

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

PERMIAN GLOBAL INC., AND
MANTICORE FUELS, LLC
Petitioners,

v.

FUEL AUTOMATION STATION, LLC,
Patent Owner.

Case IPR2023-01236

Patent No. 10,815,118

Case IPR2023-01237

Patent No. 9,586,805

Case IPR2023-01238

Patent No. 10,974,955

ORAL DEPOSITION OF

ROBERT A. DURHAM PhD PE

Thursday, May 9, 2024

REPORTED BY:

MICHAEL E. MILLER, FAPR, RDR, CRR

Notary Public in and for the State of Texas

JOB NO. 30373

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2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

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4 MANTICORE FUELS, LLC
5 Petitioners,

6 v.

7 FUEL AUTOMATION STATION, LLC,
8 Patent Owner.

9 Case IPR2023-01236

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1 ORAL DEPOSITION OF ROBERT A. DURHAM PhD PE,
2 produced as a witness at the instance of the Patent
3 Owner and duly sworn, was taken in the above-styled
4 and numbered cause on the above-referenced date from
5 9:02 a.m. to 1:16 p.m. CDT before Michael E.
6 Miller, FAPR, RDR, CRR, Notary Public in and for the
7 State of Texas, reported by real-time stenographic
8 means at the offices of Baker Botts LLP, 910
9 Louisiana Street, 32nd Floor, Houston, Texas.

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DEPOSITION EXHIBITS		
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3		Durham in Support of Petition	
4		for Inter Partes Review of	
5		US Patent No. 10,815,118	
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P R O C E E D I N G S
May 9, 2024, 9:02 a.m. CDT

ROBERT A. DURHAM PhD PE,
having been duly sworn,
testified as follows:

EXAMINATION

BY ATTORNEY SZYPA:

Q. Good morning, Dr. Durham.

A. Good morning.

Q. Can you please state and spell your full
name for the record?

A. Sure. Robert Allan, A-L-L-A-N, Durham.

THE WITNESS: Do you need spellings?

THE STENOGRAPHER: (Shakes head.)

THE WITNESS: Okay.

ATTORNEY SZYPA: I'm going to hand
you three exhibits here.

(Whereupon, Durham Deposition
Exhibit 1, Patent Owner Fuel Automation
Station LLC'S Notice of Deposition of
Robert A. Durham re: US Patent

1 No. 9,586,805, was marked for
2 identification.)

3 ATTORNEY SZYPA: Exhibit 1 is the
4 notice of deposition in connection with the
5 IPR for the '805 patent.

6 (Whereupon, Durham Deposition
7 Exhibit 2, Patent Owner Fuel Automation
8 Station LLC'S Notice of Deposition of
9 Robert A. Durham re: US Patent
10 No. 10,815,118, was marked for
11 identification.)

12 ATTORNEY SZYPA: Exhibit 2 is the
13 notice of deposition for the IPR in connection
14 with the '118 patent.

15 (Whereupon, Durham Deposition
16 Exhibit 3, Patent Owner Fuel Automation
17 Station LLC'S Notice of Deposition of
18 Robert A. Durham re: US Patent
19 No. 10,974,955, was marked for
20 identification.)

21 ATTORNEY SZYPA: Exhibit 3 is the
22 notice of deposition in connection with
23 the '955 patent IPR.

24 BY ATTORNEY SZYPA:

25 Q. Do you understand that you're here to

1 testify today in connection with these notices of
2 deposition?

3 A. Yes, that's my understanding.

4 Q. Have you been deposed before?

5 A. Yes, sir.

6 Q. How many times?

7 A. Over a hundred.

8 Q. You understand that you're under oath as
9 if you were in a courtroom today, right?

10 A. Yes.

11 Q. Okay. Is there any reason that you can't
12 give truthful and accurate testimony today?

13 A. No.

14 Q. Are you taking any medications that might
15 affect your testimony today?

16 A. No.

17 Q. Let me know at any time today if you need
18 a break. I guess if there's a question pending,
19 though, I ask that you answer the question before we
20 leave for the break.

21 A. Sure.

22 Q. And if you ever don't understand a
23 question, I'd ask that you please let me know.

24 A. Okay.

25 Q. Have you worked with Ms. Flannery before

1 prior to these IPRs?

2 A. Yes, sir.

3 Q. How many times?

4 A. At least one IPR that I can think of
5 directly with --

6 Q. Do you remember the name of that IPR?

7 A. No. Too many numbers between now and
8 then.

9 Q. Do you remember the parties involved in
10 that IPR?

11 A. Yes.

12 Q. What were those?

13 A. Halliburton and ProFrac.

14 Q. Outside of that engagement, have you
15 worked with the Baker Botts law firm prior to these
16 IPRs?

17 A. There's been several IPRs in a court case
18 between the same parties, Halliburton and ProFrac,
19 as well as its predecessor. So yes, several IPRs.

20 Q. Anything else?

21 A. No.

22 Q. So the petitioners in this case are
23 Permian Global Inc. and Manticore Fuels LLC. Is it
24 okay if I refer to them in the short form as
25 petitioners today?

1 A. Sure.

2 Q. Okay. Have you worked with the
3 petitioners prior to these IPRs?

4 A. No, sir.

5 Q. And that's either of the petitioners,
6 correct?

7 A. Correct.

8 Q. Okay. When were you first approached by
9 the petitioners regarding these matters?

10 A. Probably in late spring or early summer
11 of 2023.

12 Q. And was that in connection with the IPRs
13 or the district litigation or both?

14 A. I don't know I can answer that question.
15 Just that it was -- there was a dispute. I don't
16 know if they contacted me based on the IPRs,
17 litigation, or what it was.

18 Q. They haven't engaged you to provide
19 services as an expert in connection with the
20 district court litigation?

21 A. No, I haven't provided -- I -- sorry.
22 I've not prepared anything in the
23 district court litigation.

24 Q. Have you reviewed any materials in
25 connection with the district court litigation?

1 A. I don't believe so. No, sir.

2 Q. Did you conduct any prior art searching
3 in connection with these IPRs?

4 A. Yes.

5 Q. How much prior art searching did you
6 conduct?

7 ATTORNEY FLANNERY: Object to form.

8 A. I'm not sure how to answer that. That
9 was part of my due diligence in the preparation of
10 the declaration was to perform some prior art
11 searching. So it was just part of the process.

12 BY ATTORNEY SZYPA:

13 Q. How many hours did you spend performing
14 prior art searching?

15 A. Oh, there's no way for me to know that.
16 I don't call that out separately for sure.

17 Q. You don't call that out separately?

18 A. No. I don't tabulate my time separately
19 based on patent search or preparation of --
20 sometimes I'll identify the report, but my time is
21 just recorded based on the job, not on the task.

22 Q. Was any of the prior art in the three IPR
23 petitions provided to you by counsel?

24 A. I -- seems maybe Van Vliet was. That's
25 the only one I can remember for sure. I think...

1 (Document review.)

2 A. I think maybe AFD may have been as well.
3 That's Exhibit 1007 in the '805 patent IPR. Those
4 are the ones I remember for sure.

5 BY ATTORNEY SZYPA:

6 Q. I noticed you have a binder in front of
7 you. Can you tell me what that is?

8 A. Sure. This is a copy -- a clean copy of
9 each of my declarations, one for each of the IPRs.

10 Q. When you say clean copy, there's no
11 annotations on that?

12 A. Correct. Oh, and I also have a small
13 errata sheet. There were some footnotes that didn't
14 get printed on the '955 patent IPR, so I have those
15 as well.

16 ATTORNEY FLANNERY: And we have some
17 extra copies of that as well if you need that.

18 ATTORNEY SZYPA: Okay. Have those
19 been submitted in connection with the petition
20 or in the --

21 ATTORNEY FLANNERY: No, this isn't
22 stuff that we filed with the petition. It's
23 just for today's deposition.

24 ATTORNEY SZYPA: Okay. Okay.

25 ///

1 BY ATTORNEY SZYPA:

2 Q. So those copies of the declaration that
3 you have in front of you, those are as they were
4 filed --

5 A. Yes.

6 Q. -- in connection with the petitions?

7 A. These are as they were filed, yes.

8 Q. Which references -- which prior art
9 references did you locate in your own prior art
10 searching?

11 A. I can go by exclusions. To my
12 recollection, the ones I did not just name. So
13 Coxreels, Shoap, Hosecraft, Cable, Lowrie. LCR I
14 and II, I actually don't recall whether I found that
15 or that was provided by counsel. And DeFosse I
16 found.

17 Q. Did you review materials in advance of
18 today's deposition?

19 A. Yes, sir.

20 Q. What did you review?

21 A. I reviewed each of my declarations, each
22 of the patents, each of the prior art references
23 that are identified. I think that encompasses it.
24 And the POPR and the institution decision for each
25 of the three cases. Sorry, POPR is P-O-P-R, patent

1 owner's preliminary response.

2 Q. You've done this before?

3 A. Yes, sir.

4 Q. How many hours did you spend preparing
5 for today's deposition?

6 A. I'm going to estimate between 25 and 30.
7 That's a rough estimate.

8 Q. Whom did you meet with during those
9 yesterday?

10 A. Ms. Flannery and Mr. Chuning yesterday.

11 Q. Anyone else?

12 A. No.

13 Q. How many times did you meet?

14 A. Just yesterday.

15 Q. Do you have any patents?

16 A. No, sir.

17 Q. You're not an inventor on any patents?

18 A. Not on any patents, no, sir.

19 ATTORNEY SZYPA: I'm going to hand
20 you what I've marked as Exhibit 4, which is
21 the declaration that you submitted in support
22 of the IPR in connection with the '805 patent.
23 I'll hand that to you.

24 (Whereupon, Durham Deposition
25 Exhibit 4, Declaration of Dr. Robert

1 Durham in Support of Petition for Inter
2 Partes Review of US Patent No. 9,586,805,
3 was marked for identification.)

4 ATTORNEY FLANNERY: I've got copies
5 of these, Counsel, so you can -- if you want
6 to make a stack somewhere over there.

7 ATTORNEY SZYPA: Can we shred them so
8 I don't have to take them back to Michigan?

9 ATTORNEY FLANNERY: Yes, we can.

10 ATTORNEY SZYPA: I'll just set them
11 over there.

12 I'm also going to hand you what I've
13 marked as Exhibit 5, which is the declaration
14 that you submitted in support of the petition
15 for IPR in connection with the '955 patent.

16 (Whereupon, Durham Deposition
17 Exhibit 5, Declaration of Dr. Robert
18 Durham in Support of Petition for Inter
19 Partes Review of US Patent
20 No. 10,974,955, was marked for
21 identification.)

22 ATTORNEY FLANNERY: I'm just going to
23 look at his copies and confirm that that's
24 what this is.

25 ATTORNEY SZYPA: Sure.

1 As well as Exhibit 6 which is the
2 declaration that you submitted in support of
3 the petition for IPR in connection with
4 the '118 patent.

5 (Whereupon, Durham Deposition
6 Exhibit 6, Declaration of Dr. Robert
7 Durham in Support of Petition for Inter
8 Partes Review of US Patent
9 No. 10,815,118, was marked for
10 identification.)

11 BY ATTORNEY SZYPA:

12 Q. Do you recognize Exhibit 4, Exhibit 5 and
13 Exhibit 6?

14 A. Yes, sir.

15 Q. And you submitted those on behalf of the
16 petitioners in these IPR proceedings, correct?

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

18 Q. How many hours did you spend preparing
19 these three declarations?

20 A. I don't know.

21 Q. Do you keep records of that?

22 A. Yes, sir. It would be in our billing
23 records.

24 Q. Do you have a rough idea of how many
25 hours?

1 A. No, sir. Those are, what, nearly a year
2 ago? I don't know at all.

3 Q. It's not something you looked at before
4 your deposition today to refresh your memory?

5 A. No, sir, that was not part of the
6 materials I reviewed.

7 Q. What was the writing process like for the
8 declarations?

9 A. Could you maybe phrase that or ask that a
10 different way?

11 Q. Sure.

12 Did you prepare the first draft of each
13 declaration?

14 A. Yes.

15 Q. You did.

16 And then what did you do after that?

17 A. The first draft went to counsel, and
18 we -- it was an iterative process to refine it from
19 that point forward.

20 Q. Did you meet with counsel at all before
21 preparing that first draft?

22 A. I'm sure we had video calls.

23 Q. You don't recall, though?

24 A. No.

25 Q. Did you meet in person?

1 A. Mr. Chuning and I went to Midland to see
2 Manticore's trailer, so -- but other than that, I
3 think that's the only -- that's the only, as I
4 recall, in-person meeting we had.

5 Q. And that was before you submitted your
6 declarations?

7 A. Yes.

8 Q. Okay. What was -- what was the trailer
9 that you saw in Midland?

10 A. It was a refueling trailer.

11 Q. Was it the CORE Automated Fueling
12 Solution that Permian Global offers?

13 A. I don't know. I didn't review those
14 photographs --

15 Q. Okay.

16 A. -- before I came.

17 Q. What is it -- can you describe the
18 product that you saw?

19 A. Yeah. Roughly, it was a trailer with a
20 fuel tank in the rear, control cabin in the front
21 and reels with hoses on them down the middle, two
22 rows, one on each side.

23 Q. For automated fueling?

24 A. Yes, sir, that's my understanding.

25 Q. Okay. Was it in operation when you saw

1 it?

2 A. No.

3 Q. It was in Midland you said?

4 A. It's -- Midland -- to me, Midland is a
5 really big area. It's mostly Permian. But it was
6 at their offices, wherever they are, in the Permian,
7 Midland or Odessa.

8 Q. Who is they?

9 A. Manticore.

10 Q. Manticore's offices. Okay.

11 At what rate are you billing your time in
12 connection with these IPRs?

13 A. I think this is still the old rate, so
14 305 an hour. I think that's right.

15 Q. Is that your standard rate?

16 A. That's the old standard rate.

17 Q. Old standard rate.

18 Have you increased that rate --

19 A. Yes.

20 Q. -- in connection with these proceedings,
21 though?

22 A. No, these are -- my recollection is these
23 would have been still under the old rate. We raised
24 rates the middle of the year last year.

25 Q. Who is we?

1 A. THEWAY Labs.

2 Q. What's THEWAY Labs?

3 A. That's the engineering firm I serve as
4 principal for.

5 Q. Did anyone else at THEWAY Labs assist you
6 in preparing your declarations?

7 A. No.

8 Q. Could you turn to page 66 of Exhibit 4 --
9 or you're welcome to look at your own copy in front
10 of you there. That's the '805 declaration.

11 A. Sure. 66, you said?

12 Q. Yes.

13 A. Okay.

14 Q. And that begins an Overview of the Prior
15 Art section.

16 Do you see that section I'm referring to?

17 A. Yes, sir.

18 Q. Okay. And I believe the first reference
19 there is US Patent Publication No. 2011/0197988 to
20 Van Vliet; is that correct?

21 A. Yes, sir.

22 Q. Is it okay if I refer to this reference
23 today in the short form, as Van Vliet?

24 A. Sure.

25 Q. And that's the same Van Vliet reference

1 as the ones discussed -- or as the one discussed in
2 Exhibit 5 and Exhibit 6, correct?

3 A. Yes, sir.

4 Q. Can you turn to page 70 of your
5 declaration, please, still Exhibit 4. And there's a
6 US Patent number there, 3,810,4817 [sic] to Cable;
7 is that correct?

8 A. No, sir.

9 Q. No?

10 A. No, I think you added a number. Or I
11 left one out, but I think you added a number.

12 Q. Okay. On page 70 there is mention of a
13 US Patent number 3,810,487 --

14 A. Yes.

15 Q. -- to Cable --

16 A. Yes, sir.

17 Q. -- is that correct?

18 A. Yes.

19 Q. Is it okay if I refer to that reference
20 in the short form, as Cable, today?

21 A. Yes, sir.

22 Q. And that's the same Cable used in
23 Exhibit 5, correct?

24 A. Yes, sir.

25 Q. On page 74, you discuss a US Patent

1 publication number 2018/0057348 to Lowrie,
2 L-O-W-R-I-E; is that correct?

3 A. I have that on page 73.

4 Q. Did I -- what did I say? Okay. Yeah,
5 page 73.

6 A. Okay. Yes, sir, it's on page 73,
7 correct.

8 Q. Okay. Is it okay if I refer to this
9 reference in the short form, as Lowrie, today?

10 A. Yes.

11 Q. Okay. On page 76, there is reference to
12 a prior art reference that you call AFD, which is
13 Exhibit 1007 in the associated petition; is that
14 correct?

15 A. Well, it's Exhibit 1007 to my
16 declaration. I don't -- I can't answer whether it
17 was on the petition as well. Probably was.

18 Q. This reference that you refer to in
19 paragraph 123 here, is it okay if I refer to it in
20 the short form, as AFD, today?

21 A. Yes.

22 Q. Let's go to page 81 next, and there's an
23 Exhibit 1008 that you refer to as Coxreels; is that
24 correct?

25 A. Yes, sir.

1 Q. Is it okay if I refer to this reference
2 in the short form, as Coxreels, today?

3 A. Yes, that's correct.

4 Q. That's correct, but if I do that, you'll
5 understand what I'm talking about?

6 A. Yes.

7 Q. Okay. And that's the same Coxreels
8 reference as you use in Exhibit 6, correct, your
9 declaration in connection with the '118 patent?

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

11 Q. Okay. I'd like to direct you to your
12 Experience and Qualifications section in Exhibit 4,
13 which starts on page 1.

14 A. Okay.

15 Q. And actually now, I'm going to direct you
16 to page 2, paragraph 4. You state that you have
17 expertise in the electrification of the oil and gas
18 industry from drilling and completion to downstream;
19 is that correct?

20 A. Yes, sir.

21 Q. Okay. What special considerations are
22 made in electrification in the oil and gas industry?

23 A. Could you maybe rephrase that question a
24 little bit?

25 Q. Sure.

1 A. That's kind of a really broad question.

2 Q. Sure.

3 Why does -- why is expertise needed in
4 electrification in the oil and gas industry?

5 A. To be able to understand the process of
6 replacing fueled engines with electric systems.

7 Q. Okay. So when you say electrification of
8 the oil and gas industry, you're referring to
9 replacing fueled engines with electric systems?

10 A. I mean, broadly that's where you start,
11 right? And then you move into controls and those
12 kind of things as well, which are a lot easier to do
13 on electric motors than they are on engines.

14 So it's really broad, but it starts with
15 that replacement process. We've been doing it for
16 about a hundred years. 1920s or so is when we
17 really started electrifying.

18 Q. What are some of the risks associated
19 with electrification in the oil and gas industry?

20 A. Availability, supply of electricity.
21 You've changed the potential risk for ignition.
22 There's grounding considerations, lightning
23 protection. Those -- I'd put those at the top of
24 the risks.

25 Q. Okay. Those are at the top. Are there

1 any other risks?

2 A. I'm sure there are. I don't -- not
3 coming to my mind right now. That wasn't something
4 I reviewed.

5 Q. But you're an expert in the field, right?

6 A. Sure.

7 Q. Okay. What about fire risks? Is that
8 something you consider during electrification in the
9 oil and gas industry?

10 A. Yeah. I think that's one of the ones
11 that I just mentioned. You change your ignition
12 potentials.

13 Q. Okay. So by ignition, you're referring
14 to ignition of fires?

15 A. Yes, sir.

16 Q. Okay. Any other safety risks associated
17 with electrification in the oil and gas industry?

18 A. Of course shock and electrocution are
19 always a risk. I'm sure there are others that you
20 would consider in any particular scenario in any
21 particular application, but those would encompass
22 the majority of the risks.

23 Q. What about running electricity adjacent
24 to flammable liquids?

25 A. Well, running it adjacent to flammable

1 liquids? Not a problem.

2 Q. Not a problem, okay.

3 Why is that?

4 A. Because there's no ignition scenario in
5 the normal circumstance when you just have a
6 conductor running next to something.

7 Q. Okay. What would create an ignition
8 scenario?

9 A. Switching, primarily switching.
10 Energization can as well when you first energize it
11 at the terminals. Some electronics development of
12 heat at the surface can serve as a -- well, not just
13 electronics. Like light bulbs, ballasts and those
14 kind of things can produce enough heat to be an
15 ignition source, so we take those into
16 consideration. Depending on the technology, the
17 motor, running a motor can create an ignition
18 scenario.

19 And of course you have to be concerned
20 with traveling -- the vapors from the flammable
21 liquid traveling in conduits or other raceways to a
22 source where you're doing switching or starting.

23 Q. Could you turn to paragraph 13 and let me
24 know when you're there.

25 A. Okay. I'm there.

1 Q. This says, quote: I have consulted and
2 investigated incidents on multiple oil and gas sites
3 where OSHA has also performed investigations
4 regarding injuries and fatalities that have occurred
5 at oil and gas locations, including drilling,
6 fracturing and completion operations, end quote.

7 Do you see that?

8 A. Yes, sir.

9 Q. Okay. What was your role in those OSHA
10 investigations that you're referring to?

11 A. Investigating the cause of the incident.

12 Q. Were you working with OSHA?

13 A. No.

14 Q. Who were you working with?

15 A. Whoever client I had.

16 Q. What's the purposes of OSHA, to your
17 knowledge?

18 A. OSHA is a Department of Labor
19 organization that promulgates rules for either
20 general industry or in some cases specific
21 industries.

22 Q. Rules in connection with --

23 A. Rules in connection with worker safety.

24 Q. Safe and healthy working conditions?

25 ATTORNEY FLANNERY: Object to form.

1 A. Worker safety I think is how I classified
2 it.

3 BY ATTORNEY SZYPA:

4 Q. And does OSHA set and enforce standards
5 to ensure that worker safety?

6 A. To help in that direction, yes, sir.

7 Q. Is safety the highest priority for OSHA?

8 ATTORNEY FLANNERY: Object to form.

9 A. That's certainly their role in the
10 Department of Labor. I can't speak for their
11 highest priority.

12 BY ATTORNEY SZYPA:

13 Q. It's a high priority for them?

14 A. It seems to be.

15 ATTORNEY FLANNERY: Object to form.

16 BY ATTORNEY SZYPA:

17 Q. Do you know what the consequences would
18 be for a failure to observe OSHA requirements in
19 connection with an automatic fueling unit?

20 ATTORNEY FLANNERY: Object to form.

21 A. It would depend on the circumstances what
22 those consequences would be.

23 BY ATTORNEY SZYPA:

24 Q. Personal injury?

25 ATTORNEY FLANNERY: Object to form.

1 A. Perhaps.

2 BY ATTORNEY SZYPA:

3 Q. Death?

4 ATTORNEY FLANNERY: Same objection.

5 A. Perhaps.

6 BY ATTORNEY SZYPA:

7 Q. Shutdown of a frac operation?

8 ATTORNEY FLANNERY: Same objection.

9 A. Perhaps.

10 BY ATTORNEY SZYPA:

11 Q. Fines?

12 ATTORNEY FLANNERY: Same objection.

13 A. I've seen fines from OSHA, yes, perhaps.

14 BY ATTORNEY SZYPA:

15 Q. Ejection from the well site?

16 ATTORNEY FLANNERY: Same objection.

17 A. I'd be surprised, but perhaps.

18 BY ATTORNEY SZYPA:

19 Q. I'd like to turn to paragraph 59 now. I
20 see here that, in the first sentence, it's your
21 opinion that mobile fuel delivery was well known in
22 the prior art for many years before the '805 patent
23 was filed; is that correct?

24 A. Yes.

25 Q. Okay. What do you mean by mobile fuel

1 delivery?

2 A. Fuel delivery that's not a fixed
3 permanent structure, but one that moves from
4 location to location.

5 And by location, I mean a geographic
6 space, not an oil and gas location.

7 Q. So oil and gas mobile fuel delivery was
8 not available before the '805 patent was filed?

9 A. No, that's not --

10 ATTORNEY FLANNERY: Object to form.

11 A. That's not what I intended to say at all.
12 It's just the word "location" means something
13 special in an oil and gas drilling operation.

14 BY ATTORNEY SZYPA:

15 Q. Understood.

16 You refer to aviation refueling in this
17 paragraph, correct?

18 A. Yes.

19 Q. And I understand you're a pilot?

20 A. Yes.

21 Q. Do aircrafts require continuous
22 refueling?

23 ATTORNEY FLANNERY: Object to form.

24 A. Not to my knowledge, no.

25 ///

1 BY ATTORNEY SZYPA:

2 Q. In the aviation refueling that you
3 mentioned, are those systems refueling 10 to 20
4 aircrafts at a time?

5 A. Perhaps. Not the ones I'm personally
6 familiar with, but I could imagine that.

7 Q. You're not familiar with ones that --

8 A. Correct.

9 Q. -- have --

10 And you're definitely not familiar with
11 ones that have before the filing of the '805 patent?

12 A. Correct.

13 Q. Those aviation refueling examples that
14 you mention, are they automatic?

15 ATTORNEY FLANNERY: Object to form.

16 A. What do you mean by automatic?

17 BY ATTORNEY SZYPA:

18 Q. Sure.

19 The refueling process, is it automatic?
20 Are there sensors at the end of the hose that detect
21 when the tank is too full or empty?

22 ATTORNEY FLANNERY: Object to form.

23 A. Yes, I have seen such sensors.

24 BY ATTORNEY SZYPA:

25 Q. What about a low-level sensor? Is there

1 a low-level sensor in that type of application?

2 A. No, I haven't -- don't think I've seen
3 that.

4 Q. Can you describe the system that you have
5 seen?

6 A. Sure. It's a fuel truck, very similar to
7 the ones we used to use in the fracturing
8 environment that would go from location to location.
9 You extend a hose into the aircraft, ground it, bond
10 it properly, and use it to fill the systems, use it
11 to fill the fuel tanks on the airplane.

12 Q. What's on the -- in the systems that
13 you've seen, what type of nozzle is on the end of
14 those hoses?

15 A. A nozzle appropriate for the type fuel,
16 either avgas or Jet A.

17 Q. Does it have a low-level sensor in it, to
18 your knowledge?

19 A. I think we've discussed that. No, I
20 don't recall seeing one of those.

21 Q. And these are systems that refuel the
22 aircrafts while the aircrafts are on the ground,
23 correct?

24 A. Yes, the ones I'm talking about here.

25 Q. Okay.

1 A. There certainly are systems for in-flight
2 refueling for certain aircraft, but that's not what
3 I'm referring to here.

4 Q. That's not what you're referring to as
5 mobile fuel delivery?

6 A. Correct.

7 ATTORNEY FLANNERY: Object to form.

8 A. Although I think that would qualify,
9 certainly.

10 BY ATTORNEY SZYPA:

11 Q. And why is that?

12 A. It's fuel delivery that's mobile, goes
13 from location to location; certainly is mobile.

14 Q. So that's the definition of mobile fuel
15 delivery that you're applying here, then?

16 A. Yeah, I think I said that earlier.

17 Q. Okay. And what would the in-air mobile
18 fuel delivery look like for an aircraft?

19 A. You have to have a receiving tube on the
20 front of the aircraft, and you deploy a drogue from
21 the tanker plane, fly that drogue to the nozzle in
22 flight and perform fueling operations.

23 Q. And the source, the fuel source is on the
24 aircraft, correct?

25 A. The fuel source is on a separate

1 aircraft.

2 Q. It's on a separate aircraft, okay.

3 A. Yes, sir.

4 Q. And that would connect to -- so the fuel
5 source is on one aircraft, and that could fuel a
6 second aircraft in air?

7 A. Yes.

8 Q. Okay. And you've seen that before
9 the '805 patent?

10 A. Oh, yes.

11 Q. Is that -- is that refueling multiple
12 aircrafts at once?

13 A. No, I don't think I've seen that.

14 Q. Okay. And so what is that process like?
15 The aircraft that needs fuel gets low, this other
16 aircraft comes, helps fill it up, and then what
17 happens?

18 A. They disconnect and go their separate
19 ways.

20 Q. Okay. I'd like to direct you to
21 paragraph 71. Again, here you mention that you're a
22 licensed pilot.

23 Do you believe that the person of
24 ordinary skill in the art in connection with any of
25 the '805, '955 or '118 patents that we're talking

1 about today would be a licensed pilot?

2 A. I can't exclude that. It's not part of
3 the definition.

4 Q. It's not necessary, though?

5 A. Correct, it's not necessary. I agree.

6 Q. Here you say, as a licensed pilot, you're
7 familiar with the use of reels such as those used in
8 Coxreels on mobile fueling trucks used to fuel
9 aircraft.

10 Do you see that?

11 A. Yes, sir.

12 Q. Was it the Coxreels 1125 series model
13 that you saw in that example there?

14 A. I don't know the answer to that.

15 Q. You weren't ever close enough to see who
16 manufactured those reels?

17 A. No, I disagree.

18 Q. You were?

19 A. Yes.

20 Q. Okay. But you don't know if it was the
21 Coxreels 1125?

22 A. Correct.

23 Q. How close would you get to those hose
24 reels as a pilot?

25 A. Hand on the hose.

1 Q. Hand on the hose.

2 A. Yeah.

3 Q. Okay.

4 A. Pretty close.

5 Q. Okay. But you still don't know whether
6 the Coxreels 1125 series was the hose reel that you
7 saw in that application?

8 A. Correct.

9 Q. I'd like to move to paragraph 149. And
10 this is under the subheading for what you refer to
11 as claim feature 1(c) in the '805 patent.

12 Do you see that?

13 A. Yes, sir.

14 Q. And you say: Van Vliet discloses "first
15 and second manifolds on the mobile trailer and
16 fluidly connected with the pump"; is that correct?

17 A. Yes.

18 Q. And there's a footnote 174 in connection
19 with this paragraph, correct?

20 A. Yes, there is. Well, in connection with
21 the heading, the entire section.

22 Q. Okay. Sure. And thank you for that
23 clarification.

24 Footnote 174 is in connection with the
25 claim 1(c) subheading section?

1 A. Yes, that's correct.

2 Q. Okay. And at the beginning of
3 footnote 174 you say: I have applied Van Vliet to
4 the claimed manifolds based on its use of the same
5 terminology as the '805 patent claims.

6 Do you see that?

7 A. Yes.

8 Q. What do you mean by that?

9 A. Well, what I mean is Van Vliet says it
10 has manifolds 36 and 38, and I used the term
11 "manifolds" in Van Vliet to map, if you will, to the
12 manifolds in the claim language.

13 Q. So is your allegation that Van Vliet
14 discloses this claim feature only based on its use
15 of the same terminology?

16 A. Well, based on my entire analysis. I
17 wouldn't say it's an allegation. I'd say it's an
18 analysis in paragraphs 149, 150, and 151. There's
19 an entire section there.

20 Q. What would a person of ordinary skill in
21 the art understand the term "manifold" to be?

22 A. I would expect there to be a certain
23 structure in any given application, but I didn't get
24 into that kind of analysis in this section. I just
25 simply found the same term used in Van Vliet and

1 used in the same ways it is in the -- described in
2 the -- in this case '805 patent, and a couple of the
3 terms that way.

4 Q. So you didn't consider how a person of
5 ordinary skill in the art would interpret the term
6 "manifold" in this section?

7 ATTORNEY FLANNERY: Object to form.

8 A. No, I would say that I did -- I did
9 analyze how a POSITA would understand the use of the
10 term "manifold" in Van Vliet in comparison with the
11 claim language and the specification of the '805
12 patent.

13 BY ATTORNEY SZYPA:

14 Q. And what would that understanding be?

15 A. That they're described the same way, use
16 the same terms and described the same way in both
17 references.

18 Q. Why does Van Vliet disclose a manifold?

19 A. Because it says each tank 18, 20 is
20 connected to respective pumps 32, 34 and then to
21 respective manifolds 36, 38. And then it describes
22 it in a very similar manner to what's described for
23 manifold in the '805 patent.

24 Q. Which is what?

25 A. Just that term. If you look, the figures

1 are similar and the use of the terminology is
2 similar, so that's how I coupled those.

3 Q. What does the Figure 1 representation of
4 the manifolds in Van Vliet represent to a person of
5 ordinary skill in the art?

6 A. There's a structure that distributes fuel
7 from one line to multiple valves. In this case, 36
8 and 38 are called out. There's no representation of
9 what that physical structure looks like, but just --
10 but the flow line -- the flow diagram, Figure 1, is
11 what I would call a schematic or flow diagram is
12 there, shows those flow characteristics.

13 Q. So is a structure that distributes fuel
14 from one line to multiple valves a manifold?

15 ATTORNEY FLANNERY: Object to form.

16 A. Could be, depending on the physical
17 structure.

18 BY ATTORNEY SZYPA:

19 Q. Is there an example you can think of
20 where it couldn't be a manifold?

21 ATTORNEY FLANNERY: Object to form.

22 A. Where a structure of a manifold could not
23 be a manifold?

24 BY ATTORNEY SZYPA:

25 Q. Where a structure that distributes fuel

1 from one line to multiple valves is not a manifold.

2 A. I would want to look at each individual
3 structure before I made that determination.

4 Q. So sitting here today, you can't think of
5 an example?

6 A. No, I wouldn't want to pull an example
7 out of the air. I'd want to look at -- anything
8 you're looking at, I'd want to analyze it and see if
9 it is or is not a manifold.

10 Q. What would go into that analysis?

11 A. Looking at the structure, looking at the
12 form of the structure, comparing that to how a
13 POSITA would understand the term, use manifolds
14 outside that structure, and see if it meets the same
15 terminology.

16 Q. What about a pipe with multiple outlets?
17 Would that be a manifold?

18 ATTORNEY FLANNERY: Object to form.

19 A. I would want to look at the pipe in
20 question to see if it was or not.

21 BY ATTORNEY SZYPA:

22 Q. What kind of questions would you need to
23 have answered to determine that?

24 A. I'd want to look at the physical
25 structure and see if it matches a manifold.

1 Q. And how would the physical structure
2 match a manifold?

3 A. It would depend on the circumstances, so
4 I would say generally a pipe that distributes to
5 valves is not a manifold. I can think of pipe that
6 distributes to valves -- for example, a plumbing
7 system certainly is not a manifold.

8 Q. Okay. And what does that look like?

9 A. A pipe that goes to valves in different
10 locations.

11 Q. The valves are in series with the pipe?

12 A. Well, valves are usually --

13 ATTORNEY FLANNERY: Object to form.

14 Sorry. Give me a half second.

15 A. Yeah. Valves are in series with some
16 pipe.

17 BY ATTORNEY SZYPA:

18 Q. So you don't think a plumbing system
19 includes manifolds?

20 ATTORNEY FLANNERY: Object to form.

21 A. That's not what I said at all.

22 BY ATTORNEY SZYPA:

23 Q. What did you say?

24 A. What I said is a pipe that distributes
25 across to valves in a plumbing system is not a

1 manifold.

2 Q. So that's one example of --

3 A. That's why it's so important to look
4 at -- to physically look at what you're analyzing.

5 Q. So let's look at Figure 1 in Van Vliet.
6 What makes the structures 36 and 38 manifolds there?

7 A. The description in the text.

8 Q. Which is what?

9 A. Van Vliet calls them manifolds 36 and 38.

10 Q. Is there anything besides the fact that
11 Van Vliet uses the nomenclature "manifolds" that
12 makes 36 and 38 manifolds to a person of ordinary
13 skill in the art in Van Vliet?

14 A. No, sir.

15 Q. No? So your entire analysis and
16 conclusion that Van Vliet discloses this claim
17 feature 1(c) is based on the fact that Van Vliet
18 uses the term "manifolds"?

19 ATTORNEY FLANNERY: Object to form.

20 A. No, not at all.

21 BY ATTORNEY SZYPA:

22 Q. What else is it based on?

23 A. It's based on the figure. It's based on
24 how it's used. But the way we know that they're
25 manifolds at the end of the day is it calls them

1 manifolds and not some other structure.

2 Q. Okay. Let's talk about that, then.

3 You said it's based on the figures. So
4 what in the figures did you base your conclusion on
5 that Van Vliet discloses manifolds?

6 ATTORNEY FLANNERY: Object to form.

7 A. Because those manifolds in Van Vliet are
8 used to distribute, in this case, the fuel to
9 various locations, which is one reason for a
10 manifold, either to collect or distribute things.

11 Whether a particular structure is a
12 manifold without the teachings of the -- I'm sorry,
13 the text of the specification, we would not know if
14 they were or not.

15 BY ATTORNEY SZYPA:

16 Q. Is that the function of a manifold?

17 A. It's one of them.

18 Q. Okay. You also said that your conclusion
19 that Van Vliet discloses a manifold is both based on
20 the figure and based on how it's used.

21 So how is your conclusion based on how
22 it's used?

23 A. I think I just said that. With -- we
24 know that one function of a manifold is to
25 distribute fluids or fuel, in this case, to

1 different locations, and we know that Van Vliet
2 calls them manifolds. So taking the two together,
3 then we know they're manifolds.

4 Q. Anything else?

5 A. No, that's it.

6 Q. Do manifolds have any other functions
7 than distributing fluids or fuel?

8 A. Sure. It can be depending on the
9 structure of the manifold.

10 Q. Like what?

11 A. I've seen manifolds that perform
12 analysis -- sensor analysis and operational value.
13 It just depends on the structure. That's why it's
14 so important to look at what you're analyzing to see
15 if it matches the definition and matches the
16 structure of the manifold.

17 Q. So manifolds can have multiple different
18 types of structures?

19 A. It can have -- yeah, you can have various
20 structures depending on how it's formed, sure.

21 Q. In the second sentence in footnote 174
22 you say that you also understand that patent owner
23 has alleged in a pending lawsuit against petitioners
24 that certain structures in the systems accused of
25 infringing the '805 patent constitute manifolds.

1 Can you explain that understanding to me?

2 A. Well, that's my -- that's it. That's my
3 understanding. Counsel has told me that there's
4 certain allegations that there's manifolds in the
5 petition -- or I assume in the petition, and I
6 considered that.

7 Q. So it's based on conversations with
8 counsel?

9 A. Yes.

10 Q. Anything else?

11 A. No.

12 Q. Did you review any infringement
13 contentions in the district court litigation?

14 A. No.

15 Q. No. Noninfringement contentions?

16 A. No, I don't think I've seen anything in
17 the district court litigation, as I mentioned
18 earlier.

19 Q. So this sentence is just based on a
20 conversation that you had with counsel?

21 A. Yes.

22 Q. In the last sentence of this footnote you
23 say: However, I do not concede that any other
24 structure, even one having a schematic like that
25 shown or described in Van Vliet, would be considered

1 a manifold by a person of ordinary skill in the art,
2 absent the information described above.

3 What do you mean by that?

4 A. As I said earlier, you can't just look at
5 Figure 1 and know that 36 and 38 are manifolds. You
6 need the description in the text of the
7 specification that describes them as manifolds to
8 know that. So without that description in the
9 specification, just because the figure is there,
10 doesn't tell us they're manifolds.

11 Q. And what is that description in the
12 specification?

13 A. Manifolds 36, 38.

14 Q. The nomenclature?

15 A. Well, that's what I'm referring to,
16 respective manifolds 36 and 38.

17 Q. And the functionality too?

18 A. And the functionality, sure. It takes
19 both.

20 ATTORNEY SZYPA: Take a five-minute
21 break? I want to grab a water.

22 ATTORNEY FLANNERY: Sure.

23 (Recess taken, 9:54 a.m. to
24 10:04 a.m. CDT)

25 ///

1 BY ATTORNEY SZYPA:

2 Q. Dr. Durham, I'd like to go to
3 paragraph 123, still in Exhibit 4, the '805
4 declaration.

5 A. 123, you said?

6 Q. Paragraph 123.

7 A. Okay. Sure.

8 Q. And you state that: AFD is an archived
9 web page from September 22nd, 2015.

10 Is that correct?

11 A. Yes, sir.

12 Q. If we jump to paragraph 125 now, here
13 you're opining on how a person of ordinary skill in
14 the art would navigate to the AFD prior art; is that
15 correct?

16 A. There's portions of that description,
17 yes, sir.

18 Q. And you show a screenshot below on
19 page 79 here of a link that you say a person of
20 ordinary skill in the art would click on; is that
21 correct?

22 A. Yes, sir.

23 Q. What's the date of that snapshot?

24 A. The date of the snapshot?

25 Q. Yes. Can you tell?

1 A. If you have Exhibit 1012, I'd want to
2 look at that.

3 Q. You need to see Exhibit 1012 to determine
4 that?

5 A. Sure.

6 ATTORNEY SZYPA: So I'll hand you
7 Exhibit 1012 of the '805 IPR, which I will
8 mark as Exhibit 7.

9 (Whereupon, Durham Deposition
10 Exhibit 7, Exhibit 1012, Affidavit of
11 Nathaniel E. Frank-White, was marked for
12 identification.)

13 THE WITNESS: September 8th, 2015.
14 BY ATTORNEY SZYPA:

15 Q. So that's different from the date on the
16 AFD reference, correct?

17 A. Yes, that's earlier than the date on the
18 AFD reference.

19 Q. So how would someone click on a link from
20 September 8th, 2015 and get to a page on
21 September 22nd, 2015?

22 A. Let me see if he described that.

23 (Document review.)

24 A. I'm not -- actually, could you rephrase
25 that question? That doesn't make a lot of sense to

1 me.

2 BY ATTORNEY SZYPA:

3 Q. Doesn't make sense to me either.

4 You're saying in paragraph 125 here --
5 you're showing a snapshot in your report, right, and
6 you say: a person of ordinary skill in the art
7 would click on the "On-Site Refueling" as shown
8 below.

9 Correct?

10 A. Correct.

11 Q. Okay. And that is a snapshot from the
12 Wayback Machine from September 8th, 2015, correct?

13 A. Yes.

14 Q. Okay. Now, if we go back to exhibit --
15 the AFD reference, that is a snapshot from
16 September 22nd, 2015.

17 A. Correct.

18 Q. So my question to you is: How would
19 someone click on a link from September 8th, 2015 to
20 take them to a page on September 22nd, 2015?

21 ATTORNEY FLANNERY: Object to form.

22 A. Same question. I still don't understand
23 your -- understand what your question is.

24 BY ATTORNEY SZYPA:

25 Q. Okay. In paragraph 125, you say: From

1 the AFD Fuel page, the person of ordinary skill in
2 the art would click on "On-Site Refueling" as shown
3 below.

4 Is that correct?

5 A. Yes.

6 Q. Okay. And what are you describing there?

7 A. The figure that's there, that's part
8 of -- taken out of Exhibit 1012. It's on pages 8
9 and 9 of 1012.

10 Q. And this figure is what?

11 A. It's an archive of the AFD Fuel -- a
12 portion of the AFD Fuel website.

13 Q. From what date?

14 A. September 8th, 2015.

15 Q. In paragraph 126 you say: This would
16 take the POSITA to the AFD reference.

17 That's your testimony, correct?

18 A. Correct.

19 Q. Okay. How?

20 A. You'd just -- by following the hyperlinks
21 embedded in the button.

22 Q. But what is the AFD reference?

23 A. Okay. I think I understand the problem.
24 I think you're missing the portion of my
25 paragraph 123 that says: At least as early as

1 September 22nd, 2015.

2 So September 8th is at least as early as
3 September 22nd.

4 Q. But September 22nd is the AFD reference's
5 date, correct?

6 A. Yes, that page -- that portion of the web
7 page was archived on September 22nd. The other
8 portions of the website were archived in this
9 example, September 8th.

10 Q. So how could you click on an archived
11 link from September 8th -- let's go to
12 September 8th, okay?

13 What is your understanding of how Wayback
14 archives its web pages?

15 A. It archives as described by Mr. White,
16 that it used web archiving software that
17 automatically stores copies of files available via
18 the Internet, each file preserved as it existed at a
19 particular point in time.

20 Q. So the snapshot shown under
21 paragraph 125, what point in time is that from?

22 A. September 8th.

23 Q. Okay.

24 A. That particular archive date was
25 September 8th.

1 Q. So if I were to click on this link,
2 shouldn't it take me to a September 8th version of
3 the web page that is associated with that link?

4 ATTORNEY FLANNERY: Object to form.

5 Sorry, just give me one second.

6 THE WITNESS: Sure.

7 A. That's a question for Mr. White. I know
8 that if you do click on that September 8th, then you
9 go to September 22nd, the September 28th archive on
10 the next page.

11 BY ATTORNEY SZYPA:

12 Q. Through the Wayback Machine?

13 A. Yes.

14 Q. But you can't speak to how that was
15 actually -- a POSITA would have done that on
16 September 8th, correct?

17 A. No, I disagree. I think based on
18 Mr. White's declaration, that is exactly what would
19 happen.

20 Q. Could the AFD reference have been changed
21 between September 8th -- I'm sorry. Strike that.

22 The AFD reference is associated with a
23 particular hyperlink, correct?

24 A. Correct.

25 Q. That is -- takes you to a web page?

1 A. Correct.

2 Q. Okay. Could that web page have been
3 changed between September 8th and September 22nd?

4 ATTORNEY FLANNERY: Object to form.

5 A. I don't know the answer to that.

6 BY ATTORNEY SZYPA:

7 Q. You don't know.

8 A. Right.

9 Q. So you can't say for certain that this
10 navigation that you're describing in paragraphs 125
11 and 126 is exactly what would have happened on
12 September 8th, 2015?

13 ATTORNEY FLANNERY: Object to form.

14 A. I disagree. I think to a reasonable
15 degree of certainty that we can say that.

16 BY ATTORNEY SZYPA:

17 Q. But you're not sure?

18 A. I think, yes, I am sure to a reasonable
19 degree of certainty.

20 Q. You're sure that the web page associated
21 with the AFD reference was not changed between
22 September 8th and September 22nd, 2015?

23 ATTORNEY FLANNERY: Object to form.

24 A. No, I think I said I don't know the
25 answer to that. I said to a reasonable degree of

1 certainty that if you clicked on that page on
2 September 22nd, it would look very -- it would look
3 the same or at least very functionally similar to
4 what it did on September 8th.

5 BY ATTORNEY SZYPA:

6 Q. That's not my question, though.

7 I'm asking if you're sure that the web
8 page associated with the AFD reference was not
9 changed between September 8th and September 22nd,
10 2015?

11 ATTORNEY FLANNERY: Object to form,
12 asked and answered.

13 A. I think to a reasonable degree of
14 certainty we can be sure because there's no evidence
15 to the contrary, and we do have evidence to say it's
16 the same.

17 BY ATTORNEY SZYPA:

18 Q. How much is a reasonable degree of
19 certainty?

20 A. More likely than not.

21 Q. 51%?

22 A. More likely than not.

23 Q. What's more likely than not?

24 A. That's the standard I understand you're
25 supposed to apply.

1 Q. Is that the standard for public
2 accessibility?

3 ATTORNEY FLANNERY: Object to form.

4 A. I don't have an answer to that.

5 ATTORNEY SZYPA: Okay. I'm going to
6 hand you what I've marked as Exhibit 8, which
7 is Exhibit 1007 to the '805 petition, also
8 referred to today as the AFD reference.

9 (Whereupon, Durham Deposition
10 Exhibit 8, Exhibit 1007, AFD Onsite
11 Refueling Web Pages, was marked for
12 identification.)

13 BY ATTORNEY SZYPA:

14 Q. Does that look familiar to you?

15 A. Yes, sir.

16 Q. Can you see the hose reels in this
17 exhibit?

18 A. No, sir.

19 Q. But it's your opinion that AFD does have
20 hoses coming out of two sides of its unit, correct?

21 A. Yes, sir.

22 Q. Assuming that's the case, does that
23 necessitate having two rows of reels inside the
24 trailer?

25 ATTORNEY FLANNERY: Object to form.

1 (Document review.)

2 ATTORNEY SZYPA: I see you're looking
3 through your reports there, so take your time.

4 A. No.

5 BY ATTORNEY SZYPA:

6 Q. It wouldn't necessitate any type of
7 aisleway inside the trailer either then, correct?

8 A. Correct.

9 Q. Okay.

10 A. Well, there would need to be some kind of
11 access -- well, that's not true.

12 No, it would not.

13 Q. Final answer, no, it would not?

14 A. I think based on the combinations and the
15 rest of the teachings, we can say there was one, or
16 there would be one in combination, but that
17 particular photograph in and of itself does not
18 necessitate --

19 Q. When you say the combination and the rest
20 of the teachings, are you referring to other
21 references?

22 A. Well, that one, the fact that there's the
23 flap on the end teaches us that there is an aisle,
24 and the combination with, for example, Cable, there
25 would be an aisle.

1 But the simple fact that the reel --
2 sorry, the hoses come out both sides does not
3 necessitate a walkway.

4 Q. Let's go to paragraph 130 now in the
5 Exhibit 4, which is the '805 patent declaration.

6 A. Okay.

7 Q. Now, you state that Coxreels is a website
8 from April 8th, 2014, correct?

9 A. Correct.

10 Q. And that's based on your understanding of
11 the Wayback Machine archives?

12 A. And Exhibit 1013.

13 Q. And Exhibit 1013. What's 1013?

14 A. I'm sorry, 1030. I'm sorry, I read that
15 reference wrong.

16 Q. 1030. Okay.

17 Which is the affidavit associated with
18 the Coxreels reference?

19 A. Correct.

20 Q. From Mr. White?

21 A. Yes.

22 Q. Okay.

23 A. Well, I presume it's Mr. White still,
24 but...

25 Q. Yeah, me too.

1 From a representative of Wayback, how
2 about that?

3 A. Yes, sir.

4 Q. Okay.

5 A. Let me see if I -- oh, I did say -- yes,
6 Mr. White -- or Mr. Frank-White --

7 Q. Okay.

8 A. -- at paragraph 131 of my declaration.

9 Q. Yes. Correct, Frank-White. Okay.

10 And then in paragraphs 132 and 133, you
11 opine on how a person of ordinary skill in the art
12 could have located the Coxreels reference, correct?

13 A. Yes, sir.

14 Q. Okay. And on page 84 you show a
15 screenshot from the Wayback archive, correct?

16 A. Yes.

17 Q. So this is the first step that you're
18 saying a person of ordinary skill in the art would
19 have taken to reach the Coxreels reference?

20 A. Correct.

21 Q. Okay. And what's the date on that
22 particular archived web page?

23 A. April 12th.

24 Q. Okay. And that's different, again, from
25 the Coxreels reference, correct?

1 A. Correct.

2 Q. Okay. And it comes after the date of the
3 Coxreels reference, correct?

4 A. Yes. There's some four days' difference
5 in the archive dates.

6 Q. Screenshot 133 -- I'm sorry.
7 The screenshot -- there's another
8 screenshot in connection with paragraph 133; is that
9 correct?

10 A. Yes, sir.

11 Q. And that's another archived web page from
12 the Wayback Machine; is that correct?

13 A. Yes, sir.

14 Q. Okay. And what's the date on that one?

15 A. Do you have 1030 I can look at?

16 Q. Yeah.

17 ATTORNEY SZYPA: So I'll mark as
18 Exhibit 9 Exhibit 1030 from the petition in
19 connection with the '805 patent.

20 (Whereupon, Durham Deposition
21 Exhibit 9, Exhibit 1030, Affidavit of
22 Nathaniel E. Frank-White, was marked for
23 identification.)

24 ATTORNEY SZYPA: There you go, sir.

25 ATTORNEY FLANNERY: Thank you.

1 THE WITNESS: April 26th, 2014.

2 BY ATTORNEY SZYPA:

3 Q. So again, the dates from the two
4 snapshots that we just talked about do not match the
5 dates from the Coxreels reference, correct?

6 A. Correct.

7 Q. Okay. So on April 8th, 2014, you're not
8 certain that this is actually how a person of
9 ordinary skill in the art would have accessed the
10 Coxreels reference, are you?

11 ATTORNEY FLANNERY: Object to form.

12 A. I would say there's a reasonable degree
13 of certainty that it would be, and those -- what is
14 that, 14 to 18 days? Perhaps something changed, but
15 based on my experience with the Coxreels website
16 even today, I would have been very surprised if it
17 changed. The structure is very similar today.

18 BY ATTORNEY SZYPA:

19 Q. Let's go to paragraph 132. In the -- I
20 guess I'm looking at the part on page 83 here.

21 A. Okay.

22 Q. That last sentence there, you say: To
23 get to Coxreels, a person of ordinary skill in the
24 art visiting the Coxreels website would have hovered
25 over the Products link and clicked on the Hand-Crank

1 Reels option that appears.

2 Do you see that?

3 A. Yes.

4 Q. Why would a person of ordinary skill in
5 the art, in your opinion, select hand-crank reels at
6 that stage?

7 A. The products page? I take you to the
8 next page. Just as an exercise in finding out what
9 products are available. Hand-crank or
10 motor-driven -- the 1125 are hand-crank or
11 motor-driven reels.

12 Q. But in this sentence, you specify
13 hand-crank reels. Is there a reason for that?

14 A. Not particularly. As I recall, it might
15 be the first one on the list, but I don't recall it
16 with any certainty.

17 Q. So you don't remember why the person
18 might choose hand-crank reels instead of a different
19 subcategory?

20 A. It's an option. It's one of just two or
21 three options, so it would have been one they would
22 have tried.

23 Q. Do you think a person of ordinary skill
24 in the art, when looking to modify the Van Vliet
25 system, would have been looking at hand-crank reels?

1 A. Yes.

2 Q. Why is that?

3 A. As an option in the designing of the
4 system.

5 Q. Do you think hand-crank reels are
6 suitable for their application in the Van Vliet
7 system?

8 A. Yes.

9 Q. Why is that?

10 A. They're more reliable than, for example,
11 a spring-driven reel, and they're simpler than a
12 motor-driven reel.

13 Q. What are some of the drawbacks of a
14 hand-crank reel?

15 A. That you have to go and crank it.

16 Q. It takes a lot of effort, right?

17 ATTORNEY FLANNERY: Object to form.

18 A. It takes -- no, I won't classify it as a
19 lot of effort, no. It takes time to go do it, but
20 it also takes time to do a spring-driven or a
21 motor-driven, so I don't know if that's a
22 disadvantage.

23 BY ATTORNEY SZYPA:

24 Q. Would it take more time, in your opinion,
25 to hand-crank --

1 ATTORNEY FLANNERY: Object to form.

2 BY ATTORNEY SZYPA:

3 Q. -- than spring-driven or motor-driven,
4 for example?

5 ATTORNEY FLANNERY: Object to form.

6 A. I haven't studied that with regard to
7 these particular reels. My experience is hand-crank
8 reels are faster as a general rule.

9 BY ATTORNEY SZYPA:

10 Q. You haven't studied that but that's your
11 experience?

12 A. Yeah, I haven't looked at these
13 particular set of reels to do that analysis, but my
14 experience is hand-crank reels can be done faster as
15 a general rule.

16 Q. That wasn't something you considered in
17 connection with Coxreels, though?

18 A. Correct.

19 ATTORNEY SZYPA: I'm going to hand
20 you Exhibit 10, which is Exhibit 1008 in
21 connection with the '805 IPR.

22 (Whereupon, Durham Deposition
23 Exhibit 10, Exhibit 1008, Coxreels Web
24 Pages, was marked for identification.)

25 THE WITNESS: Okay.

1 BY ATTORNEY SZYPA:

2 Q. Do you see where, on the first page in
3 the right-hand column, it lists possible fields of
4 application?

5 A. Yes, sir.

6 Q. And there's a variety of subcategories
7 and bulleted subcategories under that, correct?

8 A. Correct.

9 Q. Which of those subcategories does the
10 Van Vliet system fall under?

11 A. Construction sites, chemical fluid
12 transfer.

13 Q. Why would it fall under chemical fluid
14 transfer?

15 A. Certainty, fuel is a chemical. It falls
16 under the broad category of chemicals for sure.
17 It's a hydrocarbon compound.

18 Q. That's how you interpret -- that's what
19 you interpret "chemical fluid transfer" to mean --
20 to encompass?

21 A. Yes. A chemical fluid transfer would
22 encompass transferring hydrocarbon, which is a
23 chemical.

24 Q. What's a hydrocarbon?

25 A. It's a molecule made up of carbon,

1 hydrogen and oxygen molecules in various forms and
2 configurations.

3 Q. What's a hydrocarbon liquid?

4 A. It's one of those hydrocarbons in a
5 liquid phase.

6 Q. What are some examples of a hydrocarbon
7 liquid?

8 A. Oil, coolant, diesel, oil, gasoline,
9 kerosene.

10 Q. Is water a hydrocarbon liquid?

11 A. No. Water doesn't have any carbon.

12 Q. So it's your belief that Van Vliet falls
13 under construction sites and/or chemical fluid
14 transfer?

15 A. Yes.

16 Q. Why a construction site?

17 A. I -- a fractionating site is certainly a
18 construction site. You're constructing or
19 completing a well.

20 Q. So you're interpreting construction site
21 to encompass a fracturing site?

22 A. Yes, sir.

23 Q. There's no bullet here for fuel delivery,
24 is there?

25 A. No, not directly. Chemical fuel -- fluid

1 transfer certainly would encompass fuel delivery,
2 but the words "fuel delivery" don't show up.

3 Q. Now, this Coxreels reference lists a
4 variety of model numbers.

5 Do you agree with that? On the end of
6 page 1 there and then continuing on to page 2?

7 A. Oh, yes. On this one, yes.

8 Q. There's several different 1125 series
9 models, correct?

10 A. Yes, sir.

11 Q. Now, at various times in your
12 declaration, you're proposing that a person of
13 ordinary skill in the art would have modified the
14 Van Vliet reference to include reels like the
15 Coxreels 1125 series, correct?

16 A. Yes.

17 Q. In your opinion, when doing that, are
18 they selecting a specific one of these models?

19 A. I would expect --

20 ATTORNEY FLANNERY: Object to form.

21 Sorry.

22 A. Yes, I would expect the designer to
23 choose the model most appropriate for whatever
24 length of hose is the biggest variance here that
25 they would want to store.

1 BY ATTORNEY SZYPA:

2 Q. And what hose lengths do the 1125 series
3 models accommodate?

4 A. Between 100 and 700 -- I'm sorry, between
5 50 and 700.

6 Q. Is there a specific hose length that you
7 think is appropriate for the Van Vliet system?

8 A. I would say it depends. I chose this one
9 out of the list on the previous page based on the
10 ability to capture 700 feet. I think 700 feet
11 probably would be a good number for a maximum length
12 at a fracturing site.

13 So I would probably look at one at
14 700 feet. A different designer may know he can park
15 his vehicle or his trailer at a different location
16 or tighter spaces, maybe a smaller fracturing site,
17 may choose a smaller length.

18 Q. But in your analysis in connection with
19 these declarations, you haven't at any time chosen a
20 specific Coxreels 1125 model, have you?

21 A. That's correct. For the way I use
22 Coxreels, it doesn't matter which of these models
23 you choose.

24 Q. It doesn't matter.

25 A. Correct. They all have the same

1 features. Each one of these models has the same
2 features as the others with the way that I used them
3 in the analysis.

4 Q. Are there any models on here that you
5 think would not work in connection with the
6 Van Vliet system?

7 A. No, they would all work.

8 Q. They would all be suitable for reels in
9 the Van Vliet system?

10 A. In the Van Vliet system, yes. For
11 application at a particular fracture site, perhaps
12 not.

13 Q. Are there any that you would eliminate?

14 A. I would be real concerned about those
15 shorter than 300 feet, but I don't know. I don't
16 know the layout of every single frac site, so there
17 may be some that are appropriate for, for example,
18 smaller frac jobs.

19 Q. When you say 300 feet, you're referring
20 to the hose length?

21 A. Yes.

22 Q. Any others you think wouldn't work with
23 Van Vliet?

24 A. Oh, they would all work with Van Vliet.
25 They may not all be appropriate for a particular

1 location. And in that case, location, I am meaning
2 an oil and gas location, a well pad.

3 Q. Say for like a particular well site
4 design, for example, some -- some might not work?

5 A. Well, no, for a particular fracturing
6 layout. Well site design is a different term.

7 Q. Sure.

8 For a particular fracturing layout, some
9 of these reels on the list may not work?

10 A. Correct.

11 Q. And that's based on what?

12 A. Just the length of hose. The fracturing
13 layouts -- some fracturing layouts are certainly
14 longer than 50 feet.

15 Q. Anything else?

16 A. No.

17 Q. And it's your position that the reels
18 in -- listed in the Coxreels 1125 reference -- I'm
19 going to start over.

20 It's your position that the reels listed
21 in Coxreels provide part of the fluid path; is that
22 correct?

23 A. Yes.

24 Q. They have like an internal fluid path
25 within them?

1 A. Yes, they do.

2 Q. Okay. What is the material of that
3 internal fluid path?

4 A. It's a brass- or nickel-plated path.

5 Q. It is. Okay.

6 And where does it say that?

7 A. You get that from the first bullet under
8 Swivel.

9 Q. So is that describing the swivel or the
10 internal fluid path?

11 ATTORNEY FLANNERY: Object to form.

12 A. It's describing the fluid path as part --
13 and the swivel as part of that fluid path.

14 BY ATTORNEY SZYPA:

15 Q. And it's your testimony that a person of
16 ordinary skill in the art would interpret this
17 bullet to mean that that fluid path is made of
18 brass- or nickel-plated steel?

19 A. Yes. And you also have to look at the
20 fields of application. So we look at the fields of
21 application, we're talking about pest and weed
22 control, chemical fluid, golf course maintenance,
23 fire suppression. These are all very corrosive --
24 all that list, at least, tend to be corrosive-type
25 materials. So taking that along with the

1 description of the swivel, yes, we would find that
2 it's a brass- or nickel-plated steel or some other
3 corrosive-resistant material, more likely than not
4 brass- or nickel-plated steel. Nickel-plated steel
5 is a little stronger.

6 Q. Okay. So let's break that down a little
7 bit.

8 And why is the golf course maintenance
9 application a corrosive one?

10 A. Because of the type chemicals they put on
11 the golf course lawns -- or lawns, fairways, greens.
12 Tends to be corrosive-type chemicals, weed control
13 and fertilizers, those kinds of things.

14 Q. So you're interpreting golf course
15 maintenance as referring to applying chemicals to
16 the various parts of a golf course as opposed to
17 watering?

18 A. Yes, watering golf course is done with
19 fixed sprinklers in most cases. Maybe not all
20 cases, but yes, I'm understanding golf course
21 maintenance to include the spraying of chemicals and
22 chemical treatments.

23 Q. What about fire suppression?

24 A. Fire suppression chemicals are -- foams
25 in particular are very corrosive.

1 Q. Do those have the same corrosive
2 properties as fuel?

3 A. Generally much more corrosive.

4 Q. More corrosive?

5 A. Yes.

6 Q. Okay. So you would select the same
7 materials for the fluid path in a fuel delivery
8 application as you would in a fire suppression or
9 golf course maintenance application?

10 ATTORNEY FLANNERY: Object to form.

11 A. I would say, generally speaking, yes. I
12 would say brass- and nickel-plated steel are very
13 appropriate for fuel delivery or any of these
14 chemicals as described.

15 BY ATTORNEY SZYPA:

16 Q. Now, that bullet that you were referring
17 to earlier, what exactly is that describing to you
18 in terms of the fluid path?

19 A. Which bullet?

20 Q. I'm sorry, the first bullet under the
21 heading Swivel.

22 A. Uh-huh. It's describing the metal
23 portions of the fluid path, and next one talks about
24 the seals, the nitrile seals or Aflas on larger
25 models.

1 Q. So to you, that's describing both the
2 fluid path and the swivel?

3 ATTORNEY FLANNERY: Object to form.

4 A. Yes, the -- correct, those taken
5 together.

6 BY ATTORNEY SZYPA:

7 Q. And so what is the external fluid path
8 that is machined from solid brass? What part of the
9 reel is that?

10 A. That's the fluid path.

11 Q. Can I see that in that figure that's next
12 to that bullet point there?

13 A. You can see the inlet and the outlet of
14 that fluid path.

15 Q. The inlet and the outlet. Okay.
16 So the inlet is on the left?

17 A. Yes.

18 Q. And the outlet is kind of near the barrel
19 of the reel, if you will?

20 A. Yes, the portion of the spindle.

21 Q. Okay. That's fine.

22 So the inlet is near the -- on the
23 left-hand side there and the outlet is kind of blue
24 there near the spindle?

25 A. Well, I don't have a color copy.

1 Q. Oh, I'm sorry.

2 The inlet is on the left?

3 A. Yes.

4 Q. Okay. And the outlet is right of the
5 inlet in this figure near the spindle, correct?

6 A. Correct.

7 Q. Okay.

8 A. In the drum slot.

9 Q. In the drum slot. Okay.

10 So where is the external fluid path? Is
11 that what connects the inlet to the outlet?

12 ATTORNEY FLANNERY: Object to form.

13 A. That's my understanding, yes.

14 BY ATTORNEY SZYPA:

15 Q. And what's the swivel inlet?

16 A. The swivel inlet? That's the piece
17 that's on the left.

18 Q. Okay.

19 A. The 90-degree.

20 Q. That little 90-degree elbow?

21 A. Correct.

22 Q. Okay. And what's your understanding of
23 how that functions?

24 A. That serves as the input to the fluid
25 path, and that fluid path then extends into the

1 spindle of the reel with the nitrile or Aflas seals
2 securing the liquid, and then exits out the outlet.

3 Q. So that's made from nickel-plated steel?
4 Is that your understanding?

5 A. Two -- brass- or nickel-plated steel or
6 other noncorrosive materials that would be
7 appropriate for chemical fluid transfer and the
8 other things we've talked about.

9 Q. Oh, so there could be other materials
10 that aren't listed here?

11 A. Right. I said that earlier.

12 Q. Okay. And that's based on what?

13 Your -- I'm sorry. Your interpretation
14 of Coxreels is that the fluid path could be made of
15 materials other than brass- or nickel-plated steel,
16 correct?

17 ATTORNEY FLANNERY: Object to form.

18 A. There could be other chemicals -- or I'm
19 sorry, other ones in there. But they would be
20 noncorrosive, like the brass- and nickel-plated
21 steel.

22 BY ATTORNEY SZYPA:

23 Q. And what's that based on?

24 A. That's what I said. It's chemical fluid
25 transfer or these other fields of application we've

1 discussed give us the idea that they're at least
2 resistant to those chemicals, which makes them
3 corrosion resistant.

4 Q. So based on those fields of application,
5 it's your belief that the internal fluid path could
6 be made of -- the internal fluid path in the
7 Coxreels reference shown here could be made of a
8 material different than brass- or nickel-plated
9 steel?

10 A. Right. As I said earlier, or other
11 similar corrosive-resistant materials.

12 Q. But that is not listed anywhere in here,
13 correct, explicitly?

14 A. Correct. That's right.

15 Q. But you think that a person of ordinary
16 skill in the art might make that modification to
17 these Coxreels 1125 reels to make them suitable for
18 fuel?

19 ATTORNEY FLANNERY: Object to form.

20 A. I disagree.

21 BY ATTORNEY SZYPA:

22 Q. Which part do you disagree with?

23 A. There's no modification.

24 Q. No modification. Okay.

25 A. Correct. If it's suitable for chemical

1 fluid transfer and these other things we've talked
2 about, it is suitable for fuel.

3 Q. And that was your analysis when you chose
4 the Coxreels 1125 series reel to modify Van Vliet
5 with?

6 A. Correct. Specifically, it's appropriate
7 for chemical fluid transfer at a construction site.

8 Q. Okay. And because of that, you think
9 it's also suitable for fuel delivery?

10 A. Yes.

11 Q. Is there anything else in this reference
12 that you think makes the Coxreels 1125 series reels
13 suitable for fuel delivery?

14 A. Yes, I call those out in my declaration,
15 all the advantages of those reels. The all-welded
16 frame construction, the low-profile outlet riser and
17 open slot design for flat, smooth hose wrap would be
18 important. Permanently lubricated bearings,
19 adjustable tension brake. There's also a
20 noncrimping flat, smooth hose wrap in the paragraph
21 above.

22 All those features and advantages are
23 important in making it appropriate for use in a fuel
24 application. May I have missed one. They're
25 described in my declaration.

1 BY ATTORNEY SZYPA:

2 Q. At paragraphs 81 through 97, you discuss
3 various industry codes and standards that you say
4 would apply to the design and construction of a
5 mobile fuel distribution station; is that correct?

6 A. Yes.

7 Q. Okay. Are any of these mentioned in
8 Coxreels?

9 A. On a quick review, I don't see them.

10 Q. How would a person of ordinary skill in
11 the art know whether the Coxreels 1125 reel meets
12 these various standards that you set forth in your
13 declaration?

14 A. Well, these standards assume that the
15 Coxreels is going to leak. So there is no standard
16 for a reel used in these applications; it's assuming
17 those kind of things will leak. Or I should -- let
18 me clarify my answer. The standards assume that
19 there will be leaks under abnormal conditions in
20 these systems.

21 Q. So would these various industry codes and
22 standards that you discuss not apply to reel
23 selection in the design and construction of mobile
24 fuel distribution stations?

25 ATTORNEY FLANNERY: Object to form.

1 A. I would say, yes, these would not apply
2 to reel selection. They would apply to other
3 aspects of the design of the system.

4 BY ATTORNEY SZYPA:

5 Q. Like what?

6 A. Like the location of partitions, like the
7 location of electrical equipment, the classification
8 of electrical/electronic equipment that's necessary,
9 ignition sources, those kind of things.

10 Q. Anything else?

11 A. Those kind of things. Yeah, the things I
12 describe in my declaration.

13 Q. I'd like to go to paragraph 184, still in
14 the same declaration.

15 ATTORNEY SZYPA: I'm going to hand
16 you Exhibit 11, which is Exhibit 1009 to
17 the '805 IPR petition.

18 (Whereupon, Durham Deposition
19 Exhibit 11, Exhibit 1009, Federal Size
20 Regulations for Comerica Motor Vehicles,
21 was marked for identification.)

22 THE WITNESS: Okay.

23 BY ATTORNEY SZYPA:

24 Q. It's titled Federal Size Regulations for
25 Commercial Motor Vehicles. And on page 5 of that

1 exhibit, which is either page 1 or page 5, depending
2 on which of the page numbers you use, there's a
3 subheading called Width Requirements.

4 Let me know when you get there.

5 A. I'm there.

6 Q. The second paragraph starts with:
7 Federal width limits do not apply to special mobile
8 equipment.

9 Do you see that?

10 A. Correct.

11 Q. Are you sure the Van Vliet system is not
12 special mobile equipment within that exception?

13 ATTORNEY FLANNERY: Object to form.

14 A. I am.

15 BY ATTORNEY SZYPA:

16 Q. You are sure?

17 A. Uh-huh.

18 Q. Okay. And why is that?

19 A. Because it goes on to describe special
20 mobile equipment. The Van Vliet system would not
21 meet that description.

22 Q. Can you explain why?

23 A. Well, Van Vliet system is neither road
24 construction nor maintenance machinery, emergency
25 apparatus, including police and fire emergency

1 equipment. I'm sorry, I missed something. Military
2 or farm equipment, instruments of husbandry, road
3 construction or maintenance machinery and emergency
4 apparatus, including police and fire emergency
5 equipment. That is the definition of special mobile
6 equipment given in that paragraph.

7 Q. And Van Vliet does not fall within that
8 definition?

9 A. It does not.

10 Q. Who is Marcus Durham?

11 A. That's my father and the founder of
12 THEWAY Labs.

13 Q. I saw that you coauthored a few papers
14 with him; is that right?

15 A. Yes, sir. I've had that privilege.

16 Q. Actually -- I'm sorry. Let's go to
17 paragraph 249, actually.

18 Paragraph 249 begins a section that you
19 call Rationale and Motivation for Combining
20 Van Vliet and Cable with Coxreels.

21 Do you see that?

22 A. Yes, sir.

23 Q. Okay. And you have the Coxreels
24 reference in front of you now, right?

25 A. Yes, sir. I do now.

1 Q. And I guess, for the record, this
2 paragraph is nearly identical to paragraph 149 in
3 Exhibit 6, which is the -- your declaration for
4 the '118 patent. I'll represent that to you. If
5 you want to, you know, go ahead and confirm that for
6 me, though, for the record.

7 A. Well, based on your representation and my
8 recollection, they're going to be very similar.

9 Q. Okay.

10 A. I mean, the motivation to combine
11 Van Vliet with Coxreels is going to be the same.

12 Q. Okay. There's a good amount of
13 similarity across the reports, right?

14 A. The declarations, yes, sir.

15 Q. Yeah, the declarations, correct. Okay.

16 A. Yes, sir. As there should be.

17 Q. Yeah, I agree. Thank you. I just -- for
18 efficiency, if I could just ask you about this one
19 and not have to ask you the same questions about
20 that one, things will go a lot quicker here.

21 Anyway, so in paragraph 249, you mention
22 that: Coxreels is in the same field of endeavor as
23 Van Vliet and Cable, and is directed to solving the
24 same problem, using reels to support hoses for use
25 in distributing hydrocarbon liquids.

1 Is that correct?

2 A. Yes, sir.

3 Q. Where does Coxreels say that it is
4 directed to use with hydrocarbon liquids?

5 A. Chemical fluid transfer, pest and weed
6 control, each of which comprise hydrocarbon liquids.
7 Agriculture spraying probably will as well.

8 Q. Anything else?

9 A. Some of the others may, but those would
10 comprise hydrocarbon liquids.

11 Q. Which ones may also comprise --

12 A. Every other one --

13 Q. -- hydrocarbon liquid?

14 A. Every one on the list except for
15 high-flow watering.

16 Q. Okay. Because that's water.

17 A. Because that's water. I mean, wash
18 down -- very well could be washed down with
19 solvents -- we see that regularly -- which are
20 hydrocarbons. And air compressor because that's
21 air.

22 Q. Did you study what Coxreels meant by
23 those various subcategories when selecting the
24 Coxreels 1125 series reel?

25 ATTORNEY FLANNERY: Object to form.

1 A. I just applied the plain and ordinary
2 meaning of those terms. They don't need any
3 particular construction to a POSITA.

4 THE WITNESS: Counsel, my water
5 bottle tells me we've been going about an
6 hour. Is that about right?

7 ATTORNEY FLANNERY: Close. Do you
8 need a break?

9 THE WITNESS: Yeah, it would be a
10 good time to take a break.

11 ATTORNEY FLANNERY: Let's take one.

12 ATTORNEY SZYPA: Okay.

13 (Recess taken, 10:57 a.m. to
14 11:10 a.m. CDT)

15 BY ATTORNEY SZYPA:

16 Q. Before the break, we were talking about
17 paragraph 249 of your declaration in connection with
18 the '805 IPR, right?

19 A. Yes, sir.

20 Q. Are you still there?

21 A. Yes, sir, I am.

22 Q. Okay. You allege here in the, I guess,
23 second-to-last -- last full sentence on this page,
24 second-to-last sentence on this page, that Coxreels
25 is therefore analogous art to both Van Vliet and

1 Cable as well as the '805 patent claims.

2 Correct?

3 A. Yes, sir, I do. Well, that's my
4 analysis.

5 Q. What does the term "analogous art" mean
6 to you?

7 A. That they're directed towards solving at
8 least some of the same problems.

9 Q. Some of the same problems, okay. So --

10 A. It doesn't have to be all of the problems
11 in one particular art. For example, Coxreels
12 doesn't address some of the other considerations
13 Van Vliet does, but it at least addresses using
14 reels to support hoses for use in distributing
15 hydrocarbon liquids.

16 Q. What are the considerations in Van Vliet
17 that Coxreels doesn't address?

18 A. Pretty much the rest of them, the spacing
19 equipment, the controls, the automatic shutoff and
20 pickup, those kind of things.

21 Q. And so what problems does Coxreels
22 solve -- problem or problems does Coxreels solve --

23 A. Using reels --

24 ATTORNEY SZYPA: I'm sorry. I've got
25 to finish the question.

1 ATTORNEY FLANNERY: Maybe start over.

2 THE WITNESS: Yeah. I thought you
3 were finished.

4 ATTORNEY SZYPA: That's okay. That's
5 okay. Trying to go slow.

6 BY ATTORNEY SZYPA:

7 Q. What problem or problems does Coxreels
8 solve that makes it analogous art to Van Vliet and
9 Cable and the '805 patent claims?

10 A. Using reels to support hoses for use in
11 distributing hydrocarbon liquids. That would be a
12 problem that a designer of a system would encounter.

13 Q. Let's go back to 221, paragraph 221. I'm
14 sorry, it's actually paragraph 231.

15 No, its 221. I'm sorry, they're actually
16 very similar, and they're about the same claim
17 limitation. 221, I was right the first time.

18 So this section is about claim limitation
19 17(h), as, you know, named in your declaration,
20 which provides, quote: wherein the mobile trailer
21 includes first and second opposed trailer side walls
22 and a first group of the hoses are deployable from
23 the first trailer side wall and a second group of
24 the hoses are deployable from the second trailer
25 side wall.

1 Is that correct?

2 A. Yes, you read that correctly.

3 Q. And it's your opinion that Van Vliet
4 teaches or discloses that feature, correct?

5 A. Correct.

6 Q. And then on the next page, in connection
7 with paragraph 221, you made a sketch, right?

8 A. Yes.

9 Q. That sketch isn't actually found anywhere
10 in Van Vliet, right?

11 A. Correct. That's my sketch based on the
12 disclosure of Van Vliet.

13 Q. And in paragraph 221, it begins that
14 Van Vliet -- in your opinion, Van Vliet discloses a
15 mobile trailer having first and second opposed
16 trailer side walls.

17 Do you see that?

18 A. Yes.

19 Q. And then after that, there's two
20 sentences where you quote portions of Van Vliet,
21 correct?

22 A. Yes.

23 Q. And then based on that, you conclude
24 that, I quote: A person of ordinary skill in the
25 art would have understood this disclosure describes

1 two groups of hoses, each deployable through one of
2 the opposite -- one of two opposite side walls, end
3 quote.

4 Do you see that?

5 A. Yes, I believe that would immediately
6 come to mind in a POSITA reading that disclosure.

7 Q. Okay. Now, neither of those quoted
8 passages explicitly say that the hoses come out of
9 two sides of Van Vliet's trailer, do they?

10 A. That's correct. Those passages don't use
11 those words. As I said, that's what a POSITA would
12 immediately visualize or immediately think in
13 reading those disclosures.

14 Q. And Figure 1 doesn't show hoses coming
15 out of two sides of the trailer, does it?

16 A. Figure 1 is a schematic. It doesn't show
17 the physical -- the physical structure of any of
18 those items.

19 Q. What do you mean by Figure 1 is a
20 schematic?

21 A. Well, Figure 1 -- that's what it is.
22 It's called a schematic in the specification text,
23 and it's used to show fluid flow and arrangement of
24 equipment fluidly, but not physically.

25 Q. How do you get from those quoted passages

1 in this paragraph from Van Vliet to the conclusion
2 that Van Vliet describes two groups of hoses, each
3 deployable through one or two opposite side walls?

4 A. As I said, I believe that's the image or
5 the arrangement that would immediately come to mind
6 to a POSITA reading that disclosure.

7 Q. I understand that's your conclusion. I'm
8 just -- I'm wondering what your analysis is.

9 Why would a POSITA interpret those
10 passages to describe what you're saying they
11 describe?

12 A. That's what immediately come to mind.
13 You want to have an arrangement that would reduce
14 crossing of hoses, reduce or minimize the length of
15 the hoses. And I believe that a POSITA reading that
16 would immediately come to mind.

17 If it doesn't, it's -- as I say in
18 paragraph 222 and following, it would at least have
19 been an obvious design based on the disclosure of
20 Van Vliet.

21 So I think it's there. I think it's
22 disclosed. I think that's what immediately comes to
23 mind. But if it's not there, it's at the very least
24 an obvious arrangement based on those disclosures.

25 Q. So you think a POSITA would look at those

1 passages in Van Vliet and in order to have an
2 arrangement that would reduce crossing of hoses and
3 reduce or minimize the length of the hoses,
4 configure a system as you show in your sketch?

5 A. Yes.

6 Q. How does that sketch reduce the crossing
7 of hoses as compared with what is shown in Figure 1
8 of Van Vliet?

9 ATTORNEY FLANNERY: Object to form.

10 A. Figure 1 is a schematic. It doesn't show
11 physical arrangement. So we can't learn anything
12 about physical arrangement necessarily from
13 Figure 1. It shows fluid arrangement but not
14 physical arrangement.

15 BY ATTORNEY SZYPA:

16 Q. Okay. How does the sketch that's shown
17 here on page 151 reduce the crossing of hoses and
18 reduce or minimize the length of hoses as compared
19 with having hoses come out of only one side of the
20 trailer?

21 A. All right. Well, if you have hoses
22 coming only out of one side -- we'll take
23 manifold 36 side -- the left side of the figure for
24 one, you're going to increase the length by at least
25 the length of the trailer and you're likely to have

1 clutter inside the trailer where hoses are going
2 through a walkway, should there be one, or whatever
3 access there is to those manual valves 28 that
4 Van Vliet describes needing access to.

5 And then you're likely to have at least
6 some crossing of hoses as hoses are going two
7 directions from the same side; if not crossing, at
8 least clutter. That's how it does.

9 Q. Wouldn't that depend on how you position
10 and orient the trailer though?

11 ATTORNEY FLANNERY: Object to form.

12 A. Yes. You could orient it so they're on
13 the 38 side and it has that same problem the other
14 direction.

15 BY ATTORNEY SZYPA:

16 Q. So your position is that a person of
17 ordinary skill in the art would read these two
18 quoted passages that you cite in paragraph 221 and
19 arrive at that sketch on page 151?

20 A. Yes, I believe that would be what
21 immediately comes to mind. And then if it doesn't,
22 then that would at least be an obvious orientation
23 based on the disclosure of Van Vliet. For example,
24 in paragraph 27 it talks about the arrangements, and
25 paragraph 2 -- I'm sorry, paragraph 24, I believe it

1 is, that talks about orienting the trailer as the
2 operator requested.

3 Q. Are there ways that you can orient a
4 system having hoses come out of one side that would
5 require reduced length hoses from those shown in
6 your sketch on page 151?

7 ATTORNEY FLANNERY: Object to form.

8 A. If you have a particular configuration,
9 I'd be glad to look at it to see if it would do
10 that.

11 BY ATTORNEY SZYPA:

12 Q. It's not something you thought about
13 before today, though?

14 A. I think this was what was disclosed or
15 the most obvious choice. So if you have something
16 different, I'd be glad to consider it.

17 Q. Can you describe the thought process of
18 how you got from those two passages in Van Vliet
19 that you quote in paragraph 221 to the sketch shown
20 on page 151?

21 ATTORNEY FLANNERY: Object to form.

22 A. Well, I believe I already have. I
23 believe that's what immediately would come to mind.
24 My thought process is you want a design that
25 minimizes length and clutter and crossing, and this

1 would be what would come to mind when you read that
2 quote, particularly the one -- well, it's undisputed
3 it says opening in the trailer wall, so that's
4 undisputed it says that. And when it says supply
5 fluid equipment on one side of the well while
6 another manifold may supply fluid to equipment on
7 the other side of the well, I believe what
8 immediately comes to mind is having a manifold and
9 reels on both sides of the trailer and the hoses
10 extended out.

11 BY ATTORNEY SZYPA:

12 Q. And that's not how it's shown in
13 Figure 1, right?

14 A. Figure 1 doesn't show anything about the
15 physical arrangement. Only the fluidic arrangement.

16 Q. So you're not relying on Figure 1 at all
17 for physical arrangement?

18 A. No, Figure 1 doesn't have anything to do
19 with physical arrangement.

20 Q. You're only relying on it as a schematic?

21 A. Yes, that's what it is. It shows fluid
22 flows but not physical configuration or arrangement.

23 Q. Could you service two equipment at --
24 strike that.

25 Could you have one manifold supply fluid

1 to equipment lined up on one side of a well and
2 another manifold supplying fluid to equipment on the
3 other side of the well with all hoses coming out of
4 one side of the trailer?

5 A. Could you?

6 Q. Uh-huh.

7 A. Sure.

8 Q. And in paragraph 221, that second
9 sentence, you just mentioned this quote. It says:
10 Hoses are run through, quote, an opening in the
11 trailer wall, end quote.

12 Correct?

13 A. Correct.

14 Q. It doesn't say multiple openings in
15 trailer walls, does it?

16 A. No, it says an opening in the trailer
17 wall.

18 Q. Okay. One opening, one trailer wall?

19 ATTORNEY FLANNERY: Object to form.

20 A. In that sentence, you can read it that
21 way, one opening, yes.

22 BY ATTORNEY SZYPA:

23 Q. But you think a person of ordinary skill
24 in the art would take that sentence and interpret it
25 to mean you would actually have an opening in a

1 first trailer wall with hoses running out of it and
2 an opening in a second, different trailer wall with
3 other hoses running out of it?

4 A. Not based on that single sentence, no.

5 Q. Not based on that sentence. Okay.

6 Well, this is one of the sentences that
7 you said you relied on in making the sketch in --
8 shown on page 151, correct?

9 A. Right.

10 Q. So is it the other sentence, then, that
11 you think discloses having hoses out of two sides of
12 the trailer wall?

13 A. No, sir. You have to take them both
14 together. That's --

15 Q. Okay. So how does that second sentence
16 build on the first sentence to disclose in Van Vliet
17 that you have hoses coming out of two sides of the
18 trailer?

19 A. Well, taking the sentences together, the
20 first sentence gives us kind of the first portion of
21 that claim limitation where the hoses are -- well,
22 Van Vliet already has a mobile trailer, first and
23 second opposed trailer side walls. We talk about
24 that in a different connection with the Sea-Can.
25 The first group of hoses are deployable from -- it

1 doesn't say through; it says from the first trailer
2 side wall, and a second group of hoses are
3 deployable from the second trailer side wall. We
4 could take the first sentences to say the hoses are
5 deployed from the side wall.

6 The second sentence, what immediately
7 would come to mind to a POSITA is having them on
8 opposite walls.

9 So you have to take both together to get
10 to the -- what I believe is the disclosure, or at
11 least, the obviousness arrangement.

12 Q. But the second sentence isn't about side
13 walls. It's about sides of the well, right?

14 ATTORNEY FLANNERY: Object to form.

15 A. Correct. Yeah, you have to take it all
16 together. You can't look at any portion of the
17 disclosure in isolation.

18 BY ATTORNEY SZYPA:

19 Q. So why couldn't you service two sides of
20 a well through one opening in one side of the
21 trailer?

22 ATTORNEY FLANNERY: Object to form.

23 A. Well, I disagree with your question. I
24 didn't say that.

25 ///

1 BY ATTORNEY SZYPA:

2 Q. So you can?

3 A. Yeah, you asked that question earlier.

4 That's not what immediately would come to mind, I
5 don't believe, but you could.

6 Q. What would immediately come to mind in
7 your opinion is this sketch shown on Figure 1 on
8 page 151?

9 A. Yes, sir. In my opinion, that's what
10 would immediately come to mind. And if not, as I
11 say on paragraphs 222 and 223, that at least would
12 have been an obvious arrangement based on those
13 disclosures. Maybe it's the second thing that comes
14 to mind, not the first.

15 Q. Or the third?

16 A. It's very obvious.

17 Q. Is it obvious or is it disclosed?

18 ATTORNEY FLANNERY: Object to form.

19 A. I believe it's disclosed. And to the
20 extent it's not disclosed, I believe it is the most
21 obvious arrangement.

22 BY ATTORNEY SZYPA:

23 Q. There's nothing explicit in the text that
24 says there's hoses coming out of two sides of
25 Van Vliet's trailer, right?

1 ATTORNEY FLANNERY: Object to form.

2 A. Correct. Those words don't exist in the
3 text, as I recall.

4 BY ATTORNEY SZYPA:

5 Q. But it's your interpretation that these
6 two sentences listed in paragraph 221 would lead a
7 person of ordinary skill in the art to believe that
8 Van Vliet discloses this claim 17(h) claim feature?

9 A. Yes, sir.

10 Q. Okay.

11 A. I'm sorry.

12 Yes, sir, I believe that's the first
13 thing that would come to mind -- immediately come to
14 mind. And to the extent it's not disclosed, I
15 believe it is the most obvious arrangement.

16 Q. Let's go to paragraph 240.

17 A. I'm sorry, I'm looking at page 240.
18 Apologies.

19 (Document review.)

20 A. Okay. I've read that paragraph.

21 BY ATTORNEY SZYPA:

22 Q. And it continues on to page 164. Did you
23 read that portion too?

24 A. Yes.

25 Q. Last sentence you say: A person of

1 ordinary skill in the art would have recognized the
2 advantage of augmenting Van Vliet's control systems
3 with AFD's control system architecture and fire
4 safety precautions, end quote.

5 Do you see that?

6 A. Yes, sir.

7 Q. My question for you is: What is AFD's
8 control system architecture?

9 A. It's described earlier in the paragraph.
10 Its intuitive control panel useful to control and
11 provide fuel status for each reel and main tank.
12 And I describe the advantages of why it's desirable
13 to use that.

14 Q. And where do you find support for those
15 statements in AFD itself?

16 A. It's...

17 Q. I think you have that reference in front
18 of you.

19 A. Do I?

20 (Document review.)

21 A. Page 3 of Exhibit 1007, Exhibit 8 to the
22 deposition, has that quote that's referenced in
23 paragraph 240.

24 BY ATTORNEY SZYPA:

25 Q. So that's your interpretation of AFD's

1 control system architecture?

2 ATTORNEY FLANNERY: Object to form.

3 A. Yes, sir.

4 BY ATTORNEY SZYPA:

5 Q. Okay. Anything else?

6 A. No, that's the disclosure we have.

7 Q. Okay.

8 A. Oh, there's one more piece. The
9 color-coded monitoring system allows for easy
10 recognition of each individual reel as well as a
11 visual of all 24 reels at one time.

12 And then we have a photograph on page 4
13 that shows what I understand to be that intuitive
14 touchscreen on the right.

15 Q. Okay. Anything else?

16 A. No, sir. That's what I relied on.

17 Q. What are some ways that water and diesel
18 are different from one another when it comes to
19 fluid delivery systems?

20 ATTORNEY FLANNERY: Object to form.

21 A. The primary difference is diesel is a
22 combustible liquid, and you have to take those
23 precautions as outlined in the fire codes and
24 standards, for example, when handling a combustible
25 liquid.

1 BY ATTORNEY SZYPA:

2 Q. They have different viscosities too,
3 right?

4 A. Depends. They can, yeah, at different
5 temperatures and those kind of things.

6 Q. Would the required pumping power be
7 different?

8 A. Not significantly different, no. They
9 have similar weights.

10 Q. The corrosion and chemical effect on the
11 various equipment would be different, right?

12 ATTORNEY FLANNERY: Object to form.

13 A. It would be different. I don't think you
14 can characterize fuel as being more corrosive than
15 water because water certainly is an element of
16 corrosive if it's not distilled water. So they're
17 both corrosive. They're corrosive in a little bit
18 different ways.

19 BY ATTORNEY SZYPA:

20 Q. And on different materials probably too,
21 right?

22 A. I'd have to study. That's a broad
23 statement, so I'd have to study a particular
24 material to see if it has different corrosion
25 characteristics between water and diesel.

1 Q. It's not something you studied before
2 today?

3 A. It's not something I prepared an opinion
4 for this matter. I've certainly studied corrosion
5 of various materials and various fluids in the past.

6 Q. In connection with what?

7 A. In connection with working in the oil and
8 gas industry, and likely other things as well, other
9 jobs.

10 Q. Why would you be studying that in
11 connection with electrification in the oil and gas
12 industry?

13 A. Because you're handling water and
14 hydrocarbons every day, all the way from production
15 to midstream to downstream. Those are materials you
16 handle.

17 Q. Earlier we talked about how you went to
18 Manticore to see what I'll call an automated fueling
19 unit; is that correct?

20 A. I think that's a broad category, yes, of
21 what we saw.

22 Q. What would you call it, though?

23 A. We can use that term. That's fine.

24 Q. Have you seen any other systems similar
25 to that one in person?

1 A. I've seen them on frac sites. I haven't
2 studied them in any detail.

3 Q. You have.

4 Do you know which ones you've seen?

5 A. No, sir.

6 Q. And you've seen them in operation on frac
7 sites?

8 A. Yes.

9 Q. Do you know when you saw them?

10 A. No, sir. I have a recollection of when I
11 started studying this that I had seen similar
12 systems. I've also seen the old systems where we
13 had the truck running around the outside of the frac
14 site, very similar to the aviation fuel truck.

15 But it was not unfamiliar technology or
16 unfamiliar system when I started reading these
17 patents.

18 Q. You don't know the product names of any
19 of the other systems that you've seen?

20 A. No, sir.

21 Q. Okay. Do you know about how many other
22 systems you've seen?

23 A. No. It's not something I would have kept
24 track of and not the reason I was there.

25 Q. What was the reason you were there?

1 A. To perform whatever function was there,
2 whether investigating an incident or looking at
3 other pieces of equipment at the site.

4 Q. Okay. Let's move on to what I've marked
5 as Exhibit 5. Although I know you have your own
6 copies of your report there in front of you,
7 Exhibit 5 is your declaration in connection with the
8 IPR of the '955 patent?

9 A. Sure. Okay. I've got that declaration
10 in front of me.

11 Q. I'd like to go to page -- starting at
12 page 113.

13 A. Is that my 113 or the exhibit 113?

14 Q. It's your 113, exhibit's 119.

15 A. Okay.

16 Q. Paragraph 172.

17 A. Sure. That's great.

18 Q. And the section is headed Rationale and
19 Motivation for Combining Van Vliet and Cable.

20 Do you see that?

21 A. Yes, sir.

22 Q. Okay. And this appears to be the same
23 analysis that you give in paragraphs 137 -- I'm
24 sorry.

25 So in this section, it goes from

1 paragraphs 172 to 175, and that appears to be the
2 same analysis that you give in paragraphs 137
3 through 140 in Exhibit 4, which was the '805 report
4 that we were just looking at.

5 Can you confirm that for me?

6 ATTORNEY FLANNERY: I'll object to
7 form.

8 Go ahead.

9 (Document review.)

10 A. Well, no, sir, there are some
11 differences.

12 BY ATTORNEY SZYPA:

13 Q. Okay. What are they?

14 A. They largely -- they're very, very
15 similar, and even I would say substantially similar,
16 but there's a few differences.

17 Q. Okay. I'm going to ask you questions
18 about this section in Exhibit 5, but if your answer
19 is somehow different as it pertains to Exhibit 4, if
20 you could please let me know.

21 A. Okay.

22 ATTORNEY FLANNERY: I'll object to
23 the extent there's a question there. I don't
24 know if there is, but I object.

25 ATTORNEY SZYPA: Okay. Just trying

1 to do things efficiently.

2 BY ATTORNEY SZYPA:

3 Q. In paragraph 175 -- and I guess it's
4 the -- the sentence starts on page 117 and continues
5 on to page 118 that I'm looking at. It says, quote:
6 Incorporating Cable's aisle walkway, doors and reel
7 configuration into Van Vliet's mobile fuel delivery
8 system would merely involve combining prior art
9 elements according to known methods to yield
10 predictable results, end quote.

11 Is that correct?

12 A. Yes, sir, you read that correctly.

13 Q. What reel configuration from Cable are
14 you incorporating into Van Vliet?

15 A. Well, there's several things. One, to
16 the extent that Van Vliet doesn't disclose a reel
17 with an internal fluid path, we get that from Cable.
18 We also have the reels arranged on two side walls or
19 at least adjacent two side walls with an aisle
20 between.

21 There's also the arrangement of the reels
22 where you have upper and lower rows, and the number
23 of reels in the upper row is the same as the lower
24 row.

25 I think that encompasses what I picked up

1 from Cable.

2 Q. On page 121, you have a snapshot there of
3 Figure 2 from Cable; is that right?

4 A. Yes, there is a grab of Figure 2 of Cable
5 that's been annotated.

6 Q. Oh, you annotated that? Okay.

7 A. Yes, sir. Counsel may have helped me
8 annotate it. She did the art.

9 Q. That's fine.

10 And there's kind of an outer -- I guess
11 it's not the outermost box, but the next kind of
12 rectangular box that's shown there, on the right
13 side of that, that would be indicative of the back
14 of the trailer in Cable, right?

15 A. I'm sorry, I got lost. Could you repeat
16 that.

17 Q. I'm looking at Figure 2 in your snapshot
18 here.

19 A. Okay.

20 Q. So there's an outer rectangle around
21 everything, but I'm looking at the next-most-inner
22 rectangle that I believe is representative of
23 Cable's truck; is that correct?

24 ATTORNEY FLANNERY: Object to form.

25 A. Do you have Cable there I can look at? I

1 don't see that as a rectangle really, but -- it's a
2 portion of a rectangle maybe.

3 BY ATTORNEY SZYPA:

4 Q. Sure.

5 ATTORNEY SZYPA: I'll mark Cable as
6 Exhibit 12.

7 (Whereupon, Durham Deposition
8 Exhibit 12, Exhibit 1005, US Patent
9 No. 3,810,487, was marked for
10 identification.)

11 BY ATTORNEY SZYPA:

12 Q. We can just look at Figures 1 and 2,
13 actually. They're on the same page in Exhibit 12
14 here.

15 So the right side of each of those
16 figures is indicative of the back of the truck in
17 Cable, right?

18 A. It's indicative of the rear, yes.

19 Q. Okay.

20 A. I'm not sure that rectangle represents
21 the rear wall necessarily. I'd have to do some
22 study to answer that. But it has at least the rear
23 of the trailer -- of the van truck.

24 Q. And Cable's reels function to have their
25 hoses deployed out the back or out the rear of that

1 trailer, correct?

2 A. Yes. If you're saying out of, then out
3 of the rear, yes.

4 Q. And can we go back -- let's go back to
5 this annotated snapshot you have on page 121 of your
6 declaration, Exhibit 5.

7 A. Okay.

8 Q. So you have boxes around the, I guess,
9 two sets of reels, and then an aisleway there in
10 between, correct?

11 A. Yes, sir.

12 Q. Okay. And is this the configuration that
13 you are proposing a person of ordinary skill in the
14 art would have incorporated into Van Vliet?

15 A. Well, the teachings of this is what's
16 incorporated into Van Vliet.

17 Q. What are those?

18 A. The ones I just went through, the
19 teachings of the fluid path of the reel, the
20 teachings of reels aligned -- arranged along both
21 side walls with an aisle between, the teaching of an
22 upper/lower row of reels, and the teaching of the
23 same number of reels, having a one-to-one
24 relationship.

25 And I don't believe it's in this one --

1 or maybe in the '118, there's also something about
2 the size of the reels that we can gather and the
3 size of the aisles. I believe that's in the '118.

4 Q. When it comes to arranging the reels
5 along the side walls with an aisle between, do you
6 have a specific orientation of the reels in mind for
7 that proposed modification?

8 A. Yes.

9 Q. Is it the way that it's shown in Cable?

10 A. It's similar. They're arranged along
11 both side walls with an aisle in between, but I
12 think the teachings of Van Vliet teach us we want to
13 extend it out both sides of the trailer as well. So
14 you can do it this way or you could rotate them
15 90 degrees. Either one would be fine.

16 Q. You haven't necessarily narrowed your
17 proposed modification to either configuration?

18 A. Either one would work fine, yeah.

19 Q. And for the turning of -- the 90-degree
20 turning that you mentioned, that would be in
21 connection with the teachings of Van Vliet?

22 A. That's one configuration, but you could
23 also use the reels in exactly this orientation of
24 Van Vliet. Just offset the opening a little bit and
25 run it out the opening that way.

1 Q. But you haven't decided which orientation
2 that you would choose when in paragraph 175 you
3 discuss incorporating Cable's reel configuration
4 into Van Vliet's system?

5 ATTORNEY FLANNERY: Object to form.

6 A. I have decided. Either one would work.

7 BY ATTORNEY SZYPA:

8 Q. Either one would work?

9 A. Yes, sir.

10 Q. Okay. So you haven't chosen one or the
11 other?

12 ATTORNEY FLANNERY: Object to form.

13 A. No. No reason to.

14 BY ATTORNEY SZYPA:

15 Q. Okay. Unless you wanted hoses to come
16 out of both sides of the trailer, right?

17 ATTORNEY FLANNERY: Object to form.

18 A. No, not at all.

19 BY ATTORNEY SZYPA:

20 Q. You wouldn't need to turn the reels
21 90 degrees to have hoses come out of two sides of
22 the trailer?

23 A. No, sir.

24 ATTORNEY FLANNERY: Object to form.

25 Sorry. Just give me one second.

1 A. No, sir, you would not.

2 BY ATTORNEY SZYPA:

3 Q. Why is that?

4 A. Because it's not necessary.

5 Q. So you could use the configuration shown
6 in Cable's Figures 1 and 2, incorporate that into
7 Van Vliet, not turn the reels 90 degrees, and still
8 have hoses come out of opposing sides --

9 A. Yes.

10 Q. -- of Van Vliet's trailer?

11 A. Sorry.

12 ATTORNEY FLANNERY: Object to form.

13 A. Yes, sir, you could. There's advantages
14 to both.

15 BY ATTORNEY SZYPA:

16 Q. Advantages to both. What do you mean?

17 A. There's advantages to having them in this
18 orientation, for example, to access the reel
19 mechanism, make it easier to reel back up. There's
20 advantage to the other in order to have your
21 windows, if you will, or opening in the side trailer
22 walls in line with the reels. But that's a design
23 choice.

24 Q. Wouldn't the hoses cross if you didn't
25 turn them 90 degrees and you wanted to have them out

1 the side walls of Van Vliet?

2 ATTORNEY FLANNERY: Object to form.

3 A. No, sir.

4 BY ATTORNEY SZYPA:

5 Q. No? So you -- so you don't think that --
6 well, okay.

7 How many reels are you proposing in this
8 configuration of the combination of Van Vliet and
9 Cable?

10 A. This one shows eight. Van Vliet shows
11 ten. I don't think the number is -- it's limited to
12 either of those. I think it would work, depending
13 on your pumping system and fluid flow capacity, with
14 a various number of reels.

15 Q. Do you have a range that it would work
16 with?

17 A. No, that would take a different level of
18 study.

19 Q. Something you haven't considered?

20 A. I considered it. I'd say it would work
21 with a variety of range, but it would require
22 details on the pumps and the piping and the tank
23 volume. All those kind of things are design choices
24 that would go into how you would actually physically
25 put it together.

1 Q. So in your proposed combination of
2 Van Vliet and Cable, you're not proposing a specific
3 number of reels either?

4 A. Correct.

5 ATTORNEY FLANNERY: Object to form.

6 THE WITNESS: If we're close to the
7 top of the hour, I think it would be a good
8 time to take a break.

9 ATTORNEY FLANNERY: We're about ten
10 minutes to noon.

11 THE WITNESS: Ten minutes? Just a
12 couple more minutes would be fine.

13 ATTORNEY FLANNERY: Just finish up
14 this area?

15 ATTORNEY SZYPA: Yes.

16 THE WITNESS: That would be great.

17 BY ATTORNEY SZYPA:

18 Q. In paragraph 182, which I'll represent to
19 you is the same as paragraph 170 in Exhibit 4 --

20 Are you there?

21 A. Yes, sir.

22 Q. Okay. You state that a person of
23 ordinary skill -- and I'm sorry. I'm looking at the
24 final sentence.

25 A. Okay.

1 Q. You state that: A person of ordinary
2 skill in the art would have implemented the spatial
3 arrangement of Cable to the trailer of Van Vliet,
4 and then there's some more after that.

5 I'm sorry, strike that. I'm going to go
6 a few sentences back.

7 You say in the first full sentence on
8 this page 122, quote: Accordingly, when determining
9 the arrangement of on-trailer equipment, a person of
10 ordinary skill in the art would have looked at other
11 similar references to provide details of specific
12 arrangements, end quote.

13 Do you see that?

14 A. Yes.

15 Q. You're not necessarily opining that a
16 person of ordinary skill in the art would have
17 chosen the specific reel orientation as shown in
18 Cable, right?

19 ATTORNEY FLANNERY: Object to form.

20 A. Correct. I think reel orientation is --
21 I think the design is agnostic of reel orientation
22 in the combination.

23 BY ATTORNEY SZYPA:

24 Q. But Cable only shows one type of reel
25 orientation, right?

1 ATTORNEY FLANNERY: Object to form.

2 A. When you're talking about a plan view,
3 yes. It shows upper and lower rows. It shows
4 multiple reels in a row. So those are also
5 orientations, if you will, arrangements. But in
6 plan view it only shows one arrangement, Figure 2.

7 BY ATTORNEY SZYPA:

8 Q. And in that arrangement, you have -- you
9 have the aisleway, which is elongated from the --
10 let's say near the back of the truck toward the
11 front of the truck, correct?

12 A. Yes, sir.

13 Q. Okay. And then you have one set of reels
14 on one side of that aisleway, a second set of reels
15 on the other side of that aisleway, right?

16 A. Correct.

17 Q. And those reels have what I'll call axes
18 of rotation?

19 A. Okay.

20 Q. Are you picturing that?

21 A. In the plan view of Figure 2, yes.

22 Q. Yeah.

23 And if you were to extend those axes of
24 rotation across the aisle, they would be transverse
25 to that aisle, right, as shown in Figure 2?

1 A. Are you talking -- okay. Maybe we're
2 looking at different -- are you talking about the
3 orientation of the spindles? The orientation of the
4 spindles is transverse to the aisle.

5 Q. I'm talking about the axis -- so there's
6 like a central axis of rotation of each reel right
7 there.

8 A. Okay. The spindles?

9 Q. Yeah.

10 A. All right. Then with that clarification,
11 yes.

12 Q. Those would be transverse to the
13 aisleway?

14 A. Correct, the spindles are transverse to
15 the aisleway.

16 Q. There's nothing in here that ever shows
17 those as being parallel to the aisleway, right?

18 A. If by "those" you mean the spindles, that
19 is not shown in these figures, no.

20 Q. Okay. In any figure in Cable, is there?

21 A. Correct, in the figures.

22 ATTORNEY SZYPA: I think now is a
23 good time for a break.

24 ATTORNEY FLANNERY: Great. Off the
25 record.

1 (Recess taken, 12:00 p.m. to
2 12:51 p.m. CDT)

3 BY ATTORNEY SZYPA:

4 Q. I want to go to paragraph 183 in
5 Exhibit 5.

6 A. Is that the '955?

7 Q. It is, yeah. And it also -- it matches
8 paragraph 171 in the '805 declaration.

9 Are you there?

10 A. I'm at 183, yes.

11 Q. Okay. So here you provide as a
12 motivation for combining -- or you provide a
13 motivation for combining Cable and Van Vliet,
14 correct?

15 A. Yes. This is still part of the
16 motivation and rationale for combining -- well, it's
17 not in that section, but it is still part of that
18 rationale.

19 Q. And you say that Cable would help meet
20 Van Vliet's goal of, quote, the manual valves 28
21 should be readily accessible to an operator on the
22 trailer, period. This can be arranged with the
23 manifolds 36, 38, mounted on a wall of the trailer
24 with the outlets extending -- the outlets 22
25 extending inward of the trailer wall, end quote.

1 Do you see that?

2 A. Yes.

3 Q. My question for you is: Does Van Vliet
4 already meet that goal?

5 A. Yes.

6 Q. So why would a POSA be motivated to
7 making this change to meet that goal?

8 A. As described in the rest of the sections,
9 motivations to combine, and 184, for example, in
10 order to be able to have the operator access more
11 equipment from one location in the trailer and all
12 those reasons I talked about.

13 Q. But you agree that Van Vliet discloses a
14 configuration that already meets this goal?

15 ATTORNEY FLANNERY: Object to form.

16 A. Well, no.

17 BY ATTORNEY SZYPA:

18 Q. Oh, you don't agree with that?

19 A. Correct. No, I don't agree with that.
20 Van Vliet does not disclose a configuration of the
21 reels --

22 Q. So Van Vliet --

23 A. -- to meet that goal.

24 Q. Van Vliet discloses a goal, but it
25 doesn't talk about how that goal would be achieved?

1 A. Right. Van Vliet is largely silent about
2 the physical arrangement of the equipment, instead
3 leaving it up as a design choice to the designer of
4 the equipment, in paragraph 27 of Van Vliet.

5 Q. What do you -- do you interpret
6 Van Vliet's quote about the manifolds being mounted
7 on a wall as not being about its configuration?

8 A. No, that's one.

9 Q. So --

10 A. Maybe I didn't understand your question.

11 Q. Okay.

12 A. Van Vliet does not -- what I intended to
13 say was Van Vliet does not limit it to this one
14 particular configuration. Van Vliet says that the
15 orientation is up to the -- as the design choice.

16 Yes, this one orientation with them
17 mounted on one wall with the outlets extending
18 inward of the trailer wall would meet that goal, but
19 that's not the only way to meet that goal.

20 Q. But in paragraph 183, you're not talking
21 about design choice, right?

22 ATTORNEY FLANNERY: Object to form.

23 A. Well, design choice is part of the entire
24 teaching of Van Vliet, so yes. I mean, I don't
25 quote that section here.

1 BY ATTORNEY SZYPA:

2 Q. What does design choice mean to you?

3 A. As is used in Van Vliet -- do you have
4 Van Vliet? I can...

5 Q. Yeah, did I not give that to you? Sure.

6 ATTORNEY FLANNERY: I don't see that
7 in my stack.

8 ATTORNEY SZYPA: We can mark
9 Van Vliet as Exhibit 13.

10 (Whereupon, Durham Deposition
11 Exhibit 13, Exhibit 1004, US Patent
12 Publication 2011/0197988, was marked for
13 identification.)

14 (Comments off the stenographic
15 record.)

16 THE WITNESS: So if we look at
17 paragraph 27, Van Vliet teaches that the
18 spatial orientation of the control station 56,
19 reels, manifolds 36, 38, tanks 18, 20 and
20 other equipment, such as the generator, is a
21 matter of design choice from the manufacturer
22 and will depend on space requirements.

23 So what he's talking about design
24 choice here is how you arrange the equipment
25 spatially to meet the goals of Van Vliet.

1 BY ATTORNEY SZYPA:

2 Q. And that's how you're -- strike that.

3 So back to paragraph 26 then, you agree
4 that Van Vliet talks about a goal of having the
5 manual valves 28 being readily accessible, correct?

6 A. Yes.

7 Q. And that goal, Van Vliet discloses, is
8 achieved by arranging the manifolds 36, 38, mounted
9 on a wall of the trailer with outlets 22 extending
10 inward of the trailer wall, correct?

11 A. I disagree.

12 Q. So you disagree that that configuration
13 that Van Vliet discloses achieves that goal?

14 A. Correct. That's not the question you
15 asked.

16 Q. What question do you think I asked?

17 A. You asked if the goal is met by this
18 configuration. I said it may be met by that
19 configuration. That's one configuration that would
20 meet that goal, but it's not limited to that.

21 Q. Okay. Let's try this again.

22 In paragraph 26, Van Vliet discloses a
23 goal -- using your words, a goal that the manual
24 valves 28 should be readily accessible to an
25 operator on the trailer, correct?

1 A. Correct.

2 Q. Okay. And then after that it says: This
3 can be arranged with the manifolds 36, 38 mounted on
4 a wall of the trailer with outlets 22 extending
5 inward of the trailer wall.

6 Correct?

7 A. Correct.

8 Q. So does that configuration achieve
9 Van Vliet's goal of having the manual valves readily
10 accessible to the operator on the trailer, or does
11 it not?

12 ATTORNEY FLANNERY: Object to form.

13 A. It appears to, yes.

14 BY ATTORNEY SZYPA:

15 Q. Okay. So then why would a person of
16 ordinary skill in the art need to modify Van Vliet
17 with Cable to achieve that goal?

18 ATTORNEY FLANNERY: Object to form.

19 A. For the same reasons we talked about
20 earlier, to take the advantages of the other
21 reasons -- the other configuration described by
22 Cable provides, such as for the operator to have
23 access to more equipment at any given location, to
24 have separate manifolds, separate pieces of
25 equipment on opposed sides of the well with minimal

1 crosses of hoses, and all the reasons described in
2 the motivations to combine.

3 Q. So is one of those motivations to meet
4 this goal?

5 A. Well, I don't think I said motivation,
6 but yes, that -- you do want to meet that goal.

7 Q. So if the goal is already met.

8 A. Okay.

9 Q. So why would a person of ordinary skill
10 in the art be motivated to meet that goal if the
11 goal is already met in the configuration disclosed
12 in Van Vliet?

13 ATTORNEY FLANNERY: Object to form.

14 A. They would be motivated to meet the goal
15 because Van Vliet describes that as a goal.

16 BY ATTORNEY SZYPA:

17 Q. But doesn't Van Vliet describe that the
18 goal is met --

19 ATTORNEY FLANNERY: Object to form.

20 BY ATTORNEY SZYPA:

21 Q. -- with its configuration?

22 ATTORNEY FLANNERY: Object to form.

23 A. It describes one embodiment that appears
24 to meet that goal, right.

25 ///

1 BY ATTORNEY SZYPA:

2 Q. Okay. And you're saying a person of
3 ordinary -- that would motivate a person of ordinary
4 skill in the art to reconfigure Van Vliet to meet
5 that goal?

6 ATTORNEY FLANNERY: Object to form.

7 A. A person of ordinary skill in the art
8 using the teachings of Cable to modify Van Vliet
9 would keep that goal in mind and want to make sure
10 they met that goal.

11 BY ATTORNEY SZYPA:

12 Q. Okay. But it wouldn't provide the actual
13 motivation for the combination with Cable; it's just
14 a -- they're just going to keep that in mind while
15 they do it?

16 A. Right, but it's also --

17 ATTORNEY FLANNERY: Object to form.

18 A. It's also part of the motivation to
19 combine because -- because Van Vliet teaches that
20 the spatial orientation is a matter of design
21 choice, a POSITA would go out and look for other
22 references with different spatial orientations and
23 would recognize those advantages when looking at
24 Cable.

25 ///

1 BY ATTORNEY SZYPA:

2 Q. I understand that, but that's a different
3 part of Van Vliet, right?

4 ATTORNEY FLANNERY: Object to form.

5 BY ATTORNEY SZYPA:

6 Q. The spatial orientations and design
7 choice that you keep talking about is from a
8 different paragraph in Van Vliet, right?

9 A. Right. I discuss those in paragraph 182
10 immediately preceding 183. It's all part of the
11 same analysis.

12 Q. Okay.

13 A. You can't pick them one piece at a time.

14 Q. Oh, I can't?

15 A. A POSITA does not. A POSITA analyzes a
16 piece of art as a whole.

17 Q. They analyze everything in the reference,
18 right?

19 A. They certainly keep that in mind, yes.
20 That's part of it.

21 ATTORNEY SZYPA: I don't have
22 anything further at this time.

23 ATTORNEY FLANNERY: Let's take a
24 short break.

25 You said at this time. I want to

1 make sure we're not saving something for later
2 or something like that.

3 ATTORNEY SZYPA: No. Well, I
4 get redirect --

5 ATTORNEY FLANNERY: Sorry. Let's go
6 off the record.

7 ATTORNEY SZYPA: Yeah.

8 (Recess taken, 1:01 p.m. to
9 1:07 p.m. CDT)

10 -----

11 EXAMINATION

12 -----

13 BY ATTORNEY FLANNERY:

14 Q. Dr. Durham, just a few questions for you.
15 First of all, I'd like to ask you about the errata
16 sheet. I'd like to go ahead and mark this as an
17 exhibit. I think we're on Exhibit 14.

18 (Whereupon, Durham Deposition
19 Exhibit 14, Errata Sheet for Declaration
20 of Dr. Robert Durham in Support of
21 Petition for Inter Partes Review
22 of US Patent No. 10,974,955, was marked
23 for identification.)

24 BY ATTORNEY FLANNERY:

25 Q. And, Doctor, can you just tell me what's

1 described in this sheet?

2 A. Yes. In reviewing the documents, I
3 realized during the print process some of the
4 footnotes had gotten blanked out or were removed.
5 The footnote references were still in the body of
6 the text, but the actual note had been -- was gone
7 for whatever reason.

8 So this is a list of those footnotes that
9 should have been there, or in two cases, should not
10 have been footnotes because they should not have
11 been footnoted.

12 Q. So other than the remove reference to
13 footnote for 222 and 230, those are adding
14 citations?

15 A. Yes, those are just adding citations to
16 the various pieces of art that I was, in most cases,
17 quoting.

18 Q. That you were quoting where?

19 A. In the text of the declaration.

20 Q. Okay. Very good. All right. Set that
21 aside.

22 Just a couple of other follow-up
23 questions.

24 Do you recall some testimony from earlier
25 today where Mr. Szyba was asking you about the AFD

1 reference? Do you recall that?

2 A. Yes, AFD. Yes.

3 Q. Yes?

4 And do you recall your testimony where
5 you stated that AFD does not necessarily disclose
6 having reels on both sides of the trailer with an
7 aisle in between?

8 A. Correct. It's not inherent in that
9 single photograph.

10 Q. Would a person of ordinary skill in the
11 art understand that -- would they understand that
12 from the reference?

13 A. I would say --

14 ATTORNEY SZYPA: Objection, form.

15 A. I would say it's an obvious configuration
16 based on that reference. That would be the obvious
17 way to do it.

18 BY ATTORNEY FLANNERY:

19 Q. Why would that be an obvious way to do
20 it?

21 A. The same reasons I talk about in my
22 declaration; to reduce clutter, hose crossing,
23 reduce length, prevent hoses from running across
24 walkways, those kind of things.

25 Q. And what would that be obvious in view

1 of?

2 A. In view of the teachings of, for example,
3 Cable that has that orientation on both sides, and
4 the reference in Van Vliet that talks about serving
5 both sides of the well from the single trailer with
6 different manifolds.

7 Q. Would a person of skill in the art have
8 to have read Cable to understand the reasons that
9 you gave a second ago?

10 A. No, those reasons would be in the
11 knowledge of a POSITA. You don't want tripping
12 hazards, lines crossing and extra length.

13 Q. I want to point you to whichever exhibit
14 is the '805 declaration. I'm going to find it for
15 you to make things quicker.

16 A. I believe that's Exhibit 4.

17 Q. It is indeed Exhibit 4. That's right.
18 And I'd like you -- sorry, bear with me.
19 I'd like to turn you to page 22 of that declaration.
20 It has some claim language from the '805 patent.

21 Do you see that?

22 A. Yes.

23 Q. And I'd like to turn your attention to
24 claim 6 in particular, where it calls for: The
25 distribution station as recited in claim 2, wherein

1 a ratio of a number of reels in the upper row to a
2 number of reels in the lower row is 1:1.

3 Do you see that?

4 A. Yes.

5 Q. Just to orient you, do you recall that
6 this is one of the claims where you applied the
7 combination of Van Vliet and Cable to find that
8 claim obvious?

9 A. Yes, it is.

10 Q. Okay. So in doing that analysis, did you
11 consider the number of reels that would be -- that
12 would result in that combination?

13 A. Well, in the Cable reference, it's 4:4,
14 which is 1:1, but really what I was seeing in Cable
15 was a one-to-one relationship. The number of reels
16 wasn't important as long as they were the same.

17 Q. Okay. You considered the ratio of the
18 numbers of reels?

19 A. Yes.

20 Q. Okay. And in other claims of the '805
21 patent, did you consider the orientation of the
22 reels, for example, with regard to how wide the
23 aisle might be in the trailer?

24 A. Yes. Well, with regard to Cable, yes, I
25 believe so. Not the orientation, but the size of

1 the reel.

2 Q. Okay.

3 A. Not the orientation, no.

4 Q. Do you recall some testimony earlier
5 today where Mr. Szypa asked you about having clicked
6 through the Wayback Machine link -- pages for
7 certain websites for AFD and Coxreels?

8 Do you recall that?

9 A. Yes.

10 Q. To navigate to the AFD and Coxreels
11 references in your declarations?

12 A. Yes, I remember those questions, or the
13 discussion at least.

14 Q. Yep.

15 So prior to the filing of the asserted
16 patents here, the '805, the '118 and '955, is
17 clicking through those navigation paths the only way
18 a POSITA might have gotten to the web pages that you
19 used as the actual reference in your grounds?

20 ATTORNEY SZYPA: Objection, form.

21 A. No, I wouldn't think that's the only way.

22 BY ATTORNEY FLANNERY:

23 Q. Okay. How else might a POSITA have
24 landed on those pages?

25 ATTORNEY SZYPA: Objection, outside

1 the scope of my questioning and the report.

2 ATTORNEY FLANNERY: You can go ahead
3 and answer.

4 A. I mean, there's a reel selector tool on
5 the Coxreels' website they could have used. As I
6 recall, you put in the length of hose and size of
7 hose you want and it gives you a list of reels.

8 You could do a Google search and look for
9 reels, and it could take you there, or look for
10 mobile fuel systems and take you to the AFD
11 reference. And I'm using Google as a verb, not as
12 using that particular tool.

13 There's probably other configurations of
14 clicks you could go through on those websites. In
15 my experience, websites have lots of different ways
16 to get to the same place because people think
17 differently.

18 So those are some examples, I think.

19 ATTORNEY FLANNERY: I have no further
20 questions.

21 -----

22 EXAMINATION

23 -----

24 BY ATTORNEY SZYPA:

25 Q. Dr. Durham, we took a few breaks today,

1 right?

2 A. Yes.

3 Q. And where did you go during those breaks?

4 A. To the restroom, to the -- get a bottle
5 of water, to our breakout room.

6 Q. Did you talk to counsel in your breakout
7 room?

8 ATTORNEY FLANNERY: Is it your
9 position, Counsel, that having done this way
10 is privileged? I just want to make sure we're
11 clear on the record.

12 ATTORNEY SZYPA: I don't know. We'll
13 see what he says.

14 A. We had discussions, yes. We talked.

15 BY ATTORNEY SZYPA:

16 Q. Did you talk about your testimony?

17 A. Only at the last break.

18 Q. At the last break you talked about your
19 testimony?

20 A. Yes, sir.

21 Q. The one right before Ms. Flannery's
22 questioning?

23 A. Yes, sir.

24 Q. What did you guys talk about?

25 A. She asked me some questions about various

1 pieces of testimony, similar to the questions she
2 asked me here.

3 Q. Did you talk about your answers to those
4 questions?

5 A. No.

6 Q. No?

7 A. I gave my answers, but that's it.

8 Q. You gave your answers?

9 A. Sure.

10 Q. Did she comment on those answers?

11 A. No.

12 Q. Did Mr. Chuning comment on those answers?

13 A. No.

14 Q. No?

15 You rehearsed the question and the
16 answer, though?

17 ATTORNEY FLANNERY: Object to form.

18 A. She asked me some questions, and I gave
19 her the same or very similar answers that I gave
20 here, sure.

21 BY ATTORNEY SZYPA:

22 Q. And the questions were the same as the
23 ones that were just asked, right?

24 A. They were on the same topics. I don't
25 know if they were the exact same questions or not.

1 ATTORNEY SZYPA: Okay. I guess, for
2 the record, we're going to move to exclude
3 that testimony.

4 ATTORNEY FLANNERY: On what basis?

5 ATTORNEY SZYPA: It's improper under
6 the rules to talk about testimony during
7 breaks and in a deposition in a PTAB
8 proceeding.

9 ATTORNEY FLANNERY: We're going to
10 disagree. The rules specifically say after
11 cross-examination is completed, that that's
12 allowed.

13 ATTORNEY SZYPA: I don't think so.

14 ATTORNEY FLANNERY: If you want to
15 move to strike, you can move to strike.

16 ATTORNEY SZYPA: We will. Okay.
17 That's all I have.

18 ATTORNEY FLANNERY: Okay.

19 THE WITNESS: Mike, we'll read and
20 sign.

21 ATTORNEY FLANNERY: I think we're off
22 the record.

23 (Time noted: 1:16 p.m. CDT)

24 --o0o--
25

C E R T I F I C A T E

I, MICHAEL E. MILLER, FAPR, RDR, CRR, Notary
Public, do hereby certify:

That ROBERT A. DURHAM PhD PE, the witness
whose deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness;

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

IN WITNESS WHEREOF, I have hereunto set my
hand on May 13, 2024.

Michael E. Miller

Michael E. Miller
Fellow of the Academy of Professional Reporters
Registered Diplomate Reporter
Certified Realtime Reporter

Notary Public in and for the
State of Texas

1 I HEREBY CERTIFY that I have read this
2 transcript of my deposition, and that this
3 transcript accurately states the testimony given by
4 me, with the changes or corrections, if any, as
5 noted.

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10 X _____

11 ROBERT A. DURHAM PhD PE
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1 ERRATA SHEET FOR THE TRANSCRIPT OF:

2 CASE NAME: IPR2023-01236, IPR2023-01237, IPR2023-01238

3 DEP DATE: May 9, 2024

4 DEPONENT: ROBERT A. DURHAM PhD PE

5	Pg.	Ln.	Now Reads	Should Read	Reason
6	—	—	—	—	—
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23					
24			X	—	
25				ROBERT A. DURHAM PhD PE	

Exhibits		
Exhibit 1 5:3 7:23 8:3	1008 23:23 64:20,23	164 99:22
Exhibit 2 5:7 8:7,12	1009 80:16,19	17(h) 87:19 99:8
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