

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3
4

5 THE NOCO COMPANY, INC.,
6 Petitioner,

7 v.
8

9 PILOT, INC.,
10 Patent Owner.

11
12 CASE NO. IPR2021-00777
13 Patent No. 10,046,653
14

15
16 The deposition of JOSEPH COLBY McALEXANDER III
17 was taken on Friday, March 4, 2022, commencing
18 at 10:03 a.m. Eastern Time, via Zoom
19 videoconference, before Josett F. Whalen,
20 Court Reporter and Notary Public.
21
22

**Exhibit
1018**

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

2

3 ON BEHALF OF THE PETITIONER (THE NOCO COMPANY):

4 WILLIAM H. OLDACH III, ESQ.

5 REX W. MILLER II, ESQ.

6 Vorys, Sater, Seymour and Pease LLP

7 1900 K Street, N.W.

8 9th Floor

9 Washington, D.C. 20006-1152

10 (202) 467-8800

11 wholdach@vorys.com

12

13 ON BEHALF OF THE PATENT OWNER (PILOT, INC.):

14 ALEX RUGE, ESQ.

15 Sheridan Ross P.C.

16 1560 Broadway

17 Suite 1200

18 Denver, Colorado 80202

19 (303) 863-9700

20 aruge@sheridanross.com

21

22

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

2 - - - - -

3 STIPULATION:

4 All counsel present stipulate
5 that the witness shall be sworn remotely
6 by the court reporter

7 * * *

8 Whereupon --

9 JOSEPH COLBY McALEXANDER III

10 a witness, called for examination, having been
11 first duly sworn, was examined and testified as
12 follows:

13 EXAMINATION

14 BY MR. OLDACH:

15 Q. Mr. McAlexander, can you please state
16 your full name and town of residence for the
17 record.

18 A. Full name is Joseph Colby McAlexander III.
19 Town of residence is Anna, A-N-N-A, Texas.

20 Q. Thank you.

21 And again, my name is Bill Oldach. I'm
22 counsel for petitioner, The NOCO Company, in

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1 this proceeding, which is IPR2021-00777,
2 regarding U.S. Patent Number 10,046,653.

3 Mr. McAlexander, I understand you've
4 given a number of depositions over the years,
5 and I presume those over the last couple of
6 years have included Zoom depositions. Is that
7 right?

8 A. Yes, sir, that is correct.

9 Q. Okay. I will just briefly go over some
10 Zoom procedures to make sure we have a clean
11 record.

12 First, it is very important that we try
13 not to talk over each other so the
14 court reporter can take everything down.

15 Is that agreed?

16 A. Yes, it is.

17 Q. Please allow me to finish my question,
18 and I will allow you to finish your answer.

19 Is that agreed?

20 A. Do the best I can. Yes.

21 Q. And likewise on my end.

22 Please make sure to answer all my

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1 questions verbally. The court reporter cannot
2 take down if you shake or nod your head.

3 Is that agreed?

4 A. Yes, that's agreed.

5 Q. We shouldn't have any problems with the
6 Zoom. It's been fairly reliable, in my
7 experience. But if you can't hear me at any
8 time, please let me know. If it seems like the
9 audio link may not be working, please raise your
10 hand so that we can see that there is a
11 problem.

12 Do you agree?

13 A. Yes, I do.

14 Q. Okay. If you don't understand my
15 question at any time, please stop me and tell --
16 or after I ask it, please let me know that you
17 don't understand it, and I'll be happy to
18 rephrase or repeat it.

19 Is that agreed?

20 A. Yes, sir, it is.

21 Q. If you want to take a break, we can do
22 so at any time as long as there is not a

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1 question pending.

2 Is that agreed?

3 A. Yes.

4 Q. And Mr. McAlexander, is there any
5 reason, such as any medications you could be
6 taking, where you would not be able to give your
7 full attention to my questions and your answers
8 today?

9 A. No, sir.

10 Q. Great.

11 What I'd like to do first so that we
12 can get some of the housekeeping out of the way
13 using the AgileLaw platform is I'd like to go
14 ahead and publish some of the documents we'll be
15 looking at today.

16 But before I do that, Mr. McAlexander,
17 can I ask if you happen to have with you any
18 hard copies of, for example, your declaration or
19 Dr. Kattamis' declaration?

20 A. Yes. I did print some hard copies of
21 the documents.

22 Q. Okay. Could you tell me what you have

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1 a hard copy of, please.

2 A. Certainly.

3 I printed a copy of Exhibit 2005, which
4 is the -- my declaration.

5 I printed a copy of Exhibit 1001, which
6 is the '653 patent.

7 Exhibit 1003, which is the Richardson
8 '362 patent publication.

9 I printed a copy of Exhibit 1004, which
10 is the Baxter '182 publication.

11 Exhibit 1005, which is Kreiger's patent
12 '450.

13 I also printed a copy of Exhibit 1008,
14 which is Kattamis' declaration.

15 And lastly, I printed a copy of the
16 decision dated October 5, 2021.

17 Q. Great.

18 Thank you, Mr. McAlexander. I think
19 that will help us to go a little more smoothly.

20 But so that we have a clear record, I
21 am going to go ahead and mark some of the
22 documents that we'll be using today formally in

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1 the deposition. The way that happens is I'm
2 going to hit a button which should reveal the
3 document on your AgileLaw screen, and hopefully
4 that will all work and let's -- and I've done
5 this before, but it's been a couple of months,
6 so I'm going to first reveal what's been marked
7 as Exhibit 1 for the deposition, which is a
8 copy of Exhibit 2005, your declaration in this
9 case.

10 Do you see that on your screen?

11 A. Amazingly I see it without having to
12 refresh the screen, so yes.

13 Q. Okay. Are you seeing page 1 of your
14 declaration now?

15 A. Page 1 of 32. Yes.

16 Q. And as I scroll down, for example, to
17 the last page, do you see now page 32 on your
18 screen?

19 Or perhaps now that it's published on
20 the AgileLaw you can move around it yourself.

21 A. I think it is scrolling myself. No,
22 it does not. I can scroll to those pages, but

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1 I don't think your selecting it comes over to
2 me.

3 Q. Okay. Would you turn to page 32,
4 please, and confirm that that is your signature
5 dated December 30, 2021.

6 A. I confirm it is, yes.

7 Q. Great.

8 I'm now revealing what I've marked as
9 Exhibit 2 for the deposition, Mr. McAlexander,
10 which is a copy of your curriculum vitae, which
11 was Exhibit 2006 in the IPR.

12 Could you briefly look at that and
13 scroll through it and confirm that that is a
14 copy of Exhibit 2006.

15 A. Confirmed.

16 Yes.

17 Q. Great.

18 I've now published in the AgileLaw
19 platform what's marked as Exhibit 3 for the
20 deposition, which is a copy of Exhibit 1001 in
21 the IPR, the '653 patent.

22 Could you briefly look at that and

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1 confirm that that is a copy of the patent.

2 A. Yes, it is.

3 Q. Okay. And I'm now publishing as
4 Exhibit 4 for the deposition a copy of IPR
5 Exhibit 1008, the declaration of Dr. Kattamis.

6 Could you briefly look that, please,
7 and confirm that that is Exhibit 4.

8 A. Yes. It appears to be.

9 Q. Published as Exhibit 5 for the
10 deposition a copy of IPR Exhibit 1003, the
11 Richardson reference from July of 2009, could
12 you briefly look at that and confirm that that
13 is the Richardson reference discussed in your
14 declaration.

15 A. Confirmed it is.

16 Q. As Exhibit 6 for the deposition I have
17 marked -- I just want to confirm that actually
18 the mark is there. Yes, it is -- Exhibit 6 is a
19 copy of Exhibit 1004 in the IPR, the Baxter
20 reference discussed in your declaration, if you
21 could please confirm that.

22 A. Confirmed it is the Baxter reference.

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1 Q. As Exhibit 7 for the deposition I've
2 marked Exhibit 1005, the Kreiger reference, if
3 you could confirm that that has been published
4 and is the Kreiger reference discussed in your
5 declaration.

6 A. Confirmed it is.

7 Q. Finally for right now I'm revealing a
8 copy -- as Exhibit 8 a copy of Paper 1, which is
9 the petition for inter partes review of the
10 '653 patent that was filed by NOCO in this case,
11 if you could please look at that and confirm
12 that is what this is.

13 A. Yes. That is the petition.

14 Q. Great.

15 So, Mr. McAlexander, if I could turn
16 back to your declaration, sir, that you signed
17 on December 30, when did you begin work on that
18 declaration?

19 A. My actual work on the declaration was
20 in December.

21 Q. Did you have discussions with anyone in
22 the preparation of your declaration?

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1 A. Just with counsel.

2 Q. And by "counsel" do you mean Mr. Ruge,
3 your counsel today?

4 A. That's correct.

5 Q. Any other counsel?

6 A. Briefly with Aaron Bradford.

7 Q. Anyone else?

8 A. No, sir.

9 Q. When were you first retained on behalf
10 of Pilot for this IPR?

11 A. As I recall, in July of '21.

12 Q. Had you been retained by Pilot prior to
13 July 2021 in connection with any other
14 proceeding?

15 A. Yes.

16 Q. Okay. What proceeding or proceedings
17 were those?

18 A. I can't say necessarily proceedings.
19 That might not fit the bill. But in terms of
20 just doing some product evaluations.

21 Q. When you say "product evaluations," was
22 that for purposes of determining whether other

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1 competitors' products were infringing Pilot's
2 patents?

3 A. In part, yes.

4 Q. Would that include -- in fact, I can
5 click over to your -- click over to your CV for
6 a moment, which I'd marked as Exhibit 2. And
7 I'm going to scroll down to page 25 of that
8 document. And I apologize. I thought when I'm
9 doing this that I'm actually publishing that on
10 your screen.

11 A. There probably is some option that you
12 can select for that, but I have not used this
13 package before.

14 Q. Well, let me ask if you could please
15 scroll to page 25 of the declaration -- excuse
16 me -- of the CV.

17 A. I'm there.

18 Q. Okay.

19 Do you see there is a listing for
20 Pilot v. CarKu, Amazon arbitration?

21 A. Yes, sir, I do.

22 Q. So that was in 2020; correct?

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1 A. Yes, that is correct.

2 Q. Was that the first occasion on which
3 you had been retained by Pilot?

4 A. I -- interesting question. I really as
5 I sit here can't respond as to whether that was
6 the first or not.

7 Q. Okay.

8 What did you do for Pilot in connection
9 with the CarKu Amazon arbitration?

10 A. That was evaluating some of the CarKu
11 products.

12 Q. And what was the result of your -- what
13 was the result of the Amazon arbitration, to the
14 best of your recollection?

15 A. I don't recall. I mean, I know there
16 was an arbitration. I don't recall what the
17 result was.

18 Q. Did you provide a report in connection
19 with that arbitration?

20 A. I don't recall having provided a
21 report. I may have, but I don't recall
22 having -- that was two years ago.

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1 Q. Okay.

2 There is a letter t in your TYPE
3 category for the CarKu Amazon arbitration.

4 Does that indicate you provided
5 testimony?

6 A. I thank you for indicating that. I
7 need to look at my report here.

8 Anytime I have a t, that could be by
9 dec- -- it could be by a report as well, so it's
10 very possible I did provide a declaration in
11 that.

12 Q. Okay. So the t could -- when it says
13 "testify," that could include actual testimony
14 or a report or declaration; is that correct?

15 A. That is correct. And I know I did not
16 do actual testimony.

17 Q. Okay. Understood.

18 In addition to the -- in addition to
19 this IPR and in addition to the Pilot versus
20 CarKu Amazon arbitration, have you provided
21 testimony, either live or by report or
22 declaration, for Pilot in any other

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1 proceedings?

2 A. I thought that in this particular CV --
3 I don't have a copy in front of me. Is there a
4 search routine on this?

5 Q. I don't believe so.

6 A. I don't believe so.

7 I thought that I had remembered a
8 document in here that referred to Schumacher as
9 well.

10 Q. Was that in connection with an IPR do
11 you recall?

12 A. Not that I recall, no.

13 I mean, I've evaluated a number of
14 different products, but I thought that that was
15 one of the cases that I had identified as well,
16 but let me -- let me check.

17 Q. Yeah. If you'd like to double-check
18 that CV, that's fine.

19 A. Just give me a second here.

20 (Pause in the proceedings.)

21 So far, this AgileLaw presentation is
22 one of the best I've seen.

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1 Q. Yeah, I find it -- it's so advanced
2 that there are a couple of things that I've --
3 that are slipping my mind on some of its
4 functionalities, but it does have a very good
5 functionality.

6 (Pause in the proceedings.)

7 A. Yeah, I had -- there was a -- let me
8 see if I can find it on here.

9 (Pause in the proceedings.)

10 Q. Yeah, actually, if you'll look at
11 page 20?

12 A. That's where I'm at right now.

13 Q. Yeah.

14 A. Yeah, that's the Pilot versus
15 Schumacher.

16 Q. And I see that that notation does not
17 include a t for testified.

18 Does that refresh your recollection as
19 to whether you had prepared or served a report
20 or declaration in that case?

21 A. I had not recalled serving one in that
22 case. I believe that this supports the fact

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1 that I did not.

2 Q. Okay.

3 A. Those are the only two that I'm aware
4 of, is the CarKu, Schumacher, and then of course
5 the NOCO.

6 Q. Now, are you aware, Mr. McAlexander,
7 that Pilot has had other IPRs filed against the
8 '653 patent and/or other patents related to that
9 patent?

10 A. I am aware of that, yes.

11 Q. Have you worked on any of those
12 matters?

13 A. Not at this point, no.

14 Q. Okay. So there was an earlier IPR that
15 was filed against the '297 patent.

16 You did not provide any testimony in
17 connection with that; is that right?

18 A. That's as I recall correct, yes.

19 Q. Okay. Who contacted you initially to
20 work with Pilot some years ago?

21 A. I would say initially Aaron Bradford.

22 Q. And was that in or around 2019?

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1 A. As I recall, that's probably correct.

2 Yes.

3 Q. Getting back to this particular
4 declaration, Mr. McAlexander, approximately how
5 many hours did you spend working on it?

6 A. Specifically on the declaration
7 probably around 12 to 14. Certainly since my
8 engagement back in July I had spent prior time
9 looking at the petition and responses and the
10 patents, but I'd say as far as the declaration
11 around 12.

12 Q. Are you billing Pilot on an hourly
13 basis?

14 A. Yes, I am.

15 Q. Okay. And what rate are you currently
16 billing Pilot at?

17 A. The rate is 595 an hour.

18 Q. Has that rate been the same throughout
19 your representation of Pilot in this particular
20 IPR proceeding?

21 A. Yes, sir, it is.

22 Q. Has that hourly rate been the same

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1 since you first began working for Pilot back in
2 2019?

3 A. Now, that, I don't recall. Probably
4 not.

5 Q. Okay. It may have increased some
6 amount over the last two to three years?

7 A. I can guarantee it did not decrease. I
8 believe maybe the original was maybe 575 or
9 something like that, but it was not -- it was
10 not originally 595 as best I recall.

11 Q. Okay.

12 Do you know how much in total you have
13 invoiced to Pilot in connection with this IPR?

14 A. Well, if I can -- if I can -- if I
15 look at the -- including work that I did prior
16 to or -- no. You said IPR, not declaration.
17 Excuse me.

18 Q. Yes.

19 A. I would say probably maybe 15,000.

20 As I recall, I've -- the total has been
21 somewhere around 28 to 30 hours, so I'm just
22 estimating 15-16 thousand.

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1 Q. Understood.

2 Do you know approximately how much in
3 total you've invoiced to Pilot since 2019?

4 A. No, sir, that, I do not know. I do not
5 recall.

6 Q. Okay. Do you have any outstanding
7 invoices with Pilot in connection with this
8 IPR?

9 A. I don't recall any outstanding. And I
10 have some outstanding invoices to send, but I'm
11 not aware of any outstanding payments.

12 Q. Okay. To whom do you direct your
13 invoices?

14 A. As I recall, that goes to
15 Aaron Bradford.

16 Q. Do you know whether your invoices then
17 are paid by Mr. Bradford or his firm or by Pilot
18 itself?

19 A. They, as I recall, are paid by the law
20 firm, not by the -- not by Pilot.

21 Q. Understood.

22 Did you do anything to prepare for

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1 today's deposition?

2 A. Yes.

3 Q. What did you do?

4 A. I reread my declaration.

5 I looked briefly through the

6 Richardson, Baxter and Kreiger patents and

7 patent publications.

8 I reviewed in some part Kattamis'

9 declaration, the decision -- basically the

10 documents that I copied are the ones that I

11 reviewed.

12 Q. Did you have --

13 A. I also met with counsel probably less

14 than two hours.

15 Q. Okay. And by "counsel" is that

16 Mr. Ruge?

17 A. That's correct.

18 Q. And when did you have that discussion

19 with Mr. Ruge?

20 A. Yesterday.

21 Q. Okay.

22 Still in your -- I know from your CV,

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1 Mr. McAlexander, that you have received a
2 bachelor -- B.S. of EE degree from
3 North Carolina State. Is that correct?

4 A. Yes, sir, that is correct.

5 Q. Did you take any graduate courses
6 toward a further electrical engineering degree?

7 A. Not toward a further electrical
8 engineering degree, no.

9 Q. Okay. Well, in fact I see on your
10 CV -- I'm looking at page 7 -- that you took
11 1.5 years of graduate study in neural science at
12 the University of Texas; is that correct?

13 A. Yes, sir, that's correct.

14 Q. So, just curious, how did you come to
15 explore that area of graduate study?

16 A. I'd always been intrigued by the
17 bioengineering programs. My last semester at
18 North Carolina State, a professor from
19 Rice University came, interviewed, with an
20 intent of bringing graduate students to Rice.

21 Once I finished my military experience,
22 I immediately went and had an interview with

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1 them and in the process determined that -- that
2 I could actually do in-state tuition at the
3 University of Texas Graduate School of
4 Biomedical Sciences while taking the courses at
5 rice University for a lot cheaper than private
6 price, so that's what I did.

7 And I'd say maybe four years after
8 getting out of the military I then went
9 full-time as a graduate student in the
10 neurophysical sciences and specifically looking
11 at neurophysical -- the neurological aspects of
12 electrical engineering.

13 Q. Interesting.

14 And were you taking these courses --
15 you said you actually went full-time to graduate
16 school for that period?

17 A. I was full-time for a year and a half
18 for that period while being full-time employed
19 as a managing designer at Texas Instruments
20 while working 20 hours in a lab. The reason I
21 didn't finish the course, I just -- it actually
22 got to the point where it was too much for me,

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1 and I had to make a decision.

2 Q. Understood.

3 So this was while you -- during your
4 employment at TI; correct?

5 A. That is correct.

6 So I remained employed full-time at TI
7 while doing full-time graduate work.

8 Q. That's a heavy load.

9 A. It was -- between that and family, it
10 was -- I had to make a choice, so I'm glad I did
11 it, glad I took the courses, but I did
12 not complete it for the degree. I stopped short
13 of doing the thesis work.

14 Q. Now, has any of your educational
15 experience centered on automotive electrical
16 systems?

17 A. It has not centered on it. Of course,
18 I had -- in my coursework in my bachelor's
19 degree, motors was part of the coursework.
20 Motor controls was part of the coursework. And
21 my specialty in the school was not in power but
22 in solid-state.

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1 So the integrated circuit world is what
2 I really gravitated toward, and most of my
3 experience in the industrial world has been in
4 the application of integrated circuits as
5 control systems and storage systems with
6 industry kind of applications such as
7 automotive.

8 Q. Right.

9 So the types of solid-state and
10 integrated circuit work are things that could be
11 used, for example, in an electronic module in a
12 vehicle; correct?

13 A. That is correct.

14 And in fact, if you look, some of my
15 patents are to MEMS, which are the
16 microelectromechanical systems, specifically for
17 control systems for air bag deployment as an
18 example for automotive functions.

19 Q. During your educational experience or
20 your work experience, have you ever worked with
21 electrical circuits used in automotive wiring,
22 not from the steady-state standpoint but from a

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1 wiring standpoint?

2 A. Yes.

3 In fact, a number of years ago, I was
4 Toyota's 30(b)(6) witness in a case, evaluating
5 a number of different wiring harnesses in safety
6 and control systems for them.

7 Q. Okay. You say "a number of years ago."

8 When was that, to your recollection?

9 A. I can give you a precise date if you
10 give me just a second.

11 (Pause in the proceedings.)

12 That was in the 2000 to 2003 time
13 frame.

14 Q. And what was at issue in that
15 litigation?

16 A. At issue in that litigation was a
17 litigation brought by another party and it
18 was -- as best as I recall, it was related to
19 the vehicular sensor and alarm systems.

20 Q. And when you say "sensor and alarm
21 systems," what type of systems were those?

22 A. It involved monitoring the -- you

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1 mentioned ECM, the electronic -- the engine
2 control module, the body control module,
3 other -- other electrical systems that were then
4 connected together through bus architecture
5 using the wiring harness.

6 I evaluated the protocol for the data
7 transmission between different modules. It's
8 specifically sensors for alarms which would
9 involve either faults within the modules or
10 faults that they detected from, for instance,
11 RPM or slippage, general -- general alarms that
12 you think about from a security standpoint in
13 terms of opening of doors or vibrations or
14 something of that nature, movement. Basically,
15 those are the sensors that then brought
16 information back to the various modules and then
17 transmitted that information for remote access
18 so that someone through a remote could get
19 access to that information as well.

20 Q. Okay. Do you recall what was the legal
21 issue in that litigation?

22 A. It was the way in which -- it was the

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1 way in which the alarm systems were
2 constructed, the way in which they -- as I
3 recall -- boy, this is really going way back.

4 As I recall, some of these dealt with
5 system-type alarm systems where you would have
6 vehicles that were part of a network such that
7 if -- if you actually had one alarm go off, that
8 it would actually activate alarms in other
9 vehicles, so if a sensitive -- someone was
10 having a problem or an alarm in one area like in
11 a parking lot, it could have multiple cars in
12 the parking lot going off to just increase the
13 volume.

14 But it was alarm sensors for violation
15 of some type of an alarm and then remotely
16 transmitting that information so that the owner
17 would have access to that information.

18 Q. And let me rephrase my question.

19 When I said "the legal issue," I guess
20 what I meant to ask was, for example, was this a
21 patent litigation?

22 A. Excuse me for misunderstanding.

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1 Yes, it was a patent litigation.

2 Q. Okay. Do you recall where that case
3 was pending?

4 A. Eastern District of Texas - Marshall.

5 Q. I know it well.

6 Did you provide testimony in that
7 litigation?

8 A. As I recall, in that litigation -- as I
9 recall in that litigation I provided testimony
10 in terms of a report. And my belief is the
11 report had to do with claim construction. And I
12 believe that I also testified orally because I
13 believe I -- I was deposed in that matter, too.

14 As I recall, it did not go to trial.
15 We actually were able to -- Toyota was the
16 defendant. And as I recall, we were actually
17 able to get the case basically tossed aside as a
18 result of the claim construction period.

19 Q. Okay.

20 Let me -- looking also at page 9 of
21 your CV -- and I'm going to try to see if I can
22 get this so that I can -- you're free to look

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1 around at it, but I'm --

2 A. I am at page 9.

3 Q. Okay. Great.

4 My note says page 9, but I don't see
5 what I'm looking for at page 9. Pardon me. I
6 apologize.

7 I'm sorry. That's because I wasn't on
8 your CV. I'm sorry. I was on your
9 declaration, and I was looking at paragraph 9,
10 not page 9.

11 A. That does make a difference.

12 Q. Yes.

13 So I'm looking at paragraph 9 of your
14 declaration, Mr. McAlexander, when you state
15 that "As part of my work with McAlexander Sound,
16 I have gained additional experience with
17 portable, rechargeable battery technology and
18 control systems associated with that
19 technology." Is that correct?

20 A. Yes, that's correct.

21 Q. What type of rechargeable batteries are
22 you referring to here?

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1 A. The -- well, it's various ones. I
2 would say the predominant one was lithium ion.

3 Q. And what application were these lithium
4 ion batteries used in?

5 A. I was going to also add NiCad as well,
6 but lithium ion predominantly.

7 Various different kinds of systems.
8 Basically, we know that there's -- there's
9 always some safety issues with lithium ion in
10 particular, caused quite a crisis 10 or 12 years
11 ago in the airline industry.

12 And so the lithium ion and NiCad both
13 as rechargeable batteries have been used in a
14 number of instantiations, such as in cell
15 phones, many types of portable devices. Power
16 tools they're used as -- rechargeable batteries
17 are used in those aspects as well.

18 Predominantly that's been NiCad with some
19 lithium ion transitioning taking place as well.

20 So I think power tools, small portable
21 devices, testing -- testing devices as well.

22 Q. When you -- were you working on

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1 recharging the batteries ever?

2 Let me rephrase my question.

3 I guess, when you say you've got
4 experience with portable, rechargeable battery
5 technology, does that experience include designs
6 for charging such batteries?

7 A. I can't say it's directly related to
8 designs for charging such batteries.

9 I can remember early on working with a
10 company called Benchmark, which worked with --
11 which had designs on small systems. In this
12 particular case, it was dual-port storage,
13 dual-port memory storage. And dual ports --
14 dual-port memory storage using static random
15 access memories, if they lose power, they lose
16 their data, so involved in the products that
17 were being used there or sold by Benchmark, what
18 they had was a two-level -- two layers of
19 batteries as backup, and so I worked with them
20 regarding the circuitry to detect when the level
21 of one battery was going below one threshold so
22 it would kick in the other battery.

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1 So transferring from battery to battery
2 I did work on. That was not necessarily
3 recharging per se.

4 Q. Right. I understand.

5 So you have experience, it's fair to
6 say, Mr. McAlexander, with products that use
7 these rechargeable batteries; correct?

8 A. Yes, that is correct.

9 Q. But is it fair to say you have not
10 been involved in the design of products or
11 systems used to recharge those rechargeable
12 batteries?

13 A. That is fair.

14 Q. Okay.

15 And in addition to -- have you ever,
16 prior to your work with Pilot, been involved in
17 working with products used to jump-start
18 automobiles?

19 A. No, I have not.

20 Q. Okay.

21 Do you know, for example, when you're
22 talking about one of these rechargeable

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1 lithium ion batteries, do you know how much
2 power is delivered when recharging a lithium ion
3 battery?

4 A. I know that that is battery-dependent.
5 Each battery, whether it's lithium ion, NiCad or
6 whatever, have a certain rating. And based on
7 that C rating, your charge needs to make sure
8 that it is maintained within the margin that is
9 specified; otherwise, you can possibly overheat
10 and take a lithium ion battery into thermal
11 runaway, so one has to conform to whatever the
12 specification for that battery is.

13 Q. Okay. Would you agree that in
14 jump-starting an automobile a larger amount of
15 power is used than would be used to recharge a
16 mobile phone battery?

17 A. There's an instant -- instantaneous
18 amount of charge that's much more. Yes.

19 Q. I think you mentioned earlier with
20 respect to lithium ion batteries that safety is
21 a concern when charging those batteries;
22 correct?

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1 A. I'd say safety is or should be a
2 concern recharging any type of battery, but
3 there are specific precautions that one needs to
4 take with lithium ion.

5 Q. Would you agree that safety is also an
6 important consideration in jump-starting an
7 automobile?

8 A. I would say yes, yes.

9 Q. You had mentioned earlier the
10 litigation you were involved with for Toyota
11 involving their engine control module; correct?

12 A. Yes, that's correct.

13 Q. Have you ever worked on -- well, let me
14 rephrase that.

15 Do you have any experience with
16 electrical circuits and automotive wiring
17 particularly as applied to driver-activated
18 functions?

19 A. Yes.

20 Q. Could you give me some examples?

21 A. I've been involved with a number of
22 companies working with -- working with systems,

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1 automobile systems, automotive systems in which
2 there's communication from a portable device,
3 can be a PDA, can be a cell phone, something of
4 that nature. These can be -- the projects I've
5 worked on, in some cases the communication path
6 is USB, in others it's wireless using, for
7 example, Bluetooth and WiFi.

8 So yes, so in terms of collaborative
9 work with small portable systems in combination
10 with an automotive system, I have worked with
11 that, yes.

12 Q. Okay. Let me kind of go to a different
13 kind of area of the automotive application,
14 Mr. McAlexander.

15 Have you ever had work or litigation
16 experience involving electrical circuits used in
17 automotive wiring, for example, with respect to
18 the activation of headlights?

19 A. Not with the activation of headlights,
20 no.

21 Q. How about turn signals?

22 A. No, sir.

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1 Q. Brake lights?

2 A. No.

3 Q. Brakes themselves?

4 A. In a general sense, yes. I've had
5 litigation experience representing a company in
6 several litigations involving the hybrid
7 vehicles, specifically looking at the governing
8 and transfer functions between making -- making
9 the decisions between using the gas for fuel
10 versus the electric, looking at -- and in many
11 of those instances we're looking at sensors that
12 are developed based upon RPM, speed, torque, in
13 some cases GPS, so I've had experience in that
14 with taking inputs from these sensors and making
15 decisions as to what to process and when to
16 process.

17 Q. Okay.

18 Mr. McAlexander, looking back at your
19 CV, is it your understanding that this CV is
20 complete as of the fourth quarter of 2021?

21 A. It was certainly intended to be. There
22 may be a few things because I -- cases are being

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1 added and I may have -- as far as I know, it
2 certainly was intended to be correct as of the
3 time I provided.

4 Q. Mr. McAlexander, let me ask,
5 approximately what percentage of your
6 professional yearly income derives from your
7 litigation consulting work?

8 A. It varies, clearly, quarter to quarter
9 and year to year, but I would say roughly over
10 the last several years 75 percent.

11 Q. And does the other 25 percent come from
12 your other enterprises, such as
13 McAlexander Sound?

14 A. Well, yes. Well, look, when you say
15 "McAlexander Sound," I have two separate
16 companies, one of which is McAlexander Sound,
17 Incorporated. And all of my litigation income
18 or income that comes because of that is through
19 McAlexander Sound, Incorporated.

20 I also do contract and licensing work
21 with my private limited company over in
22 Singapore that's separate.

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1 And professionally, I am also a
2 certified counselor in behavioral science, so I
3 actually have an animal therapy nonprofit
4 organization, and I do work in that as well.

5 Q. Interesting.

6 I did have a couple questions about a
7 couple of the items on your CV,
8 Mr. McAlexander.

9 A. Okay.

10 Q. Do you recall, has any of your
11 testimony or intended testimony ever been the
12 subject of a motion to strike or exclude that
13 was successful in whole or in part?

14 A. Of course. I've been involved in this
15 for many years.

16 Q. Okay.

17 A. There have been motions to that effect,
18 certainly.

19 Q. Is it your understanding that you will
20 be testifying in an upcoming trial on behalf of
21 AMS Sensors, Inc. in a trade secret case?

22 A. AMS Sensors, Inc.?

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1 Q. Yes.

2 (Pause in the proceedings.)

3 A. The reason I'm hesitating, I mean, when
4 you look at -- you asked about AMS. I guess
5 there's a number -- I've testified on behalf of
6 a company that used the acronym AMS back in --
7 probably about eight or ten -- ten years ago.
8 That was with regard to vending machines. I
9 represented AMS.

10 There's another AMS that I testified
11 in -- or that I participated in, rather, and
12 that was an IPR I believe, and that's probably
13 eight years ago.

14 So I'm not sure which one you're
15 referring to or if it's something that's new.
16 I'm not sure what I -- can you be more
17 specific?

18 Q. Well, I'll move on to something else.
19 I can come back with it later if I need to.

20 On your CV I did have one other
21 question, and that's on page 12. And there's a
22 case you reference there Omega versus Calamp

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1 for -- looking like it was from 2013 in Florida.

2 A. This is Calamp. Uh-huh.

3 Q. Calamp.

4 A. Uh-huh.

5 Q. And it says "Patents related to
6 vehicular control systems and tracking."

7 What type of vehicular control systems
8 and tracking was involved in that case?

9 A. Well, I wish the case had gone away.
10 It has been back -- back and forth twice now,
11 still pending but not -- the -- everything that
12 was done in 2016 was a finding of infringement.
13 The Fed Circuit twice has reinforced the fact
14 that it is infringed. They have not countered
15 that. But they pushed it back twice now from a
16 damage standpoint to reevaluate.

17 This involved -- it's called control
18 systems and tracking. It's basically tracking
19 vehicles, can be any type of motorized vehicle,
20 specifically looking at tracking based upon GPS
21 coordinates that can either be done or achieved
22 through a GPS-to-satellite measurement or

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1 through a location that is then translated based
2 upon direction and RPM rate, so it's -- so it's
3 basically measuring various electrical
4 parameters and mechanical parameters within the
5 system, matching that with GPS coordinates, so
6 that's -- it's basically the thrust of it.

7 And then some of the -- some of the
8 invention in the Calamp procedure goes to, as I
9 recall, in terms of data bus traffic and the way
10 that data bus traffic within the vehicle is
11 transmitted to various controllers and then
12 remotely transmitted as well.

13 Q. Okay.

14 I want to move back over to your
15 declaration, Mr. McAlexander. And I'd like to
16 see if we can look at paragraph 16, which is on
17 page 6.

18 Just tell me when you're there.

19 A. I'm there.

20 Q. So, in paragraph 16, you are addressing
21 Dr. Kattamis' statements regarding the level of
22 ordinary skill in the art; correct?

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1 A. Yes, sir, I am.

2 Q. Okay. You state at the bottom of
3 paragraph 16, "Under this proposed skill level,
4 I qualified as at least a POSITA in 2014. For
5 purposes of this declaration, I have adopted
6 this level of skill"; is that correct?

7 A. Yes, sir, that's correct.

8 Q. And I just want to clarify.

9 Do you disagree with the level of
10 skill asserted by Dr. Kattamis whether you're
11 adopting it for purposes of this declaration or
12 not?

13 A. Well, I've adopted it and I think for
14 purposes of this litigation it's reasonable.

15 Q. You say for purposes of this litigation
16 it's reasonable.

17 Are there some purposes where you think
18 it would be unreasonable?

19 A. Well, it's not so much unreasonable.
20 As an example, in Dr. Kattamis' -- and that is
21 a -- as I'm -- am I pronouncing his name
22 correct?

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1 Q. Yes.

2 A. Okay.

3 In Dr. Kattamis' representation, he
4 defined a degree and experience level, and then
5 he also said the description is approximate, and
6 he allows high level of education or skill might
7 make up for less experience.

8 And I think that's probably reasonable,
9 too. That's why I'm -- it's not an unreasonable
10 definition because there's some allowance that's
11 built into it.

12 Q. Okay.

13 Would you turn to paragraph 24 of your
14 declaration. That's at page 9.

15 Are you there?

16 A. Yes, I am.

17 Q. In paragraph 24 you are setting out
18 what are the so-called secondary indicia that
19 indicate nonobviousness; correct?

20 A. Yes, sir, that's correct.

21 Q. Okay. And I just want to be clear.

22 And that carries over onto the next page,

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1 page 10.

2 Is it -- you are not relying on any
3 secondary considerations of nonobviousness in
4 arriving at your opinions in this declaration;
5 correct?

6 A. Yes, sir, that's correct. This opinion
7 that I have arrived at is in rebuttal to
8 Dr. Kattamis' position.

9 Q. Okay.

10 On paragraph 25 you're discussing the
11 teaching-suggestion-motivation or TSM test;
12 correct?

13 A. I brought that up. Yes.

14 Q. Okay. But you have a sentence at the
15 end of that paragraph saying, "I am informed
16 that, according to the TSM test, it must be
17 shown explicitly or implicitly that there is
18 some suggestion or motivation in the prior art
19 to combine known elements to form the claimed
20 invention."

21 Do you see that?

22 A. Yes, sir, I do.

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1 Q. And what do you mean by "shown
2 implicitly"?

3 A. Well, this is mirroring what KSR
4 determined, as I recall.

5 "Explicitly" means you can read word by
6 word, it literally is there.

7 Implicitly, the way in which it
8 describes the particular point, I'll use, it's
9 done in such a way that it would be -- that it
10 would imply that this particular aspect,
11 although not explicitly stated, would be --
12 would be correct as well.

13 So "implicit" says it's not
14 specifically stated.

15 Q. Okay.

16 Is this TSM test that you've set forth
17 in paragraph 25 the test that you have relied on
18 in arriving at the opinions set out in your
19 declaration?

20 A. No. KSR says you can't rely directly
21 on this. TSM is a way. In fact, if there is a
22 teaching, motivation and suggestion, it's a

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1 pretty strong indication. But, as I recall,
2 KSR said you cannot rely specifically on that.
3 There are other aspects of it that can be
4 relied on as well, but as -- my understanding
5 is, is that there has to be some reason. There
6 has to be something that's reasonably pointed to
7 or suggested or provided by the documents
8 themselves. One has to have a reason for it. It
9 doesn't have to go to the point of specifically
10 teaching, suggestion and motivation, but there
11 still has to be a reason.

12 Q. So is it fair to say then,
13 Mr. McAlexander, your understanding is the TSM
14 test is a way but not the only way to show
15 obviousness?

16 A. I think that is correct, that according
17 to 35 U.S.C. § 103, TSM is certainly -- that is
18 a way, but if you look at the tenets of what is
19 required, it's not just the way.

20 Q. Okay. Understood.

21 You have -- I presume and I think
22 you've stated in your declaration,

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1 Mr. McAlexander, you did also review the
2 petition in this matter; correct?

3 A. Yes, I did.

4 Q. Okay. I'm going to go ahead and click
5 over to the petition. And I think you may have
6 indicated you don't have a hard copy of the
7 petition, but are you able to scroll through the
8 AgileLaw viewer with the petition that's up
9 there?

10 A. I can't -- the document number was what
11 again?

12 Q. It's document 8.

13 A. Okay. I have it in front of me.

14 Q. So I just want to look down at
15 paragraph -- excuse me -- page 19 of the
16 petition.

17 And that is page 19 of the actual
18 petition page numbers, not the PDF page numbers,
19 which will be different.

20 So it's page 29 of the PDF, but it's
21 page 19 numbered on the page if you see that.

22 A. Thank you. That's a help.

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1 Okay. I'm on page 29 of the PDF, which
2 is page 19 of the petition.

3 Q. Great.

4 And here you see a table of the
5 grounds that are asserted in the petition, the
6 section of the code that is cited and the
7 references cited and the claims applicable to
8 each ground.

9 Do you see that?

10 A. Yes, sir, I do.

11 Q. Okay.

12 So you see on this table that in the
13 petition in ground 1, under section 102,
14 anticipation, the petition asserts that
15 claims 7 to 9, 11, 12, 14 through 18, and 20 are
16 unpatentable over Richardson.

17 Do you see that?

18 A. I see that.

19 Q. Okay. And similarly, ground 4 asserts
20 that those same claims, 7 to 9, 11, 12, 14 to
21 18, and 20, are unpatentable as anticipated by
22 Baxter.

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1 Do you see that?

2 A. Yes, I do.

3 Q. Ground 2 of the petition asserts that
4 claim 13 is unpatentable under section 103 as
5 obvious over Richardson in view of George.

6 Do you see that?

7 A. Yes, I do.

8 Q. Okay. Now, your declaration does not
9 provide any opinion with respect to
10 grounds 1, 2 or 4 of NOCO's petition; is that
11 right?

12 A. That's correct. My declaration I was
13 asked to specifically focus on grounds 3 and
14 5 and within grounds 3 and 5 claim 1.

15 Q. Okay. So you are not providing an
16 opinion that claims 7 to 9, 11, 12, 14 to 18,
17 and 20 are not anticipated by Richardson;
18 correct?

19 A. I'm not providing any opinion on that.

20 Q. And you're not providing an opinion
21 that claims 7 to 9, 11, 12, 14 through 18, and
22 20 are not anticipated by Baxter; correct?

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1 A. I was not asked to provide an opinion
2 on that.

3 Q. Okay. And you are not providing an
4 opinion that claim 13 is not obvious over the
5 combination of Richardson and George; correct?

6 A. Likewise, I was not asked to provide an
7 opinion on that particular ground.

8 Q. Understood.

9 I'd like to flip over briefly to
10 Dr. Kattamis' declaration. That's document 4 on
11 the screen.

12 And I'm looking at numbered page 33 of
13 his declaration, which is going to be around
14 page 40 I think of the PDF. Yes, page 40 of the
15 PDF, which is page 33 of Dr. Kattamis'
16 declaration.

17 Are you there, sir?

18 A. Yes, I am.

19 Q. Okay. And I just want to be clear on
20 this. Starting at this page for a couple of
21 pages, Dr. Kattamis sets forth reasoning why in
22 his opinion it would be obvious to combine

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1 Richardson with George.

2 Do you see that?

3 A. Yes, I see that.

4 Q. Okay. And you do not state any opinion
5 to the contrary of what Dr. Kattamis has stated
6 with respect to the combination of Richardson
7 and George; correct?

8 A. If I can qualify it, I did not -- you
9 asked did I state anything to the contrary. I
10 was not asked to comment or declare anything
11 with regard to Richardson and George because, as
12 I recall, that did not have anything to do with
13 grounds 3 and 5 as it applied to claim 1.

14 Q. Yeah, I understand. I'm just asking
15 you to confirm that you did not therefore set
16 forth any statements in your declaration with
17 respect to Dr. Kattamis' statements on
18 Richardson and George; correct?

19 A. That is correct, yes.

20 Q. And similarly, at pages 46 to 47 of his
21 declaration, which I think is going to be around
22 page 53 of the PDF -- yeah, pages 53 and 54 of

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1 the PDF, which are pages 46 and 47 numbered of
2 his declaration, where Dr. Kattamis has
3 specifically addressed why it would be obvious
4 in his opinion to combine Richardson and George
5 to arrive at claim 13, you have not stated in
6 your declaration any opinion to the contrary;
7 correct?

8 A. Again, as I said before, I was not
9 asked to make any comments with regard to
10 ground 2, which is the one that this one is
11 addressing.

12 Q. Okay. Very good.

13 We've been going a little over an hour
14 and I'm going to switch topics. Do you want to
15 take a five-minute break?

16 A. Your call. Maybe the reporter would
17 like to have a five-minute break.

18 MR. OLDACH: Reporters always enjoy a
19 break, so why don't we take five minutes.

20 THE WITNESS: All right. Certainly.

21 MR. OLDACH: Thank you.

22 (Recess)

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1 BY MR. OLDACH:

2 Q. I believe I did figure out what I need
3 to do to display specific pages so you don't
4 have to go crawling around the document,
5 Mr. McAlexander. Let's see if I'm right.

6 I've gone back in, and you should see
7 now again page 19 of the petition that we were
8 looking at earlier. Is that correct?

9 A. Yes, that's correct.

10 Q. Great.

11 (Crosstalk)

12 Go ahead.

13 A. Congratulations.

14 Q. Thank you.

15 So this is the table we were looking
16 at earlier with respect to the grounds that
17 were asserted in the petition, and you did
18 refer earlier to grounds 3 and 5; is that
19 correct?

20 A. Yes, that is correct.

21 Q. So here in ground 3 on page 19 of the
22 petition it's stated that the assertion is that

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1 claims 1 and 3 through 6 are unpatentable over
2 Richardson in view of Kreiger; is that correct?

3 A. Yes, sir, that's correct.

4 Q. And ground 5 asserts that claims 1 and
5 3 through 6 are unpatentable over Baxter in view
6 of Kreiger; is that correct?

7 A. That is correct.

8 Q. And in your declaration you've provided
9 your opinion that claim 1 is not obvious over
10 those combinations; correct?

11 A. Yes, that is correct.

12 Q. Okay. But to be clear, you have not
13 set forth in your declaration any opinion that
14 claims 3 through 6 are obvious on any basis
15 separate from your opinion regarding claim 1; is
16 that correct?

17 A. That is correct. Because if claim --
18 with the knowledge that claim 1 is not obvious,
19 that renders clearly that 3 through 6 are also
20 not obvious.

21 Q. Yes, I understand, Mr. McAlexander.

22 By the same token, however, if

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1 claim 1 is held to be obvious, you have not
2 provided any opinion as to any additional
3 reasons why claims 3 through 6 would not be
4 obvious; correct?

5 A. That is also correct.

6 Q. Now, going back over to Dr. Kattamis'
7 declaration and go to page 18 of the PDF, which
8 is page 11 of Dr. Kattamis' declaration.

9 Do you have that on your screen?

10 A. Page 8; is that correct -- 18, rather?

11 Q. Page 18 of the PDF. I should -- it
12 should be showing you that on your screen now.

13 A. And what paragraph would that be?

14 Q. Paragraph 29.

15 A. Okay. That's what is showing.

16 Q. And I just want to make sure we're
17 understanding the limitations or the elements
18 that are at issue in claim 1 of the patent.

19 And paragraph 29 of Dr. Kattamis'
20 declaration sets out the elements of claim 1;
21 correct?

22 A. That is correct, yes.

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1 Q. Okay. And Mr. McAlexander, do you have
2 that on your AgileLaw screen? It should be
3 showing it right now according --

4 A. I see paragraph 29 on the screen right
5 now.

6 Q. Okay. Good.

7 So I want to run through these elements
8 to make sure that we have our nomenclature in
9 order.

10 Claim 1 of the '653 patent has elements
11 which Dr. Kattamis labeled as 1a through 1g.

12 Do you see that?

13 A. Yes, I see that.

14 Q. So 1a is assigned to the preamble "An
15 automobile charger, comprising"; correct?

16 A. Yes, sir, that's correct.

17 Q. And 1b is "a first pole of a first
18 battery connected with a first lead of a power
19 converter, a first lead of a battery level
20 detector, and a first lead of a load"; correct?

21 A. That is correct.

22 Q. Element 1c is "a second pole of the

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1 first battery connected with a second lead of
2 the power converter, a first lead of a
3 microcontroller, a first lead of a switching
4 circuit and a second lead of the battery level
5 detector"; correct?

6 A. Yes, that's correct.

7 Q. Element 1d is "a third lead of the
8 power converter connected with a second lead of
9 the microcontroller"; correct?

10 A. Correct.

11 Q. 1e is "three additional leads of the
12 microcontroller connected with a third lead of
13 the battery level detector, a second lead of the
14 switching circuit and a first lead of a load
15 detector, respectively"; is that correct?

16 A. Yes. That's read correctly.

17 Q. Element 1f reads "wherein a second lead
18 of the load detector is connected with a third
19 lead of the switching circuit and a second lead
20 of the load, and"; is that correct?

21 A. That's correct.

22 Q. And element 1g "wherein the load

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1 includes a second battery and a motor"; is that
2 correct?

3 A. That is correct.

4 Q. Okay. So that is what -- those are the
5 elements as labeled by Dr. Kattamis as 1a
6 through 1g; correct?

7 A. That is correct.

8 Q. Great.

9 Now, again, in his declaration at
10 paragraphs 47 to 56, which I think starts at
11 around page 54 -- once again, this is page 54 of
12 the PDF, which is labeled page 47 of
13 Dr. Kattamis' declaration.

14 This is where Dr. Kattamis sets forth
15 his opinion in ground 3 regarding claim 1 of the
16 '653 patent; correct?

17 A. That appears correct. Yes.

18 Q. So Dr. Kattamis is setting forth where
19 the various elements 1a through 1g that we just
20 listed are disclosed in Richardson and/or
21 Kreiger and how, in his opinion, it would be
22 obvious to combine those references to arrive at

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1 claim 1; correct?

2 A. That is what he is purporting. Yes.

3 Q. Okay. So flipping back then to your
4 declaration, Mr. McAlexander, and I want to look
5 at page 12, which is going to be page I think
6 14, yes, page 14 of the PDF, page 12, starting
7 at the header A.

8 Do you see that?

9 A. I see it in my hard copy, yes. I don't
10 think you have pushed the --

11 Q. I can --

12 A. -- server.

13 Q. Okay. I think I'm displaying that on
14 the screen now.

15 A. Yes, sir, that's correct.

16 Q. So you state here in your header,
17 "Richardson Fails to Disclose at Least Two
18 '653 Patent Claim 1 Limitations"; correct?

19 A. Yes, that's correct.

20 Q. Okay. And going in these next
21 paragraphs, the elements you are discussing here
22 are the ones we identified when we read them as

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1 elements 1b and 1c; is that correct?

2 A. That is also correct. Yes.

3 Q. So you have not stated in your
4 declaration any view that any of elements 1a or
5 1b through 1g are not disclosed by Richardson;
6 correct?

7 A. I did not make any statements one way
8 or the other. I focused on 1- -- on Kattamis'
9 1b and 1c.

10 Q. Okay.

11 Now, you state in -- sorry. I lost my
12 place for a moment. Just give me a minute,
13 please.

14 Forgive me. Something went a little
15 bit awry.

16 (Pause in the proceedings.)

17 Yes, Mr. McAlexander, I wanted to look
18 at paragraph 42 of your declaration, which is on
19 page 17.

20 Tell me when you have that.

21 A. I have paragraph 42.

22 Q. Okay.

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1 And you state here in paragraph 42 that
2 Richardson does not render claim 1 of the
3 '653 patent obvious.

4 Do you see that?

5 A. That is correct.

6 Q. Now, you understand that NOCO has not
7 asserted that claim 1 is obvious over Richardson
8 alone; correct?

9 A. Oh, yes, that is correct. Richardson
10 alone does not obvious -- clearly what's being
11 proposed by the petitioner is a combination of
12 Richardson and Kreiger.

13 Q. Uh-huh.

14 Now, on the following page of your
15 declaration at paragraph 45 -- and tell me when
16 you are there.

17 A. Okay. Got it.

18 Q. At paragraph 45, you state -- and I
19 quote -- "any attempt to alter Richardson's
20 embodiments to involve negative side switching
21 would render Richardson inoperative."

22 Do you see that?

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1 A. Yes.

2 Q. Okay. Now, is it your opinion,
3 Mr. McAlexander, that it would be impossible to
4 modify the circuit shown in Richardson so that
5 the switch is on the negative side rather than
6 the positive side and that the circuit would
7 still perform the functions described in the
8 Richardson reference?

9 A. Not without redesign.

10 Q. Okay. Not without redesign.
11 So it could be redesigned to accomplish
12 that function; correct?

13 A. You could -- an expert, a person could
14 redesign something to incorporate going in the
15 other direction. As I have stated, there's no
16 reason why one looking at Richardson who has
17 a -- has a particular structure that works,
18 there's certainly no reason to go look at
19 something else that you would have to totally
20 redesign your circuit in order to accommodate.
21 You'd have to redesign the control circuitry in
22 order to accommodate it, otherwise just -- it's

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1 not a simple substitution of going from negative
2 to positive.

3 Q. Well, I understand your opinion in that
4 regard, but I'm -- my question is slightly more
5 basic, Mr. McAlexander. Let me go back to
6 restate that.

7 You stated an expert could redesign
8 something to incorporate going in the other
9 direction from positive to negative.

10 Is it your testimony, Mr. McAlexander,
11 that such an adaptation of the design would be
12 beyond the skill of a POSITA?

13 MR. RUGE: Objection. Beyond the
14 scope.

15 THE WITNESS: So let me see -- I'm
16 going to try to answer the question. If I'm
17 not, please ask it again.

18 A person of skill in the art, as we
19 have agreed and adopted for this particular
20 petition, if that particular person already knew
21 to do it a different way, which goes to
22 hindsight, then one could design one a circuit

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Shenzhen Chic Electronics v. Pilot, IPR2021-01232

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1 to accommodate the negative or accommodate the
2 positive. One could do that.

3 But the issue before me is a person of
4 skill in the art sitting down without any
5 knowledge of the claimed invention because the
6 claims don't exist at that time, they're not
7 public, it's at that time what would that person
8 of skill in the art do reasonably. And when
9 I -- when a person of skill in the art
10 reasonably looks at Richardson who has a
11 solution to a problem, it would not be
12 reasonable for that particular person of skill
13 in the art to do the exact opposite when there's
14 no reasonable reasonableness to doing something
15 like that when Richardson already has a
16 solution.

17 So now, backing up to your question,
18 could somebody that with -- had knowledge of
19 circuitry go in and make a new design, a new
20 invention, yes. But it would not be
21 complementary to Richardson; it would be
22 contradictory to Richardson.

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1 BY MR. OLDACH:

2 Q. Well, I understand --

3 A. It would require experimentation in
4 order to do that.

5 Q. Well, I understand your position with
6 respect to obvious with respect to the
7 motivation, Mr. McAlexander, but the question I
8 was asking -- and I think you did answer it --
9 is that it would be possible for someone to
10 design a Richardson -- if they had the
11 motivation to do it, looking at Richardson,
12 could adapt Richardson's design to have a
13 switch on the negative side and still
14 accomplish the functions in Richardson; is that
15 correct?

16 A. I put this in the category, sir, of a
17 "could have, would have, should have." There's
18 a lot of things that are possible for a person
19 that's skilled in the art.

20 The question I have that I address is
21 would it be obvious to a person to do something
22 like that. And in the teachings in -- that I

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1 see in Richardson, who already shows a way in
2 which it's done, it would not be clear to a
3 person of skill in the art to do something that
4 is contradictory or opposite to that.

5 But could -- is it possible? With a
6 designer and creativity and independence and
7 additional inventiveness, it's possible.

8 Q. Right. And that's why I asked that
9 question, because in paragraph 45,
10 Mr. McAlexander, you said "any attempt to alter
11 Richardson's embodiments to involve negative
12 side switching would render Richardson
13 inoperative," and that's not correct, is it?

14 A. That is absolutely correct. It would
15 render it inoperative. He would have -- a
16 person of skill in the art -- any attempt to
17 alter it to involve negative side switching
18 would require a redesign and a redesign of the
19 control circuitry in order to do that, and so
20 that is not leveraging off of or building upon
21 or involving a Richardson. That's really coming
22 up with a new design.

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1 So my statement in paragraph 45 is

2 correct.

3 Q. So what you're saying in

4 paragraph 45 is just moving the switch in

5 Richardson from the positive side to the

6 negative side without doing anything else would

7 render Richardson inoperative; is that correct?

8 A. It would render it inoperative, that is

9 correct.

10 Q. Okay.

11 Same page, a little further down, at

12 paragraph 48 -- do you see paragraph 48,

13 Mr. McAlexander?

14 A. Yes, I do. In my hard copy. Let's see

15 on the screen -- I can move it, yeah.

16 Q. You say, "It is inappropriate to

17 consider and combine art that is opposite to

18 Richardson."

19 Do you see that?

20 A. Yes, sir, I do.

21 Q. And so you're referring there to the

22 Kreiger reference as being opposite to

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1 Richardson?

2 A. That's correct.

3 Q. Okay. Now, both Kreiger and Richardson
4 are concerned with battery jump-starting;
5 correct?

6 A. Yes, that is correct. And generally
7 they are both targeting the same, same topic.

8 Q. And both Richardson and Kreiger are
9 concerned with safety features, including
10 reverse polarity protection; correct?

11 A. They both address that. Yes.

12 Q. Okay.

13 Now, going back to Dr. Kattamis'
14 declaration -- I'll flip over to that -- there's
15 another section in Dr. Kattamis' declaration
16 around page -- sorry -- starting at page 34 of
17 the PDF, which is numbered page 27.

18 And Dr. Kattamis has a section here in
19 his declaration where he provides his opinion as
20 to why it would be obvious to combine Richardson
21 and Kreiger.

22 Are you familiar with that section?

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1 A. Yes, sir, I am.

2 Q. Okay. And at paragraph 68 of
3 Dr. Kattamis' declaration -- and that's
4 page 36 of the PDF -- do you see that,
5 paragraph 68?

6 A. Yes. I have paragraph 68 in front of
7 me.

8 Q. Now, in this paragraph, Dr. Kattamis is
9 saying that a POSITA would be motivated to
10 combine Richardson and Kreiger because a POSITA
11 would be aware that in jump-starting operations
12 using traditional cables it's advised to connect
13 the negative terminal of the jumping battery to
14 the chassis of the vehicle receiving the jump
15 last; correct?

16 A. Are you reading out of paragraph 68?

17 Q. I am referring to paragraph 68. To be
18 candid, I was paraphrasing but --

19 A. Thank you. I was trying to find the
20 words and couldn't.

21 Q. So are you able to answer the question
22 that I posed?

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1 A. Since I was trying to find the exact
2 words you were reading from and you were
3 paraphrasing, if you could restate the question,
4 please.

5 Q. Sure.

6 And again, I'm merely trying to frame
7 our discussion in terms of Dr. Kattamis' opinion
8 here.

9 In paragraph 68, Dr. Kattamis is
10 providing an opinion that a POSITA would be
11 motivated to combine Richardson and Kreiger
12 because a POSITA would be aware that in
13 jump-starting operations using traditional
14 cables it is advised to connect the negative
15 terminal of the jumping battery to the chassis
16 of the vehicle receiving the jump last; is that
17 correct?

18 A. That is a position he has -- that
19 generally characterizes the position he's taking
20 in paragraph 68.

21 Q. Sure.

22 And so, in that case, if any spark is

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1 generated when the circuit is closed, the spark
2 would be physically separate from either of the
3 batteries; correct? Again, using traditional
4 cables.

5 A. I'm not sure I understood your
6 question. Let me answer it.

7 If you're doing standard jumping,
8 jumping cables, it is strongly advised that
9 when you connect the batteries together you
10 connect the positive terminals first. You then
11 connect a negative terminal of one battery.
12 And then the last lead, the fourth one, which
13 is also a ground, connects somewhere in the
14 body chassis remote from the battery terminal.
15 That's -- in standard cabling that's known to
16 be the case.

17 Q. Right. And I just wanted to confirm
18 that you agree that that is in fact the well --
19 well and long-advised method of performing a
20 jump-start operation using traditional cables.

21 A. In terms of using traditional cables
22 without anything intervening, that I believe

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1 would be a long-established understanding,
2 except for the vehicles that have reverse
3 polarity, which there are such vehicles, out of
4 Europe. Maybe you haven't driven one, but there
5 are.

6 But that is -- that's a different
7 statement as compared to what he has pushed in
8 paragraph 68 because, if I understand, what
9 Dr. Kattamis is representing in paragraph 68 is
10 specifically focused, if you look at the very
11 first clause, "A POSITA would also be motivated
12 to combine Richardson and Kreiger because in
13 Kreiger."

14 Well, the only reason that Dr. Kattamis
15 says "because in Kreiger" is because
16 Dr. Kattamis already knows what the claimed
17 invention requires and it requires negative side
18 switching, so that's because in Kreiger. Well,
19 that's not a POSITA. A POSITA is sitting there
20 without that knowledge and looking at the
21 documents themselves and Richardson already has a
22 solution. There's no motivation to go find

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1 something else when the solution is already
2 there, so it's that part that I'm taking issue
3 with.

4 In terms of standard cabling, yes, I
5 fully concur that there are -- in terms of
6 standard cabling, there is a preferred and
7 understood well, long-seated method to do that.

8 Q. Okay. Well, thanks, Mr. McAlexander.
9 Again, my question was not about your refutation
10 of Dr. Kattamis' position. My question was
11 merely about the longstanding -- the
12 long-established method of jump-starting using
13 traditional cables, which you have -- you have
14 answered; correct?

15 A. That's correct.

16 Q. Okay. Now -- and I understand you
17 disagree with Dr. Kattamis' ultimate conclusion
18 regarding that.

19 Now, your position in your declaration
20 is that because in a jump-starting device, such
21 as a handheld lithium ion jump starter, the
22 switch is being closed in the device and not

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1 adjacent to the vehicle battery, the motivation
2 cited by Dr. Kattamis to use a negative side
3 switch, such as disclosed in Kreiger with the
4 device of Richardson, is not present; is that
5 correct?

6 A. Well, it doesn't necessarily have to be
7 limited to a lithium ion battery. Whenever you
8 have the switching components that are removed
9 away from the battery terminal itself, then
10 clearly, if the switching is done, the
11 activation is done after the connections to the
12 terminal, then you -- you kind of preempted the
13 safety issue at the terminal because there is no
14 current path at that time until you start
15 activating the switch.

16 Q. Well, you have already I think pointed
17 this out, but in paragraph 68, when Dr. Kattamis
18 says that a POSITA would readily be able to
19 reconfigure the Richardson system to provide the
20 switching circuitry on the negative side as
21 opposed to the positive side, you disagree with
22 that assessment; correct?

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1 A. It would require redesign in order to
2 accommodate that and testing in order to ensure
3 that it is appropriate.

4 And again, I just -- I contest the
5 combination because Richardson already has a
6 solution. In fact, negative side switching was
7 so obvious to Richardson that he never covered
8 it. He suggested a different way of doing it,
9 because he never talked about negative side
10 switching.

11 Q. Now, just to be clear, Mr. McAlexander,
12 did you attempt to lay out a design where you
13 adapted the Richardson system to provide the
14 switch on the negative side as opposed to the
15 positive side?

16 A. Did I attempt to.

17 I looked at and just -- I can't recall
18 that I jotted anything down or drafted anything,
19 but I did look at, if I were to do that change,
20 some of the things that would have to be
21 required, and obviously the control circuitry
22 that is operating has to be changed in order to

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1 accommodate that, so I did not go through any
2 specific redesign of that, no.

3 Q. Okay. So you did not -- you neither
4 attempted to nor completed a design adapting
5 Richardson; correct?

6 A. No. I did not attempt to complete such
7 a design. I knew that just looking at the
8 representation of Richardson in order to
9 accommodate negative side one would have to go
10 back and redesign the control circuitry that
11 works with that. And that even involves
12 redesign within the components within the
13 microcontroller, and that would go back to
14 programming changes as well.

15 So this is a lot of effort that would
16 have to go in to translating from positive to
17 negative.

18 Q. Well, then when you said in
19 paragraph 48 of your declaration,
20 Mr. McAlexander -- I can put it back up if we
21 need to --

22 A. I have it in my hard copy here.

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1 Q. Yeah. And it's the same one I think I
2 had up earlier.

3 At the bottom of your paragraph 48 on
4 page 19 of your declaration, you say, "Such a
5 pursuit would require undue experimentation, to
6 the point of complete redesign, with no
7 reasonable expectation of success."

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if you did not lay out or
11 attempt to lay out an adaptation of Richardson
12 with that change made, what do you base that
13 conclusion on?

14 A. My own experience working with
15 microcontrollers and programming and sensors and
16 switches. I know when you make a change that's
17 really going from one to the other it does
18 require redesign as to that formulation has to
19 be different.

20 Q. Okay. Looking back at -- and I'm doing
21 some switching back and forth here, but
22 hopefully it's working out okay, and you've got

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1 some hard copies.

2 In paragraph -- in Dr. Kattamis'
3 declaration, we had just been discussing
4 paragraph 68; right?

5 A. Yes. That's correct.

6 Q. Now, immediately above paragraph 68 is
7 paragraph 67.

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, in paragraph 67, Dr. Kattamis is
11 stating that a POSITA would be motivated to
12 look to Kreiger after reading Richardson
13 because Kreiger uses solid-state switches rather
14 than relays as in Richardson and solid-state
15 switches are more rugged and inexpensive than
16 relays.

17 Is that a correct summary of his
18 opinion in paragraph 67?

19 A. I did not necessarily take issue with
20 the statement, although it's not completely
21 true. It depends upon the particular
22 instantiation as to whether solenoids and/or

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1 the solid-state devices are more or less
2 expensive.

3 In a general sense, it's easier to
4 build a solid-state device than a solenoid in
5 terms of repeatability, if you will, but these
6 are both choices that are available. I'm trying
7 to think if -- if I look at -- just go back and
8 look at Richardson here just a second.

9 (Document review.)

10 I was just looking back at Richardson,
11 just looking at the way he was designing it.

12 I mean, the general statement about
13 solid-state devices rather than mechanical, in
14 some situations it may be true, not generally
15 the case in all situations, no.

16 Q. Maybe not in all situations, but as
17 you've stated -- well, let me rephrase the
18 question.

19 Mr. McAlexander, you have not put
20 forward any opinions in your declaration that
21 refute paragraph 67 of Dr. Kattamis'
22 declaration; is that fair?

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1 A. I did not address the specifics of this
2 replacement solenoid to power switching using
3 integrated circuit or solid state, as he called
4 it. But what -- but I did comment on the fact
5 that when you're starting to make these changes,
6 that does come back to a complete redesign,
7 because the conditions that you would have to
8 take -- that you would have to consider for a
9 solenoid are different than you would for a
10 solid-state device.

11 The solenoids are more robust when it
12 comes to high currents like this. You can use
13 the solid-state to do that, but then that
14 requires quite a bit of design experimentation
15 effort to make sure that you're not creating a
16 weld in the solid-state device itself.

17 Q. Well, I understand. I think you
18 referenced in your response there,
19 Mr. McAlexander, the other question of course
20 regarding the positive and negative switching
21 and that also doing a solid-state would require
22 some adaptation as well, but to be clear, there

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1 isn't anything in your declaration that refutes
2 paragraph 67 of Dr. Kattamis' declaration;
3 correct?

4 A. I have not directed my report
5 specifically to that particular instance of a
6 solenoid versus solid-state switch. I have -- I
7 have directed my attention more generally to the
8 fact of no motivation, teaching or suggestion in
9 Richardson to do this and that one would not
10 reasonably do the switch because of the fact
11 that Richardson already has a solution using
12 this approach, which he does use a solenoid.
13 But there's no motivation to move to something
14 totally different because he already has a
15 solution in place.

16 And to move it -- to move to a negative
17 side switching, again, there's nothing that
18 reasonably says that Richardson would have known
19 or considered that. That's why I said it must
20 have been so obvious that Richardson didn't even
21 know about it.

22 But I have not directed anything

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1 specifically to this aspect of component changes
2 specifically other than the general statement,
3 for instance, in paragraph 48.

4 Q. Well -- and again, I understand you've
5 incorporated in your response issues regarding
6 the positive and negative side switching, but
7 I'm just trying to make sure we have a -- I
8 want, you know, a clean record,
9 Mr. McAlexander, that you did not in your
10 declaration refute Dr. Kattamis' statements in
11 paragraph 67 of Dr. Kattamis' declaration;
12 correct?

13 A. I don't think I directed anything
14 specifically to this particular aspect.

15 If you look in his paragraph 67, "A
16 POSITA would be motivated to modify," well,
17 there's no motivation in Richardson to modify at
18 all. And I've already addressed the fact of the
19 motivation, teaching and suggestion being
20 missing, and so he's making a statement here
21 that just -- it's -- it's a conclusion not based
22 upon any supporting evidence.

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1 Q. Well, you understand, Mr. McAlexander,
2 that the motivation does not need to come from
3 Richardson itself; correct?

4 A. That is correct. I understand it
5 doesn't have to come from -- there's -- the
6 reasonableness, the reason, does not necessarily
7 have to come from Richardson. But that's why
8 when a POSITA is looking at a reference and he
9 sees that there's already a solution, then it's
10 unreasonable to think that you're going to have
11 to go redesign and come up with something
12 different when there's a solution already in
13 front of you.

14 Q. Okay.

15 Let me just put Kreiger up for a
16 moment, Mr. McAlexander. That's been marked as
17 document 7. It's Exhibit 1005.

18 I'm going to look to column 2 of
19 Kreiger. Around line 21.

20 Do you see a column 2 of Kreiger,
21 Mr. McAlexander?

22 A. Yes, I do.

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1 Q. Okay. And I'm going to start at
2 line 21 to 25.

3 A. Okay.

4 Q. Kreiger states, "A polarity protection
5 circuit is provided. According to an exemplary
6 embodiment, the polarity protection circuit is
7 comprised of solid-state devices. Preferably no
8 mechanical or electro-mechanical devices, such
9 as solenoids are included in the polarity
10 protection circuit."

11 Do you see that?

12 A. Yes, I do.

13 Q. So isn't Kreiger stating there a
14 motivation for a person to replace solid-state
15 devices in place of relays?

16 A. Well, as I understand the obviousness
17 argument being put forward by the petitioner,
18 this is obvious over Richardson in view of
19 Kreiger, not the opposite. And so the question
20 is, from an obviousness standpoint, if I've got
21 Richardson in front of me, would it be obvious
22 to include Kreiger. I think what you're asking

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1 me is the reverse.

2 Here, by Kreiger -- "Kreiger" or
3 "Kreiger"; I'm not sure which it is -- saying
4 this is preferable to not have mechanical
5 switches is -- it is in essence a teaching away
6 from using mechanical switches, let's do it with
7 the -- with other than that particular
8 mechanism.

9 So he is -- he's using solid-state.
10 He's teaching away from using mechanical or
11 electromechanical devices, which is exactly what
12 Richardson is using.

13 Q. Let me rephrase my question.

14 Actually, I'll move on.

15 So we looked at here in
16 ground 3 regarding the asserted combination of
17 Richardson and Kreiger.

18 You'll understand, Mr. McAlexander,
19 that ground 5 similarly asserts obviousness of
20 claims 1 and 3 through 6 in view of Baxter plus
21 Kreiger; correct?

22 A. Yes, sir, that's correct. That's my

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1 understanding.

2 Q. And we can get into -- we'll get into
3 some detail on this, but is it fair to say that
4 your opinions regarding the combination of
5 Baxter with Kreiger are that it would not have
6 been obvious for a POSITA to combine those
7 references for much the same reasons as those
8 set forth with respect to the combination of
9 Richardson and Kreiger?

10 A. Well, I've certainly delineated more
11 specifically in my declaration specifically
12 addressing Baxter. But generally speaking, I
13 would say yes because in both Baxter as well as
14 in Richardson we're talking about positive side
15 switching. And I am also addressing the same
16 two limitations that are missing out of Baxter.

17 So, yes, I would say from a general
18 sense the statements I'm making are generally
19 the same.

20 Q. Okay. Is it your position -- or let me
21 rephrase.

22 Is it your opinion that it would be

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1 impossible to modify the circuit shown in Baxter
2 so that the switch is on the negative side
3 rather than the positive side and that the
4 circuit would still perform the functions
5 described in the Baxter reference?

6 A. I think to the same extent that I have
7 commented on Richardson, clearly following --
8 falling into the could, would or should
9 category, the possibility exists for a person to
10 go back and make a redesign effort.

11 It would require redesign, it would
12 require experimentation, undue experimentation
13 amount, in order to accomplish that. And once
14 again, it would not meet the criteria I believe
15 that is -- a POSITA would not reasonably desire
16 to make that change when Baxter already has a
17 fairly, a very clear representation and does
18 that on the positive side switching.

19 To go back and make that change I
20 believe requires hindsight. It's not something
21 that a person would know because he's not aware
22 of the claimed invention that is negative side

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1 switching.

2 Q. Well, in fact, I'm looking now at
3 paragraph 55 of your declaration,
4 Mr. McAlexander. And I believe this summarizes
5 some of what you had just said.

6 You actually say here -- I'm about four
7 lines down -- "In fact, Baxter teaches the
8 antithesis of the '653 Patent."

9 Do you see that?

10 A. Yes, I do.

11 Q. So is it your understanding,
12 Mr. McAlexander, that the fact that Baxter has
13 its switch on the positive side rather than the
14 negative side renders it the antithesis of the
15 '653 patent?

16 A. That is the basis of that. Yes.
17 That's the foundational reason for that
18 statement.

19 Q. Okay. And again, both Baxter and
20 Richardson are concerned with battery
21 jump-starting; correct?

22 A. Yes, they are.

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1 Q. And both Baxter and Kreiger are
2 concerned with safety features, including
3 reverse polarity protection; correct?

4 A. That is correct.

5 Q. Okay.

6 A. And what they have done is Richardson
7 and Baxter solve or propose a solution that is
8 antithetical, opposite, to what the '653 patent
9 suggests as a way to remedy that.

10 Q. Okay. Now -- and I can -- well, I will
11 go back, jump over to Dr. Kattamis' declaration
12 again. And looking down to his page 30, which
13 is page 37 of the Kattamis PDF, where he has a
14 section regarding his reasons for combining
15 Baxter and Kreiger, do you see that?

16 A. Yes. Beginning in paragraph 70?

17 Q. Correct.

18 A. Okay.

19 Q. And on a couple of pages down he has a
20 paragraph 74 regarding his assertions to
21 combine Baxter and Kreiger regarding the
22 switching circuitry being at the negative

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1 terminal.

2 Do you see that?

3 A. Yes, sir, I do.

4 Q. Okay. And essentially,

5 Mr. McAlexander, Dr. Kattamis is stating here

6 that the motivations to combine Baxter and

7 Kreiger have to do with the normal,

8 long-established procedure of using traditional

9 jumper cables to jump a car connecting at the

10 negative side last, similar to the opinion he

11 provided regarding the combination of Richardson

12 and Kreiger; correct?

13 A. Yes. And again, the same issue I had

14 with our discussion on Richardson is that while

15 the statement about the longstanding

16 understanding of cable connection is true, when

17 you're talking about the Richardson or Baxter

18 proposal, that's removing the connection away

19 from the battery.

20 So even though the longstanding issue

21 is true about sparking at the battery, the fact

22 that you're removing it from the battery doesn't

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1 change the fact of that longstanding position,
2 but it has nothing to do with the control
3 circuits that we are talking about.

4 Q. Yeah. I understand -- I understand
5 your opinion, Mr. McAlexander.

6 In fact, though, if you look at Baxter,
7 in fact just look at the front page of Baxter,
8 the cover page of Baxter, in fact Baxter's
9 invention is intended to be used with
10 traditional jumper cables; correct?

11 A. Well, when you say "with traditional
12 jumper cables," if you look at Baxter's
13 rendition, do you see something in here where
14 16 has the module that the cables are plugged
15 into it? I see this as this is not a standard
16 cable. This is a cable that has a control
17 section that's inserted into it.

18 Q. Well, I understand -- let me rephrase.

19 Baxter is not a -- in Baxter, the
20 control circuit is intended to be used in
21 conjunction with a supplying automotive battery,
22 for example; correct?

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1 A. Well, yeah. I mean, the cables that
2 are shown are certainly what you would
3 anticipate. This is like between two -- that's
4 correct. They've got four leads to it.

5 Q. Now, Mr. McAlexander, did you actually
6 lay out or attempt to lay out a design where you
7 reconfigured the Baxter system to provide the
8 switch on the negative side as opposed to the
9 positive side?

10 A. You know, it's interesting you ask that
11 question because I attempted to see what that
12 would look like. And it's -- it was really
13 troubling because in figure 2 of Baxter -- let
14 me make sure I've got the right one here.
15 Figure 2 of Baxter, if you want to bring that
16 up.

17 Q. Okay. Do you see figure 2 of Baxter?

18 A. I can. Thank you.

19 In figure 2 of Baxter you'll notice
20 that there are four leads that are shown.
21 There's two -- there's a pair for 20 and a pair
22 for 22.

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1 Do you see that?

2 Q. We do.

3 A. All right.

4 And so that's consistent with what
5 they're showing in figure 1. But when you look
6 at the box, this is trying to elaborate it
7 doesn't matter -- the circuitry allows you to
8 connect it different ways.

9 And if you look at it, one would think
10 that you can basically cross-link 20 and 22, but
11 that doesn't occur because you can see the way
12 that the circuitry is organized depending upon
13 which lead of 20 -- let's say 20 on the left
14 side is red and 20 on the right side top is
15 black. What that says is, if I switch those two
16 leads, there is a mechanism by which it can
17 detect that change.

18 But interestingly, the power transistor
19 is only on one side. And that power transistor
20 that's on one side, 24, is not switchable to the
21 other side. There's no teaching or any way how
22 that's done. I could not -- I tried and could

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1 not figure out how they could do that without
2 having power transistors switchable to the
3 other side. I didn't go through trying to
4 design it because it was missing. It's just not
5 there.

6 So I think even Baxter himself has some
7 missing statements in terms of how one would do
8 that switching. But I didn't go back and try to
9 design it, no.

10 Q. Okay. So you believe Baxter may have
11 some deficiencies in its disclosure?

12 A. Yes.

13 Q. Okay.

14 In fact, in paragraph -- I think it's
15 paragraph 73 of your declaration --

16 A. Let's go back and look at that.

17 Q. Let me just click over there.

18 A. Okay. I have that.

19 Q. Yeah. I'm at page 73, which is
20 numbered page 27 of your declaration.

21 And you're there, sir?

22 A. Yes, sir, I am.

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1 Q. You stated here that "Any attempt to
2 successfully reconfigure this complex switching
3 circuit to operate in the opposite
4 'negative-side switching' capacity would be a
5 monstrous task."

6 Do you see that?

7 A. Yes, sir.

8 Q. And that's not a term you used when you
9 were discussing Richardson; correct?

10 A. I may not have used the word
11 "monstrous."

12 Q. Is it the case that modifying
13 Richardson to provide negative side switching
14 would be less difficult than modifying Baxter,
15 in your opinion?

16 A. An interesting question.

17 Baxter is far more detailed in terms of
18 the actual schematic that is used, and so in
19 addition to -- let me turn to Baxter here.

20 If I look at Baxter figure 7, which is
21 a generalized schematic, but then
22 figures 8 through I believe 12 go into far more

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1 detail, down at this level of transistor and
2 amplifier, doing from negative to positive side
3 switching would require some fairly significant
4 reinvention and redesign of his circuitry to
5 make it work.

6 If I compare that to Richardson, I
7 think since Richardson is -- Richardson is at
8 the solenoid level, there's not quite as much
9 solid-state circuitry that would have to be
10 redesigned to accommodate that, so only to that
11 extent. Maybe I can say it's not as monstrous,
12 but it's still a large task.

13 MR. OLDACH: I understand.

14 Mr. McAlexander, I want to thank you
15 very much for your time. I don't have any other
16 further questions today.

17 THE WITNESS: Well, I appreciate your
18 questions, very professionally well-handled.
19 Thank you so much.

20 MR. OLDACH: Counsel?

21 MR. RUGE: I just have one thing I'd
22 like to address with Mr. McAlexander.

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2 EXAMINATION

3 BY MR. RUGE:

4 Q. And that's if you could go to --
5 Mr. McAlexander, if you could look at your
6 declaration, which I believe has been marked as
7 Exhibit 1, and go to paragraph 61.

8 I'd like to talk to you briefly about
9 paragraph 61.

10 (Pause in the proceedings.)

11 A. Okay. I've got paragraph 61 in front
12 of me.

13 Q. I know you've talked -- I know you
14 talked a little bit about this with Mr. Oldach
15 already, but if you could explain a little bit
16 what you mean in this paragraph when you talk
17 about how the poles are not connected.

18 A. Okay.

19 Paragraph 61 reads -- this is in my
20 declaration, which is Pilot's Exhibit 2005 -- I
21 stated, "As Dr. Kattamis acknowledges (see
22 above), Baxter's different switching solution

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1 requires that," and I've put some quotes, as
2 required by claim 1 of the '653. I will tell
3 you, reading through that, I'm not sure exactly
4 what it was -- what it says.

5 What it's supposed to say, to be
6 clearer, is Dr. Kattamis acknowledges Baxter's
7 different switching solution does not meet the
8 "a first pole" -- in quotes -- and "a second
9 pole" -- in quotes -- limitations as required
10 by claim 1. That's more clearly the way --
11 that's what I intended to write. When I looked
12 at the way it was quoted, I'm not sure that
13 that -- it can be interpreted in several
14 different ways, but that's obviously a
15 conclusion statement that says Dr. Kattamis
16 acknowledged above -- he acknowledges that these
17 two limitations are not met by Baxter, and
18 that's in his declaration.

19 MR. RUGE: Okay. That's all I have.

20 THE WITNESS: I hope that clears up.

21 MR. RUGE: And I said that's all I
22 had.

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1 MR. OLDACH: And I don't have any
2 recross on that.

3 So with that, Mr. McAlexander, thanks
4 again for your time today, appreciate it.

5 THE WITNESS: Thank you.

6 (Time noted: 12:09 p.m. Eastern Time.)

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1 STATE OF MARYLAND, to wit:

2 I, Josett F. Whalen, before whom the
3 foregoing deposition was taken, do hereby
4 certify that the within-named witness personally
5 appeared before me at the time and place herein
6 set out, and after having been duly sworn by me,
7 according to law, was examined by counsel.

8 I further certify that the examination
9 was recorded stenographically by me and this
10 transcript is a true record of the proceedings.

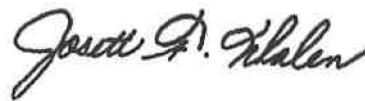
11 I further certify that I am not of
12 counsel to any party, nor an employee of
13 counsel, nor related to any party, nor in any
14 way interested in the outcome of this action.

15 As witness my hand and notarial seal
16 this 15th day of March, 2022.

17

18

19



20

JOSETT F. WHALEN

21

Notary Public

22 MY COMMISSION EXPIRES: 10-2-2024

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MARCH 4, 2022

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MR. OLDACH

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MR. RUGE

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