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23

24       **ALSO PRESENT:**

**David Zduren, Dentsply**

25       **Jason Levin, Legal Videographer**



E X H I B I T S		
NUMBER	DESCRIPTION	MARKED
1		
2		
3	Exh 7	
4		
5		
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7	Exh 8	
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9	Exh 9	
10	Exh 10	
11	Exh 11	
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14	Exh 12	
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17	Exh 13	
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19	Exh 14	
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23	Exh 15	
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1	E X H I B I T S		
2	NUMBER	DESCRIPTION	MARKED
3	Exh 16	the first edition of the ISO	
4		3630-1 standard.....	140
5	Exh 17	a copy of Dr. Luebke's declaration	
6		signed on August 14th, 2014.....	145
7	Exh 18	a copy of a dissertation entitled	
8		Investigation of Phase Transformation	
9		Mechanisms for Nickel-Titanium Rotary	
10		Endodontic Instruments.....	152
11	Exh 19	a document titled Relevant Aspects in	
12		the Clinical Application of	
13		NiTi-Shaped Memory Alloys, first	
14		Author's last name Gill.....	160
15	Exh 20	an article from the American Journal	
16		of Orthodontics and Dentofacial	
17		Orthopedics from April 1991.....	168
18	Exh 21	a copy of an article entitled,	
19		Fatigue in Mechanical Properties	
20		of Nickel-Titanium Endodontic	
21		Instruments.....	187
22	Exh 22	an article entitled, Bending Fatigue	
23		Study of Nickel-Titanium Gates Glidden	
24		Drills.....	188
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NUMBER	DESCRIPTION	MARKED
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3	Exh 23 a copy of an information disclosure	
4	statement that is dated August	
5	2014.....	193
6	Exh 24 a copy of published patent	
7	application U.S. 2002/0137008.....	226
8	Exh 25 a copy of U.S. Patent 6,485,507,	
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13	signed April 28th, 2011.....	257
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21	in the Application Number	
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24	Number U.S. 2001/0271529, first	
25	named inventor Gow.....	280

1           THE VIDEOGRAPHER: We are now on the  
2 record. Please note that the microphones are  
3 sensitive and may pick up whispering and private  
4 conversations, and please turn off all cell  
5 phones or place them away from the microphones,  
6 as they can interfere with the deposition audio.

7           Recording will continue until all  
8 parties agree to go off the record.

9           My name is Jason Levin, representing  
10 Veritext. The date today is October 8th, 2014,  
11 and the time is approximately 9:01 a.m.

12           This deposition is being held at the  
13 offices of Rothwell, Figg, located at 607 14th  
14 Street, Northwest, Washington, D.C., Suite 800,  
15 and is being taken by the counsel for the  
16 defendant.

17           The caption of the case is Dentsply  
18 International, Incorporated, et al., versus  
19 US Endodontics LLC. This case is filed in  
20 the United States District Court for the  
21 Eastern District of Tennessee, Case Number  
22 2:14-cv-00196.

23           The name of the witness is Neill  
24 Luebke.

25           At this time, the attorneys present

1 will please identify themselves and the parties  
2 they represent.

3 MR. GINSBERG: Jeff Ginsberg,  
4 of Kenyon and Kenyon, for defendant US  
5 Endodontics.

6 MR. JESIC: Slaven Jesic, Kenyon &  
7 Kenyon, on behalf of US Endo.

8 MR. DAHLGREN: Derek Dahlgren,  
9 Rothwell, Figg, Ernst & Manbeck, on behalf of  
10 plaintiffs.

11 MR. NOLAN: Jason Nolan, Rothwell,  
12 Figg, Ernst & Manbeck, on behalf of plaintiffs.

13 MR. ZDURNE: David Zdurne, plaintiff  
14 Dentsply.

15 THE VIDEOGRAPHER: And our court  
16 reporter, Ryan Black, representing Veritext,  
17 will swear in the witness, and we can proceed.

18 - - -

19 Whereupon --

20 NEILL LUEBKE, DDS, MS,  
21 called to testify, having been first duly sworn  
22 or affirmed, was examined and testified as  
23 follows:

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EXAMINATION

BY MR. GINSBERG:

Q. Good morning, Dr. Luebke.

A. Good morning.

Q. Could you state your full name and residence for the record?

A. My name is Neill Hamilton Luebke. And my residence is 18010 Continental Drive in Brookfield, Wisconsin.

Q. Dr. Luebke, have you ever been deposed before?

A. Some years ago in a dental case I believe I gave a video. I'm not certain if I was an expert witness or not, but it was a -- a short deposition, so I believe I have.

Q. Was that a malpractice case?

A. I believe it was. I -- I -- it has been so long ago. It -- it occurred in prehistoric times, so I don't exactly remember.

Q. Since it's been so long, why don't we just go over a couple of ground rules for today.

You understand that I will be asking you questions and that you are here to provide answers to my questions?

A. I do.

1 Q. You also see that the court reporter  
2 is taking down my questions and your answers,  
3 so it's important that we don't talk over each  
4 other so we have a clear record.

5 Is that okay?

6 A. That would be fine.

7 Q. I do ask that if you don't  
8 understand one of my questions, just let  
9 me know. Otherwise, I assume that you have  
10 understood my question in providing your answer.

11 Is that fair?

12 A. That would be fair.

13 Q. Is there anything preventing you from  
14 providing truthful and complete responses to my  
15 questions today?

16 A. No, there is not.

17 Q. [REDACTED]

18 [REDACTED]

19 MR. DAHLGREN: I'm going to object.  
20 Just to the extent it calls for privileged  
21 communications between attorneys and yourself,  
22 I'd instruct you not to divulge the substance of  
23 those communications. But you can answer  
24 otherwise.

25 THE WITNESS: [REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5 BY MR. GINSBERG:

6

Q. [REDACTED]

7

[REDACTED]

8

A. [REDACTED]

9

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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1 (Luebke Deposition Exhibit No. 1, a  
2 copy of the declaration of Jon Goldberg that is  
3 dated August 4th, 2014, was marked.)

4 BY MR. GINSBERG:

5 Q. Dr. Luebke, you've been handed what  
6 has been marked Luebke Exhibit 1. It is a copy  
7 of the declaration of Jon Goldberg that is dated  
8 August 4th, 2014. It does not include the  
9 exhibits, but is this the declaration that you  
10 reviewed?

11 A. I -- I believe it is.

12 Q. Did you ever see any other materials  
13 Dr. Goldberg submitted in this case?

14 A. You did not include the prior art  
15 references?

16 Q. Yes. This is the declaration without  
17 the exhibits.

18 A. I see. Okay.

19 I'm not aware of anything else I was  
20 shown.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

[REDACTED]

[REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 Q. [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 (Luebke Deposition Exhibit No. 2,  
15 a copy of an expert report of Jon Goldberg,  
16 certain portions redacted, dated September 11th,  
17 2014, was marked.)

18 BY MR. GINSBERG:

19 Q. Dr. Luebke, you've been handed what  
20 has been marked Luebke Exhibit 2. It's a copy  
21 of an expert report of Jon Goldberg, certain  
22 portions redacted, dated September 11th, 2014.

23 [REDACTED]  
[REDACTED]  
[REDACTED]

1 Q. You're aware that in this action  
2 Dentsply is asserting two patents against US  
3 Endodontics, correct?

4 A. That's my understanding.

5 Q And those two patents are U.S. Patent  
6 Number 8,727,773 and 8,562,341; is that correct?

7 A. I must rely that you read those  
8 numbers correctly, and, if you did, then I agree  
9 to that.

10 Q. I'll be talking about these patents  
11 today. If I refer to your -- the patent that  
12 has a Patent Number 8,727,773 as the '773  
13 patent, would that be okay?

14 A. That would be very acceptable.

15 Q. And same thing with the -- your  
16 patent, 8,562,341. Okay if I refer to that as  
17 the '341 patent?

18 A. Is that '341?

19 Is that correct?

20 Q. I could show it to you, if need be.

21 A. No. That's fine. If it's '341,  
22 that's fine. I -- I guess I had thought it was  
23 311 or 331, so, okay.

24 Yes. '341 is fine.

25 Q. And, collectively, I'll refer to them

1 as the asserted patents, okay?

2 A. That would be acceptable.

3 Q. Is it also okay if I refer  
4 collectively to the plaintiffs, Dentsply  
5 International and Tulsa Dental Products,  
6 collectively, as Dentsply?

7 A. That would be fine.

8 Q. Dr. Luebke, you went to dental school  
9 at the University of Iowa; is that correct?

10 A. That's correct.

11 Q. And a DDS was awarded to you in 1969?

12 A. That's correct also.

13 Q. Do you have any undergraduate degree?

14 A. I do not.

15 Q. You went straight from high school to  
16 dental school?

17 A. No. That is incorrect. I had  
18 four years -- I had four years of -- of college.

19 The only one in the family that  
20 doesn't have the bachelor's degree because I'm  
21 missing a language.

22 Q. So you do not have a college degree,  
23 correct?

24 A. Yes, I do. I have a DDS.

25 Q. Do you --

1           A.    I also have a master's degree, as  
2 well.

3           Q.    The four years that you -- where --  
4 did you attend University of Iowa undergrad?

5           A.    I did.

6           Q.    And did you have a -- a major at that  
7 time?

8           A.    General science.

9           Q.    And did you ever get a degree in  
10 general science from University of Iowa?

11          A.    I did not.

12          Q.    You obtained your master's degree from  
13 University of Iowa in 1972; is that correct?

14          A.    I believe that's correct, yes.

15          Q.    And what was the master's degree in?

16          A.    The master's degree was from the  
17 graduate -- it was a -- it was a master of  
18 science from the graduate college. And it  
19 entailed education, operative dentistry.

20          Q.    Did the --

21          A.    May I -- may I take a moment, please?

22                MR. GINSBERG:   You may.

23                THE VIDEOGRAPHER:  We're going off  
24 record at 9:14 a.m.

25                (Brief recess.)

1 THE VIDEOGRAPHER: We're going back on  
2 record at 9:15 a.m.

3 BY MR. GINSBERG:

4 Q. You do not have a material science  
5 degree, correct?

6 A. I do not.

7 Q. And you do not have a degree in  
8 metallurgy, correct?

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: I do not.

11 BY MR. GINSBERG:

12 Q. Do you consider any of the degrees  
13 you obtained to be related to the field of  
14 metallurgy?

15 MR. DAHLGREN: Objection; form.

16 THE WITNESS: Yes, indeed.

17 When I was in dental school, we had  
18 materials presented by the various departments.  
19 So all of the -- the current instruments and  
20 materials were presented in dental school. And  
21 then in the graduate program, my certificate in  
22 master of science in endodontics in Nebraska, we  
23 then, again, also went over all of the current  
24 materials that would be relevant to an  
25 endodontic practice.

1 BY MR. GINSBERG:

2 Q. Did you study the structure of  
3 those materials that would be relevant to an  
4 endodontic practice?

5 MR. DAHLGREN: Objection; form.

6 THE WITNESS: When you're in dental  
7 school, you receive training in all of the  
8 various materials, and I presented on some of  
9 those materials at student dental clinics. And  
10 in your graduate program, you have to know what  
11 the instruments are, what the makeup is. And  
12 so I -- yes, everything that was relevant to  
13 practicing endodontics was -- and materials was  
14 presented in my graduate program.

15 BY MR. GINSBERG:

16 Q. Did you study the chemical structure  
17 of materials that were used in the endodontic  
18 field --

19 MR. DAHLGREN: Objection.

20 BY MR. GINSBERG:

21 Q. -- [REDACTED]

22 MR. DAHLGREN: Sorry.

23 Objection; form.

24 THE WITNESS: [REDACTED]  
[REDACTED]



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[REDACTED]

BY MR. GINSBERG:

Q. Did you -- did any of your courses involve study of various phase transformations associated with the materials that were used in the endodontic field?

MR. DAHLGREN: Objection; form.

THE WITNESS: Well, if you'll look at the -- the CV, I graduated in 1980, and in 19 -- 1980 from the endo program. So at that time we had carbon steel and we had stainless steel. I don't know that we looked at the chemical formation or the physical properties of all of that at that time. But I'm sure we were aware of their capabilities and their physical properties.

BY MR. GINSBERG:

Q. When you say their physical properties, what do you mean?

A. Whether they can bend or whether they -- how well they cut. All of the literature that was current at that time.

Q. Do you recall submitting two declarations as an expert report in this case?

Let me rephrase the question. Do you

1 recall submitting two declarations and a report  
2 in this case?

3 A. I may need assistance. I know I gave  
4 one declaration and one report. I don't know  
5 whether I -- I -- I don't recall whether I gave  
6 two declarations or not.

7 Q. [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection to the extent  
10 it calls for privileged communications between  
11 you and counsel. I'd instruct you not to  
12 divulge the substance of those communications.

13 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 BY MR. GINSBERG:

23 Q. Do you know when?

24 MR. DAHLGREN: Objection. Same

25 objection.

1 THE WITNESS: I have no idea.

2 I just have returned. I haven't been  
3 home for a while, so ...

4 (Luebke Deposition Exhibit No. 3, a  
5 document titled Report of Neill Luebke, DDS, MS,  
6 dated September 10th, 2014, was marked.)

7 BY MR. GINSBERG:

8 Q. Dr. Luebke, you've been handed Luebke  
9 Exhibit 3. It's entitled Report of Neill  
10 Luebke, DDS, MS, and it is dated September 10th,  
11 2014.

12 Could you go to Page 22 of this  
13 report?

14 MR. DAHLGREN: And, Dr. Luebke, you  
15 can look through the whole report, if you want  
16 to.

17 BY MR. GINSBERG:

18 Q. Is that your signature on Page 22?

19 A. Yes.

20 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



1 BY MR. GINSBERG:

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. Was it within the last couple of  
6 weeks, months or years?

7 A. All of the above.

8 Q. You've provided certain opinions  
9 regarding the validity of the claims of the  
10 '341 and '773 patents, correct?

11 MR. DAHLGREN: Objection; form.

12 THE WITNESS: Please re -- you went a  
13 little fast for me.

14 BY MR. GINSBERG:

15 Q. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: Did you say, have I  
2 considered?

3 BY MR. GINSBERG:

4 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9 MR. DAHLGREN: Objection; form.  
10 Compound.

11 THE WITNESS: [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

16 BY MR. GINSBERG:

17 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22 MR. DAHLGREN: Same objections. Asked  
23 and answered.

24 THE WITNESS: I will take the time to  
25 read this to see if I have.

1                   Let me answer your question in this  
2 way: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 BY MR. GINSBERG:

6           Q.    When you say in earlier applications,  
7 what do you mean?

8           A.    Wherever Heath was mentioned in the  
9 patents.

10          Q.    I don't understand.  What patents are  
11 you talking about?

12          A.    Do you have my patents?

13          Q.    I do.

14          A.    May I see them?

15          Q.    Sure.

16                   (Luebke Deposition Exhibit No. 4, Dr.  
17 Luebke's '341 patent, was marked.)

18                   (Luebke Deposition Exhibit No. 5, Dr.  
19 Luebke's '773 patent, was marked.)

20 BY MR. GINSBERG:

21          Q.    Dr. Luebke, you've been handed what has  
22 been marked Luebke Exhibit 4 and Luebke Exhibit  
23 5.  Luebke Exhibit 4 is your '341 patent, and  
24 Luebke Exhibit 5 is your '773 patent, correct?

25          A.    That's correct.



1 Q. Okay. You've been handed those. [REDACTED]

[REDACTED]  
[REDACTED]

4 MR. DAHLGREN: Objection;  
5 mischaracterizes his testimony.

6 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 A. [REDACTED]  
[REDACTED]  
[REDACTED]

18 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23 A. I certainly don't understand that  
24 question.

25 Q. [REDACTED]

1 [REDACTED]

2 [REDACTED], --

3 MR. DAHLGREN: Objection; asked and  
4 answered.

5 BY MR. GINSBERG:

6 Q. -- [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 MR. DAHLGREN: Same objection.

10 Sorry for the interruption.

11 THE WITNESS: [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 MR. DAHLGREN: Objection; form.

22 THE WITNESS: [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 BY MR. GINSBERG:

1           Q.    Was it listed in his expert report  
2   dated September 10th, 2014?

3           MR. DAHLGREN:  Objection; form.

4           THE WITNESS:  [REDACTED]

5   BY MR. GINSBERG:

6           Q.    [REDACTED]  
7  [REDACTED]  
8  [REDACTED]  
9  [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 BY MR. GINSBERG:

18          Q.    [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23          MR. DAHLGREN:  Objection; form.

24          Compound.  Asked and answered.

25          THE WITNESS:  What are you asking?

1 BY MR. GINSBERG:

2 Q. [REDACTED]  
3 [REDACTED] --

4 A. Okay.

5 Q. -- [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection; form.  
10 Compound. Asked and answered.

11 THE WITNESS: Do you have a copy of  
12 that report?

13 BY MR. GINSBERG:

14 Q. You just reviewed it. You just spent  
15 five minutes reviewing that report.

16 A. Oh. No, it's not in that one. Okay.  
17 Good. Good.

18 MR. DAHLGREN: Objection;  
19 mischaracterizing the record. He didn't spend  
20 five minutes reviewing the report.

21 THE WITNESS: [REDACTED] [REDACTED]  
22 [REDACTED] [REDACTED]

23 BY MR. GINSBERG:

24 Q. [REDACTED]  
25 [REDACTED]

1 A. [REDACTED]

2 MR. DAHLGREN: Same objections.

3 THE WITNESS: [REDACTED]

4 [REDACTED] [REDACTED]

5 BY MR. GINSBERG:

6 Q. You are the president of Gold Standard  
7 Instruments, LLC, correct?

8 A. That is correct.

9 Q. Gold Standard is the assignee and  
10 licensor of the '341 and '773 patents, correct?

11 A. That is correct.

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Q.

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

[REDACTED]

6

[REDACTED]

7

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

13

[REDACTED] [REDACTED]

14

[REDACTED] [REDACTED]

15

[REDACTED]

16

[REDACTED]

[REDACTED]

17

[REDACTED]

[REDACTED]

18

Q.

[REDACTED]

19

[REDACTED]

20

MR. DAHLGREN: Objection; form.

21

THE WITNESS: [REDACTED]

22

[REDACTED]

23

BY MR. GINSBERG:

24

Q.

[REDACTED]

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[REDACTED]

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A. [REDACTED]  
[REDACTED]  
[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]  
[REDACTED].

BY MR. GINSBERG:

Q. [REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. Anything else?

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. Anything else?

MR. DAHLGREN: Same objection.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. [REDACTED]

1 [REDACTED]

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: [REDACTED]

4 BY MR. GINSBERG:

5 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED]

16 BY MR. GINSBERG:

17 Q. What are they called now?

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] I don't know.

22 BY MR. GINSBERG:

23 Q. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 MR. DAHLGREN: Objection; form.



1 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 MR. DAHLGREN: Objection; form.  
7 Objection to the extent it calls for a legal  
8 conclusion.

9 THE WITNESS: [REDACTED]

[REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 MR. DAHLGREN: Objection; form.  
17 Objection to the extent it calls for a legal  
18 conclusion.

19 THE WITNESS: [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

[REDACTED]

23 MR. DAHLGREN: Objection; form.

24 Vague.

25 THE WITNESS: [REDACTED]

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[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]  
BY MR. GINSBERG:

Q. [REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: I believe that's information that I don't need to divulge.

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: So I'm going to object -- well, first I'd like to mark this transcript highly confidential, outside counsel's eyes only, with respect to defendant. And, also, I would caution Dr. Luebke, to the extent that the questions call for third-party confidential information and things that you can't divulge, I'd ask you not to divulge that information, if you're under an obligation not to.

BY MR. GINSBERG:

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Q. Who -- who do you have an obligation  
5 with that would prohibit -- that would prevent  
6 you from disclosing this information?

7 MR. DAHLGREN: And I also want to  
8 object to the extent that Gold Standard has  
9 separate trade secrets that are proprietary to  
10 Gold Standard that --

11 MR. GINSBERG: This is an improper  
12 objection. Are you -- are you instructing the  
13 witness not to answer this question, Derek, just  
14 so I know? I need a record of this.

15 MR. DAHLGREN: I'm giving him  
16 instruction, to the extent that it calls -- if  
17 he has trade secrets that have been disclosed,  
18 if it's confidential information to Gold  
19 Standard, I -- I think that's a proper  
20 objection.

21 BY MR. GINSBERG:

22 Q. Do you understand that your counsel  
23 has designated this transcript outside counsel  
24 only, meaning this portion of your testimony can  
25 only be seen by outside counsel, under the terms

1 of a protective order in this case?

2 Do you understand that?

3 A. I -- I don't understand the law,  
4 but if that's what you say, that's fine.

5 Q. Your counsel could correct me if I'm  
6 wrong.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 Q. [REDACTED]

15 MR. DAHLGREN: Jeff, perhaps if we  
16 could take a quick break, we could -- maybe we  
17 can sort this thing out.

18 MR. GINSBERG: That's fine.

19 MR. DAHLGREN: Okay. Thank you.

20 THE VIDEOGRAPHER: We're going off  
21 record at 9:47 a.m.

22 (Recess taken.)

23 THE VIDEOGRAPHER: We're going back on  
24 record at 9:51 a.m.

25 BY MR. GINSBERG:











1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

BY MR. GINSBERG:

1 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

14 BY MR. GINSBERG:

15 Q. [REDACTED]

[REDACTED]

[REDACTED]

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: [REDACTED]

[REDACTED]

21 BY MR. GINSBERG:

22 Q. [REDACTED]

[REDACTED]

[REDACTED]

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: [REDACTED]

2 BY MR. GINSBERG:

3 Q. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

10 [REDACTED]

11 MR. DAHLGREN: Objection; form.

12 THE WITNESS: [REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 MR. DAHLGREN: Objection; form.

16 THE WITNESS: [REDACTED]

17 [REDACTED]

18 BY MR. GINSBERG:

19 Q. [REDACTED]

20 MR. DAHLGREN: Objection; form.

21 THE WITNESS: [REDACTED]

22 [REDACTED]

23 BY MR. GINSBERG:

24 Q. [REDACTED]

25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Q. What did you say?

4 A. I agreed.

5 Q. [REDACTED]

6 [REDACTED]

7 MR. DAHLGREN: Objection; form.

8 THE WITNESS: [REDACTED]

9 [REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 (Luebke Deposition Exhibit No. 6, [REDACTED])

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 ///

1 (Luebke Deposition Exhibit No. 7, a

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED] was marked.)

5 BY MR. GINSBERG:

6 Q. Dr. Luebke, you've been handed Luebke  
7 Exhibit 6 and 7. Luebke Exhibit 6 is [REDACTED]  
8 [REDACTED]  
9 [REDACTED].

10 Luebke Exhibit 7 is [REDACTED]  
11 [REDACTED]  
12 [REDACTED].

13 Turning first to Luebke Exhibit 6, do  
14 you recognize this agreement?

15 MR. DAHLGREN: And, Dr. Luebke, you  
16 could look at the document before you answer  
17 that question.

18 THE WITNESS: Yes.

19 BY MR. GINSBERG:

20 Q. What is this agreement?

21 MR. DAHLGREN: Objection; form.

22 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



1 BY MR. GINSBERG:

2 Q. [REDACTED]

3 MR. DAHLGREN: Objection; form.

4 BY MR. GINSBERG:

5 Q. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. DAHLGREN: Same objection.

9 THE WITNESS: [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 MR. DAHLGREN: Objection; form.

16 Mischaracterizes his testimony.

17 THE WITNESS: [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 BY MR. GINSBERG:

22 Q. [REDACTED]

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

1

[REDACTED]

2

BY MR. GINSBERG:

3

Q. [REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED].

11

Do you see that?

12

A. Yes.

13

Q. [REDACTED]

14

[REDACTED]

15

MR. DAHLGREN: Objection; form.

16

THE WITNESS: [REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

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[REDACTED]

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[REDACTED]

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A. [REDACTED]

Q. Do you know her last name?

A. No.

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

BY MR. GINSBERG:

Q. -- [REDACTED]

[REDACTED]

MR. DAHLGREN: Sorry.

Same objection.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

1 THE WITNESS: [REDACTED]

[REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

[REDACTED]

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

[REDACTED]

[REDACTED]

12 MR. DAHLGREN: Objection; form.

13 THE WITNESS: I trust that's correct.

14 BY MR. GINSBERG:

15 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 MR. DAHLGREN: Objection; form.

20 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 BY MR. GINSBERG:

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 MR. DAHLGREN: Objection; form.

5 Doctor, will you just give me a little  
6 time to make a objection?

7 THE WITNESS: I -- yeah.

8 MR. DAHLGREN: That's fine.

9 THE WITNESS: I slapped my hand  
10 already.

11 BY MR. GINSBERG:

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 MR. DAHLGREN: Objection; form.

16 THE WITNESS: [REDACTED]

17 [REDACTED]

18 BY MR. GINSBERG:

19 Q. [REDACTED]

20 [REDACTED]

21 MR. DAHLGREN: Objection; form.

22 BY MR. GINSBERG:

23 Q. -- [REDACTED]

24 [REDACTED]

25 MR. DAHLGREN: [REDACTED]

1 THE WITNESS: [REDACTED]

2 [REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

5 MR. DAHLGREN: Same objection.

6 THE WITNESS: [REDACTED]

7 BY MR. GINSBERG:

8 Q. [REDACTED]

9 [REDACTED]

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 BY MR. GINSBERG:

15 Q. [REDACTED]

16 [REDACTED]

17 MR. DAHLGREN: [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 BY MR. GINSBERG:

22 Q. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

[REDACTED]

4 BY MR. GINSBERG:

5 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED]

[REDACTED]

[REDACTED]

17 MR. DAHLGREN: Objection; form.

18 Objection; mischaracterizes the evidence.

19 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 BY MR. GINSBERG:

25 Q. If we can re -- turn to your report





1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

BY MR. GINSBERG:

6

Q. [REDACTED]

7

[REDACTED]

8

[REDACTED]

9

MR. DAHLGREN: Objection; form.

10

THE WITNESS: [REDACTED]

11

BY MR. GINSBERG:

12

Q. What happens if the claims of your

13

patents are held invalid?

14

MR. DAHLGREN: Objection; form.

15

THE WITNESS: [REDACTED]

16

[REDACTED]

17

BY MR. GINSBERG:

18

Q. If they are?

19

MR. DAHLGREN: Asked and answered

20

-- objection; asked and answered. Objection;

21

form.

22

THE WITNESS: [REDACTED]

23

[REDACTED]

24

[REDACTED]

25

BY MR. GINSBERG:

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: [REDACTED]

6 [REDACTED]

7 BY MR. GINSBERG:

8 Q. I'm asking for your understanding.

9 A. Well --

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: -- let me take time to  
12 read it, then.

13 BY MR. GINSBERG:

14 Q. Okay.

15 A. Do you have a suggestion where I might  
16 look?

17 Q. Sure.

18 [REDACTED]

19 [REDACTED]

20 A. Okay.

21 MR. DAHLGREN: [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 THE WITNESS: Now, Jeff, would you ask  
25 the question again, please?

1 BY MR. GINSBERG:

2 Q. Sure.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: [REDACTED]  
11 [REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]

14 MR. DAHLGREN: Objection; form.

15 THE WITNESS: [REDACTED]

16 BY MR. GINSBERG:

17 Q. [REDACTED]

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: [REDACTED]

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 BY MR. GINSBERG:

25 Q. So you don't know.

1                   Have you ever heard of Dentsply's  
2 ProTaper Gold file?

3                   MR. DAHLGREN:   Objection; form.

4                   THE WITNESS:   I have.

5 BY MR. GINSBERG:

6                   Q.    Is that a heat treated nickel-titanium  
7 file?

8                   MR. DAHLGREN:   Objection; form.

9                   THE WITNESS:   I don't know that I've  
10 personally been informed of that, [REDACTED]

[REDACTED]

12 BY MR. GINSBERG:

13                   Q.    [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] --

17                   MR. DAHLGREN:   Objection; form.

18 BY MR. GINSBERG:

19                   Q.    [REDACTED]  
[REDACTED]

21                   MR. DAHLGREN:   Objection; form.  
22 Objection to the extent it calls for a legal  
23 conclusion.

24                   THE WITNESS:   [REDACTED]  
[REDACTED]

1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED]  
[REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]

13 MR. DAHLGREN: Objection; form.  
14 Objection to the extent it calls for a legal  
15 conclusion.

16 THE WITNESS: I think the limitation  
17 of one of these, and I don't remember which one  
18 it is, calls for temperatures 400 degrees and  
19 above.

20 BY MR. GINSBERG:

21 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: [REDACTED]

2 BY MR. GINSBERG:

3 Q. When did you learn that Dentsply was  
4 selling Vortex Blue files?

5 MR. DAHLGREN: Objection; form.

6 THE WITNESS: [REDACTED]

7 [REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 MR. DAHLGREN: Objection; form.

13 THE WITNESS: [REDACTED]

14 [REDACTED]

15 BY MR. GINSBERG:

16 Q. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MR. DAHLGREN: Objection; form.

20 THE WITNESS: [REDACTED]

21 [REDACTED]

22 BY MR. GINSBERG:

23 Q. [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]



1 BY MR. GINSBERG:

2 Q. How?

3 MR. DAHLGREN: Objection; form.

4 THE WITNESS: [REDACTED]

5 [REDACTED]

6 BY MR. GINSBERG:

7 Q. Between whom?

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED]

10 [REDACTED]

11 BY MR. GINSBERG:

12 Q. When was this?

13 MR. DAHLGREN: Objection; form.

14 THE WITNESS: I -- I can't give you a  
15 date.

16 BY MR. GINSBERG:

17 Q. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 BY MR. GINSBERG:

4 Q. Do you recall who that was?

5 A. [REDACTED]

6 [REDACTED]

7 (Luebke Deposition Exhibit No. 8,  
8 declaration of Neill Luebke, signed June 19th,  
9 2014, was marked.)

10 BY MR. GINSBERG:

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] you were

21 invited to attend a meeting at D&S Dental

22 in Johnson City to discuss possible

23 commercialization of your post heat treated

24 endodontic files, correct?

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: Okay. Yeah.

2 BY MR. GINSBERG:

3 Q. What do you mean by post heat treated?

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: Dental files that have  
6 been fabricated and then heat treated.

7 BY MR. GINSBERG:

8 Q. Dental files that had the cutting  
9 edges formed in them and then heat treated?

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: That would be correct.

12 BY MR. GINSBERG:

13 Q. Who invited you to attend the June  
14 24-26, 2010, meeting?

15 A. I think Mr. Bennett did.

16 Q. At the time of the June 2010 meeting,  
17 do you recall how many pending U.S. Patent  
18 applications you had?

19 A. It's a matter of secretarial. I  
20 would -- you probably know better than I do.  
21 Let me look at the two you gave me.

22 I believe there's two earlier patents  
23 than these two, so I would assume that there  
24 were two patents pending at that time.

25 Yeah. It's plural, so that would be

1 two.

2 Q. If you look at the face of Luebke  
3 Exhibit 5, which is the '773 patent, the -- your  
4 '773 patent.

5 A. Okay. Thank you.

6 Q. Sure. Under related U.S. application  
7 data, that provides some information as to your  
8 pending applications, correct?

9 A. Oh, okay. Okay. I agree.

10 Q. Reading that, is it your understanding  
11 that the only application that was pending at  
12 the time of the June 2000 and the only -- let me  
13 rephrase the question.

14 Reading the related U.S. application  
15 data that's provided in the '773 patent, does  
16 that refresh your recollection that the only  
17 pending U.S. application, at the time of your  
18 June 2010 meeting with D&S Dental, was the  
19 application that resulted in U.S Patent Number  
20 8,062,033?

21 MR. DAHLGREN: Objection; form.

22 THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

BY MR. GINSBERG:

7

Q. Well, the only patent application

8

listed on the '773 patent that was pending

9

at the time of the June 2010 meeting was

10

the application that led to the '033 patent,

11

correct, that was filed in June of 2005.

12

All your other applications were filed after

13

June of 2010, correct?

14

MR. DAHLGREN: Objection; form.

15

Compound. Asked and answered.

16

THE WITNESS: The first patent numbers

17

is -- is 80 something --

18

BY MR. GINSBERG:

19

Q. When you say 80 something, what do you

20

mean?

21

A. Well, these are -- my understanding,

22

the way I look at it, this is, I believe, patent

23

number three and this is patent number four.

24

And there are two previous patents to this.

25

///

1 (Luebke Deposition Exhibit No. 9,  
2 U.S. Patent Number 8,062,033, was marked.)

3 BY MR. GINSBERG:

4 Q. I'm handing you what has been marked  
5 Luebke Exhibit 9. It's U.S. Patent Number  
6 8,062,033.

7 Is this patent number one?

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: I don't have the numbers  
10 memorized. I would assume -- you have the  
11 numbers better than I, so ...

12 BY MR. GINSBERG:

13 Q. Well, if you look at Luebke Exhibit  
14 5, --

15 A. Five, okay.

16 Q. -- you have the date of the '773  
17 patent, which is May 20th, 2014, correct?

18 A. Correct.

19 Q. The date that the '341 application  
20 -- I'm sorry. The date that the '341 patent  
21 was filed was December 23rd, 2011, correct?

22 MR. DAHLGREN: Objection; form.

23 THE WITNESS: Ask the question again,  
24 please.

25 BY MR. GINSBERG:



1 Q. Why don't I just give you your fourth  
2 patent so we'll have them all there.

3 (Luebke deposition Exhibit No. 10,  
4 U.S. Patent Number 8,083,873, was marked.)

5 MR. DAHLGREN: Are you all right? Do  
6 you need a break?

7 THE WITNESS: No.

8 MR. DAHLGREN: Okay.

9 THE WITNESS: Okay. Now we've got  
10 them. This is one, two, three and four.

11 BY MR. GINSBERG:

12 Q. And you've just been handed what has  
13 been marked Luebke Exhibit 10, and that is a  
14 copy of the U.S. Patent Number 8,083,873.

15 A. Right.

16 Q. So --

17 A. So these patent applications were in  
18 process when I met with Bobby.

19 Q. When you say these, the application  
20 that is identified on Luebke Exhibit 10, that  
21 was filed on December 23rd, 2010, correct?

22 A. Oh, that -- this one is.

23 Q. Right.

24 A. Yeah. This one is 2005.

25 Q. Which one is this one that you're



1 referring to?

2 A. 8,062,033.

3 Q. We'll refer to that as the '033  
4 patent, okay?

5 A. '033 patent, okay.

6 Q. The application that led to the '033  
7 patent was the only application -- only U.S.  
8 application of yours that was pending at the  
9 time that you met with D&S Dental, correct?

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: Okay. So let's look at  
12 some dates here.

13

14 BY MR. GINSBERG:

15

Q.

16

17

18

19

20

21 Q. And you had no other applications that  
22 were in the Patent Office at the time --

23

A. At the time.

24

25

MR. DAHLGREN: If you could just let  
him finish his questions.

1 THE WITNESS: Sorry.

2 BY MR. GINSBERG:

3 Q. The claims of your '033 patent are  
4 limited to heat treatment in an atmosphere  
5 consisting, essentially, of a gas unreactive  
6 with the nickel-titanium shank, correct?

7 MR. DAHLGREN: Objection; form.  
8 Objection; calls for a legal conclusion.

9 THE WITNESS: [REDACTED]

10 BY MR. GINSBERG:

11 Q. And when you met with D&S Dental, the  
12 pending claims of your application that resulted  
13 in the '033 patent were limited to a post heat  
14 treatment step, conducted in an atmosphere  
15 consisting, essentially, of a gas unreactive  
16 with a nickel-titanium shaft, correct?

17 MR. DAHLGREN: Objection; form. Calls  
18 for a legal conclusion.

19 THE WITNESS: [REDACTED]

20 BY MR. GINSBERG:

21 Q. How long did your meeting at D&S  
22 Dental last in June of 2010?

23 A. If memory serves me correctly, I flew  
24 in on a late afternoon, went to the hotel on my  
25 own. The next day I was picked up, taken to D&S

1 Dental, and I met with several people. I made a  
2 presentation to a dentist, and I left the next  
3 morning.

4 Q. So was your meeting at D&S Dental a  
5 one-day meeting?

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: I -- I would  
8 characterize it as a one-day meeting.

9 BY MR. GINSBERG:

10 Q. And who did you meet with at D&S  
11 Dental?

12 A. Okay. Mr. Bennett, a gentleman that  
13 has the S, Steve --

14 Q. Treadway?

15 A. Correct. Thank you.

16 Their lab technician who was doing  
17 their testing.

18 Q. Do you remember his or her name?

19 Anyone else?

20 A. Yeah. The H&R gentleman.

21 Q. Is that human resources or --

22 A. Human resources.

23 Q. Okay. Thank you.

24 A. Yeah.

25 And the floor manager for the files.

1 Q. Do you know the name of the floor  
2 manager? Do you know the name of the HR rep?  
3 Did you meet -- I'm sorry. You need  
4 to answer verbally.

5 A. I'm sorry. I have to say no. No.  
6 I can't shake my head. I'm sorry.  
7 No.

8 Q. Did you meet with Derek Heath at that  
9 time?

10 A. No.

11 Q. Do you have any notes from the June  
12 2010 meeting with D&S Dental?

13 A. I believe I do. Not with me, but I  
14 believe I do.

15 Q. In your June 19 declaration that  
16 we've marked as Luebke Exhibit 8, you state  
17 in paragraph -- Paragraph 12 that you advised  
18 Mr. Bennett and others at D&S Dental that you  
19 had pending applications that contained claims  
20 directed to post heat treated endodontic files;  
21 is that correct?

22 A. Well, you reminded me, I should  
23 probably have application. So if we make that  
24 correction, I would say that Mr. Treadway was  
25 incidentally involved, but Mr. Bennett was the

1 primary individual that I talked with.

2 Q. Was Mr. Treadway there for your  
3 conversation?

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: Part of the  
6 conversation, but it -- it appeared Mr. Treadway  
7 wasn't terribly interested in that information.

8 BY MR. GINSBERG:

9 Q. Well, when you said, I advised  
10 Mr. Bennett and others at D&S Dental that you  
11 had pending applications, which you've corrected  
12 to application, that contained claims directed  
13 to post heat treated endodontic files, was there  
14 anyone besides Mr. Bennett and, possibly,  
15 Mr. Treadway that you advised?

16 MR. DAHLGREN: Objection; form.

17 THE WITNESS: I don't believe so.

18 BY MR. GINSBERG:

19 Q. What was their response?

20 MR. DAHLGREN: Objection; form.

21 THE WITNESS: I believe Mr. Bennett  
22 said that he was filing a patent, but I don't  
23 believe it had been published yet.

24 BY MR. GINSBERG:

25 Q. Did he show you a copy of that

1 application?

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: I don't think he shared  
4 that with me. I think we just shared dialogue.

5 BY MR. GINSBERG:

6 Q. Did Mr. Bennett inform you that  
7 his application covered a method of post heat  
8 treating nickel-titanium shanks in air and not  
9 an atmosphere that's unreactive with the shanks?

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: I believe --

12 MR. DAHLGREN: Objection; compound.

13 THE WITNESS: I believe we discussed  
14 that.

15 BY MR. GINSBERG:

16 Q. And did Mr. Bennett, in fact, tell you  
17 that he had a pending application directed to  
18 methods of making post heat treated endodontic  
19 files, where the step of heat treating did not  
20 take place in an atmosphere consisting,  
21 essentially, of a gas unreactive with a shank?

22 MR. DAHLGREN: Objection; form. Asked  
23 and answered.

24 THE WITNESS: That's, perhaps, more  
25 specific than -- than the conversation we had.



1           We -- so the conversation was more  
2 about leaving some files in an oven.

3 BY MR. GINSBERG:

4           Q.     Did Mr. Bennett suggest to you that  
5 you should combine your pending application with  
6 his pending application?

7           MR. DAHLGREN:  Objection; form.

8 BY MR. GINSBERG:

9           Q.     During the June 2010 meeting?

10          MR. DAHLGREN:  Same objection.

11          THE WITNESS:  I -- that -- we might  
12 actually have talked about that a little bit.

13 BY MR. GINSBERG:

14          Q.     Do you recall what you said in  
15 response?

16          MR. DAHLGREN:  Objection; form.

17          THE WITNESS:  I believe at -- it  
18 might have gone something, like, if we joined  
19 our applications, it would be strong.  And I  
20 asked him about his application, and he informed  
21 me that he put Mr. Heath and Mr. Treadway on the  
22 application.  And I asked him what part did they  
23 play.  And he said, they're my friends, and so I  
24 put them on.

25                 And I think I said to him, don't think



1 that's advisable.

2 (Luebke Deposition Exhibit No. 11, a  
3 copy of a published patent application with the  
4 publication Number U.S. 2011/0159458, was  
5 marked.)

6 (Luebke Deposition Exhibit No. 12, a  
7 copy of a published patent application with the  
8 publication Number U.S. 2011/0159458, was  
9 marked.)

10 THE VIDEOGRAPHER: Excuse me. Can we  
11 go off record for just a moment?

12 MR. GINSBERG: Sure.

13 THE VIDEOGRAPHER: We're going off  
14 record at 10:40 p.m.

15 (Recess taken.)

16 THE VIDEOGRAPHER: We're going back on  
17 record at 10:55 a.m. This is the start of Media  
18 Unit Number 2 in the deposition of Dr. Luebke.

19 BY MR. GINSBERG:

20 Q. Dr. Luebke, you've been handed what  
21 has been marked Luebke Exhibit 11 and Luebke  
22 Exhibit 12.

23 Luebke Exhibit 11 is a copy  
24 of a published patent application with the  
25 publication Number U.S. 2011/0159458. And

1 Luebke Exhibit 12 is a copy of a provisional  
2 application, that, on the front page, lists  
3 three inventors, one of whom is Bobby Bennett.

4 Do you see that?

5 I'm referring to Luebke Exhibit 12.  
6 The front page identifies Bobby Bennett as one  
7 of the inventors.

8 Do you see that?

9 A. I do.

10 Q. And if you turn to the end of Luebke  
11 Exhibit 12, it's the third-to-last page, this  
12 page right here. It's double-sided, so  
13 -- there's a communication from the Patent  
14 Office that identifies the application number  
15 for this provisional application.

16 Do you see that in the top left? It  
17 says 61/263,192.

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: Yeah. I do.

20 BY MR. GINSBERG:

21 Q. And that provisional application was  
22 filed November 20th, 2009?

23 MR. DAHLGREN: Objection; form.

24 THE WITNESS: I believe that's  
25 correct.

1 BY MR. GINSBERG:

2 Q. If you look at the front page of  
3 Luebke Exhibit 12, that references a provisional  
4 application -- I'm sorry. If you look at the  
5 front page of Luebke Exhibit 11, that references  
6 the provisional application that we just  
7 identified in Luebke Exhibit 12, correct, --

8 MR. DAHLGREN: Objection; form.

9 BY MR. GINSBERG:

10 Q. -- under related U.S. application  
11 data?

12 MR. DAHLGREN: Objection; form.

13 And, Dr. Luebke, you can take your  
14 time to look at the documents, if you need to.

15 THE WITNESS: Where would I find the  
16 corresponding number on 12?

17 BY MR. GINSBERG:

18 Q. If you recall, it's at the end of the  
19 document.

20 A. Oh, it's at the end. Thank you.

21 And should these numbers match?  
22 Should these -- should some numbers from here be  
23 transferred over here?

24 Q. Yeah. If you look at the Luebke  
25 Number 11, there's a provisional application

1 number that's provided.

2 A. But are there numbers that transfer  
3 from this document --

4 Q. Sure.

5 A. -- to this document?

6 Q. If you look at the application number,  
7 when you see this document on Luebke Exhibit 12,  
8 you see there's a provisional patent application  
9 number.

10 So you have -- your thumb is right on  
11 it.

12 A. Yeah.

13 Q. There's a provisional -- there's an  
14 application number there, 61/263,192.

15 A. Right.

16 Q. Does that match up with the  
17 provisional application number on Luebke  
18 Exhibit 11?

19 A. I'm not trying to be a dunce, but I  
20 don't -- I don't see 61/23. Can you help me?

21 Q. Sure.

22 Under related U.S. application data on  
23 Luebke Exhibit 11, --

24 A. Right.

25 Q. -- there's provisional Application

1 Number 61/263,192.

2 Do you see that?

3 It's in the first column --

4 A. Oh. Here it is. Here it is.

5 Couldn't find it. I'm sorry.

6 Yes.

7 Q. That matches up?

8 A. Yes.

9 Q. The provisional application that has  
10 been marked Luebke Exhibit 12, that was on file  
11 at the time that you met with Mr. Bennett at D&S  
12 Dental in June of 2010, correct?

13 MR. DAHLGREN: Objection; form.

14 THE WITNESS: Are the dates on the  
15 back? And I'm at --

16 BY MR. GINSBERG:

17 Q. The filing date says November 20th,  
18 2009, correct?

19 A. Oh. There it is.

20 Yeah. Okay.

21 Q. So the provisional application was on  
22 file prior to your meeting with Mr. Bennett in  
23 June of 2010, correct?

24 MR. DAHLGREN: Objection; form. Asked  
25 and answered.

1 THE WITNESS: Yeah. After you've  
2 walked me through that, I believe that's  
3 correct.

4 BY MR. GINSBERG:

5 Q. You indicated that at the June 2010  
6 meeting you gave a presentation. Was that a  
7 presentation to D&S Dental, or was that a  
8 presentation to somebody else that you were  
9 meeting with in Tennessee?

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: I made a presentation to  
12 Bobby.

13 He called a dentist to come in and see  
14 the presentation, as well.

15 BY MR. GINSBERG:

16 Q. Do you have a copy of that  
17 presentation still?

18 A. Probably not that exact presentation,  
19 but maybe something similar.

20 Maybe.

21 Q. Where would that be?

22 MR. DAHLGREN: Objection; form.

23 THE WITNESS: My best guess, it would  
24 be on a D drive at home.

25 BY MR. GINSBERG:



1 Q. Are you aware that the Patent Office  
2 recently -- recently allowed a D&S Dental patent  
3 application directed to heat treating endodontic  
4 files to issue over your application?

5 MR. DAHLGREN: Objection; form.

6 Vague.

7 THE WITNESS: I'm not.

8 BY MR. GINSBERG:

9 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 MR. DAHLGREN: Objection; form.  
17 Vague. Objection; calls for a legal conclusion.

18 THE WITNESS: [REDACTED]  
[REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

BY MR. GINSBERG:

10

Q. [REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

MR. DAHLGREN: Objection; form.

16

Objection; mischaracterizes the evidence.

17

THE WITNESS: I see it.

18

BY MR. GINSBERG:

19

Q. [REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

MR. DAHLGREN: Objection; form.

7

Mischaracterizes the evidence. Objection;

8

vague.

9

THE WITNESS: I see that.

10

BY MR. GINSBERG:

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

MR. DAHLGREN: Objection; asked and

19

answered.

20

BY MR. GINSBERG:

21

Q. Speak about it in what way?

22

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

BY MR. GINSBERG:

4

Q. I'm sorry. What was the last one?

5

A. [REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

MR. DAHLGREN: Objection; form.

15

THE WITNESS: [REDACTED]

16

[REDACTED]

17

BY MR. GINSBERG:

18

Q. [REDACTED]

19

[REDACTED]

20

MR. DAHLGREN: Objection; form.

21

THE WITNESS: [REDACTED]

22

BY MR. GINSBERG:

23

Q. [REDACTED]

24

[REDACTED]

25

[REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

5 [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 MR. DAHLGREN: Objection; form.

24 Mischaracterizes the testimony.

25 Mischaracterizes the evidence.

1 BY MR. GINSBERG:

2 Q. You say that, right?

3 MR. DAHLGREN: Objection; form.  
4 Mischaracterizes the record, the evidence, the  
5 testimony --

6 MR. GINSBERG: These are improper  
7 talking objections. You should look at Judge  
8 Greer's order. The objection is to form. You  
9 should limit your speaking objections.

10 MR. DAHLGREN: I disagree. You're  
11 mischaracterizing the record.

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 Do you see that?

18 MR. DAHLGREN: Objection;  
19 mischaracterizes his report.

20 THE WITNESS: I see that.

21 BY MR. GINSBERG:

22 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 Q. [REDACTED]

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: [REDACTED]

4 [REDACTED]

5 BY MR. GINSBERG:

6 Q. [REDACTED]

7 [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED]

10 [REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 MR. DAHLGREN: Objection; form.

17 THE WITNESS: [REDACTED]

18 BY MR. GINSBERG:

19 Q. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

1

[REDACTED]

2

BY MR. GINSBERG:

3

Q. [REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

MR. DAHLGREN: Objection; form.

13

THE WITNESS: It's not stated that

14

way.

15

BY MR. GINSBERG:

16

Q. [REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

MR. DAHLGREN: Objection; form.

24

THE WITNESS: I don't believe either

25

one of us would agree with that.



1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Objection; form.  
14 Vague. Compound.

15 THE WITNESS: I have no idea what  
16 you're driving at.

17 BY MR. GINSBERG:

18 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 [REDACTED]

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. [REDACTED]

14 [REDACTED]

15 Q. Luebke Exhibit 3.

16 A. [REDACTED]

17 [REDACTED]

18 Q. Paragraph 4.

19 A. [REDACTED]

20 Q. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 MR. DAHLGREN: Objection; form.

1

THE WITNESS: [REDACTED]

[REDACTED]

3

BY MR. GINSBERG:

4

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12

Q. You're aware that in Dr. Goldberg's declaration, Dr. Goldberg provided certain opinions where he concluded that the asserted patents are invalid based on prior art that he reviewed, correct?

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14

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16

17

A. Yes. I'm aware of that.

18

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED] --

3 BY MR. GINSBERG:

4 Q. Sure.

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: [REDACTED]

11 [REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 MR. DAHLGREN: Objection; form.

20 Vague.

21 THE WITNESS: Let me state it this  
22 way: The prior art that was presented by  
23 Dr. Goldberg has no basis to invalidate the  
24 patent.

25 Does that answer the question?

1 BY MR. GINSBERG:

2 Q. [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 BY MR. GINSBERG:

9 Q. Did you consider US Endodontics'  
10 proposed construction for the heat treating step  
11 in Claim 1 of the '773 patent in rendering your  
12 opinions in this case?

13 MR. DAHLGREN: Objection; form.

14 THE WITNESS: Now that I have it in  
15 front of me, would you please rephrase your  
16 question?

17 BY MR. GINSBERG:

18 Q. Sure.  
19 Did you consider US Endodontics'  
20 proposed construction for the heat treating step  
21 of Claim 1 of the '773 patent in rendering your  
22 opinions in this case?

23 MR. DAHLGREN: Objection; form.

24 THE WITNESS: I -- that's long.  
25 Make it short.

1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Objection; form. Asked  
14 and answered.

15 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

18 BY MR. GINSBERG:

19 Q. [REDACTED]  
[REDACTED]

21 Q. Turning to Claim 1 of the '773 patent,  
22 Step 1A requires providing an elongate shank  
23 with a cutting edge that is comprised of a  
24 superelastic nickel-titanium alloy, correct?

25 MR. DAHLGREN: Objection; form.

1     **Objection; mischaracterizes evidence.**

2     **Objection; calls for a legal conclusion.**

3             **THE WITNESS: I believe that's what**  
4     **that says.**

5     **BY MR. GINSBERG:**

6             **Q. What does superelastic mean?**

7             **MR. DAHLGREN: Same objections.**

8             **THE WITNESS:** [REDACTED]  
9     [REDACTED]

10    **BY MR. GINSBERG:**

11            **Q. What does it mean?**

12            **MR. DAHLGREN: Same objections.**

13    **BY MR. GINSBERG:**

14            **Q. Let me ask you this: How do you**  
15    **know if a nickel-titanium alloy is superelastic?**

16            **MR. DAHLGREN: Objection; form.**

17    **Objection to the extent it calls for a legal**  
18    **conclusion.**

19            **THE WITNESS:** [REDACTED]

20    [REDACTED] [REDACTED]  
21    [REDACTED]

22    **BY MR. GINSBERG:**

23            **Q.** [REDACTED]

24            [REDACTED]

25            [REDACTED]



1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 BY MR. GINSBERG:

10 Q. Let me -- let me start again.

11 A. Okay.

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 MR. DAHLGREN: Objection; form.

17 Objection to the extent it calls for a legal  
18 conclusion.

19 THE WITNESS: [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 original form, you would consider it to be  
2 superelastic, correct?

3 MR. DAHLGREN: Objection; form.  
4 Objection; vague. Objection to the extent it  
5 calls for a legal conclusion.

6 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Same objections.

14 THE WITNESS: [REDACTED]

15 BY MR. GINSBERG:

16 Q. Well, how would a manufacturer know  
17 whether the shanks it provides are superelastic,  
18 as required by Step 1A of Claim 1 of the '773  
19 patent?

20 MR. DAHLGREN: Same objections.

21 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

24 BY MR. GINSBERG:

25 Q. [REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

3 BY MR. GINSBERG:

4 Q. Why is that one of the best ways? I'm  
5 sorry.

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 BY MR. GINSBERG:

12 Q. How would the provider of the ingot  
13 that is drawn know whether the nickel-titanium  
14 alloy is, in fact, superelastic?

15 MR. DAHLGREN: Objection; form.  
16 Objection to the extent it calls for a legal  
17 conclusion.

18 THE WITNESS: [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 BY MR. GINSBERG:

23 Q. How would knowing the components of  
24 the metal inform one whether or not the material  
25 is superelastic?

1 MR. DAHLGREN: Objection; form.  
2 Vague. Objection to the extent it calls for a  
3 legal conclusion.

4 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

7 BY MR. GINSBERG:

8 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 MR. DAHLGREN: Objection; form.  
16 Objection to the extent it calls for a legal  
17 conclusion.

18 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

24 BY MR. GINSBERG:

25 Q. [REDACTED]

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[REDACTED]

MR. DAHLGREN: Same objections.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. You're an endodontist. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection; mischaracterizes testimony.

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection to the extent it calls for a legal conclusion. Asked and answered.

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

BY MR. GINSBERG:

1 Q. How about subjecting it to a test in  
2 accordance with ISO Standard 3630-1?

3 MR. DAHLGREN: Objection; form.  
4 Objection to the extent it calls for a legal  
5 conclusion. Objection; vague.

6 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 MR. DAHLGREN: Objection; form.  
18 Objection; vague. Objection to the extent it  
19 calls for a legal conclusion.

20 THE WITNESS: [REDACTED]  
[REDACTED]

22 BY MR. GINSBERG:

23 Q. [REDACTED]  
[REDACTED]

25 MR. DAHLGREN: Same objections.

1 THE WITNESS: [REDACTED]

2 [REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

5 MR. DAHLGREN: Same objections.

6 THE WITNESS: [REDACTED]

7 [REDACTED]

8 (Luebke Deposition Exhibit No. 13, a  
9 declaration under 37 CFR Section 1.132, dated  
10 May 20th, 2013, was marked.)

11 BY MR. GINSBERG:

12 Q. Dr. Luebke, you've been handed  
13 what's been marked Luebke Exhibit 13. It's a  
14 declaration under 37 CFR Section 1.132. It's  
15 dated May 20th, 2013.

16 Do you see that on Page 7 it bears  
17 your signature; is that correct?

18 MR. DAHLGREN: And, Dr. Luebke, you  
19 can take your time to look at the document.

20 THE WITNESS: Yeah. That's my  
21 signature.

22 BY MR. GINSBERG:

23 Q. In Paragraph 6 of your declaration,  
24 second sentence recites, the office action cites  
25 the mention of orthodontic wires with Patel as



1 an example for deformation, but the orthodontic  
2 wires in Patel of austenitic NiTi, which means  
3 they will be super-elastic and will deform under  
4 stress, but will return to their original shape,  
5 which is the precise mechanism that allows teeth  
6 to be orthodontically moved.

7 Do you see that?

8 A. You read that well.

9 Q. Thanks.

10 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

14 MR. DAHLGREN: Objection; form.  
15 Objection; mischaracterizes testimony.  
16 Objection; vague. Objection to the extent  
17 it calls for a legal conclusion.

18 THE WITNESS: [REDACTED]

[REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1           A.     The same.

2           Q.     Going back to your expert report that  
3 we've marked Luebke Exhibit 3, I want to direct  
4 your attention to Paragraph 10.

5                     Let me know when you're there.

6           A.     I am there.

7           Q.     Okay.  In the middle of that paragraph  
8 you state, in later experiments you came up with  
9 the idea of heat treating nickel-titanium  
10 endodontic files that were not coated, and  
11 tested these instruments after they were heat  
12 treated.

13                     Do you see that?

14          A.     Yes.

15          Q.     What possessed you to heat treat  
16 nickel-titanium endodontic files?

17                     MR. DAHLGREN:  Objection; form.  
18 Objection; vague.

19                     THE WITNESS:  That actually explains  
20 it pretty well.

21                     I had discussions with endodontists  
22 who were complaining about, we call them broken,  
23 separated, fractured files in teeth.  And I had  
24 not used those instruments because of that.  And  
25 so before I was going to do that, I wanted to

1 solve -- see if I could solve a -- a problem.

2 BY MR. GINSBERG:

3 Q. Why did you think that one way to  
4 solve the problem would be to heat treat a  
5 nickel-titanium endodontic file?

6 MR. DAHLGREN: Objection; form.  
7 Vague.

8 THE WITNESS: That isn't where I  
9 started.

10 BY MR. GINSBERG:

11 Q. But you eventually got there.

12 MR. DAHLGREN: Same objections.

13 THE WITNESS: That would be a  
14 quantum --

15 MR. DAHLGREN: Is there a question?

16 THE WITNESS: That would be a quantum  
17 leap, however.

18 BY MR. GINSBERG:

19 Q. How did you get to -- like, why did  
20 you think you should heat treat nickel-titanium  
21 files? How did that idea come into your mind?

22 MR. DAHLGREN: Objection; form.  
23 Compound.

24 THE WITNESS: I thought the reason  
25 nickel-titanium files were fracturing is because

1 they weren't sharp enough. So my first -- I  
2 first addressed sharpness with diamond coating.

3 Talking to manufacturers, talking  
4 -- talking -- looking at some of the things  
5 that came with it, I realized there may be  
6 more problems with diamonds than with the files  
7 themselves.

8 The concept was still sharpness. So I  
9 decided if I TIN coated them, I could, perhaps,  
10 make them sharper.

11 So that's what I did.

12 BY MR. GINSBERG:

13 Q. How did you get to heat treating?

14 MR. DAHLGREN: Objection; form.

15 THE WITNESS: Are you aware of the TIN  
16 coating process?

17 BY MR. GINSBERG:

18 Q. Explain it.

19 A. TIN coating process is the short  
20 for titanium nitride. And I took some files  
21 to a heat treater. We figured out a jig that it  
22 would work in. And we did the titanium nitride,  
23 which is placing the files in a furnace,  
24 evacuating the atmosphere and replacing it with  
25 nitrogen, having a pure titanium rod, put

1 electricity across it, it atomizes and it  
2 deposits on the files. And that's how you TIN  
3 coat them.

4 Q. Okay. And that's what's referred to  
5 as your earliest experiments, correct?

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: That would be correct.

8 BY MR. GINSBERG:

9 Q. Then you say, in later experiments,  
10 you came up with the idea of heat treating  
11 nickel-titanium endodontic files that were not  
12 coated.

13 Do you see that?

14 A. Yes.

15 Q. How did you come up with the idea of  
16 heat treating nickel-titanium files that were  
17 not coated?

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: I tested the TIN coated  
20 files, and I was satisfied with some of the  
21 results, using 3630-1, General Requirements.

22 My concern, however, was, although  
23 it may have made it sharper, was there a  
24 possibility that the TIN coating could come  
25 off, just like the diamond might have, and so I

1 would have been trading one problem for another  
2 problem. But I liked the results, so I decided  
3 to eliminate the TIN coating.

4 BY MR. GINSBERG:

5 Q. When you were coating the  
6 nickel-titanium files, was that nickel-titanium  
7 files that had the shank with the cutting edges  
8 already formed?

9 MR. DAHLGREN: Objection; form.  
10 Objection to the extent it calls for a legal  
11 conclusion.

12 THE WITNESS: That would be correct.

13 BY MR. GINSBERG:

14 Q. And what temperature were the files  
15 heat treated to when you did the coat -- well,  
16 were they subjected to any particular  
17 temperature during the heat treatment -- during  
18 the coating process?

19 MR. DAHLGREN: Objection; form.

20 THE WITNESS: During the coating  
21 process?

22 Yeah, they were.

23 BY MR. GINSBERG:

24 Q. What temperature?

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: I believe it was 500  
2 degrees.

3 BY MR. GINSBERG:

4 Q. And that treatment took place in a  
5 nitrogen atmosphere, correct?

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: Yeah. That's where the  
8 N in TIN comes from, yeah.

9 BY MR. GINSBERG:

10 Q. At the time you filed your provisional  
11 application that's identified on the '773  
12 patent, which was June 8th, 2004, --

13 A. Okay.

14 Q. -- it was known that the ability  
15 to pre-bend an endodontic file was useful  
16 to endodontics -- endodontists, correct?

17 MR. DAHLGREN: Objection; form.  
18 Objection; vague.

19 THE WITNESS: That's a very  
20 interesting question, because, in stainless  
21 steel, the answer is, absolutely correct.

22 BY MR. GINSBERG:

23 Q. And in Paragraph 12 of your report,  
24 you state that, pre-bending a file is something  
25 that is important and useful to endodontists,



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[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. Correct.

MR. DAHLGREN: Objection;  
mischaracterizes report.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

MR. DAHLGREN: Objection; form.  
Objection to the extent it calls for a legal  
conclusion. Objection; vague.

THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

MR. DAHLGREN: Objection; form.

4

THE WITNESS: [REDACTED] [REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

BY MR. GINSBERG:

9

Q. [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED] [REDACTED]

15

MR. DAHLGREN: Objection.

16

MR. GINSBERG: [REDACTED] --

17

MR. DAHLGREN: Please give me the time

18

to make my objections.

19

Objection to form. Objection to the

20

extent it calls for a legal conclusion.

21

THE WITNESS: [REDACTED]

22

BY MR. GINSBERG:

23

Q. [REDACTED]

24

[REDACTED]

25

MR. DAHLGREN: Same objections.

1                   Please give me the time to make my  
2 objections.

3                   THE WITNESS:   Excuse me.

4 BY MR. GINSBERG:

5           Q.   [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

12                   MR. DAHLGREN:   Objection; form.  
13 Objection; mischaracterizes his testimony.  
14 Objection to the extent asked and answered,  
15 and, objection, compound.

16                   THE WITNESS:   [REDACTED]  
[REDACTED]   [REDACTED]

18 BY MR. GINSBERG:

19           Q.   [REDACTED]  
[REDACTED]  
[REDACTED]?

22                   MR. DAHLGREN:   Objection; form.

23                   THE WITNESS:   [REDACTED]   [REDACTED]

24 BY MR. GINSBERG:

25           Q.   [REDACTED]

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

3 [REDACTED]

4 BY MR. GINSBERG:

5 Q. [REDACTED]

6 [REDACTED]

7 MR. DAHLGREN: Objection; form.

8 THE WITNESS: [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. DAHLGREN: Objection; form.

18 Objection to the extent it calls for a legal

19 conclusion.

20 THE WITNESS: [REDACTED]

21 BY MR. GINSBERG:

22 Q. [REDACTED]

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

1 BY MR. GINSBERG:

2 Q. Claim 1 of the '773 patent, in  
3 Step B requires, heat treating the entire shank  
4 at a temperature from 400 degrees C, up to, but  
5 not equal to, the melting point of the  
6 superelastic nickel-titanium alloy.

7 Do you see that?

8 A. Very well. Yes.

9 Q. [REDACTED]

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 MR. DAHLGREN: Counsel, we've been  
16 going almost an hour. Do you think we could  
17 take a break shortly?

18 MR. GINSBERG: Sure. We can take a  
19 break.

20 THE VIDEOGRAPHER: We're going off  
21 record at 11:53 a.m.

22 (Recess taken.)

23 THE VIDEOGRAPHER: We're going back on  
24 record at 12:03 p.m. This is the start of Media  
25 Unit Number 3 in the deposition of Dr. Luebke.



1

Q.

[REDACTED]

2

[REDACTED]

[REDACTED]

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[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

[REDACTED]

6

[REDACTED]

[REDACTED]

7

MR. DAHLGREN: Objection; form.

8

THE WITNESS: [REDACTED]

9

[REDACTED]

10

BY MR. GINSBERG:

11

Q.

[REDACTED]

12

MR. DAHLGREN: Objection; form.

13

THE WITNESS: [REDACTED]

14

BY MR. GINSBERG:

15

Q.

[REDACTED] [REDACTED]

16

MR. DAHLGREN: Objection; form.

17

THE WITNESS: [REDACTED]

18

[REDACTED] [REDACTED]

19

BY MR. GINSBERG:

20

Q.

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

MR. DAHLGREN: Objection; form.

25

THE WITNESS: [REDACTED] [REDACTED]



1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED]

5 MR. DAHLGREN: Objection; form.

6 THE WITNESS: [REDACTED]  
[REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]  
[REDACTED]  
[REDACTED]

12 MR. DAHLGREN: Objection; form.

13 Objection; mischaracterizes testimony.

14 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

17 BY MR. GINSBERG:

18 Q. [REDACTED]  
[REDACTED]

20 MR. DAHLGREN: Objection; form.

21 THE WITNESS: [REDACTED].

22 BY MR. GINSBERG:

23 Q. [REDACTED]  
[REDACTED]  
[REDACTED]

1

A.

[REDACTED]

2

[REDACTED]

3

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

6

[REDACTED]

[REDACTED]

7

[REDACTED]

8

MR. DAHLGREN: Objection; form.

9

THE WITNESS: [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

BY MR. GINSBERG:

14

Q.

[REDACTED]

15

[REDACTED]

16

MR. DAHLGREN: Objection; form.

17

THE WITNESS: [REDACTED]

18

[REDACTED]

19

[REDACTED]

20

BY MR. GINSBERG:

21

Q.

[REDACTED]

22

MR. DAHLGREN: Objection; form.

23

THE WITNESS: [REDACTED]

24

[REDACTED]

25

[REDACTED]

1

[REDACTED]

7

BY MR. GINSBERG:

8

Q. [REDACTED]

11

MR. DAHLGREN: Objection; form.

12

THE WITNESS: [REDACTED]

13

BY MR. GINSBERG:

14

Q. [REDACTED]

15

MR. DAHLGREN: Objection; form.

16

THE WITNESS: [REDACTED]

[REDACTED]

18

BY MR. GINSBERG:

19

Q. [REDACTED]

23

MR. DAHLGREN: Objection; form.

24

THE WITNESS: [REDACTED]

[REDACTED]

1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6 MR. DAHLGREN: Objection; form.  
7 Objection to the extent it calls for a legal  
8 conclusion. Vague.

9 THE WITNESS: [REDACTED] [REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 Do you see that?

22 MR. DAHLGREN: Objection; form.

23 You can look at the whole document, if  
24 you want to, Dr. Luebke.

25 THE WITNESS: [REDACTED] [REDACTED]

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[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection; mischaracterizes the evidence.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. The article is entitled, an Initial Investigation of the Bending and Torsional Properties of Nitinol Root Canal Files, correct?

MR. DAHLGREN: Objection; form.

THE WITNESS: That is correct.

BY MR. GINSBERG:

Q. And in that paragraph, second full

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[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

MR. DAHLGREN: Objection; form.

5

THE WITNESS: [REDACTED]

6

[REDACTED]

7

[REDACTED]

8

BY MR. GINSBERG:

9

Q. [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

MR. DAHLGREN: Objection; form.

14

Objection; mischaracterizes the evidence.

15

THE WITNESS: [REDACTED]

16

MR. DAHLGREN: Objection; asked and

17

answered.

18

BY MR. GINSBERG:

19

Q. [REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

1

[REDACTED]

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MR. DAHLGREN: Objection; form.

3

THE WITNESS: [REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

BY MR. GINSBERG:

9

Q. [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

MR. DAHLGREN: Objection; form.

13

Is that a question?

14

THE WITNESS: Was that a question?

15

BY MR. GINSBERG:

16

Q. Absolutely.

17

A. Oh.

18

MR. DAHLGREN: Objection; form.

19

THE WITNESS: [REDACTED]

20

[REDACTED]

21

BY MR. GINSBERG:

22

Q. [REDACTED]

23

[REDACTED]

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[REDACTED]

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[REDACTED]



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[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: I believe it says what  
it says.

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection to the extent it calls for a legal  
conclusion. Asked and answered.

1 THE WITNESS: [REDACTED]

2 [REDACTED]

3 BY MR. GINSBERG:

4 Q. Reading this article, --

5 A. Right.

6 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Objection; form.  
14 Mischaracterizes testimony. Asked and answered.

15 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 BY MR. GINSBERG:

21 Q. You've read the Miura reference,  
22 correct?

23 A. Yes.

24 Q. Does the Miura reference disclose that  
25 if you heat treat the endodontic nickel-titanium

1 wire, under certain conditions, it will lose its  
2 superelastic characteristic?

3 MR. DAHLGREN: Objection; form.  
4 Objection to the extent it calls for a legal  
5 conclusion.

6 THE WITNESS: Well, I don't have Miura  
7 in front of me, but the answer to that is no.

8 (Luebke Deposition Exhibit No. 15, a  
9 document entitled the superelastic property of  
10 the Japanese NiTi alloy wire for use in  
11 endodontics, was marked.)

12 BY MR. GINSBERG:

13 Q. Okay.

14 Let's take a look Miura.

15 A. Be pleased to.

16 Q. You've been handed a copy of Luebke  
17 Exhibit 15. This is entitled, the Superelastic  
18 Property of the Japanese NiTi Alloy Wire for use  
19 in Endodontics. First author is Miura.

20 Is this the Miura reference that we've  
21 been discussing?

22 A. Yes.

23 Q. Is it your position that a method of  
24 making an endodontic file that follows the steps  
25 of Miura would not be covered by the '773

1 patent?

2 MR. DAHLGREN: Objection; form.  
3 Vague. Objection to the extent it calls for a  
4 legal conclusion.

5 Dr. Luebke, you can take your time to  
6 look at Miura, if you need to, before you answer  
7 that question.

8 THE WITNESS: Yeah. I wanted to look  
9 at something right here. Now I have my  
10 reference I want.

11 Would you ask it again?

12 BY MR. GINSBERG:

13 Q. Is it your position that a method of  
14 making an endodontic file that follows the heat  
15 treating steps of Miura would not be covered by  
16 the '773 patent?

17 MR. DAHLGREN: Objection; form.  
18 Objection to the extent it calls for a legal  
19 conclusion. Objection; vague.

20 THE WITNESS: That would be correct.

21 BY MR. GINSBERG:

22 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 MR. DAHLGREN: Objection; form.  
2 Objection; mischaracterizes the reference.

3 THE WITNESS: [REDACTED]  
4 [REDACTED]

5 BY MR. GINSBERG:

6 Q. [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 MR. DAHLGREN: Objection; form.  
11 Objection; vague. Objection to the extent it  
12 calls for a legal conclusion.

13 THE WITNESS: [REDACTED]  
14 [REDACTED]

15 BY MR. GINSBERG:

16 Q. If you can turn to Page 5 of the Miura  
17 reference, which is Luebke Exhibit 15.

18 Are you there?

19 A. Yes.

20 Q. Do you see the paragraph that  
21 recites, Fig 7 indicates the results after heat  
22 application at 600 degrees C. Superelasticity  
23 and a good spring-back property of the wire were  
24 almost completely lost, even when the heat  
25 exposure was for only five minutes.

1 Do you see that?

2 A. Yes.

3 Q. [REDACTED]

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: [REDACTED]

[REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]

[REDACTED]

15 MR. DAHLGREN: Objection; Form.

16 THE WITNESS: [REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5 BY MR. GINSBERG:

6 Q. Does the ISO 3630-1 standard have a  
7 temperature at which the files are to be tested?

8 A. That is correct.

9 Q. It does?

10 A. It does.

11 Q. And what temperature is that?

12 A. Twenty-three degrees, plus or minus  
13 two degrees centigrade.

14 Q. And -- and what standard is that? Is  
15 that in the -- what version of the standard?

16 A. The current stand -- standard of  
17 3630-1, 3630-1, Dentistry-Root Canal  
18 Instruments, General Requirements.

19 Q. Was that requirement in the ISO 3630-1  
20 standard that was in effect at the time that you  
21 filed your provisional application that resulted  
22 in these asserted patents?

23 A. Yes.

24 Q. [REDACTED]

[REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

MR. DAHLGREN: Objection; form.

5

Objection to the extent it calls for a legal

6

conclusion. Vague.

7

THE WITNESS: [REDACTED]

8

BY MR. GINSBERG:

9

Q. [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

Look at Figure 7, for example, just

17

the -- the heading. It talks about Japanese

18

NiTi alloy wire.

19

Do you see that?

20

A. Yes.

21

Q. [REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

MR. DAHLGREN: Objection; form.

1 Objection; mischaracterizes the evidence.

2 THE WITNESS: [REDACTED]

[REDACTED]

4 BY MR. GINSBERG:

5 Q. [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: [REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

[REDACTED]

14 MR. DAHLGREN: Objection; form.

15 THE WITNESS: [REDACTED]

[REDACTED]

18 BY MR. GINSBERG:

19 Q. [REDACTED]

[REDACTED]

1           A.    [REDACTED]  
2           [REDACTED] [REDACTED]  
3           [REDACTED]  
4   [REDACTED]  
5           [REDACTED] [REDACTED] [REDACTED]  
6           [REDACTED] [REDACTED]  
7           [REDACTED] [REDACTED]  
8           [REDACTED]  
9   [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

11           Q.    So now -- so -- so you're looking at  
12 other parts of the article?

13           A.    You asked me about this, --

14           Q.    Right.

15           A.    [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19           [REDACTED] [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

1 It says that, correct?

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 BY MR. GINSBERG:

9 Q. You mentioned that the ISO standard  
10 that was in effect when you filed your  
11 applications disclosed a temperature range.

12 Do you recall what standard was in  
13 effect? Was that the 1992 edition?

14 A. No.

15 Q. What edition was in effect?

16 A. It was a committee draft.

17 Q. A committee draft?

18 A. Yes.

19 Q. That was what was in effect?

20 A. That was -- that was published.

21 That was available to all -- all member nations  
22 for -- for that, yes.

23 Q. Is that the ISO 36 standard  
24 that -- and what year was that published?

25 A. The -- the final publication was in

1 2008.

2 Q. And when was the initial publication?

3 A. Initial publication of what?

4 Q. The standard that you were just  
5 referring to.

6 A. 2008. However, it was available  
7 publicly prior to 2008.

8 Q. When was it available?

9 A. We're trying to get an exact date,  
10 but the ADA Spec 101 preceded 3630-1 General  
11 Requirements, and it came into effect in 2001.

12 Q. So it came into effect prior to  
13 the -- it came into effect in 2001. And do you  
14 have a copy of that?

15 MR. DAHLGREN: Objection; form.

16 BY MR. GINSBERG:

17 Q. Do you have a copy of that?

18 A. I do not.

19 Q. Do you know what ISO 3630-1 standard  
20 was in effect in 2005?

21 A. In 2005?

22 Q. Right.

23 A. That was the transition where this  
24 standard became 3630-5.

25 Q. What is the difference between ISO

1 3630-5 and ISO 3630-1?

2 A. 3630-5 states this:

3 Q. Why don't I do this --

4 A. Root canals --

5 Q. Let me --

6 A. Okay. Fine.

7 Q. Just so we have it on the record, I'll  
8 give it to you.

9 A. Okay.

10 (Luebke Deposition Exhibit No. 16,  
11 the first edition of the ISO 3630-1 standard,  
12 was marked.)

13 BY MR. GINSBERG:

14 Q. You've been handed what has been  
15 marked Luebke Exhibit 16. It's been designated  
16 DII-TDS 0000751 to 778.

17 Is this the first edition of the ISO  
18 3630-1 standard?

19 A. That's what it says.

20 Q. What edition -- is this the actual  
21 edition that was in effect when you filed the  
22 application that is identified on Luebke Exhibit  
23 5 as being filed on June 7th, 2005?

24 MR. DAHLGREN: Objection; form. Asked  
25 and answered.

1 THE WITNESS: In effect means what?

2 BY MR. GINSBERG:

3 Q. Is this the standard that was used by  
4 practitioners in the field?

5 MR. DAHLGREN: Same objections.

6 THE WITNESS: The standards process  
7 is an ongoing process. [REDACTED]

8 [REDACTED]  
9 [REDACTED] At the time I  
10 made my application, there were copies of  
11 3630-1, Dentistry-Root Canal Instruments,  
12 General Requirements.

13 BY MR. GINSBERG:

14 Q. Let me ask you this, Dr. Luebke:  
15 I'm an endodontic file manufacturer.

16 A. Mm-hmm.

17 Q. I'm looking at Claim 1 of your '773  
18 patent, which tells me that I should test it in  
19 accordance with ISO 3630-1.

20 A. Continue.

21 Q. [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]  
23 MR. DAHLGREN: Objection; form.  
24 Compound.

25 THE WITNESS: [REDACTED] But



1 I'm looking -- I'm looking for something else.

2 BY MR. GINSBERG:

3 Q. Sure.

4 A. [REDACTED]

5 [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 He wasn't done yet, I don't believe,

8 Counsel.

9 THE WITNESS: It's an ongoing process.

10 Every five years standards need to be either  
11 revised or -- I'm trying to think of the term  
12 of art -- not renewed, not accepted. There's a  
13 term of art that's slipping my mind right now.

14 When you referred to Claim 1 --

15 BY MR. GINSBERG:

16 Q. Yes.

17 A. -- if you'll turn to Column 3, --

18 Q. Okay.

19 A. -- Figure 3, for starters, --

20 Q. Yes.

21 A. -- so there's the statement, Root  
22 Canal Instruments, Part 1, General Requirements.

23 Q. And that is something that is  
24 different than what has been marked Luebke  
25 Exhibit 16?

1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: Correct.

3 BY MR. GINSBERG:

4 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

8 MR. DAHLGREN: Objection.

9 BY MR. GINSBERG:

10 Q. [REDACTED]  
[REDACTED] [REDACTED]

12 MR. DAHLGREN: Objection; form.  
13 Objection; compound. Mischaracterizes  
14 testimony. Objection to the extent it calls for  
15 a legal conclusion.

16 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

22 BY MR. GINSBERG:

23 Q. The standard identified in Figure 3,  
24 in Column 3 of your '773 patent, --

25 A. Right.

1 Q. [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: I don't have a -- a  
11 specific date.

12 MR. DAHLGREN: Jeff, do you think this  
13 is a good time for a lunch break?

14 MR. GINSBERG: Sure. We could break  
15 for lunch.

16 Is that okay?

17 THE WITNESS: That's fine.

18 THE VIDEOGRAPHER: Going off the  
19 record at 12:40 p.m.

20 (Lunch recess.)

21 THE VIDEOGRAPHER: We're going back  
22 on the record at 1:33 p.m. This is the start  
23 of Media Unit Number 4 in the deposition of  
24 Dr. Luebke.

25 ///

1                   (Luebke Deposition Exhibit No. 17, a  
2 copy of Dr. Luebke's declaration signed on  
3 August 14th, 2014, was marked.)

4 BY MR. GINSBERG:

5           Q.     Dr. Luebke, before you I've handed  
6 you a copy of Luebke Exhibit 17. It's a copy of  
7 your declaration that you signed on August 14th,  
8 2014.

9                   Do you see that if you go to Page 10?

10           A.    I did, indeed.

11           Q.    Okay. I'll note in Paragraph 8 of  
12 your declaration, you had mentioned a couple of  
13 references that you say are attached -- or that  
14 are identified as Exhibit N, O and P. These are  
15 not attached to the copy you received. So I'll  
16 just request that we do get a copy of those  
17 exhibits. And that was, again, just Exhibits N,  
18 O and P.

19                   In Paragraph 6 of your report, you  
20 state that a -- let's see, a person having  
21 ordinary skill in the endodontic art would not  
22 look to prior art directed to stents, catheter  
23 guide wires and orthodontic wires, because the  
24 manufacturer of those instruments requires  
25 divergent considerations with respect to

1 longevity, corrosion, shape and elasticity  
2 needs.

3 Do you see that?

4 A. Paragraph 6?

5 Q. Correct. The last sentence.

6 A. Yes.

7 Q. Do you still agree with that sentence?

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: Yeah.

10 BY MR. GINSBERG:

11 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 MR. DAHLGREN: Objection; form.

16 Objection; vague.

17 THE WITNESS: [REDACTED]  
[REDACTED]

19 BY MR. GINSBERG:

20 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

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[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection; vague.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Objection; mischaracterizes the evidence.

Objection; asked and answered.

BY MR. GINSBERG:

1 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6 MR. DAHLGREN: Objection; form.  
7 Objection; mischaracterizes the evidence.  
8 Objection -- objection; asked and answered.

9 THE WITNESS: [REDACTED]  
[REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form.  
19 Objection; asked and answered.

20 THE WITNESS: You're asking me Miura  
21 is suggesting --

22 BY MR. GINSBERG:

23 Q. No. [REDACTED]  
[REDACTED]  
[REDACTED]



1 Q. -- [REDACTED]  
[REDACTED]  
[REDACTED]

4 MR. DAHLGREN: Objection; form.  
5 Objection; asked and answered.

6 THE WITNESS: [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

9 BY MR. GINSBERG:

10 Q. What about the Miura reference itself  
11 that's referenced there, Reference 18?

12 MR. DAHLGREN: Same objection.

13 THE WITNESS: What would be the  
14 question concerning Miura?

15 BY MR. GINSBERG:

16 Q. Does Miura disclose heat treatment of  
17 a nickel-titanium orthodontic wire?

18 MR. DAHLGREN: Objection; form.

19 BY MR. GINSBERG:

20 Q. It's Tab 15 -- I'm sorry. Exhibit 15.

21 MR. DAHLGREN: Objection; vague.

22 BY MR. GINSBERG:

23 Q. My question, Dr. Luebke, is,  
24 does Miura disclose the heat treatment of a  
25 superelastic nickel-titanium orthodontic wire?

1 MR. DAHLGREN: Objection; form.

2 Vague.

3 THE WITNESS: Yes.

4 BY MR. GINSBERG:

5 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

10 MR. DAHLGREN: Objection; form.

11 Objection; vague. Objection; asked and  
12 answered.

13 THE WITNESS: [REDACTED]  
[REDACTED]

15 BY MR. GINSBERG:

16 Q. [REDACTED]

17 MR. DAHLGREN: Objection; form.

18 THE WITNESS: [REDACTED]

19 BY MR. GINSBERG:

20 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 MR. DAHLGREN: Objection; form.  
13 Objection; mischaracterizes his testimony.

14 THE WITNESS: [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 BY MR. GINSBERG:

19 Q. Do you know a Satish B. Alapati?

20 A. Yes.

21 Q. Who is Alapati?

22 A. Satish, at this time, is a associate  
23 professor at the University of Illinois.

24 Q. Have you ever worked with Dr. Alapati?

25 A. Yes, I have.

1 Q. When?

2 A. Oh. What's the date on his thesis?

3 Q. 2006.

4 A. 2006.

5 Q. How long did you work with  
6 Dr. Alapati?

7 A. In passing.

8 (Luebke Deposition Exhibit No. 18, a  
9 copy of a dissertation entitled Investigation  
10 of Phase Transformation Mechanisms for  
11 Nickel-Titanium Rotary Endodontic Instruments,  
12 was marked.)

13 BY MR. GINSBERG:

14 Q. You've been handed Luebke Exhibit 18.  
15 Is this a copy of the dissertation that you were  
16 just mentioning, --

17 A. That would be correct.

18 Q. -- entitled Investigation of Phase  
19 Transformation Mechanisms for Nickel-Titanium  
20 Rotary Endodontic Instruments?

21 A. That's the correct title.

22 Q. You've co-authored an article with  
23 Dr. Alapati, correct?

24 A. I believe I have.

25 Q. [REDACTED]

1

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4

MR. DAHLGREN: Objection; form.

5

THE WITNESS: [REDACTED]

6

BY MR. GINSBERG:

7

8

9

Q. Now, in his dissertation, Dr. Alapati discloses the heat treatment of nickel-titanium endodontic files, correct?

10

A. I --

11

MR. DAHLGREN: Objection; form.

12

13

THE WITNESS: I haven't read the entire dissertation.

14

BY MR. GINSBERG:

15

16

Q. If I could turn your attention to Page 42.

17

18

19

MR. DAHLGREN: Dr. Luebke, if you need to look at the document, feel free to do so.

20

BY MR. GINSBERG:

21

22

23

Q. Do you see in -- in Page 42, Dr. Alapati discloses heat treatment of various nickel-titanium endodontic files?

24

MR. DAHLGREN: Objection; form.

25

THE WITNESS: Okay.

1 BY MR. GINSBERG:

2 Q. Do you see that?

3 A. I do.

4 Q. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: [REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. DAHLGREN: Objection; form.

18 THE WITNESS: [REDACTED]

19 BY MR. GINSBERG:

20 Q. Is Dr. Alapati -- do you see the  
21 sentence on Page 42 that states, quote, the heat  
22 treatment temperatures and time were based upon  
23 the Miura, et al., 1986 study that introduced  
24 superelastic NiTi orthodontic wires?

25 Do you see that?

1 A. I do.

2 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: [REDACTED]

[REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]



1 BY MR. GINSBERG:

2 Q. [REDACTED]

3 MR. DAHLGREN: Objection; form.

4 BY MR. GINSBERG:

5 Q. [REDACTED]

6 [REDACTED]

7 MR. DAHLGREN: Objection; form.

8 Vague.

9 THE WITNESS: [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED].

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. DAHLGREN: Objection; form.

18 Mischaracterizes testimony.

19 THE WITNESS: [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 BY MR. GINSBERG:

23 Q. [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 MR. DAHLGREN: Objection; form.

2 Objection; mischaracterizes the evidence.

3 THE WITNESS: [REDACTED]

4 [REDACTED]

5 BY MR. GINSBERG:

6 Q. And the Miura reference is identified  
7 on Page 58 of his dissertation, correct, which  
8 is the same cite as the Miura reference provided  
9 and designated as Luebke Exhibit 15, correct?

10 MR. DAHLGREN: Objection; form.

11 Compound.

12 THE WITNESS: Yes.

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: [REDACTED]

20 BY MR. GINSBERG:

21 Q. You have no opinion on that?

22 A. [REDACTED]

23 [REDACTED]

24 Q. [REDACTED]

25 [REDACTED]

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[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection;  
mischaracterizes the evidence.

THE WITNESS: Would you repeat that  
question now that I have the -- in front of me?

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Same objections.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.  
Objection; mischaracterizes the evidence.  
Objection; vague.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

1 Q. Okay. During the prosecution of your  
2 asserted patents, the '341 and '773 patents,  
3 non-endodontic art such as the Patel reference  
4 was cited, correct?

5 A. That's correct.

6 Q. [REDACTED]  
[REDACTED]  
[REDACTED]

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

13 BY MR. GINSBERG:

14 Q. Okay. Your expert report that was  
15 signed on September 10th, 2014, that we marked  
16 as Luebke Exhibit 3, --

17 A. Three?

18 Q. Correct.

19 -- that report does not contain  
20 the subject matter of Paragraph 6 of your  
21 declaration that we've marked Luebke 17; is  
22 that right?

23 MR. DAHLGREN: Objection; form.

24 Objection; mischaracterizes the evidence.

25 THE WITNESS: Rephrase the question.

1 Six is in Number 17, but it's not in Number 3,  
2 is that the question?

3 BY MR. GINSBERG:

4 Q. Yes.

5 A. Okay.

6 MR. DAHLGREN: Same objection. Form.  
7 Mischaracterizes the evidence.

8 THE WITNESS: I did not find it.

9 BY MR. GINSBERG:

10 Q. [REDACTED]  
[REDACTED]

12 MR. DAHLGREN: Objection; form.

13 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 (Luebke Deposition Exhibit No. 19,  
18 a document titled Relevant Aspects in the  
19 Clinical Application of NiTi-Shaped Memory  
20 Alloys, first author's last name Gill, was  
21 marked.)

22 BY MR. GINSBERG:

23 Q. You've been handed what has been  
24 marked Luebke Exhibit 19. It's a copy of a  
25 reference entitled, Relevant Aspects in the

1 Clinical Application of NiTi Shaped Memory  
2 Alloys. First author's last name is Gill.

3 Have you seen this reference before,  
4 Dr. Luebke?

5 A. Yes, I have.

6 Q. Turn to Page 2 of this exhibit.

7 Under experimental methods, it talks  
8 about the chemical composition of the NiTi alloy  
9 that's studied, right?

10 Do you see that?

11 A. Page 404?

12 Q. Right.

13 A. Correct.

14 Q. And it states that the composition of  
15 the NiTi alloy studied was 48 percent titanium  
16 and 52 percent nickel, in atomic percentage,  
17 correct?

18 A. That's what it states. But one must  
19 be cautious that sometimes they make it in an  
20 atomic percentage, and sometimes they make it in  
21 a weight percentage. So that changes what  
22 you're looking at.

23 Q. Okay. Here it's being reported as an  
24 atomic percentage; is that correct?

25 MR. DAHLGREN: Objection; form.

1 THE WITNESS: Repeat, please.

2 BY MR. GINSBERG:

3 Q. In Gill it's being reported --

4 A. Right.

5 Q. -- as atomic percentage?

6 A. I'm sorry. Yes.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 MR. DAHLGREN: Objection; form.

11 BY MR. GINSBERG:

12 Q. What reference are you looking at,  
13 Dr. Luebke, to inform --

14 A. [REDACTED]

15 Q. Okay.

16 A. Gill does not refer to it for  
17 endodontic files.

18 Q. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 MR. DAHLGREN: Objection; form.

24 THE WITNESS: [REDACTED]

25 [REDACTED]





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[REDACTED]  
[REDACTED]  
[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

A. That's -- yes.

Q. Gill reports on Page 405, second column in the middle of the page, paragraph that begins, at low annealing temperatures.

Do you see that?

A. I have that.

Q. If you go to the second-to-last sentence of that paragraph it states, after six H, is that hours, to your understanding?

A. [REDACTED]

Q. It states, after six hours, heat treatment at 500 degrees C and 600 degrees C, the samples lost the shape memory and pseudoelastic effects.

Do you see that?

1 A. I do.

2 Q. [REDACTED]  
3 [REDACTED]

4 MR. DAHLGREN: Objection; form.  
5 Compound.

6 THE WITNESS: [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 BY MR. GINSBERG:

11 Q. If you turn back to Page 404, there's  
12 some disclosure on experimental methods. Do you  
13 see that?

14 A. I'm to it.

15 Q. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 MR. DAHLGREN: Objection; form.

21 THE WITNESS: [REDACTED]

22 BY MR. GINSBERG:

23 Q. [REDACTED]  
24 [REDACTED]  
25 [REDACTED] --





1

Q. [REDACTED]

2

3

4

MR. DAHLGREN: Same objection.

5

THE WITNESS: [REDACTED]

6

7

8

(Luebke Deposition Exhibit No. 20,

9

an article from the American Journal of

10

Orthodontics and Dentofacial Orthopedics from

11

April 1991, was marked.)

12

BY MR. GINSBERG:

13

Q. Dr. Luebke, you've been handed what

14

has been marked Luebke Exhibit 20. It's

15

an article from the American Journal of

16

Orthodontics and Dentofacial Orthopedics

17

from April 1991.

18

A. Okay.

19

Q. First author's last name is Khier?

20

A. Correct.

21

Q. [REDACTED] -- Dr. Brantley, is

22

also on there. Do you see that?

23

A. Correct.

24

Q. [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED] [REDACTED]

4

[REDACTED]

5

[REDACTED] [REDACTED]

6

[REDACTED]

7

[REDACTED]

8

BY MR. GINSBERG:

9

Q. [REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

MR. DAHLGREN: Objection; form.

14

THE WITNESS: [REDACTED]

15

[REDACTED]

16

[REDACTED]

17

BY MR. GINSBERG:

18

Q. [REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED] [REDACTED]

22

Q. [REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

MR. DAHLGREN: And, Doctor, feel free

7

to look at the entire article, if you need to.

8

THE WITNESS: I see that.

9

BY MR. GINSBERG:

10

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14

MR. DAHLGREN: Objection; form.

15

THE WITNESS: [REDACTED]

[REDACTED]

17

BY MR. GINSBERG:

18

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23

MR. DAHLGREN: Objection; form.

24

THE WITNESS: [REDACTED]

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 MR. DAHLGREN: Objection; form. Asked  
10 and answered.

11 And, Counsel, I'd ask that your  
12 tone -- just to calm it down a little bit.

13 BY MR. GINSBERG:

14 Q. Am I being -- is my tone bothering  
15 you? I'm sorry.

16 A. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1 [REDACTED]

2 MR. DAHLGREN: Objection; asked and  
3 answered.

4 THE WITNESS: [REDACTED]

[REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]

[REDACTED]

[REDACTED]

24 MR. DAHLGREN: Objection; form. Asked  
25 and answered.

1 THE WITNESS: I see that, but continue  
2 reading.

3 BY MR. GINSBERG:

4 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [REDACTED]

9 Q. [REDACTED]

[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form.

19 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25 BY MR. GINSBERG:

1 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 MR. DAHLGREN: Objection; form.

6 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 Q. There's one more sentence that says,  
20 for the heat treatments at ten minutes and two  
21 hours at 600, the permanent set for nitinol SE,  
22 sentinol and NiTi increased to values of  
23 approximately 20 to 35 degrees.

24 Do you see that?

25 A. I do.

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23

[REDACTED]

24 MR. DAHLGREN: Objection; form.  
25 Objection; mischaracterizes testimony.

1

THE WITNESS: [REDACTED]

2

[REDACTED]

3

BY MR. GINSBERG:

4

Q.

[REDACTED]

5

[REDACTED]

6

MR. DAHLGREN: Objection;

7

mischaracterizes.

8

THE WITNESS: [REDACTED]

9

[REDACTED]

10

MR. DAHLGREN: Doctor, I'd just ask

11

you to give me time to make my objections.

12

THE WITNESS: I'm sorry.

13

BY MR. GINSBERG:

14

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



1 [REDACTED]

2 THE REPORTER: Can you answer yes or  
3 no, please?

4 THE WITNESS: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: [REDACTED]

12 MR. DAHLGREN: You're good. You can  
13 answer.

14 THE WITNESS: [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 BY MR. GINSBERG:

18 Q. In Paragraph 30 of your report that  
19 we've marked as Luebke Exhibit 3, I'll let you  
20 get there. Just let me know when you're there.  
21 Paragraph 30 --

22 A. That's in 3?

23 Q. Yes. That's correct.

24 A. [REDACTED]

25 Q. [REDACTED]



1 MR. DAHLGREN: Dr. Luebke, you should  
2 let him finish his questions.

3 THE WITNESS: Sorry.

4 MR. DAHLGREN: That's okay.

5 BY MR. GINSBERG:

6 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 MR. DAHLGREN: Objection; form. Asked  
12 and answered.

13 THE WITNESS: [REDACTED]  
[REDACTED]

15 BY MR. GINSBERG:

16 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20 MR. DAHLGREN: Objection; form. Asked  
21 and answered.

22 THE WITNESS: [REDACTED]

23 BY MR. GINSBERG:

24 Q. [REDACTED]

25 MR. DAHLGREN: Objection; form. Asked

1 and answered.

2 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 BY MR. GINSBERG:

9 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 MR. DAHLGREN: Objection; form.

15 THE WITNESS: [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

19 BY MR. GINSBERG:

20 Q. [REDACTED]

[REDACTED]

22 MR. DAHLGREN: Objection; form.

23 THE WITNESS: [REDACTED]

[REDACTED]

25 BY MR. GINSBERG:

1 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7 MR. DAHLGREN: Objection; form.  
8 Vague.

9 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
[REDACTED]

15 If it helps, it's Luebke Exhibit 15.  
16 You have it.

17 MR. DAHLGREN: Objection; form.  
18 Vague.

19 THE WITNESS: Okay.

20 BY MR. GINSBERG:

21 Q. If you go to Page 4.

22 A. 311 -- wait. Wait. Wait. I've got  
23 the wrong one.

24 Q. No problem.

25 MR. DAHLGREN: Which exhibit is it

1 again?

2 MR. GINSBERG: It's 15.

3 THE WITNESS: Yes.

4 BY MR. GINSBERG:

5 Q. [REDACTED]

[REDACTED]

12 MR. DAHLGREN: Objection; form. Asked  
13 and answered.

14 THE WITNESS: Page again, please?

15 BY MR. GINSBERG:

16 Q. Five.

17 A. Where is it on the page?

18 Q. If you go to the first column on Page  
19 5, there's some discussion about Figure 7.

20 A. Okay.

21 Q. [REDACTED]

[REDACTED]

1 MR. DAHLGREN: Objection; form.

2 Vague. Asked and answered.

3 THE WITNESS: [REDACTED]

4 MR. DAHLGREN: Mischaracterizes the  
5 evidence.

6 Sorry.

7 THE WITNESS: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 BY MR. GINSBERG:

11 Q. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 MR. DAHLGREN: Objection; form.

18 THE WITNESS: [REDACTED]

19 [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]



1 MR. DAHLGREN: Objection; form.

2 THE WITNESS: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 MR. DAHLGREN: Counsel, we've been  
6 going almost an hour. Can we take a break?

7 MR. GINSBERG: Sure.

8 THE VIDEOGRAPHER: Going off the  
9 record at 2:31 p.m.

10 (Recess taken.)

11 THE VIDEOGRAPHER: We are going back  
12 on record at 2:43 p.m. This is the start of  
13 Media Unit Number 5 in the deposition of  
14 Dr. Luebke.

15 BY MR. GINSBERG:

16 Q. Dr. Luebke, I just wanted to return  
17 to the Khier Exhibit, which we've marked Luebke  
18 Exhibit 20.

19 Could you turn back to that?

20 And I want to direct your attention  
21 to Page 313 again in that second column, the  
22 first full paragraph in that second column.

23 A. Okay.

24 Q. There's a statement that says,  
25 heat treatment at 500 degrees C for two hours

1       resulted in decreases in both the maximum moment  
2       at 80 degrees activation and the average moment  
3       for the central or superelastic portion of the  
4       deactivation curve; there was little change in  
5       the value of spring-back.

6                     Do you see that?

7             A.     I do.

8             Q.     [REDACTED]

9     [REDACTED]

10    [REDACTED]

11    [REDACTED]

12                     MR. DAHLGREN:  Objection; form.

13                     THE WITNESS:  [REDACTED]

14    [REDACTED]

15             BY MR. GINSBERG:

16             Q.     [REDACTED]

17    [REDACTED]

18    [REDACTED]

19    [REDACTED]

20    [REDACTED]

21    [REDACTED]

22    [REDACTED]

23                     MR. DAHLGREN:  Objection; form.

24             Compound.

25                     THE WITNESS:  [REDACTED]

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6 BY MR. GINSBERG:

7

Q.

8

9

10

MR. DAHLGREN: I don't think there's a

11

question.

12

BY MR. GINSBERG:

13

Q.

14

15

16

MR. DAHLGREN: Objection; form. Asked

17

and answered.

18

THE WITNESS:

19

20

BY MR. GINSBERG:

21

Q.

22

23

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25

MR. DAHLGREN: Objection; form.

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THE WITNESS:

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MR. DAHLGREN: Objection; form. Asked

14

and answered.

15

Please give me time to make my

16

objections.

17

THE WITNESS: Right.

18

19

20

21

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23

(Luebke Deposition Exhibit No. 21,

24

a copy of an article entitled, Fatigue in

25

Mechanical Properties of Nickel-Titanium

1 Endodontic Instruments, was marked.)

2 BY MR. GINSBERG:

3 Q. Okay. You've been handed what has  
4 been marked Luebke Exhibit 21. It is a copy  
5 of an article entitled, Fatigue in Mechanical  
6 Properties of Nickel-Titanium Endodontic  
7 Instruments. First named author is Kuhn.  
8 There's a publication date of October 2002.

9 Do you recognize this reference,  
10 Dr. Luebke?

11 A. I do.

12 Q. When did you first become aware of  
13 this reference?

14 A. [REDACTED]  
[REDACTED]  
[REDACTED]

17 (Luebke Deposition Exhibit No. 22,  
18 an article entitled, Bending Fatigue Study of  
19 Nickel-Titanium Gates Glidden Drills, was  
20 marked.)

21 BY MR. GINSBERG:

22 Q. Dr. Luebke you've been handed  
23 Luebke Exhibit 22, which is an article entitled,  
24 Bending Fatigue Study of Nickel-Titanium, Gates  
25 Glidden Drills. You're the first named author

1 of that article, and this was -- it was  
2 published in July of 2005.

3 Do you see that?

4 A. Yes, I do.

5 Q. Did you write this article with  
6 others?

7 A. I did.

8 Q. Do you see in the reference section  
9 there's a Footnote 22?

10 A. Okay.

11 Q. That's reference to a Kuhn article.  
12 Do you see that?

13 A. I do.

14 Q. Does that match up with the Kuhn  
15 article that's been marked as Luebke Exhibit 21?

16 A. I do.

17 Q. It does, correct?

18 A. It does.

19 Q. It does match up?

20 Were you aware of the Kuhn article  
21 that's been marked Luebke Exhibit 21 at the time  
22 that you wrote the article that has been marked  
23 Luebke Exhibit 22?

24 A. Of course.

25 Q. Earlier today we had talked about one



1 of your applications that's still pending before  
2 the Patent and Trademark Office, correct?

3 Do you recall that?

4 A. Excuse me?

5 Q. Do you recall earlier today we talked  
6 about that you still have an application that's  
7 pending before the Patent and Trademark Office?

8 A. I -- is -- is that the one that's been  
9 issued? Or, no, that is -- that is -- that has  
10 -- the issue fees have been paid?

11 Q. Yes.

12 A. Is that what you're referring to?

13 Q. I am.

14 Now, in connection with that  
15 prosecution, you submitted an information  
16 disclosure statement identifying some of the  
17 references that Goldberg has cited in this case,  
18 correct?

19 MR. DAHLGREN: Objection; form.

20 THE WITNESS: I was informed that --  
21 that, if we learned of any prior art, that we  
22 would have to inform the Patent Office if we  
23 didn't know it three months earlier, so ...

24 BY MR. GINSBERG:

25 Q. And one of the references that you



1 told the Patent Office that you didn't know  
2 of three months earlier was the Kuhn reference,  
3 correct?

4 A. That would be true.

5 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 BY MR. GINSBERG:

16 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 MR. DAHLGREN: Objection; form.

22 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. You also submitted a copy of your declaration, dated August 14th, 2014, to the Patent Office, correct? It's been marked Luebke Exhibit 17.

MR. DAHLGREN: Objection; form.

THE WITNESS: Was this document submitted?

BY MR. GINSBERG:

Q. Yes.

A. Then I guess I -- I submit --

Q. Oh. I'm sorry. You were asking me. You don't know?

A. Some of the legal information is taken care of by the patent attorney.

If he felt it warranted to be, you know, then -- then we did that.

1 Q. Do you know whether or not  
2 Dr. Goldberg's declaration was submitted to the  
3 Patent Office?

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: If you can show me  
6 the --

7 BY MR. GINSBERG:

8 Q. Sure.

9 A. -- then I can answer more correctly.

10 Q. That's fair. That's fair.

11 (Luebke Deposition Exhibit No. 23, a  
12 copy of an information disclosure statement that  
13 is dated August 2014, was marked.)

14 BY MR. GINSBERG:

15 Q. I've marked Luebke Exhibit 23 a copy  
16 of an information disclosure statement that is  
17 dated August 2014.

18 Do you see on the -- do you recognize  
19 this document, Dr. Luebke?

20 A. I believe this is a -- I have not  
21 received a hardcopy of this document, but I  
22 believe it's a document that's on the -- in the  
23 payer area for the patents.

24 Q. It's a publicly available document?

25 A. I believe that's true.

1 Q. Do you see on the third page there's a  
2 disclosure of your declaration that was filed in  
3 the present action on August 15th, 2014?

4 A. Okay.

5 Q. Do you see any disclosure of the  
6 declaration from Dr. Goldberg?

7 MR. DAHLGREN: Objection; form.  
8 Vague.

9 THE WITNESS: If I'm reading this  
10 correctly, I do not.

11 BY MR. GINSBERG:

12 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18 BY MR. GINSBERG:

19 [REDACTED]  
[REDACTED]  
[REDACTED]

23 MR. DAHLGREN: Objection; form.  
Vague. Mischaracterizes the evidence.

24 [REDACTED]  
[REDACTED]

1 [REDACTED]

2 BY MR. GINSBERG:

3 Q. It discloses Dr. Goldberg's position  
4 with regard to the relevance of the prior art,  
5 correct?

6 MR. DAHLGREN: Objection; form.

7 THE WITNESS: That would be more  
8 correct.

9 BY MR. GINSBERG:

10 Q. And you disagreed with his positions,  
11 correct?

12 A. Absolutely.

13 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form.

19 [REDACTED]  
[REDACTED]  
[REDACTED]

22 BY MR. GINSBERG:

23 Q. Did you disclose the Walia reference,  
24 specifically, during the prosecution of your  
25 application by way of a information disclosure



1 conclusion.

2 THE WITNESS: [REDACTED]

3 [REDACTED]  
4 BY MR. GINSBERG:

5 Q. Is it your understanding that the  
6 Pro -- ProFile endodontic files are superelastic  
7 nickel-titanium endodontic files?

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: That I would agree with.

10 BY MR. GINSBERG:

11 Q. And those are the files that are  
12 among the files that were analyzed in the Kuhn  
13 reference, correct?

14 MR. DAHLGREN: Objection; form.

15 And, Dr. Luebke, you could review the  
16 reference, if you need to, before answering that  
17 question.

18 THE WITNESS: ProFile were some of  
19 them, yes.

20 BY MR. GINSBERG:

21 Q. [REDACTED]  
22 [REDACTED]

23 MR. DAHLGREN: Objection; form.

24 Vague.

25 THE WITNESS: [REDACTED]



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[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Vague.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Vague.

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. They're endodontic files, so you would assume that they would have cutting edges formed into them, right?

MR. DAHLGREN: Objection; form.

THE WITNESS: That is the objective of our fun.

BY MR. GINSBERG:

Q. I'm sorry. What was your response?

1           A.    That's the objective of our fun as an  
2 endodontist.

3           Q.    So the answer is yes?

4           A.    Yes.

5           Q.    [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9           MR. DAHLGREN:  Objection; form.  
10 Objection to the extent it calls for a legal  
11 conclusion.

12           THE WITNESS:  [REDACTED]

13 BY MR. GINSBERG:

14           Q.    Could you look at Figure 4A of the  
15 Kuhn reference?

16                    What does this show?

17           MR. DAHLGREN:  Objection; form.

18 Vague.

19           THE WITNESS:  It's a DSC.

20 BY MR. GINSBERG:

21           Q.    DSC curves of what?

22           MR. DAHLGREN:  Objection; form.

23           THE WITNESS:  A ProFile 04, a ProFile  
24 600 and a ProFile 700.

25 BY MR. GINSBERG:

1 Q. And how about Figure 4A? What does  
2 that disclose?

3 MR. DAHLGREN: Objection; form.

4 THE WITNESS: Oh. Excuse me.

5 BY MR. GINSBERG:

6 Q. No problem.

7 A. A ProFile 0420, a ProFile 400 degrees  
8 C10 and a ProFile 500 10C10.

9 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Objection; form.

14 And you can read the document, if you  
15 need to, before answering that question.

16 THE WITNESS: [REDACTED] [REDACTED]

17 BY MR. GINSBERG:

18 Q. [REDACTED]

19 MR. DAHLGREN: One -- sorry. I just  
20 lost my connection.

21 THE VIDEOGRAPHER: Do you want to go  
22 off record?

23 We're going off record at 3:07 p.m.

24 (Brief pause.)

25 THE VIDEOGRAPHER: We're going back on



1

Q. [REDACTED]

[REDACTED]

3

MR. DAHLGREN: Objection; form.

4

THE WITNESS: [REDACTED].

5

BY MR. GINSBERG:

6

Q. Okay. I'm going to take my

7

colleague's pen back.

8

I don't want you running off with it.

9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16

MR. DAHLGREN: Objection; form.

17

THE WITNESS: [REDACTED]

[REDACTED]

19

BY MR. GINSBERG:

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Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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A. [Witness complies.]

[REDACTED]

A. [Witness complies.]

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

[REDACTED]



1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 MR. DAHLGREN: Objection; form.

12 THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

17 BY MR. GINSBERG:

18 [REDACTED]  
[REDACTED]  
[REDACTED]

21 MR. DAHLGREN: Objection; form.

22 THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED]

25 BY MR. GINSBERG:

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[REDACTED]

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[REDACTED]

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[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

MR. DAHLGREN: Objection; form.

10

THE WITNESS: -- correct.

11

BY MR. GINSBERG:

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

Q. Okay. Could I see that, please?

19

Thank you.

20

[REDACTED]

21

[REDACTED]

22

MR. DAHLGREN: Objection; form.

23

THE WITNESS: [Witness complies.]

24

BY MR. GINSBERG:

25

[REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 MR. DAHLGREN: Objection; form.

5 BY MR. GINSBERG:

6 Q. [REDACTED]

7 [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 Mischaracterizes -- mischaracterizes testimony.

10 THE WITNESS: [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 [REDACTED]

16 MR. DAHLGREN: Objection; form.

17 THE WITNESS: [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 You can take the time to look at the



1

[REDACTED]

2

MR. DAHLGREN: Objection; form.

3

THE WITNESS: [REDACTED]

4

BY MR. GINSBERG:

5

Q. Please.

6

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

MR. DAHLGREN: Objection; form.

20

BY MR. GINSBERG:

21

Q. -- [REDACTED]?

22

MR. DAHLGREN: Same objection.

23

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

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7 BY MR. GINSBERG:

8 Q. Why aren't you convinced?

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: [REDACTED]

11

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22 BY MR. GINSBERG:

23

Q. [REDACTED]

24

25

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

MR. DAHLGREN: Objection; form.

7

THE WITNESS: [REDACTED]

8

[REDACTED]

9

BY MR. GINSBERG:

10

Q. [REDACTED]

11

[REDACTED]

12

MR. DAHLGREN: Objection; form.

13

THE WITNESS: [REDACTED]

14

[REDACTED]

15

BY MR. GINSBERG:

16

Q. [REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

MR. DAHLGREN: Objection; form.

23

Vague.

24

THE WITNESS: [REDACTED]

25

[REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 BY MR. GINSBERG:

6 Q. Okay. Let's use the definition of  
7 permanent deformation in Claim 1 of your '773  
8 patent, okay? So that's Luebke Exhibit 5.

9 Do you see that Claim 1 requires  
10 greater than 10 degrees of permanent deformation  
11 after testing in accordance with the ISO  
12 Standard 3630-1 test?

13 MR. DAHLGREN: Objection; form.

14 THE WITNESS: Yes. I'm familiar with  
15 that.

16 BY MR. GINSBERG:

17 Q. [REDACTED]  
18 [REDACTED]

19 MR. DAHLGREN: Objection; form.  
20 Objection to the extent it calls for a legal  
21 conclusion.

22 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1

[REDACTED]

2

BY MR. GINSBERG:

3

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6

MR. DAHLGREN: Objection; form.

7

Objection to the extent it calls for a legal

8

conclusion.

9

THE WITNESS:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16

BY MR. GINSBERG:

17

Q.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 MR. DAHLGREN: Objection; form.  
2 Objection to the extent it calls for a legal  
3 conclusion. Compound.

4 THE WITNESS: [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 BY MR. GINSBERG:

8 Q. [REDACTED]  
9 [REDACTED]

10 MR. DAHLGREN: Objection; form. Asked  
11 and answered.

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
14 [REDACTED]

15 MR. DAHLGREN: Same objection.

16 THE WITNESS: [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 BY MR. GINSBERG:

22 Q. Okay.

23 A. [REDACTED]  
[REDACTED]  
[REDACTED]



1 BY MR. GINSBERG:

2 Q. [REDACTED]

3 MR. DAHLGREN: Objection; form. Asked  
4 and answered multiple times.

5 THE WITNESS: [REDACTED]

6 [REDACTED]

7 BY MR. GINSBERG:

8 Q. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 MR. DAHLGREN: Objection; form.  
14 Objection to the extent it calls for a legal  
15 conclusion.

16 THE WITNESS: [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

2

[REDACTED]

3

MR. DAHLGREN: Objection -- Objection;

4

form. Mischaracterizes his testimony.

5

Objection to the extent it calls for a legal

6

conclusion. Asked and answered.

7

THE WITNESS: I believe that's what it

8

says.

9

BY MR. GINSBERG:

10

Q.

[REDACTED]

11

[REDACTED]

12

MR. DAHLGREN: Objection; form.

13

THE WITNESS:

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

BY MR. GINSBERG:

17

Q.

[REDACTED]

18

[REDACTED]

19

MR. DAHLGREN: Objection; form.

20

BY MR. GINSBERG:

21

Q.

[REDACTED]

22

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Q. [REDACTED]

[REDACTED]  
[REDACTED]

MR. DAHLGREN: Objection; form.

Mischaracterizes his testimony.

THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED].

BY MR. GINSBERG:

Q. [REDACTED] [REDACTED]

[REDACTED]  
[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

[REDACTED]

MR. DAHLGREN: Objection; form.

Vague.

THE WITNESS: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]



1

[REDACTED]

2

MR. DAHLGREN: Objection; form.

3

THE WITNESS: [REDACTED] [REDACTED]

4

[REDACTED]

5

It's been a long time.

6

BY MR. GINSBERG:

7

Q. [REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

MR. DAHLGREN: Objection; form.

12

THE WITNESS: [REDACTED]

13

[REDACTED] [REDACTED]

14

[REDACTED]

15

BY MR. GINSBERG:

16

Q. Of course.

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

MR. DAHLGREN: Objection; form.

22

Objection to the extent it calls for a legal

23

conclusion.

24

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

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7 BY MR. GINSBERG;

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BY MR. GINSBERG;

Q. Okay. And all of the applications that are identified on the face of the '773 patent, excluding the provisional application, have the exact same specification, correct?

MR. DAHLGREN: Objection; form. Objection; vague.

THE WITNESS: Specifications is a big word. I -- I need to know what you're -- what -- what are you asking?

BY MR. GINSBERG:

Q. The same abstract, background of the invention, figures and detailed description of the invention.

MR. DAHLGREN: Same objection.

THE WITNESS: I would probably have to defer to the patent attorney because he wrote it. So if it reads the same, then it is the same.

1 BY MR. GINSBERG:

2 Q. Do you understand what the meaning  
3 of a continuation application or a division  
4 application is?

5 MR. DAHLGREN: Object --

6 BY MR. GINSBERG:

7 Q. Let me take that one at a time.  
8 Do you know the meaning of a  
9 continuation application?

10 MR. DAHLGREN: Objection; form.

11 THE WITNESS: It's my understanding  
12 that, if you receive a patent, you can do a  
13 continuation on an aspect of that patent  
14 and -- and -- and go from there. So that -- I  
15 mean, that's -- that's my nonlegal explanation.

16 BY MR. GINSBERG:

17 Q. Do you know what your -- scratch that.  
18 Do you know what the definition is of  
19 a division application?

20 MR. DAHLGREN: Objection; form.

21 Vague.

22 THE WITNESS: I could -- I could only  
23 guess that it's -- you're splitting the patent  
24 into product and process. But if I'm wrong,  
25 I'm -- I'll accept that.

1 BY MR. GINSBERG:

2 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6 MR. DAHLGREN: Objection; form.

7 Vague.

8 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form.

19 Vague. Calls for a legal conclusion.

20 THE WITNESS: [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

1

2

3 BY MR. GINSBERG:

4 Q. Can we just refer back to your  
5 declaration that was submitted -- actually, I'm  
6 sorry. I have the wrong document.

7 Just turning back to Luebke Exhibit  
8 13, which is a copy of a declaration that was  
9 submitted during the prosecution of the  
10 application that led to the '773 patent.

11 A. I have it in hand.

12 Q. Thanks.

13 And I just want to direct your  
14 attention again to Paragraph 6.

15 There's a sentence near the bottom of  
16 that paragraph that says, permanent deformation  
17 refers to martensitic NiTi.

18

19 MR. DAHLGREN: Objection; form.

20 And you can look at the whole  
21 document, if you need to, Dr. Luebke.

22

THE WITNESS:

23

24

25

1 [REDACTED]

2 [REDACTED]

3 BY MR. GINSBERG:

4 Q. [REDACTED]

5 [REDACTED]

6 MR. DAHLGREN: Objection; form.

7 Mischarac -- mischaracterizes testimony.

8 THE WITNESS: [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 BY MR. GINSBERG:

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 MR. DAHLGREN: Objection; form. Asked  
20 and answered multiple times.

21 THE WITNESS: I think I've already  
22 answered that, so ...

23 BY MR. GINSBERG:

24 Q. Do you believe 30 degrees to be close  
25 to room temperature?



1 MR. DAHLGREN: Objection; form.

2 Vague.

3 BY MR. GINSBERG:

4 Q. And I mean 30 degrees C.

5 MR. DAHLGREN: Same objection.

6 THE WITNESS: I don't define it -- it  
7 -- we have -- we have to deal off some -- we  
8 have to deal off known -- known documents. And  
9 my known document is 25 degrees, is what I --

10 BY MR. GINSBERG:

11 Q. Do you consider 30 degrees Celsius  
12 close to 25 degrees Celsius?

13 MR. DAHLGREN: Objection; form.

14 Vague.

15 THE WITNESS: It's closer than a  
16 hundred.

17 MR. DAHLGREN: Counsel, I think we've  
18 been going almost an hour. Could we maybe take  
19 a break now?

20 MR. GINSBERG: Sure.

21 MR. DAHLGREN: Okay.

22 THE VIDEOGRAPHER: We're going off  
23 record at 3:43 p.m.

24 (Recess taken.)

25 THE VIDEOGRAPHER: We're going back on



1 record at 3:51 p.m. This is the start of Media  
2 Unit Number 6 in the deposition of Dr. Luebke.

3 (Luebke Deposition Exhibit No. 24, a  
4 copy of published patent application U.S.  
5 2002/0137008, was marked.)

6 BY MR. GINSBERG:

7 Q. Dr. Luebke, you've been handed what  
8 has been marked Luebke Exhibit 24, which is a  
9 copy of published Patent Application U.S.  
10 2002/0137008. First named inventor is  
11 McSpadden.

12 Have you seen this reference before?

13 A. I have.

14 Q. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form.

19 Vague.

20 And you can review the reference, if  
21 you need to.

22 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

25 BY MR. GINSBERG:

1 Q. In Paragraph 52 of the McSpadden  
2 reference, towards the end of the first column  
3 of -- let me make sure I'm on the right page.

4 It's Paragraph 52, and it's the first  
5 column on that page. Do you see that?

6 There's a sentence that reads,  
7 if desired, the formed endodontic file; i.e.,  
8 subsequent to machining, may be further heat  
9 treated.

10 Do you see that?

11 A. Paragraph 52?

12 Q. In the last sentence --

13 A. Oh, the last sentence.

14 Q. -- in that column.

15 A. Okay. Okay. Okay. I'm sorry. I'm  
16 sorry.

17 Q. No problem.

18 Do you see the sentence that says,  
19 if desired, the formed endodontic file; i.e.,  
20 subsequent to machining --

21 A. Yes.

22 Q. -- may be further heat treated?

23 [REDACTED]

24 MR. DAHLGREN: Objection; form.

25 THE WITNESS: [REDACTED]

1 [REDACTED]

2 BY MR. GINSBERG:

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. DAHLGREN: Ob -- objection;

7 compound. Partly asked and answered.

8 MR. GINSBERG: That was a new

9 objection.

10 THE WITNESS: [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 BY MR. GINSBERG:

14 Q. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 MR. DAHLGREN: Objection; form.

24 Asked and answered.

25 THE WITNESS: [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

BY MR. GINSBERG:

6

Q. [REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

MR. DAHLGREN: Objection; form.

15

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

BY MR. GINSBERG:

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

BY MR. GINSBERG:

Q. [REDACTED]

1 [REDACTED]

2 MR. DAHLGREN: Objection; form.  
3 Mischaracterizes testimony.

4 THE WITNESS: [REDACTED]

5 BY MR. GINSBERG:

6 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11 MR. DAHLGREN: Objection; form.  
12 Vague. Mischaracterizes the evidence. Asked  
13 and answered.

14 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 BY MR. GINSBERG:

20 Q. I'm citing the disclosure of  
21 McSpadden.

22 MR. DAHLGREN: Same objections.

23 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]

1 BY MR. GINSBERG:

2 Q. You opined on the disclosure in  
3 McSpadden, correct?

4 A. Excuse me?

5 Q. You opined on --

6 A. Yes.

7 Q. -- the disclosure in McSpadden.  
8 You've read McSpadden, correct?

9 MR. DAHLGREN: Objection; form.  
10 Compound.

11 THE WITNESS: [REDACTED]

12 BY MR. GINSBERG:

13 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

18 MR. DAHLGREN: Objection; form. Asked  
19 and answered. Mischaracterizes the evidence.

20 THE WITNESS: [REDACTED]

21 MR. GINSBERG: Thank you.

22 (Luebke Deposition Exhibit No. 25, a  
23 copy of U.S. Patent 6,485,507, first-named  
24 inventor Walak, was marked.)

25 BY MR. GINSBERG:



1 Q. Dr. Luebke, you've been handed what  
2 has been marked Luebke Exhibit 25. It's a  
3 copy of U.S. Patent 6,485,507. The first named  
4 inventor is Walak.

5 Do you recognize this exhibit?

6 MR. DAHLGREN: You can take your time  
7 to look at it, if you need to.

8 THE WITNESS: I do.

9 BY MR. GINSBERG:

10 Q. If you look at Column 4, Lines  
11 -- well, before we do that, do you agree that  
12 this reference discloses heat treating the  
13 nickel-titanium alloy, under certain conditions?

14 MR. DAHLGREN: Objection; form.  
15 Vague.

16 THE WITNESS: Yes.

17 BY MR. GINSBERG:

18 Q. If you look at Column 4, Lines 13  
19 through 19, it states, quote, the locally  
20 treated portions will initiate plastic  
21 deformation at a lower strain than the  
22 portions that have not been locally treated.

23 Depending on the extent of the  
24 heat treatment, the material may simply have  
25 a reduced stiffness in the locally treated

1 portion, or the superelacticity of the locally  
2 treated portion may be destroyed, with the  
3 locally treated portion being plastically  
4 deformable.

5 Do you see that?

6 A. Yes.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 MR. DAHLGREN: Objection; form.

11 Mischaracterizes the evidence. Vague.

12 THE WITNESS: [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 BY MR. GINSBERG:

21 Q. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

MR. DAHLGREN: Objection; form.

5

Mischaracterizes testimony.

6

THE WITNESS: [REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

BY MR. GINSBERG:

11

Q. [REDACTED]

12

MR. DAHLGREN: Same objections.

13

THE WITNESS: [REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

BY MR. GINSBERG:

18

Q. [REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

MR. DAHLGREN: Objection; asked and

1 answered.

2 THE WITNESS: [REDACTED]

[REDACTED]

9 BY MR. GINSBERG:

10 Q. Okay.

11 A. [REDACTED]



1 [REDACTED]

2 BY MR. GINSBERG:

3 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

9 MR. DAHLGREN: Objection; form.  
10 Mischaracterizes testimony.

11 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 BY MR. GINSBERG:

17 Q. [REDACTED]  
[REDACTED]  
[REDACTED]

20 MR. DAHLGREN: Objection; form. Asked  
21 and answered. Vague.

22 THE WITNESS: I -- I would -- I'd have  
23 to read -- read that to find that passage.

24 BY MR. GINSBERG:

25 Q. How about what we've read before,

1 [REDACTED]

2 MR. DAHLGREN: Objection; form. Asked  
3 and answered. Vague.

4 THE WITNESS: [REDACTED]

5 [REDACTED]

6 BY MR. GINSBERG:

7 Q. [REDACTED]

8 [REDACTED]

9 MR. DAHLGREN: Objection; form. Asked  
10 and answered. Vague.

11 THE WITNESS: [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 BY MR. GINSBERG:

17 Q. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 MR. DAHLGREN: Objection;  
22 mischaracterizes his testimony. Vague.

23 THE WITNESS: [REDACTED]

24 [REDACTED]

25 [REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

BY MR. GINSBERG:

8

Q. Can we turn to your expert report

9

that we've marked Luebke Exhibit 3, Paragraph

10

41?

11

Okay? Are you there?

12

A. Mm-hmm.

13

Yes.

14

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

MR. DAHLGREN: Objection; form. Asked

8

and answered.

9

THE WITNESS: Is that the passage we

10

just looked at?

11

MR. GINSBERG: Yes.

12

MR. DAHLGREN: Same objections.

13

THE WITNESS: [REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

BY MR. GINSBERG:

21

Q. [REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

1 MR. DAHLGREN: Objection; form. Asked  
2 and answered multiple times.

3 THE WITNESS: [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 That's all in that paragraph that you  
8 pointed me to.

9 (Luebke Deposition Exhibit No. 26,  
10 a copy of U.S Patent Number 5,171,383.  
11 First-named inventor is Segae, was marked.)

12 BY MR. GINSBERG:

13 Q. Dr. Luebke, you've been handed what  
14 has been marked Luebke Exhibit 26, a copy of U.S  
15 Patent Number 5,171,383. First named invent --  
16 inventor is Segae.

17 Have you seen this reference before?

18 A. I have.

19 Q. [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 MR. DAHLGREN: Objection; form.  
23 Vague.

24 THE WITNESS: [REDACTED]

25 BY MR. GINSBERG:

1

[REDACTED]

6

MR. DAHLGREN: Objection; form.

7

THE WITNESS: I -- I was reading something, so I didn't catch this.

9

I'm sorry.

10

BY MR. GINSBERG:

11

[REDACTED]

16

MR. DAHLGREN: Objection; form.

17

Compound. Objection to the extent it calls for a legal conclusion.

19

THE WITNESS:

[REDACTED]

22

BY MR. GINSBERG:

23

[REDACTED]

1 MR. DAHLGREN: Objection; form.

2 Vague.

3 Dr. Luebke, take your time to look at  
4 that, if you need to.

5 THE WITNESS: [REDACTED]  
6 [REDACTED]

7 BY MR. GINSBERG:

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 MR. DAHLGREN: Objection; form.

12 Mischaracterizes his testimony.

13 THE WITNESS: [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 BY MR. GINSBERG:

25 Q. And I just want to go back to my prior

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

MR. DAHLGREN: Objection; form. Asked

6

and answered.

7

THE WITNESS: [REDACTED] [REDACTED]

8

[REDACTED]

9

BY MR. GINSBERG:

10

Q. Thank you.

11

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

MR. DAHLGREN: Objection; form.

20

Vague.

21

THE WITNESS: [REDACTED]

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]



[REDACTED]

6 BY MR. GINSBERG:

7 Q. Let me refer you to Claim 1 again  
8 of your '773 patent that we've marked Luebke  
9 Exhibit 5.

10 Are you there?

11 A. Mm-hmm.

12 Q. And I want to look at Step 1B right  
13 now.

14 That calls for heat treating the  
15 entire shank. [REDACTED]

[REDACTED]

17 MR. DAHLGREN: Objection; form.  
18 Objection to the extent it calls for a legal  
19 conclusion.

20 THE WITNESS: [REDACTED]

[REDACTED]

22 BY MR. GINSBERG:

23 [REDACTED]

1 MR. DAHLGREN: Same objections.

2 THE WITNESS: [REDACTED]

3 BY MR. GINSBERG:

4 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

8 MR. DAHLGREN: Objection; form.  
9 Objection to the extent it calls for a legal  
10 conclusion. Vague.

11 THE WITNESS: [REDACTED]  
[REDACTED]

13 BY MR. GINSBERG:

14 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 MR. DAHLGREN: Objection; form.  
20 Objection to the extent it calls for a legal  
21 conclusion. Vague.

22 THE WITNESS: [REDACTED]

23 BY MR. GINSBERG:

24 [REDACTED]  
[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

MR. DAHLGREN: Objection; form.

6

Objection to the extent it calls for a legal

7

conclusion. Asked and answered.

8

THE WITNESS: [REDACTED]

9

BY MR. GINSBERG:

10

Q. Are you aware of US Endodontics'

11

proposed construction for the heat treating step

12

in Claim 1 of the '773 patent?

13

MR. DAHLGREN: Objection; form. Asked

14

and answered.

15

THE WITNESS: I believe I missed the

16

question.

17

BY MR. GINSBERG:

18

Q. No problem.

19

Are you aware of US Endodontics'

20

proposed construction for the heat treating step

21

in Claim 1 of the '773 patent?

22

MR. DAHLGREN: Objection; form. Asked

23

and answered.

24

THE WITNESS: Construction throws me.

25

I don't know what that means.

1 BY MR. GINSBERG:

2 Q. Are you aware that, in this case, US  
3 Endodontics has proposed that the heat treating  
4 step in Claim 1 of your '773 patent should be  
5 construed to mean heat treating in an atmosphere  
6 unreactive with nickel-titanium?

7 MR. DAHLGREN: Objection; form. Asked  
8 and answered.

9 THE WITNESS: It doesn't say it.

10 BY MR. GINSBERG:

11 Q. My question to you was, are you  
12 aware that US Endodontics, in this case, has  
13 proposed that the heat treating step in Claim 1  
14 of the '773 patent should be defined to mean  
15 heat treating in an atmosphere unreactive with  
16 nickel-titanium?

17 MR. DAHLGREN: Objection; form. Asked  
18 and answered.

19 THE WITNESS: Why would you do that?

20 BY MR. GINSBERG:

21 Q. Are you aware that that's US  
22 Endodontics' position?

23 A. Oh. Oh. No.

24 MR. DAHLGREN: Same objections.

25 BY MR. GINSBERG:

1 Q. US Endodontics' Edge files include  
2 shanks that -- well, do you know how the Edge  
3 files are heat treated?

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: I do not.

6 BY MR. GINSBERG:

7 [REDACTED]

8 MR. DAHLGREN: Objection; form.

9 Vague.

10 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 BY MR. GINSBERG:

17 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23 MR. DAHLGREN: Objection; form.

24 Vague.

25 THE WITNESS: [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

BY MR. GINSBERG:

9

Q. Are you aware of any disclosure in the

10

'773 patent of heat treating a nickel-titanium

11

shank in an atmosphere that is reactive with

12

nickel-titanium?

13

MR. DAHLGREN: Objection; form. Asked

14

and answered. Objection to the extent it calls

15

for a legal conclusion.

16

THE WITNESS: Are you referring to

17

Number 5 in the claims?

18

BY MR. GINSBERG:

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]

23

[REDACTED]

24

MR. DAHLGREN: Objection; form. Asked

25

and answered. Objection to the extent it calls

1 for a legal conclusion.

2 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 BY MR. GINSBERG:

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 MR. DAHLGREN: Objection; form. Asked  
18 and answered.

19 We've gone through this multiple times  
20 now.

21 THE WITNESS: So you want me to read  
22 the document?

23 MR. DAHLGREN: Objection to the extent  
24 it calls for a legal conclusion.

25 BY MR. GINSBERG:



1 Q. Maybe we can go over a couple  
2 examples.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 MR. DAHLGREN: Dr. Luebke, you can  
25 take the time to look at the document, if you

1 need to.

2 THE WITNESS: [REDACTED]  
3 [REDACTED]

4 BY MR. GINSBERG:

5 [REDACTED]  
6 [REDACTED]

7 MR. DAHLGREN: Objection; form.

8 THE WITNESS: [REDACTED]

9 BY MR. GINSBERG:

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 MR. DAHLGREN: Objection; form.

20 Objection; form.

21 THE WITNESS: [REDACTED]

22 BY MR. GINSBERG:

23 Q. Dr. Luebke, who is David Berzins?

24 A. David is a faculty member at

25 Marquette.



1 this case, correct?

2 MR. DAHLGREN: Objection; form.

3 THE WITNESS: I believe he did.

4 BY MR. GINSBERG:

5 Q. Did you ask him to submit those  
6 declarations?

7 A. Yes.

8 (Luebke Deposition Exhibit No. 27, a  
9 declaration from David Berzins, signed April  
10 28th, 2011, was marked.)

11 BY MR. GINSBERG:

12 Q. You've been handed what has been  
13 marked Luebke Exhibit 27. It's a declaration  
14 from David Berzins, signed April 28th, 2011.

15 Do you recognize this document,  
16 Dr. Luebke?

17 A. I do.

18 Q. When was the last time you saw this  
19 document?

20 A. Other than when we submitted it,  
21 the -- did Goldberg cite this? I don't --

22 Q. Do you recall?

23 [REDACTED]  
[REDACTED]  
[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

Q. If I can refer you to Paragraph 9

5

of the Berzins declaration. In the first

6

sentence he states, an issue associated with

7

the processing of the files, as in the Matsutani

8

patent, is that titanium is very reactive in air

9

as it readily forms thick oxides when exposed to

10

air at elevated temperatures.

11

Do you see that?

12

A. I do.

13

[REDACTED]

14

MR. DAHLGREN: Objection; form.

15

I just want to object to the extent this

16

mischaracterizes the evidence this is a

17

incomplete disclosure to the Patent Office.

18

We got into this last time, Jeff, and I think it

19

mischaracterizes the evidence.

20

MR. GINSBERG: Once again,

21

inappropriate talking objection. This is a

22

complete declaration signed by Dr. Berzins.

23

MR. DAHLGREN: It doesn't have the

24

claims that were submitted to the Patent Office

25

with it, Jeff.

1 BY MR. GINSBERG:

2 [REDACTED]  
3 [REDACTED]

4 MR. DAHLGREN: Same objections.

5 THE WITNESS: [REDACTED]  
6 [REDACTED]

7 BY MR. GINSBERG:

8 [REDACTED]

9 MR. DAHLGREN: Objection; form.

10 THE WITNESS: [REDACTED] [REDACTED]  
11 [REDACTED]

12 BY MR. GINSBERG:

13 [REDACTED]

14 MR. DAHLGREN: Objection; form.

15 Mischaracterizes his testimony.

16 THE WITNESS: [REDACTED]  
17 [REDACTED]

18 BY MR. GINSBERG:

19 Q. Further on down that paragraph, David  
20 Berzins states that the Luebke patent calls for  
21 heating the files in an inert atmosphere.

22 Do you see that?

23 MR. DAHLGREN: Objection; form.

24 Mischaracterizes the evidence, again, for the  
25 reasons I stated earlier.

1

THE WITNESS: [REDACTED]

2

3

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BY MR. GINSBERG:

6

Q. You already had patents in April of

7

2011?

8

A. That is correct.

9

Well, I think it's correct.

10

Q. Is it correct?

11

A. What's the first patent number?

12

Q. If you look at Luebke Exhibit 9, maybe

13

that will help.

14

A. Nine?

15

Q. Yeah.

16

A. Thank you.

17

Maybe I can find it. I'm papered.

18

Q. I apologize.

19

The --

20

A. Six.

21

Q. I'm sorry. I thought you had it.

22

A. I haven't found it.

23

There it is.

24

Q. Luebke Exhibit 9 is the '033 patent,

25

correct?



1           A.    Is this the first patent?

2           Q.    Well, looking at the '033 patent, do  
3 you see it has -- if you look at Luebke Exhibit  
4 9, there's an Application Number 11/628 933.

5                    Do you see that on the first page,  
6 first column, application number?

7           A.    Here.

8           Q.    Yeah. It says 11/628 933?

9           A.    Okay.

10          Q.    That corresponds to the application  
11 number on Luebke Exhibit 27, correct?

12          A.    Twenty-seven?

13          Q.    Yeah. It's open. It's right next to  
14 the Berzins declaration?

15          A.    Okay. Oh. Is it?

16                    Oh, okay. Oh, yeah. Okay.

17          Q.    So this declaration was submitted  
18 before the application that resulted in the '033  
19 patent issued, correct?

20          A.    Oh, yes.

21          Q.    And David Berzins states that the  
22 Luebke patent calls for heating the files in an  
23 inert atmosphere. This will limit oxide growth  
24 on the file surface.

25                    Do you see that?

1 MR. DAHLGREN: Objection; form. Same  
2 objections as before.

3 THE WITNESS: Yes, I see that.

4 BY MR. GINSBERG:

5 Q. Do you agree that heating the files in  
6 an inert atmosphere will limit oxide growth on  
7 the file surface?

8 MR. DAHLGREN: Objection; form.

9 THE WITNESS: Yes.

10 MR. DAHLGREN: Jeff we've been going  
11 about an hour. Is this an okay time to take a  
12 break?

13 MR. GINSBERG: Sure.

14 THE VIDEOGRAPHER: Going off record at  
15 4:50 p.m.

16 (Recess taken.)

17 THE VIDEOGRAPHER: We're going back on  
18 record at 5:02 p.m. This is the start of Media  
19 Unit Number 7 in the deposition of Dr. Luebke.

20 BY MR. GINSBERG:

21 Q. Dr. Luebke each of the examples in  
22 your '773 patent disclose heat treating -- let  
23 me rephrase that question.

24 Each of the examples in your '773  
25 patent disclose a post heat treatment step that

1 takes place in an argon atmosphere, correct?

2 MR. DAHLGREN: Objection; form.

3 Objection to the extent it mischaracterizes the  
4 evidence.

5 BY MR. GINSBERG:

6 Q. The examples begin on Column 7, if  
7 that helps.

8 MR. DAHLGREN: Same objections.

9 And, Dr. Luebke, you can take your  
10 time to look at the document.

11 THE WITNESS: The examples use argon.

12 BY MR. GINSBERG:

13 [REDACTED]

14 MR. DAHLGREN: Objection; form.

15 Vague.

16 THE WITNESS: [REDACTED]

17 BY MR. GINSBERG:

18 [REDACTED]

19 MR. DAHLGREN: Objection; form.

20 Vague.

21 THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

24 BY MR. GINSBERG:

25 [REDACTED]

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MR. DAHLGREN: Objection; form. Asked  
and answered.

7

8

THE WITNESS: [REDACTED]

9

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BY MR. GINSBERG:

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BY MR. GINSBERG:

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[REDACTED]

MR. DAHLGREN: Objection; form.  
Mischaracterizes his testimony.

THE WITNESS: [REDACTED]

BY MR. GINSBERG:

[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED] --

BY MR. GINSBERG:

Q. Dr. Berzins, in his declaration, which we've marked Luebke Exhibit 27, states that the oxide layer may affect the surface integrity of the file as well as its properties and transformations.

Do you see that in Paragraph 9?

MR. DAHLGREN: Objection; form.

1 BY MR. GINSBERG:

2 Q. I'll read the whole sentence.

3 Dr. Berzins states, however, at  
4 elevated temperatures, the oxide layer grows  
5 in thickness. And this may affect the surface  
6 integrity of the file, as well as its properties  
7 and transformations.

8 Do you see that?

9 A. I see that.

10 [REDACTED]  
[REDACTED]

12 MR. DAHLGREN: Objection; form.

13 THE WITNESS: [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

17 BY MR. GINSBERG:

18 [REDACTED]  
[REDACTED]

20 MR. DAHLGREN: Objection; form.

21 Objection; vague.

22 THE WITNESS: [REDACTED]  
[REDACTED]

24 BY MR. GINSBERG:

25 [REDACTED]



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[REDACTED]

MR. DAHLGREN: Objection; form.

THE WITNESS: [REDACTED]

[REDACTED]

(Luebke Deposition Exhibit No. 28, a copy of an amendment that was submitted to the Patent Office during the prosecution of the Application Number 11/628933, was marked.)

BY MR. GINSBERG:

Q. Dr. Luebke, you've been handed Luebke Exhibit 28. It's a copy of an amendment that was submitted to the Patent Office during the prosecution of the Application Number 11/628933.

Have you seen this amendment before?

A. I'm sure I have, but they're all a blur, but -- which one does this relate to?

Q. The '933 application, which I think we've noted resulted in the '033 patent.

A. Okay. So in that case, I've seen it.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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MR. DAHLGREN: Objection; form.

4

Dr. Luebke, you can read the entire

5

Exhibit 28.

6

BY MR. GINSBERG:

7

Q. And I'm referring to paragraph that

8

appears on Page 9, if that helps.

9

MR. DAHLGREN: Okay. You can still

10

read the entire Exhibit 28, Dr. Luebke, before

11

answering that question.

12

And, also, objection; form; compound;

13

to the extent it calls for a legal conclusion

14

and vague.

15

THE WITNESS: So where on Page 9?

16

BY MR. GINSBERG:

17

Q. Page 9?

18

A. Where about?

19

Q. So starting with the first full

20

sentence on Page 9, it says, Item 6 of the

21

declaration states, the use of an argon

22

atmosphere, as described in Example 4, requires

23

that the entire file be heat treated in the

24

furnace in order to keep the argon contained

25

in a closed system. Stated a different way, one

1 skilled in the art, when reading the original  
2 disclosure of Example 4 of the present  
3 application, would immediately discern that  
4 the entire shank has to be heat treated in the  
5 furnace, using a closed system, due to the use  
6 of argon (which can cause rapid suffocation  
7 according to the MSDS attached to the  
8 declaration).

9 Do you see that?

10 A. I do.

11 MR. DAHLGREN: Objection; form.

12 BY MR. GINSBERG:

13 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 MR. DAHLGREN: Objection; form. Calls  
20 for a legal conclusion. Mischaracterizes the  
21 evidence.

22 THE WITNESS: [REDACTED]

23 MR. GINSBERG: Vague.

24 THE WITNESS: [REDACTED]

[REDACTED]

1 MR. DAHLGREN: Asked and answered.

2 BY MR. GINSBERG:

3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 MR. DAHLGREN: Objection; form. Calls  
14 for a legal conclusion. Vague. Compound.  
15 Asked and answered.

16 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 BY MR. GINSBERG:

22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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[REDACTED]

MR. DAHLGREN: Objection; form.

Vague.

THE WITNESS: [REDACTED]

[REDACTED]

MR. GINSBERG: Let me re -- okay.

(Luebke Deposition Exhibit No. 29, an amendment that was filed in the application that led to the '033 patent, was marked.)

BY MR. GINSBERG:

Q. Dr. Luebke, you've been handed Luebke Exhibit 29, which is an amendment that was filed in the application that led to the '033 patent. I want to direct your attention to Page 7.

The statement in the first full paragraph, I'll just read that paragraph, the inventor's declaration explains that the angular defect -- deflection was significantly larger for the files heat treated at 500 degrees C; that the cyclic fatigue data demonstrate the remarkable property of passive flexibility in the files heat treated 500 degrees C, compared to the files heat treated at 375 degrees C; that the torque data indicates that the heat did not degrade the metal in the files heat treated at

1 500 degrees C; and that the bend test data shows  
2 that the files heat treated at 500 degrees C  
3 have improved flexibility compared to the files  
4 heat treated at 375 degrees C. Thus, heat  
5 treatment within the claim range was critical  
6 to improving the beneficial properties of the  
7 endodontic instruments.

8 Do you see that?

9 A. I do.

10 [REDACTED]

11 MR. DAHLGREN: Objection; form.

12 THE WITNESS: [REDACTED]

13 [REDACTED]

14 BY MR. GINSBERG:

15 Q. And what were the ranges of heat  
16 treating disclosed in the claims of the '033  
17 patent?

18 It's Luebke Exhibit 9.

19 MR. DAHLGREN: And, counsel, just give  
20 me one second.

21 THE WITNESS: In Claim 1, it's 400, up  
22 to, will not equal the melting point.

23 BY MR. GINSBERG:

24 Q. Do you have any claims that are  
25 directed to heat treating lower than 400

1 degrees?

2 A. In this document?

3 Q. Any claims, correct. Yes, in this  
4 document, the '033 patent.

5 MR. DAHLGREN: Objection; form.

6 And you can take your time to look at,  
7 it, Dr. Luebke.

8 THE WITNESS: No. I believe 400 was  
9 what -- was the lowest temperature.

10 BY MR. GINSBERG:

11 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 MR. DAHLGREN: Objection; form.  
17 Objection to the extent it calls for a legal  
18 conclusion.

19 THE WITNESS: [REDACTED]  
[REDACTED]

21 BY MR. GINSBERG:

22 [REDACTED]  
[REDACTED]  
[REDACTED]

25 Q. I think, just so we're all on



1 the same page, do you see any claims in the '773  
2 patent directed to heat treating at temperatures  
3 below 400 degrees C?

4 MR. DAHLGREN: Objection; form.

5 THE WITNESS: In the claims, no.

6 BY MR. GINSBERG:

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 MR. DAHLGREN: Objection; form.  
13 Objection to the extent it calls for a legal  
14 conclusion. Objection; vague.

15 THE WITNESS: [REDACTED]  
16 [REDACTED]

17 BY MR. GINSBERG:

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8

MR. DAHLGREN: Objection; form.

9

Objection to the extent it calls for a legal

10

conclusion. Asked and answered. Vague.

11

THE WITNESS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14

BY MR. GINSBERG:

15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25

MR. DAHLGREN: Objection. Same

1 objections.

2 Also, Dr. Luebke, I just want to  
3 instruct you not to divulge any testing that  
4 you did at the instruction of counsel, if that  
5 happens to be the case.

6 THE WITNESS: [REDACTED]  
[REDACTED]

8 BY MR. GINSBERG:

9 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 MR. DAHLGREN: Same objections. And,  
17 Dr. Luebke, again, I just want to ask you not to  
18 divulge any testing that you did at the request  
19 of counsel.

20 You can answer otherwise.

21 THE WITNESS: I'm just -- I'm talking  
22 to myself.

23 BY MR. GINSBERG:

24 Q. Okay.

25 A. I'm sorry.

1 Q. No problem.

2 A. He probably hears me, but -- yes.

3 Q. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

8 MR. DAHLGREN: Objection; form. To  
9 the extent it calls for a legal conclusion and,  
10 same instruction, to the extent it's testing  
11 done at the request of counsel.

12 THE WITNESS: [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

19 BY MR. GINSBERG:

20 [REDACTED]

21 MR. DAHLGREN: Same objections.

22 THE WITNESS: [REDACTED]

23 BY MR. GINSBERG:

24 [REDACTED]  
[REDACTED]

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[REDACTED]

MR. DAHLGREN: Same objections to form; to the extent it calls for a legal conclusion. And, Dr. Luebke, again, please don't divulge any testing that you may have done, to the extent you did, at the request of counsel.

THE WITNESS: [REDACTED]

(Luebke Deposition Exhibit No. 30, a copy of a Notice of Allowance in the Application Number 11/628933, was marked.)

BY MR. GINSBERG:

Q. You've been handed what is marked Luebke Exhibit 30. It's a copy of a Notice of Allowance in the Application Number 11/628933, which resulted in your '033 patent.

A. Could you repeat the patent number again, please?

Q. '033.

Do you see under, allowable subject matter, which is the second -- third-to-last page of the document, Paragraph 4, do you see following statement: The following is an

1 examiner's statement for the reasons of  
2 allowance.

3           The titanium alloy endodontic  
4 instrument and method of using, having a shank  
5 with cutting edges, formed by heat treating the  
6 entire shank at a temperature from 400 degrees  
7 Celsius up to, but not including, the melting  
8 point of a titanium alloy in an atmosphere  
9 consisting, essentially, of a gas unreactive  
10 with the shank (this temperature range and  
11 environment has been shown to be critical in  
12 providing distinguishing shape memory qualities  
13 along the entire length of the shank from the  
14 prior art, which teaches heat treatment at  
15 temperatures outside this range, treatment only  
16 to the tips of devices and without the described  
17 atmosphere. It was neither taught nor suggested  
18 by the prior art, as a whole, either alone or in  
19 combination, and in combination with the  
20 elements set forth in the claims.

21           Do you see that?

22           MR. DAHLGREN: Objection; form.  
23 Mischaracterizes the evidence.

24           THE WITNESS: Obviously, I see it.

25 BY MR. GINSBERG:

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MR. DAHLGREN: Objection; form.

8

Mischaracterizes the evidence.

9

THE WITNESS: [REDACTED]

10

BY MR. GINSBERG:

11

Q. [REDACTED]

12

[REDACTED]

13

MR. DAHLGREN: Objection; form.

14

THE WITNESS: [REDACTED]

15

[REDACTED]

16

[REDACTED]

17

BY MR. GINSBERG:

18

Q. Dr. Luebke, are you aware that

19

Dentsply is pursuing its own patent application

20

on heat treating nickel-titanium endodontic

21

files?

22

MR. DAHLGREN: Objection; form.

23

THE WITNESS: I have no idea.

24

(Luebke Deposition Exhibit No. 31, a

25

published patent application, Number U.S.



1 2001/0271529, first named inventor Gow, was  
2 marked.)

3 BY MR. GINSBERG:

4 Q. You've been handed what has been  
5 marked Luebke Exhibit 31. It's a published  
6 patent application, with the number U.S.  
7 2001/0271529. First named inventor is Gow.

8 Have you seen this application before?

9 MR. DAHLGREN: And, Dr. Luebke, you  
10 can take your time to look at the document and  
11 familiarize yourself with it.

12 THE WITNESS: I don't believe I have  
13 seen this before. Maybe. No. No. I haven't  
14 seen this before.

15 BY MR. GINSBERG:

16 Q. Take a quick look at Claim 1 that  
17 appears in Column 6 of this document. It's  
18 actually -- I guess, it's page -- it's the  
19 second-to-last -- it's the last page of this  
20 document. I'm sorry. It's where the claims  
21 appear.

22 Do you see Claim 1?

23 A. I do.

24 Q. Do you have any objection to Dentsply  
25 seeking patent protection for the scope of the



1 subject matter disclosed in Claim 1 of the Gow  
2 application?

3 MR. DAHLGREN: Objection; form.  
4 Objection to the extent it calls for a legal  
5 conclusion.

6 And, Dr. Luebke, if you need to look  
7 at the remainder of that application to answer  
8 that question, you may do so.

9 THE WITNESS: I've never seen this.

10 BY MR. GINSBERG:

11 Q. Do you have any objection to Dentsply  
12 pursuing patent protection for Claim 1 of the  
13 Gow reference?

14 MR. DAHLGREN: Objection; form.  
15 Objection to the extent it calls for a legal  
16 conclusion. Objection; asked and answered.

17 THE WITNESS: I don't know what I can  
18 object about.

19 MR. GINSBERG: Why don't we take a  
20 short break. I think I'm getting towards the  
21 end. Just let me review my notes.

22 MR. DAHLGREN: Okay.

23 MR. GINSBERG: Just give me five  
24 minutes.

25 THE VIDEOGRAPHER: Going off the

1 record at 5:36 p.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: We're going back on  
4 record at 5:46 p.m.

5 BY MR. GINSBERG:

6 Q. Dr. Luebke, during the last break, did  
7 counsel discuss any questions that he might ask  
8 you today?

9 A. No.

10 MR. GINSBERG: Pending any questions  
11 by your counsel, I have no further questions at  
12 this time.

13 THE WITNESS: Okay.

14 MR. DAHLGREN: I don't have any  
15 questions.

16 MR. GINSBERG: Great.

17 THE VIDEOGRAPHER: We're going off  
18 record at 5:46 p.m. This is the end of the  
19 deposition.

20 (Deposition concluded -- 5:46 p.m.)

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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

\_\_\_\_\_

NEILL H. LUEBKE, DDS, MS

SUBSCRIBED AND SWORN before and to me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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My Commission expires:



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ACKNOWLEDGMENT OF DEPONENT

I have read the foregoing transcript of my deposition and except for any corrections or changes noted on the errata sheet, I hereby subscribe to the transcript as an accurate record of the statements made by me.

*Neill H. Luebke*

NEILL H. LUEBKE, DDS, MS

SUBSCRIBED AND SWORN before and to me this 12 day of November, 2014.

*[Signature]*

NOTARY PUBLIC

My Commission expires: *is permanent*

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**ERRATA**

To the October 8, 2014 Deposition Transcript of Neill Hamilton Luebke, DDS, MS.

*(Dentsply International Inc. et al. v. US Endodontics LLC, No. 2:14-CV0196-JRG-DHI  
in the UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TENNESSEE)*

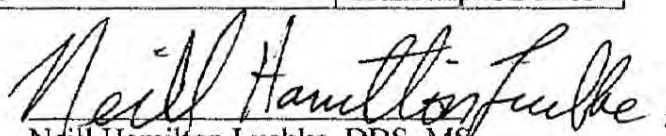
<b>Citation (page: line)</b>	<b>Transcript Text</b>	<b>Should Read</b>	<b>Reason</b>
2:24	"Zduren"	"Zdurne"	Transcription error
4:21	"Hermeet"	"Harmeet"	Transcription error
11:2-3	"and declaration only,"	"Dr. Goldberg's Report,"	Forgetfulness
13:4	"I have not . . ."	"Yes."	Forgetfulness
13:9	"No, they have not."	"Yes."	Forgetfulness
13:11-13	"I . . ."	Strike	Forgetfulness
21:11	"At the present time, I have not."	"Yes."	Forgetfulness
22:6	"ownness"	"onus"	Transcription error
23:3	"I have not re – read this report."	"I don't know."	Clarification
25:10	"the line reference"	"the Weine reference"	Transcription error
31:4	"I haven't seen that."	"I don't recall."	Clarification
53:3	"No."	"Franken"	Forgetfulness
59:24	"invalid"	"invalidate"	Clarification
65:9	"Amen"	"Ammon"	Transcription error
65:17	"Amen"	"Ammon"	Transcription error
65:18	"Amen"	"Ammon"	Transcription error
68:12	"2000"	"2010"	Clarification
98:20	"I don't believe so"	"Yes"	Forgetfulness
116:17	"There's nothing in the patent."	"There's nothing in the patent literature."	Clarification
119:3, 9, 23	"Hermeet"	"Harmeet"	Transcription error
160:15	"responded"	"relied on"	Clarification
160:20	"Gill"	"Gil"	Transcription error
161:2	"Gill"	"Gil"	Transcription error
162:3, 14, 16	"Gill"	"Gil"	Transcription error
163:18, 25	"Gill"	"Gil"	Transcription error
164:12	"Gill"	"Gil"	Transcription error
166:2, 7	"Gill"	"Gil"	Transcription error
167:6, 7, 20	"Gill"	"Gil"	Transcription error
176:18, 19, 22	"Gill"	"Gil"	Transcription error
178:10	"Gill"	"Gil"	Transcription error
179:14, 16	"Gill"	"Gil"	Transcription error

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236:7	"plastic"	"elastic"	Transcription error
237:17, 24	"plastically"	"elastically"	Transcription error
238:15	"plastically"	"elastically"	Transcription error
280:1, 7	"Gow"	"Gao"	Transcription error
282:1	"Gow"	"Gao"	Transcription error

11-12-14

Date

  
Neill Hamilton Luebke, DDS, MS.