

13:35:18 1 models of other pants? Actual samples, not photos.

13:35:23 2 A. I did go shopping and having a look at  
13:35:27 3 different maternity pants and seeing my daughter's  
13:35:32 4 maternity pants, as well, of course.

13:35:34 5 Q. Which ones did you compare or see --

13:35:36 6 A. And also with Target's, I -- the attorneys  
13:35:40 7 showed me maternity samples.

13:35:42 8 Q. Did you compare Secret Fit with Target's  
13:35:47 9 pants?

13:35:47 10 MR. LECHLEITER: Objection. Form.

13:35:48 11 THE WITNESS: I think that we, obviously, talked  
13:35:51 12 about any differences.

13:35:52 13 Q. BY MR. POLLACK: Well, what differences did  
13:35:53 14 you see?

13:35:55 15 MR. LECHLEITER: Objection. Form.

13:35:57 16 THE WITNESS: I think that on the -- one of the  
13:36:02 17 Target ones, they were -- had a seam maybe in the  
13:36:06 18 back, and that was -- I don't know about the other  
13:36:08 19 differences. I think they're all -- I think there  
13:36:12 20 was a combination, but not -- no.

13:36:17 21 Q. BY MR. POLLACK: Did the Target pants go up  
13:36:20 22 to the empire line?

13:36:23 23 MR. LECHLEITER: Objection. Form.

13:36:24 24 THE WITNESS: Yes. They went -- well, not  
13:36:26 25 empire line. They went over the abdomen. I mean,

13:36:30 1 same difference.

13:36:31 2 Q. BY MR. POLLACK: Same -- same thing?

13:36:32 3 A. Uh-huh.

13:36:34 4 Q. So they -- so they did go to the empire  
13:36:37 5 line?

13:36:38 6 A. Yes. Over the abdomen; right.

13:36:40 7 Q. And -- and that's true of the Secret Fit  
13:36:47 8 pants, as well, they went to the empire line?

13:36:46 9 A. Correct. So does J.C. Penney.

13:36:52 10 Q. We'll get to J.C. Penney in a second.

13:36:52 11 A. Yeah.

13:36:56 12 Q. Have you seen commercially sold maternity  
13:36:59 13 pants that don't go up to the empire line?

13:37:02 14 MR. LECHLEITER: Objection. Form.

13:37:03 15 THE WITNESS: Have I seen -- well, I talked  
13:37:05 16 about some that I'd seen when I was pregnant, yeah.  
13:37:09 17 Yes.

13:37:09 18 Q. BY MR. POLLACK: Am I correct that  
13:37:11 19 companies are still selling maternity pants that  
13:37:14 20 go -- don't go to the empire line?

13:37:15 21 A. Correct.

13:37:16 22 Q. What are the advantages of having pants go  
13:37:19 23 to the empire line?

13:37:22 24 MR. LECHLEITER: Objection. Form.

13:37:23 25 THE WITNESS: I think the wearer would be the

13:37:27 1 one to decide whether or not they felt comfortable  
13:37:29 2 wearing them. Some people, as I said earlier on,  
13:37:32 3 feel comfortable with a pant that goes over the  
13:37:34 4 abdomen and other people feel comfortable with it  
13:37:36 5 going under the abdomen or folded over to the waist.

13:37:39 6 Q. BY MR. POLLACK: Do you know why that is?

13:37:41 7 A. I think it's just preferences.

13:37:43 8 Q. Do you know why they have those preferences  
13:37:46 9 about --

13:37:46 10 MR. LECHLEITER: Objection. Form.

13:37:46 11 Q. BY MR. POLLACK: -- what --

13:37:47 12 A. Well, it's like why do you like a striped  
13:37:50 13 shirt or striped tie? I think it's a personal  
13:37:53 14 preference of fit. Or why you like a certain pair  
13:37:58 15 of jeans to wear. It's just a comfort.

13:38:01 16 Q. Okay. Do you know when the Secret Fit  
13:38:14 17 products entered the market?

13:38:17 18 MR. LECHLEITER: Objection. Form.

13:38:18 19 THE WITNESS: As far as I can recall, I think it  
13:38:27 20 was -- the patent application was 2007.

13:38:30 21 Q. BY MR. POLLACK: Sure. Sure.

13:38:32 22 But do you know when the -- when the  
13:38:32 23 product entered the market?

13:38:34 24 A. No.

13:38:35 25 Q. Okay. Do you know whether -- in 2007,

13:38:42 1 whether there were -- ignoring now the J.C. Penney  
13:38:47 2 photographs, do you know of any commercial pants  
13:38:52 3 that you've actually seen, seen the actual pants,  
13:38:54 4 where the pants went to the empire line?

13:39:01 5 A. As I said earlier, the company that I was  
13:39:03 6 working with, Layette, they did have a roll-up pant.

13:39:06 7 Q. Other than Layette, do you know of any  
13:39:09 8 other pants -- actual pants that you've seen that  
13:39:11 9 went up to the empire line?

13:39:12 10 A. Well, I wasn't really looking in 2007, at  
13:39:15 11 that time.

13:39:15 12 Q. Okay. So as you sit here today, you don't  
13:39:18 13 know of any pants, other than the Layette pants,  
13:39:21 14 that went up to the empire line as of 2007?

13:39:24 15 A. For maternity wear?

13:39:25 16 Q. For maternity wear.

13:39:28 17 A. Not that I'm aware of. I personally wasn't  
13:39:32 18 looking then.

13:39:38 19 Q. Now, we're also talking about pants that  
13:39:53 20 had a -- a roll-up tube that was attached to the --  
13:39:57 21 to the jeans or other pair of pants; is that  
13:40:00 22 correct?

13:40:00 23 A. Correct.

13:40:00 24 Q. Yeah.

13:40:04 25 The roll-up pants, do -- do -- am I correct

13:40:08 1 that many of them do not go to the empire line when  
13:40:11 2 they're rolled up?

13:40:12 3 MR. LECHLEITER: Objection. Form.

13:40:14 4 Q. BY MR. POLLACK: Is that fair?

13:40:14 5 A. I think you've -- we've seen examples of  
13:40:17 6 some of them that don't.

13:40:26 7 Q. Okay. I would like to -- your help with  
13:40:28 8 understanding some terms in the attorney pants art.  
13:40:34 9 I've seen the term used "under-belly maternity  
13:40:41 10 pants."

13:40:42 11 Do you know what that is?

13:40:43 12 A. Well, it would sit under the belly of the  
13:40:46 13 wearer.

13:40:49 14 Q. So under the extended pregnant area?

13:40:53 15 A. Correct.

13:40:54 16 Q. Okay.

13:40:56 17 A. Like a low-riser -- a low-riser jean would.

13:40:58 18 Q. Sure.

13:41:02 19 Why would someone wear an under --  
13:41:04 20 under-belly maternity pants?

13:41:07 21 MR. LECHLEITER: Objection. Form.

13:41:08 22 THE WITNESS: I would assume they would wear  
13:41:11 23 them because it felt comfortable to them to allow  
13:41:15 24 their body to -- or their belly to feel free of  
13:41:20 25 constriction.

13:41:20 1 Q. BY MR. POLLACK: Do you know if there's --  
13:41:25 2 if there are problems holding up under-belly  
13:41:29 3 maternity pants?

13:41:29 4 MR. LECHLEITER: Objection. Form.

13:41:30 5 THE WITNESS: For the most part, from the  
13:41:33 6 experience I've seen, they're in a stretch fabric,  
13:41:36 7 so they hold to the body.

13:41:38 8 Q. BY MR. POLLACK: Okay. Now, there are  
13:41:41 9 also, I believe, pants that are referred to as  
13:41:44 10 mid-belly maternity pants; is that correct?

13:41:46 11 A. I would think that would be obvious, yes.

13:41:50 12 Q. Okay. I'm not as familiar.

13:41:50 13 A. Yeah.

13:41:54 14 Q. So what are -- what are mid-belly maternity  
13:41:56 15 pants?

13:41:56 16 A. I think they would be similar to the ones I  
13:41:59 17 was talking about earlier in the '70s that went --  
13:42:01 18 came up to the waist. That would be about  
13:42:03 19 mid-belly.

13:42:04 20 Q. Okay. And are there any advantages or  
13:42:07 21 disadvantages of mid-belly maternity pants?

13:42:10 22 MR. LECHLEITER: Objection. Form.

13:42:11 23 THE WITNESS: I think you would have to probably  
13:42:14 24 do a survey of pregnant women to find out which ones  
13:42:18 25 they would prefer to wear.

13:42:19 1 Q. BY MR. POLLACK: Okay. You haven't looked  
13:42:20 2 into that?

13:42:20 3 A. No. I think that everybody's got their own  
13:42:23 4 preference on that.

13:42:29 5 Q. And I think there's another kind of  
13:42:34 6 maternity pants that are referred to as  
13:42:36 7 over-the-belly maternity pants; is that correct?

13:42:39 8 A. Yes.

13:42:39 9 Q. Okay. What -- what are those?

13:42:42 10 A. I think we have examples of the Penney and,  
13:42:46 11 of course, of Destination going over the belly.

13:42:49 12 Q. What does it mean to be over the belly?

13:42:52 13 A. Well, it would cover and encompass the  
13:42:55 14 belly portion where -- where the pregnancy is and  
13:43:00 15 below the breast.

13:43:03 16 Q. Am I correct that over-the-belly pants,  
13:43:10 17 though, don't necessarily go to the empire line?

13:43:14 18 MR. LECHLEITER: Objection. Form.

13:43:16 19 THE WITNESS: Well, the empire line can vary,  
13:43:18 20 just as under the breast area can vary. So you  
13:43:21 21 could have an empire line that might be 2 inches  
13:43:24 22 below the breast or it could still be just above the  
13:43:27 23 waistline and be considered to be an empire line.  
13:43:30 24 So it's -- there's no measurement given to an empire  
13:43:33 25 line.

13:43:34 1 Q. BY MR. POLLACK: Sure.

13:43:36 2 But back to my question. Am I correct that

13:43:38 3 there are over-the-belly pants that don't

13:43:43 4 necessarily go to the empire line?

13:43:46 5 MR. LECHLEITER: Objection to form.

13:43:48 6 THE WITNESS: I'm not quite sure what you mean.

13:43:51 7 It's over the belly.

13:43:52 8 Q. BY MR. POLLACK: Uh-huh. Right.

13:43:52 9 A. If it's over the belly, it's over the

13:43:55 10 waist. So that would be the empire line; correct?

13:43:58 11 Is that what you're asking me?

13:43:59 12 Q. It's over the waist --

13:44:01 13 A. It's going over the belly. Over the

13:44:01 14 belly --

13:44:01 15 Q. Uh-huh.

13:44:02 16 A. -- is above the waist.

13:44:03 17 Q. Okay.

13:44:03 18 A. So that would take it to the empire line.

13:44:06 19 So anything above the waist is considered to be an

13:44:09 20 empire line.

13:44:10 21 Q. Okay. Are there any over-the-belly

13:44:19 22 pants -- maternity pants that do not reach to just

13:44:24 23 under the breasts?

13:44:25 24 MR. LECHLEITER: Objection. Form.

13:44:27 25 THE WITNESS: I think you would have to decide



13:44:29 1 on the types of fabrics used and the wearer, the  
13:44:32 2 size of the wearer.

13:44:32 3 Q. BY MR. POLLACK: Uh-huh.

13:44:34 4 A. Some of it might stretch -- the same pant  
13:44:36 5 might stretch on one person over the breast if she's  
13:44:39 6 a small woman. Some of it, if she's a big woman, is  
13:44:43 7 not going to reach. It would depend on the wearer  
13:44:46 8 themselves as to -- or as to how much stretch the  
13:44:50 9 fabric had.

13:44:50 10 Q. Okay. But I am correct the wearers  
13:44:52 11 normally would size their clothing; correct?

13:44:55 12 MR. LECHLEITER: Objection. Form.

13:44:56 13 THE WITNESS: They would size their clothing,  
13:44:58 14 yes.

13:44:58 15 Q. BY MR. POLLACK: Okay. So they would pick  
13:45:00 16 different sizes that are appropriate for them?

13:45:02 17 A. Correct.

13:45:03 18 Q. So given that, are you able to answer  
13:45:05 19 whether or not over-the-belly pants -- assuming the  
13:45:08 20 wearer's wearing the appropriate size for them, are  
13:45:12 21 there over-the-belly pants that don't reach to just  
13:45:16 22 under the breasts?

13:45:17 23 MR. LECHLEITER: Objection. Form.

13:45:18 24 THE WITNESS: I think you'll find that some  
13:45:20 25 people -- I'm not being evasive, but some people

13:45:22 1 have a lower torso or the breasts may be lower, and  
13:45:26 2 so anything over the waist, you know, is -- that is  
13:45:30 3 maybe considered to be under the breast. So it's  
13:45:33 4 hard to say. And, plus, certain fabrics, as I've  
13:45:37 5 seen, they all stretch in different ways, and you  
13:45:39 6 can have it sit in a certain area that feels  
13:45:42 7 comfortable, but if you're a bigger woman --

13:45:45 8 Q. BY MR. POLLACK: Okay.

13:45:45 9 A. -- you pull it up.

13:45:47 10 Q. Right. Right.

13:45:48 11 Well, doesn't that -- given all those  
13:45:49 12 factors, doesn't that mean that then that must be  
13:45:53 13 that over-the-belly pants, at least on some women,  
13:45:56 14 don't reach to just under the breast area?

13:45:59 15 MR. LECHLEITER: Objection. Form.

13:46:00 16 THE WITNESS: Well, of course, we have to define  
13:46:03 17 what under the breast area is.

13:46:03 18 Q. BY MR. POLLACK: Okay.

13:46:05 19 A. Is it under breast --

13:46:05 20 Q. But whatever --

13:46:06 21 A. -- or under the breast area?

13:46:07 22 Q. Sure. Whatever definition you are using.

13:46:10 23 A. Right. So I think --

13:46:10 24 MR. LECHLEITER: Objection to form.

13:46:11 25 THE WITNESS: -- it would sit in different ways

13:46:12 1 on the breast -- on the wearer.

13:46:13 2 Q. BY MR. POLLACK: If you wanted to design a  
13:46:21 3 product that would go up to just beneath the  
13:46:26 4 breasts, what would you do?

13:46:28 5 A. Probably I would get in some models and  
13:46:32 6 find out what the measurements are and do a fit and  
13:46:35 7 sort of do a technical analysis of what you would  
13:46:39 8 need to do and then also analyze the fabrics to see  
13:46:43 9 which types of fabrics stretch better. And some of  
13:46:46 10 them will stretch more than others and be -- and be  
13:46:50 11 comfortable on different sizes.

13:46:53 12 Q. Would you use mannequins, as well? Is that  
13:46:58 13 something that's done?

13:46:58 14 A. Yeah. You have mannequins with --  
13:47:01 15 sometimes they will have a strap-on pregnant belly  
13:47:05 16 or you can actually have mannequins made to  
13:47:07 17 different sizes of the pregnancy.

13:47:10 18 Q. Okay. And that would be part of the  
13:47:12 19 process of designing a -- maternity pants that went  
13:47:15 20 to just under the breast area?

13:47:16 21 A. That's right. They would check it on  
13:47:19 22 different sizes -- different sizes and different  
13:47:23 23 timing of the pregnancy, so six months, seven  
13:47:26 24 months, eight months, depending on that.

13:47:29 25 Q. Okay. Just ask a few more word questions.

13:47:46 1 Do you know what a jersey knit is?

13:47:49 2 A. Yes.

13:47:49 3 Q. Okay. What is a jersey knit?

13:47:52 4 A. Well, there's wool jersey and there's  
13:47:55 5 different -- most of it is applying to wool, wool  
13:47:58 6 jersey, and it's a knit, a knitted fabric.

13:48:01 7 Q. And then I've also seen in the documents  
13:48:11 8 the phrase "ribbed knit." Do you know what that is?

13:48:13 9 A. Ribbed knit is usually -- the rib is the  
13:48:17 10 bottom part of a sweater or on the cuffs or it could  
13:48:25 11 be around the neck.

13:48:26 12 Q. Is that also a knit that's in wool?

13:48:30 13 A. Rib could be in any type of fiber. It's a  
13:48:35 14 type of knit.

13:48:38 15 Q. What's --

13:48:40 16 A. So you can have a -- you could have a  
13:48:42 17 spandex rib.

13:48:44 18 Q. Okay. What's --

13:48:46 19 A. That would really stretch.

13:48:47 20 Q. What's different about a ribbed knit from  
13:48:52 21 other -- a ribbed knit from other kinds of knits?

13:48:56 22 MR. LECHLEITER: Objection. Form.

13:48:57 23 THE WITNESS: Well, on my experience, I would  
13:48:59 24 say that ribbed knit would probably expand, I would  
13:49:04 25 say, quite well because it's -- it typically expands

13:49:08 1 and it holds the body --

13:49:11 2 Q. BY MR. POLLACK: Okay.

13:49:11 3 A. -- it holds the shape.

13:49:12 4 Q. And what is it about the knit that makes it  
13:49:15 5 a ribbed knit? What is it about the way it's put  
13:49:19 6 together?

13:49:19 7 A. It's the knitting technique. So it's not  
13:49:22 8 just straight knit. It's what we call knit one,  
13:49:26 9 purl one, so you get your ribbing.

13:49:28 10 Q. Okay. And what about a jersey knit? What  
13:49:31 11 is it about a jersey knit that makes it a jersey  
13:49:35 12 knit?

13:49:35 13 A. Well, I think that's just a general  
13:49:38 14 terminology. So jersey knit could be a hand knit,  
13:49:41 15 it could be a machine knit, so it's just a technical  
13:49:46 16 word. So it could be a wool knit or it could be  
13:49:50 17 synthetic, it could be a mixture. It's just a  
13:49:53 18 general term for jersey, jersey knit.

13:49:55 19 Q. Yeah, but, I mean, what does it mean? What  
13:49:56 20 makes something a jersey knit?

13:49:58 21 A. Well, it's like saying a woven or a knit.  
13:50:01 22 It's just a terminology to describe that type of a  
13:50:06 23 knitted garment. So you could have a woven garment  
13:50:10 24 that's -- that's a twill woven, and that's the  
13:50:13 25 terminology in the weaving. A jersey knit or a knit

13:50:18 1 ribbing is -- it's a terminology used for knit.

13:50:21 2 Q. I mean, do you know what it is about how  
13:50:22 3 they knit it that distinguishes a jersey knit from,  
13:50:27 4 say, a twill knit?

13:50:29 5 A. Well, you don't get a twill knit. Twill is  
13:50:29 6 used for the woven. But, obviously, we're saying  
13:50:31 7 different terminologies. A rib is -- if I were to  
13:50:35 8 knit you one now with a needle --

13:50:37 9 Q. Right. Right.

13:50:38 10 A. -- two needles --

13:50:38 11 Q. Uh-huh.

13:50:38 12 A. -- it would be -- it would be purl one,  
13:50:40 13 knit one or knit one, purl one.

13:50:40 14 Q. Right.

13:50:42 15 A. And that -- you would then achieve that  
13:50:45 16 rib.

13:50:45 17 Q. That would give the ribbed knit. How would  
13:50:48 18 I get the jersey knit?

13:50:49 19 A. The jersey knit?

13:50:49 20 Q. Yeah.

13:50:52 21 A. The jersey knit, well, that's usually a  
13:50:52 22 little bit thicker, and so that's -- that's probably  
13:50:54 23 the technician who sets the machinery up. So you  
13:50:58 24 would be talking to them as a designer, and you say  
13:51:01 25 you would need a little thicker knit, so they would

13:51:04 1 probably use a jersey knit method to create that.

13:51:08 2 Q. Okay. You don't know the technical details  
13:51:10 3 of how they get the jersey knit versus -- versus the  
13:51:13 4 rib? That's for the technical guy?

13:51:15 5 A. The technical guy would be doing  
13:51:17 6 the jersey -- using the machine to build the  
13:51:19 7 technical fabrics, and then they would work with the  
13:51:23 8 designers to see whether or not that, in fact, did  
13:51:27 9 what they did. And they would be playing with  
13:51:29 10 different threads and different kinds of materials  
13:51:32 11 to find what they wanted.

13:51:34 12 Q. Right. Right.

13:51:34 13 But that's outside of your area?

13:51:36 14 A. That's a -- that's probably a textile  
13:51:39 15 engineer's job.

13:51:40 16 Q. And you're not a textile engineer?

13:51:43 17 A. No.

13:51:43 18 Q. Other than this case, have you ever  
13:51:51 19 consulted with Target?

13:51:54 20 MR. LECHLEITER: Objection. Form.

13:51:55 21 THE WITNESS: Been on a case opposing them.

13:52:02 22 Q. BY MR. POLLACK: What case was that?

13:52:04 23 A. It was a copyright infringement.

13:52:08 24 Q. Is it -- you have some cases listed in your  
13:52:13 25 CV on page 3.

13:52:13 1 A. Where is that?

13:52:23 2 Q. It's Harder Deposition Exhibit 10.

13:52:53 3 A. Okay.

13:52:53 4 Q. Is it -- is it any of the cases that are  
13:52:56 5 listed there?

13:53:04 6 A. No.

13:53:06 7 Q. I think you said you participated in  
13:53:09 8 six cases. Are there two cases that you didn't list  
13:53:12 9 on your CV?

13:53:14 10 A. I think these were the ones that went to  
13:53:19 11 trial. That was why I had -- I had them listed. I  
13:53:22 12 think I asked the attorneys, "Do you want me to have  
13:53:25 13 all of them down?" Because I have more than that.  
13:53:27 14 I think these were the ones that went to trial.

13:53:29 15 Q. Were you deposed in the other -- in the  
13:53:32 16 other two?

13:53:32 17 A. Yes.

13:53:32 18 Q. Okay. So you were deposed in six cases?

13:53:35 19 A. More than that total over -- you know, but  
13:53:39 20 they didn't all go to trial.

13:53:42 21 Q. Did you testify at trial in all four of  
13:53:45 22 these cases?

13:53:46 23 A. No.

13:53:46 24 Q. Did you testify at trial in any of the  
13:53:48 25 cases?



13:53:48 1 A. No. They -- these went to trial, but I  
13:53:51 2 didn't have to testify.

13:53:52 3 Q. Okay. Do you know why not?

13:53:53 4 A. No, I don't know why.

13:53:55 5 Q. Okay. Do you know whether you were  
13:53:57 6 excluded from testifying at trial in any of these  
13:54:00 7 cases?

13:54:01 8 A. No, I wasn't excluded.

13:54:02 9 Q. Okay. Did you know that motions were filed  
13:54:05 10 to exclude you in any of these cases?

13:54:07 11 A. No.

13:54:08 12 Q. You didn't know that?

13:54:09 13 A. No, I was not. No one filed to exclude me.  
13:54:13 14 It's never -- no one -- as far as I'm aware, there's  
13:54:17 15 no one. I've never been told that I've been --  
13:54:20 16 anyone's tried to file to exclude me.

13:54:22 17 Q. Okay. You didn't know that there were  
13:54:26 18 motions, I think, in all four -- in three of the  
13:54:28 19 four cases to exclude you?

13:54:30 20 A. No.

13:54:33 21 Q. And no one discussed with you what the  
13:54:35 22 outcomes were of any of those motions?

13:54:38 23 A. No.

13:54:38 24 Q. Okay. Have you ever consulted with Liz  
13:55:06 25 Lange?

13:55:06 1 DEPOSITION OFFICER: With who?

13:55:06 2 MR. POLLACK: Liz Lange.

13:55:06 3 DEPOSITION OFFICER: Thank you.

13:55:08 4 THE WITNESS: No, that I'm aware of.

13:55:11 5 Q. BY MR. POLLACK: Have you ever consulted

13:55:18 6 with a company called Cherokee, Inc.?

13:55:16 7 A. No.

13:55:28 8 Q. Have you ever heard of the term "full

13:55:41 9 panel" in regard to maternity clothes?

13:55:43 10 A. Full panel?

13:55:45 11 Q. Yeah.

13:55:46 12 A. Full panel. I'm not quite sure. You gotta

13:55:51 13 put it in a sentence. I'm not sure whether it means

13:55:54 14 the panel for the -- panel for the maternity panel.

13:55:58 15 Is that what you --

13:55:59 16 Q. Yes.

13:55:59 17 A. -- are referring to?

13:55:59 18 Q. I'm referring to the panel for the -- for

13:56:02 19 the maternity panel.

13:56:02 20 A. Okay. Right. Okay. Yes, I have.

13:56:03 21 Q. Okay. What does full panel mean?

13:56:05 22 A. I'm not quite sure of your terminology in

13:56:10 23 the full panel, so I'm hesitant to give you a full

13:56:14 24 description on that.

13:56:14 25 Q. Okay. What does it mean to you? Forget

13:56:17 1 about what it means to me. What -- in your  
13:56:18 2 understanding, what is a full panel?

13:56:20 3 A. Well, a full panel, it could either go all  
13:56:25 4 the way around the body or it could be just in the  
13:56:28 5 front part of the body, front panel or a full  
13:56:31 6 circumference panel. It would depend on how  
13:56:34 7 you would -- how you were using it and what  
13:56:37 8 terminology.

13:56:38 9 Q. Well, what makes it full? What makes it a  
13:56:42 10 full panel?

13:56:42 11 A. Well, if it's a full panel circumferencing  
13:56:46 12 the body or whether it's a panel just in the front  
13:56:49 13 of the pant.

13:56:50 14 Q. So a full panel is one that goes around the  
13:56:53 15 entire body?

13:56:54 16 A. I honestly -- I would prefer not to make a  
13:56:57 17 judgment on that because I'm not sure how -- how  
13:56:59 18 it's being referred to, in which terms, whether it's  
13:57:03 19 a full panel circumferencing the body or whether  
13:57:08 20 it's a full front panel.

13:57:09 21 Q. What's a full front panel?

13:57:11 22 A. Well, that would be the panel that we  
13:57:12 23 talked about earlier that's sewn in to the front of  
13:57:15 24 the pant --

13:57:15 25 Q. Okay.

13:57:16 1 A. -- or it could be a full panel that  
13:57:19 2 encompasses the whole body.

13:57:20 3 Q. So for a -- for a full front panel that is  
13:57:23 4 in the front of the pants, what makes it full? Why  
13:57:26 5 is it called a full panel?

13:57:27 6 A. Because it's encompassing the full front of  
13:57:31 7 the pant.

13:57:31 8 Q. How high -- is there anything special about  
13:57:34 9 the height of a full panel or not really?

13:57:37 10 MR. LECHLEITER: Objection to form.

13:57:40 11 THE WITNESS: I don't think there's a  
13:57:42 12 measurement on it, so I couldn't give you a full  
13:57:46 13 definition.

13:57:46 14 Q. BY MR. POLLACK: Yeah.

13:57:47 15 I mean -- I mean, does a full panel go  
13:57:48 16 higher than other kinds of panels on -- on the  
13:57:51 17 torso?

13:57:51 18 MR. LECHLEITER: Objection. Form.

13:57:52 19 THE WITNESS: Full panel could be the full panel  
13:57:57 20 that's to the pant top or it could be extending  
13:58:01 21 above, so it depends on -- on how you're determining  
13:58:05 22 the structure around the full panel, how you're  
13:58:09 23 going to use it.

13:58:10 24 Q. BY MR. POLLACK: Okay. So full panel could  
13:58:12 25 mean just extending to the top of the pants?

13:58:14 1 A. Yes.

13:58:15 2 Q. Did you see any prior art that you reviewed  
13:58:36 3 for this case that had a full panel?

13:58:47 4 A. Let me review that. Did I reference that  
14:00:00 5 in my report?

14:00:01 6 Q. No, I don't think so.

14:00:01 7 A. Okay.

14:00:02 8 Q. I was just wondering if you saw anything  
14:00:05 9 that had a full panel.

14:00:06 10 A. I don't recall. I'm just wondering if I  
14:00:08 11 had it in my report, if you could refer to it.

14:00:11 12 Q. No. No. I didn't see that term in your  
14:00:13 13 report.

14:00:13 14 A. Okay. So I -- without reading everything,  
14:00:15 15 I have no recollection -- recognition of -- of what  
14:00:18 16 you mean by "full panel," so it's hard for me to  
14:00:21 17 give you a definition.

14:00:23 18 Q. Okay. But, I mean, using your  
14:00:24 19 understanding of full panel, did you see any prior  
14:00:27 20 art that had a full panel?

14:00:29 21 A. I'm confused to what you really mean by  
14:00:35 22 "full panel," so it's hard for me to give you a  
14:00:38 23 "yes" or "no" on that.

14:00:39 24 Q. Okay. Well, you said earlier it was --  
14:00:41 25 well, let's take a full panel -- a full front panel.

14:00:41 1 A. Uh-huh.

14:00:47 2 Q. Did you see any prior art that had a full  
14:00:50 3 front panel?

14:00:51 4 A. I think we've seen evidences of panels in  
14:00:57 5 R. Bowdry [sic] with a panel in the front --

14:01:00 6 Q. In Browder?

14:01:00 7 A. -- and a panel in the back. Browder.

14:01:02 8 Q. Which -- which figures in Browder show  
14:01:06 9 that, a full panel -- a full front panel?

14:01:09 10 A. Well, whether it's full, I mean, you've got  
14:01:12 11 Figure 1 which has a panel in the front.

14:01:14 12 Q. Okay. That's the control area?

14:01:17 13 A. That's right. And then Figure 3 has got a  
14:01:19 14 panel that circumferences the body. And then on  
14:01:24 15 Figure 5, you've got a panel in the front of the  
14:01:27 16 skirt.

14:01:28 17 Q. Is that -- is that a full front panel?

14:01:30 18 A. That's a full front panel.

14:01:31 19 Q. Okay.

14:01:33 20 A. And then 7 has a panel.

14:01:35 21 Q. Is that a full front panel in 7?

14:01:38 22 A. It looks like a full panel.

14:01:40 23 Q. Okay.

14:01:43 24 A. And then on Figure 11, the maternity pants,  
14:01:47 25 they have a panel in the front.

14:01:47 1 Q. You --

14:01:49 2 A. And 10, too. 10 and 11.

14:01:51 3 Q. Okay. So in 11, you would consider that --  
14:01:53 4 the non-control area there to be a full front panel?

14:01:57 5 A. Correct.

14:01:57 6 Q. Okay. And what -- what is it that makes --  
14:02:03 7 let's take Figure 11. What is it that makes the  
14:02:06 8 panel in Figure 11 a full front panel?

14:02:09 9 A. Because it encompasses the body -- the  
14:02:14 10 torso, bottom part of the torso, front panel.

14:02:19 11 Q. Okay. I have one other term I was hoping  
14:02:37 12 to understand. Do you -- do you know the term  
14:02:40 13 "high-rise front panel"?

14:02:42 14 MR. LECHLEITER: Objection. Form.

14:02:43 15 THE WITNESS: High rise? High rise, as we  
14:02:46 16 talked about low rise, would be the opposite of a  
14:02:50 17 low rise, so it would be rising above the waist.

14:02:54 18 Q. BY MR. POLLACK: And how high does a  
14:02:59 19 high-rise front panel go?

14:03:02 20 A. That varies again. Could be an inch, could  
14:03:06 21 be 2 inches, could be 4 inches, could be more than  
14:03:09 22 that. So a high rise could have an ending below the  
14:03:14 23 breasts, so it depends on the definition of how  
14:03:18 24 rise -- how high you want the rise to be.

14:03:20 25 Q. So it could be below the breast or it could

14:03:23 1 be not below the breast?

14:03:24 2 A. It could be mid -- yeah, mid-torso above  
14:03:28 3 the waist. It normally refers to above the waist.

14:03:31 4 Q. Turn to paragraph 16 of your declaration.  
14:05:15 5 You say about midway down, "A POSA" -- P-O-S-A --  
14:05:22 6 "could make modifications to garments to render them  
14:05:25 7 suitable for use during pregnancy based on market  
14:05:30 8 demand for designs including specific features  
14:05:32 9 and/or design needs or market pressures to solve a  
14:05:35 10 problem with a finite number of solutions."

14:05:39 11 Did I read that correctly?

14:05:40 12 A. Correct.

14:05:40 13 Q. Okay. First of all, what's -- what's a  
14:05:42 14 POSA?

14:05:42 15 A. Person of -- oh, I'm crazy. A person of --  
14:05:51 16 sorry. I don't know this one off my heart. Sorry.  
14:05:59 17 I'm just getting a total blank. It's a person of --  
14:06:06 18 I'm just being -- I don't know. I'm sorry. I'm  
14:06:08 19 just --

14:06:08 20 Q. Okay.

14:06:09 21 A. -- getting a mental -- a mental block here.

14:06:13 22 Q. No problem.

14:06:18 23 Let me ask --

14:06:18 24 A. Person of obvious -- it will come to me in  
14:06:23 25 a second. Sorry.



14:06:24 1 Q. Okay. No problem.

14:06:38 2 A. It will come to me in a minute. Okay. Go  
14:06:38 3 on with your question, and I'll come back to it.  
14:06:39 4 I'm sorry.

14:06:39 5 Q. Okay. No --

14:06:39 6 A. I know what it is, but I'm just --

14:06:39 7 Q. No problem.

14:06:39 8 A. -- getting a mental block.

14:06:40 9 Q. Prior to -- prior to working on this case,  
14:06:42 10 had you ever heard of anything called a POSA or  
14:06:46 11 POSA?

14:06:46 12 A. A person of -- yeah, I have heard of it.  
14:06:49 13 But a person of ordinary skills and arts or  
14:06:56 14 something like that.

14:06:57 15 Q. Right.

14:06:58 16 A person of ordinary skill in the art?

14:07:00 17 A. Yes.

14:07:00 18 Q. Okay.

14:07:00 19 A. Okay. Got it. Yes, I have. But, you  
14:07:03 20 know, I don't normally use it in every day, but I  
14:07:06 21 have heard of it.

14:07:06 22 Q. Now, I think in here you gave a definition  
14:07:13 23 of a person of ordinary skill in the art?

14:07:16 24 A. Right.

14:07:16 25 Q. How did you come up with that definition?

14:07:19 1 A. Because we were -- I think we were  
14:07:23 2 discussing what it would need for an ordinary person  
14:07:28 3 in the arts to be able to take the existing --  
14:07:32 4 pre-existing artwork to come to the conclusion that  
14:07:38 5 was obvious to create a maternity pant with an  
14:07:45 6 extended tubular knit to go over the belly.

14:07:49 7 Q. Okay. So you looked for the kind of person  
14:07:52 8 who would come to a conclusion that it was obvious  
14:07:55 9 to come up with the invention at issue in this case?

14:07:59 10 A. Correct.

14:07:59 11 Q. Okay. Did you do that on your own or you  
14:08:04 12 did that with the assistance of counsel?

14:08:06 13 A. I did that basically on my own because I'm  
14:08:09 14 probably the only one who would understand how to  
14:08:12 15 create that and how to come up with that, taking and  
14:08:15 16 putting it together and constructing it --

14:08:15 17 Q. Okay.

14:08:17 18 A. -- with the materials that are available.

14:08:20 19 Q. Okay. Going back to 16, we were reading  
14:08:34 20 this sentence where it says, "A POSA" -- or person  
14:08:38 21 of ordinary skill in the art -- "could make  
14:08:41 22 modifications to garments to render them suitable  
14:08:45 23 for use during pregnancy based on market demand..."

14:08:50 24 Is it your view that the fact that it's  
14:08:57 25 technically possible to produce items to meet those

14:09:03 1 demands, is -- is that what makes the invention in  
14:09:09 2 this case obvious?

14:09:09 3 MR. LECHLEITER: Objection to form.

14:09:10 4 THE WITNESS: What is the question? Sorry. Can  
14:09:12 5 you repeat that?

14:09:13 6 Q. BY MR. POLLACK: Yeah. Maybe I should  
14:09:15 7 rephrase it.

14:09:16 8 Is what you're saying here that a person of  
14:09:22 9 ordinary skill has the ability to make or produce  
14:09:28 10 products to meet market demands, is that what makes  
14:09:32 11 the invention in this case obvious, in your view?

14:09:36 12 A. I think that taking all the prior art that  
14:09:41 13 was available and also seeing the demand, that it  
14:09:46 14 would be obvious.

14:09:48 15 Q. Yeah. I understand that.

14:09:49 16 But is it -- is it obvious because -- is  
14:09:52 17 what you're saying is -- is it obvious because a  
14:09:56 18 person of ordinary skill could technically make the  
14:10:00 19 modifications? Is that what makes it obvious?

14:10:04 20 A. Correct.

14:10:05 21 Q. Okay. Is there anything else that makes it  
14:10:07 22 obvious?

14:10:07 23 A. I just think it's -- well, it's obvious  
14:10:11 24 that it would be easy to make and to -- to turn a  
14:10:16 25 normal pair of pants into maternity pants using a

14:10:20 1 tubular knit or creating it from scratch.

14:10:22 2 Q. Right.

14:10:24 3 I mean, other than that, is there anything  
14:10:25 4 else, in your view, that makes the invention  
14:10:28 5 obvious?

14:10:32 6 MR. LECHLEITER: Objection to form.

14:10:34 7 THE WITNESS: I think it's obvious. I think  
14:10:36 8 it's obvious as it is.

14:10:37 9 Q. BY MR. POLLACK: Yeah. Okay.

14:10:37 10 That's -- that's all you're relying on?

14:10:39 11 MR. LECHLEITER: Objection.

14:10:40 12 THE WITNESS: All --

14:10:40 13 Q. BY MR. POLLACK: If I understand  
14:10:42 14 correctly --

14:10:42 15 MR. LECHLEITER: Objection to form.

14:10:43 16 Q. BY MR. POLLACK: -- what you just said  
14:10:44 17 about it being easy for someone to modify to add a  
14:10:50 18 tubular knit, that's what makes it obvious, in your  
14:10:54 19 view?

14:10:54 20 MR. LECHLEITER: Objection. Form.

14:10:55 21 THE WITNESS: I think we're losing the trail  
14:10:58 22 here, so maybe you should --

14:10:58 23 Q. BY MR. POLLACK: Okay. Okay.

14:11:00 24 A. -- give me another -- give me a question.

14:11:01 25 Q. Sure. Let me -- let me start again.

14:11:03 1 Am I correct that the sum and substance of  
14:11:10 2 your opinion why this invention is obvious is that a  
14:11:14 3 person of ordinary skill in the art has the  
14:11:16 4 technical ability to make the modifications of prior  
14:11:24 5 pants to form the claimed invention?

14:11:29 6 A. Either taking the prior pants or creating  
14:11:31 7 the pants from scratch.

14:11:33 8 Q. Right. Okay.

14:11:34 9 A. Correct.

14:11:35 10 Q. But -- but other than those two things,  
14:11:37 11 that's the sum and substance of your opinion;  
14:11:39 12 correct?

14:11:39 13 MR. LECHLEITER: Objection. Form.

14:11:41 14 THE WITNESS: It's one of the main  
14:11:45 15 considerations, of course.

14:11:47 16 Q. BY MR. POLLACK: Okay. Are there any other  
14:11:49 17 considerations?

14:11:52 18 A. I think you have to sort of give me a  
14:11:56 19 direct question. It's not really -- I mean, we're  
14:11:59 20 talking about prior art being in the marketplace and  
14:12:03 21 taking what was already there, which was obvious,  
14:12:05 22 and putting together a pair of pants with a tubular  
14:12:09 23 knit on the top or creating the pants with a tubular  
14:12:13 24 knit on the top.

14:12:13 25 Q. Uh-huh.

14:12:14 1 A. So other than that, I'm not sure what else  
14:12:17 2 you would be considering.

14:12:18 3 Q. There's nothing else that you considered?

14:12:20 4 MR. LECHLEITER: Objection to form.

14:12:21 5 THE WITNESS: I'm still not quite sure of what  
14:12:23 6 your question is. Considered in what way?

14:12:26 7 Q. BY MR. POLLACK: Considered in any way in  
14:12:28 8 forming your opinion that the inventions were  
14:12:31 9 obvious.

14:12:33 10 A. Well, from seeing the evidence out there  
14:12:35 11 and knowing that it would be easy to do --

14:12:35 12 Q. Uh-huh.

14:12:38 13 A. -- and the fact that Penney had already  
14:12:40 14 done it, that it would be easy to create those  
14:12:44 15 pants.

14:12:45 16 Q. Okay. Well, let's -- let's ignore Penney  
14:12:48 17 for now. I think your argument about Penney is that  
14:12:50 18 they already did it and it anticipates; correct?

14:12:53 19 A. Correct.

14:12:53 20 Q. Okay. So let's say we're not dealing with  
14:12:56 21 Penney. We're -- we're making instead an  
14:12:59 22 obviousness argument.

14:13:02 23 A. Okay.

14:13:02 24 Q. Other than the fact that it's easy to  
14:13:08 25 technically modify a pair of pants to add a tubular

14:13:12 1 knit on top of it, is there any other reason that  
14:13:17 2 you're saying the invention is obvious?

14:13:20 3 MR. LECHLEITER: Objection. Form.

14:13:22 4 THE WITNESS: Not particular -- I -- I don't see  
14:13:29 5 any other reason, except that there is -- it's  
14:13:34 6 easily done to -- obvious to take certain elements  
14:13:37 7 and create a pair of pants with a tubular knit.

14:13:40 8 Q. BY MR. POLLACK: Okay. I'd like to go to  
14:14:19 9 paragraph 17 on page 9. Here you say, "I have  
14:14:31 10 considered the available evidence and documentation  
14:14:33 11 as they relate to secondary considerations that I  
14:14:37 12 discussed previously."

14:14:39 13 But I think in another part in your report  
14:14:43 14 you say that your -- I should find that.

14:14:47 15 MR. POLLACK: Do you know where that is? Where  
14:15:37 16 does she say that? Oh, I'm sorry. Down here.  
14:15:37 17 Okay.

14:15:49 18 Q. In -- but later in paragraph 17, you say  
14:15:51 19 the -- say the following: "...despite Patent  
14:15:56 20 Owner's contention, I am unaware of any evidence or  
14:15:59 21 facts showing that the products purportedly covered  
14:16:01 22 by the claims are commercially successful" --

14:16:02 23 A. Where are -- where are you?

14:16:03 24 Q. Yep. I'm at (a).

14:16:03 25 A. Okay.

14:16:04 1 Q. Do you see (a) in 17?

14:16:06 2 A. Okay. Okay. Got it. Okay.

14:16:06 3 Q. Okay. In (a) you say, "...despite Patent  
14:16:09 4 Owner's contention, I am unaware of any evidence or  
14:16:12 5 facts showing that the products purportedly covered  
14:16:15 6 by the claims are commercially successful due to the  
14:16:18 7 merits of the claimed invention..."

14:16:20 8 Do you see that?

14:16:21 9 A. Yes.

14:16:21 10 Q. Okay. Did you look at any of the economic  
14:16:26 11 factors of sales of both Destination Maternity's  
14:16:32 12 products or Target's products or anyone else in the  
14:16:35 13 industry's products in forming that conclusion?

14:16:39 14 MR. LECHLEITER: Objection. Form.

14:16:43 15 THE WITNESS: I have -- I know that there were  
14:16:44 16 some numbers given for it, but I didn't see those  
14:16:48 17 numbers as far as Destination was concerned, and  
14:16:52 18 there was no -- none of them indicated that the  
14:16:55 19 patented part of the pant was the driving force of  
14:16:58 20 the sale.

14:16:59 21 Q. BY MR. POLLACK: How would you tell whether  
14:17:02 22 the patented part of the pants was the driving force  
14:17:05 23 of the sale?

14:17:05 24 A. Well, they would have to find that out.  
14:17:08 25 You could only do that by customer survey or finding



14:17:13 1 out why they wore them, why they bought them. Could  
14:17:16 2 have been the fabric.

14:17:16 3 Q. Well, if you saw Destination Maternity  
14:17:24 4 selling two types of pants, one not reaching to just  
14:17:28 5 below the breast area and another reaching to just  
14:17:31 6 below the breast area, and the one selling -- the  
14:17:33 7 one reaching to just below the breast area was  
14:17:37 8 selling much more than the other type, wouldn't you  
14:17:42 9 be able to conclude that the reason it's selling  
14:17:46 10 more is because it reaches to just below the breast  
14:17:50 11 area?

14:17:50 12 MR. LECHLEITER: Objection. Form.

14:17:50 13 Q. BY MR. POLLACK: That's logical; correct?

14:17:53 14 MR. LECHLEITER: Objection to form.

14:17:54 15 THE WITNESS: I think it would depend on what  
14:17:56 16 kind of -- what kind of fabric and cut it was.

14:17:58 17 Q. BY MR. POLLACK: Okay. But if they -- if  
14:17:59 18 they were essentially the same fabric and cut, would  
14:18:01 19 that be a logical conclusion?

14:18:04 20 MR. LECHLEITER: Objection to form.

14:18:06 21 THE WITNESS: I would have to see more data on  
14:18:09 22 that because, basically, customers usually buy  
14:18:13 23 something, first of all, by color or pattern, and  
14:18:20 24 then they would go from that.

14:18:23 25 Q. BY MR. POLLACK: Did you --

14:18:23 1 A. But I haven't seen any evidence of that.

14:18:23 2 Q. Okay. Did you ask to see any evidence of  
14:18:25 3 the commercial situation of the market in forming  
14:18:28 4 your opinion?

14:18:29 5 MR. LECHLEITER: Objection to form.

14:18:29 6 THE WITNESS: I know I talked to my attorneys  
14:18:31 7 about it, but I -- we have no evidence on that.

14:18:34 8 Q. BY MR. POLLACK: You didn't -- you didn't  
14:18:35 9 look into that?

14:18:36 10 A. I think -- I believe the -- that the  
14:18:38 11 attorneys tried to ascertain information on that,  
14:18:40 12 but I never had actual driving numbers why people  
14:18:45 13 bought them because -- they bought them because of  
14:18:47 14 these maternity panels.

14:18:50 15 Q. Okay. I mean, did you ask to look at  
14:18:52 16 numbers? Did you say, "You know what? I really  
14:18:54 17 want to see numbers on commercial sales so I can  
14:18:57 18 opine on this issue"?

14:18:59 19 MR. LECHLEITER: Objection. Form.

14:18:59 20 THE WITNESS: I think we discussed it, but I  
14:19:01 21 never was -- I don't think -- as far as I'm aware,  
14:19:03 22 there are no numbers as to why people bought  
14:19:06 23 those -- there are numbers as to how many they sold,  
14:19:08 24 but not why they were sold, why people bought them.

14:19:11 25 Q. BY MR. POLLACK: Okay.

14:19:12 1 A. There's no -- there's no data on that.

14:19:16 2 Q. If you saw data on that, would that change

14:19:18 3 your opinion?

14:19:19 4 MR. LECHLEITER: Objection to form.

14:19:20 5 THE WITNESS: As to why they bought them?

14:19:21 6 Q. BY MR. POLLACK: Yes.

14:19:22 7 A. I think if there was evidence, obviously we

14:19:24 8 would have to -- have to see what the evidence was.

14:19:26 9 Q. Okay. And that might change your opinion?

14:19:28 10 A. I don't know. I would have to see what it

14:19:34 11 is.

14:19:38 12 Q. Okay.

14:19:38 13 DEPOSITION OFFICER: I don't what?

14:19:38 14 THE WITNESS: I would have to see, first of all,

14:19:38 15 what -- what it was.

14:19:40 16 Q. BY MR. POLLACK: Let's go down to (d). "I

14:19:42 17 am unaware of any evidence or facts showing that

14:19:44 18 others copied the claimed invention as Patent Owner

14:19:47 19 contends..."

14:19:48 20 Do you see that, letter (d)?

14:19:51 21 A. Okay. Yes.

14:19:52 22 Q. Okay. Did you ask whether or not Target

14:19:58 23 had taken any steps to copy the Destination

14:20:03 24 Maternity products?

14:20:03 25 MR. LECHLEITER: Objection. Form.

14:20:04 1 THE WITNESS: I didn't ask if they had, no.

14:20:07 2 Q. BY MR. POLLACK: You didn't look into any  
14:20:10 3 facts regarding that?

14:20:10 4 MR. LECHLEITER: Objection. Form.

14:20:11 5 THE WITNESS: I didn't not -- I haven't -- I'm  
14:20:14 6 not -- unaware of any of that.

14:20:15 7 Q. BY MR. POLLACK: Yeah. Okay.

14:20:16 8 But I'm asking, did you ask about that?

14:20:17 9 A. No.

14:20:18 10 Q. Okay. So that's not something you did in  
14:20:20 11 forming your opinion?

14:20:21 12 A. No.

14:20:21 13 Q. Okay.

14:20:23 14 A. I've seen the pants.

14:20:25 15 Q. Sure.

14:20:26 16 I think earlier you testified that they  
14:20:28 17 looked fairly similar?

14:20:30 18 MR. LECHLEITER: Objection. Form.

14:20:31 19 THE WITNESS: As similar to the J.C. Penney  
14:20:35 20 ones, as well, yeah.

14:20:37 21 Q. BY MR. POLLACK: Okay. But the Target and  
14:20:39 22 the Destination Maternity pants all went up to just  
14:20:41 23 below the breast area; correct?

14:20:43 24 A. Correct.

14:20:44 25 Q. Let me ask you, were you aware that -- were

14:21:00 1 you aware of any issue with maternity pants  
14:21:06 2 regarding holding them up over the belly? Was that  
14:21:12 3 an issue you had ever heard about or were concerned  
14:21:15 4 about?

14:21:15 5 MR. LECHLEITER: Objection. Form.

14:21:16 6 THE WITNESS: I am not aware of it having --  
14:21:19 7 anyone having particular issues with -- people have  
14:21:22 8 issues with being pregnant and obviously wearing --  
14:21:25 9 finding the clothes to fit them.

14:21:27 10 Q. BY MR. POLLACK: But was -- holding their  
14:21:29 11 maternity pants over the belly, was that an issue  
14:21:31 12 that was a concern for women?

14:21:34 13 A. It's not something that I focused on.

14:21:47 14 Q. Were you aware of any issues with maternity  
14:22:07 15 pants falling down?

14:22:09 16 MR. LECHLEITER: Objection. Form.

14:22:10 17 THE WITNESS: Not that I'm aware of. I'm  
14:22:12 18 unaware of that.

14:22:13 19 Q. BY MR. POLLACK: Are you aware of any  
14:22:31 20 issues that pregnant women expressed about having a  
14:22:38 21 line across their -- their belly due to their  
14:22:42 22 maternity pants?

14:22:43 23 MR. LECHLEITER: Objection. Form.

14:22:44 24 THE WITNESS: I never did a survey to find out  
14:22:46 25 whether or not they were -- whether they were

14:22:50 1 concerned with the line across the belly or the  
14:22:52 2 pants being too tight.

14:22:53 3 Q. BY MR. POLLACK: Okay. But ignoring a  
14:22:55 4 survey for now, do you know of that being a -- a  
14:22:58 5 concern of some women?

14:23:00 6 MR. LECHLEITER: Objection to form.

14:23:01 7 THE WITNESS: Through the pregnant women that  
14:23:03 8 I've been around, I have never heard anyone  
14:23:05 9 discussing that.

14:23:05 10 Q. BY MR. POLLACK: Okay. Okay. What about,  
14:23:08 11 you know, concern that there was, you know, a line  
14:23:10 12 visible under their top or -- due to -- due to the  
14:23:17 13 maternity pants underneath?

14:23:18 14 MR. LECHLEITER: Objection to form.

14:23:19 15 THE WITNESS: I have never heard anyone  
14:23:21 16 discussing that or my pregnant people and daughter  
14:23:23 17 or my friends, daughter's friends, never heard  
14:23:27 18 anyone discuss that.

14:23:28 19 Q. BY MR. POLLACK: Now, you've worn maternity  
14:23:30 20 pants. Did you have any issues with your maternity  
14:23:37 21 pants falling down?

14:23:37 22 A. No.

14:23:38 23 Q. Have you looked into any literature or  
14:23:54 24 marketing information about what the market has said  
14:23:59 25 about maternity pants that reached up to the breast

14:24:06 1 area?

14:24:07 2 MR. LECHLEITER: Objection. Form.

14:24:09 3 THE WITNESS: No, I have not.

14:24:11 4 Q. BY MR. POLLACK: Okay. That's not  
14:24:12 5 something you looked into?

14:24:14 6 A. You mean doing a survey on that?

14:24:16 7 Q. No. Just looking, reading, reviewing.  
14:24:19 8 Have you reviewed any materials or asked to review  
14:24:21 9 any materials from the industry regarding the  
14:24:24 10 benefits or lack of benefits concerning maternity  
14:24:28 11 pants that reached up to the breast area?

14:24:30 12 MR. LECHLEITER: Objection to form.

14:24:32 13 THE WITNESS: I think there are -- most pregnant  
14:24:34 14 women have a number of issues that they complain  
14:24:36 15 about, so I think there will be other issues besides  
14:24:40 16 some may find that the pants -- as I said earlier,  
14:24:44 17 some women prefer them to be higher and some would  
14:24:47 18 prefer them to be lower and some would prefer more  
14:24:51 19 comfort all around.

14:24:51 20 Q. BY MR. POLLACK: Okay. So there are women  
14:24:53 21 who are concerned about their maternity pants  
14:24:57 22 falling down?

14:24:59 23 MR. LECHLEITER: Objection. Form.

14:25:01 24 THE WITNESS: I don't know of any personally.

14:25:06 25 Q. BY MR. POLLACK: Sure.

14:25:07 1 Generally, you know that that's -- that's  
14:25:08 2 the case?

14:25:08 3 A. No. I have never heard anyone talking  
14:25:12 4 about their pants falling down.

14:25:13 5 Q. Okay. That's not something you've seen?

14:25:15 6 A. No.

14:25:15 7 Q. Okay. Have you looked into whether or not  
14:25:17 8 there was information out there regarding pants  
14:25:20 9 falling down or concerns expressed by women?

14:25:23 10 MR. LECHLEITER: Objection. Form.

14:25:24 11 THE WITNESS: No. I think maternity clothing  
14:25:27 12 today is a lot more efficient than it was years ago,  
14:25:30 13 and I've never heard of pregnant women being  
14:25:34 14 concerned about their pants falling down.

14:25:36 15 Q. BY MR. POLLACK: You said it's a lot more  
14:25:37 16 efficient. How is it more efficient today?

14:25:40 17 A. I would say, technically, the fabrics are a  
14:25:43 18 lot easier and comfortable -- more comfortable.

14:25:43 19 Q. Uh-huh.

14:25:46 20 A. And as we talked about earlier on, styles  
14:25:49 21 have changed, which allow women to be more obviously  
14:25:55 22 pregnant so they don't have to be so concerned about  
14:25:58 23 walking around in a big tent.

14:26:01 24 Q. Have you seen any written documents, which  
14:26:19 25 would include literature, email, electronic



14:26:25 1 information, all the things that are now the way we  
14:26:28 2 communicate today, that talked about maternity pants  
14:26:32 3 falling down?

14:26:33 4 MR. LECHLEITER: Objection to form.

14:26:34 5 THE WITNESS: I have not seen any focus on  
14:26:36 6 maternity pants falling down.

14:26:38 7 Q. BY MR. POLLACK: Okay. Now, you are aware  
14:26:52 8 that the patents in this case talk about a  
14:26:55 9 longstanding problem with maternity pants falling  
14:26:58 10 down; correct?

14:26:59 11 A. Well, I think that -- yes, I think the  
14:27:01 12 patent takes care of holding up -- as all the others  
14:27:06 13 do, holding up -- holding up the pants.

14:27:08 14 Q. Okay. Do you disagree with the patent's  
14:27:12 15 description that there was a longstanding problem  
14:27:14 16 with holding maternity pants up?

14:27:16 17 MR. LECHLEITER: Objection. Form.

14:27:17 18 THE WITNESS: I think that's the terminology,  
14:27:22 19 that they have found that there is a need for it.  
14:27:26 20 And I think it's also available, and you could  
14:27:30 21 possibly have pants that you adapt. But, yes,  
14:27:34 22 that's -- that's their contention in the patent;  
14:27:36 23 right.

14:27:36 24 Q. BY MR. LECHLEITER: Okay. Do you -- do you  
14:27:39 25 disagree with that contention as of 2007?

14:27:42 1 MR. LECHLEITER: Objection to form.

14:27:43 2 THE WITNESS: I'm neither one or the other. I'm

14:27:47 3 neither way.

14:27:48 4 Q. BY MR. POLLACK: Okay. Going to paragraph

14:27:59 5 18, you say that you were involved in the creation

14:28:05 6 of the claim charts?

14:28:07 7 A. Yes.

14:28:07 8 Q. Okay. What was your involvement?

14:28:10 9 A. We had a number of WebEx meetings, and we

14:28:15 10 discussed how the charts were put together and the

14:28:19 11 terminology.

14:28:19 12 Q. How many WebEx meetings did you have?

14:28:24 13 A. I can't precisely say. A number of them.

14:28:29 14 Q. More than five?

14:28:30 15 A. Probably, yeah.

14:28:33 16 Q. And this, I assume, is between May and

14:28:35 17 August of 2013?

14:28:36 18 A. Correct.

14:28:37 19 Q. Okay. Was it more than 10?

14:28:40 20 A. No.

14:28:40 21 Q. Okay. So somewhere between five and 10,

14:28:42 22 approximately?

14:28:43 23 A. Some of them longer than -- and shorter

14:28:45 24 than others; right.

14:28:46 25 Q. What was the length of the longest meeting?

14:28:52 1 A. Off the top of my head, I think there was a  
14:28:56 2 two-hour one and a two-and-a-half-hour one.

14:28:58 3 Q. Okay. So there was one about two hours,  
14:29:01 4 one about two and a half, give or take --

14:29:01 5 A. There were --

14:29:03 6 Q. -- and then the other meetings were --

14:29:03 7 DEPOSITION OFFICER: Sorry?

14:29:03 8 THE WITNESS: Sorry.

14:29:06 9 Q. BY MR. POLLACK: -- and then the other  
14:29:07 10 meetings were shorter?

14:29:08 11 A. Sorry. Yes.

14:29:37 12 MR. POLLACK: I'm going to mark as Harder  
14:29:40 13 Deposition Exhibit 12 the Corrected Petition for  
14:29:48 14 Inter Partes Review. This is also known in the  
14:29:50 15 proceeding as Exhibit 1026. It will now be known in  
14:29:57 16 the deposition as Harder Deposition Exhibit 12.

14:30:00 17 (Patent Owner's Exhibit 12 was marked  
14:30:00 18 for identification and attached hereto.)

14:30:14 19 THE WITNESS: Thank you.

14:30:14 20 Q. BY MR. POLLACK: And my first question is  
14:30:20 21 whether or not you've seen Harder Deposition  
14:30:22 22 Exhibit 12, either in its entirety or in part,  
14:30:26 23 before.

14:30:30 24 A. Harder Deposition did you say?

14:30:34 25 Q. Prior to today's deposition --

14:30:35 1 A. Oh, sorry. Sorry.

14:30:36 2 Q. -- have you ever seen Deposition Exhibit

14:30:38 3 12, either in whole or in part?

14:30:40 4 A. I have.

14:30:40 5 Q. Okay. Did you see the whole of it or just

14:30:43 6 part of it?

14:30:43 7 A. Whole of it.

14:30:44 8 Q. And can you point to me, where are the

14:30:47 9 claim charts? I know there's a number of them in

14:30:51 10 Deposition Exhibit 12.

14:30:51 11 A. It would be in the index; right? Let me

14:30:51 12 see.

14:31:59 13 Q. Let me make it easier.

14:31:59 14 A. Yeah.

14:32:00 15 Q. Go to pages 31 to 34.

14:32:00 16 A. Right.

14:32:02 17 Q. Is that a claim chart?

14:32:04 18 A. Right.

14:32:04 19 Q. Okay. Is that one of the claim charts that

14:32:06 20 you were referring to --

14:32:07 21 A. Correct.

14:32:07 22 Q. -- in your declaration?

14:32:09 23 A. Yes.

14:32:09 24 Q. Yes? Okay.

14:32:10 25 Can you tell me on pages 31 to 34 which

14:32:14 1 parts you contributed to?

14:32:16 2 A. Well, we discussed all of the claims, so we  
14:32:22 3 went through them step by step.

14:32:23 4 Q. Okay. Is there any text in here that you  
14:32:26 5 wrote?

14:32:27 6 A. I think we discussed it and the  
14:32:31 7 terminologies, particularly terminology.

14:32:35 8 Q. Okay. But was the text all written by the  
14:32:40 9 attorneys?

14:32:40 10 A. We -- we wrote them together --

14:32:40 11 Q. Okay.

14:32:42 12 A. -- so we made changes together.

14:32:44 13 Q. Can you give me an example of some of the  
14:32:47 14 changes you made?

14:32:48 15 MR. LECHLEITER: Objection. Form.

14:32:50 16 THE WITNESS: I think you probably appreciate  
14:32:58 17 that attorneys don't normally have the terminology  
14:33:01 18 to discuss garments, so there was quite a bit of  
14:33:05 19 changing that I could help them with the  
14:33:06 20 terminology.

14:33:07 21 Q. BY MR. POLLACK: For example, I see the  
14:33:08 22 words "over the belly." Was that a terminology that  
14:33:11 23 you helped them with?

14:33:12 24 A. Where are we looking?

14:33:15 25 Q. Top of page 32, for example.

14:33:19 1 A. Where is "belly"?

14:33:25 2 Q. It ends with the words "over the belly."

14:33:28 3 A. Okay.

14:33:28 4 Q. Was that terminology that -- that you  
14:33:29 5 helped them with or the attorneys came up with that  
14:33:31 6 on their own?

14:33:32 7 MR. LECHLEITER: Objection. Form.

14:33:33 8 THE WITNESS: I can't go through word-for-word  
14:33:36 9 as to know exactly which parts I added or he added  
14:33:40 10 or... I'm not quite aware of that. But we agreed  
14:33:43 11 on the terminology.

14:33:43 12 Q. BY MR. POLLACK: Okay. And the term "over  
14:33:46 13 the belly," is that -- is that a term of art in the  
14:33:50 14 maternity garment industry?

14:33:52 15 A. Over the belly?

14:33:53 16 Q. Yes.

14:33:53 17 A. Over the belly or the abdomen?

14:33:53 18 Q. Uh-huh.

14:33:56 19 A. Yes.

14:33:56 20 Q. Okay. And what does over the belly mean?

14:34:00 21 A. To cover the belly portion of the body  
14:34:03 22 where the pregnancy would be.

14:34:05 23 Q. Okay. Does over the belly -- I'm correct  
14:34:09 24 that doesn't necessarily mean to just below the  
14:34:12 25 breasts, though?

14:34:12 1 MR. LECHLEITER: Objection. Form.

14:34:13 2 THE WITNESS: Well, as you know, pregnancy, over  
14:34:18 3 the belly -- as the belly gets bigger, it gets  
14:34:22 4 nearer to the breast form, so it depends on where in  
14:34:26 5 what stage of pregnancy. So it could be under the  
14:34:30 6 breast area, could be right directly under the  
14:34:32 7 breast or it could be 2 or 3 inches below it. It  
14:34:36 8 would still be within the breast area.

14:34:49 9 Q. BY MR. POLLACK: Have you looked for the  
14:35:02 10 use of the term "over the belly" in the prior art  
14:35:06 11 other than in the J.C. Penney reference?

14:35:12 12 A. I would have to go back and check them all  
14:35:16 13 out to see whether or not it was used in any of the  
14:35:21 14 other patents or previous art work.

14:35:24 15 Q. To be -- as you sit here now, you don't  
14:35:26 16 recall seeing that term in any of the prior art that  
14:35:28 17 you looked at?

14:35:29 18 A. Over the belly?

14:35:31 19 Q. Yes.

14:35:31 20 A. I'm not prepared to say because I would  
14:35:33 21 have to check back.

14:35:34 22 Q. Okay. I mean, you didn't do any research  
14:35:36 23 for patents or other prior art that used the term  
14:35:39 24 "over the belly" as part of your analysis?

14:35:43 25 MR. LECHLEITER: Objection. Form.

14:35:44 1 THE WITNESS: Did I do any research for other  
14:35:50 2 patents?

14:35:51 3 Q. BY MR. POLLACK: Patents or publications or  
14:35:53 4 anything else using the term "over the belly."

14:35:55 5 A. Not that I recall "over the belly" as a  
14:36:00 6 term, but it's a pretty generic term.

14:36:04 7 Q. What do you mean by a "generic term"?

14:36:07 8 A. Over the belly meaning a garment would fit  
14:36:11 9 over the belly or something could come over the  
14:36:14 10 belly from the top to the bottom or from the bottom  
14:36:16 11 to the top.

14:36:16 12 Q. You say -- I think by "generic term," are  
14:36:18 13 you saying it's not really a term of art, it's just  
14:36:21 14 plain English?

14:36:23 15 A. It's a term --

14:36:23 16 Q. Is that what you mean?

14:36:24 17 A. -- that describes either the garment coming  
14:36:27 18 up -- in that way, three words, "over the belly"?

14:36:29 19 Q. Yeah.

14:36:29 20 A. I mean, this is the obvious. Here, it's  
14:36:32 21 talking about a garment going over the belly as a  
14:36:35 22 pant -- tubular pant, but it could also apply over  
14:36:39 23 the belly in a -- if you were to Google it, it could  
14:36:41 24 be over the belly coming from the top to the bottom.

14:36:45 25 Q. Okay. Going from the bottom to the top,



14:36:48 1 what does it mean?

14:36:49 2 A. In this particular case, it's talking about  
14:36:53 3 a tubular knit that's going from below the belly to  
14:36:57 4 over the belly.

14:36:59 5 Q. Uh-huh.

14:36:59 6 And did you do any research, though, to  
14:37:16 7 understand whether the term "over the belly" was a  
14:37:20 8 term used in the clothing art?

14:37:25 9 MR. LECHLEITER: Objection. Form.

14:37:27 10 THE WITNESS: That particular terminology, no, I  
14:37:30 11 did not do any particular research on over the  
14:37:36 12 belly.

14:37:37 13 Q. BY MR. POLLACK: And were any of the  
14:37:48 14 opinions expressed in these claim charts opinions  
14:37:56 15 that were solely contributed by you and not by the  
14:38:03 16 attorneys?

14:38:04 17 MR. LECHLEITER: Objection. Form.

14:38:05 18 THE WITNESS: I think I had to talk them through  
14:38:10 19 how to -- how these garments would be put together  
14:38:15 20 and made and a lot -- and quite a bit of the  
14:38:17 21 terminology, yes.

14:38:18 22 Q. BY MR. POLLACK: Right. Right. I  
14:38:19 23 understand that --

14:38:19 24 A. Uh-huh.

14:38:20 25 Q. -- that you gave them a lot of the

14:38:22 1 terminology.

14:38:23 2 But were there any new opinions that came  
14:38:26 3 solely from you rather than the attorneys?

14:38:30 4 MR. LECHLEITER: Objection. Form.

14:38:31 5 THE WITNESS: I think there were -- there were a  
14:38:35 6 few, but I can't recall them off the top of my head.  
14:38:39 7 There were a few.

14:38:40 8 Q. BY MR. POLLACK: Do you recall any of them?

14:38:42 9 MR. LECHLEITER: Objection. Form.

14:38:44 10 THE WITNESS: I can't recall -- give you a  
14:38:53 11 definite on that, but I know that we discussed it.  
14:38:55 12 And obviously there were a lot of terminologies, as  
14:38:58 13 we talked about, that only I could give them that  
14:39:01 14 they wouldn't possibly know.

14:39:04 15 Q. BY MR. POLLACK: Were there any views that  
14:39:06 16 the attorneys expressed that you rejected?

14:39:10 17 A. Quite a few, yes.

14:39:12 18 Q. Which ones? Do you recall?

14:39:15 19 A. Not really off the top of my head because a  
14:39:20 20 lot of it was -- as we talked about earlier, it was  
14:39:23 21 just general terminology that would not be  
14:39:25 22 appropriate.

14:39:25 23 Q. Okay. So the attorneys were using  
14:39:27 24 inappropriate terminology?

14:39:28 25 A. Not accurate to define and describe; right.

14:39:33 1 Q. Right. Right.

14:39:34 2 But other than inappropriate terminology,  
14:39:36 3 were there any actual opinions or views that the  
14:39:39 4 attorneys expressed about prior art that you said,  
14:39:42 5 "No. You're wrong. That's not a correct piece of  
14:39:45 6 prior art," or, "We shouldn't use that piece of  
14:39:48 7 prior art"?

14:39:48 8 MR. LECHLEITER: Objection. Form.

14:39:49 9 THE WITNESS: I don't recall.

14:40:09 10 MR. POLLACK: How are we doing on the tape?

14:40:11 11 THE VIDEOGRAPHER: 27 minutes.

14:40:14 12 MR. POLLACK: Want to take a break now?

14:40:16 13 MR. LECHLEITER: I could use a break, yeah.

14:40:18 14 THE VIDEOGRAPHER: Going off the record. The  
14:40:19 15 time is 2:40 p.m.

14:40:25 16 (A brief recess was taken.)

14:50:40 17 THE VIDEOGRAPHER: This marks the beginning of  
14:50:50 18 Video Media No. 3 to the videotaped deposition of  
14:50:53 19 Frances Harder. Going back on the record. The time  
14:50:55 20 is 2:51 p.m.

14:50:57 21 Q. BY MR. POLLACK: Ms. Harder, I'd like to go  
14:51:01 22 back to Harder Deposition Exhibit 3. That's the  
14:51:05 23 J.C. Penney catalog. And let's begin first with the  
14:51:28 24 product that you refer to in your declaration as  
14:51:31 25 JCP-A. That's on page 2 of the document --

14:51:31 1 A. Uh-huh.

14:51:34 2 Q. -- also known as page 15 of Harder  
14:51:36 3 Deposition Exhibit 3.

14:51:38 4 I think before you confirmed that you've  
14:51:40 5 never seen an actual sample or version of this  
14:51:46 6 product; correct?

14:51:46 7 A. Correct.

14:51:47 8 Q. And other than this photograph on -- on  
14:51:52 9 page 15, I'm correct that you've seen no other  
14:51:55 10 information about this product?

14:51:57 11 MR. LECHLEITER: Objection. Form.

14:51:59 12 THE WITNESS: Other than seeing these  
14:52:03 13 photographs?

14:52:03 14 Q. BY MR. POLLACK: Right.

14:52:05 15 A. Correct.

14:52:05 16 Q. Okay. What did you do to look for actual  
14:52:18 17 samples, if anything, of this product?

14:52:22 18 MR. LECHLEITER: Objection. Form.

14:52:24 19 THE WITNESS: I think we talked to the attorneys  
14:52:26 20 in regards to doing a search for the products. And  
14:52:32 21 as far as I was aware, they haven't located one yet,  
14:52:35 22 but it was just a general conversation.

14:52:38 23 Q. BY MR. POLLACK: And I think we discussed  
14:52:41 24 this earlier, but am I correct that -- let me ask it  
14:52:49 25 again.

14:52:49 1           Were you surprised that they weren't able  
14:52:51 2       to find the product?

14:52:52 3           MR. LECHLEITER:  Objection.  Form.

14:52:54 4           THE WITNESS:  I don't know whether "surprised"  
14:52:57 5       would be the word, but -- not surprised, but it's  
14:53:06 6       usual that they would have samples.

14:53:09 7           Q.     BY MR. POLLACK:  Based on your knowledge of  
14:53:13 8       the industry, do you have -- what's your best  
14:53:17 9       understanding of why they wouldn't have samples?

14:53:19 10          MR. LECHLEITER:  Objection.  Form.

14:53:20 11          THE WITNESS:  I don't know why they didn't have  
14:53:25 12       samples.  Maybe they were made in China or maybe the  
14:53:33 13       samples are over in China.  Depends on who  
14:53:36 14       manufactured them.

14:53:37 15          Q.     BY MR. POLLACK:  Now, if we look at the  
14:54:00 16       photographs, am I correct that we don't see the  
14:54:07 17       breasts in any of these photos?

14:54:11 18          MR. LECHLEITER:  Objection.  Form.

14:54:12 19          THE WITNESS:  Correct.

14:54:13 20          Q.     BY MR. POLLACK:  Can you tell me what the  
14:54:17 21       height is of the mannequin?  Am I correct that  
14:54:23 22       that's a mannequin in these photos?  Is that your  
14:54:26 23       understanding?

14:54:26 24          A.     No.  I think it's a real body, actually.

14:54:28 25          Q.     You think it's a real body?

14:54:31 1 A. Yeah.

14:54:31 2 Q. Okay. Did you look at any testimony from  
14:54:33 3 people from J.C. Penney?

14:54:34 4 A. No. I just said I think.

14:54:34 5 Q. Okay.

14:54:36 6 A. I think it's a real body. It looks like a  
14:54:38 7 real flesh body. Mannequins are usually white  
14:54:51 8 canvas, so you -- they would be obvious.

14:54:45 9 Q. Okay.

14:54:46 10 A. So...

14:54:57 11 Q. If I represent to you that the witness for  
14:54:59 12 J.C. Penney said that she thought it -- this was a  
14:55:02 13 mannequin, would that surprise you?

14:55:04 14 MR. LECHLEITER: Objection. Form.

14:55:06 15 THE WITNESS: Well, they -- they would have to  
14:55:08 16 have the new mannequins, which are made of like a  
14:55:13 17 rubber that looks like real fabric -- real flesh.  
14:55:18 18 So it could possibly be made from that where they  
14:55:22 19 scan the body and make an avatar from them and then  
14:55:26 20 make a -- a rubber form.

14:55:27 21 Q. BY MR. POLLACK: Okay. But you don't  
14:55:28 22 know -- you didn't look into whether or not that was  
14:55:31 23 a rubber form or a real body?

14:55:33 24 A. I don't think it really mattered enough to  
14:55:35 25 me to find out.

14:55:37 1 Q. Why not?

14:55:39 2 A. Why would it particularly change my  
14:55:41 3 opinion?

14:55:44 4 Q. Well, what is the height of the mannequin  
14:55:53 5 or the person shown in -- in these photos?

14:55:58 6 MR. POLLACK: Objection. Form.

14:55:59 7 THE WITNESS: Without having a sample and laying  
14:56:01 8 them on the table and giving you a measurement -- I  
14:56:06 9 mean, I can give you a rough estimate, but, you  
14:56:10 10 know, if you are looking at these from the -- below  
14:56:14 11 the belly to above the belly in the various stages,  
14:56:20 12 whether it's turned over twice or three times, you  
14:56:23 13 can see -- I would judge that to be somewhere around  
14:56:28 14 about 8 -- 8 or 9 inches.

14:56:30 15 Q. BY MR. POLLACK: Well, what is -- obviously  
14:56:33 16 the person's not 8 or 9 inches. So what is --

14:56:36 17 A. No. No. The panel.

14:56:37 18 Q. The panel you think is 8 or 9 inches?

14:56:37 19 A. Yeah.

14:56:37 20 Q. Okay. Yeah.

14:56:40 21 But what is the -- what is the height of  
14:56:43 22 either the person or the mannequin in these photos?

14:56:45 23 MR. LECHLEITER: Objection. Form.

14:56:46 24 THE WITNESS: I can't see the height because  
14:56:47 25 it's not visible. Usually mannequins, they do them

14:56:53 1 a fit size. So traditional sizing for a fit model  
14:57:00 2 is usually around about 5'6, not like a runway  
14:57:04 3 model. So -- and then they would -- various stages  
14:57:08 4 of pregnancy, they would probably have made forms.

14:57:13 5 Q. BY MR. POLLACK: Can you tell me how many  
14:57:17 6 inches above the top of the knit in Figure 1 are the  
14:57:28 7 breasts?

14:57:29 8 MR. LECHLEITER: Objection. Form.

14:57:31 9 Q. BY MR. POLLACK: In Figure 1.

14:57:32 10 A. Well, without seeing the model, it's hard  
14:57:35 11 to tell whether or not -- how many inches there are  
14:57:37 12 above. It's just below the breast area somewhere.

14:57:41 13 Q. Looking at the woman, the actual person who  
14:57:52 14 is shown in -- on page 15, I assume this woman is  
14:57:58 15 not -- or not known to be pregnant; is that fair?

14:58:02 16 MR. LECHLEITER: Objection. Form.

14:58:03 17 THE WITNESS: It's hard to tell. She might have  
14:58:05 18 some bump there, so she might be in early pregnancy.

14:58:09 19 Q. BY MR. POLLACK: Okay. Well, is it your  
14:58:10 20 experience that when they make these photos for  
14:58:14 21 catalogs, that they necessarily use pregnant women?

14:58:18 22 MR. LECHLEITER: Objection. Form.

14:58:19 23 THE WITNESS: They would sometimes have where  
14:58:22 24 they have a strap-on belly so that they could give  
14:58:25 25 them the appearance of being pregnant.



14:58:28 1 Q. BY MR. POLLACK: Okay. Usually the women  
14:58:30 2 aren't pregnant?

14:58:31 3 MR. LECHLEITER: Objection to form.

14:58:34 4 THE WITNESS: Sometimes they are. I mean, you  
14:58:34 5 might have a model who's pregnant, so they could  
14:58:36 6 bring her in. But you're not pregnant forever, so  
14:58:37 7 they have strap-on bellies.

14:58:40 8 Q. BY MR. POLLACK: Okay. These women don't  
14:58:41 9 have strap-on bellies; correct?

14:58:44 10 MR. LECHLEITER: Objection. Form.

14:58:45 11 THE WITNESS: Which women?

14:58:45 12 Q. BY MR. POLLACK: The women on page 2 and  
14:58:47 13 page 3 of Exhibit 3.

14:58:48 14 A. It's hard to see whether or not they do. I  
14:58:51 15 mean, she looks like she's got some curvature in --  
14:58:54 16 the girl in the green --

14:58:54 17 Q. Yeah.

14:58:56 18 A. -- looks like she's got some belly form  
14:58:58 19 there.

14:58:58 20 Q. All right. What about the girl in the pink  
14:58:59 21 on page 3?

14:59:02 22 A. It's hard to see when she's full on, so you  
14:59:05 23 don't know whether she's -- you can't see whether  
14:59:08 24 she's actually got a belly or not.

14:59:10 25 Q. Okay. Looking at the two models on pages 2

14:59:19 1 and 3, can you tell how high the pants go on the  
14:59:25 2 model's body?

14:59:27 3 A. Only from the lower -- illustrations on the  
14:59:32 4 lower, you can see how high it's been pulled up on  
14:59:37 5 her, on the belly, over-the-belly coverage, the one  
14:59:39 6 on the lower right.

14:59:40 7 Q. Right. Right.

14:59:41 8 But looking at the two models, can you tell  
14:59:43 9 how high the pants have gone?

14:59:45 10 A. No.

14:59:45 11 Q. Okay. So the only thing you can rely on,  
14:59:48 12 if you can rely on that at all, is the figure  
14:59:52 13 labeled "1. over-the-belly coverage"; correct?

14:59:55 14 A. Well, they may have turned them down, so  
14:59:57 15 you don't know whether they've got them up -- fully  
15:00:01 16 up or whether they've got them as it's shown in 3.

15:00:03 17 Q. So in 1, they may be folded over, as well?

15:00:06 18 A. Sorry?

15:00:07 19 MR. LECHLEITER: Objection. Form.

15:00:08 20 Q. BY MR. POLLACK: You said you couldn't  
15:00:09 21 tell --

15:00:09 22 A. Couldn't tell in the girl -- the model in  
15:00:11 23 the green and the pink --

15:00:12 24 Q. Right.

15:00:12 25 A. -- whether or not the top is folded over or

15:00:15 1 whether it's pulled straight up.

15:00:18 2 Q. Well, assuming it's pulled straight up, can  
15:00:21 3 you tell how high it went?

15:00:23 4 A. No.

15:00:23 5 Q. Okay. You can't tell anything at all about  
15:00:26 6 how high the -- the pants -- the top of the pants  
15:00:30 7 went in -- on the two models; correct?

15:00:33 8 A. Well, you've got the figures on the bottom.  
15:00:36 9 So if someone's looking at a catalog and they're  
15:00:39 10 thinking about buying them for themselves, they  
15:00:41 11 would refer to the pictures and know that these  
15:00:43 12 pants would have these tops.

15:00:45 13 Q. Okay. But from the women on -- on page 2  
15:00:48 14 and page 3, the actual women --

15:00:48 15 A. You --

15:00:50 16 Q. -- it's impossible to tell how high the  
15:00:54 17 pants went?

15:00:55 18 A. But as I said, you don't know whether it's  
15:00:57 19 folded down. So if it's folded down, it's hard to  
15:01:00 20 tell on those models where -- wherever -- if they  
15:01:04 21 have them folded down or whether they have them  
15:01:07 22 turned all the way up. That's why you've got the  
15:01:10 23 three pictures to refer to on the bottom.

15:01:10 24 Q. Right.

15:01:10 25 So my point is, by looking at the models,

15:01:12 1 you can't tell anything about them?

15:01:15 2 A. About height.

15:01:15 3 Q. How high are the pants -- about height; is  
15:01:17 4 that correct?

15:01:17 5 A. Correct. How they are wearing them.

15:01:18 6 Q. Okay. And looking at the text, am I  
15:01:26 7 correct that there's nothing in the -- in the text  
15:01:30 8 that refers to breasts or breast area?

15:01:47 9 A. Nothing to do -- says about the breast.  
15:01:50 10 Over the -- just No. 1, it says, "over-the-belly  
15:01:53 11 coverage"; right.

15:01:53 12 Q. There's nothing about breasts?

15:01:56 13 A. No.

15:02:00 14 Q. And I'm correct there's also no written  
15:02:05 15 information here about the size of the knit area  
15:02:12 16 over the pants?

15:02:17 17 A. You mean the depth of the panel?

15:02:19 18 Q. Yes.

15:02:20 19 A. There's no -- no measurement given, no.

15:02:39 20 THE VIDEOGRAPHER: Could you adjust your mic?

15:02:42 21 THE WITNESS: I'm sorry. It's on the inside.

15:02:47 22 Q. BY MR. POLLACK: I just want to ask you  
15:02:50 23 about one thing in your -- in your declaration. If  
15:02:56 24 you go to paragraph 31 on page 16 --

15:03:05 25 A. Okay.

15:03:06 1 Q. -- you say there, "A ten inch band, scaled  
15:03:11 2 appropriately for wearers of different shapes and  
15:03:13 3 sizes and comprised of material with sufficient  
15:03:16 4 elasticity, is more than sufficient to cover the  
15:03:19 5 wearer's torso from just below the belly to just  
15:03:23 6 below the breast area." And that's written just  
15:03:25 7 after paragraph 30, which describes JCP-A.

15:03:31 8 Just wanted to confirm, though, that you're  
15:03:33 9 not saying that the band in JCP-A, Harder Deposition  
15:03:41 10 Exhibit 3, is a 10-inch band?

15:03:44 11 A. No. I was talking in regards to Spangle --  
15:03:47 12 Stangle.

15:03:47 13 Q. Okay. There's nothing in Harder Deposition  
15:03:51 14 Exhibit 3 that suggests that the JCP band is a  
15:03:56 15 10-inch band?

15:03:57 16 A. No.

15:03:57 17 Q. Okay. And you haven't seen any other  
15:03:59 18 information, from J.C. Penney or otherwise,  
15:04:02 19 suggesting that that band is a 10-inch band?

15:04:04 20 A. No. Only judging by -- given my experience  
15:04:09 21 in the industry and understanding measurements and  
15:04:11 22 how they purport to the body, I would say, judging  
15:04:16 23 from looking at this picture, that it would be  
15:04:19 24 around about 8 to 10 inches, but probably not 10. I  
15:04:22 25 would say around about 9 -- 8, 9.

15:04:26 1 Q. And would it matter whether the photograph  
15:04:32 2 on page 2 was a mannequin or a real model in making  
15:04:38 3 that determination?

15:04:39 4 A. No. A mannequin is made to mirror exactly  
15:04:43 5 the body form of a real person.

15:04:46 6 Q. Okay. But I think earlier you were -- you  
15:04:49 7 were telling me that, you know, real persons have  
15:04:50 8 all kinds of different body forms and torsos?

15:04:54 9 A. Yes. But they have -- as I said earlier,  
15:04:56 10 they have -- they choose a fit model and they -- as  
15:05:00 11 they do with any type of clothing, and they have a  
15:05:03 12 particular size that they work with for their  
15:05:06 13 samples. And this one, if you look at it, actually,  
15:05:10 14 it looks like the crotch is rather low and could be  
15:05:15 15 actually pulled higher. It's rather baggy.

15:05:20 16 Q. Why is that? Why is the crotch low?

15:05:23 17 A. I don't know. It's just the way it's been  
15:05:25 18 put on the mannequin. It could be pulled up higher.

15:05:29 19 Q. Are those all the same mannequins or -- are  
15:05:32 20 those either three different mannequins or the same  
15:05:36 21 mannequin with different stomach inserts being put  
15:05:40 22 on?

15:05:41 23 MR. LECHLEITER: Objection to form.

15:05:41 24 THE WITNESS: You were the one that told me they  
15:05:44 25 were mannequins. You probably know whether or not

15:05:46 1 they were all the same mannequin. I don't know.

15:05:47 2 Q. BY MR. POLLACK: Okay. Did -- did you look  
15:05:48 3 into the mannequins?

15:05:49 4 A. I didn't.

15:05:49 5 Q. Okay.

15:05:50 6 A. But I would think it would be the same  
15:05:51 7 mannequin, and the tops are turned down in different  
15:05:54 8 ways, either up or halfway or three times.

15:05:57 9 Q. Okay. I only ask because if you look at  
15:06:00 10 the mannequin on the -- in the third photograph, it  
15:06:04 11 doesn't look, to me, as round as the one in the  
15:06:07 12 first. What's your view?

15:06:11 13 MR. LECHLEITER: Objection. Form.

15:06:12 14 THE WITNESS: It's hard to tell. I think it  
15:06:15 15 might be the angle, so it's hard to say whether or  
15:06:18 16 not it is. But the crotches look pretty low to me.

15:06:24 17 Q. BY MR. POLLACK: Were the crotches low in  
15:06:27 18 all three photos?

15:06:28 19 A. Yes.

15:06:29 20 Q. And you mentioned the angles. What effect  
15:06:37 21 would the angles have?

15:06:39 22 A. The angle of the photographer?

15:06:41 23 Q. Yes.

15:06:41 24 A. Well, I think you would see whether or  
15:06:44 25 not -- how -- how pregnant she was. Whether it was

15:06:49 1 the same one or not, it's hard to tell.

15:06:52 2 Q. Would the -- would the angle of the  
15:06:54 3 photographer also affect how high the knit appears  
15:06:57 4 to be going?

15:06:57 5 MR. LECHLEITER: Objection. Form.

15:06:59 6 THE WITNESS: I think it's pretty obvious when  
15:07:02 7 you see this that it's over the belly. So it's --  
15:07:06 8 if you think of the apex of the belly, the belly  
15:07:09 9 being the -- where pregnant, the highest part, it's  
15:07:12 10 beyond and over that.

15:07:13 11 Q. BY MR. POLLACK: Sure.

15:07:14 12 That's what makes it over the belly;  
15:07:16 13 correct?

15:07:17 14 A. Correct.

15:07:17 15 Q. That it's -- that it's over the apex of the  
15:07:19 16 belly?

15:07:19 17 A. Right.

15:07:20 18 Q. So anything that's over the apex of the  
15:07:23 19 belly would be called over the belly?

15:07:25 20 A. Correct.

15:07:25 21 Q. And how do you know how low the crotch of  
15:07:35 22 the mannequin or model is in these -- in these  
15:07:37 23 photos? You said it was low.

15:07:39 24 A. Well, if I were doing -- if I were a  
15:07:40 25 technical designer and I was doing the fit on this,



15:07:43 1 I would be looking at that crotch and be saying,  
15:07:46 2 "What's wrong with the crotch? Why is it hanging  
15:07:48 3 low?"

15:07:49 4 Q. So you are saying something's wrong with  
15:07:50 5 the crotch in these photos?

15:07:52 6 A. Well, some women like to wear them maybe a  
15:07:54 7 little lower than others, but normally jeans are  
15:07:59 8 considered to be a little bit tighter around the  
15:08:02 9 crotch.

15:08:03 10 Q. And you're saying these are loose around  
15:08:05 11 the crotch?

15:08:05 12 A. They look loose.

15:08:07 13 Q. Is it possible that the reason for that is  
15:08:21 14 that the jeans are falling down a little bit on this  
15:08:26 15 mannequin so it's not tight over the crotch?

15:08:30 16 MR. LECHLEITER: Objection. Form.

15:08:30 17 THE WITNESS: I would say that the pants are too  
15:08:32 18 big for the mannequin, so that's probably the reason  
15:08:35 19 why.

15:08:36 20 Q. BY MR. POLLACK: I want to look at the text  
15:08:58 21 up near the top where it says, "E. FOLD-OVER PANEL  
15:09:02 22 JEANS."

15:09:03 23 A. Right.

15:09:03 24 Q. And starting with the second sentence, it  
15:09:10 25 says, "These have a unique fold-over panel design