



Deposition of:
Arrigo D. Jezzi

May 7, 2021

In the Matter of:
**Attends Healthcare Products, Inc.
v Paul HARTMANN AG**

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

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ATTENDS HEALTHCARE :
PRODUCTS, INC., :
Petitioner, : Patent 8,152,788
Patent 8,784,398
v. : Patent 8,771,249
Patent 8,708,990
PAUL HARTMANN AG, :
Patent Owner. :

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Friday, May 7, 2021
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REMOTE ZOOM deposition of ARRIGO D. JEZZI,
beginning at 10:03 a.m., before Christina S.
Hotsko, RPR, CRR, when were present on behalf of
the respective parties:

A P P E A R A N C E S (Via Zoom)

On behalf of Petitioner:

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Also Present:

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C O N T E N T S

EXAMINATION BY: PAGE

Counsel for Patent Owner 04

Counsel for Petitioner 196

FURTHER EXAMINATION BY: PAGE

Counsel for Patent Owner 199

JEZZI DEPOSITION EXHIBITS: * PAGE

Exhibit 1001 '788 Patent, Beckert et al. 04

Exhibit 1002 U.S. Patent Application 04
2005/0256496, Benning et al.Exhibit 1003 U.S. Patent Application 04
2006/0058772, KaramiExhibit 1004 U.S. Patent Application 04
2003/0220626, Karami

Exhibit 1012 Jezzi Declaration 04

Exhibit 1028 U.S. Patent Application 04
2005/0261650, Damaghi et al.Exhibit 1034 ASTM Standard Test Method 04
for Shear Strength (Dynamic
Method) of Hook and Loop
Touch FastenersExhibit 2001 Jezzi Deposition Transcript, 04
15 Aug 2013

* (Exhibits attached to transcript.)

P R O C E E D I N G S

(Jezzi Deposition Exhibits 1012, 1002,
1003, 1028, 1004, 1034, 2001, 1001
premarked for identification and attached
to the transcript.)

Whereupon,

ARRIGO D. JEZZI,
being first duly sworn or affirmed to testify to
the truth, the whole truth, and nothing but the
truth, was examined and testified as follows:

MS. DALEY: Kathleen Daley from Finnegan
Henderson. With me is Courtney Bolin from
Finnegan Henderson, and we represent patent owner
Paul Hartmann.

MR. ALBRIGHT: And this is Jeremy
Albright from Norton Rose Fulbright, and we
represent the petitioner.

THE WITNESS: I'm Rick Jezzi. I'm the
expert witness.

EXAMINATION BY COUNSEL FOR PATENT OWNER
BY MS. DALEY:

Q. Thank you, Mr. Jezzi. Thank you for

1 joining us today, Mr. Jezzi. Can you state your
2 name for the record.

3 A. My name is Arrigo D. Jezzi.

4 Q. And where are you located?

5 A. Bala Cynwyd, Pennsylvania.

6 Q. Is there anyone else in the room with
7 you?

8 A. No.

9 Q. Do you have any materials with you?

10 A. Yes, I do.

11 Q. And what are those?

12 A. Basically, they are the volumes that were
13 sent to me by Norton Rose of the declaration that
14 I wrote with all of the exhibits and they're --
15 two here. They're unmarked. They are tabbed with
16 an index.

17 Q. Thank you.

18 And we also do have exhibits set up in an
19 exhibit share folder remotely. So if there's
20 something you need from --

21 A. Okay. On that note, I -- how is that
22 going to be shown?

1 Q. It would be something you can pull up.
2 If you've got the paper copies, that's fine.
3 That's --

4 A. Okay. Good.

5 Q. Do you have any written notes on the
6 materials that you have in front of you?

7 A. No -- no, I don't. Let me just close the
8 notebook here. But I do not.

9 Q. And you understand I'm going to be asking
10 you a series of questions?

11 A. Yes.

12 Q. And the answers you'll be giving will be
13 under oath as you've taken an oath?

14 A. Yes.

15 Q. And if at any time you don't understand a
16 question, please let me know. I'll do my best to
17 clarify it.

18 Also, let me ask, can you hear me all
19 right with the remote setting?

20 A. I can you fine, yes.

21 Q. Okay. Thank you. I just want to -- and
22 if you can't --

1 A. By the way, just for the record, I'm hard
2 of hearing, I have hearing aids. And
3 occasionally, I will ask you to repeat the
4 question because I have not been able to pick up
5 the words that you said.

6 Q. And that's fair. And please do that.
7 And particularly a little more difficult in the
8 remote setting. And sometimes people's feeds
9 buffer a little bit. So if you don't understand
10 or you don't know the complete question I ask,
11 please ask me again.

12 If you answer the question, I'm going to
13 assume you understood the question. Is that all
14 right?

15 A. Yes.

16 Q. Please give audible answers so the court
17 reporter can record it. Nods and gestures, she's
18 unable to record. Is that all right?

19 A. Yes.

20 Q. And we'll also -- it's important we try
21 not to talk over each other. So let me complete
22 the question before you start answering, and I'll

1 let you complete your answer before my next
2 question, if that's fair.

3 A. That's fine.

4 Q. And through the course of the deposition,
5 counsel for Attends may object. You understand,
6 though, that unless he instructs you not to
7 answer, you do have to answer the question.

8 A. Can you clarify that? If he says, don't
9 answer the question, I still have to answer it?

10 Q. No. Unless he tells you not to answer --

11 A. Oh, okay.

12 Q. -- the question, you still have to answer
13 it.

14 A. Very good.

15 Q. Okay. We'll also take breaks during the
16 deposition. If you feel you need one, let me
17 know. I just ask that you answer the question
18 that's pending, and then we can take a break, if
19 that's fair.

20 A. Okay.

21 Q. Is there any reason you can't provide
22 full and truthful testimony today?

1 A. No.

2 Q. And you're represented by counsel today,
3 correct?

4 A. Correct.

5 Q. How many times have you -- have you been
6 deposed before?

7 A. Yes.

8 Q. How many times?

9 A. About four or five, in that range. I
10 don't remember exactly. It's been a while.

11 Q. Were they --

12 A. It's --

13 Q. Sorry, I -- were they patent matters?

14 A. The first one was not. It was a
15 bankruptcy hearing on my old employer. The other
16 ones that ensued were, let's say, intellectual
17 property matters, patent or trademark.

18 Q. And do you recall what those matters
19 were?

20 A. There was one that I'm sure you'll --
21 you're aware of, is the Medline deposition on this
22 particular patent. It was an IPR.

1 I've done a couple of litigation-type
2 depositions on trademark patent issues. One was
3 an embossing -- not an embossing -- a bonding
4 pattern [sic] on a white representing private
5 label trade companies like -- I'm not going to use
6 Walmart, but -- not the Walmart, but those type of
7 retailers.

8 The other one was a patent and a
9 trademark litigation case against McAir Lathes on
10 an incontinent pad that was embossed.

11 There was another trademark violation on
12 an advertising claim that was used on
13 superabsorbents on an incontinent product again.
14 And that's about it.

15 Q. So you have mentioned the term IPR. So
16 you're familiar with what an IPR is?

17 A. Inter partes review. Yes.

18 Q. And you mentioned a prior proceeding with
19 Medline.

20 Apart from that IPR and the ones that
21 were -- what you're here on to talk about, have
22 you worked on any other inter partes review

1 proceeding?

2 A. Yes, I have. Currently I've been working
3 on one where I submitted a declaration. It was
4 for an incontinent medical device, as opposed to a
5 non-medical device. That was done earlier this
6 year.

7 I've participated as an expert witness on
8 IPR-related matters, but -- but it was just for
9 technical counsel to the law firm. I was never --
10 I never wrote declarations or were deposed for
11 those particular ones. And I've done a couple of
12 those.

13 Q. And for this one that you submitted
14 earlier this year, who did you submit that on
15 behalf of?

16 A. The company is called PureWick, and it's
17 a small company. They've been acquired a couple
18 of times since that. They were a part of CR Bard
19 and currently they're a part of Becton Dickinson.

20 Q. And you understand that you're being
21 deposed here today based on a declaration you
22 submitted for four IPR proceedings that Attends

1 filed?

2 A. Correct.

3 Q. Okay. And you know that they -- I'm just
4 going to read the IPR proceeding so that it's in
5 the record, what this is related to. And so you
6 understand it's IPR2020-01477 involving U.S.
7 patent 8,152,788?

8 A. Correct.

9 Q. IPR2020-01478 involving U.S. patent
10 number 8,784,398?

11 A. '398.

12 Q. '398.

13 A. Yes.

14 Q. Okay. IPR2020-01479 involving U.S.
15 patent number 8,771,249?

16 A. Correct.

17 Q. And IPR2020-01480 involving U.S. patent
18 number 8,708,990?

19 A. That's correct.

20 Q. And are you aware that your declaration
21 was submitted as Exhibit 1012 in these
22 proceedings?

1 A. Yes.

2 Q. And you signed that declaration, correct?

3 A. Correct.

4 Q. When were you first contacted about this
5 matter?

6 A. When?

7 MR. ALBRIGHT: I'd like to object to that
8 question to the extent it calls for privileged
9 communications or work product.

10 So Mr. Jezzi, do not reveal the substance
11 of any of our communications.

12 THE WITNESS: Okay. I was contacted
13 sometime last year. I don't recall the exact
14 month, but it was early in 2020, I believe.

15 BY MS. DALEY:

16 Q. And were you retained for this matter
17 around that same time?

18 A. Yes.

19 Q. Did you prepare the declaration that's
20 marked as Exhibit 1012?

21 A. Basically, what -- what I did was I
22 discussed the matter with Norton Rose in detail.

1 I believe I prepared a preliminary draft, ended
2 up, you know, having revisions. Some of the
3 sections of the declaration I wrote; some of the
4 sections of the declaration were prepared by
5 Norton Rose.

6 The documented evidence that we cited was
7 submitted by both parties as -- as we discussed
8 the issues. And in all cases, the declaration
9 represents the opinion -- my opinions in this
10 particular case.

11 Q. How much time did you spend preparing the
12 declaration?

13 A. I don't recall. I mean, it was over a
14 period of time. And so it was not a continuous
15 effort, but it was -- it was in sections. It went
16 on for a while. It went on for weeks for sure.

17 Q. Do you have a rough estimate of how much
18 time you spent?

19 A. I -- I don't recall exactly.

20 Q. What did you review in preparing the
21 declaration?

22 A. What did I review?

1 Q. Uh-huh.

2 A. Basically, I reviewed the documented
3 evidence that we cited in Medline as -- just to
4 find out. I have not read that declaration, but I
5 did review the citations that we had as far as
6 what they were. And then I basically did, you
7 know, searches on the topics that were relevant to
8 Beckert '788.

9 Q. You said you didn't review your prior
10 declaration for Medline; is that correct?

11 A. That is correct.

12 Q. And why not?

13 A. So that I could tell you that I didn't
14 review it with a straight face. I felt it was
15 really not relevant. I felt we could have a fresh
16 start and there's ample prior art out there, as
17 you probably saw, and we could still generate
18 further from what we, you know, recently
19 submitted.

20 Q. And did you -- could you turn to page 5
21 of your declaration, Exhibit 1012?

22 A. Okay.

1 Q. Do you see that there's a list of
2 documents considered?

3 A. Yes.

4 Q. And is that list all of the documents you
5 considered in preparing your declaration?

6 A. For the preparation of the declaration,
7 yes.

8 Q. So was there other material that you
9 considered prior to the preparation of the
10 declaration?

11 A. No.

12 Q. So all the materials that you had looked
13 at before you submitted the declaration is listed
14 on page 5 and 6 of your declaration.

15 A. Yes.

16 Q. Have you -- what have you done to prepare
17 for this deposition today?

18 A. Basically, I focused primarily on the
19 declaration that was submitted. And as a result
20 of, you know, reviewing it in detail, I also
21 reviewed in some detail the more relevant patents
22 that we have cited.

1 Q. And what were those more relevant ones?

2 A. Well, obviously Beckert '788, Karami
3 '772, Karami '626, Stupperich, Miyamoto, Jacobs,
4 Anderson, Fernfors. A lot of the supporting ones
5 like Sun or Young, Wallup, Cree.

6 I mean, I basically refreshed myself on
7 what we cited and, you know, some obviously I read
8 in depth and some I just basically skimmed to
9 refresh myself of what they were about.

10 Q. Did you review anything else that's not
11 listed in your items considered -- let me start
12 over.

13 Did you review anything else in
14 preparation for your deposition outside of what's
15 listed in your materials considered in your
16 declaration?

17 A. No, I did not. I basically reviewed the
18 materials that were listed here.

19 I did review -- outside of this, I did
20 just a cursory look at some websites on some of
21 the materials just to see if they were still
22 around.

1 Q. And what were those websites?

2 A. I looked at the Binder website,
3 Microbook, and I looked at the non-woven supplier
4 website. And the reason for that, there was
5 significant consolidation in the industry, so --
6 you know, they change names and things of that
7 sort.

8 (Discussion off the record.)

9 BY MS. DALEY:

10 Q. Mr. Jezzi, I think you said you went to
11 and looked at some non-woven supplier websites.
12 Why was that again?

13 A. There's been significant consolidation in
14 the industry, so some of the names that are cited
15 as suppliers basically have had acquisition. So I
16 just went through it; it just refreshed me on what
17 the latest status was.

18 Q. You mentioned -- remember we talked about
19 the prior proceeding, the -- well, let me say the
20 prior Medline proceeding, correct?

21 A. Yes.

22 Q. Will you understand what I'm talking

1 about if I say the prior Medline proceeding?

2 A. Yes.

3 Q. And just to confirm, that was -- let
4 me -- and your counsel can say if I'm wrong on
5 this, likely, but I'd just say the prior Medline
6 proceeding was IPR2013-00173, U.S. patent number
7 8,152,788.

8 Does that make sense to you?

9 A. It sounds -- I don't know. I mean, I
10 don't recall the actual numbers.

11 Q. That's --

12 A. I haven't looked at it, so I would refer
13 to Jeremy to verify that.

14 Q. That's fair. I just wanted it on the
15 record, and we'll -- if it's not the right
16 recitation, we'll have that fixed. But I believe
17 it's the right recitation.

18 And you'll understand, then, that
19 proceeding was -- involved what was called the
20 '788 patent in that proceeding?

21 A. Yes.

22 Q. And that's involved in this proceeding as

1 well?

2 A. Yes.

3 Q. So if I refer to the '788 patent, you'll
4 understand what I mean?

5 A. Yes.

6 Q. Okay. And I believe we talked about --
7 you said you had been deposed in that proceeding,
8 correct?

9 A. Yes.

10 Q. And did you -- before preparing your
11 declaration, did you review your prior deposition
12 testimony?

13 A. As I said before, no, I did not.

14 Q. Before your deposition today, did you
15 review your prior deposition testimony?

16 A. No, I did not. And the prior deposition
17 is the Medline deposition.

18 Q. Correct.

19 A. Okay. No, I did not.

20 Q. Thank you. That makes the record clear,
21 so...

22 So attached to -- at the end of your

1 declaration is your CV. It's on pages 151 to 153;
2 is that correct?

3 A. I have to check. What tab? What index?

4 Q. It's your declaration. Exhibit 1012.

5 A. Oh, okay. Yes. I have it.

6 Q. So in your CV, you mention having worked
7 at First Quality; is that correct?

8 A. No, that is not correct. The -- Paragon
9 Trade Brands was not First Quality. This is why
10 it's important -- there's significant
11 consolidation.

12 Paragon Trade Brands became Tyco -- well,
13 before that, they were purchased by a venture
14 capital firm, which sold it to Tyco, and Tyco sold
15 it to First Quality somewhere in the 2000 time
16 frame.

17 Q. Thank you. So you worked for -- when you
18 worked there, it was Paragon Trade Brands,
19 correct?

20 A. Yes.

21 Q. Okay. And did you -- when you were
22 there, did you participate in designing and

1 creating -- designing adult incontinence diapers?

2 A. Yes. Not only in that particular
3 assignment, but previous assignments I was also in
4 charge of groups that had responsibility in the
5 incontinent area.

6 Q. Did you have also have a responsibility
7 for the baby diaper area?

8 A. Also baby diaper.

9 Q. And are baby diapers and incontinence
10 diapers viewed as separate groups or products?

11 A. They're different consumer groups. From
12 a technology, they're the same. If you reviewed
13 my declaration, in many citations they use baby
14 diapers and incontinence as similar products. And
15 that is the correct interpretation, by the way. I
16 mean...

17 Q. You note that you have led development
18 and commercialization of the new ultra-thin White
19 Cloud diaper --

20 A. Correct.

21 Q. -- at a minimum cost basis on page 2 of
22 your declaration; is that correct?

1 A. That is correct. I believe that's under
2 Paragon Trade Brands. Yes.

3 Q. What is the White Cloud product?

4 A. I do not think it's sold in the
5 marketplace anymore. So it was a short-lived
6 product launch. And what it was, it was a
7 customized diaper that Paragon Trade Brands made
8 exclusively for Walmart as their branded product.
9 So Walmart sold the White Cloud label as their own
10 brand, the store brand.

11 And White Cloud -- maybe do your
12 homework, want to check into it -- was a Procter &
13 Gamble brand name that was licensed by Paragon
14 through the years.

15 Q. And what made this White Cloud product,
16 quote, ultra-thin, unquote?

17 A. Basically -- a little diaper 101.
18 Diapers historically were made with comminuted
19 pulp, cellulose fibers as the absorbent core.
20 They evolved in the mid-'80s, in 1986 around, to
21 including superabsorbents, which was a sodium
22 polyacrylate polymer that's a super-slooper and

1 it, you know, holds 30 times its weight in water.

2 And the advent and the development of the
3 super-absorbent technology allowed for the
4 converters to decrease the amount of cellulose
5 fibers that were used in the absorbent core,
6 therefore making them thin.

7 Kimberly-Clark was the leader of this
8 technology when I was still employed by
9 Kimberly-Clark, and introduced the ultra-thin
10 diaper in the early '90s, probably 1991, '92. And
11 the ultra-thin term not only -- by the way, was
12 initiated in sanitary napkins, but evolved into
13 baby diapers, and the ultra-thin concept has been
14 used since.

15 Q. And what is the ultra-thin concept?

16 A. A diaper that's about, you know, maybe
17 half to one-third of the thickness of the
18 conventional historical early 1980 diapers.

19 Q. And for this White Cloud product, how
20 were you able to make it ultra-thin?

21 A. Basically that product -- we -- we did
22 two things to it. We added a higher level of

1 super-absorbent. And when you do that, you can
2 take out significant amounts of cellulose fibers.
3 So you decrease the bulk of the material, the
4 absorbent core, while still retaining the
5 absorbent capacity.

6 Furthermore, I think that diaper had a
7 little bit of densification in the processing so
8 that we compressed the absorbent core to -- to
9 make it thinner. And that would give you a lot of
10 advantages and cost savings in packaging and
11 freight, et cetera, and warehouse space, because
12 you could pack more diapers per unit area of
13 space.

14 Q. So a larger diaper has larger packaging,
15 which increase packaging costs; is that fair?

16 A. It depends on the product that you're
17 referring to, yes, a larger product would require
18 more packaging or more, you know --

19 Q. And would that, in turn, increase
20 shipping costs because you'd have to ship more, or
21 it would be heavier to ship?

22 A. Yeah. The number of products per truck

1 load would be decreased if you have less product
2 in a cord, for instance.

3 Q. So when you're referring to the
4 ultra-thin product, is that the ultra-thin --
5 referring to the absorbent core, and reducing the
6 absorbent core, is that what makes it ultra-thin?
7 Or what --

8 A. That is the primary way of reducing the
9 thickness of the product is the absorbent core.

10 Q. How do you define a diaper?

11 A. A diaper is a containment product that
12 is -- whether -- there are two types of diapers.
13 There are, you know, non-reusable, which we all
14 know as being the cloth-like diaper, and now the
15 reusable diapers are fashioned after a disposable,
16 you know, the same shape with the clips and a
17 variety of different embodiments of a cloth diaper
18 that's reusable.

19 And then the disposable diaper, which is
20 a containment product that is disposable, it's
21 designed basically for the containment of urine
22 and BM, bowel movement, material, feces, for

1 babies and as well as for adults.

2 Q. What type of diapers are there?

3 A. What types of diaper?

4 Q. Yeah.

5 A. I would say there are basically two
6 categories of diaper. One would be an open-face
7 diaper, which is the one that you probably see
8 under -- well, Huggies and Pampers being the
9 leading brands. But they're just -- you know,
10 they're the diaper that you see on the shelf
11 today, which is open-face with mechanical
12 fasteners.

13 And then you have a pull-on diaper, which
14 is the training pad, like Huggies Pull-Ups. Or I
15 think Pampers is Easy Ups. They're basically
16 pull-on and they're used for training after a baby
17 goes through the diaper phase. And the advantage
18 of that is that they go through potty training,
19 they can pull the diaper down, do their stuff, and
20 then pull the diaper back on.

21 Those are the primary types of baby
22 diapers that are out there.

1 Q. And what are the types of incontinence
2 diapers?

3 A. Incontinence is an evolution product of
4 the baby diaper technology. So basically you have
5 similar embodiments. And they varied -- they
6 evolved through the years.

7 The original -- and there are a couple of
8 markets that they go into predominantly, and they
9 split the market about 50/50, which is basically a
10 consumer product and an institutional product.
11 Institutional means nursing homes and hospital use
12 through caretakers, whereas the consumer product
13 is you and I or our parents or whoever is in need
14 of an incontinent product.

15 So they basically follow the same
16 embodiment that baby diapers pioneered, which is
17 an open-face diaper, similar to those that are in
18 the patents that we've cited. And then there's
19 also a pull-on diaper. The terminology -- the
20 correct terminology would be pull-on undergarment.
21 And that's basically similar to the training pad
22 concept, or the pull-on diaper, which is --

1 typically do not have adhesive tapes for closure.
2 It's a pre-closed product.

3 Q. You referenced in your declaration a
4 T-shaped diaper; is that correct?

5 A. Yes. That's basically another slight
6 modification to an open-face diaper.

7 Q. And what is -- how is that different than
8 the open-face diaper?

9 A. Open-face diapers also went through an
10 evolution. And we cited, through the patents that
11 we've discussed, hourglasses as one. And then the
12 hourglass geometry evolved to diapers that were
13 made, rather than monolithically, with components,
14 such as side parts.

15 And the design of -- or the introduction
16 of side parts allowed the diaper to be modified,
17 whether you would have two or four, or they would
18 be more T-shaped because you'd only have two and
19 you'd still have a rectangular absorbing core.

20 So it was just an evolution. The
21 predominant diapers in the field today are
22 basically modified hourglass. They do have side

1 parts, but they still have a leg contour. And so
2 they're more hybrids. But that's basically what
3 is out there.

4 There are not that many T-shaped diapers.
5 They're used in incontinence for some reasons. So
6 there could be some more T-shaped -- I mean,
7 basically semantics here as to what would you call
8 a T-shape. If you vary two of the wings, for
9 instance, and make them smaller, that would be a
10 T-shaped diaper as opposed to a conventional
11 diaper if the side parts are the same size. So
12 those are all variants of the same motif.

13 Q. You said that T-shaped is used for a
14 reason. What reason is a T-shaped traditionally
15 used for?

16 A. The evolution from hourglass to side
17 parts was the advantage that you would have in
18 reducing waist by eliminating the cutout portion
19 of a monolithic square to allow the leg fit.
20 Okay? This was an R-quate cut in the material.
21 That material would be wasted.

22 And so the concept came out to use a

1 rectangular absorbent core and add components to
2 this, such as side parts. And the first
3 introduction of that concept was the Huggies
4 Supreme diaper in 1994. And that was kind of a
5 hybrid because they still used some hourglass
6 shaping with the addition of the side parts.

7 Q. Why would a consumer use a T-shaped
8 diaper over a conventional diaper?

9 A. Why? There is -- availability. How is
10 that? The one who dictated that particular
11 evolution was the manufacturer, not necessarily
12 the consumer. However, the manufacturer made sure
13 that it had full consumer acceptance; otherwise,
14 they would not have made the change.

15 Q. How is a T-shaped diaper donned, or put
16 on?

17 A. How is it put on?

18 Q. Put on, yes.

19 A. Similarly -- well, on an adult?

20 Q. On an adult. Yes.

21 A. It would be similarly to how they would
22 put on an open-face diaper. And there are a

1 couple of ways that it's done in a hospital, if
2 you're prone, you know, with a caretaker, they use
3 a certain protocol. If you are a consumer, it
4 varies based on the consumer.

5 Q. Are you familiar with the T-shape that
6 forms a belt?

7 A. There are some of those embodiments
8 discussed in the patents that we've cited.

9 Q. And how is that type of T-shaped diaper
10 where the -- where it forms a belt, how are those
11 put on a wearer?

12 A. Similar to an open-face diaper.
13 Basically, you typically put it on so that the
14 product goes up into the crotch area, you bring
15 the wing over from the back to the front, and
16 overlap or put it on the face, depending on the
17 particular embodiment, and you put it on that way.

18 Q. How are -- for adult incontinence, how
19 are pull-up diapers put on a wearer?

20 A. Same way you put on underpants. One leg
21 at a time.

22 Q. Do the product requirements vary between

1 infant and adult diapers?

2 A. Repeat that question, please.

3 Q. Do the product requirements vary between
4 infant and adult diapers?

5 A. The product requirements are the same,
6 basically, not to have any leakage, whether it's
7 feces or urine. So that requirement is identical.
8 The difference -- the primary difference between
9 the two products is size.

10 Q. You mentioned preventing leakage. That's
11 an important design characteristic for an adult
12 diaper?

13 A. Preventing leakage?

14 Q. Yes.

15 A. Yes.

16 Q. What other -- what are other design
17 characteristics -- what other -- when you're
18 designing an adult incontinence diaper, what other
19 features are important?

20 A. You have to keep in mind that in the
21 development curve of products, adult incontinence
22 actually benefits from the two previous

1 categories, which is feminine hygiene, sanitary
2 napkins, and baby diapers.

3 Up to about this time -- and it's
4 changing because of the sizes of the markets
5 predominantly, with adult incontinence growing in
6 size, in market size -- both of those
7 technologies, whether it's feminine hygiene on the
8 bladder control side and baby diapers on the
9 open-face or pull-on side, set technically the
10 developments of adult incontinence. Okay?

11 So the requirements that would go in
12 would be very similar, and the incontinent
13 products benefited from the features that were
14 exhibited both in sanitary napkins as well as baby
15 diapers. The differences are, again, size and,
16 surprisingly -- this is how you would measure
17 it -- the absorbent capacity would be different in
18 the diaper-like pull-on-type products compared to
19 baby diapers.

20 Q. So when designing an incontinence diaper,
21 apart from preventing leaking, what other design
22 considerations are important?

1 A. The other criteria would be similar to
2 the baby diaper, which is you want comfort, you
3 want good fit, you want ability to adjust the
4 products as you put them on. You want odor
5 control -- and there are no products that do that
6 particular requirement justice yet. You want
7 breathability for comfort. So -- you want
8 aesthetics, certainly in the baby diapers, and
9 some of those aesthetic requirements have moved on
10 to incontinent products, such as cloth-like outer
11 covers.

12 Q. And of all those design considerations,
13 which is -- which are the most important?

14 A. Absorbent capacity and leakage prevention
15 is the primary criteria, followed by comfort-type
16 benefits, as well as, you know, flexibility and
17 adjustment and those type of issues. And
18 adjustment and fit follow comfort. I mean, that's
19 how you get the comfort is to have, you know,
20 good-fitting parts.

21 Q. And how do you achieve adjustment and fit
22 in an adult incontinence diaper?

1 A. Well, it varies. And I guess it -- if
2 you look at it today, the adult brief, which is
3 the open-face diaper that these patents cite, has
4 really disappeared from the consumer market. I
5 mean, market share is very low for the open-face
6 adult incontinent product for consumers. And the
7 reason for that is consumers are ambulatory. They
8 like normalcy. They like discreetness. And the
9 evolution of the pull-on undergarments have
10 overtaken significantly the open-face diaper.

11 And then there's the other categories --
12 adult incontinence is a predominantly female
13 issue. The bladder control pads also took a
14 significant share the adult market.

15 The institutional market follows
16 predominantly the open-face because of application
17 of that product in a prone position. And so those
18 diapers are out there. The adjustability is based
19 on the size of the product, as well as the side
20 part design, whether they use adhesive tapes or
21 whether they use mechanical fasteners, whether
22 they use the outer cover for adjustment or whether

1 they use loop material that are target zones.

2 So depending on the embodiment, there's a
3 variety of ways that these products are adjusted.

4 Q. So when you're designing an incontinence
5 diaper, you have to balance all of the factors
6 that you've mentioned going into designing a
7 diaper; is that fair?

8 A. You would take that into consider- --
9 yeah, you would take these factors into
10 consideration, depending on how you want to
11 position yourself.

12 Q. When you're designing an adult
13 incontinence diaper, is cost a consideration?

14 A. Cost is a consideration predominantly on
15 the institutional side. It's not become that big
16 a consideration anymore on the consumer side.

17 Q. And so does the cost of a diaper or cost
18 of making a diaper impact some of those design
19 considerations that we were talking about?

20 A. Yes. It depends on the amount of
21 material that you add, as well as the type of
22 material that you add. So material addition or

1 components addition do impact the cost of the
2 product.

3 Q. In your declaration you refer to
4 non-wovens, correct?

5 A. That is correct.

6 Q. What is a non-woven?

7 A. A non-woven is a fabric that is made
8 without weaving the fibers into form. It's
9 basically -- there are various non-woven
10 technologies that make fabrics or webs,
11 substrates, that are basically a compilation of
12 fibers, sometimes discrete fibers, like textile
13 fibers, that are randomly deposited uniformly, or
14 at least you attempt to make it uniformly
15 deposited, and then further consolidate it. And
16 there are all different techniques of depositing
17 the fibers onto a forming screen. And there are
18 various technologies used to consolidate these
19 fibers into a web.

20 And the basic technologies would be
21 carded, spunmelt, which includes spunbond, the
22 wet laid, which would be more like paper-making.

1 And sometimes argue that paper is a non-woven.
2 And then there would be spunlaid, which would be
3 water entangling of primarily textile fibers.

4 Q. What's a woven material?

5 A. Woven material is something that
6 basically takes a yarn or a filament and weaves it
7 into a fabric, either by knitting it, which is --
8 we hear knit fabrics, which is like T-shirts.
9 There are machines that basically take filaments
10 of these fibers or yarns, and they cross them one
11 above another and go back and forth and they
12 create a mesh of substrate that has structural
13 integrity just by the fact that they're woven into
14 some form of grid. And the grid takes various
15 designs depending on the looms that you use or the
16 type of technology that's used to weave
17 specifically.

18 Q. Are woven materials more uniform than
19 non-woven materials?

20 A. Typically, yes.

21 Q. Are woven materials used in diapers?

22 A. Absolutely. Woven -- correction. Woven

1 materials?

2 Q. Woven materials.

3 A. In reusables, yes. In disposables,
4 that's a -- at times, components of a baby diaper
5 had a knit material which was woven. That product
6 is no longer in use. And to the best of my
7 knowledge, none of the current products that are
8 out there, the branded -- you know, the
9 high-volume products that have 80 percent of the
10 market, use any woven in them. They're
11 disposable. And woven materials tend to be more
12 expensive.

13 Q. And when you're using a woven material in
14 a diaper, how typically are they fastened? Or is
15 a fastener engaged to the non-woven? Or -- I'm
16 sorry. Let me start over because I mis- -- I
17 combined woven and non-woven, so I apologize.

18 A. Yes.

19 Q. When using a woven material in a diaper,
20 how do you typically -- how typically does a
21 fastener engage that woven material?

22 A. Well, the only case that I am aware of --

1 okay? -- and it's something that I was personally
2 involved while at Kimberly-Clark -- is when they
3 launched their hook-and-loop material. The loop
4 target zone that was used in the diaper in that
5 particular case was a knit material, which is
6 woven. And the hooks went -- the hook system was
7 a Velcro system, and it was specifically designed
8 to engage that particular hook. And so that's how
9 it was developed. And it was laminated to the
10 outer cover of the diaper.

11 And those materials -- that component
12 of -- is sometimes referred to as a loop target
13 zone in diapers, and they're still used today.

14 Also a correction I've got to make.
15 There is one product that is using a knit material
16 as a loop. And that is Pampers. And it's an
17 APLIX product that takes a very open knit
18 structure, like a scrim, and adhesively laminates
19 that to a film before it's attached to the diaper.
20 Whereas the Kimberly-Clark embodiment originally
21 was exclusively an unwoven; it had no film as part
22 of the target zone.

1 Q. Can you make a -- do you ever attach a
2 fastener directly to the wovens -- a woven surface
3 in a diaper without an additional loop material?

4 A. Diapers do not have woven materials. As
5 I said, the only woven material that I can think
6 of -- and it's a loose definition of woven,
7 because they're scrims. You know, some people
8 would argue that they wouldn't be a woven. But
9 they're interlaced fiber; they're not non-wovens;
10 they're very uniform.

11 Those materials are specifically designed
12 for target zones for engagement with their
13 optimized and made-it hook material.

14 Q. And so -- but non-wovens -- are
15 non-wovens used in adult incontinence diapers?

16 A. Non-wovens are also used in incontinent
17 diapers.

18 Q. And you've discussed --

19 A. Well, I have one clarification. We
20 focused on woven target zones for the hooks.
21 There are other materials that are used today, and
22 used quite frequently, and those are non-woven

1 loop materials that are used to engage the hooks.
2 Specifically, Kimberly-Clark uses a proprietary
3 patented spunbond only non-woven as their hook
4 material -- as their target zone material for the
5 hook.

6 Q. And so you mention in your declaration
7 that there are -- even non-wovens are used in
8 incontinence diapers, correct?

9 A. Correct.

10 Q. And there have also been used, with
11 those, these landing zones; is that correct?

12 A. So the evolution of hook and loop with a
13 target zone into the incontinence field has been
14 limited. There are embodiments out there
15 specifically with hook and loop, but it's to a
16 much lesser frequency than baby diapers, which is
17 basically a hundred percent right now.

18 Q. How do you -- when you have a non-woven
19 material, how does it engage a fastener in an
20 adult incontinence diaper?

21 A. Well, basically, regardless of whether it
22 is a non-woven -- regardless of the type of

1 non-woven, the engagement with a hook comes from
2 the hook penetrating the non-woven and grasping on
3 to the fibers that are in the non-woven for
4 anchorage and for gripping power.

5 Q. How are the fibers in that non-woven
6 made?

7 A. A variety of ways. And it depends what
8 type of fiber. But for simplicity, let's just
9 focus on spunmelt, spunbond non-wovens, which is
10 the ones in discussion with most of the citations,
11 except Stupperich; they use carded as well.

12 But the non-wovens that are used in
13 spunbond are -- they're basically made from resin.
14 So you take a chip of polypropylene specifically,
15 as that is the predominant resin that's used in
16 spunbond, and they melt it in an extruder. And
17 the extruder will push this molten resin into a
18 die with little holes. And the polymer is
19 extruded through the hole.

20 Later, as soon as it comes out, it's
21 attenuated with high-velocity air to form a
22 filament, which is then basically randomized by

1 either air or mechanical means onto a forming
2 table that is vacuum-assisted, so it's laid as a
3 web and then it's later consolidated.

4 Q. So you're able to control the size of
5 those individual fibers through this process?

6 A. The answer generally -- broad answer is
7 yes. However, going to a spunbond 101
8 dissertation now, the technology that is out there
9 for use in these products is rather consistent.
10 Spunbond is known as a commodity non-woven today
11 specifically for the disposable absorbing products
12 industry.

13 They have been dominated almost
14 exclusively as the gold standard by a German
15 company by the name of Reifenhäuser with their
16 Reicofil technology. And for the most part, the
17 entire industry globally is supplied by this
18 technology.

19 Q. And can you -- in that process you were
20 talking to, to make the fibers, can you control
21 the shape of the fibers through that process?

22 A. Generally, that is possible. You can use

1 geometries other than round. You can go bilobal,
2 you can go trilobal. You can go sheet core. You
3 can go adjacent, one to the next fibers. That is
4 all possible.

5 But it's a massive -- well, not a
6 massive, but it's a major equipment change in the
7 die configuration. For the most part, these
8 commodity non-wovens are round. I am not aware of
9 a general distribution non-woven that has other
10 than round fibers in it.

11 There has been experimentation through
12 the years and there have actually been commercial
13 uses of other shaped fibers, but those are not
14 commodity, not commonly available. They're not
15 sold to the industry. They're proprietary. And
16 that was specifically in Kimberly-Clark.

17 Q. So when we were discussing the design of
18 diapers, we talked about cost.

19 Would you say cost is important when
20 manufacturing an incontinence article?

21 A. It's taken into consideration.

22 Q. What are the biggest costs in designing

1 and developing an incontinence article?

2 A. Primary cost is the absorbent core. It's
3 the largest component. It's got a lot of material
4 by weight.

5 The next component that I would probably
6 point on -- to is the elastomeric ear, which is
7 common in almost a hundred percent of diapers,
8 baby diapers today, less common in adult for the
9 reason we just stated, which is cost. They can
10 and cannot have. So there are embodiments that
11 are commercial with elastomeric ears.

12 I'd probably say another component that
13 adds to the cost is the leg cuff, which is an
14 additional component to the original diaper
15 design. The cloth-like outer cover is another
16 contributor.

17 So you look at the components of the
18 diaper and you can pick them up. The leg elastic
19 and waist elastic, if they have them -- not too
20 many products have waist elastics in incontinence.
21 But if you look at the leg elastics, they're
22 expensive raw materials. They're probably the

1 most expensive on a per weight basis. But they
2 use very little, so percentage of the diaper costs
3 are small, so the elastic portion, the leg elastic
4 and the waist elastic elements would be the least
5 costly on an overall basis.

6 Q. What about manufacturing? That's a cost?

7 A. Yes. There is a cost to convert.

8 Q. Is packaging a cost involved?

9 A. Yes. You're adding two components.
10 You're adding a bag and you're adding a cord.

11 Q. Shipping, another cost associated with
12 it?

13 A. Yes. Warehouse and cloth storage.

14 Q. When -- looking at the non-wovens, how
15 much does the cost of a non-woven vary in -- for
16 use in an incontinence article?

17 A. It depends on the basis. Weight,
18 actually, a lot of non-wovens, specifically
19 spunbond, are priced on a per kilo basis. I'd say
20 by, you know -- it's pet peeve of mine -- but
21 anyway, it's -- they can go by cents per square
22 yard. But they're pretty low.

1 The -- the cost of the spunbond is
2 basically between 70 to 80 percent cost of goods,
3 just the resin cost, the polypropylene cost. The
4 converting cost to make spunbond is, depending on
5 the polymer's pricing cycle, somewhere between 20
6 to 30 percent.

7 So my answer would be it varies because
8 there are different basis weights that are used in
9 a diaper. And so the non-woven cost will vary by
10 the application as to what component is going into
11 the diaper.

12 Q. So the higher basis weights are generally
13 more expensive?

14 A. It goes by weight. Yes. They're
15 proportionally more expensive.

16 Q. Are there ways to -- are there
17 different -- let me ask this.

18 We talked about -- you talked about
19 making the non-woven. What does a bonded
20 non-woven refer to?

21 A. A bonded non-woven is basically the means
22 of consolidating the individual fibers to

1 consolidate the web into a fabric. If spunbond,
2 for instance, were not bonded, it would basically
3 fray apart. It would pill. It would -- the
4 fibers would separate. You could scratch a hole
5 into it very easily.

6 So the bonding techniques that are used
7 are basically to consolidate and hold the fibers
8 into place to form a fabric or a web or a
9 substrate.

10 Q. Are there different ways to bond it?

11 A. There are very many different ways to
12 bond it. The predominant and almost exclusively
13 way to bond a spunbond is through thermal bonding.
14 There are other ways to bond it that are basically
15 not in use. They're not commercial, but that have
16 been used in the past, or experimented in the
17 past, which would be, you know -- water
18 entanglement would be one way. Chemical bonding
19 would be another.

20 For instance, when you use carding
21 technology and you have textile fibers, you can
22 chemically bond, you can thermally bond. You

1 know, you can use almost the same bonding
2 techniques that you would use for spunbond,
3 although predominantly -- and when I say
4 predominantly, in hygiene, 99.9 percent of the
5 fabrics that I'm aware of in the products today
6 are thermally bonded through bonding -- through
7 heat and temperature -- and pressure.

8 Q. The way the non-woven is bonded, does
9 that impact how well it works in a diaper?

10 A. Well, the bonding definitely is. It's
11 very standard within the windows of the processes
12 that are used to make these. But it -- it could
13 be a variable.

14 Bonding -- the key property that the
15 bonding method -- mechanism does to a spunbond is
16 basically improve the strength of the fabric.

17 Q. Could the way the non-woven is bonded
18 impact how well it can engage a fastener?

19 A. It is a variable. However, if you've
20 read the citations that we've quoted, they all use
21 practically the same land area range, which is
22 typical because, as I mentioned earlier, all these

1 spunbonds that are commodity grades and they're
2 available in the industry are made by the same
3 manufacturing process. So they're all going to
4 fit within a very, very small window of, you know,
5 bonding land areas and, you know, filament size
6 and those type of issues.

7 Q. So is there ever -- for non-wovens that
8 are used in incontinence articles, are they ever
9 additional work done on the diaper besides the
10 bonding? On the non-woven -- let me start again.

11 For bonded non-wovens that are used in
12 adult incontinence articles, are there -- is there
13 anything else done to the non-woven -- or
14 can anything -- what else is done to the non-woven
15 before it's used in a diaper, if you understand
16 that question? That was...

17 A. I know what you're trying to say. But I
18 think that the -- there's very little, if any -- I
19 mean, there are always exceptions. There's always
20 experimentation and there's always somebody trying
21 to develop something. But the norm -- and when I
22 say the norm, 90 to 99 percent of the time the

1 non-wovens are used as sold. There's no further
2 treatment by -- certainly by the converter on
3 these non-wovens.

4 The industry -- just to clarify, the
5 industry is usually non-woven suppliers, and the
6 diaper manufacturers are typically distinct
7 separate companies. There was some vertical
8 integration. There is probably some still here
9 and there. But for the majority, they're two
10 separate entities, two separate companies.

11 Q. Are there finishings that can be done to
12 a non-woven that are used in an incontinence
13 article, apart from bonding?

14 A. Well, it depends what you define as
15 finishing. Finishing is a step. You rise from
16 the textile industry where they treat woven
17 fabrics for a variety of things. You know, dyeing
18 a fabric is a finishing treatment. Making the
19 fabric -- heat-setting the fabric is a finishing
20 treatment. There are a variety of -- napping,
21 corduroying -- and I go on and on. The textile
22 industry has multiple, multiple post-treatments.

1 Hundreds of them, actually.

2 The spunbond industry has -- the only
3 post-treatment -- or treatment that I have of the
4 non-woven is they add surfactants to the fabric to
5 make them hydrophilic. So that could be defined
6 as a treatment. And that's done in the
7 manufacturing process of the non-woven itself.

8 Q. So are you familiar with, then,
9 lamination?

10 A. Yes.

11 Q. What would you consider lamination? Is
12 lamination used on a non-woven?

13 A. Yes.

14 Q. And what do you consider a lamination?

15 A. Well, now that you mention it, lamination
16 could be a post-treatment. It's usually done by
17 the rolled goods supplier, i.e., the non-woven
18 producer, on occasions. It is done -- it can be
19 done on a diaper machine as well where they
20 basically take the non-woven and the film --
21 typically the laminations are with film -- and
22 they adhere them together either through thermal

1 bonding or through adhesive bonding.

2 Q. And what's the purpose of laminating the
3 non-woven when being used in an incontinence
4 article?

5 A. Well, let me go through the history a
6 little bit. Cloth-like backsheet, which was the
7 lamination of a non-woven to a film in a
8 disposable absorbent product, was something that
9 Kimberly-Clark pioneered as early as 1989 with the
10 Huggies Pull-Up, which was the first disposable
11 absorbent product in the U.S. with a cloth-like
12 backsheet. It was then implemented in baby
13 diapers on their Supreme line around 1994. And
14 Procter soon followed. All baby diapers have
15 cloth-like backsheets today. And the same has
16 moved into the incontinence.

17 The primary reason for that is
18 aesthetics. Originally started with aesthetics
19 and has moved on to providing also fastening
20 systems to the diapers that choose that particular
21 embodiment. So it's been growing in popularity
22 more and more into the incontinence area as well.

1 Q. Why does someone choose to use a
2 non-woven that's been laminated in an adult
3 incontinence diaper?

4 A. The non-woven not impermeable. A
5 non-woven would let fluid go through. So you need
6 a barrier that -- that's added, and the film
7 basically provides that fluid barrier.

8 Whereas the non-woven does two things,
9 actually. It provides some strength to the
10 laminate and it provides the cloth-like feel. And
11 in our particular case, in these patents cited, it
12 basically allows for engagement of the fastener.

13 The other thing that has occurred is that
14 by using a stronger member of this laminate, being
15 the non-woven, you've been able to downgauge the
16 film significantly to offset some of the costs.
17 So it's kind of a trade-off on costs when you look
18 at the ability to downgauge the film as much as
19 possible with the structure.

20 Q. How does the -- using a -- how does
21 laminating a non-woven impact its ability to
22 engage a fastener?

1 A. Well, basically, the lamination itself
2 doesn't impact the properties of the non-woven, if
3 you do it right. I mean, basically, people who
4 are skilled in the art would figure out how to --
5 would know how to laminate the two together so
6 that the properties of the non-woven are not
7 necessarily impaired.

8 And so the engagement characteristics of
9 the non-woven to a hook fastener primarily are,
10 for the most part, dictated by the basis weight of
11 that non-woven.

12 Q. So it's your position that a fastener
13 would be able to engage a laminated non-woven as
14 easily as an un laminated non-woven?

15 A. It depends on the -- on the lamination.
16 But if the lamination is properly done, they
17 should be able to do that, yes.

18 Q. What are -- we've been talking about
19 retaining forces. What are the forces between a
20 fastener and a non-woven when in use in an
21 incontinence article?

22 A. I -- I can't answer that. I would

1 probably, you know, cite that -- some of the
2 references that are there in the patents are
3 possible ranges that could be used.

4 The reason I am having difficulty to
5 answer is because a lot of these tests are
6 customized or proprietary tests to the converter,
7 and so they're apples and oranges in comparison,
8 and I try to stay away from that.

9 Q. So you --

10 A. The ultimate answer is, you know, whether
11 the product can be used on a wearer and is
12 securely fastened.

13 Q. Are you familiar with peel force or peel
14 strength?

15 A. Yes.

16 Q. And what does that refer to?

17 A. Basically, there are two ways to measure
18 the securement properties of either a tape, an
19 adhesive tape, or hook into reel. And one is
20 peel, which is basically a delamination
21 measurement. And the other one is shear, which is
22 pulling apart, force. And they both have a role.

1 Peels are much less significant in these
2 applications. The only reason they are measured
3 is you don't want to have a movement of your hand
4 or the -- I'm going back to babies -- where the
5 product is exposed. It's less sensitive.

6 Obviously, an adult, unless they're
7 bedridden and only have a brief on, you know, a
8 hand motion or a rubbing motion could basically
9 peel the hook material off the diaper, or the
10 tape. So you want some residual force. And it's
11 also used for other reasons. But, you know, it's
12 not key.

13 Shear forces are basically the key force
14 to hold the diaper in place.

15 Q. What role does peel strength play between
16 the fastener and the -- let me say it again.

17 How important is the peel strength
18 between a fastener and the diaper for an adult
19 incontinence article?

20 A. I just answered it, basically. I said
21 it -- it plays a lesser role than shear force.

22 Q. How is -- what units are peel strength

1 measured in?

2 A. It depends on the test that the -- the
3 company is using. And it varies. It could be
4 area-based force, it could be linear force, or
5 width.

6 Q. When you were working on adult
7 incontinence diapers, did you consider the peel
8 strength?

9 A. It was part of the specification, yes,
10 but it was not an issue of contention or anything
11 that we paid extraordinary attention to.

12 Q. You didn't measure the peel strength in
13 your prior work on adult incontinence diapers?

14 A. We measured both peel and we measured
15 shear.

16 Q. And when you were measuring peel,
17 typically what units did you measure it in?

18 A. I don't recall.

19 Q. And you mentioned shear strength as well.
20 So that's -- you believe that's more important
21 in -- the shear strength between a fastener and a
22 diaper in an adult incontinence article?

1 A. That's basically what's going to be
2 holding the diaper in place. Because that's the
3 force in the direction of where the -- how the
4 wings of the side parts are attached to the main
5 chassis of the diaper.

6 MR. ALBRIGHT: Counsel, we've been going
7 about an hour. I just wanted to make sure if --
8 Mr. Jezzi, if you needed a break or if you want to
9 keep going. I just wanted to check in.

10 THE WITNESS: Why don't we take a short
11 break, five minutes or so.

12 MS. DALEY: Why don't we make it
13 ten minutes, just because I think for people to
14 literally get up, it takes more than five, so --
15 we can come back around 11:15 or so.

16 THE WITNESS: It's 11:10 now, so --

17 MS. DALEY: Oh, is it? I'm sorry. My
18 computer is wrong. You're right. 11:20. Sorry
19 about that.

20 THE WITNESS: 11:20. Okay. Very good.

21 (A recess was taken.)

22 MS. DALEY: I also note that Eckhard

1 Oltmann of Paul Hartmann has joined the
2 deposition.

3 BY MS. DALEY:

4 Q. Mr. Jezzi, I believe that you said when a
5 fastener engages a non-woven you have a hook
6 trying to engage the individual fibers; is that
7 correct?

8 A. Yes.

9 Q. Are there ways to engineer that non-woven
10 to better be able to engage the hook?

11 A. There have been techniques that have been
12 used through the years to -- to do that, or to
13 make loop materials, where they basically modify
14 some of the features of the non-woven of the
15 fibers to do that.

16 Q. And what are some of those ways?

17 A. Well, basically, if you look at the loop
18 materials that are commercially available today
19 through APLIX or through 3M primarily, they use
20 non-woven materials as the loop, and they
21 basically modify them through, you know,
22 corrugation means or through heat shrinkage means

1 as discussed by Gorman, the Gorman patent, also
2 the APLIX is a knit that's laminated to a film.

3 Typically, these structures tend to be
4 customized specifically to the hook that they're
5 selling. So it's a combination structure. It's a
6 system that they are providing.

7 Q. We talked about -- when we talked about
8 the non-woven, we talked about basis weight. What
9 is that?

10 A. Basis weight?

11 Q. Yeah.

12 A. It's the weight of the material in grams
13 or kilos per square meter. Grams per square
14 meter. So it's a measurement of the -- the
15 thickness of the material.

16 Q. Is --

17 A. Indirectly or directly. I mean, it
18 correlates with thickness and how much fibers you
19 have on a per unit -- per unit area basis.

20 Q. Can you also buy the non-wovens in
21 different thickness?

22 A. Yes.

1 Q. And what kind of thicknesses, typically?

2 A. I think in the open market today, the
3 range can be anywhere from 7 to 100, 200 grams per
4 square meter. Usually 7 to 100 would be probably
5 the range within the commercial spunbond market
6 today.

7 Q. What would be the range of thickness
8 available for a non-woven?

9 A. I don't recall the caliber measurements
10 in microns on thicknesses of these materials.

11 Q. Can you get non-wovens that have
12 different fiber sizes?

13 A. The answer is, in the spunbond merchant
14 market available, it's a commodity. It is
15 basically what it is. Okay? It's based on the
16 same technology, the Reicofil 3, 4, or 5
17 spunbonding technology that the Reifenhäuser
18 company sells to the market. It has become the
19 gold standard. So whatever, you know, their
20 machines make, that's what you end up having.

21 Q. So you're saying today it's commoditized
22 such that you just buy what's available?

1 A. Yes. Very few companies have the luxury
2 of having sufficient volume that they can command
3 customization of a non-woven for them. I am sure
4 there are cases of such, but again, it's not
5 something that is done often because of the
6 additional cost. It's volume-dependent.

7 Q. Well, of these commoditized non-wovens
8 that are available today, what are the fiber sizes
9 that they make?

10 A. On the spunbond again?

11 Q. Uh-huh. Yes.

12 A. Basically, what is cited in some of the
13 patents that we've discussed, the range is -- and
14 I'm going quote it -- 1.3 to 3 denier is pretty
15 customary. As a matter of fact, that is the
16 range.

17 Q. But you could get different fiber sizes
18 if you wanted to in the non-woven?

19 A. Outside of that range with difficulty in
20 spunbond. There are melt spuns, like melt-blown
21 that have been mentioned in some of these patents
22 on the side, you know, just to mention them, that

1 you can get down to 1 to 3, 1 to 5 micron, but
2 it's a completely, completely different non-woven.

3 Q. Why would you use a 1.3 denier versus a
4 3 denier in a non-woven for an incontinence
5 article?

6 A. The reason -- and again, you're -- you're
7 pretty much driven to use what's available. Could
8 you make a 1.3 denier? If -- if the literature
9 says you can, you can slow down the machine, you
10 can attenuate the fiber more to stretch it more.
11 The lower deniers tend to have a better feel,
12 better formation. There are more fibers per area
13 so that you could get better capacity. You know,
14 there would be more fibers and more interstices of
15 the fibers.

16 Q. And you say it's a better feel. Do you
17 mean to the wearer?

18 A. To the hand touch. The feel. The outer
19 cover is not necessarily touched by the wearer.
20 It's depending on the fold. Your legs may rub
21 against it. But it's -- it's on the outside.

22 Q. If you have the finer fibers, though,

1 you'll have -- they won't be as strong as a larger
2 fiber; is that fair?

3 A. A thinner fiber, assuming the same
4 polymer and assuming the same bond area, would be
5 weaker than a thicker fiber.

6 Q. So it wouldn't be able to engage a hook
7 as well as the larger fiber?

8 A. Maybe. It depends.

9 Q. Well, if it's weaker, it wouldn't be able
10 to bear the load of a hook as well as a larger
11 fiber; is that true?

12 A. Yes, that would be true, depending on how
13 the differences are. But within the range of 1.3
14 to 3, I would not expect significant, you know,
15 variation.

16 Keep in mind, the reason these quotes
17 are -- these citations refer to a range is that
18 is -- you do not exclusively, in a spunbond
19 non-woven web that you cut out, have every fiber
20 at, you know, 2 deci-tex, for instance. It's
21 going to vary plus or minus based on a lot of
22 factors, temperature profile being one. Viscosity

1 of the material varies with temperature;
2 therefore, the attenuation or the air flow
3 variability within the slides of the die.

4 So you are going to get a range of
5 deniers within the same non-woven web.

6 Q. So can you get non-wovens where you have
7 different fiber density?

8 A. Explain density.

9 Q. How many fibers per square inch or
10 something like that. The --

11 A. Density --

12 MR. ALBRIGHT: Objection to form.

13 THE WITNESS: Excuse me?

14 MR. ALBRIGHT: I said, objection. Form.
15 Sorry.

16 BY MS. DALEY:

17 Q. The question was -- you asked me to
18 explain density. I said, such as how many fibers
19 per square inch in a non-woven would be density.

20 Can you get something with a different
21 range of density in the fibers for a non-woven?

22 A. Can you repeat the question again?

1 Because I'm --

2 Q. Sure.

3 A. I lost you.

4 Q. That's all right.

5 We talked about fiber size, correct?

6 A. Yes.

7 Q. Well, let's get something else. There's
8 also something called interstices, right? In
9 between fibers. Is that something you're familiar
10 with?

11 A. Yes.

12 Q. And can you -- how does the
13 interstices work or -- what are the interstices in
14 a non-woven?

15 A. Basically, when the non-woven web is
16 formed, the fibers lay one on top of the other
17 randomly. They cross each other at different
18 angles. If you were to do a scanning electron
19 micrograph of a spunbond non-woven, if you can
20 picture a plate of spaghetti with the spaghetti
21 being, you know, not 2 inches thick, but just
22 think it a little bit when you get to the end of

1 the plate, then you have, like, one or two layers
2 of noodles intertwined, that's exactly how they
3 look.

4 So the interstices are the white spaces
5 that are resultant of these fiber interactions
6 laying at different angles, one on top of the
7 other.

8 Q. Is that where the hook goes in between
9 the fibers?

10 A. Yes.

11 Q. And do the non-wovens have different size
12 interstices or openings between the fibers?

13 A. Yes. They would be vary and they would
14 be pretty diverse in sizing depending on the
15 formation of the non-woven and how well you run
16 your machine.

17 Q. So how big or small these interstices are
18 would impact how well the hook could engage,
19 correct?

20 A. Possibly. Yes.

21 Q. We've been talking about a fastener
22 generally, saying fasteners engaging a non-woven.

1 What type of fasteners are used in adult
2 incontinence diapers?

3 A. Type of fasteners?

4 Q. Uh-huh.

5 A. In adult incontinence? Adult
6 incontinence is still using diaper tape. I don't
7 know what the percentage is; they are slowly
8 evolving into hook and loop-type structures,
9 whether the loop is an outer cover or it's an
10 additional patch target zone.

11 There are basically a handful of
12 companies globally that make the hook material.
13 3M. I quoted APLIX. Velcro obviously. There's a
14 couple of German companies. Binder is one. Some
15 of these companies sell systems, which includes
16 the loop. Other companies just sell you the hook.
17 But there may be five or six globally. I'm not
18 going to quote the Chinese, because they probably
19 have a dozen, and I don't know what they are.

20 Q. And do those different fasteners engage a
21 non-woven differently?

22 A. Yes. Depending on the geometries of the

1 hooks and the size of the hook, et cetera. There
2 are variables that are modified as you make them,
3 or that companies choose to use.

4 Q. What kind of geometries are used for the
5 hooks?

6 A. They vary. The original Velcro, the
7 inventor of this structure, used a loop fiber that
8 they stiffen through heat and then they cut at a
9 certain angle. So it was a textile fiber. Okay?
10 That technology is still being used, however, to a
11 lesser extent. And the industry, probably in the
12 '80s, late '80s, moved to a polymer web that is
13 premolded on a cavity-formed roll at temperature.
14 And the whole geometry basically dictates the
15 shape of the hook.

16 So there are various hooks that are
17 there. They could be harpoon-like or they could
18 be, you know, round, could be mushroom, et cetera.
19 And some of that geometry is discussed in some of
20 the citations we included.

21 Q. And are some of those geometries, are
22 they better at engaging a non-woven than others?

1 A. It varies.

2 Q. So their ability to engage the non-woven
3 will vary depending on what their geometry is?

4 A. Yes.

5 Q. So what do you call each of those -- I
6 don't know -- mushroom parts or bowls or what you
7 called -- what are each of those called? Do they
8 have a term, if you understand what I'm asking?

9 A. They're basically called hooks. And
10 whether they're hook-like or not, they're called
11 hooks, because they engage through a loop of some
12 sort, or fiber of some sort.

13 Q. All right. So I'll refer to them as
14 hooks, but as you said, that doesn't necessarily
15 mean they're hook-shaped. They could be
16 mushroom-shaped. They could be round or
17 something. Okay.

18 Does the number of those hooks in a
19 fastener -- how many -- well, let me say this
20 again.

21 In your typical -- what's the size of a
22 typical fastener used in an adult incontinence

1 article?

2 A. It varies. I mean, the surface area of
3 the hook material?

4 Q. Correct.

5 A. It varies. I think that if you looked at
6 some of the citations that are out there, they can
7 go from a minimum of half an inch as Karami '626
8 cites, to 2 square inches. I think Beckert, you
9 know, used a smaller, 20-by-25 millimeters, which
10 is around .79 or .8 square inches.

11 It varies on the product developer and it
12 varies on how much engagement and shear strength
13 and shear force you want to have. So it's a
14 variable in a design.

15 Q. And what about the, typically, number of
16 pins -- or, I'm sorry, hooks in a fastener? Does
17 that vary as well?

18 A. It varies depending on the geometry and
19 the manufacturer and what they want to do. And --
20 all I can say is that the Binder hook that's
21 discussed in these patents is defined as a
22 microhook, and they tend to be smaller than the

1 more conventional Velcro hooks that are quoted,
2 for instance, in some of these patents.

3 And the advent of this technology from
4 Binder was that they developed an extremely
5 aggressive hook.

6 Q. Does the spacing in between the hooks
7 vary between different fasteners?

8 A. Yes.

9 Q. And so the number of hooks in a
10 particular -- in different fasteners can vary as
11 well?

12 A. Correct.

13 Q. We talked earlier about laminating a
14 non-woven. And I believe you said that that's
15 something that can also be done to increase the
16 strength of the non-woven; is that fair?

17 A. Repeat the question, please.

18 Q. You said you could -- we talked about
19 laminating a non-woven.

20 A. Yes.

21 THE WITNESS: You froze. Ms. Daley?

22 (Discussion off the record.)

1 MS. DALEY: I apologize for that,
2 Mr. Jezzi. We can get started again.

3 BY MS. DALEY:

4 Q. So I think, before I froze, I was asking
5 again about lamination. And I believe we talked a
6 little bit earlier about using a laminated film
7 could help present [sic] -- make it
8 water-impermeable; is that correct?

9 A. That is correct.

10 Q. Okay. I think you also said that it can
11 be used to increase the strength of the non-woven;
12 is that fair?

13 MR. ALBRIGHT: Objection.
14 Mischaracterizes the testimony.

15 THE WITNESS: Should I try to answer
16 that?

17 BY MS. DALEY:

18 Q. Yes, please.

19 A. Could you repeat the question? Because I
20 wanted to make sure -- when you said increase the
21 strength of the non-woven -- you said the
22 non-woven or the laminate? Or -- how did you ask

1 that question?

2 Q. Well, that it would increase -- by
3 laminating a film on the non-woven, can that
4 increase the strength of the non-woven?

5 A. To answer your question very
6 specifically, the answer is no. It can increase
7 the strength of the composite, but that does not
8 change the properties of the spunbond.

9 Q. Okay. But what's the distinction between
10 changing the strength of the composite versus the
11 non-woven?

12 A. The non-woven is one layer; composite is
13 two layers.

14 Q. How does it increase the strength of the
15 composite?

16 A. Well, it's a thicker material. They're
17 two materials. They -- they're additional forces.
18 You know, they're additional to each other.

19 Q. Can you --

20 A. I mean, we're -- we can get in the hole.
21 You know, it depends on the -- I mean, you could
22 weaken it if you do it wrong. But I -- I think

1 that that's not -- you know, people who do
2 lamination certainly for outer covers in the
3 hygiene business, those people who are skilled in
4 the art do know what -- the acceptable techniques
5 of lamination so that the properties of both
6 materials are not destroyed.

7 Q. We also talked about bonding a non-woven.
8 What is an -- is embossing a form of bonding?

9 A. Yes.

10 Q. And what is embossing?

11 A. Basically, the technology that is used
12 are two rollers, one roller being engraved with an
13 embossing pattern. These rolls are heated by,
14 typically -- typical temperatures in the
15 350-degree Fahrenheit range, and they're run at
16 either no gap or a very small gap of about a
17 thousandth of an inch, two-thousandths of an inch.
18 That varies depending on the quality of the
19 engraving and the rolls. And they compress the
20 non-woven web that goes through the nip with
21 bossments that are designed in a variety of
22 different ways and typically fall in a range of --

1 I mean, they can be square, they can be circular,
2 they can be trilobal, as Stupperich discusses.
3 They can be uniformly arrayed or they could be
4 randomly arrayed.

5 You know, so there are different
6 geometries, there are different designs that you
7 can use on these bossments, but they're usually
8 quite a few per square inch. And they have land
9 areas, as has been discussed in the patent
10 literature that we cited, on the broad range
11 between 15 and 30. Operationally, they're
12 probably in a narrow -- you know, in the middle of
13 that.

14 But that's typically the process that was
15 used.

16 Q. You referenced a land area. What is
17 that?

18 A. It's basically these bossments, the heads
19 of these pins. And just as -- one embodiment of
20 many, they're truncated -- they're basically like
21 a trapezoidal and the head is chopped off; it's
22 flat like a pyramid with the head -- with the cap

1 chopped off. That's how they look. Or they can
2 look. They're different designs.

3 That area on a per square inch, when it
4 embosses the non-woven, what happens is the fibers
5 lose their fiber characteristic and they become a
6 film, in essence. Depending on the pressure and
7 the temperature. But typically they would be an
8 amorphous film of polypropylene that would have
9 virtually no distinct fibers in them. And that
10 area, on a per square inch basis, is defined as
11 the land area.

12 Q. And if you've made it so there's no
13 distinct fibers in them, does that make it harder
14 or easier for a hook to engage in that land area
15 of a non-woven?

16 A. Specifically in the land area, the hook
17 more than likely would not engage because it is a
18 film. But it's a very small area. And don't ask
19 me what the number is, but it's based on the size
20 of the pin head that's used. And they're small
21 because there are many of them per square inch, as
22 the literature cites.

1 Q. You mentioned there's a large variety of
2 embossing patterns. Why would you pick one
3 embossing pattern over another when making an
4 adult incontinence article?

5 A. The converter or the incontinence product
6 would not pick the embossing pattern. It was
7 given to them by the supplier. These are
8 commodity goods. Customization is seldom applied
9 in -- into these products. And that would be
10 something that probably the majority of -- you
11 know, except for Procter & Gamble, perhaps, would
12 have very little say in what that geometry would
13 be.

14 Q. Do different suppliers have different
15 geometry?

16 A. They probably -- maybe. If they do,
17 they'd be very, very similar. And the reason I
18 say that, they all have a common denominator, and
19 that common denominator is the manufacturer of the
20 machine. So they're going to inherit whatever
21 that machine supplier is going to provide them.

22 And that has become fairly standardized

1 in the industry. And I would be willing to say
2 that there's very little variation in the
3 available commercial spunbonds that are out there.

4 Q. And you're talking about it's been
5 standardized -- or what's available today,
6 correct?

7 A. Well, it was standardized way before
8 2007, if that's what you're inferring.

9 Q. No, I'm saying you were talking about
10 what's commercially available today, is what you
11 were referring to.

12 A. Was commercially available for a very
13 long time. I have seen very little change in --
14 you know, they're probably at a Reico 6. But I've
15 seen very little change in the recent years over
16 what was available in the late '90s, for instance,
17 '99, 2000. So I would probably say that, you
18 know, it is what they are being supplied.

19 Q. So if you preferred a particular bonding
20 pattern, you wouldn't be able to make sure that
21 you got a non-woven with a bonding pattern that
22 you want?

1 A. For one thing, for most of these
2 spunbonds, the non-woven pattern, certainly at the
3 lighter basis weights, is not that visible. It --
4 it falls in -- whether it's a circle or a square,
5 you have to do SEMs.

6 The array, whether -- you know, the
7 spacing, those are all variables. But I would see
8 that there would be very little difference between
9 the suppliers with this particular property.

10 Q. So if you were at a higher basis weight,
11 would the embossing patterns be more pronounced?

12 A. Yes. I think they would be more
13 pronounced at higher basis weights. And I'm --
14 you know, from my records, looking at 50 to 100
15 gsm fabrics, they have become more visible. And
16 the reason for that, the fabric is much more
17 opaque as well at those basis weights.

18 Q. So when you're selecting the non-woven,
19 you have to -- and when you're selecting a
20 non-woven to use in an incontinence article, you
21 have to select the type of non-woven you're going
22 to use, correct?

1 A. You select the non-woven that you're
2 going to use, predominantly a spunbond.

3 Q. And you have to select the thickness of
4 the non-woven that you're going to use.

5 A. You typically do not select thickness.
6 You select basis weight.

7 Q. So you're going to select the basis
8 weight?

9 A. Yes.

10 Q. And you can select the fiber size of the
11 non-woven.

12 A. You get what you get.

13 Q. You can't order a -- didn't we talk about
14 that you could get a 1.3 denier non-woven?

15 A. You would get a range from 1.3 to 3.
16 Like I said, the manufacturing process does not
17 give you a specific number. Sometimes they -- you
18 know, they would specify, you know, under 3
19 deci-tex or something along those lines. But
20 typically it's within a range.

21 Q. So --

22 A. They are a range, by the way. Yeah.

1 Q. Huh?

2 When you were talking about bonding
3 patterns, you were talking about the needles and
4 the needle size, correct? Or embossing patterns.
5 I'm sorry.

6 When you were talking about embossing
7 patterns, you mentioned needles, correct?

8 A. No, I did not. I don't --

9 Q. Oh. Maybe it was when you were talking
10 about the landing spot.

11 A. We were talking about the land area. You
12 asked me about the land area --

13 Q. Yes.

14 A. -- and I was trying to explain to you
15 what that meant.

16 Q. Yes. And you mentioned needles, correct?

17 A. Needles? N-e-e-d-l-e-s?

18 Q. Yes.

19 A. I don't recall that.

20 Q. How did -- how is that land area made
21 again?

22 A. The embossing roll has different

1 bossments or basically -- these are chemically
2 etched rolls that are soft metal to hard metal
3 engraving, and then they go through a chemical
4 etching process to further eat away. And the pins
5 typically resemble a pyramid with the head cut
6 off -- okay? -- with the top cut off, or a cone
7 with the head cut off. It's a circle versus a
8 square.

9 And basically there are a certain number
10 of these per square inch. And the land area is
11 basically the area in the non-woven that this
12 boss, or embossing point, compresses the fibers
13 and basically melts them. And if you look at that
14 area of each individual embossing point by the
15 number of points per square inch, you get the
16 ratio of land area to non-land area, which would
17 be the unembossed areas of fibers.

18 Q. And the number of those pins is what you
19 were referring to? I think I said needles.

20 So the pins -- you said there's a certain
21 number per square inch. Can that vary depending
22 on the embossing pattern you want?

1 A. I mean, you know, you're talking to a
2 head of R&D historically. So we have looked for a
3 number of different reasons -- different
4 practices, different product categories, various
5 embossing patterns. So, you know, my answer in
6 that respect would be, yes, there are -- there are
7 different geometries, different dense -- number of
8 pins per square inch that -- that you can use.

9 But again, I go back to the fact that the
10 industry has consol- -- you know, because of the
11 fact there's a phenomenal common denominator named
12 as Reicofil process and Reifenhäuser, they tend to
13 be within a very narrow range. And that narrow
14 range is discussed in the patents where they talk
15 about a land area of between 15 to 30. The way to
16 get to 15 to 30 would be by having different
17 densities of pins per square inch. That's one
18 way.

19 The other way is where the pins -- maybe
20 that's where you got needles -- the pins or the
21 points over time. These rolls don't last forever.
22 They basically are under very high pressures, and

1 maybe in a period of three to five years, there's
2 a pinning effect on the points of those emboss
3 areas that flatten it. And so, therefore, a lot
4 of specifications are written as not to exceed a
5 certain land area because, over time, it's
6 varying, it's changing.

7 Q. Do you have any experience with durable
8 goods?

9 A. Yes.

10 Q. Are the kind of fastening requirements
11 when they're used on durable goods different than
12 for disposable goods?

13 A. Well, let me correct that, you know, when
14 you say durable goods -- I'm trying to -- I have
15 not worked on any hook and loop -- or hook
16 applications on durable goods. I can't think of
17 any right offhand. Maybe, you know -- but -- and
18 that's something I commonly do. I've always
19 looked at the disposable side.

20 Q. Now, in your declaration, you rely on
21 patent application number U.S. 2005/0256496 that's
22 been referred to as Benning.

1 Does that sound familiar?

2 A. Yes.

3 Q. It's Exhibit 10 -- sorry, it's
4 Exhibit 1002.

5 A. Okay.

6 Q. And you're familiar with this Benning
7 reference?

8 A. Yes.

9 Q. And you'll understand that if I refer to
10 the Benning reference, I'm referring to
11 Exhibit 1002?

12 A. Yes.

13 Q. What does Benning relate to?

14 A. May I review my declaration, please?

15 Q. Certainly.

16 A. Basically Benning refers to an
17 incontinent diaper that has side flaps or side
18 parts or wings that are basically attached, two at
19 the front and two at the back region. And that
20 these side parts are folded in some form of V
21 direction and releasably attached to themselves.

22 Q. And is it fair to say Benning was

1 concerned with the manufacture of the diaper and
2 these wings in particular?

3 A. Repeat the question, please.

4 Q. Is it fair to say -- is -- Benning was
5 concerned with how to manufacture these side parts
6 to avoid flutter during the manufacturing? Is
7 that fair?

8 A. I think they discuss briefly the
9 advantages of folding the side parts.

10 Q. And in connection with Benning, you
11 referred to a landing zone.

12 What is a landing zone?

13 A. Okay. A landing zone was developed and
14 commercialized -- actually invented by a French
15 company called Poudous. That technology was
16 licensed by both Kimberly and Procter in the
17 mid-'80s. And it really was -- a tape landing
18 zone was a tape -- a patch of film that went onto
19 the film outer cover of a diaper at that time, and
20 it was meant to be used with adhesive tapes.

21 And the rationale behind that was that
22 this patch, typically about a 1-1/4-mill film, was

1 then, over -- was adhered to the outer cover film
2 of the diaper. The outer cover film of the diaper
3 before this invention was around 2 to 2-1/4 mills.
4 It was a heavy film. And the reason for that is
5 the refastenability of the adhesive tape. If they
6 downgauged it below 2 mills, for instance, when
7 you opened up the tape, you would tear the film.

8 So the invention reinforced that film
9 outer cover, and it allowed the film outer cover
10 to be downgauged significantly around 1 mill. And
11 then the tape would then be attachable to this
12 tape zone.

13 This concept of a landing area or tape
14 landing area, tape landing zone, was then evolved
15 into a loop non-woven material for the mechanical
16 fasteners.

17 Q. So the landing zone referred to an area
18 where you had designed it to have fasteners
19 attached to the diaper.

20 A. Correct.

21 Q. And is that -- does that refer to added
22 loop material?

1 A. It could be a loop material. Yes.

2 Q. Well --

3 A. Let me rephrase that. When we say loop
4 material, we're looking at the female component of
5 a mechanical fastener system. And some of them
6 are loop; some of them are different. But that's
7 the concept.

8 Q. And when you say loop material, you're
9 meaning something distinct from the non-woven when
10 we're talking about a landing zone?

11 A. It is a targeted zone that's a separate
12 component to the outer cover, which is attached at
13 the tape -- you know, the front portion of the
14 diapers -- front portion of the diapers for
15 engaging the hooks to the tapes.

16 Q. In paragraph 114 in your declaration,
17 Exhibit 20 -- 1012 --

18 A. Section 114?

19 Q. Paragraph 114. Yes.

20 A. Yes.

21 Q. You -- in that first sentence you
22 mention -- you say that Benning includes a landing

1 zone on its chassis.

2 Do you see that?

3 A. Yes.

4 Q. What do you mean that Benning includes a
5 landing zone?

6 A. One of the items in Benning is that they
7 discuss the outer cover, which we are -- because
8 of the fact that they discuss a landing zone,
9 they're basically discussing this component that I
10 just described, which is a target area. These
11 typically, in an incontinent product, can be done
12 differently. Can be a single piece in front of
13 the entire diaper. A lot of them have gone to
14 discrete pieces, one on either side, to save
15 money, because incontinent products are very
16 large, so they just focus it onto a section of the
17 width of the front of the diaper.

18 And their design, with the adhesive, it
19 would be just an extra piece of film. On hooks,
20 it would be, as we defined loop material, or a
21 female component to the fastening system, for the
22 hooks to engage, to grip mechanically, as he

1 states.

2 Q. So it's your opinion that Benning has a
3 targeted area for the fastener to engage?

4 A. It leads us to believe that it does.
5 And -- yes.

6 Q. Do you -- is it your understanding that
7 Benning uses an added loop material to provide
8 that landing zone?

9 A. They discuss a landing zone. Yes.

10 Q. But does that necessarily mean it's
11 adding a loop material?

12 A. No. I think it's an either/or. I think
13 it could be a -- and I think they discuss that.
14 It could be a tape. It could be adhesive tapes or
15 it could be a non-woven-type structure for the
16 hook material.

17 Q. So in Benning, would you agree that --

18 A. Can I --

19 Q. Certainly.

20 A. I would probably have to review Benning,
21 because I think they talk about the advantage of
22 using hooks for getting -- eliminating

1 contamination and the sort. So they may be
2 favoring or discussing the hook loop fastening
3 system.

4 If you don't mind, if I can just read it.

5 Benning column page 1, paragraph 3, talks
6 about mechanical or adhesive closures on the
7 lateral parts of the incontinence article are
8 frequently used, which act in concert with
9 similarly configured landing zones in the front
10 region of the main body.

11 They refer to adhesives as well.

12 That doesn't mean that, you know, the two
13 couldn't be combined, as they are in Miyamoto,
14 so...

15 Q. So it's your understanding that Benning
16 is targeting the front region of the main body for
17 the fasteners?

18 A. Repeat the question, I'm sorry.

19 Q. So it's your understanding that Benning
20 is targeting the front region of the main body for
21 attaching fasteners?

22 A. With a -- with a loop material, yes.

1 With a targeted patch of some sort.

2 Q. And in fact, in paragraph 55 of
3 Benning --

4 A. 55?

5 Q. Yeah. And page 4 -- or page 12 of the
6 exhibit, page 4 of the -- let's just go with
7 paragraph 55. It's the easier way to locate it.

8 A. 5-5, right?

9 Q. 5-5.

10 And do you see at the end that it says,
11 "The tapes interact in a releasably adherent
12 manner with an outside of the front region of the
13 main body portion"?

14 A. Okay. In that particular zone I was
15 looking at what item -- the tapes 44 interact in a
16 --

17 THE REPORTER: Sorry, Mr. Jezzi, this is
18 Christina. I can't hear you when you turn that
19 way, sorry.

20 THE WITNESS: Okay. Basically, the tapes
21 44 interact in a releasably adhering manner --
22 adherent manner with an outside 46 -- which is the

1 outer cover -- of the front region 22.

2 And I believe that is -- that would be a
3 film outer cover.

4 BY MS. DALEY:

5 Q. And it's targeting the front of the
6 diaper for receiving --

7 A. Yes.

8 Q. -- the fasteners.

9 A. And like I said earlier, that if the film
10 gauge is around 2 mills, you historically were
11 able to do that. The tape landing zone film patch
12 was just designed so that you could downgauge
13 the -- the larger part of the outer cover to a
14 lower gauge film.

15 Q. So Benning doesn't seek to use the wings
16 to receive the fasteners -- or the material -- I
17 think they are called material sections or side
18 flaps?

19 A. Well, Benning adheres the side parts to
20 the main body of the diaper.

21 Q. But it doesn't seek to fasten --
22 engage -- have the fasteners engage those side

1 parts. They're seeking the fastening on the front
2 part of the diaper.

3 A. I don't follow you exactly.

4 Q. So I think we just discussed that Benning
5 teaches fastening the diaper to the front,
6 correct?

7 A. Correct.

8 Q. Not to the side parts.

9 A. That's what it looks like they're doing.
10 Especially with the adhesive tapes, that would be
11 the case.

12 Q. And in fact, Benning says it wants the
13 side parts to be breathable; is that right?

14 If it helps, I can --

15 A. I can't find the part, but they did
16 discuss that the side parts are non-woven
17 materials.

18 Q. So my question is in -- referring to
19 paragraph 32 in Benning.

20 A. Yes. Yes, they're discussing non-woven
21 materials.

22 Q. But my question was that they said they

1 wanted it to be able to breathe.

2 A. Non-woven materials are breathable.

3 Q. Correct. So that they -- that Benning is
4 seeking to have the side parts be able to breathe?

5 A. Yes.

6 Q. And in Benning, they also want the side
7 parts to be flexible; is that fair?

8 A. Yes. They would be flexible.

9 Q. And what they're trying to achieve is a
10 skin-friendly side section that's comfortable to
11 the wearer?

12 A. If you use non-wovens for the wings and
13 they have them touch the body, they would be --
14 they were trying to achieve a softness aspect to
15 them.

16 Q. So looking at -- again, looking at
17 paragraph 55 in Benning, in that last sentence
18 where it says the tapes interact in a releasably
19 adherent manner with an outside 46 of the front
20 region 22 of the main body portion 20 --

21 A. Yes.

22 Q. -- do you see that?

1 It doesn't indicate that there's actually
2 any loop material on the front of the body, does
3 it?

4 A. Not in this particular statement. They
5 refer to adhesive. They refer to tapes, which I'm
6 assuming to adhesive.

7 Q. In your declaration you also rely on
8 patent application number U.S. 2006/005 -- I'm
9 sorry, let me start over.

10 You rely on a patent publication number
11 U.S. 2006/0058772 that you refer to as Karami
12 '772.

13 Does that sound familiar?

14 A. Yes. That is correct.

15 Q. And it's been included as Exhibit 1003?

16 A. Yes.

17 Q. And you do discuss -- and if I refer to
18 this as Karami '772, you'll know what I'm talking
19 about?

20 A. Yes.

21 Q. What does the Karami '772 patent relate
22 to?

1 A. If you don't mind, I'll look at my
2 declaration.

3 It -- Karami '772, as I state in my
4 declaration on page 55, describes a T-shaped, a
5 pull-up undergarment, a breathable diaper or any
6 other garment that incorporates a fastening system
7 that does not include a loop fastening system.

8 It further describes the use of minihooks
9 that -- to secure the article around a wearer
10 needed -- to serve as a loop-type landing zone
11 with which the minihook fastener could engage.

12 They also go ahead and describe the
13 materials that are used.

14 Q. So Karami '772 wants to avoid using an
15 added loop-type landing zone; is that right?

16 A. That is one of the objectives. Yes.

17 Q. And would you agree that they teach
18 subjecting a non-woven to water jet treatment
19 and/or aperturing to avoid using that landing zone
20 of added loop material?

21 A. They use water treatment and pin
22 aperturing to enhance the retentive forces of

1 the -- of the side parts.

2 Q. And they do that so that they don't have
3 to have a hook -- loop-type landing zone, correct?

4 A. Yes. The primary reason for Karami '772
5 to treating the outer portions of their diaper or
6 their side parts was basically to get this
7 differentiation in retentive forces between the
8 side parts and the -- what they call the stay-away
9 untreated zone in the center part of the diaper.

10 Q. And will you look at paragraph 42 of
11 Karami '772?

12 A. What paragraph? 42?

13 Q. 42.

14 A. Yes.

15 Q. Are you there?

16 A. Yes, I am.

17 Q. About halfway down there's a sentence
18 that says, "Water jet treating and/or aperturing
19 the non-woven wings 40."

20 A. You're talking paragraph 42 of -- of
21 Karami?

22 Q. Yes. Karami '772, paragraph 42.

1 A. Oh, I opened the wrong Karami. It's the
2 other one.

3 Okay. I'm open to that paragraph. On
4 '772, paragraph 42.

5 Q. Okay. About halfway down, following a
6 reference to small-waisted persons, there's a
7 sentence that starts, "Water jet treating."

8 A. Yes.

9 Q. Where it says, "Water jet treating and/or
10 aperturing the non-woven wings obviates the need
11 for corresponding loop-type landing zones to mate
12 with the hook-type fasteners 41, 46, and 48."

13 Do you see that?

14 A. Yeah.

15 Q. So Karami '772 teaches that the water jet
16 treating and aperturing in lieu of the
17 hook-type -- that -- Karami '772 teaches water jet
18 treating and/or aperturing in lieu of having the
19 loop landing zone, correct?

20 A. No. I think that what they basically are
21 teaching is that they have two zones of different
22 retentive forces. One, the center portion which

1 has the -- what they define as the stay-away zone,
2 with some retentive forces there. And the wings
3 that are treated to enhance the retentive forces.

4 So that there is a differential between
5 the center of the diaper and the outside of the
6 diaper for the flexibility of adjustment and the
7 range in the flexibility and sizing as well.

8 Q. Well, right here, Karami '772 states that
9 it's the water jet treating and aperturing that
10 obviates the need for the corresponding loop-type
11 landing zone, correct?

12 A. That's what that says, yes. But they do
13 have retentive zones in the center, which are
14 sufficient enough, if -- not just looking at '772
15 by itself, but looking at Karami '626, that would
16 basically say that they are sufficient enough that
17 they can still secure the diaper to the body.

18 Q. And the way that Karami '772 gets rids of
19 the corresponding loop-type landing zones is by
20 water jet treating or aperturing?

21 A. Basically, what they're doing is they're
22 using the water jet treatment or aperturing in the

1 side parts with higher retentive forces as a way
2 to encourage the user to use those for securing
3 the hooks. And they're using the stay-away zone
4 with lower retentive forces to discourage.

5 One of the things that, you know, we
6 looked at and kept in -- in context is that really
7 the concept of a stay-away zone originated with
8 the Damaghi patent which Karami was also a
9 co-inventor. And if you recall that particular
10 citation that we used, the Damaghi patent had a
11 film target zone area in the middle of the diaper
12 as a stay-away zone. And the films, as we
13 discussed earlier, do not have any engagement
14 characteristics.

15 Soon after that, they kind of migrated
16 and evolved to a non-woven-only outer -- or
17 non-woven laminate outer cover with no treatment
18 with -- having lower retentive forces than the
19 wings as a way to, you know, discourage the use in
20 that area but encourage the use in the wings,
21 somewhat of a balance between those properties so
22 that the, you know, smaller sized wearers could

1 basically use the center portion to hold the
2 diaper on, or, you know, larger sized wearers
3 could use the side parts to hold the diaper on.

4 Q. Karami '772 doesn't actually talk about
5 encouraging or discouraging, does it?

6 A. No. But that's basically -- when -- when
7 you look at that, you know, that -- that's the
8 implication of what they are trying to do. And
9 we're looking at '772 in context to '626.

10 Q. Well, right now, I'm talking to you about
11 '772.

12 But what's your understanding of the word
13 "obviate"?

14 A. It basically means that it doesn't have.

15 Q. It eliminates the need for; is that fair?

16 A. Eliminates the need for the loop
17 material. And that's because the outer cover, as
18 well as the side parts, are engageable with some
19 retentive forces.

20 Q. What the sentence actually says is it's
21 the water jet treating and/or aperturing that
22 obviates the need for the corresponding loop-type

1 landing zone, right?

2 A. That's what that line says. Yes.

3 Q. And Karami '772 actually says that you're
4 treating the non-woven through water jet treatment
5 or aperturing so that the fasteners can securely
6 engage the wings, correct?

7 A. It basically says they have stronger
8 engagement forces on the side parts and the wings.

9 Q. Doesn't it actually say that they treat
10 it with water jet treating and aperturing so that
11 the fasteners can securely engage?

12 A. What sentence is that on?

13 Q. Well, let's look at paragraph 39.

14 A. It basically says, "so that the hook-type
15 fasteners at the free ends of the wings can attach
16 to the front portion."

17 Q. So what Karami is saying is that the
18 water jet treated and/or aperture bonded --
19 they've treated the non-woven so that the
20 hook-type fasteners at the free ends of the wings
21 can attach, correct?

22 A. You're reading paragraph 38 of --

1 Q. 39.

2 A. 39.

3 Q. The last sentence: "With this
4 construction, at least a portion of the outer
5 surface of the front portion 22 of the T-shaped
6 diaper may be made of water jet treated and/or
7 apertured bonded non-woven so that the hook-type
8 fastener at the free ends of the wings 40 can
9 attach to the front portion 22."

10 Do you see that?

11 A. Yes. I'm just going to look at what the
12 front portion 22 really refers to.

13 Front portion -- yes. They basically
14 have the outer cover that is water jet treated.
15 That's right.

16 Q. And they do that so that the hook-type
17 fasteners at the free end of the wings can attach
18 to the front portion 22?

19 A. Yes. You know, it's a matter of degree.

20 Q. Then -- let's take a look at
21 paragraph 48.

22 A. Paragraph 48?

1 Q. Yes. Second sentence.

2 "In at least one embodiment of the
3 invention, the entire outer surface of the wings
4 131 and 133, is made of water jet treated and/or
5 apertured non-woven so that the hook-type
6 fasteners 150a to 150d can securely engage with
7 any portion of the wings 131 and 133 when the
8 diaper 100 is placed on the wearer."

9 Do you see that?

10 A. Yes.

11 Q. And again, Karami '772 says that the
12 surface of the wings is made of water jet treated
13 and/or apertured non-woven so that the hook-type
14 fasteners can securely engage, correct?

15 A. Yes. That's what it reads.

16 Q. So you'd understand that it's -- what's
17 enabling the non-woven to securely engage is the
18 water jet treatment and/or the aperturing of the
19 non-woven?

20 A. Well, it's a matter of degree. They've
21 made a -- a difference in retentive forces between
22 the center portion and the outer wings. And the

1 water jet treatment and aperturing enhances the
2 retentive forces.

3 Q. And --

4 A. So the wings would have higher retentive
5 forces in the center portion by Karami '772.

6 Q. And in fact, Karami '772 is teaching the
7 water jet treatment and/or aperturing so that the
8 fasteners can securely engage.

9 A. Basically, yeah, they can securely engage
10 better than the outer cover, that the retentive
11 forces are greater with the treatment.

12 Q. Let's also look at paragraph 51.

13 A. Paragraph 51?

14 Q. Correct. Around the middle of the
15 paragraph on page 13 of 16, it starts, "In at
16 least one embodiment."

17 Do you see that?

18 A. Yes.

19 Q. "In at least one embodiment of the
20 invention, the entire outer surface of the wings
21 231 and 233 is made of water jet treated and/or
22 apertured bonded non-woven so that the hook-type

1 fasteners 250a through 250d can securely engage
2 with any portion of the wings 231 and 233 when the
3 pull-up absorbent article 200 is placed on the
4 wearer."

5 Do you see that?

6 A. Yes.

7 Q. And again, Karami '772 is teaching that
8 you do the water -- use a water jet treated or
9 non-bonded [sic] non-woven so that the hook-type
10 fasteners can securely engage.

11 A. Yes. I'm -- basically what '722 [sic] is
12 saying, that the water treated, yeah, side parts
13 can secure the diaper onto the body.

14 Q. And that's what you would think --
15 "securely engage" would mean can secure the diaper
16 onto the body?

17 A. Yes. But that's not -- yeah. And they
18 have -- they're not saying that the retentive
19 forces in the outer cover cannot do the same.

20 Q. They don't say that they can.

21 A. Not in '772 by itself. But if you look
22 at it in combination with '626, you can conclude

1 that.

2 Q. And in fact, Karami '772 does tell you
3 how to securely engage the diaper, and it never
4 says that attaching fasteners to an untreated
5 non-woven would secure the diaper.

6 A. You have to look at it from evolutionary
7 point where they were going from basically a zero
8 engagement to some; there was a rationale as to
9 why they chose to have some retentive forces in
10 the outer cover in the central portion of the
11 diaper. And that's because, if you look at the
12 flexibility of how you put these things on, you
13 want some engagement into the center portion. And
14 they were not getting it with film alone, so they
15 modified their design to do that, having the
16 distinction between the side parts and the center
17 portion of the -- of the diaper, which is
18 basically -- this is nothing more than a variant
19 of what Beckert was trying to claim. Beckert is
20 basically taking the same concept of separate
21 retentive forces.

22 Q. But Karami actually talks about the --

1 securely engagement only with the water jet
2 treated and apertured bonded non-woven, correct?

3 A. On '772. Correct.

4 Q. And in fact, Karami '772 refers to the
5 water jet treatment and/or aperturing a non-woven
6 to be the inventive concept; is that right?

7 A. Repeat the last comment.

8 Q. Karami '772 refers to the water jet
9 treating and/or aperturing of a non-woven so that
10 it can engage fasteners to be the inventive
11 concept of Karami '772.

12 A. No, I don't think that's the only thing
13 they're talking about. They're talking about a
14 stay-away zone that has retentive forces as well.

15 Q. Let's take a look at paragraph 40 where
16 it says, "Example 1 below illustrates the
17 advantages provided by the inventive concept of
18 water jet treating and/or aperturing a bonded
19 non-woven to enhance shear and peel strengths of a
20 fastening system."

21 A. Basically like we've said all along, that
22 the water treatment and aperturing does enhance

1 shear and peel strengths of the fastening system.

2 Q. And Karami '772 calls that the inventive
3 concept?

4 A. That's what they were doing to improve
5 the retentive forces.

6 Q. And they call it the inventive concept.
7 Is that a yes?

8 A. That's what it says.

9 Q. Well, let's take a look at paragraph 44
10 as well. In paragraph 44, you see, "The T-shaped
11 diaper 10 described in the previous embodiments is
12 used to illustrate the inventive concept of using
13 a water jet treated and/or apertured bonded
14 non-woven as part of an absorbent article to
15 enhance the shear and peel strength of surfaces of
16 the absorbent article that engage with a hook-type
17 fastener."

18 Do you see that?

19 So again, Karami '772 calls using a water
20 jet treated and apertured bonded non-woven so that
21 the non-woven can engage with a hook-type
22 fasteners as the inventive concept.

1 A. That's what they state here.

2 Q. Let's take a look at paragraph 52. And
3 again, I think if you look at 52, you will agree
4 that Karami '772 again refers to incorporating the
5 inventive concept of a bonded non-woven that is
6 water jet treated and/or apertured.

7 A. Basically they're stating that the water
8 treatment enhances the retentive properties of
9 those side parts.

10 Q. And Karami '772 considers that the
11 inventive concept.

12 A. I'd have to review the claims to see
13 exactly how they word it to agree with your
14 inventive -- with what you're saying is the
15 inventive step.

16 If you don't mind, let me look at the
17 claims.

18 Q. Sure.

19 A. They include the water jet treated side
20 parts in one of the claims.

21 Q. Yes. But I think we went through three
22 instances in the specification where it referred

1 to that as the inventive concept, correct?

2 A. Of Benning '772. Yes.

3 Q. Yeah, Karami '772. But --

4 A. Oh, that's right.

5 Q. No, no, all that's right. I mix them all
6 up all the time, too.

7 And I'd like to take a look at table 1 in
8 Karami '772.

9 A. Okay.

10 Q. In paragraph 68 of your declaration --

11 A. Okay.

12 Q. -- you state that Karami '772 uses a
13 modified ASTM standard to obtain peel and shear
14 data, right?

15 A. Yes.

16 Q. How was the test modified?

17 A. I have no idea. I don't think they state
18 exactly what they're doing.

19 Q. So you don't know -- we don't know what
20 tests Karami '772 actually carried out?

21 A. I don't. They refer it as a modified
22 spin test.

1 Q. Can you make any determinations on
2 reported shear and peel strengths when you don't
3 know what the test was?

4 A. Not really, I cannot.

5 Q. Will you --

6 A. Let me put it this way: Within the data
7 that's exhibited in that particular table, I think
8 it is valid to compare one against the other, kind
9 of. It was a very difficult table to navigate for
10 a variety of reasons.

11 But -- so basically my only takeaway from
12 this table is that water jet treated or apertured
13 non-wovens have higher retaining forces, shear
14 specifically, than nontreated ones. And that was
15 my takeaway.

16 Q. And in fact, they showed that a lower
17 basis weight non-woven, a 20 gsm non-woven, could
18 have higher retaining forces than a non-treated
19 33.9 gsm non-woven, correct?

20 A. I don't think so. Can you specifically
21 point to that?

22 Q. Well, sure. Take a look at -- let's take

1 a look at Binder 65445.

2 A. Okay.

3 Q. And if -- you see for the 20 gsm spunbond
4 wet jet treated non-woven, 16 pins per square
5 inch, they had a load of 1677.

6 A. 1677? I don't see that.

7 Q. .78. It's at the bottom of the table for
8 the Binder sample 65445, there's a reference to a
9 20 gsm spunbond water jet treated non-woven. And
10 then the shear strength, it says 1677.780.

11 A. Comparing that with?

12 Q. Higher in the table, there's a spunbond
13 non-woven. That's the 33.9. And it has a number
14 of 16.16 -- or, sorry. It has a 1616.699.

15 A. But that's with the 65445 hook?

16 Q. No, that's with the -- yes. 65445 hook.
17 Correct.

18 A. Okay. But that was not the hook that we
19 used in our analysis for the most part. We were
20 using the 25445.

21 The other thing to -- that I'll point out
22 to you is, if you look at the notes below, it

1 says, all above testing was done peeling and
2 shearing from the 2 inch length side of the hook
3 samples.

4 So they're looking at something that I'm
5 not used to, of pulling the force 90 degrees to
6 the actual application and use force vector of
7 the -- of the shear.

8 So I cannot make heads or tails of these
9 numbers, honestly. And -- you know, so it was a
10 lot of data, and I guess they use it to validate
11 their position of the treatment. And if you take
12 a step back and look at it overall, you can see
13 that water treatment -- water jet treating and
14 aperturing does increase the shear forces. But to
15 make the comparison, I was extremely uncomfortable
16 in doing that.

17 Q. Yeah. And it does show that you can
18 treat a lower basis weight non-woven to get -- and
19 have it have higher retentive forces than a higher
20 basis weight non-woven.

21 A. If needed. Yes.

22 Q. So let me ask you again about these

1 numbers. Let's even look at the first number in
2 this table for shear strength for the spunbond
3 non-woven.

4 Do you see that? I think the -- just
5 trying to look at the -- on the page 12 of 16 of
6 the exhibit.

7 A. Okay.

8 Q. The first -- the top part of the table,
9 spunbond non-woven, there's a reference at shear
10 strength to 1,094.645/569.7?

11 Do you see that?

12 A. Yes.

13 Q. Do you know what that number -- well,
14 what does the -- what do you understand the
15 1,094.645 to refer to?

16 A. It says load at max load, which to me was
17 the stress force. And then they mention grams per
18 2 inches. I have no idea what the lower number
19 is, or what that is, if it's a range or not. It's
20 very confusing.

21 And I would not read into this because I
22 have no idea what they did.

1 Q. Okay. Could that be the standard
2 deviation?

3 A. If so, it should be noted, and it's not.
4 And that would -- by the way, that would be a
5 significantly high standard deviation, so I would
6 probably say it's not. I have no idea what they
7 were meaning by that.

8 Q. So we also don't know, in terms of the
9 testing, how many specimens were tested --

10 A. Correct.

11 Q. -- using this?

12 A. Yeah, that's a very important point, that
13 a lot of these tests -- and they don't talk about
14 it in any of the patents that we've read. But
15 somebody who's been in this industry and has done
16 this kind of work, or had groups that basically
17 developed these products and materials, the peel
18 and shear forces are typically done with multiple
19 pulls, certainly peel is done that way, for a
20 second, third, fourth, because it's a refastening
21 option, the flexibility that these structures
22 provide. And none of them mention that

1 specifically as, oh, this is the fifth or the
2 third.

3 And companies tend to have a range of,
4 you know, which of the pulls they use for their
5 primary determination or selection.

6 Q. And we couldn't reproduce this test?

7 A. I could not. No.

8 Q. And also, correct me if I'm wrong, but it
9 appears that he didn't -- he had tested -- let me
10 start over.

11 What it does report is that it has tested
12 a 33.9 gsm spunbond non-woven that was untreated,
13 correct?

14 A. Correct.

15 Q. And then also tested it treated, correct?

16 A. Correct.

17 Q. And when it came to the 20 gsm non-woven,
18 there were no untreated 20 gsm non-wovens tested;
19 is that correct?

20 I'll say it again. Karami '772 didn't
21 treat an untreated 20 gsm non-woven.

22 A. Doesn't look like they did, no.

1 Q. Karami '772 wasn't concerned with finding
2 out what the retaining forces were for a 20 gsm
3 non-woven?

4 A. Without water treatment. Correct.

5 MS. DALEY: So I know that -- I don't
6 remember when we came back or how long it's been,
7 Jeremy. I'll continue, but I just want to check
8 in. Because we did have an unforced break there
9 for a little bit, but -- I just wanted to see what
10 you guys think.

11 MR. ALBRIGHT: It's up to Mr. Jezzi.

12 THE WITNESS: Why don't we go to 1:00 --

13 MS. DALEY: Okay.

14 THE WITNESS: -- and then take a lunch
15 break.

16 MS. DALEY: Sure.

17 MR. ALBRIGHT: Great. Yeah, that sounds
18 good.

19 BY MS. DALEY:

20 Q. Can you turn to figure 8 in Karami '772?

21 A. Yes.

22 Q. What does figure 8 illustrate?

1 A. What does this figure illustrate?

2 Q. Yeah.

3 A. To me it illustrates a full-sized diaper,
4 a-la figure 6 or even figure 8 without using the
5 side seals they commented on as a pull-on
6 convertible diaper.

7 Figure 7, I'm sorry, is, based on my
8 experience and the way they tried to describe it,
9 as a convertible diaper. Typically, this concept
10 was developed by Kimberly-Clark on their pull-up,
11 their training pant. And they didn't use
12 adhesives, as -- I believe Karami described they
13 used mechanical fasteners for those side seals.
14 They would come in in a closed fashion as a
15 pull-up so they could, out of the package, be used
16 as a pull-up.

17 However, they could be opened up and used
18 as a flat diaper and applied that way. Or -- and
19 they were designed for, in case that you wanted to
20 take the diaper off, they could just split it at
21 the seam. So that was that whole concept.

22 The only difference between figure 6 and

1 figure 8 are the fact that the side seals have
2 that adhesion capability.

3 So what I look at figure 8 is basically
4 those type of diapers that are closed and sealed
5 with the fastening systems 150a through d onto the
6 side part of the diaper. And it's also used to
7 illustrate the stay-away zone 160.

8 Q. And where is figure 8 discussed in
9 Karami -- where is figure 8 discussed in
10 Karami '772?

11 A. Figure 8?

12 Q. Yeah.

13 A. When they discussed the stay-away zone.

14 Q. Is that paragraph 53?

15 A. I would look for item 160. Let me look
16 at that first.

17 Q. Certainly.

18 A. Item [sic] 53.

19 Q. And in paragraph 53, Karami '772 refers
20 to a stay-away zone.

21 A. Yes.

22 Q. And it's your position that the fasteners

1 can engage the stay-away zone?

2 A. Based on reading '626, the answer is yes.

3 Q. Well, let's go through that paragraph.
4 Can you take a look at the second sentence in
5 paragraph 53 and tell me what's described there?

6 A. Starting where? With "alternatively"?

7 Q. The stay-away zone. The second sentence.
8 So it's the third line down in paragraph 53.

9 A. "The stay-away zone 160 can be formed by,
10 for example, an inner backing film or backing film
11 laminated to spunbond/melt blown/spunbond
12 non-woven exposed through an opening in the
13 backsheet. Alternatively, the entire front waist
14 portion can be water jet treated (with or without
15 three dimensional [sic]) and/or apertured except
16 [sic] for a portion of the front waist portion
17 forms the stay-away zone."

18 Q. For that -- oh, sorry.

19 A. Let me finish. Thus, the stay-away
20 zone ... will have diminished affinity to
21 hook-type fasteners in relationship to the
22 remainder...

1 That's how they get their differentiation
2 in the -- between the two retentive forces
3 between --

4 Q. So the --

5 A. -- the stay-away zone and the side parts.

6 Q. So you would agree there's two stay-away
7 zones described in paragraph 53, correct?

8 A. Possibly. Or a variation or a tapering.

9 Q. So that first portion, before the
10 "alternatively," where it says, "The stay-away
11 zone 160 can be formed by, for example, an inner
12 backing film or backing film laminated to a
13 spunbond/melt blown/spunbond non-woven exposed
14 through an opening in the backsheet 130" --

15 What do you understand that to mean?

16 A. That's referring to the Damaghi concept.

17 Q. And in that situation, fasteners would
18 not be able to adhere to the non-woven at all?

19 A. If you have a film, they would not have
20 affinity to the film.

21 Q. And you agree with the Damaghi that it
22 referred to -- I'm going to say that we've

1 referenced that, but I'll just say I believe it
2 was Exhibit 1028 -- references a stay-away zone as
3 well, correct?

4 A. The Damaghi patent does refer to a
5 stay-away zone, yes.

6 Q. And you would agree that the Damaghi
7 reference refers to that as an area to which the
8 fasteners could not attach.

9 A. They were specific to films, if I recall
10 correctly, and basically they would have zero
11 engagement capability.

12 Q. So in Damaghi, the stay-away zone is --
13 the fasteners don't attach?

14 A. In Damaghi, that's correct.

15 Q. And in the Karami '772, in the first half
16 of paragraph 53, they describe a stay-away zone
17 where the fasteners would not attach.

18 A. That is one of the embodiments that they
19 mention here. Yes.

20 Q. And then -- but it's your position, for
21 this alternative stay-away zone in Karami '772
22 where there's an untreated non-woven, that that --

1 fasteners could attach to?

2 A. Yes. Basically they're aperturing the
3 side parts. How far in varies.

4 Q. And it's your position that they can
5 attach sufficiently to secure the diaper on the
6 wearer?

7 A. Based on, you know, other citations that
8 we have specifically, 66 and the commonality of
9 the materials, the answer is yes.

10 Q. So you're saying that the stay-away zone
11 in paragraph 53 is both a stay-away no-attachment
12 zone and a stay-away attachment zone?

13 A. A stay-away attachment zone with
14 diminished retentive forces. Yes.

15 Q. And you're not basing that on Karami '772
16 itself; I think you said you're basing that on
17 Karami '626, correct?

18 A. In conjunction. Yes.

19 Q. Well, what's the "in conjunction" part?

20 A. Well, basically the '626 -- and can I go
21 to it in my declaration? Because I think we
22 address it there.

1 Basically, when you look at it -- I can't
2 find the section readily here. But when you look
3 at Karami '626, they discuss the basis weight
4 ranges that are used for the side parts, as well
5 as for the outer cover. And, you know, persons
6 skilled in the art from that citation would
7 understand that the hook forces, the shear forces,
8 that are used there, because of the commonality of
9 the materials in relation to Beckert '78 [sic]
10 would work sufficiently for securing the diaper to
11 the outer cover.

12 Q. Looking at Karami '772, you'd agree that
13 reference to diminished affinity does not mean
14 that it necessarily has sufficient affinity to
15 secure the diaper on the wearer.

16 A. No, it doesn't say -- I don't know if it
17 says that -- I haven't found it. I didn't find
18 that reference to diminished not being able to
19 secure the diaper. It does have diminished
20 retentive forces, which is the same concept that
21 Beckert is elaborating on.

22 Q. And it doesn't say in this paragraph 53

1 to instruct you to fasten -- to adhere fasteners
2 to the stay-away zone, does it?

3 A. It basically discourages the fastening to
4 the stay-away zone for adjustability and sizing.

5 Q. And it doesn't use that term "securely
6 engage," which we saw it use in connection with
7 the water jet treated wings, correct?

8 A. You know, we're not using Karami '772 to
9 assert that we're doing it in combination with
10 '626.

11 MS. DALEY: So I think, then -- is it
12 1:00? It's about 1:00. We'll let you have a
13 little food.

14 What time, Mr. Jezzi and Jeremy, do you
15 want to return?

16 THE WITNESS: You guys pick. 30 minutes?
17 An hour? An hour?

18 MS. DALEY: We can split the difference.
19 45?

20 MR. ALBRIGHT: 45 minutes?

21 MS. DALEY: 45 minutes.

22 THE WITNESS: 45 minutes.

1 (A recess was taken.)

2 BY MS. DALEY:

3 Q. Mr. Jezzi, in your declaration, you refer
4 to an elastic non-woven.

5 A. Do you know which section of the
6 declaration you're referring to?

7 Q. Well, let me ask you. Are you familiar
8 with elastic non-wovens?

9 A. Yes. Very much so.

10 Q. What -- what is an elastic non-woven?

11 A. And elastic non-woven is one that has
12 elastic properties. Elasticity basically is the
13 stretching and retracting of the material, whether
14 it's a film or a non-woven. And there have been
15 some efforts at developing these type of
16 materials.

17 Q. What does -- do you use elastic
18 non-wovens in adult incontinence articles?

19 A. Elastic non-wovens per se, to the best of
20 my knowledge, have never been truly successful.
21 The elasticity of the non-woven is basically
22 determined by the polymer that's used. There are

1 other things you can do to it that some people
2 call -- or refer them to [sic] as elastic, but
3 they truly are not.

4 But truly elastic non-wovens are
5 polymer-dependent. They're resins, polypropylene,
6 polyethylene, OBCs, olefin block copolymers.
7 There's styrenic block copolymers. They can be
8 used to make these structures elastic. Few have
9 really been successful at developing them.

10 So typically, the elastic non-woven,
11 per se is not used in incontinent products or baby
12 diapers. There are composite structures, and
13 mostly using -- well, Kimberly-Clark used the
14 non-woven -- they use a melt blown, or they have
15 used in -- mostly it's film that's elastic, and
16 they may laminate it in a certain way with the
17 non-woven on the outside for cloth-likeness and
18 let it retract or shrink or whatever it is to get
19 the elasticity of the composite.

20 Q. Do you know what that Kimberly-Clark
21 non-woven to -- product that gets the elasticity
22 of a composite is used for?

1 A. Kimberly-Clark developed and
2 commercialized an elastic wing side tab, probably
3 going back to 1987, a project that my group was
4 involved with. And the non-woven they used as
5 part of the composite was melt blown, which is a
6 spun mill process similar to spunbond but with
7 significantly finer fibers. And it was used for
8 the wings.

9 Q. Okay. And that was going to be my next
10 question. And why is that used on the wings?

11 A. Because it has elasticity. And what they
12 could do then is provide adjustability and also
13 help improve the -- basically it would help with,
14 you know, the flexibility of stretching and
15 securing the fasteners, whether they would be
16 adhesive or hook, to the main body. And they're
17 still used that way today.

18 Q. Would you use that type of elastic
19 non-woven, referring to the one that you're
20 talking about of the composite from
21 Kimberly-Clark, say, to engage fasteners?

22 A. The elastomeric composite that I'm -- you

1 know, that we've reviewed can be used to engage --
2 you said to engage or to -- to bond or to hold?

3 Q. Well, let's start with to engage. Can it
4 engage fasteners?

5 A. Yes. It's a structure that may be
6 engageable by a hook.

7 Q. How well does it engage? Is it
8 sufficient to hold the diaper on the wearer?

9 A. It depends on the composite. It varies.
10 The affinity tends to be relatively good because
11 the basis weight of these non-wovens in the
12 composite form are fairly high. You know, so they
13 can be used that way. They could engage.

14 Q. How does the elastomeric composite's
15 affinity compare to a traditional non-woven's
16 affinity?

17 A. Well, there are a lot of variants, and
18 they all -- you know, there are different
19 embodiments, and they all have their own
20 characteristics and performance ratios. And I
21 don't recall -- you know, I think -- I can't, in
22 my mind, rank them as to how well they perform.

1 They're all going to perform up to a degree.

2 Typically, the fact that the non-woven is
3 heavier and is more corrugated or some -- along
4 these things that, you know, are -- that we'll
5 probably discuss tend to make the side parts -- or
6 the elastomeric composites that are used for the
7 wings and the side parts engageable.

8 Q. So would you -- you said they're used for
9 the wings. Would you ever use that type of
10 elastomeric composite for the backsheet?

11 A. I'm glad you asked that question. Yes,
12 we did, in an experimental project back in 1990.

13 The issue with these materials for usage
14 in greater surface area components in a diaper,
15 whether it's baby or incontinent, is cost.
16 They're relatively heavy. There's a lot of
17 material there. The elasticity or the polymers
18 that are used to make the film or the non-woven
19 elastic are not commodity polymers by any means.
20 They're specialty polymers. So the cost of these
21 materials are higher.

22 And even though it does a -- you know, we

1 had made a -- developed a beautiful diaper, it's a
2 little bit expensive.

3 Q. Would it -- since it's an elastomeric
4 composite, would you have -- would it sag at all
5 when the absorbent pad was filled with fluids,
6 since it has some elastomeric to it?

7 A. To some degree they all do. Sagging when
8 wet, you know, depending on the loading, is going
9 to put some force onto the diaper, pull it down.
10 Obviously, those diapers that have, you know,
11 well-designed and well-fitted -- and they are
12 well-fitted and have significant shear forces to
13 hold them in place would perform slightly better.
14 But it all depends on how you put together the
15 product.

16 So, you know, the -- I have seen very few
17 diapers that don't sag. That's another way of
18 saying that.

19 Q. My question is more, would they have a
20 bigger problem with sagging if you used an
21 elastomeric composite as the backsheet than a
22 traditional non-woven, given that there's some

1 stretch to the elastomeric composite?

2 A. Well, if you would put the elastomeric
3 entirely as the outer cover --

4 Q. Yes.

5 A. -- the fit of that diaper, if designed
6 correctly, would be better than one that would not
7 have an elastomeric outer cover.

8 Q. How would you fit that correctly?

9 A. Repeat that.

10 Q. How would you -- you said if it was
11 fitted correctly. How would you fit an
12 elastomeric as --

13 A. If I were -- I'm sorry, I meant if the
14 composite and the diaper were designed correctly,
15 you know, the elasticity of the non-woven would
16 allow for a certain range of fit more than a
17 non-elastic material. And basically, if you
18 designed the diaper correctly, and -- and fit it,
19 it would stay closer to the body, obviously, which
20 is what you're trying to do.

21 Q. And you don't think it would sag more
22 when the absorbent pad was filled because it is

1 elastomeric?

2 A. Honestly, no. I would be surprised -- if
3 they did that, there's something wrong with your
4 concept and your approach because, like I said,
5 these materials probably are heavier and so
6 they're stronger.

7 So I would not predict that you would get
8 more sagging.

9 Q. But you said that most -- it's not
10 typically used as the backsheet for the entire
11 diaper because of the cost?

12 A. That is correct. I have not seen one in
13 commercial use at all.

14 Q. Mr. Jezzi, in your declaration you --

15 A. Now, let me rephrase that. We're
16 discussing diapers, and I'm focusing on open-face
17 diapers. It's a possibility that you can identify
18 a pull-on undergarment or a -- specifically, in
19 the incontinent side, as having an elasticized
20 outer cover. They're not a hundred percent
21 elasticized; they're elasticized primarily around
22 the waist. But that's a -- that's using Lycra, a

1 Spandex filament, multiple filaments, to get the
2 elasticity of the composite. It's basically a
3 spunbond two-layer structure.

4 Q. Are you familiar with the material that's
5 been called Fabrilix?

6 A. Yes. I think that was referred to as
7 being made by Tredegar. And my old employer
8 Clopay made a similar material.

9 Q. And would that be one of those
10 elastomeric composites?

11 A. It's an elastomeric trilaminate. Yes.

12 Q. Mr. Jezzi, you rely on a reference that
13 you call Karami '626, correct?

14 A. Yes.

15 Q. And it's publication number
16 2003/0020626 [sic], and it has been submitted as
17 Exhibit 1004; is that consistent with your
18 understanding?

19 A. Yes.

20 Q. So if I refer to this as Karami '626, or
21 Exhibit 1004, you'll know what I'm referring to?

22 A. Yes.

1 Q. I'd like to take a look at figure 1 in
2 Karami '626.

3 A. Okay.

4 Q. What does figure 1 illustrate?

5 A. Well, that is a diaper that is -- has
6 side parts and the wings, items, you know, 33 and
7 31 -- 30, 31. And it has kind of a semi-hourglass
8 shape on the main body.

9 Q. And Karami '626 refers to this as a
10 T-shaped brief; is that right?

11 A. You could refer to it that way. Yes.

12 Q. Well, if you look at --

13 A. They do call it a T-shaped brief.

14 Q. -- paragraph 24.

15 So then what does figure -- can you take
16 a look at figure 2?

17 A. Yes.

18 Q. Is that also a T-shaped brief?

19 A. Yes.

20 Q. Can you take a look at figure 7?

21 A. Yes.

22 Q. Is that also a T-shaped brief?

1 A. Well, it appears to be a -- it appears to
2 be one of those described before in figures 1 or
3 so that is closed.

4 Q. So it's different from the others; it's
5 assembled on the wearer?

6 A. It's been assembled. Yeah.

7 Q. And what are figures 3 through -- 3, 4,
8 5, and 6?

9 A. Those are variants of the mechanical
10 fasteners that are placed on the front end of the
11 diaper.

12 Q. And so the figures 1 through 7 are all
13 forms of the T-shaped diaper, correct?

14 A. Repeat that again.

15 Q. Figures 1 through 7, they're all related
16 to the T-shaped brief.

17 A. Correct.

18 Q. So what's illustrated at -- looking at
19 figure 1, sorry.

20 A. Okay.

21 Q. What's illustrated at number 40?

22 A. The wings where you may be elastic, not

1 elastic or partially elastic.

2 Q. And what are -- where are the fasteners
3 located in -- are there fasteners in the diaper in
4 figure 1 of Karami '626?

5 A. Yeah. There are fasteners in items 41
6 and 42.

7 Q. How does a wearer put the T-shaped diaper
8 on shown in figure 1 of Karami '626?

9 A. The same way I described it before,
10 basically. You hold the back with one hand and
11 pull the front with the other, you pull it up, and
12 basically move one of the flaps. In this
13 particular case, you would move the one described
14 at -- well, 40, the right-handed one first, and
15 then you fold the other one against it.

16 Q. So in Karami '626, they describe
17 attaching the wings first and forming a belt; is
18 that right?

19 A. Well, I don't know if that would be the
20 only way of putting it on. I'd have to review how
21 they are suggesting. But that would be one way
22 that you could attach the wings. And then you can

1 bring the front portion in and then fasten in
2 under the wings. Or, like I said earlier, you can
3 bring one of the wings over as you move the front
4 portion in, fold the wing over, then bring the
5 other wing.

6 And I think that consumers will pick
7 whatever method is easiest for them to use.

8 Q. Well, let's take a look at paragraph 37
9 in Karami '626?

10 A. Which -- figure or item?

11 Q. Paragraph 37.

12 A. Oh, paragraph 37?

13 Q. Yes.

14 A. Okay.

15 Q. In the second sentence there it says,
16 "When brief 12 is first placed on the wearer, the
17 free ends of the wing" -- sorry.

18 "When the brief 12 is first placed on the
19 wearer, the free ends of the two wings 40 are
20 brought around the sides and front of the waist of
21 the wearer and make a partially overlapping
22 connection around the front of the waist of the

1 wearer."

2 A. That is one way to apply it, like I
3 mentioned, and the other way would be the other
4 way I discussed.

5 Q. So -- but -- do you agree that Karami
6 refers to that in here as a belt?

7 A. They're referring to that methodology.
8 Yes.

9 Q. Okay.

10 A. Consumers will do what they want to do.

11 Q. But the method that -- Karami '626
12 doesn't disclose an alternate way of donning it;
13 it disclosed first using a belt, correct?

14 A. Right. Yes.

15 Q. And then there's that -- figure 1,
16 there's that body portion or -- of the diaper, the
17 main body portion, correct?

18 A. I don't -- yeah. 26 and 24? Is that
19 what -- that area?

20 Q. Yeah. And what Karami '626 says is that
21 is pulled between the legs of the user and
22 attached to the belt; is that fair?

1 A. Yes.

2 Q. So those fasteners 42 -- so let me -- so
3 first we talked about our wings 40. They're
4 fastened together using that fastener 41 to form a
5 belt; is that right?

6 A. Yes.

7 Q. And then the other part of the diaper is
8 pulled between those legs and those fastener 42
9 are attached to the wings, correct?

10 A. Yes.

11 Q. So in figure 1, when someone is wearing
12 this T-shaped brief, all of the fasteners are
13 engaged to the wings, correct?

14 A. Let me review '626 a little bit closer.

15 Well, I think that it could -- it could
16 vary depending on the size of the person, whether
17 it would be engaging on the side parts exclusively
18 or whether one of the -- whether the item 41 would
19 be engaging the outer cover.

20 Q. We'll get to the size adjustability
21 parts. But let's take a look at paragraph 38 of
22 Karami '626. And it's referring to figure 7,

1 which we had just said was the assembled T-shaped
2 brief, correct?

3 A. Yes.

4 Q. And in paragraph 38, they indicate that
5 the two wings are put in partially overlapping
6 connection to form a belt, correct?

7 A. Repeat that again.

8 Q. The first sentence of paragraph 38,
9 "Thus, as illustrated in figure 7" --

10 A. Yes.

11 Q. -- "once the two wings 40 are placed in
12 partially overlapping connection, they, in effect,
13 form (with the back portion 20) a belt 40
14 encircling the waist of the wearer," correct?

15 A. Correct.

16 Q. And then it says that "the front portion
17 22 is then passed through the legs of the wearer
18 and raised in front of the wearer until the first
19 laterally spaced ... fastener elements 42 secured
20 thereto engage the outer exposed surface of the
21 belt 44," correct?

22 A. Yes.

1 Q. So what it's describing is those
2 fasteners on the front of the diaper are pulled up
3 and attached to the belt formed by the wings.

4 A. In -- in one description, yes. But I
5 could envision another methodology of application
6 where that would not be the case. That would be
7 dependent on the sizing of the wings and the
8 sizing of the individual.

9 Q. That's how in -- Karami '626 says to don
10 the figure 1 diaper.

11 A. By the methodology they're describing.

12 Q. And in fact, Karami '626 doesn't describe
13 any other way of attaching the fasteners in a
14 T-shaped brief other than them attaching to the
15 wings.

16 A. That's probably correct.

17 Q. So in that figure 1 embodiment, or as
18 shown in figure 7, those wing parts, they're
19 holding all the weight of the diaper, correct?
20 Because all of the fasteners have engaged those
21 wing portions.

22 A. At the body side, fasteners are engaging

1 the side parts.

2 Q. They're engaging the wings, correct?

3 A. Yes.

4 Q. Yes.

5 So you mentioned size adjustability. And
6 you also mention it in paragraph 107 in your
7 declaration.

8 A. Yes.

9 Q. You cite -- you indicate that Karami '626
10 shows and allows size adjustability, correct?
11 Accommodating both small- and large-waisted
12 persons?

13 A. What paragraph is that?

14 Q. 107.

15 A. Okay.

16 Q. You see that first sentence in
17 paragraph 107?

18 A. Yes.

19 Q. And you cite paragraphs 38 through 40 of
20 Karami '626 and paragraphs 62 through 65; is that
21 correct?

22 A. Yes.

1 Q. So taking a look at paragraphs 38 through
2 40, would you agree with me that, in paragraphs 38
3 through 40, Karami '626 is talking about the
4 T-shaped brief?

5 A. Yes.

6 Q. And if we look at paragraphs 62 through
7 65, would you agree with me that they don't
8 actually discuss size adjustability? And I'm
9 referencing 62 through 65 of Karami '626.

10 A. Okay.

11 Q. So going back to 38 through 40 in
12 Karami '626, paragraphs 38 through 40, and in
13 particular, paragraph 40. Well -- and actually, I
14 would like to -- it does mention -- actually, what
15 I'd like to do is turn to 41. So sorry about
16 that.

17 Because that's where they're talking
18 about the -- for the large-waisted wearer,
19 correct?

20 A. Can you repeat that again, please.

21 Q. Paragraph 41.

22 A. Wings 40 of the brief. Okay.

1 Q. So looking at paragraph 41 where it says,
2 "For the extra large-waisted wearer, the wings 40
3 need not be secured together at the front of the
4 wearer to form (with the back portion 20) a belt
5 44. Instead, they are secured to the opposite
6 lateral edges of the front portion 22 by fastener
7 elements 42 so that the wings 40 form a belt
8 including both the front and back portions 22,"
9 correct?

10 A. Yes.

11 Q. So how is that working to adjust for the
12 large-waisted wearer? What is being described by
13 Karami '626 there?

14 A. Well, it depends on the degree of
15 overlap. That's the adjustability portion, as
16 well as, you know, they mention elasticity. So
17 those would be the two factors for adjustability
18 or sizing for a larger person.

19 Q. So is it fair to say that maybe if you
20 have a larger waist, you can't actually form the
21 belt because the side flaps don't reach each
22 other?

1 A. Or possibly the outer cover, depending on
2 the size.

3 Q. And in that case, you still take the
4 fasteners that are on the front of the diaper and
5 attach them to the wings to form that belt,
6 correct?

7 A. Well, at least to one wing, and the other
8 would attach to the outer cover.

9 Q. When you say the outer cover, what do you
10 mean?

11 A. The backsheet.

12 Q. Of the wings?

13 A. Of the main body.

14 Q. But the fasteners are actually on the
15 main body.

16 A. It depends on the size of the individual.
17 They could leave it open. You know, it depends on
18 the amount of overlap, it depends on the size of
19 the wings, and the girth of the person.

20 Q. Well, looking at figure 1 -- well, wait.
21 Before we go there, in paragraph 41, they're
22 referring to fastener elements 42, correct?

1 A. It says, "For the extra large-waisted
2 wearer, the wings 40 need not be secured together
3 at the front of the wearer to form (with the back
4 portion 20) a belt 44. Instead, they are secured
5 by the wearer to opposite lateral edges of the
6 front portion 22" -- which is the outer cover.

7 Q. Yes. But the -- they're secured -- okay.
8 They're secured to the outer cover by the
9 fasteners 42 that are on the inside of the
10 frontsheet of the diaper, correct?

11 A. Can you repeat that again?

12 Q. Well, let's go look at -- let's look at
13 figure 1 again. And let's go look at what they
14 actually say about figure 1 and where -- looking
15 at figure 1, there's fasteners 42, correct? Let's
16 start there.

17 A. Okay.

18 Q. And where are the fasteners 42 located?

19 A. Well, the -- one thing to mention: There
20 are no dimensions in -- in this application, I
21 don't believe. And so the amount of overlap of
22 these wings is variable. And it is very possible

1 that you could end up with the wing -- the wing
 2 without item 41 latching on to fastener 42 right
 3 and -- and having the top portion wing, the left
 4 wing, with 41 attaching to the outer cover, if you
 5 can understand the fit that I'm describing. I
 6 mean, it is possible to anchor the wing to the
 7 outer cover.

8 Q. I'm focusing on what Karami '626 teaches
 9 doing with those fasteners.

10 And if you look at paragraph 37 at the
 11 top of the second column, do you see it refer to
 12 fastener elements 42 on the frontsheet 30?
 13 Correct?

14 A. On 37? Fasteners --

15 Q. It's in paragraph 37, but it spills over
 16 to the second column. So it's at the top of --

17 A. Okay. Yeah. They're stating that, but
 18 I'm just, you know, giving you the hypothetical
 19 that, in practice, it could be possible to attach
 20 the hook that's in the side part to the outer
 21 cover.

22 Q. And what's the frontsheet of the diaper?

1 A. The front -- the top sheet?

2 Q. The frontsheet that they're referring to.
3 They're calling it a frontsheet 30.

4 What is the reference to a frontsheet?

5 A. That's probably the outer cover.

6 Q. Well, if you see, there's a reference
7 farther down to a frontsheet 30 and a backsheet
8 32.

9 A. I'm trying to follow you, and I lost
10 that --

11 Q. In that same paragraph 37.

12 A. Yes.

13 Q. If you -- farther down you'll see there's
14 a reference, i.e., frontsheet 30 and backsheet 32.

15 A. Okay.

16 Q. So would it be the frontsheet --

17 A. Terminology is different. Frontsheet
18 could be top sheet, would be the inside of the
19 diaper. And 32, what they're describing as the
20 backsheet, would be the outside of the diaper.

21 Q. So you would agree that the way that
22 Karami '626 is using it, the frontsheet would be

1 the top sheet of the diaper?

2 A. Correct. The inner liner.

3 Q. And so Karami '626 says that the fastener
4 elements are affixed -- are attached to the top
5 sheet of the T-shaped diaper, correct, before
6 they're in use. So before the diaper is
7 assembled, the fastener elements 42 are attached
8 to the frontsheet of -- 30 of the diaper.

9 A. That's odd. But maybe it's sandwiched in
10 between? Not -- it's hard to understand the way
11 they're describing it. You typically would not
12 have mechanical fasteners next to the top sheet.
13 It -- you can, you know, understand why, because
14 of the fact that it would be rubbing against the
15 body and, -et cetera, et cetera.

16 So that reads awkward and I didn't
17 interpret it that way at the beginning. Okay.

18 Q. Well, I think when we were talking about
19 if you first formed a belt, then the fasteners on
20 the inside of the diaper can attach to that belt.

21 A. But the -- the fasteners would be on the
22 backsheet.

1 Q. Well, we just said the fasteners are
2 on -- they attach to the -- when you say the
3 fasteners are on the backsheet, what do you mean?

4 A. The outer cover.

5 Q. Of what?

6 A. Of the diaper.

7 Q. Of which -- of the wings? Of the front
8 of it?

9 A. Yeah. They would -- they should be
10 facing out.

11 Q. So for the T-shaped diaper, where we just
12 described it here -- and you can look at
13 paragraph 37 again -- but it does say there that
14 the fasteners are located on the frontsheet, which
15 would be the inside of the diaper, correct?

16 A. That's what it says, but it doesn't make
17 too much sense. But that's -- go ahead.

18 Q. Well, if you're -- the way they've said
19 it, if you put the two wings around and you form a
20 belt and then you pull the diaper up to attach to
21 the belt, having the fasteners on the inside
22 actually enable you to put those fasteners on the

1 belt.

2 A. Well, what you're -- okay. I got it.
3 You're putting the outer cover on outside of the
4 wings.

5 Q. Correct. Yes.

6 A. Well, they're designed -- okay. Go
7 ahead. There are design flaws with that, but go
8 ahead.

9 Q. Okay. Well, that's what --

10 A. That's what --

11 Q. -- Karami '626 is describing for
12 figure 1, correct?

13 A. That's apparently what they said. Okay.

14 Q. So looking at that, when we get to
15 paragraph 41 and they're talking about the
16 large-waisted wearer, you still take those
17 fastener elements 42 that are inside of the diaper
18 and attach them to the wing, the outside of the
19 wings; it's just that the wings haven't formed a
20 belt because there's not sufficient material; is
21 that fair?

22 A. Yeah. So -- yes.

1 Q. Okay. And looking at -- they also, I
2 think as you mention, they do discuss a
3 small-waisted wearer. And I believe that's in
4 paragraphs 50 and 51 of Karami '626.

5 A. Repeat the question again.

6 Q. I was going to -- we had just discussed
7 how Karami '626 talks about attaching -- how to
8 accommodate large-waisted wearers. I was turning
9 to small-waisted wearers. And I think you'll see
10 them referenced -- a small-waisted person
11 referenced in paragraphs 50 and 51 of Karami '626.

12 A. 60 and 61 doesn't talk about small.

13 Q. 50 and 51. I'm sorry if I misspoke. In
14 Karami '626, if you look at paragraph 50 --

15 A. Yes.

16 Q. -- it references in the first sentence a
17 small-waisted wearer. And in paragraph 51 in the
18 first sentence, it references a small-waisted
19 wearer. So I just want to make sure you're where
20 I am.

21 So how does Karami '626 teach adjusting
22 for a small-waisted wearer here?

1 A. Basically by the overlap of the wings.

2 Q. And when you say that, what do you mean?

3 A. The side parts. That's how much they --
4 they fold over each other.

5 Q. But -- and again, let me look at
6 paragraph 50. You would agree, again, this is
7 related to a T-shaped brief, correct?

8 A. Yes.

9 Q. And they disclose using a -- it discloses
10 partway down, they use an auxiliary fastener
11 element 70 on a wing; is that correct? In
12 figure 2. If you look halfway down through
13 paragraph 50.

14 A. Do you know which figures they have
15 item --

16 Q. Figure 2 they're referring to. But -- I
17 could step back first for a second if --

18 A. I see it. Okay. Right.

19 Q. Then let's step back and look at
20 figure [sic] 50. And you tell me if you agree
21 that what they're describing in paragraph 50 for
22 the small-waisted wearer using a T-shaped brief is

1 that you might have too much wings and you end up
2 with one of them forming a long flap or extending
3 down; is that correct?

4 A. Yeah. I think.

5 Q. And they teach putting an extra fastener
6 on that so that could just at least be tucked up
7 and wrapped around so you don't have a wing
8 flapping around; is that fair?

9 A. Correct.

10 Q. Okay. Then in paragraph 51 I think they
11 discuss another way to adjust it for a
12 small-waisted wearer.

13 A. Yeah. They're adding extra fasteners.
14 And they're attaching to the opposite wing.

15 Q. Yeah. So you can get those extra wings
16 out of the way, correct?

17 And you would agree that what Karami '626
18 is discussing in 50 and 51 relate to the T-shaped
19 brief.

20 A. Yes.

21 Q. So does Karami ever discuss how to adapt
22 for size adjustability to anything other than a

1 T-shaped brief?

2 A. I think they discuss a T-shaped brief.
3 So I don't think they make references to other
4 embodiments.

5 Can I look at my declaration, please, for
6 one second?

7 Q. Uh-huh.

8 A. Basically, Karami '626 -- I think
9 paragraph 35 -- says, While article 10 is a
10 T-shaped brief 12, Karami '626 teaches that it can
11 be a diaper or a pull-up brief where the same or
12 analogous improvements in fit, appearance and
13 economy are realized for each type article.

14 Q. But it doesn't actually describe how to
15 do those analogous improvements, does it?

16 A. Well, you haven't asked me how I would do
17 it. I would definitely modify the Karami design
18 in view of Benning. I think that's one of the
19 combinations that we have. So...

20 Q. I'm asking -- I'm not asking whether --
21 how you would do it. I'm asking, while
22 Karami '626 says that those improvements could be

1 added to a conventional diaper, it doesn't
2 describe how to do that; Karami '626 doesn't
3 describe it.

4 A. I'd have to review the patent.

5 No. But paragraph 35 implies that you
6 could take this concept of -- of applying the
7 fastener and modify it to a conventional and a
8 pull-on diaper.

9 Q. But it doesn't actually tell you how to
10 apply it to those.

11 A. No. They focused on the T-shaped.

12 Q. Yeah. And in the T-shaped -- I think we
13 talked about it -- all the --

14 A. But on that note, I think a person
15 skilled in the art, certainly keeping in mind
16 Benning design, can figure out how to apply the
17 concept to a modified chassis.

18 Q. And I think we discussed, in the T-shaped
19 diaper, all of the fasteners engage the wings,
20 correct?

21 A. It appears in their executions they do.

22 Q. Now, in your declaration, you cite

1 paragraph 65 of Karami '626; is that right?

2 A. In which paragraph?

3 Q. Paragraph 65 -- I'm sorry. In -- looking
4 at paragraph -- let's look at paragraph 65 of
5 Karami '626.

6 A. Yes.

7 Q. And you cite that in your declaration,
8 right?

9 A. Yes.

10 Q. Would it surprise you if I counted it and
11 it was at least 20 times you cited it?

12 A. Quite a few.

13 Q. You would agree with me that paragraph 65
14 is referring to the T-shaped brief, right?

15 A. Yes.

16 Q. And as we just discussed, the T-shaped
17 brief doesn't use the backsheet of the front and
18 back portions to engage fasteners, correct?

19 A. Yes.

20 Q. We had also talked about -- oh, when we
21 were -- I wanted to follow up on paragraph 116 of
22 your declaration. We were talking about size

1 adjustability.

2 And do you see that -- where you -- and
3 this is where I think you have modified the
4 Benning diaper, correct?

5 A. Yes.

6 Q. And you say that the closure tabs would
7 be able to engage the non-woven's chassis 20
8 underlayer to accommodate a small-waisted wearer,
9 correct?

10 A. Yes.

11 Q. And then engage the non-woven of the
12 front side panels 34 to accommodate large-waisted
13 wearers.

14 If you had a small-waisted wearer, why
15 would your closures 42 engage the chassis while --
16 why would -- I guess my question for you is --
17 well, my question for you is, if you have a -- in
18 your diaper, why would the closures 42, if you're
19 a large-waisted wearer, actually engage the front
20 side panels 34 and not the front of the diaper?

21 A. I don't know if I said that correctly
22 here. But basically, if you follow that through,

1 the accommodation of both small and large-waisted
2 persons by a single brief is simplified, with the
3 wings overlapping to form belt 44 for a
4 small-waisted person and not overlapping for an
5 extra large-waisted wearer.

6 Q. But if you've got the small-waisted
7 person, why would it engage the chassis for a
8 small-waisted person, yet the front side panels
9 for a large-waisted person?

10 A. Well -- no, this makes sense. I mean,
11 the side part would engage the chassis 20, which
12 is the outer cover for a small person; you have to
13 come in more. And then it would be opened up for
14 a larger person.

15 Q. Okay. Turning back to Karami '626, in
16 paragraph 69 of Karami '626, do you see it has a
17 reference to the pore size in the non-woven?

18 A. That's correct.

19 Q. And what do you understand that to be?

20 A. Let me read the entire paragraph.

21 Basically, it says that -- they're
22 discussing the fact that the lengths are elastic

1 with regards to the hooks.

2 Q. And it describes the pore size as the
3 size of the interstices formed by the fibers,
4 correct?

5 A. Yes. I mean, it's not clear. There is
6 another paragraph in 66 that describes -- or
7 defines, almost, pore size to be equivalent to the
8 interstices of the fibers. Okay?

9 And here, there's a -- they're discussing
10 that the pore sizes will change with regards to
11 the stretch of the material.

12 I would have to question that because the
13 non-woven component of the composite probably will
14 not have their pore sizes changed through the
15 elongation. If it were an elastic material, like
16 we had discussed, where we have a polymer, such as
17 Vistamaxx or an OBC or an elastomeric
18 polyethylene, as the spunbond polymer -- which
19 these are not; they're polypropylene -- you could
20 argue that when you stretch the non-woven
21 spunbond, you would change the pore size.

22 But these are composite structures, as

1 defined by that fabric-like strudegar material,
2 which only has on the inside and outside the
3 spunbond material, more than likely, as they
4 specified, polypropylene.

5 So the pore size of the spunbond is not
6 changing upon elasticity, as they're discussing.
7 It can't.

8 Q. But you can get non-wovens that have
9 different pore sizes, different interstices.

10 A. Not when they define themselves as
11 standard commercially available non-woven. And in
12 my experience of purchasing tons and tons of these
13 materials, as well as developing them, we have
14 never really focused on pore size as a spunbond
15 specification. So this is one of the very few,
16 and probably in recent years, the only time I've
17 seen pore size on a spunbond identified as a -- as
18 a property.

19 And I think the criteria that is
20 impacting the pore size is basically the denier.
21 And -- you know, the giveaway here is, if you look
22 at paragraph 66, A preferred non-elastic spunbond,

1 which is on the surface of these elastomeric
2 composites, is available from First Quality
3 Non-Wovens under the trade, you know, designation.

4 These are conventional non-wovens. So as
5 we discussed before, they're all really narrowly
6 defined by the technology that is being used
7 commercially, which is the Reifenhäuser Reicofil.
8 So they all make the same thing.

9 So, you know, are there other non-wovens
10 or spunbonds out there with different pore sizes?
11 I would say that in a very high percentage,
12 99-point-something, the answer is no.

13 Q. So is it your position that when you're
14 just making a disposable diaper, there's only one
15 type of non-woven available that anyone can use?

16 A. Just about, yes. And it's a Reicofil
17 technology spunbond made on Reifenhäuser machines.
18 It is the gold standard, and it is what it is.

19 Q. You could engineer a non-woven to have a
20 larger pore size.

21 A. You can engineer anything.

22 Q. And if you did that, according to -- you

1 could affect how well it engages a fastener,
2 correct?

3 A. Possibly. Yes.

4 Q. Well, Karami '626 says the pore size
5 affects the peel strength, correct?

6 A. Yes, it can. They mention that it had an
7 impact on peel strength, which is not that
8 significant on the overall attribute of the
9 diaper, which is what I said before.

10 Q. And could you engineer a diaper using an
11 embossing pattern to either enhance or detract how
12 well the non-woven engages the fastener?

13 A. If you look at Stupperich, that's what
14 they tried to do. If you look at Kimberly-Clark,
15 they modified the emboss pattern -- not to change
16 the pore size, however. They just basically
17 change the presentation of the fibers to the -- to
18 the hook.

19 Q. Okay. And in that way, they were able to
20 get better engagement with the fibers to the hook?

21 A. By modifications, yes. That's one of the
22 variables that you can use.

1 Q. What are some of the other variables you
2 could use if you are engineering the non-woven to
3 engage fasteners better?

4 A. Well, you know, I'm just going to cite
5 the Beckert '788 and some other claims that
6 they're using known techniques for post-treating,
7 such as heat setting, you know, ring rolling.
8 There are a couple of ways of corrugating the
9 non-wovens, some through not heat setting
10 necessarily -- you get the same effect -- but
11 through elasticity of one of the components.
12 Those would be ways to do that.

13 You could look at it through Gorman where
14 they basically form the loops mechanically and
15 then adhere them to a backing sheet. So those
16 techniques have been used.

17 Q. And I think we also discussed in
18 connection with Damaghi and the stay-away zone,
19 you can engineer to be less receptive or to not
20 adhere to a fastener, correct?

21 A. If I emboss the heck out of it and make a
22 film out of the non-woven, it would not have any

1 affinity to hooks, or very little affinity. So,
2 you know, there are known techniques. But the key
3 material is these materials that we're discussing
4 overall, except the ones that are dedicated, like
5 the 3M material, et cetera, are not conventional
6 non-wovens. I mean, they basically are telling us
7 that this is a conventional material that is sold
8 throughout, you know.

9 Q. I'd like to just -- since I mentioned the
10 Damaghi and the stay-away zone, I'd like to turn
11 back to the '772 patent, Karami '772.

12 A. Okay.

13 Q. And when we talk about the stay-away
14 zone, and particularly the version where the
15 stay-away zone is formed by having an untreated
16 non-woven in the front -- you're familiar with
17 that stay-away zone?

18 A. Conventional non-woven. Yes.

19 Q. And -- can you tell from Karami '772
20 whether fasteners would adhere to that?

21 A. Whether what?

22 Q. Whether fasteners would engage --

1 A. Table 1 tells you they do.

2 Q. I thought we just said that table 1 you
3 couldn't read anything from.

4 A. You said the 20 gsm specifically?

5 Q. No, no, no. I was talking about -- well,
6 let me start over.

7 So in paragraph 75 of your declaration,
8 if you want to take a look at that.

9 A. Paragraph 75. Okay.

10 Q. You say that "the retaining forces
11 between the fasteners 150a to 150d and the
12 stay-away zone 160, (i.e., untreated non-woven),
13 are sufficient to hold diaper 100 on a wearer"; is
14 that correct?

15 Do I not have the right paragraph?

16 A. We're on paragraph 75?

17 Q. I have -- sorry. Why don't we look at --
18 yes. Paragraph 75 at the top of page 64.

19 Paragraph 75, top of page 64.

20 A. Yes.

21 Q. So there you say that the retaining
22 forces between the fasteners 150a and d and the

1 stay-away zone are sufficient to hold diaper 100
2 on the wearer, correct?

3 A. Yes.

4 Q. And my question was, can you tell from
5 Karami '772 whether the forces are sufficient to
6 retain the diaper on the wearer between fasteners
7 150 and the stay-away zone?

8 A. I don't think they specifically state
9 that, but, you know, we can conclude that there
10 are retentive forces available through the
11 mechanical hook attachment.

12 Q. How do you conclude that?

13 A. Well, we know that the 20 gsm that
14 they're using here is, again, you know, within the
15 basis weight range that is expressed in Beckert.
16 And, you know, Beckert uses the same materials as
17 expressed in Karami '626 and Karami '772.

18 Q. Where is the 20 gsm -- when you say
19 20 gsm, where are you referring to that? In the
20 Karami '772 patent?

21 A. Well, in both the '772 and the '626 they
22 refer to roughly the same range basis weight

1 levels for the backsheet.

2 Q. And I think, as we discussed earlier,
3 Karami '772 didn't actually test an untreated 20
4 gsm unwoven, correct?

5 A. Correct. But the numbers in that
6 table 1, if you look at them, you know, they
7 basically test not that far off, the 30, 34.

8 Q. Yeah. But if we don't know what the
9 testing procedure was, what the numbers mean --

10 A. But the data --

11 Q. So how do you rely on the numbers in
12 table 1 if we don't know what the testing
13 procedure was?

14 A. You can rely on the numbers within
15 themselves, not outside or making comparisons, so,
16 you know, or establishing what's an acceptable
17 range or not. But within the block of data, as I
18 said before, they are comparable. Because you
19 assume that they're using the same technique on --
20 on every sample.

21 Q. Well, if you look at -- like, look at
22 paragraph 4 of Karami '772.

1 A. Paragraph 4?

2 Q. Uh-huh. We're -- at the end of
3 paragraph 4, it refers to a preferred peel and
4 shear strength.

5 Do you see that?

6 A. Of '772?

7 Q. '772, yes. Exhibit 103 -- 1003.

8 A. Next to each other, so I've got the
9 wrong -- yeah. They are -- "Generally, a peel
10 strength of at least 60 grams per square inch and
11 a shear strength of at least 1300 per square inch
12 is preferred."

13 Q. All right. So the 1300. So let's look
14 at table 1.

15 A. Yes.

16 Q. And you would agree that the -- I think
17 you said the Binder 25445 was the -- well, let's
18 look at the Binder sample 25445 in table 1.

19 A. Okay.

20 Q. And you see the first column is for a
21 33.9 gsm spunbond non-woven that's untreated?

22 A. Okay.

1 Q. And you see, for the shear strength, the
2 load -- this number presented there is 1,094.645?

3 A. Yes.

4 Q. That's less than 1300, correct?

5 A. Have you looked at the units of these two
6 numbers? This is what is confusing and this is
7 why this data -- this table -- you know, you look
8 at it and you shrug. Because one is square inches
9 and this is per 2 inches. And it happens that the
10 sample they used is 2 inches long. And it also
11 happens that they're shearing from the 2-inch
12 length side, which is perpendicular to the
13 direction of force in application.

14 And so I -- you know, you start to make a
15 lot of assumptions on this table; it's pure, pure
16 speculation. I would not be willing to do that.

17 Q. Well, if --

18 A. I will not do that because it doesn't
19 make sense.

20 Q. And so -- but tell me, if you had done
21 something and had done it per 2 inch instead of
22 per 1 inch, how would you normalize that number to

1 1 inch?

2 A. Basically, the Beckert '788 has a
3 paragraph there where they use a 25-by-20, and
4 they make a statement that if you use something
5 other than 25, you make it proportional for the
6 width of the sample, leaving -- and this is
7 another flaw that I see -- leaving the length of
8 the diaper at 20 millimeters, or whatever is used
9 in the diaper, which is an open window to any
10 product development person to vary that length --
11 and they do -- and there are many different
12 lengths that are used -- to vary the retentive
13 forces from A through Z, because it's a pretty --
14 shear forces are proportional to area,
15 predominantly. And so area is a big component.
16 And if you let that be a variable, you have a
17 variable result.

18 Q. If you use a higher area, will you get
19 stronger forces?

20 A. Yes.

21 Q. And so when looking at the traditional
22 ASTM test for shear forces, is that traditionally

1 done with a 2-inch sample?

2 A. I'd have to look at it. Which exhibit is
3 that? I know we have it here.

4 Q. Let me -- I believe it's Exhibit 1034.

5 A. 32, you mean.

6 Q. Excuse me?

7 A. You're looking for the ASTM shear test?

8 Q. Yes.

9 A. I have it as 32.

10 Q. It's the -- D5169-98?

11 A. I have D5169. I have the shear test.
12 98, correct. Yes.

13 Q. Okay. So you would agree with me in the
14 ASTM there is a calculation 11 -- it's on
15 page 3 -- to convert the force of pounds per
16 square inch?

17 A. They're looking at pounds per inch
18 square, PSI.

19 Q. Uh-huh.

20 A. These people are -- are following
21 modified versions of this. So, I mean, what this
22 is is, I would have to say, somewhat irrelevant

1 because they're using their own test methods, and
2 who knows what they are. Beckert does describe
3 theirs a little bit more explicitly.

4 Q. Well, my question is more generally using
5 the ASTM, how do you make that calculation to
6 convert the force to separate the 2-inch overlap
7 into pounds per square inch?

8 MR. ALBRIGHT: Objection. Scope.

9 THE WITNESS: Well, I -- I don't
10 understand what the overlap -- the overlap --
11 2-inch overlap -- well, I think they're basically
12 taking the force and using the 2-inch overlap with
13 the length to come up with the area measurement.
14 So they get pounds per square inch or grams per
15 square inch or whatever.

16 BY MS. DALEY:

17 Q. Would you have it to --

18 A. It's area-dependent. I mean, they're
19 basically -- but they've specified what that is.

20 Q. Do you cut the force in half in order to
21 convert it into pounds per square inch?

22 MR. ALBRIGHT: Objection. Scope.

1 Relevance.

2 THE WITNESS: Should I answer that?

3 MS. DALEY: If you can.

4 THE WITNESS: Basically, they have a
5 2-inch overlap. They don't -- at least I'm
6 looking at figure 2. They don't tell you the --
7 well, 2 inches. The width is 25. So you're
8 looking at 2 square inches. And so the force is,
9 you know, whatever the force is divided by
10 2 square inches to get it on a per-inch basis.

11 But that's their test method. I mean,
12 and with -- if I wanted to use that -- because if
13 you look at Beckert, they talk newtons per
14 25 millimeters.

15 BY MS. DALEY:

16 Q. Yes.

17 A. If I wanted to get that to area, the
18 square inches, I would have to take the .79 into
19 play and use that number. And who knows what
20 Karami did. So I -- you know...

21 Q. Well, but I think we did say that the --
22 you're going to have -- if you have a 2-inch

1 sample -- a 2-square-inch sample is going to have
2 greater forces than a 1-inch sample, correct?

3 A. Yes.

4 MS. DALEY: Actually, why don't we -- if
5 it makes sense, why don't we take a break here.
6 It's been more than an hour.

7 THE WITNESS: Okay. When did you want to
8 reconvene?

9 MS. DALEY: You're -- you're the boss.
10 You're the witness.

11 THE WITNESS: 3:15?

12 MS. DALEY: Sounds good.

13 (A recess was taken.)

14 BY MS. DALEY:

15 Q. So we talked a bit earlier about -- that
16 you testified in a prior IPR involving the
17 '788 patent, correct?

18 A. Yes.

19 Q. And do you recall giving a deposition in
20 there?

21 A. Say it again? Did I --

22 Q. Do you recall being deposed in that case?

1 A. Yes.

2 Q. Okay. Can you take a look at
3 Exhibit 2001?

4 A. 2001? Is that the Beckert?

5 Q. It's your prior deposition testimony.

6 A. You mean the transcript of --

7 Q. The transcript. Yes.

8 A. Okay. That's 51 for me.

9 Q. And if you see on the front of it, it
10 says, Videotaped deposition of Arrigo Jezzi,
11 Thursday, August 15th, 2013, at 9:30 a.m.,
12 correct?

13 A. Yes.

14 Q. And the person referenced is you?

15 A. Yes.

16 Q. And you sat for that deposition, correct?

17 A. Yes.

18 Q. And I believe you said you didn't review
19 your deposition testimony before preparing your
20 declaration, correct?

21 A. Correct.

22 Q. Can you look at page 158? It's in the

1 top right corner is where the page numbers are,
2 underneath the date.

3 A. Okay.

4 Q. And do you see at line 6 there's a
5 question, "And in Karami '772, can you tell
6 whether the forces are sufficient?"

7 A. Yes.

8 Q. And your answer was, "No, I cannot."
9 Do you see that?

10 A. Yes.

11 Q. And that was your answer then?

12 A. Can I read the --

13 Q. You certainly can.

14 A. I mean, you know, trying to read it into
15 some form of context -- but I said no, I cannot.
16 And I think the reason I gave that is that -- is
17 right below, is that there's no magic number on
18 retentive forces working or not working especially
19 when, you know, most companies have proprietary
20 tests that measure and vary from one to another.
21 So making a correlation yes or no on numbers, even
22 that are published, would be very hard to do. And

1 after our discussion on table 1, it's pretty
2 evident.

3 Now -- so I'm sure that I was referring
4 to the fact that, looking at table 1, I was not
5 able to make that determination. But that does
6 not mean that they would not work.

7 Q. But it also doesn't mean that they would
8 work.

9 A. It's speculative either way. Just with
10 the '772 patent.

11 Q. So you can't say that in every situation
12 it would -- the stay-away zone would be sufficient
13 to retain the diaper on the wearer.

14 A. Yeah. I mean, I think if you look at
15 '772 and you put it in context with, you know, the
16 patents that we've discussed, whether it -- you
17 know, Karami '626, and we have Stupperich and
18 Benning and our discussion of obviousness, I think
19 it all -- you know, certainly -- you know, today I
20 would probably say they have sufficient retentive
21 forces to hold a diaper next to the body based on
22 these other patents and new evidence that we

1 brought forward.

2 Q. And what specifically are you referring
3 to there?

4 A. Well, I'm referring to what we discussed
5 with '626 because one -- you know, let me -- you
6 know, the line of questioning here didn't even,
7 you know, discriminate between the side parts and
8 the outer cover. So when you look at it, you
9 know, you would have to assume that the side parts
10 in Karami '772 are adequate for holding a diaper
11 next to the body because, otherwise, they wouldn't
12 publish the patent -- I mean, you don't have a
13 functioning product if you can't close it and hold
14 it.

15 The question is, are the retentive forces
16 in the stay-away zone sufficient? And we don't
17 know that for sure on '772 alone. But with the
18 other discussions that we've had, you know, the
19 '626 and as well as Stupperich and as well as
20 Benning design, you would basically have to say
21 that, yes, they are sufficient.

22 Now, how well? You know, are they -- you

1 know, that's a different question.

2 Q. Well enough to secure the diaper on the
3 wearer in use --

4 A. Yes. One of the things to keep in mind
5 is that -- we did not discuss it -- but the way
6 these diapers are applied -- you know, you focused
7 on the T-shaped, et cetera. But let's look at
8 the -- either the Karami, the Benning, and the --
9 even the Beckert diaper, when you look at how
10 these products are applied, fastening is not a
11 single-step operation. It's a multiple-step
12 operation of refastening and readjustment,
13 especially if you're ambulatory and you're doing
14 it standing up, it's not an easy process. In bed,
15 it's a different story.

16 So typically you would want retentive
17 forces outside of the wing so that you can put
18 them down sufficiently to hold the wing in place
19 while you further adjust the other wing and go
20 back and forth. And it's an iterative process
21 that may take one to two, or sometimes three,
22 refastenings to get it to, you know, fit okay.

1 So, you know, my take is, just as a, you
2 know, veteran of developing these products, that,
3 you know, the retentive forces that are discussed
4 in Karami, you know, would be sufficient to hold
5 the diaper. And it gives them that flexibility of
6 size adjustability.

7 Q. You've mentioned from the Karami '772 --
8 you referenced the range of basis weights
9 disclosed in Karami '772. And I'll just point you
10 to paragraph 31 of Karami '772.

11 A. We're back on Karami '772?

12 Q. Uh-huh.

13 A. Okay. Which paragraph?

14 Q. 31.

15 A. Backsheet 32 is made of a liquid and/or
16 vapor-impervious material -- a basis weight
17 between 5 to 45 grams per square meter.

18 Q. Does the -- I think you said before the
19 thickness of the diaper can depend on the basis
20 weight, how thick the diaper is.

21 A. Thickness of --

22 Q. How thick the -- how thick the non-woven

1 is can depend on the basis weight; is that fair?

2 A. I was trying to follow up your discussion
3 before. Repeat that. The thickness of the --

4 Q. I said diaper. I meant non-woven.

5 A. Okay.

6 Q. So the thickness of the non-woven can
7 vary on its basis weight, correct?

8 A. Yes.

9 Q. And so a 45 gram -- gsm non-woven would
10 generally be thicker than a 5 gsm?

11 A. Yes.

12 Q. How thick would a 45 gsm non-woven be?

13 A. Would a 45 --

14 Q. -- gsm non-woven. How thick would that
15 be?

16 A. I don't have the -- the caliper
17 measurements in -- they're in thousandths of
18 inches. I don't recall. It's -- they're both
19 thin. One is a -- a 5 gsm would be a
20 gossamer-like structure, if you want to use that
21 adjective, as opposed to 45, which would be, you
22 know, like, a little bit heavier than a piece of

1 paper.

2 Q. What's a gossamer-like structure?

3 A. That you can see through, that, you know,
4 you can throw up in the air, it kind of floats
5 down. You know, that kind of structure. Very
6 light.

7 Q. Real light. And it wouldn't have as good
8 of retentive forces as the 45 gsm, correct?

9 A. Yes. There's some previous citations
10 that we have that discussed that, there's a
11 correlation between basis weight and retentive
12 forces.

13 Q. So if you had a 5 gsm non-woven as the
14 backsheet in the stay-away zone, would that -- is
15 it your position that fasteners could engage the
16 5 gsm non-woven in the stay-away zone sufficiently
17 to retain the diaper on the wearer?

18 A. Let me address that a little bit
19 differently than where you're trying to point to,
20 is that for a POSITA, a person skilled in the art,
21 you have to remember what is the objective of what
22 a cloth-like outer cover is, what it's supposed to

1 do. It's supposed to be textile-like. Okay?
2 That's the first and foremost.

3 This is a secondary performance
4 requirement, which is attachment to the mechanical
5 fastener.

6 And so, you know, a POSITA would know
7 very well that by laminating a 5 gsm to a plastic
8 film, you're going to lose significantly the
9 aesthetic characteristics that you, you know, were
10 driven to evaluate it.

11 So I don't think that anybody -- I'm not
12 aware, and I don't think any POSITA in their right
13 mind would look at a 5 gsm for an outer cover,
14 although it's possible; I mean, it's in the range
15 so that you've got to consider it. I certainly
16 would not.

17 And this is why all the literature that
18 we cited points basically to what Beckert was
19 using, which is 20 gsm. You want to be heavier
20 than that.

21 I tend to look at things on the preferred
22 or the optimized version rather than the extent of

1 the ranges. You know, is it possible someone in
2 the world would be using a 5 gsm non-woven for
3 one? I haven't found a supplier that makes it,
4 but if they did make it, yeah, somebody, you know,
5 may do that.

6 But normal developers in the industry
7 probably would not go there. It would be nice if
8 you could and get everything you wanted. You
9 know, that would be great. It would be cheaper.
10 But it just doesn't work that way.

11 But within the range they gave, you know,
12 it's possible that somebody could be using an
13 outer cover. And if they were to use that light
14 of basis weight, I think the retentive forces
15 would not be very high. I don't know what they
16 would be, but they would be lower.

17 Q. And they -- probably not high enough to
18 retain the diaper on the wearer.

19 A. Honestly, I cannot make that assessment
20 because I don't know how high they would be. And
21 the way you would assess that is not just by a
22 number; you do an in vivo use test and you

1 measure, you know, the retention on the body, you
2 know, the security on the body by actually
3 demonstrating it rather than trying to pick a
4 number.

5 Historically, you've been -- very, very
6 difficult to correlate laboratory data to in vivo
7 testing. You -- you use that to screen, and then
8 you finally use a use test -- an in vivo use test
9 to validate.

10 Q. And if a 5 gsm non-woven was good at
11 retaining a diaper on the wearer when engaging
12 fasteners, it would probably be more in use,
13 correct?

14 A. Well, see, engaging the non-woven is not
15 the only criteria for its use. It's the
16 cloth-likeness. So it would have to meet those
17 two hurdles, the engaging criteria, the retention
18 forces, as well as the cloth-like attributes.

19 Q. Does it meet the cloth-like hurdle?

20 A. Personally? I don't think so.
21 Everything is gradual. There's a range to
22 everything. It's a scale. Right? It would --

1 it's the low end of the scale. Now, it would
2 still be more cloth-like than film. Yes. Would
3 it be more cloth-like than a 20 gsm or a 30 gsm?
4 No.

5 Q. Would it meet the retention forces hurdle
6 for a 5 gsm non-woven as the backsheet?

7 A. I don't know.

8 Q. So we've also -- you know, you've
9 discussed, like, the '788 patent, and that there
10 are retentive forces disclosed within the patent,
11 correct?

12 A. Yes.

13 Q. And could you take -- do you have that in
14 front of you, the '788 patent? I believe it's
15 Exhibit 1001 in the -- in the proceeding that is
16 IPR2020-01477.

17 A. You lost me on the last number.

18 Q. I was doing that for the record. So
19 just -- we're doing this deposition for four
20 proceedings, so I was just trying to make the
21 record maybe a little bit more clear to which one
22 goes to the '788 patent.

1 So -- mostly, if you've got the -- what
2 you need to be concerned with is if you have the
3 '788 patent.

4 A. It's open. Yes.

5 Q. And do you see in -- claim 2 of the
6 '788 patent?

7 A. Yes.

8 Q. And there's a reference to the
9 over-abdomen retaining forces, and particular
10 ranges, correct?

11 A. Yes.

12 Q. And you can't tell from Karami '772
13 whether or not the retaining forces in claim 2 are
14 disclosed there, correct?

15 A. That is correct. They don't -- the
16 numbers don't correlate to the test or the -- the
17 units on the table.

18 Q. And you didn't run any test to try to see
19 if something would correlate or not?

20 A. No, we did not.

21 MS. DALEY: Mr. Jezzi, I thank you for
22 your time. That's all the questions I have at

1 this point in time. I can turn you over to your
2 counsel.

3 THE WITNESS: Okay.

4 MR. ALBRIGHT: And is it all right if I
5 take, like, 20, 30 minutes just to look over some
6 notes?

7 MS. DALEY: Yes.

8 MR. ALBRIGHT: I may not have much, if
9 anything, at all.

10 THE WITNESS: So we're coming back?

11 MS. DALEY: Yes. What time, Jeremy?

12 MR. ALBRIGHT: Is 4:00 p.m. your time too
13 late?

14 MS. DALEY: No, that's fine.

15 MR. ALBRIGHT: Okay. Thank you.

16 THE WITNESS: All right. Come back at
17 4:00.

18 (A recess was taken.)

19 EXAMINATION BY COUNSEL FOR PETITIONER

20 BY MR. ALBRIGHT:

21 Q. Mr. Jezzi, would you please bring back up
22 Exhibit 1004, Karami '626?

1 A. Okay.

2 Q. And if you recall, you were asked
3 questions earlier about T-shaped brief 12 -- I
4 think figure 1 was discussed -- and particularly
5 with its fastener elements 41 and 42.

6 Do you recall that?

7 A. Yes.

8 Q. I'd like you to read paragraph 40 of
9 Karami '626.

10 A. Read it out loud?

11 Q. No, you can just read it and let me know.

12 A. Okay.

13 Q. I just want to refresh you on it.

14 A. Okay.

15 Q. So where all are fastener elements 41 and
16 42 attachable?

17 A. They're basically, based on this
18 paragraph -- it says, The T-shaped brief 12 is
19 made according to the present invention so that
20 the fastener elements 41 and 42 do not require
21 landing zones and may be engaged directly with any
22 portion of the non-woven surface constituting the

1 frontsheet 30, the backsheet 32, or the wings of
2 the brief.

3 Q. And what advantage does that provide to
4 T-shaped brief 12?

5 A. Well, basically, it's adjustability and
6 diaper curve, so the girth of the consumer, you
7 can adjust that by varying the location, as I was
8 trying to discuss during my questioning with
9 Ms. Daley, that, you know, there are episodes
10 where you do open up the wings and attach that to
11 the outer cover for expanding the girth of the
12 diaper on a certain size wearer.

13 Q. And then just one more -- or maybe a
14 couple more questions.

15 Can you please now refer to Karami '772,
16 which is Exhibit 1003.

17 A. Okay.

18 Q. And if you recall, earlier today, you
19 were asked what figure 8 illustrates. And you
20 discussed some aspects of figure 6 and some
21 aspects of figure 7.

22 I just wanted to clarify, what is your

1 opinion regarding what figure 8 illustrates?

2 A. Figure 8 and 6? Basically, the way I
3 look at figure 6 specifically is the diaper, the
4 brief, looking at the -- at us -- from the inside
5 to the backsheet. So the area that we're looking
6 at that is depicted here is basically, as best as
7 I can tell, is the inside of the diaper. And
8 the -- figure 8 is basically that same diaper
9 that's folded as it would be on the wearer.

10 Q. Okay.

11 MR. ALBRIGHT: And I have no further
12 questions.

13 MS. DALEY: Mr. Jezzi, I do have a
14 follow-up.

15 FURTHER EXAMINATION BY COUNSEL FOR PATENT OWNER
16 BY MS. DALEY:

17 Q. If you could go back to Exhibit 1004,
18 which is Karami '626.

19 A. Yes.

20 Q. And I believe your counsel asked you
21 about paragraph 40.

22 A. Yes.

1 Q. And I think you said one of -- that this
2 paragraph describes being able to provide size
3 adjustability; is that fair?

4 A. Yes.

5 Q. And if you recall, when we discussed size
6 adjustability, they disclosed different ways of
7 engaged the fasteners on the wings, correct, to
8 provide size adjustability?

9 A. And also, I mean, the way they describe
10 it here, it's possible, you know, to attach them
11 to the backsheet.

12 Q. Well, and you agree paragraph 40 is
13 related to the T-shaped brief, correct?

14 A. Yes. Yes.

15 Q. So wouldn't it be fair to say that --
16 couldn't you read this, where it says, "frontsheet
17 30, backsheet 32, or wings 40" -- do you see that?

18 A. Yes.

19 Q. Couldn't that have been a typo and it
20 should say "of wings 40," O-F?

21 A. Let's go through that because I'm trying
22 to follow you.

1 Q. Sure.

2 A. "Do not require landing zones and may
3 engage directly with any portion of the non-woven
4 surface constituting the frontsheet 30, the
5 backsheet 32, or wings of the brief."

6 Q. Yes. And my question to you is --
7 question: Couldn't that have been a typo so that
8 it says, "frontsheet 30, backsheet 32 of wings
9 40"?

10 A. I wouldn't speculate to that point at
11 all. Because, you know, the other two
12 components -- certainly the frontsheet, by their
13 own standards, is being discussed. And the
14 backsheet, by some of my interpretation, is also
15 possible. So it would be speculative if that is a
16 typo or not.

17 The other point to make here, which is
18 one that you are basically stating that, you know,
19 definitely it's the attachment -- you know, you
20 were emphasizing the attachment to the wings. So
21 Karami '626 does disclose that the fasteners work
22 with the wings because it's staying in place.

1 However, the whole argument of '626 from
2 my point of view was that the materials were the
3 same, and similar materials that are used,
4 microhooks or spunbond, with whatever test
5 method -- shear test method you would use would
6 give you the same results. They have to.

7 And I think that the -- if you look at
8 the ranges of basis weights of the spunbond that
9 is used either in the outer cover or the wings, I
10 mean, with the same logic that you are trying to
11 use on the 5 to 45, and using a 5 gsm for the
12 outer cover, which would work because they're
13 specifying, so you have to take them at their
14 word, you could operate the full range of the
15 non-woven basis weights that Karami '626 discloses
16 for both -- for the wings. And they cover the
17 20 gsm level.

18 So it is very possible that we could --
19 what this is telling me is that the non-woven, you
20 know, would work to hold the diaper at that basis
21 weight. I mean, the retentive forces would be
22 sufficient at lower weights, other than the 34

1 that we've been discussing, to retain the wing.

2 So that was the only point,
3 clarification, I wanted to make.

4 Q. Well, and just a follow-up on this --
5 where it says, "frontsheet 30, backsheet 32, or
6 wings 40," wouldn't saying, "frontsheet 30,
7 backsheet 32 of wings 40" be more consistent with
8 what's actually disclosed about size adjustability
9 in the T-shaped diaper?

10 A. Well, I would quibble with the word
11 "frontsheet" on a wing. Okay? On an ear. You
12 know, those terms are not common to describe the
13 two layers of a side part.

14 If the side part were integrated to some
15 degree, you could -- you could make that argument.
16 But they're not. These wings are basically -- are
17 basically separate. They're separate side parts.

18 So -- I don't know. Like I said, it
19 could be, but it's a speculation.

20 Q. Mr. Jezzi, did you talk to your counsel
21 during the break that we just had between my
22 questioning and his?

1 A. Yes. He, you know, told me that, you
2 know, good for holding up, that I was holding up
3 okay.

4 Q. Did you talk about the substance of your
5 testimony?

6 A. No, we did not.

7 Q. All right.

8 A. He was big on that. I tried, but I
9 couldn't get him. I mean, no, we did not.

10 MS. DALEY: I don't have any further
11 questions.

12 THE WITNESS: Thank you.

13 MS. DALEY: Jeremy?

14 MR. ALBRIGHT: No, nothing more from me.
15 We're done.

16 MS. DALEY: Well, then, thank you. We're
17 done, Mr. Jezzi. Thank you for your time today.
18 I appreciate it.

19 (Whereupon, at 4:08 p.m., the remote Zoom
20 deposition of ARRIGO D. JEZZI was
21 concluded.)
22

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said witness was taken by me in stenotypy and thereafter reduced to typewriting under my direction; that said statement is a true record of the proceedings; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this statement was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



CHRISTINA S. HOTSKO, RPR, CRR

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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