In The Matter Of:

LifeCORE Fitness, Inc. v.
Woodway USA, Inc.

ROBERT GIACHETTI, Ph.D., P.E.
January 9, 2024
Patent No. 10,561,884

NorthStar Deposition Services

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

LIFECORE FITNESS, INC. d/b/a ASSAULT FITNESS,

Petitioner,

v.

WOODWAY USA, INC.

Patent Owner.

IPR023-00843

U.S. Patent No. 10,561,884

January 9, 2024
9:39 a.m.

The deposition of ROBERT GIACHETTI, Ph.D., P.E., called as a witness herein for examination, taken pursuant to the rules of the United States Patent and Trademark Office before JENNIFER L. BERNIER, a Certified Stenographic Reporter of the State of Illinois, CSR License No. 084-004190, Registered Merit Reporter and Certified Realtime Reporter, at Foley & Lardner LLP, 321 North Clark Street, Suite 3000, Chicago, Illinois.

A P P E A R A N C E S

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E X H I B I T S

Exhibits 1001 through 1030 were premarked and retained by counsel.

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P R O C E E D I N G S
JANUARY 9, 2024
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(Deposition Exhibits 1001 through 1030 were premarked for identification.)
(Witness sworn.)
WHEREUPON:
ROBERT S. GIACHETTI, Ph.D., P.E., called as a witness herein, having been first duly sworn, was examined and testified as follows:
EXAMINATION
BY MS. JELENCHICK:
Q. Good morning, Dr. Giachetti.
A. Good morning.
Q. Nice to see you again. I know it's been almost seven years since we were last together for a deposition.
Do you understand why you're here today?
A. I think I do.
Q. Okay. Can you explain to me why you're here today?
A. I'm the -- an expert witness testifying on behalf of LifeCORE Fitness for an

IPR.
Q. Is LifeCORE Fitness, Inc. Your client?
A. Mr. Turner is my client. Actually, he's Fusion's client, I should say.
Q. Who is Fusion?
A. Fusion Engineering is the engineering firm that employs me.
Q. Where is Fusion located?
A. Fusion Engineering is in Naperville, Illinois.
Q. When did you go to work for Fusion Engineering?
A. November of 2020, I think. The pandemic has blurred my concept of time, but I think that's correct.
Q. Do you have a job title at Fusion?
A. Yeah. I'm the director of mechanical engineering.
Q. What are your duties and responsibilities as the director of mechanical engineering?
A. So I do consulting work. I do some marketing work for Fusion. I try to do some recruiting for Fusion and make some marketing materials and swag and things like that. I also

try to push people into publications and technical conferences and things like that.
Q. How many employees does Fusion currently have?
A. We have between 15 and 20.
Q. How many of those employees are engineers?
A. The majority of them. We only have two to three admins. So the rest are technical staff; not necessarily engineers, but people with a scientific or technical background.
Q. Do you have any reports?
A. I have lots of reports.
Q. How many employees at Fusion report to you?
A. Oh, I misunderstood you. I thought you meant like written technical reports.
Technically speaking, I believe there are four people under me, although our reporting structure is a little loose.
Q. Did any of those four individuals support your work for Mr. Turner?
A. I don't think so. I haven't reviewed the invoices before today. So, you know, this case has been going for at least a year. So I

don't remember the details of everyone who has taken a look at the technical work.
Q. Your response suggested that you reviewed invoices today. Is that true?
A. No. I haven't reviewed any invoices in advance of today.
Q. Have you issued invoices for your work before today?
A. Fusion has.
Q. Did you have any role in the preparation of invoices to Mr. Turner for your work?
A. Yeah. The way it works is that I enter time in a computer system. Then we have an accounting admin who prepares bills. I check them over for -- at that time, I check them over for accuracy. And then she takes care of sending them out, usually on a monthly basis.
Q. Do you know how many invoices have been issued by Fusion thus far?
A. I do not.
Q. In what increment of time do you record your time?
A. 0.1 hours.
Q. So by the tenth of the hour?

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A. Correct.
Q. And how regularly do you -- or irregularly do you enter your time?
A. I try to enter my time once a week. I don't always succeed.
Q. How did you become aware of this particular engagement?
A. Someone from Mr. Turner's office reached out to me and asked if I had any interest in this matter. And we did a conflict check, and then I accepted the job.
Q. Do you know who specifically contacted you about this engagement?
A. I can't remember her name. I think it might have been a Rachel, but I can't remember specifically her name.
Q. Was it Rebecca Cantor?
A. Yes.
Q. Do you recall when Ms. Cantor contacted you?
A. No, not specifically.
Q. Other than conducting a conflict check, did you do any other preliminary assessment to evaluate whether this was an engagement you wanted to accept?

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A. Well, I recall my involvement from the other litigation. And so I was -- I felt pretty familiar with the topic, so I didn't do any more research.
Q. What did you mean by "the other litigation"?
A. So something like seven years ago, another company I believe had infringement and validity contentions against Woodway; and I was a part of that as their technical support.
Q. Is the company or companies that you're referring to Chapco or Samsara Fitness?
A. I believe those -- those were the parties involved, and I think you were the attorney for them -- or for Woodway at that time also.
Q. You recall in that prior litigation, Woodway alleged Chapco and Samsara were infringing its patents, correct?
A. I didn't remember. I didn't -- I don't remember, until you said that, who initiated that litigation.
Q. What about your involvement from the past litigation between Woodway and Chapco/Samsara made you feel pretty familiar with the proposed

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engagement by Mr. Turner's office?
A. Mostly, my familiarity with the prior art in the treadmill space and my familiarity with power transmission components and, basically, my professional background.
Q. Your familiarity with the prior art in the treadmill space, that was a consequence of your engagement by Chapco and Samsara, correct?
A. Partially. I mean, I have a big background in biomechanics; and I worked with treadmills as part of my academic life in biomechanics. So I did have familiarity with treadmills in advance of that -- that retention, which is, you know, why I was qualified for being a technical expert.
Q. Before accepting the engagement with Mr. Turner, did you have any substantive discussion with him or anyone at his office about the merits of the potential challenge to the Woodway patents?
A. Do you mean in this -- "this," what we're doing right now -- or in the past case?
Q. In this case. I am talking about before you were engaged by Mr. Turner and his office, did you talk with him or anybody in his

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office about the merits of the potential challenge that LifeCORE Fitness intended to raise?
A. I don't remember our conversation specifically, but they did tell me that the rules for this were different from that litigation. So I basically came into this with a -- with an open mind.
Q. Do you have any understanding as to how the rules are different in IPR proceedings relative to district court litigation?
A. Well, you know, I addressed the law as I understand it, which is what Mr. Turner and his office has instructed me; and those are in my reports. You know, off the top of my head, you know, I know that the IPRs prefer prior art that has not been before the examiner and that, you know, that -- I think that's the big one that stands out in my mind as I sit here.
But I did discuss in my reports what my understanding of the law was based on, you know, what Mr. Turner told me.
Q. Going back to that original call with Ms. Cantor, do you remember if there was anybody else on the phone with you at that time?
A. The initial call was just Ms. Cantor.

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Q. And during that call, you indicated there was some discussion or reference to IPR rules being different than district court rules; is that correct?
A. I don't think that that was the -- the first conversation. You know, we had a couple of conversations, I think, before the case really got off the ground. And I'm sure we discussed that in one of the preliminary calls.
You know, it's over a year ago. I don't remember with a ton of clarity one call to the other at the -- at the very beginning.
Q. Do you have an approximate date as to when Ms. Cantor called you in the first instance about this potential engagement?
A. The exact date, no. I could say probably late 2022 or early 2023 is probably the best estimate I could give.
Q. Is it fair to say she contacted you about a year ago?
A. Give or take.
Q. At the time that Ms. Cantor reached out, had the decision already been made for LifeCORE to file IPR challenges, if you know?
A. I don't remember.

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Q. Do you recall any specifics of your initial phone call with Ms. Cantor in this matter?
A. Not really.
Q. Do you recall which entities you ran conflicts on following your call with Ms. Cantor?
A. LifeCORE, at least. I don't remember if there were any others. Probably Assault, but I'm not sure beyond that.
Q. Before Ms. Cantor's call with you, were you familiar with LifeCORE Fitness, Inc.?
A. No, not from a technical standpoint. You know, if I had walked by one of their pieces of equipment in a gym, I might have seen it, but not -- not anything that I knew as like a brand or anything like that.
Q. Before Ms. Cantor's call with you about this potential engagement, were you familiar with the Assault Fitness brand?
A. I know that I've heard of Assault Fitness in the past, but that -- that's the only -- just like an inkling that I recognize the name. And that's all that I had at the time that I just spoke -- first spoke to her.
Q. Do you own any Assault Fitness equipment?

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A. Not that I know of.
Q. Do you own any Woodway fitness equipment?
A. Nope.
Q. Have you ever owned any Assault Fitness equipment?
A. Not to my knowledge.
Q. Do you belong to a health club or a gym?
A. I do.
Q. Do you know what type of treadmills your health club carries?
MR. TURNER: Objection.
Q. If any?
MR. TURNER: Objection. Relevance.
A. I have walked by their treadmills. I could not tell you what kind they are.
Q. Is it fair to say you're not using treadmills at your gym?
A. Regularly, yeah. I used it once. That was good enough for me.
(Reporter clarification.)
A. I used it once. That was good enough for me.
Q. Do you know whether your health club

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has nonmotorized treadmills?
A. I do.
Q. What does the phrase "nonmotorized treadmills" mean to you?
A. Nonmotorized means that the user or the operator of the treadmill provides the force to move the running surface while they're exercising.
Q. A nonmotorized treadmill does not have a motor, does it?
A. I think that -- operationally speaking, that --
Q. (Sneezing.)
A. Bless you.
Q. Thank you.
A. I would say that if there is a treadmill that gives you the option where you could shut the motor off and still use it, that that would also count as a nonmotorized one because you could use it in that configuration. So I would say without a motor or has the option to use it without the motor on.
Q. What's the name of your health club?
A. East Bank Club.
Q. Where is it located?

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A. It's about three blocks west of here.
Q. Does the East Bank Club have nonmotorized treadmills?
A. They have a few.
Q. Do you know which brand?
A. I don't. I know they have more than one brand.
Q. Do you know if they have a Woodway Curve treadmill?
A. I do not.
Q. Do you know if they have an Assault Fitness nonmotorized treadmill?
A. I don't. I don't know what kinds they have. They only have two or three, total.
Q. Okay. The East Bank Club also has motorized treadmills, right?
A. Yes. They have about 50 or 100 of them.
Q. Is it fair to say you're not a runner?
A. That is more than fair.
Q. When did you learn that LifeCORE Fitness intended to file inter partes review challenges to certain Woodway patents?
A. I think that was early on in the conversations I had with Mr. Turner's office.

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Q. Were you personally involved in the decision as to whether to file one or more IPR petitions?
A. No.
Q. Did you offer an opinion as to the possibility of success of one or more IPR petitions challenging the Woodway patents?
A. No.
Q. After you confirmed from Mr. Turner's office that Fusion had no conflicts of interest, what happened next with your engagement?
A. I think we had some more phone calls. I think -- yeah. I can't really remember back that far what the -- what the steps were. But, you know, it involved, you know, prior art -- reviewing prior art and things like that.
Q. Who identified the prior art that was being reviewed?
A. Well, I know they had some; but I also did a refresh -- refreshed search, and I also had some familiarity from -- from the last time I did a treadmill matter.
Q. And the prior art that you were familiar with was a consequence of that Chapco and Samsara litigation, right?

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A. Some of it.
Q. Is there another treadmill matter that you're referring to?
A. No.
Q. How do you know that, with IPRs, the Patent Office prefers prior art that has not been before the examiner?
A. Well, I understand that from what Mr. Turner told me.
Q. Do you have any other basis for that opinion?
A. No. No. I don't have a law degree, and I didn't pass the patent bar, and I did not stay at a Holiday Inn last night. So I don't know.
Q. Was it important for you to identify potential prior art that had not been considered by the examiner for the purposes of this engagement?
MR. TURNER: Objection. I'd like to caution the witness about any privileged communications.
A. Could you repeat that question?
Q. Sure.
Was it important for you to identify

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potential prior art that had not been considered by the examiner for the purposes of this engagement?
A. I think just with the -- with the knowledge that it's more favorable to have art that has not been before the examiner before. But I still looked at the prior art as a whole, regardless.
Q. From the time that you were contacted by Mr. Turner's office until you began reviewing prior art, approximately how much time elapsed, if you know?
A. I have no idea.
Q. Do you have any sense of whether it was a week, a month, a couple months, a few months, six months?
A. I don't know. It was less than six months, that's for sure; but I could not tell you.
Q. Did Ms. Cantor identify how she came across your name as a potential expert?
A. I don't remember.
Q. As part of your duties at Fusion, do you have any responsibility for monitoring new patent litigation filings?
A. No.

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Q. As part of your duties at Fusion, do you have any responsibility for monitoring any new inter partes review or Patent Office proceeding?
A. No.
Q. Apart from any duties that you have with Fusion personally, is it of interest to you what may be happening in patent infringement matters?
MR. TURNER: Objection. Relevance.
A. I try to keep up with the role of experts. Or, for example, if, you know, there's -- I know that there was an expert who basically disqualified himself from a case because he didn't qualify as a -- as a POSA.
So like things like that, I have interest in. But I don't follow IPRs being filed, and I don't follow any sort of litigation that's being pursued at all.
Q. Following the issuance of your opinions and deposition in the Chapco and Samsara infringement matter, did you keep tabs on that litigation?
A. No, not at all.
Q. When Ms. Cantor contacted you about a potential IPR engagement, was that the first time

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that you heard that Woodway had sued LifeCORE for patent infringement?
A. I don't even think that she mentioned that Woodway was suing at the -- I don't remember what our conversation was at the time about that.
Q. Do you know that Woodway is suing LifeCORE Fitness for patent infringement now?
A. Based on what you've told me, yes.
Q. Before today, did you have any knowledge about Woodway's lawsuit against LifeCORE Fitness for patent infringement?
A. I have no knowledge of it. I only knew that there may be infringement reports in the -- in the coming year. But beyond that, I had no clue or concept about what the suit was.
Q. Where does your knowledge about the potential for infringement reports come from?
MR. TURNER: Objection.
A. Mr. Turner.
Q. At the time that you were working on any of your declarations for your engagement for Mr. Turner's office, did you have any knowledge of Woodway's patent infringement lawsuit against LifeCORE Fitness?
A. No.

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Q. How was your hourly rate decided upon for this matter?
A. Fusion sets my hourly rate on a yearly basis.
Q. Is it fair to say you were engaged in 2023?
A. I don't remember.
Q. Paragraph 17 of your declaration, which is Exhibit 1003, which is there in Volume 1 of the binders, it states: Fusion Engineering is being compensated for my work in this matter at a rate of $300 per hour for my time.
Does that refresh your recollection as to when you may have been engaged by Mr. Turner's office, based on the hourly rate?
A. Can you point me to that paragraph?
Q. Sure. It's paragraph 17.
A. 17, yeah. So that was my hourly rate in 2023.
Q. Now that the calendar has flipped to January of 2024, do you have a rate increase?
A. Yes.
Q. What's your new rate?
A. 410.
Q. Is your work from January 1st, 2024

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through the conclusion of this year going to be billed out at $410 per hour?
A. I believe so.
Q. Does a $390 per-hour rate refresh your recollection as to the approximate timing as to when Ms. Cantor may have called you in the first instance on this potential engagement?
A. No. Because if she called me and we begin the engagement, I wouldn't have billed for any of that time. So the call could have been in 2022.
Q. Is it fair to say that any substantive work that you've done on this matter would have occurred in 2023, given the identified hourly rate?
A. That's probable.
Q. Did you or Fusion send an engagement letter to Mr. Turner's office for this matter?
A. I don't recall. Usually there is an engagement letter involved in new matters, and I don't recall if we sent them one or they sent us one.
Q. Prior to this engagement, have you personally worked with anybody from Brooks Kushman?

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A. No.
Q. Do you know whether anybody at Fusion has previously worked with Brooks Kushman?
A. I don't know.
Q. Do you have any flexibility in your hourly rate?
A. I think under special circumstances that Fusion might, but I'm not sure what those circumstances might be.
Q. So there were no special circumstances at play in your engagement with Mr. Turner's office?
A. Correct.
Q. Do you know whether Fusion required a retainer for this matter?
A. I don't recall that we did.
Q. Did you offer a preliminary budget for the work that you were going to do on this engagement?
MR. TURNER: Objection. Relevance.
A. I don't recall.
Q. Do you recall whether anybody from Mr. Turner's office asked for an assessment as to the approximate billings for the contemplated engagement?

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A. I don't remember.
Q. Do you have an estimation in how many or how much in fees has been invoiced by Fusion for this matter?
A. No. I haven't reviewed any of the invoices before today.
Q. Do you know whether any of those invoices have been paid?
A. Yes. They have been.
Q. How do you know that?
A. Because I haven't gotten any angry admin e-mails about it.
Q. It's fair to say you don't know whether or if there is any amount in fees outstanding for your work in issuing your opinions, is there?
A. I think that I would have known. Because at the year-end, we try to clean up the books; and I don't remember this matter being on the outstanding list. So I'm confident that there is nothing outstanding for 2023.
Q. So if you flip to the last page of Exhibit 1003 --
A. Okay.
Q. -- that's your signature, isn't it?

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A. That is.
Q. And it indicates that you executed this declaration under penalty of perjury on April 12th of 2023; is that right?
A. That's what it says.
Q. Seeing the date in which you signed this particular declaration, does that refresh your recollection as to the timing of when Ms. Cantor reached out in the first instance about this potential engagement?
A. No.
Q. Before issuing your opinions, did anybody at Fusion review your work?
A. Yes.
Q. Who was that?
A. My recollection is that it was Kevin Jones, but I'm not entirely sure about that.
Q. Okay. Who is Kevin Jones?
A. He is one of the shareholders of Fusion.
Q. Is Mr. Jones your boss -- or one of your bosses?
A. No.
Q. Do you report to Mr. Jones?
A. No.

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Q. Why was Mr. Jones reviewing your work?
A. I think he has a good technical eye, and he was available. And he has experience in patent matters as well, so he was a good candidate to review this from a technical perspective.
Q. Does Mr. Jones have a technical background?
A. Yes.
Q. What is his background, if you know?
A. Primarily, his academic background is metallurgy; but he is a well-qualified mechanical engineer as well.
Q. Why do you say he's well-qualified as a mechanical engineer?
A. Because you've seen his work and it's very good.
Q. What specifically did Mr. Jones review, if you know?
A. I believe he reviewed my report.
Q. Did he offer any suggested revisions?
A. I don't remember.
Q. Do you recall making changes based on Mr. Jones's review?
A. I don't remember.
Q. What is Mr. Jones's experience with

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patent matters?
A. I know that he has done work on patents in the past. I don't know what -- specifically what patents or what types they were.
Q. Has he -- has Mr. Jones been involved in IPR proceedings, if you know?
A. I don't know.
Q. Do you know whether Mr. Jones has been named as an expert in any patent proceedings, whether they be in the district court or at the Patent Office?
A. I do not know. But he was reading this from a technical perspective just to make sure that, you know, what I was saying, from a technical standpoint, was correct.
And, you know, as a -- in general, he reviews almost all the reports that I write. So it's my recollection that I sent it through him, but I haven't reviewed the invoices to make sure that that is entirely correct.
Q. So you know you sent Exhibit 1003 to Mr. Jones; but you don't know for certain whether or if he reviewed the substance of the opinions, do you?
A. I think, as I sit here, that I did

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have him review it. I can't be 100 percent sure of that, but it's generally my standard operating procedure that I kick out my reports to him before they get published.
Q. When you kick out your reports to him, do you do that electronically or in some other way?
A. Usually electronic.
Q. Do you recall whether, in this instance, you sent Mr. Jones an electronic copy or a paper copy or something else?
MR. TURNER: Objection. Relevance.
A. Yeah. I might have used like a -- an electronic means, but -- yeah. I don't believe I printed it out.
Q. Do you recall receiving any redline back from Mr. Jones?
A. I don't.
Q. Do you recall the timing of when you kicked out Exhibit 1003 to Mr. Jones?
A. I don't.
Q. Do you have a sense of whether it was shortly before you executed the declaration or early on in your work or at some other time?
A. I don't remember any of the timing of

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that at all.
Q. At the beginning of last year, January 2023 through April 12th of 2023, approximately how much of your time was spent working on engagement for Mr. Turner's office?
A. I don't recall.
Q. Was Mr. Turner's engagement the only thing you were working on in Q1 of 2023?
A. I don't think so -- no. I had other things. I couldn't tell you what they are, but it was not the only engagement I had in Q1.
Q. Have you ever heard the term Procopio?
A. Not as I sit here I can't remember it.
Q. Are you familiar with the law firm Procopio?
A. No.
Q. Is it fair to say that nobody from Procopio contacted you about any potential engagement relating to the Woodway patents?
MR. TURNER: Objection. Relevance.
A. Not that I remember.
Q. When Ms. Cantor reached out to you, was that the first time you heard about Woodway's patents since your work in the Chapco/Samsara litigation?

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A. Yes.
Q. How, specifically, was the engagement defined with Mr. Turner's office?
A. What do you mean by that?
Q. Describe for me what the scope of your engagement is.
A. Well, it's my role to provide them technical expertise from an engineering perspective for someone who understands what the POSA is; but I believe that I state what my scope is at the beginning of my disclosure.
Q. Can you direct me to where in your declaration that is?
A. I thought that that was at the beginning, but maybe I'm misremembering that. Well, I thought that I had that in here, but I don't see it in the -- in Section 1 through 4, which is where I thought it was.
But I would say that my previous answer for what the scope was is accurate.
Q. Would you have executed a declaration if there was no engagement letter in place?
A. Yes.
Q. Did you execute this specific declaration without an engagement letter in place?

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A. I don't recall.
Q. In your experience, do Fusion's engagement letters typically describe the scope of the engagement?
A. Sometimes they do.
Q. For those matters that you're working on on behalf of Fusion, do you ever execute an engagement letter or does somebody else within Fusion send that out?
MR. TURNER: Objection. Relevance.

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A. I sign the engagement letters that I send out.
Q. Do you recall sending any engagement letter out in this matter?
A. Like I said previously, I don't remember if they sent us one or we sent them one or we just agreed via e-mail. I don't remember -- I don't recall.
Q. Does the scope of your engagement with Mr. Turner's office include supporting LifeCORE Fitness in the district court case?
A. I did not have knowledge of that until this morning when you mentioned it.
Q. Have you had any role in the preparation of invalidity contentions on behalf of LifeCORE Fitness?
MR. TURNER: Objection, relevance. Objection, caution the witness about any potential privileged communications.
A. The whole of my work is in the -- is represented in the disclosures that I -- that I've made to this point.
Q. What are you specifically referring to when you're talking about the disclosures that you've made?

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A. So I believe I have three disclosures in this matter, and that represents all the work. I haven't done any work for anything outside of this IPR.
Q. When you say disclosures, are you also referring to your declarations?
A. That's what I meant. Thank you.
Q. So one such disclosure is Exhibit 1003 in IPR2023-00843; is that right?
A. Correct.
Q. In preparing your declarations, did you review the inter partes review petition that was filed in each proceeding?
A. No. No, I don't recall that I did.
Q. Since providing your executed declarations, have you reviewed any of the IPR proceedings?
A. Yes. Since then, I've seen the -- the decision. And I don't remember if I read the report that Mr. Turner's office submitted to the IPR.
Q. So you referenced the decision. Are you talking about the institution decision by the Patent Board?
A. Yes. I'm not very good with the

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terminology.
Q. You don't have the lingo down?
A. I do not. And I read Woodway's contentions.
Q. What do you mean by Woodway's contentions?
A. Or their response to my -- my declaration.
Q. So you reviewed the institution decision by the Board. Do you recall which of the institution decisions you reviewed?
A. I think I skimmed -- well, I don't know how many there are; but I know that I skimmed through at least one of them last week, but I don't recall which one it was.
Q. You understand that the Board has instituted proceedings for three inter partes reviews, right?
A. Right. I know that I -- that's why I have the three declarations.
Q. But you don't recall which IPR institution decision you reviewed, do you?
A. I probably read all three of them. I just was just kind of skimming it to get a flavor for it. I wasn't really doing a deep dive into

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it.
Q. So for the purposes of today's deposition, we're talking specifically about IPR2023-00843 which relates to Woodway Patent No. 10,561,884 and some other overlapping background relevant to the other proceedings.
Do you recall whether the institution decision you reviewed related to the '884 patent or one of the other patents?
A. I think it did. Like I said, I wasn't really paying attention to -- to the specifics of it. I was more reading it for a flavor, so there's high probability that I just skimmed through all three and just didn't pay attention.
Q. You also referenced that since issuing your declarations, you may have reviewed the reports from Mr. Turner's office. By reports, what did you mean?
A. So they have their own -- I don't know what the term -- declaration or petition or something that they submit to the IPR. And I did skim through that as well, is my recollection.
Q. And what was the timing as to when you skimmed through the petition?
A. Within the last month.

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Q. Was that the first time you looked at the petition?
A. Correct.
Q. How many times have you looked at it since then?
A. I probably skimmed it one or two times over the last month, again just to get a flavor for it. You know, my technical background is all contained in my declaration, which is really all -- all that I'm here for.
Q. Do you know whether the petition you reviewed related to the '884 patent or one of the other Woodway patents?
A. I probably skimmed through the three of them, but I don't know any specifics as I sit here.
Q. Have you reviewed any -- I'll withdraw that.
You're familiar with the phrase "claim construction"?
A. Yes.
Q. What does that mean to you?
A. Claim construction is -- I don't remember if I mentioned that in the report, but claim construction is -- yeah, on page 15, I

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describe my understanding of it.
It basically is how to read the patent and how to read the claims. But basically, page 15 of my declaration describes my understanding at the time I wrote this.
Q. Did you review either Woodway's or LifeCORE's claim construction positions in preparation of your opinions?
A. No. I don't remember specifically reviewing those, just what I understood at the time is -- is contained here.
Q. So if you flip to page 70 of Exhibit 1003, specifically paragraphs 119 through 123 -- do you see where I'm talking about?
A. Yes.
Q. -- under the heading "Construction Terms in the Challenged Claims"?
A. Yes.
Q. You indicate in paragraph 120 that in order to properly evaluate certain of the claims of the '884 patent, you understand that the terms of the claims must first be construed; is that right?
A. Right.
Q. Are you aware that the judge in the

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district court proceeding issued claim constructions relevant to the asserted Woodway patents?
A. I am not sure if I understand the question. So is that the -- so based on this morning, there is a parallel litigation that's happening right now. Is that what you're asking me about, if I'm aware of rulings from that?
Q. Well, let me ask a different question.
Are you aware that any of the claim terms in the '884 patent or the other Woodway implicated patents in these proceedings have been construed?
A. I think just what's here in my report -- or this declaration is what I'm aware of right now.
Q. Okay. So in paragraph 121, you state that you understand that the proposed construction of the term "shaft," as recited in claims 30, 37, 39 through 43, 52, and 53, is, quote: A rotating element used to transmit power from one part to another, end quote.
Did I state that correctly?
A. That's what it says there.
Q. What is your understanding based on?

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A. I believe that Mr. Turner gave me that information.
Q. Did he tell you where that came from?
A. Probably.
Q. Do you know where it came from?
A. I don't -- I don't remember as I sit here.
Q. In paragraph 122, it also indicates that you have an understanding that the proposed construction of the term "safety device," as recited in claims 30, 33, 37, 38, 50, 54, and 57, is a device having two ring-shaped components.
Did that understanding also come from Mr. Turner?
A. Correct, same.
Q. And you don't know where specifically that construction came from other than Mr. Turner told you?
A. Not as I sit here.
Q. Is the same true for paragraph 123 as it relates to the proposed construction of the term "substantially prevent"?
A. That's correct.
Q. Is proper claim construction important for the opinions that you offer in Exhibit 1003?

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A. Well, I think that the analysis that I made, from a technical perspective, needs to rely on -- on these constructions; you know, otherwise, the technical analysis would change if these terms were defined differently.
So it's important to have the terms that you're evaluating defined correctly.
Q. In your view, you used these specific proposed constructions in offering the opinions in Exhibit 1003?
A. That's right.
MS. JELENCHICK: Why don't we take a break since we've been going for over an hour, if that's okay with you?
THE WITNESS: Sounds great.
(Recess had.)
BY MS. JELENCHICK:
Q. Dr. Giachetti, before the break, we were talking about the importance of proper claim constructions. You indicated that your technical analysis would change in your opinions if the three terms that you focused on at paragraphs 121, 122, and 123 were different in some way.
Do you know how your opinions would be different if the claim construction was different?

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A. I think that there is a possibility that the opinions might change if the terms were changed. I don't know how much. You know, that's -- that's kind of a hypothetical here. I'm assuming that this is the correct construction of these terms.
But without knowing what sort of changes, I wouldn't be able to tell you the answer to that.
Q. Why do you assume that the constructions that you provided in paragraphs 121, 122, and 123 are correct?
A. Well, I guess I have to have faith that those are the correct terms that would -- you know, that's one of the bases for my opinions. I accept that as fact because that's what was explained to me.
Q. For the purposes of the opinions that you offered in Exhibit 1003 or in your other declarations, for that matter, you didn't consider any alternate constructions of these terms, did you?
A. I don't remember off the top of my head. You know, I would have to review those declarations. But let me just double-check here.

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Q. Certainly as it relates to Exhibit 1003 and the '884 declaration, you'll agree with me that you didn't consider any alternate constructions for the terms shaft, safety device, or substantially prevents, did you?
A. I don't recall looking at alternative constructions.
Q. Had you looked at alternate constructions, that would have been detailed in your opinions; is that right?
A. Yes. Unless it was just the plain meaning of those terms.
Q. As part of your engagement by Mr. Turner's office, it was your responsibility to review prior art, correct?
A. Yes.
Q. Describe for me how you proceeded with your evaluation of the prior art?
A. Well, I, you know, went to the U.S. Patent Office website, I went to Google Patents, started going through the history of the '884 patent as far as the sources that it cited, and started doing digging that way. And then started reviewing -- reviewing those patents and just kind of -- it's a process of finding something,

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reviewing it, and going on to the next one and keep going. I think I also went to the National Archives as well when I was searching.
Q. Did you go back to your file in the Chapco/Samsara litigation?
A. No. But I had some recollection of stuff that I had used; you know, for example, the standards, the international-type standards and the national standards.
Q. Is it fair to say part of your engagement in this matter was identifying prior art for the purposes of LifeCORE's IPR challenge?
A. Yes.
Q. When you went to the U.S. Patent Office website, what did you do there?
A. I searched for -- I think I tried to look up the '884 patent there, but I don't -- I don't recall specifically what I did at that website because it's like a year ago right now.
Q. On the PTO website, you may have looked for a copy of the '884 patent. Prior to that, had you seen a copy of the '884 patent?
A. I'm sure that Mr. Turner's office sent me a copy. But I usually find as a good way to start a search is to start with a patent that you

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have in hand, so that's usually where I start.
Q. Why are you sure Mr. Turner's office sent you a copy of the '884 patent?
A. Well, they would have it. And, you know, if we're doing an analysis of it, it's just the easiest thing for them to just send it to me. So I -- you know, when I say I'm sure, it's more like that's my recollection of what likely happened. I can't say it's 100 percent certain.
Q. Do you recall when specifically you first became aware of the '884 patent?
A. No.
Q. Were you aware of the '884 patent before Mr. Turner's office contacted you about this engagement?
A. Not that I remember.
Q. When did you first read the '884 patent, if at all?
A. Sometime after I was engaged in this matter.
Q. Approximately how many times have you read the '884 patent?
A. I don't -- I don't remember. I didn't keep track.
Q. Do you know how many times you've read

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the '884 patent relative to the other patents that you've offered opinions on in this matter?
A. No.
Q. Did you turn up a copy of the '884 patent at the PTO website?
A. I don't remember. I probably did, though.
Q. Do you have an electronic file for this matter?
A. Yes.
Q. Where is that stored?
A. Fusion.
Q. Do you have a laptop at Fusion or a desktop?
A. Laptop.
Q. Is your electronic file on your laptop's hard drive or on network space at Fusion?
MR. TURNER: Objection. Relevance.
Q. Or somewhere else?
A. I believe it is networked and probably mirrored onto my laptop.
Q. Did you save any of your prior art searching on your electronic file for this matter?
A. What do you mean by save my searching?
Q. If you turned up an '884 patent from

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the Patent Office website, did you save a copy of it anywhere?
A. Oh. That, I don't know. I have a copy of it, I just don't know where it came from.
Q. Do you have a hard-copy file for this matter?
A. No.
Q. How do you know whether something should be saved to your electronic file for this matter?
A. Well, if I am going to rely on it, then I'll save it.
Q. Do you recall turning up anything else at the PTO website during your searching?
A. No.
Q. You indicated you went to Google.
A. Mm-hmm.
Q. What did you do with Google as it relates to this engagement?
A. Similar to the U.S. Patent Office, I did patents.google.com. And I find that that's a little more user friendly for searching prior art than the U.S. Patent website.
Q. What specifically were you looking for at patents.google.com?

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A. Well, I was looking for treadmill art. And I was looking for terms in there that might be good search terms to find other pieces of prior art that may not have been found previously. That sort of thing.
Q. What search terms did you use on Google?
A. I don't remember all of them as I sit here. I probably used treadmill, treadwheel, exercise, exerciser, walking, gait. I probably did a search for like conveyor, things like that or some combination of those.
Q. On how many separate occasions did you go to Google Patents and -- and use search terms to look for a prior art?
A. I couldn't tell you.
Q. More than one?
A. At least, yeah.
Q. More than ten?
A. Maybe, but I don't remember.
Q. Do you recall when specifically you first went to Google Patents for searching?
A. No.
Q. Do you recall approximately how long after you were engaged by Mr. Turner's office that

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you began prior art searching?
A. That's probably one of the first things that I did, but I don't remember the date.
Q. What did you do with respect to the National Archives as it relates to searching?
A. Well, I remembered from the litigation seven or eight years ago that there was a very old curved treadmill patent, and I was having trouble finding it. So I looked for that one on the National Archives and then also tried to see if there was anything around it from that same time frame.
Q. Do you recall which patent that was?
A. I think it was -- I think the name was Briggs.
Q. That's a horse running on a treadmill, isn't it?
A. Yes.
Q. What did you mean that you tried to see if there was anything around it?
A. Well, the National Archives is like a smattering of -- like of documents stored by the government. So I was just kind of going through trying to search to see if there was anything that might be in there that wasn't.

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In the Patent Office, you know, I understand that prior art is written for this. So, you know, everything in the National Archives is documented and -- and written or printed. So I wanted to see if there was anything in there that was old that I might not have seen before.
Q. Did you use search terms for your work at the National Archives?
A. I probably did.
Q. Do you know what those search terms were?
A. I don't, but they'd probably be some variant of the ones that I already gave you.
Q. Did you come up with those search terms, or were those provided to you by somebody else?
A. Those were my own.
Q. Did you retain a copy of any of the opinions that you offered in the Chapco/Samsara litigation?
A. Those are with Exponent; although last week, Mr. Turner was able to get a copy of, I think, my opening report that he sent to me. So I skimmed that in advance of this deposition.
Q. Exponent was your former employer; is

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that right?
A. That's right.
Q. Why did you leave Exponent?
A. I just -- the opportunity at Fusion was too great to pass up.
Q. Did you leave Exponent on favorable terms?
MR. TURNER: Objection. Relevance.
A. Yes. No one -- no one asked me to leave, if that's what you're asking.
Q. What was your opening report in the Chapco/Samsara litigation about?
A. Oh, well, I just skimmed it. But it was basically talking about the art of treadmills, how old they are, and the common components within them, and how a POSA would assemble them for a treadmill.
Q. Prior to your review of that opening report from the Chapco and Samsara litigation last week, when was the last time you saw those opinions?
A. I don't know. Probably when that last matter ended -- or at least my involvement ended. I haven't looked at them in between.
Q. Were you interested in any of your

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other materials at Exponent from the Chapco and Samsara litigation?
A. Well, my interest was just in advance of today, it was a good idea to know what I had opined previously. So I just read over those briefly, but I didn't have any interest in the other stuff.
Q. Did you ask Exponent for any of your other file materials relating to the Chapco/Samsara litigation?
A. No.
Q. Did Mr. Turner ask Exponent for any of your other file materials relating to the Chapco/Samsara litigation?
MR. TURNER: Objection. Relevance.
A. I am not privy to any communication he had with Exponent, and I am 100 percent sure that Exponent would not have entertained that idea whatsoever.
Q. Why is that?
A. Because he wasn't the client in that matter.
Q. You referenced certain standards in your prior art searching. Do you recall which standards you reviewed?

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A. Yeah. Well, I don't know the number off the top of my head; and I'm sure that I put it in the declaration here. But, you know, there is basically an ISO standard for treadmills for their safety.
And there -- I think there is another international standard that revolves around electrical safety, and then there is the ASTM treadmill stuff, and there is -- there's an Australian standard for treadmills that -- that I would have referred to. But they're -- they should be referred to in this declaration specifically.
Q. What did you mean by ASTM treadmill stuff?
A. So ASTM is a standards body that has a fitness and exercise equipment committee that -- that I take part in. And they have a number of standards regarding exercise equipment and treadmills.
Q. I direct you to page 46 of Exhibit 1003.
A. Okay.
Q. Are the standards that you just referred to the ones that are identified in

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paragraphs 78 through 80?
A. Yes. And the footnote as well -- footnotes.
Q. Are there any other standards that you reviewed as part of your prior art searching other than those that are identified in paragraphs 78 through 80 and the corresponding footnotes?
A. None that I relied on.
Q. Are there any other standards that you reviewed -- I'll withdraw that.
Which standards, if any, did you review and reject for the purposes of your analysis --
A. I don't --
Q. -- if any?
A. I don't think there were any.
Q. Let's look at Exhibit 1019, which is in Volume 2 of your notebook. Where, if anywhere, does Exhibit 1019 discuss the importance of unidirectional movement of the running surface?
(Reporter clarification.)
MS. JELENCHICK: The running surface.
A. I'm not sure that this one does. I think the international standard talks about a treadmill having a unidirectional running surface.

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Let me take a look here. Yeah, I don't believe the ASTM one talks about unidirectional nature of treadmills, just that it should have an ability to stop for emergencies.
Q. Where specifically is the disclosure regarding the ability to stop for emergencies in Exhibit 1019?
A. That is -- yeah, 4.9.3. Treadmills shall be equipped with immobilization --
(Reporter clarification.)
A. Oh, sure.
4.9.3: Treadmills shall be equipped with an immobilization method to prevent unauthorized operation, which includes a key or a pullout switch or a lock.
Q. In your view, is 4.9.3 talking about anything other than that magnetic tether that's appended to -- to treadmills that pulls out if you fall?
A. Yeah. So that, in conjunction with 4.8.2, you know, basically is emergency situations to stop the treadmill from moving. But there is not a unidirectional clause in the AS -- this ASTM standard.
Q. Is 4.9.3 directed to emergency

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situations only?
A. I don't think so. It includes the term "unauthorized."
Q. Why is that term relevant?
A. Well, that's not emergency. It's unauthorized, so it's a little different.
Q. What does unauthorized operation by third parties mean to you?
A. For this -- this clause, I would say people who should not be using the treadmill.
Q. Who falls within that category?
A. Probably children.
Q. Anybody else?
A. I can't think of any as I sit here. There could be some other categories though.
Q. According to your CV, you have some role or roles with the ASTM body; is that right?
A. That's right.
Q. Can you describe for me what your role currently is?
A. Sure. I'm a committee member for -- on their consumer products committee. I also lead some of the task groups that are writing the standards for consumer products.
So, for example, right now I'm

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involved in furniture tip-over with the consumer products committee. So I basically had a large part in rewriting the dresser tip-over standard and the test methods for that.
I have since transitioned from that role to now I'm leading a test group for determining the testing standards for tethers, to tether dressers to the wall. That's an ongoing thing right now.
And then I'm also a member of the sports equipment -- I forgot what the exact title of it is. That's basically the sports equipment and playground committee. And in that, I'm -- I don't lead any of the -- any of the task groups of that. I'm more of a -- join the meetings and vote on changes, which is something I also do in the other committees.
But I've also taken part in other -- in other standards, like the market umbrella standard is brand-new. And I was on the initial committee that was putting that together.
Q. How long have you been a committee member on the consumer products committee?
A. Around ten years, give or take.
Q. How large of a committee has that been

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over your tenure?
A. Well, I think there are actually a couple of hundred members in that committee. And in the furniture group, while the whole committee -- the hundreds of people -- vote on everything, the furniture safety committee, that's actually a bit smaller; so that's probably around 50 people. Somewhere 50 to 100 people have -- participate in that more actively.
Q. How long have you been on the committee relating to the sports equipment and playground?
A. About the same amount of time.
Q. Over your tenure, how large of a committee has that group been?
A. It's similar. It's a little bit smaller, but still a lot of people.
Q. Do either of those committees address standards relating to treadmills?
A. Yes.
Q. Do both of those committees address standards relating to treadmills?
A. Just the sports one.
Q. So not the consumer products committee, the sports equipment and playground?

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A. Correct. I mean, one can call from the other; but in general, the treadmills stay in the sports committee.
Q. Over your tenure, did you have any role in proposing safety standards associated with treadmill use or operation?
A. No.
Q. In paragraph 78 of your declaration, you indicate that the ASTM standard that you're referencing was published in 2005; is that right?
A. That's right.
Q. Is that based on Footnote 1 of the exhibit?
A. Oh, that. And I'm looking at it in the -- in the binder you provided. So it says dash 05, which means 2005.
Q. So the title at the top, the designation in Exhibit 1019, F2115-05 denotes 2005?
A. The dash 05 does, yeah.
Q. In your work with ASTM on your committees or otherwise, have you had occasion to be involved in any discussions regarding the scope of this particular standard?
A. I don't recall giving input on the

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scope. I think that I gave input on some other parameters at one of the meetings a number of years ago.
Q. And what parameters do you recall giving input on?
A. I think it was along the lines of the consistency of like the nomenclature of the different portions of the treadmill. I don't remember if it was the standard specifically or not, but that's my recollection.
Q. And any input that you provided to this particular standard would have been sometime after its original publication date in 2005?
A. Yeah. It was well after that.
Q. Where, if at all, does Exhibit 1020 -- which, as I understand it, is directed to the international standard you were previously referencing -- address, if at all, unidirectional movement of the running surface?
A. It defines that as a -- when it defines what a treadmill is, it says that a treadmill is training equipment with a unidirectional moving surface on which a walking or running activity can take place where the feet are free to leave the moving surface.

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Q. Where, if anywhere, within Exhibit 1020 does it describe, if at all, how to maintain a unidirectional moving surface for a treadmill?
A. I don't know that it specifies the method that -- I don't -- I don't think that it does.
Q. According to your declaration, you identify that this particular ISO standard was published in 2005; is that correct?
A. This one was in 2001. The other one was 2005. Let's see. Well, this one is EN 957, which is probably cross-listed with -- yeah. So this is cross-listed with ISO 20957, which was 2005, correct.
Q. I'm not following.
So what was the date of publication of the particular standard that defines a treadmill as a piece of training equipment with a unidirectional moving surface in which a walking or running activity can take place where the feet are free to leave the moving surface?
A. Right. So this ISO standard 20957 was published in 2005, but it's basically a copy of EN 957-6, which is from 2001. So yeah, the ISO standard is from 2005, though, for clarity.

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Q. How do you know that the ISO standard is basically a copy of EN 957-6?
A. It says that in the forward. So it says: ISO 20957-6 was prepared by --
(Reporter clarification.)
A. So it says ISO 20957-6 was prepared by CEN, and, in parentheses, as EN 957-6, end parentheses.
And then at the -- I'm not going to cite the rest of that paragraph. But on the next page, you can see the top -- actually, page 3, you can see that it says, at the top, EN 957-6:2001. And so that means it came out in 2001.
Q. Prior to your prior art searching for this engagement, did you have any professional involvement with this particular ISO standard?
A. Not in its creation; only in its use, like application to projects and things like that.
Q. How has the ISO standard in Exhibit 1020 been used in application by you?
A. Oh, for like stability and things like that. Basically, it's a safety -- safety standard.
Q. Have you used this particular standard in connection with the design of any treadmill

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that you've been involved in?
A. No.
Q. Have you used this particular standard in connection with the design of any fitness equipment that you've been involved in?
A. I can't recall as I sit here.
Q. At any point in time, have you been involved in the design of a treadmill for a commercial application?
A. I don't think so.
Q. At any point in time, have you been involved in the design of a treadmill for a consumer application?
A. I believe I have. I can't -- I can't place it, though. I've been involved in a number of pieces of consumer exercise equipment, like steppers and ellipticals and exercise bikes. And I'm pretty sure that there is a treadmill in there. I just can't remember the specifics.
Q. Have any of those consumer exercise equipment pieces gone to market?
A. I haven't tracked it. I would assume.
Q. Are you able to share with me under what brand name?
A. No.

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Q. And that's due to confidentiality obligations of your current or former employer?
A. Correct.
Q. Is it fair to say that any involvement you've had in the design of consumer exercise equipment has not been for LifeCORE or Assault Fitness?
A. That's correct.
Q. Similarly, it's fair to say that any involvement you've had in the design of consumer exercise equipment has not been for Woodway; is that right?
A. Correct.
Q. Let's look at Exhibit 1007. What's Exhibit 1007?
A. This is the Australian consumer standard for treadmill safety.
Q. How, if at all, is this particular consumer standard used relevant to treadmills?
A. So this lays out some general parameters for suppliers who are selling treadmills in Australia in terms of the safety.
Q. Where, if anywhere, does Exhibit 1007 identify that there must be unidirectional movement of the running surface in a treadmill?

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A. I don't think that it's in this one. I don't recall where it is, at least. Let me take a quick look.
Yeah, I don't think that this one states that.
Q. You identify in paragraph 80 that this Australian standard was published in 2010. Do you have a specific month and date of publication?
A. I don't have a specific date that it was made public, but it became effective as Australian law on January 1st of 2011.
Q. In paragraph 51 of your declaration, which is at page 23 --
A. Okay.
Q. -- in the last sentence of that paragraph, you state: Treadmills have a number of safety concerns that are addressed by several standards bodies, including The Australian Competition and Consumer Comission; ASTM International (e.g., ASTM F2115), and International Organization For Standardization (e.g., ISO 20957).
Do you see that?
A. I see that.
Q. Those three standards that are

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identified are Exhibits 1019 -- excuse me -- are Exhibits 1007, 1019, and 1020, respectively; is that right?
A. Probably. The Australian one in this binder is 1007, the ISO one is 1020, and ASTM F2115 is Exhibit 1019.
Q. Do any of those standards identify specific solutions to the purported safety concerns that you're referencing?
A. Yeah. So for safety concerns, they specify, for example, handrails and emergency stops. They specify clearances and things of that nature and how durable they should be for use.
Q. And in your opinion, what are the safety concerns associated with treadmills?
A. Well, most of them are contained in these standards. So for treadmills, you -- there is mechanical safety and I would say probably electrical safety. You wouldn't want anyone to get a shock from it, so you can see that, you know, a UL standard is called out. I believe in the ASTM standard for mechanical safety, I would include like human postural stability in that. You don't want the treadmill to break.
And then for human stability, you

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would want the person to have, you know, foot platforms so that they can enter and exit the running surface without falling. You want to make sure that when they step on the running surface, that it doesn't do something unexpected.
You want to make sure that the clearances involved are -- are set so that there is not entrapment hazard, which has been a big problem for some treadmill manufacturers. So you don't want toes or fingers to get caught or you don't want someone to get pulled into the underside of the treadmill.
I'd say those are general -- the general safety concerns I have with the treadmill. Then beyond that, you would -- you know, you don't want a treadmill to run away from someone. You want them to be able to stop if they need to. Things like that.
Q. One of the safety concerns that you identified there was that with a treadmill, you want to make sure that when a user steps on the running surface, that the running surface doesn't do something unexpected; is that right?
A. That's right.
Q. None of these standards that you

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identified and that we've been talking about identify any specific solutions to that particular safety concern, do they?
A. They don't address that explicitly. But they do provide for other solutions, like having foot platforms and handle -- handrails available.
Q. How does having a foot platform mitigate against the safety concern when a user steps on the running surface that it may do something unexpected?
A. Well, I would say that foot platforms, coupled with handrails, allow someone to have what's called three points of contact, so basically two hands and a foot on something that's immovable while one foot begins weightbearing on something that is potentially moveable. And so that would -- that would give some safety to it, but not -- not necessarily while running.
Q. Any other solutions that these standards identify to address the safety concern associated with the running surface doing something unexpected when you step on it?
A. Nothing that comes to mind as I sit here.

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Q. Okay. Have you had any professional involvement with the Australian standard at Exhibit 1007?
A. Just reading it.
Q. Had you occasion to read this standard prior to your engagement in this matter?
A. Yeah. I remembered this one from the previous litigation.
Q. Prior to the Chapco/Samsara litigation, had you had occasion to review the Australian standard?
A. I don't believe so.
Q. You indicated that at some time after you were engaged by Mr. Turner's office, they provided some prior art to you. Do you recall which prior art they gave you?
A. I don't -- I don't remember what they had provided me. You know, I think that they gave me the Woodway patents. I don't know that they gave me any of the prior art, but they -- I think they did turn up a -- I think an Asian patent. I don't remember if it was Japanese or Chinese. And there might have been a German one, but I don't recall those specifically off the top of my head.
Q. Are either of those two patents, the

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Asian or German patents, identified in your opinion?
A. I -- let me take a look.
Yeah. I think they're listed in the exhibit list on page 6 as the last two entries, I believe.
Q. So the Asian patent is U.S. Patent No. 4,635,771 to Shoji; is that right?
A. Oh, no. I totally misspoke on that. It is not on this list, no. No, I don't believe we -- we cited it, then. I didn't base any of my opinions off of it.
Q. So the list of exhibits in Exhibit 1003, what is that meant to reflect?
A. So I believe these are all the things that I based my analysis off of, and so these are the things that were -- we've been talking about here. Yeah, I don't recall basing any of my opinions off of those foreign -- foreign patents in -- in this declaration.
Q. So let's go back to this page 5, list of exhibits, right? At Exhibit 1005, it identifies the Complaint, Woodway USA, Inc. Versus LifeCORE Fitness, Inc. D/b/a Assault Fitness, Case No. 3:22-cv-00492-JO-BLM, Southern District of

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California, filed April 11th, 2022. And that also includes a reference to a waiver of service.
Does that refresh your recollection that you were aware of the litigation between Woodway and LifeCORE d/b/a Assault Fitness, at the time that you -- at least as of the time that you authored the opinions in this declaration?
A. Yeah, it does. I should have referred to this page when you asked me that question. Yeah. I mean, obviously, it's not a big part of my opinions; but yeah, I certainly had that in front of me.
Q. You'll agree with me that you also had the opportunity and, in fact, cited to certain claim construction briefing in connection with the opinions that you offered, right?
A. Correct. Same -- same answer. I just didn't recall seeing those before.
Q. I'm specifically looking at the claim construction related materials that you were provided access to. Let's first look at Exhibit 1022. It's in Volume 2 of your notebook.
A. Okay.
Q. I'll direct you to the title of the document, which is "Responsive Claim Constructions

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and Identification of Extrinsic Evidence of Defendant LifeCORE Fitness." Do you see that?
A. Yes.
Q. And within Exhibit 1022, there is no identification of any -- I'll withdraw that.
Within Exhibit 1022, you'll agree with me that the claim constructions that are provided are those dueling constructions by the parties --
A. That's --
Q. -- correct?
A. -- what it looks like here.
Q. And if you look specifically at page 4 of Exhibit 1022, under the column heading "LifeCORE's Proposed Construction For the Term Shaft," you'll see a rotating element used to transmit power from one part to another. Do you see that?
A. I see that.
Q. And that's the construction that you used for the purposes of offering your opinions with respect to the '884 patent; is that correct?
(Reporter clarification.)
MS. JELENCHICK: '884.
A. Yes, that's what I did.
Q. And that construction is different

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than the plain and ordinary meaning, such as hallow or solid element part rod, two-member piece that transmits power motion or is capable of transmitting power or motion?
A. Well, that's -- Woodway says that that's the plain and ordinary meaning, but that's what's reflected in this page.
Q. Do you disagree that that's the plain and ordinary meaning of shaft to a person of ordinary skill in the art?
A. Well, I think it's a lot more explicit than it needs to be. For example, a rotating element is general; and the plain and ordinary meaning here includes element, which is -- could be anything to be more specific, even though it's already included everything.
So I don't know that this necessarily is the plain and ordinary meaning because it's very general and then also very specific at the same time. But I think the ideas of the two are pretty similar that -- that I would say the LifeCORE's is more of what a POSA would consider as the plain and ordinary meaning.
Q. How does that change your opinion if the Court in the Southern District of New York

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rejected LifeCORE's proposed construction, if at all?
A. I haven't done that analysis. So as I sit here, I don't -- I don't know that my opinions would change or not. However, at the core of these, both of them include rotating elements transmitting power. So, you know, I don't know how likely it is that my opinions would change if -- if the construction changed.
Q. But that's not analysis that you've provided in your declaration in Exhibit 1003?
A. Correct.
Q. Let's look at page 5 of Exhibit 1022, specifically the row for safety device as found in the '884, '745, and '005 patents. Under the LifeCORE's Proposed Construction heading, it states: Device having two ring-shaped components.
That's the claim construction you utilized in offering your opinions as it relates to the '884 patent; is that right?
A. That's right.
Q. And Exhibit 1003 doesn't include any analysis of how your opinions may change, if at all, if that construction is rejected by the Court, correct?

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A. Yeah, I don't recall performing that analysis.
Q. Also, on page 5 of Exhibit 1022, for the claim term phrase "substantially prevent" --
A. Okay.
Q. -- if you look under LifeCORE's proposed construction, it identifies a construction that this phrase means: Allow minimal rotation or movement before preventing any further rotation of movement. Do you see that?
A. Yeah. Except I think it says "or" movement at the end instead of "of" movement.
Q. Oh, excuse me. I'm sorry. I misspoke.
So substantially prevent, as construed by you in offering your opinions in Exhibit 1003, relies on application of LifeCORE's proposed construction, right?
A. That's right.
Q. And Exhibit 1003 does not include any discussion of an alternate claim construction should the Court have rejected LifeCORE's proposed construction; is that right?
A. That's right.
Q. We talked a little bit about what a

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person of ordinary skill in the art may consider to be the plain and ordinary meaning of, for example, shaft. You define a person of ordinary skill in the art in -- in your declaration.
A. Correct.
Q. Where did that definition come from?
A. My experience, mostly, and my knowledge of the sorts of components that go together to make a treadmill.
Q. When you reviewed your opening expert report in the Chapco/Samsara litigation, did you have occasion to review your proffered definition of a person of ordinary skill in the art?
A. Yes. Yes.
Q. What do you recall the proposed definition of a person of ordinary skill in the art was for the purposes of the Chapco/Samsara litigation?
A. Yeah. I don't have a great memory of it; but it was very similar to this, where someone with a technical background in engineering or similar and like a year of experience with the types of components that go into a treadmill, as well as experience with anthropometry or like human movement.

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Something along those lines. That's the high level of what I remember from -- from skimming that.
Q. The proffered definition of a person of ordinary skill in the art in the Chapco and Samsara litigation is not just very similar to the definition that you offer in paragraph 48 of your declaration, it's the same definition, right?
A. I don't know if it's the same; but it would make sense that I would come to the same conclusion where it's mechanical engineering, biomechanics, and then some experience putting those parts together. So that's -- you know, I would not waiver from that sort of a definition.
Q. Did you copy that definition from your prior work on the Chapco/Samsara litigation?
A. Not that I recall.
Q. Did Mr. Turner or any of his colleagues contribute to the definition of a person of ordinary skill in the art in this engagement?
A. Yes. I believe that this is a -- like a collaborative work. And so that there was -- we definitely had a discussion leading up to -- to this.

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Q. So you had a single discussion with Mr. Turner or members of -- of his office on who constitutes a person of ordinary skill in the art or more than one discussion?
A. It could have been more than one discussion. I don't recall the specifics exactly. I know that we did have a discussion. I know that I said it was important for me to be consistent with my previous opinions. And I believe I gave them, you know, my recollection, which is similar to what I told you today; you know, basically a technical degree or equivalent, with some work experience and experience with biomechanics/anthropometry.
Q. Who was involved in any of the discussions you had with Mr. Turner and his colleagues about who constitutes the relevant person of ordinary skill in the art?
A. So Mr. Turner and then -- and Kyle -- I can't remember his last name off the top of my head.
Q. Do you recall anybody else involved in those discussions?
A. I don't recall if Rebecca was still involved at that point.

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Q. Was Mr. Jones involved in those discussions?
A. I don't believe so.
Q. You identified that it was important for you to be consistent with your previous opinions. Did that importance compel you to adopt the identical claim -- identical proposed definition for a person of ordinary skill in the art in this case?
A. Yeah. I don't know if it's identical, but it is the same subject matter. And so the person of ordinary skill in the art should be the same hypothetical person. So because it's the same hypothetical person working on the same art as before, that they should be -- that my interpretation of that person should be the same or similar to what I previously opined.
Q. The '884 patent wasn't at issue in the Chapco/Samsara litigation, was it?
A. Not that I remember.
Q. Well, will you agree with me that the claims of the '884 patent are different in scope than the claims of the patents that were at issue in the Chapco/Samsara litigation?
A. That would be awkward if the same

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claims appeared in multiple patents. So I would -- I'm inclined to agree with you on that.
Q. Well, I mean, you offered opinions on the claim scope of the '580 patent, for example, right?
A. Right.
Q. And you recall the '580 patent was part of the Chapco/Samsara litigation, correct?
A. I do.
Q. In your view, are the -- are the claims of the '884 patent different in scope than the claims of the '580 patent?
A. I think they're very similar. And the person who is a person of ordinary skill in the art in the '580 patent was -- is the same hypothetical person in the '884. So because of that, the -- my description of them should be the same as well.
Q. Are your grounds for challenging the claims of the '884 patent the same as the grounds for challenging the '580 patent claims?
A. I don't believe the grounds are the same. There are different -- different combinations used in the different declarations that I have.

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Q. And there are different combinations that are used because the claim scope is different, right?
A. The claims are slightly different, so yes. There's differences in the declaration.
THE WITNESS: We've been going for like an hour and 25. Is it a good time to take a five-minute break?
MS. JELENCHICK: Sure. Of course.
THE WITNESS: Thanks.
(Lunch break.)
- o0o -
A F T E R N O O N S E S S I O N
- o0o -
BY MS. JELENCHICK:
Q. Over the lunch break, did you have an opportunity to discuss the substance of your testimony with counsel?
A. The opportunity was there, but it wasn't taken.
Q. Before the lunch break, this morning you identified at some point in the past you had done some design work for a fitness equipment company and you thought you had been involved in the design of a particular treadmill. Do you

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recall that testimony?
A. Yeah. I wasn't sure -- I recall saying that I wasn't sure if it involved the treadmill or not.
Q. The particular treadmill you're thinking of, if you're thinking of one, was that motorized or nonmotorized?
A. I think it was a very simple nonmotorized one, but I don't -- I don't have a clear recollection of it.
Q. Do you recall when that design work occurred?
A. I don't.
Q. Do you think it was before March of 2009?
A. No. No.
Q. So any design work on the nonmotorized treadmill was sometime after March of 2009?
A. Yeah. And it would have been safety related, most likely.
Q. And why do you say that?
A. Most of my work as a consultant is in the safety space or assessing something that's broken already. Most of the work is not design-related. It would be assisting someone --

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assisting someone with their design or addressing safety issues that exist or figuring out where safety issues might exist. That's the predominant umbrella that I work in.
Q. This particular nonmotorized treadmill, was it flat -- or did it have a flat running surface?
A. I think so. I think so.
Q. Do you recall whether you were addressing any particular safety considerations with this nonmotorized flat treadmill?
A. Yeah. I don't recall the specifics of -- of it very clearly.
Q. Is this product something that ever made it to market?
A. I have no idea.
Q. Going back to paragraph 48 of your declaration that has your proposed definition of a person of ordinary skill in the art, you indicate that your POSA would have at least one year of machine design experience related to power transmission equipment, among other things.
What kind of experience is considered relevant experience with power transmission equipment for the purposes of your definition?

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A. Sure. So power transmission equipment is the universe of simple mechanical elements that either cause something to move or facilitate moving. Basically, the -- it's covered in the Power Transmission Handbook, simple machine elements like bearings, rotors, discs, gears, shafts, things -- things of that nature. Basically, this POSA needs to have experience using those things to build equipment or repair that equipment, so that's what I would consider their experience.

Q. In your view, the POSA need not have specific experience with treadmills?

A. No. But they need to have an understanding of biomechanics and anthropometry so that they have a sense of human motion as it relates to a treadmill, which is basically a conveyor.

Q. Why do you say a treadmill is basically a conveyor?

A. Well, they use many of the same components and they're arranged in similar ways. So the only difference is that a conveyor, the object of the belt is to move objects. And in the treadmill, the object of the moving conveyor is to

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keep the person in the same place.

So even though the relative motion might be a little bit different, the construction of them is, by and large, the same. You know, the controls notwithstanding, but the mechanical elements are, by and large, the same.

Q. In your view, do you believe the mechanical elements are, by and large, the same if the running surface is curved?

A. Yes.

Q. Why is that?

A. Well, they still use belts; they can still use treads if they want to; they still use bearings and a frame and pulleys. And those are all things that are found in conveyors.

And conveyors can curve. They might curve -- instead of out of the plane of the conveyor, they might curve within the plane. But certainly there are conveyors out there that are not simply plain or either.

Q. Do treadmills and conveyors have overlapping safety concerns?

A. Yes.

Q. Tell me about those.

A. Mostly, the overlap would be in pinch

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points and nip points, basically in-running shear points. You wouldn't want to have any body parts trapped or injured by the components of a treadmill or a conveyor belt. Most conveyor belts aren't intended for humans to stand on, so the human stability would not be a crossover. But certainly, the safety aspect and electrical safety would definitely crossover.

Q. Are there any safety considerations with respect to a conveyor if the conveyor has unexpected movement?

A. Certainly, during servicing it, yeah. So conveyors have E-stops, and they're one of the few mechanical devices that are allowed to run during servicing because of belt alignment.

Q. During normal operation of a conveyor, is there any threat or risk of unexpected movement of the belt?

A. I'm sure there could be, depending on what sort of conveyor it is and the location that it's in and the -- and its purpose in that location.

Q. Does a conveyor require unilateral or uni -- withdrawn.

Does a conveyor require unidirectional

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movement of the belt?

A. In what context?

Q. In any context. Are there standards for conveyors that require a belt to be unidirectional?

A. I'm not aware of any conveyor standards that state that.

Q. As part of your proposed definition of a POSA, you also identify that that hypothetical individual must have a demonstrated understanding of exercise biomechanics, including anthropometry; i.e., the study of human proportion.

What constitutes a demonstrated understanding of the biomechanics of exercise?

A. Sure. It's just someone that has some sort of outward -- outward, I would say, like a certificate or some sort of training or some sort of experience that's concrete, where they can say this is the motion of the human body while it walks or runs, and can apply that to the treadmill apparatus.

Q. What type of certificate would be relevant to -- to demonstrate understanding of the biomechanics of exercise?

A. Well, maybe there's like a -- maybe an

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associate's degree or some sort of like physical therapy certificate or some sort of like maybe a trainer type of certificate.
Q. Like a personal trainer?
A. Yeah, like a physical trainer.
Q. Do you have any such certificates?
A. Just my Ph.D.
Q. What's your Ph.D. in?
A. Mechanical engineering.
Q. Does your Ph.D. in mechanical engineering relate to exercise biomechanics?
A. Yeah. So my dissertation was all about human force generation with the lower limbs. And so a large part of that dissertation was spent reviewing human stability and how humans walk.
And my master's dissertation was about prosthetic knees. And so a fair amount of research went into how humans walk in -- in an effort to figure out the loading within the artificial knee joint.
Q. Are any of the claims of the '884 patent that are being challenged in this IPR proceeding include limitations that implicate the biomechanics of exercise?
A. Without reading them right now, I

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don't recall a specific mention of that; but I know that in the rest of the patent, that there are a number of things that are stated as far as the curved surface makes things easier for a runner, things of that nature. And so from that perspective, that's where the biomechanics would come in.
Q. You understand that it's the claims of the patent that define the scope of the invention, right?
A. Right. The invention is actually the claim. The claim sets the boundary for what is covered by the patent.
Q. So a specification may say something about biomechanics or exercise more generally; but that's not a limitation that's imported into the claim, is it?
A. Well, it's certainly motivation for the development of the claim. But as far as I know, the claims -- the claims set -- set the fence around the invention, not the specification.
Q. For the other two patents that are implicated by the IPR proceedings, are you aware of any claim limitations in either the '580 patent or the '745 patent that incorporate claim

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limitations that are directed to exercise biomechanics?
A. Again, only as far as that this is a treadmill with a curved surface. And that implies that this is for exercise or rehabilitation and that the biomechanics aspect is that part of the specification and the motivation for -- for the invention.
Q. You identify, in your proposed definition for a POSA, that the study of human proportion is -- is somehow relevant. Can you explain that to me?
A. Sure. A number of the treadmills, if you're trying to make something comfortable for the runner, either you want to give the running surface some sort of property or you want to make it a specific shape for the person on the treadmill.
And so knowing, say, what the average foot-to-hip distance is or how the population that you're intending to design this for, what sort of body proportions they have, would play a role into designing this and coming up with the optimal curve for -- for a treadmill or the optimal shape.
Q. Do any of the claims across the three

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Woodway patents relate to the size or shape of humans?
MR. TURNER: Objection. Form.
A. No. The claims -- I don't recall that the claims do. The claims, I believe, say that, you know, one end has to be higher than the middle.
But again, the specification describes the curvature and gives a radius of curvature that -- that the patent author suggests.
Q. Do any of the claims that you're challenging in your opinions identify specific radiuses -- radii of curvature associated with the running surface?
A. I don't believe that that's something that we made a point of.
Q. Are you familiar or acquainted with any of the named inventors on the Woodway patents that you've offered opinions on in this engagement?
A. I don't believe I've -- I have any knowledge of them personally.
Q. Does the fact that your proposed definition of a POSA excludes certain of the named inventors impact your opinion in any way?

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A. No, I don't think so.
Q. Why not?
A. Well, if someone is clever enough to invent something, they are likely above the ordinary skill in the art. But, you know, this is the bachelor's inexperience and -- and equivalent. So, you know, maybe someone has, you know, ten years working as a mechanic and as an avid runner, or they've been involved in the sports industry for a number of years. But, you know, that would be something that could be considered equivalent, where they have some technical background and they have some background in exercise and -- something like that.
Q. Your proposed definition of a POSA identifies that this hypothetical person would have not just a bachelor's degree in mechanical engineering, but they would also have this design experience, correct?
A. That's right.
Q. In your definition of a POSA, you are focused on the relevant field as of March of 2009. Why is that the case?
A. I believe that that is the priority date of the patent, so this is the state of the

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knowledge of the POSA at that time.
Q. Did you do any analysis of what constitutes the relevant priority date for the '884 patent?
A. I don't recall doing that.
Q. Did you do any analysis of the relevant priority date for either the '580 patent or the '745 patent?
A. I don't recall doing that in this matter.
Q. Have you ever been involved in evaluating a particular patent's priority date?
A. I -- I don't think so.
Q. Who specifically told you what to use as the relevant priority date for this engagement?
A. I believe Mr. Turner did.
Q. Okay. Did he offer any explanation as to why the -- the date was what it was?
A. I believe he did. I don't recall what he said about it.
Q. In paragraph 47 of your declaration, the second sentence states: For reasons not addressed in this declaration or the petition, it accompanies the effective filing date of certain claims of the '884 patent is March 16 of 2010.

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Do you know why your declaration doesn't address the effective filing date?
A. Well, I know that that's what Mr. Turner provided me; and, you know, in the next sentence, I say that -- basically gave it an extra year. So, you know, if March 16th, 2010 is the priority date, there is another year of buffer in there that I used as the time zero, if you will, for this.
Q. Was it your idea to use that one-year buffer or somebody else's?
A. I don't believe that it was my idea.
Q. Did Mr. Turner tell you to use that one-year buffer?
A. Most likely.
Q. Did you have any discussions with Mr. Jones about the relevant priority date --
A. No.
Q. -- for these Woodway patents?
A. No.
Q. Have you read the file history for the '884 patent?
A. You mean like the back-and-forth between the examiner and -- and the authors of that?

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Q. Yes.
A. I don't recall doing that.
Q. At any point in time, you don't recall reviewing the back-and-forth between the Patent Office and -- and Woodway's representatives relating to the '884 patent?
A. I might have. I don't recall reading that specifically as part of authoring this declaration.
Q. When you were doing your prior art searching on the Patent Office website looking for the '884 patent, did you also look for a copy of the '884 file history?
A. I don't think I did.
Q. How about with respect to the other two Woodway patents, the '580 or the '745 patent? For the purposes of your declarations, at any point in time did you review those file histories?
A. Not as I sit here, I don't recall reading those file histories.
Q. In offering opinions regarding the claims of the '884 patent, do you think it would have been important to understand how the examiner understood the claim language?
A. I just used the plain meaning of the

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terms outside of the three that were construed. And, you know, if there is some sort of order that has other language that must be imposed on the analysis, then I would certainly consider that.

But as far as what the examiner did or didn't say for the language, that's not as relevant to me as something that I'm forced to consider.

Q. Is it relevant or would it -- withdrawn.

Is it relevant how the examiner interpreted the scope of the prior art in evaluating whether to issue claims for the '884 patent?

A. I don't think that that really impacted or would impact my analysis. I don't want to say that an examiner is -- is wrong or that they don't know what they're talking about, so I would be concerned about saying something like that.

But as far as their analysis, I know that they have limited amounts of time and I have the opportunity to dig deeper into these prior art references than they do. So it's probably something that is nice to have a flavor for, but

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not necessary to my analysis.

Q. With your declarations, aren't you saying that the examiner was wrong?

MR. TURNER: Objection. Form.

A. Well, I might be saying that they missed some things in their analysis. But I think as a -- taken as a whole, I don't agree with the examiner.

Q. And in your view, the examiner may have missed some things because they don't have sufficient time to evaluate the scope of the prior art?

A. I think that's a possibility.

Q. What are the other possibilities?

A. I'm not sure. I'm not sure what the background of the examiner is who reviewed this.

Q. Do you know who the examiner is that reviewed this patent?

A. I do not.

Q. Do you know how the particular examiner and/or their supervisors, how much time they may have spent during prosecution?

A. I don't. I have a sense that patent examiners only get a couple of days to go over these things, but I don't know in the '884 how

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long they had with it.

Q. You don't know in any of the Woodway patents how long the examiner may have spent with the prior art, do you?

A. I have no idea.

Q. So it's fair to say you don't know how much time they spent relative to the amount of time that you spent on this engagement, right?

A. That's right.

Q. If you had to estimate how much time you have spent thus far in developing and memorializing your opinions in your three declarations, are you able to provide me an estimate?

A. Probably -- yes, I think I could give you an estimate, a ballpark estimate.

Q. What's the ballpark?

A. It would be in -- measured in weeks.

Q. How many weeks?

A. Somewhere between three and six, I would say.

Q. Are you able to delineate the time spent on one patent relative to the others?

A. No, I don't think I can.

Q. Why is that?

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A. First, it was about a year ago. And these were -- the review of the prior art was all done together, so I can't untangle that. But the declarations themselves were written independently of one another.

Q. How much time did you spend drafting the declaration for the '884 proceeding?

A. I could only estimate.

Q. What's your estimation?

A. Something on the order of a week.

Q. How about with respect to the '580 proceeding, approximately how much time did you spend on that declaration?

A. Same answer.

Q. How about for the '745 patent, how long did you spend on that declaration?

A. Same answer.

Q. Do you recall when you first started drafting any of the declarations?

A. Sometime last year.

Q. You have no more specificity than sometime last year?

A. Well, before my signature went on it, but sometime in Q1.

Q. Were you working on each declaration

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in parallel or serially or something else?
A. It was a little bit of a mix between those as far as the analysis and the prior art review and the engineering analysis that went into it. The authorship of the declarations was mostly serialized.
Q. Which declaration did you do first?
A. I don't remember.
Q. Approximately how much time did you spend looking for prior art?
A. I probably spent a couple of weeks searching and reviewing.
Q. Your search for prior art, that wasn't a full-time engagement, was it?
A. I have a number of responsibilities at Fusion, so I have to fit everything together in my full-time job.
Q. What percentage currently is your work directed to consulting work?
A. All my -- well, my work with standards and the standard bodies, that's all volunteer. Outside of that, my work at Fusion is all consulting work.
Q. I thought you said earlier this morning that you had a variety of responsibilities

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at Fusion including not just consulting, but marketing, recruiting, and other administrative responsibilities.
A. Oh, that's true. I consider that part of the consulting job. So if you're a consultant, part of that means you have to have your name out there; you have to work on technical papers, things like that. So all that sort of thing goes hand in hand with the consulting business.
Q. So for the couple of weeks that you were doing prior art searching, was that the only thing that was taking your time during your employment at Fusion?
A. No. I have a number of things going at once at all times.
Q. How much time did you spend reviewing the prior art you uncovered?
A. I probably spent the same amount of time during the searches. So as I search, I'm reviewing it; search/review, search/review. It flips back and forth. So it's not like I have a stack that I establish and then review it. It's more of an organic development of the searching and reviewing.
Q. Okay. The couple of weeks, then, that

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you referenced relative to the prior art, that encapsulated not just the searching, but your substantive review of the material as well; is that right?
A. Yes. And then as I'm writing the declaration, I'm also going back and re-reviewing that prior art at the same time.
Q. Did you review any of the legal authorities that are cited in your declaration?
A. I did review them. I recall reading KSR. I don't -- I could not tell you what it says, though, as I sit here.
Q. Approximately how much time did you spend reviewing KSR?
A. I probably spent a few hours doing that.
Q. Do you recall any other specific legal authorities that you reviewed in the preparation of your declarations?
A. Yeah, I don't -- I don't recall, as I sit here, other ones that I -- that I reviewed at that time, you know, a year ago.
Q. Was there anything that you asked for from Mr. Turner and his colleagues that wasn't provided to you?

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A. Not that I remember.
Q. You provided a one-week estimation for the declaration associated with each of the three Woodway patents. Does that one week include the prior art searching and analysis, or is that work in addition to the one week?
A. That's in addition.
Q. Do you recall doing prior art searching in the Chapco/Samsara litigation?
A. Yes.
Q. How does the prior art searching in this engagement differ from the prior art searching you did in the Chapco/Samsara litigation, if at all?
A. I would say my process is fairly similar; coming up with search terms, going to specific sites. I would say in this -- in this matter, there was a little more emphasis placed on making sure that there was like traceability. So I know like if I found something, for example, on one-way clutches, making sure that that publication could be traced to being before the priority date. So other than that, it was -- it was fairly similar.
Q. How was your prior art searching --

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withdraw that.
Traceability analysis that you just -- the traceability analysis that you just referenced, was that your idea or somebody else's?
A. I believe that Mr. Turner indicated to me that that was something that was important for this.
Q. Did he tell you why it was important?
A. I don't recall.
Q. Did you keep a written log of the searching that you conducted?
A. No.
Q. Did Mr. Jones help in any way with prior art searching?
A. No.
Q. Did you brainstorm with Mr. Turner or his colleagues on strategies for prior art searching?
A. Yeah. I wouldn't call it brainstorming.
Q. What would you call it?
A. I -- in a discussion, I described what sort of search terms I was looking for. And I believe that -- that they might have indicated some of the search terms they used. I don't have

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a clear recollection of it, but I believe there was a brief discussion about that.
Q. Did you attempt to replicate the prior art searching that you did in the Chapco/Samsara litigation?
A. There certainly were a lot of similarities, but I didn't attempt to duplicate it.
Q. Why not? Particularly given that the '580 patent was involved in that litigation, as well as part of this proceeding.
A. Well, I didn't recall my -- 100 percent my strategy for searching for the prior litigation. I also remembered some of the patents that were involved in that litigation, at least maybe their name or -- or what they were trying to do.
And so I had kind of that starting point already as to where I could start my search. And so once I started the search, my approach was probably very similar to what I did, you know, eight years ago.
Q. Which patents did you utilize to start your search?
A. I remembered the horse patent, and I

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remembered the ancient hamster-wheel style ones, and I remembered the modern hamster style one. So I think I started there in addition to, you know, looking at -- because I remember -- I believe they gave me the '884, so I started looking at that as well because I know that has a list of the cited art in it.
So I was -- used all of those things as a starting point.
Q. In your prior art searching, did you uncover the Sclater reference?
A. So that was a book that I had available to me while I was at University of Wisconsin. But that one was actually -- the actual book that we used here, I believe, was Mr. Turner's book.
Q. Was it your idea to take a look at the Sclater book or somebody else's?
A. I think Mr. Turner spoke pretty highly of it. So after that, then I took a look at it.
Q. Do you know why Mr. Turner holds the Sclater book in such high regard?
A. Well, it's basically an encyclopedia of mechanical components that a POSA would use or be interested in; and it gives a nice CliffsNotes

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version of the advantages and disadvantages of a number of them.
Q. You indicated that this was a text that you had access to at the University of Wisconsin; is that right?
A. Yeah, that's right.
Q. And you were at the University of Wisconsin for your graduate work?
A. That's right.
Q. How, if at all, did you use the Sclater text while at Wisconsin?
A. Oh, it was available electronically. And when I discovered that we had access to all these electronic references, I remember going through it.
Also, as a graduate student there, I built all the equipment that I did testing on for humans. So I was always interested in -- in seeing the different mechanisms that are available.
Q. For the purposes of your declarations, it appears, based on the photographs, that you used a physical text for Sclater, right?
A. Correct.
Q. Approximately how many pages is that

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text?
A. I want to say 3- to 400 pages.
Q. Remind me when you were at the University of Wisconsin.
A. 2000 to 2008.
Q. During your work in the Chapco and Samsara litigation, you didn't rely on the Sclater reference in any way for your opinions in that case, did you?
A. I didn't.
Q. Why not?
A. I felt like the power transmission handbook had a succinct description of the basic mechanical components that were in those patents, and so I felt like that was enough at the time.
Q. And for the purposes of this engagement, you didn't feel like that particular power transmission handbook reference was sufficient?
A. It was a bit shorter in its descriptions of the different components, and Sclater just had a better overview of the mechanical components that were important to the '884.
Q. In your view, what are the mechanical

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components -- in your view, what are the mechanical components that were important in the '884 patent?
A. So there's bearings, pulleys, shafts, belts. And specifically, in the '884, there's clutches and one-way bearings and the differences between them. And while the Power Transmission Handbook talks about them briefly and gives a very brief overview of the subject, the Sclater reference actually provides a lot more examples that a POSA would have been familiar with.
Q. In your view and in light of your proposed definition of a POSA, would such a hypothetical person be aware of those identified mechanical components without consulting the text?
A. Yes. And if -- if they weren't, then they would be able to find them via commercially available means. Because the POSA knows what they're trying to do and would know what to look for.
Q. So whether the POSA consulted the Sclater text or not, in your view, your proffered POSA is aware of bearings, pulleys, shafts, belts, clutches, and one-way bearings?
A. Correct.

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Q. What, if anything, does Sclater offer about these particular mechanical components other than an identification that they exist?
A. So it provides a broad breadth of examples and in mechanisms that have been established, and it provides a little bit of information about advantages and disadvantages for each of the different versions.
And specifically in this matter, it shows a conveyor that uses a one-way bearing to keep it from going the wrong direction and describes that a one-way bearing is good for that. So that sort of example does not exist in the Power Transmission Handbook.
Q. Can you direct me to where in Sclater it provides that disclosure?
A. Sure.
Is it -- is Sclater in those binders? Oh, this one's backwards. That's why.
Yeah. Page 320.
Q. Where on page 320?
A. So Figure 2 shows a conveyor belt, and it shows a clutch; and it describes it as fixed to the stationary frame. And underneath that, in the caption, it says: Backstopping permits rotation

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in one direction only. The clutch serves as a counter-rotation holding device. An example is a clutch mounted on the headshaft of a conveyor. The outer race is restrained by torque-arming the stationary frame of the conveyor. If, for any reason, power to the conveyor is interrupted, the back-stopping clutch will prevent the buckets from running backwards and dumping their load.
And then in the paragraph above the figure, it talks about overrunning sprag clutches and says, essentially, that the pictures below are applications for -- for those things.
Q. Were any of those applications for use in fitness equipment?
A. Well, I would say that a conveyor is the same as a treadmill. In that sense, yes, but not explicitly here.
Q. Identify for me the differences between nonmotorized curved running surface treadmill with the type of conveyor identified in Figure 2, if there are any.
A. So the conveyor in Figure 2 here has a slope which is not a curved running surface. And it has a motor driving it in one direction. And the lateral slats are buckets instead of flat --

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flat slats, I should say.
I think those are the most obvious differences between the depiction in Figure 2 and a treadmill.
Q. Identify for me the purported similarities between the conveyor in Figure 2 and a nonmotorized treadmill with a curved running surface.
A. Can you repeat that?
Q. Sure.
Identify for me the purported similarities between the conveyor in Figure 2 and a nonmotorized treadmill with a curved running surface.
A. So the similarities are that it has a frame. It's going to have pulleys at the head and tail. There is going to be a belt that wraps around them that's endless, and there is going to be a transverse element that is used for carrying loads between the left side and the right side.
And as I sit here, I think those are the major similarities it's going to have with the treadmill.
Q. This conveyor in Figure 2 doesn't identify any safety concerns, does it?

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A. No. But it has a functional concern of going backwards.
Q. How does the introduction of a curve into the surface of the belt impact, if at all, the operation of this particular conveyor?
A. I'm sorry. Can you read that again?
Q. Sure.
How does the introduction of a curve into the surface of the belt impact, if at all, the operation of this particular conveyor in Figure 2?
A. I'm not sure that it would.
Q. Why not?
A. Because the -- the belts are still going to be running over the head and the tail pulleys, and it's still going to be driven along the path of the underlying frame of the -- of the conveyor.
Q. The introduction of a curve into the belt doesn't introduce any safety or functional considerations?
A. Well, in this conveyor, it -- it does have a curve at the top and the bottom already because it doesn't require the loading to only occur in between the head and the tail.

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But you could put curves in here, and I think that the load that it's moving would still make it from the bottom to the top, you know, using that arrow as an indicator of the direction of travel.
Q. Are you suggesting that the surface of this conveyor is curved because the belt wraps around the front and the rear pulleys?
A. Well, for the conveyor that doesn't have a running surface, yes. I think that this would constitute a curve at the -- at the very top because that is a functional piece of the load-transferring nature of the conveyor where it takes whatever it's carrying up and then over.
That's not the case in a treadmill where you wouldn't want a person to run on the front of the -- of the -- or in front of the front pulley or to the rear of the rear pulley.
Q. The conveyor in Figure 2 may have curved portions of the belt, but it is not the same type of curved surface that is claimed in any of the Woodway patents, is it?
MR. TURNER: Objection. Form.
A. I don't believe so. Because the claims in those talk about an end that is higher

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than the middle, and I don't know that this Figure 2 depicts that.
But in terms of a conveyor system that has a functional requirement of only moving one direction, this is very explicit about how that would be done.
Q. So we're looking at page 320 of what you said may be a text of at least 400 pages. How would a person of ordinary skill in the art know to go to this particular disclosure in evaluating whether the use of a clutch may be useful in the design of a curved nonmotorized treadmill?
A. Sure. So in this book, it's not just a random sampling of mechanisms. They're arranged. And in this section starting on around page 300, it's the chapter on clutches and brakes. And there's lots of prior art talking about safety and things like that.
And so starting at page 300, the POSA could start reading this and -- and look at the different options for limiting the motion of the treadmill. And then after a couple of pages of pictures -- where, I think, two pages before, it describes sprag-type clutches and their advantages, that this picture is here and the

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description that the sprag clutch is a good option for that.
Q. But this more than 100 -- excuse me.
This text that contains, you know, upwards of 400 pages has a variety of different mechanical components that could be relevant to the design of a system.
Where is the motivation to utilize this particular configuration to address safety considerations in fitness equipment?
A. Well, the safety consideration comes from other prior art talking about people being stable, people not falling off the end, issues with low-friction surfaces being hazardous.
And so with that knowledge, you curve the treadmill to keep them from going off the end. But then knowing that if you step on the end and it goes the other way that people aren't expecting, then there's a big opportunity for a fall there.
So if you want to eliminate that possibility, which is something that other pieces of prior art have done by making the belt unidirectional, you would go specifically looking up clutches and brakes, which is what this chapter

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is.
And, you know, they talk about a number of different things here. You have noisy options, options in -- where, depending on the speed, you may not catch right away. Then you move to other options that only have a few types of pieces that interfere. And then it says, hey, look at these types of sprag clutches that have many interfering elements which provide a lot of force to hold something tightly and quickly.
And then you flip another few pages, and it shows you a conveyor and gives you specific instructions that this is how you put it together. And it's all within a few pages.
THE WITNESS: Is it a good time for a five-minute break?
MS. JELENCHICK: Sure.
(Recess had.)
BY MS. JELENCHICK:
Q. Who decided which prior art you were going to rely on for the purposes of your opinions?
A. So that was a discussion that I had with Mr. Turner's office, and I had my ideas. I believe they had suggestions that I considered,

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and then we ended up with what's in the declaration.
Q. What specifically were your ideas?
A. I don't remember very clearly at this point because that was just a phone conversation like a year ago. But I probably had some idea about maybe Schmidt and probably Cutter and Chickering and Magid. And that's probably where the conversation started.
Q. If we look at your declaration for the '884 patent, you don't offer any opinions where Schmidt is used as a reference in any of the grounds challenging the patentability of the challenged claims of the '884 patent. Why is that?
A. I recall that -- I think that Schmidt had been used as a reference a number of times and that as far as it being a compelling argument might have been minimized by how often it had been cited in the prior art had been in front of the examiner.
So from that perspective, it seemed like it wasn't, perhaps, a strong contention to make with Schmidt as a primary rationale.
Q. Any other reasons why Schmidt was

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dropped?
A. I don't recall as I sit here.
Q. What were Mr. Turner's office suggestions relevant to the prior art to use?
A. I don't recall specifically what was said in those conversations. I'm sure they had some ideas about which prior art pieces were the strongest, in their opinion. And then I considered them and considered the ones that I thought were strongest.
And I think that after that discussion and that analysis, that we came up with the strongest grounds and presented those in the declaration.
Q. In paragraph 120 of your declaration in the '884 IPR proceeding, you state: For purposes of this declaration, I'm applying the following claim constructions for my analysis regarding unpatentability for Grounds 3 and 6.
There is no Ground 6 in your declaration. Should that refer to a different ground or is that a typo? Or what's your explanation for that sentence?
A. As I sit here, I don't recall. That must be a typo.

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Q. What's --
A. Yeah, there is no Ground 6.
Q. In Ground 1, the basis for the challenge is the combination of Schonenberger, Socwell, Magid, and Sclater. Which of those references were your idea in the first instance?
A. Well, I certainly was familiar with Schonenberger and Socwell and Magid prior to this IPR. I would say, you know, Mr. Turner had Sclater. And once I reviewed that, I was on board with it.
I would say that these were -- you know, this was reached as a collaboration. And I couldn't say whose idea was what at this point in time.
Q. Is the same statement true for each of the grounds in all of your declarations?
A. I think, in general, yeah.
Q. Where did your familiarity with Schonenberger, Socwell, and Magid come from prior to this IPR proceeding?
A. So that was in the litigation from seven, eight years ago.
Q. The Schonenberger reference in this particular IPR, that is Exhibit 1010, I believe.

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A. Yes.
Q. In your view, Exhibit 1010 is the same or similar to the Schonenberger reference that you utilized in the Chapco/Samsara litigation?
MR. TURNER: Objection. Form.
A. It certainly seemed familiar to me when I read it this last year.
Q. Is there any other reason that Schonenberger Exhibit 1010 would be familiar to you?
A. Not that I can think of off the top of my head.
Q. The prior art that you use as the bases for the grounds for challenge of the claims in the '884 patent was all before the patent examiner -- patent examiner except for Sclater, correct?
A. I believe that's correct.
Q. Is the only reason the Sclater reference was added to the grounds for challenge to address your desire to identify art that wasn't before the examiner?
A. Yeah. I think that that is one aspect of the Sclater reference. The second aspect that we already discussed as far as it being, you know,

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a more descriptive encyclopedia of mechanisms as opposed to the PT Handbook, which is more of a CliffsNotes version of an overview of mechanical components.
Q. A person of ordinary skill in the art of the type that you're proposing is relevant here would understand the disclosure in the PT Handbook to be comparable to the disclosure of Sclater, right?
A. Yes. It's just not as example heavy. But as far as providing descriptive assessments of different technologies that are preexisting, they both provide some similarities there.
Q. The examiner considered the PT Handbook, right, in evaluating the claims of the '884 patent?
A. I don't recall. I don't see it in the list here, unless it's hiding. And I'm looking in pages 3, 4, 5, and 6 of the '884 patent that's Exhibit 1001.
Q. Was the PT Handbook part of your opinion in the Chapco/Samsara case?
A. Yes. I used that as a basis.
Q. So I'll direct you to what I think you're already looking at, the References Cited

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section of the '884 patent which begins on page 1 and extends through, I believe, page 7.
If you look at page 6 of Exhibit 1001, about halfway down, it identifies: Declaration of Robert Giachetti, Case 3:15-cv-01665-JCH, Document 88-1 filed May 1st, 2017, 20 pps, marked on its face as Exhibit 1.
You're that Dr. Giachetti that's identified there, right?
A. It looks like it.
Q. And is that part of the opinions that you offered in the Giachetti and Samsara case, if you know?
A. I don't recall what I said about the one-way bearing in that matter other than it was a common and commercially available machine element at the time. But I don't -- I don't remember printing out the whole PT Handbook as part of that report. I'm not sure if that is contained in that declaration.
Q. But in your view, the opinions that you offered in the Chapco and Samsara case contemplated the PT Handbook being relevant in some way to the patents that you are challenging, right?

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MR. TURNER: Objection to form.
A. Well, the PT Handbook is an example of the knowledge base of what a POSA would know or understand as far as commercially available power transmission elements. So I definitely relied on it during that litigation to justify my positions as far as what a POSA would or would not know.
Q. Go down to the next reference. It identifies Opening Expert Report of Dr. Robert Giachetti Re: Invalidity of U.S. Pat No. 8,986,169 and U.S. Pat No. 9,039,580, Case 3:15-cv-01665-JCH, Document 216-1 filed April 5, 2018, 67 pages, marked on its face as Exhibit 1.
Do you see that?
A. I see that.
Q. Do you believe that's an additional disclosure of your opinions from the Chapco and Samsara case related to the validity challenge of the patents at issue?
A. It could be. I don't remember. I mean, it just says expert report and opening expert report. So I don't -- I don't recall what those -- what the contents were.
Q. Dr. Giachetti, I've handed you what's designated as Exhibits 2008 and 2009. Do you want

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to take a look at those?
A. Okay. I think I -- I've flipped through them. There is a lot of pages here, so...
Q. Do you recognize Exhibits 2008 and 2009 to be the opinions that you offered in the Chapco/Samsara case regarding your validity challenge to certain Woodway patents?
A. Yeah. So this one looks like validity, and I'm not sure what the small one is regarding. But they are -- they appear to be reports that I authored.
Q. Well, I'll direct you to the header at the top of each of those exhibits. You can see that there is a case caption number --
A. Okay.
Q. -- as well as a document ID. So, for example, Exhibit 2008 identifies the case number and then Document 216-1.
A. Okay.
Q. And a filing date of April 5th, 2018. And then if you take a look at the references cited that we were just looking at on page 6 of Exhibit 1001, those designations match with the Opening Expert Report of Dr. Robert Giachetti Re: Invalidity, et cetera, et cetera.

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Do you see that?
A. Yes.
Q. The same is true for Exhibit 2009, right, if you look at that top header? It has a case number and identifies a document ID of 88-2, with a filing date of May 1st, 2017 --
A. Right.
Q. -- which also corresponds with the declaration that's identified on page 6 in references cited.
Were you aware that your previous expert opinions regarding your validity challenge were disclosed to the Patent Office in connection with the '884 patent?
A. You know, since I read the patent, I probably spotted that my reports were in here, as I know that Dr. Blair's rebuttal is in here as well.
Flipping through these, I didn't use the Power Transmission Handbook in these. It doesn't appear as though I used it as combination. I just used it to say that POSA would understand that they exist and use in this method as the same as if -- how they're expected to be used and to give the results that they are intended to have.

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But I didn't use it specifically as a combination.
Q. Whether you used it as a combination or not, that would be knowledge that a person of ordinary skill in the art would have brought to the table in his or her analysis, right?
A. Yes. A person of ordinary skill in the art would have an understanding of those mechanisms, that they exist and how they're used.
Q. Would you say Sclater is cumulative of the PT Handbook?
A. Can you tell me what you mean by cumulative?
Q. Have you heard that word before?
A. I have, but I'm not putting it together with how the two references work.
Q. What does the word cumulative mean to you?
A. Adds up or compounds.
Q. So is the content in the PT Handbook, adding that up, is that the same as the content of Sclater?
A. I think the PT Handbook is a boiled-down essential version of Sclater. Sclater is like an encyclopedia with tons of examples, tons of pictures. And the PT Handbook is more of

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an overview that someone with knowledge already can flip through from time to time and use to their advantage.

Sclater is more of, this is everything that's out there in the universe. It's much more explicit.

Q. Would your person of ordinary skill in the art recognize the Figure 2 exemplar of the conveyor as being disclosed in the PT Handbook as one potential use for a sprag?

A. Well, I don't remember everything the PT Handbook says about one-way bearings and one-way clutches. But it definitely has a conveyor section in it that shows belts and conveyors very similar to treadmills, and I know that it talks about one-way clutches being used to keep things moving in one direction.

So those things are contained within the PT Handbook. But the PT Handbook doesn't make examples of assembling everything for you.

Q. The PT Handbook doesn't have pictures?

A. It does have pictures of existing equipment where it will show, here is a picture of a conveyor; here is a -- here is a picture of a bearing; here is a picture of a roller bearing;

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here is a picture of a plain bearing. Things like that.

Q. It just doesn't have the specific illustration that you're relying on vis-à-vis Figure 2 in Sclater?

A. So -- well, Sclater breaks it down more. So the PT Handbook gives you a general idea: Here are one-way clutches. They can be used for these few things.

Sclater, instead, says: Here is a picture of this and here is a picture of this. And this one is specifically good for this, and this one is specifically good for this. And this one does this, and this one does this.

And then it gives applications, which is, I think, something that the PT Handbook definitely -- or doesn't necessarily show inside of itself.

Q. Did you consider how your prior expert opinions regarding the '580 patent impacted your opinions regarding the '884?

A. Well, my opinions from the past litigation -- is that what you're talking about, the prior litigation?

Q. [No audible response.]

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A. So there were different claim constructions in that. There were -- the terms meant -- didn't necessarily mean the same thing, so I needed to have an analysis that was true to what the constraints were.

And the constraints for this declaration were different than the constraints for the -- the previous litigation.

Q. How about with respect to your opinions in the IPR proceeding involving the '580 patent?

Did you consider how your prior expert opinions in the Chapco and Samsara litigation regarding the '580 patent impacted the opinions that you're offering regarding the '580 patent here?

A. So I did not read the opinions from that matter before writing this declaration. So I just -- when writing this declaration, I read the prior art and did the analysis that's contained in it. I didn't review the -- the other report.

Q. Do you know whether your past opinions regarding the '580 patent had any bearing on the decision to engage you for these IPR proceedings?

A. No. I don't know what the motivation was to retain me, other than I have a lot of

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expertise in this area.

Q. Did you ask Mr. Turner or any of his colleagues whether your engagement in the Chapco and Samsara litigation had any bearing on why they were interested in hiring you in this case?

A. I think they said that's how they found me. Beyond that, I don't -- I don't know what motivated them to keep me, outside of my expertise that I've already mentioned.

Q. You mentioned a Dr. Blair. Who is he?

A. Well, he formerly worked at Exponent while I was there. And he, I believe, worked for you on that last -- the last litigation.

Q. In your view, Dr. Blair offered opinions on behalf of Woodway, right?

A. Yes.

Q. What do you think of Dr. Blair?

A. I --

MR. TURNER: Objection.

A. He is a nice guy that I had lunch with a couple of times, and he definitely thinks highly of his education at Purdue.

Q. Is that some Big Ten rivalry?

A. Yeah, a little bit.

Q. Do you think Dr. Blair qualifies as

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your proposed person of ordinary skill in the art?
A. Yes.
Q. Do you think Dr. Blair qualifies as a person of extraordinary skill in the art?
A. I'm not sure what that -- that means, but he's a skilled engineer.
Q. So in the nearly seven pages of references cited on the '884 patent, how did you decide which of those prior art references that were already before the examiner to rely on for the purposes of offering your opinions relating to the '884 challenge?
MR. TURNER: Objection, form. Objection, misstates prior testimony.
A. Like I said, I went through a search. I went through a review of the prior art. I discussed that search with Mr. Turner and his colleagues and the prior art that we discussed and analyzed.
The prior art that is selected for the grounds in my declarations we felt was the strongest to make our argument.
Q. A couple of the references that you are relying on for the purposes of the '884 patent have asterisks next to them. What does that mean?

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A. I think that's something that the examiner looked at or commented on.
Yeah, if you look at page 7, the asterisk means cited by the examiner.
Q. Was that fact that the examiner cited the particular reference relevant, if at all, to you in offering your opinions?
A. Can you say that again?
Q. Yes.
Was the fact that the examiner cited the particular reference relevant, if at all, to you in offering your opinions?
A. No.
Q. Is that because you didn't review the filed history of the '884 patent in preparing your opinions, or for some other reason?
A. So to clear up something from earlier, again, I had a mistaken memory.
Exhibit 1002 is the file history. So I did at least review it briefly while this -- while coming up with my declaration.
You know, as far as coming up with what my analysis was, I didn't rely heavily on what -- or what the examiner did not. I looked at the prior art. I developed my opinions based on

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the prior art and then discussions with Mr. Turner and his colleagues. And from there, then the grounds were developed.
Q. On page 6 of your declaration, Exhibit 1003, under the heading Anticipation --
A. Did you say page 6 or paragraph 6?
Q. Oh, I'm sorry. I meant to say page 16 of Exhibit 1003.
A. Okay.
Q. Paragraphs 33, 34, 35, and 36 relate to purported standards governing whether a particular patent claim is anticipated by the prior art. Do you see that?
A. I see that.
Q. You're not offering any opinions that any of the challenged claims of the '884 patent are anticipated, are you?
A. I believe all my grounds are combinations of prior art, so there is not a single one that's just by itself.
Q. That's true for the '580 patent, as well as the '745 patent, right?
A. I think so. I'll have to look at them just to make sure, but that's my recollection.
Q. Okay. Do you know why you included a

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section on anticipation if you weren't offering opinions directed to anticipation?
A. Yeah, I don't recall why -- why that's there.
Q. When you say that your grounds for challenge are combinations of prior art, is that another way to say obviousness, you're making an obviousness challenge to the claims? Or does it mean something else to you?
A. I think that that does constitute obviousness based on, you know, what I've written here in the declaration under Section E, you know, starting on page 17.
Q. The Skowronski reference, which is Exhibit 1030 -- I don't actually know if I'm saying that correctly. S-K-O-W-R-O-N-S-K-I --
A. Yeah.
Q. How do you say it?
A. Skowronski? But I'm probably way off.
Q. Sorry, Mr. Skowronski.
This reference only appears in your challenge to the '884 patent; is that correct?
A. I think so.
Q. In your view, what is significant about this particular reference as it relates to

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your patentability analysis of the '884 patent?
A. This is basically a reference that shows that the -- I don't know, the pulleys or the shafts can be made out of plastic. Yeah, the pulleys.
(Reporter clarification.)
A. The pulleys are formed out of plastic and that that was something that would have been obvious to the POSA.
Q. Skowronski is not disclosing a manual treadmill, is it?
A. Yeah, I don't remember if it's a -- if it's one of the motorized ones that you can shut the motor off, but I -- I know that it is at least motorized.
Q. Skowronski is not a treadmill with a curved running surface, is it?
A. No. All the graphics show it as a flat treadmill.
Q. And Skowronski also is not a treadmill that discloses a particular type of safety device, is it?
A. I'm not sure. I recall that it was using the plastic elements, and that's -- and that it put those plastic elements into the art of

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treadmills.
What its safety devices are, I don't recall off the top of my head.
Q. Or whether it even has safety devices, right?
A. Right. I know it has a bunch of sensors, and it's got some complicated controls within it. But I'm not sure, as I sit here, what those are.
Q. But in your view, the relevance of Skowronski is this idea that a pulley can be made out of plastic?
A. Right, that that is something that treadmills can be made from.
Q. So if you look at column 2 of Exhibit 1030, starting at line 10 through line 15, which is part of what I understand to be Skowronski's identification of the background of the invention, this portion of the specification states: Pulleys used in current exercise treadmills typically are made of steel or aluminum and, as such, are relatively expensive to make and are relatively heavy. Therefore, because of tooling, manufacturing, and material costs, the diameter of the pulleys are normally no larger

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than 3 to 4 inches.
At the time of the Skowronski reference, do you agree with that statement?
A. Yeah. I mean, that -- that's their understanding of the state-of-the-art at the time that this was filed, and that seems reasonable to me.
Q. Would your person of ordinary skill in the art have that same understanding?
A. That's -- that's likely. I mean, I have come across plastic pulleys before -- what is this? -- 1998. But as far as this one, the rationale to pull from this is not that metal ones couldn't be used. It's that plastic ones can be used, and you can make them larger than the metal ones.
Q. And in Skowronski's view, you can make these pulleys larger because it's more economical to utilize the plastic material; is that right?
A. Well, that and they're lighter. So there are some weight savings with them.
And the POSA would also know that if you're using them for turnarounds, that a larger diameter is better for reliability than a smaller one.

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Q. Specifically, Skowronski identifies at column 7, starting at line 50, pulleys 22 and 28 are also preferably of a molded plastic construction. Suitable materials from which pulleys 22 and 28 can be molded include glass-filled polypropylene, polystyrene, polycarbonate, polyurethane, and polyester. Economical manufacture of the pulleys 22 and 28 having such a relatively large diameter is facilitated through the use of this plastic material.
Does Skowronski identify anywhere in his disclosure the use of plastics to address any problems with static electricity?
A. I don't recall if that is present here.
Q. Anywhere within your declaration, do you cite to any portion of Skowronski that addresses any purported attempt by him to address problems with static electricity?
A. I believe in my declaration that I cite ASTM, which references a UL standard for electrical safety. I don't recall if Skowronski discusses that.
Q. Where in your declaration are you

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citing ASTM regarding static electricity and electrical safety?
A. Yeah. Page 46. So the last sentence states: The ASTM standard also invokes UL 1647 as part of its instruction that electrical elements shall be guarded --
(Reporter clarification.)
A. Sure. Sorry.
The ASTM standard also invokes UL 1647 as part of its instruction that "electrical elements shall be guarded so as to meet or exceed UL 1647." This standard also provides guidance regarding wordings, labeling, and the control panel, as well as how fast a support structure system may raise or lower the treadmill.
Q. What does UL 1647 say, if anything, about managing static electricity?
A. I don't recall exactly what UL 1647 states, but that is for electrical safety. So you do not want users to get a shock from it.
Q. Is that disclosed somewhere within Exhibit 1019 or somewhere else within your declaration?
A. I don't believe UL is cited in Skowronski; and I think that in my declaration,

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that that's what I recall Skowronski -- yeah, that's -- I believe that's the portion of my declaration where I describe electrical safety as part of the ASTM treadmill standard.
Q. Are all types of plastic electrically insulative?
A. I think plastic generally is. There may be conditions over other circumstances where it might not be.
Q. How about with respect to the plastics that are identified in Skowronski in the specification, are those plastics electrically insulative?
A. Generally speaking, I think so.
Q. What's that based on?
A. Just my experience building things. And I have some experience with those materials being used in consumer products, and they're usually around battery compartments and things like that.
So I've also seen ABS used; and all those plastics are usually involved in making electrical enclosures and things like that for, you know, small electrics.
Q. Will all plastic prevent static

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buildup?
A. I think it depends on how it's used.
Q. Skowronski certainly doesn't identify whether the plastic that it contemplates in its pulleys will have anything to do with preventing static buildup, does it?
A. I don't recall that being a portion of Skowronski.
Q. In fact, that's not a problem Skowronski identified that he was attempting to solve, was it?
A. I don't recall Skowronski stating that.
Q. And on paragraph 313 of your declaration, which is on page 177 --
A. Okay.
Q. -- you identify that Skowronski explained several benefits associated with plastic pulleys. Do you see where I'm talking?
A. Mm-hmm.
(Reporter clarification.)
A. Yes. Yes.
Q. In your declaration, in that paragraph or any of the subsequent paragraphs talking about Skowronski or anywhere else within your

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declaration for that matter, you don't identify any benefit associated with managing or preventing the buildup of static electricity, do you?
A. I don't recall that in the declaration.
Q. In paragraph 313 --
A. Except that in portion 302, a POSA would understand that plastic is electrically insulative. So I do mention that in -- in Ground 2.
Q. You weren't able to confirm for me that plastic in all circumstances is electrically insulative though, were you?
A. I think in room temperature conditions where a treadmill would be expected to be used, that we could understand that plastic is electrically insulated. If we just, say, yield to the universe is plastic always electrically insulative, I can't guarantee that, that there's not some extreme temperatures or humidity or dryness conditions where it might not be, for example.
Q. In paragraph 302, you reference the Schonenberger reference.
Where, if anywhere, does Schonenberger

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talk about addressing a potential problem with managing static electricity?
A. So I don't believe that it does. So that paragraph says, hey, if you take the metal ones that are in Schonenberger and make it out of plastic as Skowronski says to do, then you have an electrically insulative system.
Q. I know that's the opinion that you offer. I'm just trying to understand why a person of ordinary skill in the art would have been motivated to combine Skowronski with Schonenberger since Skowronski says nothing about addressing any problem associated with static electricity but, instead, is focused on the economics of using a lighter or a larger diameter pulley.
So explain that to me. Explain the motivation to combine.
A. Sure. So I think -- I think you mentioned it right there, that the economics of it is a large portion. Not only that, but you can make a very large diameter pulley, which is important for using the heavy belt on top of it. Because if you have a thick belt, it won't want to make a sharp turn.
So you want a big pulley. And making

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a big pulley out of metal will add a ton of weight and a ton of expense in fabrication and shipping and all that stuff. So to avoid that, you could make those large pulleys out of plastic. And the added benefit of that is that they are also insulative.
Q. Isn't the only reason you focused on Skowronski and plastic pulleys because the specification of the '884 patent tells you one of the problems the Woodway inventors were attempting to solve was preventing a static charge due to the operation of the treadmill?
MR. TURNER: Objection, form. Objection, foundation.
A. Well, I was looking at it from a perspective of I'm making a treadmill with a belt that is weighted and heavy. And as someone with knowledge of conveyors and that sort of thing, I would not want it to go around a small diameter pulley at the end.
And so it makes sense that to avoid expense and weight and shipping costs from extra weight, that it would make sense to have lightweight plastic pulleys on the front end and the rear.

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Q. Does Schonenberger identify any problems with utilization of smaller pulleys -- or metal pulleys, for that matter?
A. Well, Schonenberger does discuss the pulleys 12A and discusses that if they are small, it could be -- it could have negative -- a negative impact on the belt turning around. So that -- so Schonenberger recommended to make the pulleys 12A as large as possible.
Q. Does Schonenberger provide specific dimensions for its recommended pulleys?
A. I don't think that Schonenberger provides dimensions for the smaller pulleys. I think it just gives you the instruction that those pulleys need to be small enough so that the runner doesn't detect a variation in the -- in the surface from pulley to pulley.
And I'm just looking for the citation for that right now.
Yeah. It says in column 7, about line 18, that the rollers are small with respect to the size of the slats. So no specific dimension, but small relative to the slats.
Q. You don't discuss in any way in your declaration how the specific sizing of the pulleys

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in Skowronski --
(Reporter clarification.)
Q. You don't discuss in any way in your declaration how the specific sizing of the pulleys identified in Skowronski can effectively work or not with the pulleys of Schonenberger, do you?
A. No, not directly. Because it's well within the POSA's ability to be able to convert those because they do work in the Skowronski treadmill and were basically replacing the large pulleys in Schonenberger with them, And they're used in the same manner in both treadmills.
Q. In paragraph 313 of your declaration, you appear to quote from Skowronski at column 7, lines 7 through 31. Specifically, you identify the relatively large diameter of pulleys 22 and 28 provide significant performance advantages. One advantage is that the large diameter pulleys permit the use of a relatively thicker belt 20.
Would the combination of relatively large diameter pulleys contemplated by Skowronski plus the use of a thicker belt translate into more static buildup?
A. So your question -- can you just read that question back to me? I want to make sure I

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have it right.
Q. Sure.
Would the combination described in paragraph 313 of your declaration, using a larger diameter pulley and a thicker belt, result in more static buildup than if you used a smaller diameter pulley with a thinner belt?
A. I think the larger diameter is going to give you less. Because the speeds are lower, the rotational speeds are going to be lower for the same belt speed.
Q. You don't discuss that point in your declaration, do you?
A. I don't believe I do.
Q. How about with respect to paragraph 314? You identify that another benefit of larger pulleys is enhanced gripping between the pulleys and the belt due to increased contact area.
Specifically, you cite to column 7, lines 32 through 39. In part, that states: This large contact area provides enhanced "gripping" of the belt by the pulley, which in turn permits the use of lower belt tension than is required by treadmills having smaller diameter pulleys.
How, if at all, does this performance

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advantage impact static electricity associated with the use of the treadmill?
A. Sure. Well, if there is less slippage between the two components, then I think anyone who's rubbed a balloon on their hair understands that you need that relative motion to scrape the electrons off.
So if you can decrease the relative motion between the two components and you can make the speed differences between the two smaller, then you will have a beneficial result in terms of static electricity.
Q. And you don't discuss this particular issue in your declaration in any way, do you?
A. I don't believe so.
Q. Okay. And Skowronski doesn't address the management of static electricity as motivation for his proposed inventions, does he?
A. I don't recall that in Skowronski. One of the -- their invention is including the plastic pulleys, which is the primary reason why I used it, the large diameter pulleys.
Q. Will you agree with me that the '884 patent specification specifically discloses a need to manage static electricity?

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A. I don't see that in the abstract, and I don't see that in the background.
Q. I'll direct you to column 5 of Exhibit 1001, line 61: To prevent a static charge due to operation of the treadmill 10 from building on a pulley 62, 66 formed of electrically insulative materials (e.g., plastic, composite, et cetera), an antistatic additive, for example Antistat 10124 from Nexus Resin Group of Mystic, Connecticut 06355, maybe may be blended with the GV-5H material.
Do you see that?
A. I see that.
Q. Is the disclosure in the '884 patent relative to managing static electricity what dictated why you went to Skowronski?
A. No. For Skowronski, I was looking for a large diameter pulley that was economical. And the insulative properties -- electrical properties just fell into place with -- with this one. That's my recollection, at least from the analysis done a year ago.
MR. TURNER: We've been going another hour and a half. Time for a break?
MS. JELENCHICK: Sure.

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(Recess had.)
BY MS. JELENCHICK:
Q. Dr. Giachetti, how are you preventing yourself from using hindsight in doing your evaluation of the claims of the Woodway patents?
A. Well, I read the backgrounds and the abstracts of the prior art; I see what the prior art is looking to accomplish. And then all those things of what the prior art is trying to accomplish, I put together.
So not using hindsight, but I use the motivations of the people -- the POSAs who are assembling those things, whether there is an economic need or a safety need or something like that. Those are the motivations that I'm looking to when I am combining these references.
And I've got the hindsight, and those rationales are outlined in my declaration.
Q. Where in your declaration?
A. Page 18 and 19. I think it starts on page 17 under "Obviousness."
Q. I'll agree with you that you state that the obviousness inquiry should not be done in hindsight, but where do you tell me in these cited pages how you avoid using hindsight?

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A. Well, I have to go at it from the perspective of here is a piece of prior art. And what along these lines that are enumerated on page 19 -- if, for example, I know that there is a treadmill out there that says, hey, these -- a curved treadmill makes running -- reduces the shock on the legs, that's good. Raising the back end of it a little bit allows the person to center themselves in the treadmill.

Okay. Those are motivations that a person has to make a curved treadmill. And so those things, then it's like, oh, if I wanted to make those, are those parts available to that person? And the answer is, yes, those parts are available and have also been described in the prior art.

So all that stuff is available, and I don't need to look at the Woodway patents to know how to put those things together.

Q. Why isn't it the case that you took the claim limitations in the Woodway patents and simply worked backwards by picking and choosing components from the prior art to meet those limitations?

A. Well, I don't believe that I worked

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backwards. And for being the technical witness in this IPR, you have to be aware of what the claims are. So it -- it would be a lot of wasted time if I started talking about all the different things that aren't relevant to the actual claims.

So I had to focus the declaration to discuss the motivations for someone to build something that, you know, aligns with the claims. So -- and the picking and choosing, I don't agree with that because, as we mentioned already, Sclater explicitly stated what type of bearing to use.

In addition, Magid only describes that ratchet as an embodiment. So it could have been any sort of one-way device, not just the ratchet and pawl that they show in the pictures, as well as the other components that we've discussed.

The curved treadmill already existed. The front and rear pulleys already existed and were used in treadmills pretty widely. So I don't agree that I worked backwards and only picked and choosed -- chose various components to match the claims.

Q. Where in -- we'll go with Magid. I've been calling Magid for a decade, but we'll go with

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Magid.

A. Tomato, tomato.

Q. Point me to where in Magid it discloses the ability to use embodiments other than the ratchet and pawl?

A. Yeah. So in column 4, line 46, it says: A unidirectional control means 6, 6' is installed to permit only unidirectional movement of the left and right foot belts 4, 4'.

So that is just a general control means there. And then it goes on to say: In this embodiment, the control means 6, 6' includes a pair of ratchet gears.

So my reading of -- of that is that they show the ratchet and pawl here, but you could use any unidirectional control that you felt was suitable because it's an embodiment. It's just what they chose to show as opposed to admitting their invention to that, to the ratchet and pawl.

Q. That particular citation that you provided from column 4, that relates specifically to the disclosures in Figure 2 through Figure 4, right?

A. I don't know that it does. It just describes -- that's under the heading of "Detailed

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Description of the Preferred Embodiments." So I would say that that describes the preferred embodiment, but not a limitation.

Q. So you reference, in paragraph 39 of your declaration, certain secondary considerations relevant to non-obviousness. Did your understanding of those secondary considerations come from Mr. Turner and his colleagues?

A. Yes.

Q. In paragraph 452 of your declaration, you stated that you are not aware of any objective evidence that might support the patentability of the claims of the '884 patent. Did you do any investigation before coming to that conclusion -- statement?

A. No. In the sentence -- or the conclusion of that sentence on the next page is that the applicant did not raise any secondary indicia that -- during prosecution. So basically, that's it.

Q. Why is that relevant?

A. So in -- I don't recall searching for that. But also, there was nothing provided by the applicant that said, hey, here is something to consider. So I didn't -- you know, if that stuff

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comes up, then I would review it and provide an opinion if asked.
Q. The Patent Office ultimately concluded that the claims of the '884 patent, for example, can issue. Why would the Woodway inventors offer evidence of secondary indicia of non-obviousness during prosecution?
A. I'm not sure. I would have to ask an attorney.
Q. You also state that you're not otherwise aware of any publicly available evidence of secondary indicia of non-obviousness.
What, if anything, were you looking for before you came to that conclusion or came to state that in your declaration?
A. Yeah. I mean, we have the things that I enumerated at the beginning of the declaration. And I would have been interested in something that would have pointed to those things not being relevant or some other factor that -- that would have dissuaded me from my opinions that I -- that I made in the declaration, but I did not see any.
Q. Did you ask Mr. Turner or his colleagues for any information relating to the identified categories of information in

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paragraph 39?
A. Yes. So to gain my understanding which allowed me to put that section in, they gave me a description of all those things.
Q. Did you ask whether there was any evidence of -- of any of those things?
A. I believe that that came up in our discussion; but that was, you know, a long time ago. But I believe those were in our discussion.
Q. So you previously had a discussion with Mr. Turner about whether there was any evidence of secondary considerations of non-obviousness. What was the substance of that discussion?
MR. TURNER: Objection to the extent this gets into any privileged communications.
A. Yeah. So I needed an education on -- on what those things were at the time when they were going into the declaration. And I know that I asked them a number of questions about what that means, what sorts of things that would entail. And I believe that they gave me descriptions that satisfied my curiosity at the time.
Q. Was there any discussion about whether there was evidence of any of the secondary

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considerations relevant to non-obviousness?
A. I believe -- I believe so. Because if we had evidence, then I would have needed to review that and I would have needed to incorporate that into my analysis.
Q. So based on your discussion with Mr. Turner and his colleagues -- or discussions with Mr. Turner and his colleagues, you concluded that there were no secondary considerations of non-obviousness to consider because there wasn't evidence of such?
A. I believe that's correct.
Q. What does commercial success of a product do to the merits of the claimed invention mean to you? Or what's your understanding of that secondary consideration?
A. That you can sell the product and continue to sell it and make money.
Q. How about Section B, a long-felt but unmet need for the invention, what do you understand that to mean?
A. Which page is that on again?
Q. Page 18, paragraph 39.
A. All right. I guess for part (b) of paragraph 39, that that would be something that

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for years and years that people had pined for something and they just were not -- were not getting that.
Q. Do you recall the date of the first treadmill patent?
A. Oh, I could ballpark it at around 1860.
Q. And how about the Socwell patent, do you have a date on that?
A. Socwell, I feel like it was in the '70s, but I could be off on that one.
Oh, I'm sorry. It was in the '90s.
Q. What's the filing date -- or the effective filing date for the Woodway patents implicated by these IPR proceedings?
A. I think we discussed that earlier. It was in 2010, I believe?
Q. Do you believe the timeline to get to the claimed inventions in the Woodway patents supports the statement that there was a long-felt, but unmet need for the invention?
A. No. Because I think, you know, Socwell is basically the same device to a casual observer who is just looking at it and says, oh, there's a curved treadmill. So I don't

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necessarily.
And I think ten years between Socwell and the priority date is not terribly long in the scope of the treadmill history, which goes back to the 1800s for the types of treadmills that we're working with here, and then even far back, like a couple thousand years, for the hamster-wheel style.
So in the scope of the time scale here, I don't think ten years is very long at all.
Q. Do you have any evidence that Socwell was commercialized?
A. I do not.
Q. Okay. And you're not contending that Socwell meets each and every claim limitation of any of the Woodway challenged claims, are you?
A. No. Per what we discussed earlier, I don't have any anticipation opinions.
Q. What does Section C mean to you? Failure of others to find the solution provided by the claimed invention.
A. That means that people had the idea but couldn't make it work, or that they just kind of floundered around the area of the invention but -- but never got near it.

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Q. Do you think Socwell had the idea and couldn't make it work?
A. I think Socwell appears like it works. I don't know what the commercial history of that treadmill is though.
Q. You have no discussion in your declarations about the commercial viability or any assessment of the design or operational capability of Socwell, do you?
A. Well, I would say that I talk about it inasfar-as it's a curved treadmill with bearing rails on either side to keep the running belt in -- in a curved geometry. So I think from an operational standpoint, I do discuss it.
Q. You don't identify that Socwell has a safety device, do you?
A. I don't.
Q. In fact, the Court in Connecticut concluded that Socwell does not have a safety device, right?
A. I don't recall that.
Q. How about Part D, deliberate copying of the invention by others, what does that mean to you?
A. That other people see it and make the same thing.
Q. Did you have any discussion with Mr. Turner or his colleagues about whether LifeCORE deliberately copied Woodway's inventions?
MR. TURNER: Objection, form. Objection -- just leave it at form.
A. No. I did not get to that part of -- of the litigation that I understand is now going on.
Q. What does Section E mean to you, which is unexpected results achieved by the invention?
A. Basically that you have a bunch of parts and you know what they do, you know what they do together. And if you put them all together, that they do something that you didn't expect they could do.
And in this case, I don't think that there is anything that fits that description at all.
Q. But you don't discuss that in any way in any of your declarations, do you?
A. I'm not sure about that. But all these things -- even if it's not explicit here, all the components that are used function in the way that they're intended or sold for.

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Particularly, I called out the Emerson bearing manual that describes the use of a one-way bearing specifically for exercise equipment and conveyors, which aligns with Sclater.
Q. Can you direct me to that particular discussion in your declaration?
A. Yeah. So basically, on pages 48, I start discussing mechanical clutches. Then it gets into one-way bearing-type clutches, which we see from the PT Handbook. Then it gets into the sprag-type ones as described in Sclater and talk about the modes of operation.
And then after that, then the Emerson catalog for their commercially available sprag-type one-way bearings. Where they have the applications for exercise equipment and conveyors is there.
Q. So the Emerson reference that you just mentioned cites to pages 8 and 9 of that reference, which is Exhibit 1018.
You said, I think, on at least two occasions, that that exhibit and disclosure identifies that the sprag-type one-way bearing can be used for applications of exercise equipment. That reference doesn't expressly say that, does

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it?
A. It does. Yeah. So on page 53 of that document, there is a bearing that is listed as -- the applications for that are listed as exercise equipment, food-processing equipment, printing presses, and roll conveyors.
So -- and it's -- it discusses it as a sprag-type one-way clutch. And then the bearing on the next page has the same field applications as well.
Q. Nothing about the Emerson reference discloses that exercise equipment means treadmills, does it?
A. Well, I think treadmills is exercise equipment. It's the -- you know, the difference between a square and a rectangle. Exercise equipment is the generic term or fitness equipment, which I think is supported by the prior art patents.
Q. None of your grounds for challenging the Woodway claims across the three patents is based on the Emerson reference, are they?
A. I believe the grounds use the Sclater reference. But the Emerson reference basically parrots Sclater as how it's used and is evidence

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that, in addition to Sclater, that the -- that these bearings are useful in conveyors and exercise equipment.
Q. Didn't the Patent Office already know that is the case based on the PT Handbook?
A. I don't believe that the PT Handbook described exercise equipment, but certainly described conveyors and back-stopping roller bearings in the -- in there.
Q. Did you ask Mr. Turner or any of his colleagues whether there were any third parties that have taken licenses to the Woodway patents?
A. No.
Q. In the last sentence of paragraph 39, you state: I understand that secondary considerations are relevant where there is a connection or a nexus between the evidence and the claimed invention.
Do you know how to evaluate whether there is a connection or a nexus between secondary considerations and claimed inventions?
A. Can you repeat that?
Q. Yes.
You identify that you have an understanding that secondary considerations are

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relevant where there is a connection or a nexus between the evidence and the claimed invention.
How do you evaluate whether there is a connection or a nexus between any evidence and the claimed invention?
A. I would have to get some more input from a legal sense on that. As I sit here, I -- the plain reading of this, which is what I understood at the time of writing this declaration, is that you could assemble all these -- you know, a number of these, A through G, and look through the lens of those ideas at the invention to evaluate it.
Q. I understand you didn't do it in connection with your work in this engagement. But have you ever evaluated whether there was a connection or a nexus between secondary considerations of non-obviousness and claimed inventions?
A. I believe while doing this declaration, that that was considered. I did not find these things to be persuasive while considering these, even though I, you know, don't have the licensing history, for example, of, you know, Woodway or its licensees. But I know that I

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did consider these things when compiling the declaration.
Q. So what specific evidence of secondary considerations did you consider when putting together your declaration?
A. So for these, certainly I looked at them as a whole. But for Part B, long-felt but unmet need, the failure of others to find a solution, unexpected results, those things are more -- are going accepted -- against the accepted wisdom of the prior art. I -- those are more engineering-type of issues. And with those, I did not find any of those persuasive.
Q. In your declarations, you don't specifically identify which objective -- withdrawn.
In your declarations, you don't identify which specific secondary considerations you consider or evidence of the same, do you?
A. That's correct.
Q. Okay. Are you a named inventor on any patent applications?
A. Not to my knowledge.
Q. Are you a named inventor on any issued patents?

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A. Not to my knowledge.
Q. Have you ever been involved in the patent prosecution or the back-and-forth with the Patent Office once a patent application has been filed?
A. No.
Q. Earlier today, you stated that you have not passed the patent bar. Have you ever attempted to sit for the patent bar?
A. I have not.
Q. At page 65 -- or starting on page 65 of your declaration through page 69, there is a summary provided of the '884 patent file history and the '169 patent file history. Do you see that?
A. Yes.
Q. Did you draft that summary of what happened at the PTO with those two patents?
A. I am sure I had a hand in -- in some of this, but I think most of this summary was initiated by Mr. Turner and his office.
Q. Do you know why you didn't include any summary of the file history of the '580 patent?
A. I don't recall, but I -- I'm trying to remember if this -- there is a similar section in

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the declaration for that patent, or for my declaration regarding that patent.
Q. Why did you include the summary of what happened in the '169 patent file history?
A. I think because they had similar claim languages involved.
Q. Any other reason?
A. I believe it has to do with the terms for a one-way bearing and safety device and bearing rail. Most of those claim terms appear in both of these. But the one-way bearing is in the '169, as well as the bearing rail.
Q. You're not involved in any IPR challenge of the '169 patent, are you?
A. Not that I know of while sitting here.
Q. Let's look at your CV here for a minute, a few minutes, which is Exhibit --
A. 4.
Q. -- 1004. Specifically page 5, you identify your four-year testimony list. At the top of this list, you include Woodway versus Chapco, Inc. And Samsara Fitness, LLC, the case in the U.S. District Court for the District of Connecticut.
A. Correct.

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Q. You understand that case has been concluded for many years past four, right?
A. Yes. This list has been edited to more closely reflect the last four years since this was -- since I provided this to Mr. Turner's office.
Q. Okay. Can you tell me the technology at issue in the Namola case?
A. Oh, that's a -- that's not a patent matter. That is a -- that was a -- a man and a woman were riding a motorcycle and hit a deer. And it was -- I did an investigation regarding the deformation of the handlebars on the -- on their motorcycle in relation to whether or not it was possible to hit other portions of the motorcycle.
Q. For which party or parties did you offer opinion testimony?
A. I think it was DAE. That was all -- that's also a fairly old matter. I'm a little fuzzy on the details.
Q. That Cahill versus Scheck Mechanical case, that's not a patent case, is it?
A. No.
Q. What kind of case is that?
A. I think it was a man who fell off a

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ladder, a worker.
Q. And who did you provide testimony for on behalf -- on behalf of those parties? Was it the gentleman or the entities associated with the ladder or some other entity?
A. I seem to recall that it was the employer, but I definitely did not work for the plaintiff on that one. I'm a little hazy on who I was working for at the time.
Q. How long ago was that?
A. That was probably 2018.
Q. The Siegel versus Blue Giant Equipment Corporation in the Northern District of Oklahoma, what kind of case was that?
A. That was a worker basically walked off of the end of a dock, a loading dock, and pulled a -- a pallet full of heavy folding chairs onto himself and was severely injured by that.
Q. Who did you offer testimony for in that case?
A. Blue Giant.
Q. Cisneros versus Sheth, the case in the Illinois County Department of Cook County, what kind of case was that?
A. That was, I think, a painter who fell

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off a ladder.
Q. For whom did you offer testimony in that case?
A. The defense. I don't recall what their involvement was with it, though.
Q. That was not a patent case?
A. Correct.
Q. Samantha Williams versus Tristar Products, Inc., in the Middle District of Georgia, what kind of case was that?
A. That was a pressure-cooker injury.
Q. For whom were you offering testimony in that case?
A. Tristar.
Q. So there is a handful of Tristar product cases on your testimony list. In all instances, were -- were you offering testimony on behalf of Tristar?
A. Correct.
Q. Is Tristar the manufacturer of the pressure cooker?
A. They certainly distribute it. Whether or not they manufacture it, I couldn't tell you as I sit here right now.
Q. American National Manufacturing, Inc.

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Versus Sleep Number Corporation, formerly known as Select Comfort Corporation, IPR2019-00514, for whom did you offer testimony in that case?
A. I believe American National Manufacturing. I don't recall terribly which person it was, but I think that that's who I was opining for.
Q. What was the technology involved in the IPR?
A. That was an inflatable mattress, like the technology that goes into sensing the pressure and controlling it.
Q. Were you offering testimony in support of a patent challenge or on behalf of the petitioner?
A. I don't remember. I couldn't tell you. Sorry.
Q. Do you know whether that IPR was instituted?
A. I don't know.
Q. Were you deposed in that case?
A. I was.
Q. Do you know how that case resolved?
A. I don't recall.
Q. Was that the first time you were

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involved in any IPR proceeding?
A. I think so.
Q. Was there a parallel district court litigation?
A. Not that I was involved in. I don't have any awareness of it either.
Q. Is that work that you did while at Exponent?
A. Yes.
Q. Did you continue that work while at Fusion?
A. No. It concluded before I left.
Q. Do you recall the general nature of the scope of your testimony?
A. I remember a little bit. So it was basically talking about valves, their operation, how to sense pressure, fluid flow and like friction involved in sending fluid from one place to another or sensing pressure in one place versus another.
So it was all basically controlling a fan that provided pressure to the air bladders that were the -- the air mattress. And so I did a deep dive into the technology of air mattresses and the valves that are used and -- and the

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sensing of those, of the pressures.
Q. Do you recall who constituted the relevant person of ordinary skill in the art in that case?
A. I believe I did.
Q. And what specifically about your qualifications qualified you to be at least a person of ordinary skill in the art?
A. I'm having trouble remembering that one, but it was along the lines of a bachelor's degree in engineering or equivalent and a year of experience designing equipment. I forgot what other things I brought in from my experience.
But basically, that one had a lot to do with sensors and actuating valves and things. So I brought in that experience from my background, which is necessary for someone to know because it was all about sensing and actuating and computer control.
And I think there was also a human aspect of maintaining the comfort of the air mattress as well, but I'm not 100 percent sure.
Q. Do you recall whether you offered testimony arguing that the claimed inventions were either anticipated or obvious?

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A. I don't remember as I sit here.
Q. Do you know if you used the Sclater reference in that case?
A. I did not.
Q. B&P Littleford, LLC versus Prescott Machinery, LLC and Ray Miller, in the Eastern District of Michigan, what kind of case is that?
A. That is a trade secret case about -- I think there was alleged copying of proprietary information.
Q. What was the nature of the technology in that dispute?
A. Well, it wasn't really the technology. It was the shop drawings for -- it was a commercial machine. I can't remember what the name of -- it was like a super giant industrial mixer that was enormous, and they had a bunch of shop drawings.
And there was a question as to whether or not the shop drawings were copyrighted or not because they were a work of art and what the differences were between the alleged copycat drawings and the original shop drawings.
Q. Did those shop drawings relate in any way to treadmills?

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A. No.
Q. Laura Musso versus Schnuck Markets in Missouri, what kind of case was that?
A. A lady wearing two different shoes with some neuropathy in her legs, basically a loss of sensation, sprained her ankle and accused Schnuck's of having bad floors or slippery floors.
Q. That was a premises liability case?
A. I suppose that's true.
Q. Who were you offering testimony for?
A. Schnuck's.
Q. Pulford versus Ridg-U-Rak, et al., in the Northern District of Illinois, what kind of case was that?
A. A worker injury.
Q. What was the nature of the work?
A. That was a wire-coiling device. So imagine you sell electrical wire. And they're all different gauges and sizes and they're all hung on a wall. And then there is a machine that you connect one to, and it will wind it up into however big a spool you need of that or whatever custom order.
So there was a jam, and it pulled the machine into this guy and seriously injured him.

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And he -- while he was making a spool of wire.
Q. Kraslen v. W.E. O'Neil in Cook County, Illinois, what kind of case was that?
A. So that was a maintenance worker who alleged that he stepped on a sump-pump cover which catastrophically fractured, and then he fell with one leg into the sump-pump pit.
Q. What was the nature of your testimony in that case?
A. So I was discussing the biomechanics of the fall, what you could see from the security camera, and identifying where Mr. Kraslen was, while he was walking, and whether or not where he was walking was actually where the sump-pump hole was and whether or not the cover was there before he stepped on the area where the hole was.
Q. Were you offering testimony in support of Mr. Kraslen?
A. No.
Q. In the Pulford versus Ridg-U-Rak case, were you offering testimony in support of Mr. Pulford?
A. No.
Q. Vance versus Norfolk Southern Railway Company in Macon County, Illinois, what kind of

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case was that?
A. That was a railroad worker who was on a railcar that -- that failed. Not -- not that the railcar itself failed, but I believe -- and I could be confusing this one with the one after it, but my recollection is that there was a fastener on the ladder that gave way, causing Mr. Vance to fall from the railcar.
Q. So in both the Vance and Tripp cases that you identify in your testimony list, were you offering testimony on behalf of the railroad?
A. Yes.
Q. Have you ever offered testimony in support of a patent holder?
A. I don't -- I don't think so. But certainly, if a patent holder called me and wanted technical assistance, I would be glad to help them as long as we cleared the conflict check.
Q. What percentage of your consulting work relates to litigation consulting?
A. That fluctuates from month to month, but I would say the majority is probably litigation related. Last year, I had a number of nonlitigation matters that took up some time. But overall, the majority is litigation related -- not

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counting the pro bono volunteer stuff with the committees.
Q. Have your opinions ever been excluded by a Court or the Patent Office?
A. In one of those Tristar matters, there was a motion to limit my testimony and I was not able to defend myself. So the Court adopted the proposals from the plaintiff; but those opinions have basically been allowed in every other Tristar case that I've worked on.
Q. Are you aware that certain of your opinions were excluded in the Chapco/Samsara case?
A. I was not aware that opinions were. I seem to recall that like there might have been an issue with a deadline on one thing, but I did not have the understanding that my opinions had been excluded.
Q. The Chapco and Samsara challenges to the validity of the Woodway patents were unsuccessful. Would you agree with that statement?
A. I thought that the case settled, so I don't know what the outcome was beyond that.
Q. Well, the '580 patent wasn't invalidated as part of that lawsuit, was it?

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A. I guess we wouldn't be here today -- or no, here tomorrow then. So I guess the '580 stood.
Q. Have you ever turned down any potential expert engagement?
A. Yes.
Q. In what circumstances?
A. In the circumstances where I wasn't -- I didn't feel like I was the right expert for it. Or there was a matter where someone came to me asking about a trade secret case; and I took a look at their stuff and I said, I cannot help you.
Q. On how many occasions have you turned down expert engagements relating to litigation or potential litigation?
A. I would say that unless there is a conflict of interest, that I would review -- at least review documents and give someone an opinion. Whether or not that opinion helps them or not, we would get to that point and I would say, I cannot help you or you do not want a report from me. So I've definitely had those cases.
But generally speaking, on the face of it, if someone calls me with a matter and I take a look at the initial caption or whatever, I'm

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willing to assist with an investigation.
Q. In paragraph 12 of your declaration, you state: I have been recognized as an expert in mechanical power transmission equipment.
Who has recognized you as an expert in mechanical power transmission equipment?
A. Yeah, so that power transmission gearing committee was an invite. And also, the National Council of Examiners, which is the PE exam people, they invited me to participate. So they just don't ask anybody off the street, so they must have recognized something about me.
Q. Did you apply for either of those positions?
A. I did not.
Q. Did either of those organizations identify that you can only be an expert if you work with them?
MR. TURNER: Objection. Form.
A. I don't know that that's how that works. But those were invite-only opportunities, which I gladly accepted.
Q. In extending the invitation for you to join the ASME Power Transmission and Gearing Committee or the National Council of Examiners for

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Engineering and Surveying, did they tell you they considered you an expert?
A. No, no one explicitly said that; but they wouldn't want someone developing the questions for engineering licensure who didn't have a solid understanding of engineering licensure or engineering problem solving.
MS. JELENCHICK: All right. Let's put a pin in today, and we'll pick it up tomorrow.
THE WITNESS: Sounds good.
(Discussion had off the record.)
MR. TURNER: No further questions for redirect -- or no questions for redirect.
MS. JELENCHICK: One final clarification. At the outset before this deposition started, counsel discussed efforts to streamline these deposition proceedings to consolidate where we can.
My understanding of that agreement would allow us to use the deposition testimony in today's proceeding in the proceedings relevant to the '580 patent and the '745 patent.
Counsel for petitioner, do you have the same understanding?

MR. TURNER: Yeah, that's fine. We can do that. But I still want to -- we still want to close it out for the day.
MS. JELENCHICK: Yes.
MR. TURNER: Close out --
MS. JELENCHICK: Agreed.
(Deposition concluded at 5:27 p.m.)

ACKNOWLEDGEMENT

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

LIFECORE FITNESS, INC. d/b/a ASSAULT FITNESS,
Petitioner,
v.
WOODWAY USA, INC.
Patent Owner.

IPR023-0084
U.S. Patent No. 10,561,884

I, ROBERT GIACHETTI, Ph.D., P.E., state that I have read the foregoing transcript of the testimony given by me at my deposition on January 9, 2024, and that said transcript constitutes a true and correct record of the testimony given by me at the said deposition except as I have so indicated on the errata sheets provided herein.

_____
ROBERT GIACHETTI, Ph.D., P.E.

SUBSCRIBED AND SWORN to before me this_____day of_____, 2024.

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES:_____

CERTIFICATE OF SHORTHAND REPORTER

I, JENNIFER L. BERNIER, Certified Reporter and within and for the State of Illinois do hereby certify:

That ROBERT GIACHETTI, Ph.D., P.E., the witness whose deposition is hereinbefore set forth, was duly sworn by me before the commencement of such deposition and that such deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the deposition of ROBERT GIACHETTI, Ph.D., P.E., occurred at the offices of Foley & Larnder LLP on Tuesday, January 9, 2024 commencing at 9:39 to 5:27 p.m.

I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th of January, 2024.

_____
JENNIFER L. BERNIER, CSR, RMR, CRR
CSR No. 084-004190

ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: LIFECORE FITNESS, INC. d/b/a ASSAULT FITNESS v. WOODWAY USA, INC.
DEP. DATE: JANUARY 9, 2024
DEPONENT: ROBERT GIACHETTI, Ph.D., P.E.
U.S. Patent No. 10,561,884

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME THIS_____DAY OF_____, 2024.

_____
(Notary Public)
MY COMMISSION EXPIRES:_____

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