to the '758 as far as what's in Figure 30.

8 A. Uh-huh.

9 Q. Okay. Do you recall testifying earlier
10 today about what's been marked reference number 291
11 in Figure 30?

12 A. Yes.

13 Q. In your opinion, is reference number 291
14 in Figure 30 a captive security rod as recited in
15 the claims?

16 A. Not as recited in the claims, no.

17 Q. And why isn't 291 a captive security rod?

18 A. It doesn't meet all of the features or the
19 assets as identified in the claim language, so
20 while it is anchored in the housing, it doesn't
21 directly interact with the lock. So there isn't a
22 lock engagement end.

23 Q. Does it have a locking end?

24 A. No.

25 MR. WEINER: No further questions.

1 MR. VODOPIA: We'll just take two or
2 three minutes.

3 (Proceedings interrupted at 4:29 p.m. and
4 reconvened at 4:32 p.m.)

5 EXAMINATION

6 BY MR. VODOPIA:

7 Q. Ryan, on redirect I believe you testified
8 that it was unnecessary to construe certain terms
9 of the claims?

10 A. Yes.

11 Q. Did you decide it was unnecessary to
12 construe claim 14 of the '758 patent?

13 MR. WEINER: Objection, vague.

14 A. That I didn't construe claim 14 from '758?

15 Q. Yes.

16 A. I just want to double check. So I believe
17 I did construe it here, page 16.

18 Q. You know, I made a mistake.

19 I meant to say, did you find it
20 unnecessary to construe claim 16 of the '758 patent
21 in your declaration?

22 A. Can you -- so I believe page 18, paragraph
23 37, I state that "under the broadest reasonable
24 interpretation standard, this term may be
25 interpreted as a POSA would understand it, that it

1 was probably intended to read as" and then I kind
2 of list out...

3 MR. WEINER: I'm sorry. What paragraph
4 are you on?

5 THE WITNESS: I don't know if that answers
6 the question.

7 Q. Paragraph 37 at page 18.

8 A. Yeah. I don't know if that answers --

9 Q. No, I guess not.

10 A. Can you repeat the question again?

11 Q. Did you decide it was unnecessary to
12 construe claim 16 of the '758 patent?

13 A. So I didn't expand on 16 or to construe it
14 because the remaining terms -- this paragraph 43,
15 "The remaining terms of the claim shall be
16 construed according to their ordinary meaning to
17 POSA and do not require any further discussion."
18 So looking through 16 --

19 Q. Do you refer to claim 16 of the '758
20 patent in that paragraph?

21 A. No, not specifically.

22 Q. So would you say no to my question?

23 A. I don't know. Because it reads on 1.

24 Q. Ryan, you testified that you felt it was
25 unnecessary to construe certain terms --

1 A. Right.

2 Q. -- and it appears that you didn't construe
3 claim 16 of the '758 patent. Did you make the
4 decision that it was unnecessary to construe claim
5 16 of the '758 patent? That was my question in the
6 context in which it was asked.

7 A. If it's not in the table, so no, I didn't
8 include it.

9 Q. Thank you.
10 Did you decide it was unnecessary to
11 construe claim 20 of the '144 patent?

12 A. I didn't include it in the table. To me,
13 it -- it seemed like it was playing off of 1. No,
14 I didn't include it.

15 Q. So you found it was unnecessary?

16 A. Not that it was unnecessary, but as if
17 it's already been addressed.

18 Q. Ryan, your testimony was that you found it
19 unnecessary to construe certain terms?

20 A. Yeah.

21 Q. You didn't construe claim 20 in its
22 entirety and I wondered if you made the decision
23 not to construe it, that you felt it was
24 unnecessary?

25 A. I'm not sure how to answer that.

1 Q. Well, maybe you don't know.

2 A. Um, yeah, I'm not sure. I don't know.

3 Q. Fair enough.

4 Just a couple more. You testified that
5 there was certain terms of Mr. Mahaffey's claim
6 construction that you disagreed with but you were
7 not available to identify those terms; is that
8 correct?

9 MR. WEINER: Objection, misstates the
10 witness' testimony.

11 A. I didn't make that statement.

12 Q. Did you say that there were certain terms
13 of Mr. Mahaffey's claim construction that you
14 disagreed with?

15 A. Yes.

16 Q. Did you identify those terms?

17 A. In my supplemental declaration.

18 Q. In your testimony?

19 MR. WEINER: Objection, vague.

20 A. I don't know what you're --

21 Q. Would you identify those terms.

22 A. In my supplemental?

23 Q. Yes, for the record, just to keep the
24 record clear?

25 A. So do I need to state that 2002 and 2001

1 are almost interchangeable in response to Rob's
2 declaration?

3 Q. I think it's probably pretty clear at this
4 point.

5 A. Okay. Okay. So page 4, section B, this
6 is my response to Mr. Mahaffey's claim
7 construction.

8 Do you want me to read through each one
9 starting with paragraph 10?

10 Q. I want to know just which terms you
11 disagree with. Let's start with that.

12 A. Okay. His use of captive security rod.

13 Q. Any others?

14 A. So I don't know if this is included,
15 McDaid?

16 Q. No. I meant the construction of captive
17 security rod. I believe that -- I believe the
18 testimony concerning that goes from paragraph 10 to
19 paragraph 22 just before the section 3 on McDaid.

20 A. So you asked if there was anything I
21 disagree with.

22 Q. No. Yes. I asked if there was any other
23 terms that you disagreed with, with respect to
24 Mr. Mahaffey's construction of that term?

25 A. Only of that term?

1 Q. No. I'm wondering if there's anything
2 other than captive security rod that you disagree
3 with.

4 A. I'm afraid I don't understand.

5 Q. So you said that you disagree with
6 Mr. Mahaffey's construction of captive security
7 rod.

8 A. Correct.

9 Q. Are there any other terms that you
10 disagree with?

11 A. And that's what I'm asking, from his
12 entire?

13 Q. Well, it looks like it goes from 10 to 22.
14 Anything in there that you disagree with besides
15 captive security rod?

16 A. No. At a high level, it's -- it's --
17 Are the figures included?

18 Q. You know, I really -- so what I'm getting
19 at is this is about -- these paragraphs 10 to 22
20 are about captive security rod. Anything else you
21 disagree with? Any other term construed by
22 Mr. Mahaffey that you disagree with other than
23 captive security rod?

24 MR. WEINER: Objection, outside the scope
25 of the redirect.

1 A. So the way he breaks it down, this rod
2 becomes captive, but I mean, that's captive
3 security rod. So how he got to captive security
4 rod, I don't know how specific you want me to be.

5 Q. I'm just wondering if there is any other
6 terms that gave you a problem construed by
7 Mr. Mahaffey.

8 A. Does not refer to any other claim language
9 other than the words captive security rod.

10 Q. You know, I'd agree with you.

11 A. Again, this is -- the captive security
12 rod, he describes it wrong several times in here,
13 so I disagree with all of that. But I don't know
14 if you want me to just --

15 Q. I just want to know if there's anything
16 else. I know we're having a little trouble driving
17 that home. It's been a long day. And so it
18 appears to me that the only -- in those paragraphs,
19 those 13 paragraphs, it appears that what you were
20 concerned about is construction of captive security
21 rod and no other construction by Mr. Mahaffey, no
22 construction of other claim terms by Mr. Mahaffey?

23 A. So I don't know if it's a claim or if it's
24 a description of the illustrations, so I don't -- I
25 don't know how to answer. There's several things

1 in here that I would consider beyond captive
2 security rod that I would argue with, but...

3 Q. And so you mean a Mahaffey construction,
4 there's some Mahaffey constructions in there that
5 you would argue with, terms, claim terms?

6 MR. WEINER: Objection, misstates the
7 witness' testimony.

8 A. I'm not sure how to answer it.

9 Q. Okay. Let's move on.

10 Was captive security rod one of the terms
11 you felt was unnecessary to construe?

12 MR. WEINER: Objection, vague as to time.

13 A. I didn't -- it's one of those terms that
14 probably didn't need to be explained. I think it's
15 covered in the claims, the claim language, and then
16 seeing again the board's response, they all seem to
17 be coming at it from the same angle.

18 Q. And yet you went on for 13 paragraphs and
19 eight pages --

20 A. Uh-huh.

21 Q. -- with reference to Mr. Mahaffey's
22 discussion of the claim construction. And you
23 still feel it's unnecessary to construe that term?

24 MR. WEINER: Objection, vague, misstates
25 the witness' testimony.

1 A. No.

2 Q. I want to direct your attention to claim
3 20 of the '744 patent.

4 A. '144?

5 Q. Sorry. The '144 patent. I think I did
6 that before as well. That's all I need to do is
7 inject the unknowns in this contest.

8 I just want you to -- in your redirect you
9 were talking about -- you referred to claim 20, and
10 I wanted to know if the phrase "before and during
11 locking use," which is in claims 1 and 14, I
12 believe, the first two independent claims of the
13 '144 patent which has three independent claims, the
14 last one being claim 20, I was wondering if "before
15 and during locking use" is included in claim 20?

16 MR. WEINER: Objection, vague.

17 A. So the way it's broken --

18 Q. Well, let's just start with is it in
19 there, that particular phrase in quotes, before and
20 during locking use --

21 A. Word for word?

22 Q. Exactly, yes, word for word.

23 A. No, it's not.

24 Q. Okay. Do you think it's a significant
25 claim limitation?

1 MR. WEINER: Objection, vague, calls for
2 speculation.

3 A. I'm not -- I'm not sure, so I don't know
4 how to answer that.

5 Q. Do you think that it's a significant
6 limitation in claim 1? Do you think that it's
7 important to the construction of claim 1? I just
8 want to give you the background. You testified
9 that it's in claim 1 and in the second independent
10 claim, I don't know if it's --

11 MR. SCHINDLER: 14.

12 Q. -- 14. And I was wondering, again, I'll
13 repeat my question, is it important to those
14 claims, that limitation?

15 MR. WEINER: Objection, vague, calls for
16 speculation.

17 A. Again, I'm not -- I'm not sure how to
18 answer that.

19 Q. Did you find it unnecessary to construe
20 that phrase?

21 A. I didn't include it, so I must have -- I'm
22 not sure how to answer that.

23 Q. Do you find it vague and indefinite when I
24 refer to that phrase?

25 A. Little bit.

1 Q. Did you refer to it in claims 1 and claims
2 14? In your redirect, did you specifically use
3 that language?

4 A. That phrase?

5 Q. Yes.

6 A. You're saying just now did I use --

7 Q. Exactly. In the redirect by Mr. Weiner.

8 A. And your question is again? I'm sorry.

9 Q. Did you find it unnecessary to construe
10 that phrase?

11 MR. WEINER: Objection, vague, misstates
12 the witness' testimony.

13 MR. VODOPIA: Let me restate the question.

14 Q. Do you feel that that limitation is
15 important to any of the claims at a issue in this
16 IPR?

17 MR. WEINER: Objection, vague, calls for
18 speculation.

19 A. I mean, I know -- I don't have the legal
20 insight to say to what degree, so I'm not
21 comfortable answering that.

22 Q. So you don't know? Am I correct in
23 assuming that you don't know if it's significant to
24 the claims?

25 MR. WEINER: Objection, vague.

1 A. Yeah, I'm not sure.

2 Q. Can I assume that's a yes, you don't
3 understand -- you don't know if it's significant to
4 the claims?

5 A. I don't feel comfortable answering because
6 I don't have -- well -- yeah, I'm not sure.

7 Q. That's fine and that's my last question.

8 A. Okay.

9 MR. SCHINDLER: I have a couple of
10 questions.

11 MR. WEINER: Objection, there should be
12 only one counsel taking the deposition.
13 Mr. Vodopia can continue with further questions.

14 BY MR. VODOPIA:

15 Q. Ryan, in your redirect you testified that
16 claim 16 reads off claim 1 with respect to --

17 A. Claim 16 of --

18 Q. The '758 patent. You used the phrase --

19 MR. WEINER: Objection, misstates the
20 witness' testimony.

21 Q. You used the phrase in your testimony. I
22 was wondering if you could tell me what "reads off"
23 means?

24 A. I would say the copy, line 27 --

25 MR. WEINER: Which column are you

1 referring to?

2 A. So where I see -- where there is some
3 level of overlap is claim 1, column 19, "Said
4 captive security rod partially in said at least one
5 housing and partially out of said at least one
6 housing during and before locking use."

7 And "said captive security rod being
8 captive partially in said at least one housing at
9 partially out of said at least one housing during
10 and before locking use."

11 I don't know if that answers your
12 question. So to me that would be --

13 Q. No, that's fine.

14 But does claim 16 depend from claim 1?

15 A. No, it does not.

16 Q. Does claim 20 of the '144 patent depend
17 from claim 1 of the '144 patent?

18 A. No, it does not.

19 Q. Do you know the difference between
20 dependent and independent claims?

21 A. I do.

22 Q. Can you tell me?

23 A. Or I believe I do.

24 Q. Okay.

25 A. So let me look at the claims where one

1 doesn't call back on any other claim, it's
2 independent, but whereas, claim number 2 calls back
3 on 1, it's dependent on one.

4 Q. And does an independent claim read back on
5 any other claim?

6 MR. WEINER: Objection, vague.

7 A. That's a terminology thing. So if -- no.

8 Q. Fair enough. Fair enough.

9 MR. VODOPIA: And there's nothing else.
10 Thank you.

11 MR. WEINER: No further questions from me.

12 (Whereupon, this deposition was concluded
13 at 4:59 p.m.)
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CERTIFICATE OF WITNESS

Assignment No. CH-082660

Case Caption: ACCO Brands v. Think Products

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that
I have read the entire transcript of my deposition
taken in the captioned matter or the same has been
read to me, and the same is true and accurate, save
and except for changes and/or corrections, if any.

Signed on the ____ day of _____,
2016.

RYAN WHITE

1 CERTIFICATE OF REPORTER

2 Commonwealth of Massachusetts

3 Suffolk, ss.

4
5 I, Dana Welch, Registered Professional
6 Reporter, Certified Realtime Reporter and Notary
7 Public in and for the Commonwealth of
8 Massachusetts, do hereby certify that RYAN WHITE,
9 the witness whose deposition is hereinbefore set
10 forth, was duly sworn by me and that such
11 deposition is a true record of the testimony given
12 by the witness.

13 I further certify that I am neither related
14 to nor employed by any of the parties in or counsel
15 to this action, nor am I financially interested in
16 the outcome of this action.

17 In witness whereof, I have hereunto set my
18 hand and seal this 3rd day of May, 2016.

19
20 _____
Dana Welch

21 Notary Public

My commission expires:

22 October 6, 2017
23
24
25

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