

<p style="text-align: right;">Page 125</p> <p>1 A Not quite.</p> <p>2 BY MR. HARKINS:</p> <p>3 Q Okay.</p> <p>4 A I mean, these are -- even though it's fairly</p> <p>5 thin sheets it would be pretty hard to bust. I mean,</p> <p>6 you can, obviously, but you want the pump to last.</p> <p>7 And then the higher the flow rate, obviously the</p> <p>8 faster I can inflate these beds or inflatable</p> <p>9 products, and it might depend on the inflatable</p> <p>10 product you're talking about, too.</p> <p>11 Q So you want to inflate the bed quickly, but</p> <p>12 the high flow weight could, what, work against the</p> <p>13 durability of the pump design?</p> <p>14 MR. DODGE: Objection. Form.</p> <p>15 A No. It just might cost more for that pump.</p> <p>16 BY MR. HARKINS:</p> <p>17 Q What would cause it to cost more?</p> <p>18 A They would be bigger. They'd run faster,</p> <p>19 whether it's centrifugal or positive displacement.</p> <p>20 Q When you're talking about putting a pump</p> <p>21 into the side of an air mattress are there any issues</p> <p>22 with heat that you need to be concerned about if you</p> <p>23 were designing an air bed?</p> <p>24 A Yeah. You don't want to burn out your --</p> <p>25 let's say it's in an air bed. You don't want to burn</p>	<p style="text-align: right;">Page 127</p> <p>1 A It actually talked about the spec on the</p> <p>2 pump. I think it was right on the pump for some</p> <p>3 reason.</p> <p>4 Q Was it a pump in an air bed?</p> <p>5 A Yes.</p> <p>6 Q Which air bed?</p> <p>7 A I can't remember now.</p> <p>8 Q And you think it said five minutes on and</p> <p>9 then five minutes off?</p> <p>10 A Something like that, yeah, or that it would</p> <p>11 turn off after five minutes or something like that.</p> <p>12 Maybe it didn't say five minutes off.</p> <p>13 Q That it would turn off after five minutes?</p> <p>14 A Yes.</p> <p>15 Q It didn't say that it would turn back on</p> <p>16 again.</p> <p>17 A No, I don't think it said that.</p> <p>18 Q Have you ever known -- have you ever come</p> <p>19 across pumps in commercial air beds that are designed</p> <p>20 to be used for more than five minutes?</p> <p>21 A Well, there certainly are. If you have a</p> <p>22 venting bed you'd have to run it continuously.</p> <p>23 Q All right. So let's set aside the idea of a</p> <p>24 venting bed. And a venting bed, you're talking about</p> <p>25 one that is designed to continue to emit air out of</p>
<p style="text-align: right;">Page 126</p> <p>1 out your motor.</p> <p>2 Q What would cause the motor to burn out if it</p> <p>3 was put into the side of an air bed?</p> <p>4 MR. DODGE: Objection. Form.</p> <p>5 A Well, if you had to run it for a long time.</p> <p>6 But there's ways around it. You can put fins on them</p> <p>7 and you can flow air over it, you could cycle them on</p> <p>8 and off, so there certainly are solutions to all that.</p> <p>9 BY MR. HARKINS:</p> <p>10 Q Do you think it would be commercially</p> <p>11 acceptable to people if they're trying to inflate an</p> <p>12 air bed to have it turn off in the middle of the</p> <p>13 process and turn on again later on its own?</p> <p>14 A It depends how long it is, because it would</p> <p>15 be partially inflated and go back up again.</p> <p>16 Q The accused products in this case, do you</p> <p>17 know how long those motors are intended to run for?</p> <p>18 A Maybe five minutes.</p> <p>19 Q Have you seen any of the product literature</p> <p>20 or user guides about the pumps and how long they're</p> <p>21 supposed to be run for?</p> <p>22 A I just saw something on a pump that said</p> <p>23 five minutes on, five minutes off. That was a feature</p> <p>24 on it.</p> <p>25 Q It was a feature on a pump?</p>	<p style="text-align: right;">Page 128</p> <p>1 it. Right?</p> <p>2 A That's correct.</p> <p>3 Q Okay. Let's talk about airtight beds. Are</p> <p>4 you familiar with any pump model in any airtight bed</p> <p>5 that's designed to be run for more than ten minutes</p> <p>6 that you've actually seen yourself?</p> <p>7 A No. I actually looked at a spec that said</p> <p>8 that.</p> <p>9 Q If you could turn to page A-25, please. You</p> <p>10 said: Prior art inventors recognized -- paragraph</p> <p>11 50 -- that this power inflate/power deflate design</p> <p>12 offered marked improvements over power inflate and</p> <p>13 vented deflate designs. Is that correct?</p> <p>14 A Yes.</p> <p>15 Q Do you agree that having a power</p> <p>16 inflate/power deflate design is a better design than</p> <p>17 one that does power inflate but does not power</p> <p>18 deflate?</p> <p>19 MR. DODGE: Objection. Form.</p> <p>20 A Ask the question again.</p> <p>21 BY MR. HARKINS:</p> <p>22 Q Do you personally agree that having a design</p> <p>23 for an air bed that does both power inflate and</p> <p>24 deflate is a superior design than one that just does</p> <p>25 power inflate?</p>



800.211.DEPO (3376)
EsquireSolutions.com

Page 129

1 MR. DODGE: Same objection.
2 A It depends on what you're trying to produce.
3 It probably would be cheaper to just have power
4 inflate and then vent deflate, so depending where in
5 the market scheme you wanted to do things. So when
6 you said superior design, it sort of depends on what
7 market you're trying to design for. But I think
8 there's some nice reasons why you'd want to power
9 inflate and power deflate. One is you if you don't
10 get the firmness of the mattress right you may want to
11 be more controllable about how you get it back. It
12 might be easier with just doing it with a button. So
13 I think there are certain advantages for the customer.
14 But, once again, when you say superior design, it sort
15 of depends on what markets you're trying to go after.
16 BY MR. HARKINS:
17 Q Okay. So power inflate/power deflate gives
18 additional advantages to the customer over a power
19 inflate only model. Is that correct?
20 MR. DODGE: Objection. Form.
21 A I think so.
22 BY MR. HARKINS:
23 Q We had spoken a little bit before about '394
24 and the fact that you have 25 grounds of invalidity.
25 I want to turn to the B part of the report for a

Page 130

1 moment. Okay?
2 A Sure.
3 Q If you could turn to the table of contents.
4 Part B deals with the '950 patent. Correct?
5 A Yes, it does.
6 Q And you list seven grounds that you're
7 asserting cause claims to be invalid in the '950
8 patent. Right?
9 A That's correct.
10 Q Okay. So I'm looking at the art that you
11 relied on for the '950 patent, and I just want to make
12 sure I have it down. You've got Parienti in ground
13 one. Correct?
14 A That's correct.
15 Q And then you've got Chaffee in ground two.
16 Right?
17 A That's correct.
18 Q The next two grounds are using or relying on
19 that same art again. Is that correct?
20 A That is correct.
21 Q In ground five you add the possibility of
22 Goldsmith. Right?
23 A That's correct.
24 Q In ground six you talk about Chaffee again,
25 but you're now adding Chan and Clendening. Right?

Page 131

1 A That's correct.
2 Q And then in ground seven you're talking
3 about Chen with Chan and Clendening. Right?
4 A That's correct.
5 Q So I count six total references that are
6 being relied upon in your '950 report.
7 A Yes, that's right.
8 Q Okay. And that's the totality of the body
9 of prior art that you're relying on for your opinions
10 about invalidity for the '950. Correct?
11 A Yes.
12 MR. DODGE: Objection. Form.
13 BY MR. HARKINS:
14 Q Let's turn to part C. In part C, if we go
15 to C-1, you talk about the asserted art and you list
16 six prior art references. Right?
17 A That's correct.
18 Q You talk about Chaffee again, the Chaffee
19 '972 patent. Right?
20 A That's correct.
21 Q And Goldsmith, that's brought up again.
22 Correct?
23 A That's correct.
24 Q Parienti is raised again.
25 A Yes.

Page 132

1 Q Hong is used in this reference as well -- in
2 this report as well. Correct?
3 A Yes, that's correct.
4 Q About the '018 patent. Right?
5 A Yes, it is.
6 Q Okay. Now, Hong is not being used as the
7 basis of a '950 infringement. It's only being used
8 not for the '950, for the '018. Correct?
9 A I believe that's correct, yes.
10 Q Okay. Then Chen, which we did talk about,
11 that's also being asserted against the '018 patent.
12 Right?
13 A Yes.
14 Q And Walker. Correct?
15 A Yes.
16 Q And Walker is another reference that you've
17 used for '018 patent, but you're not relying on it at
18 all for the '950 patent. Is that right?
19 A Let me just look real quick, but I think
20 that's correct. Yes, that's correct.
21 Q These six pieces of prior art we just talked
22 about with respect to the '018 patent, that
23 constitutes the entire body of prior art references
24 that you're relying on for your opinions about
25 invalidity -- prior art invalidity for the '018

<p style="text-align: right;">Page 133</p> <p>1 patent. Right?</p> <p>2 MR. DODGE: Objection. Form.</p> <p>3 A Yes, that's correct.</p> <p>4 BY MR. HARKINS:</p> <p>5 Q Okay. I think all of these references are</p> <p>6 in some way discussed earlier, so I think what we'll</p> <p>7 do is we'll go through the references in the '394</p> <p>8 patent and discuss those first. Okay?</p> <p>9 A Yes.</p> <p>10 Q And I want to first go back to A-4 and look</p> <p>11 at this chart and all the grounds, please.</p> <p>12 A Yes.</p> <p>13 Q All right. So what I'm going to do is --</p> <p>14 you talked already about what's a primary reference</p> <p>15 and why you grouped the grounds together as to primary</p> <p>16 references. Do you remember that?</p> <p>17 A Yes, I do.</p> <p>18 Q Okay. So I'm going to follow your lead on</p> <p>19 that and I'm going to talk about these in terms of the</p> <p>20 primary references and we'll go through the grounds as</p> <p>21 it pertains to that reference. Okay?</p> <p>22 A Okay.</p> <p>23 Q So the first one that you list is Wu.</p> <p>24 Right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 135</p> <p>1 opinion that that's sufficient to render the claims</p> <p>2 obvious.</p> <p>3 A That is correct.</p> <p>4 Q Okay. In addition to the four grounds where</p> <p>5 you use Wu as a primary reference, I think it's</p> <p>6 asserted as a secondary reference for some of the</p> <p>7 other grounds. And if you look at the chart, I think</p> <p>8 if you get to ground 11 you'll see the next -- hold on</p> <p>9 a second. Nine. If you look at ground nine you'll</p> <p>10 see it appear again.</p> <p>11 A Yes, I do.</p> <p>12 Q Okay. Can you just confirm for me that</p> <p>13 Wu is not -- that you do not have any opinion that Wu</p> <p>14 should be combined with Walker in this report?</p> <p>15 A In the '394?</p> <p>16 Q Correct. Well, Wu's not talked about --</p> <p>17 we've already confirmed that --</p> <p>18 A That's right. I'm not seeing anything.</p> <p>19 Q All right. So then the first time that Wu</p> <p>20 is used as a secondary reference, then, is your ground</p> <p>21 number nine where you're combining it possibly --</p> <p>22 you're modifying Scott to combine it with Miller and</p> <p>23 Wu. It's a three-part combination. Right?</p> <p>24 A That is correct.</p> <p>25 Q All right. And then in ground 11 you're</p>
<p style="text-align: right;">Page 134</p> <p>1 Q Okay. And Wu is used for the first four --</p> <p>2 is the primary reference for the first four grounds</p> <p>3 that you render invalidity opinions about. Right?</p> <p>4 A That's correct.</p> <p>5 Q Okay. The Wu reference is not used at all</p> <p>6 with respect to your analysis of the '950 patent.</p> <p>7 Right?</p> <p>8 A I think that's correct. Real quick. Yes.</p> <p>9 Q And Wu is also not used at all with respect</p> <p>10 to your analysis of the '018 patent. Is that right?</p> <p>11 A That is correct.</p> <p>12 Q Okay. So as we look at the four grounds on</p> <p>13 page A-4, ground one you say is -- just to be clear</p> <p>14 about this, there is no ground where you say Wu by</p> <p>15 itself renders any of the claims of the '394 patent</p> <p>16 obvious. Correct?</p> <p>17 A That is correct, or by anticipation.</p> <p>18 Q In fact, you do not render an opinion that</p> <p>19 any of the claims -- asserted claims of the '394</p> <p>20 patent is anticipated by any single prior art</p> <p>21 reference. Right?</p> <p>22 A That is correct.</p> <p>23 Q So furthermore with Wu, for your obviousness</p> <p>24 arguments you have to combine it with some other prior</p> <p>25 art. It's not going to -- by itself it's not your</p>	<p style="text-align: right;">Page 136</p> <p>1 saying you would combine Scott with Hong and either Wu</p> <p>2 or Pisante. Right?</p> <p>3 A That's correct.</p> <p>4 Q That's another three-way combination.</p> <p>5 A Yes.</p> <p>6 Q Okay. Then if you come down to 14 you talk</p> <p>7 about Miller combined with both Scott and Wu in a</p> <p>8 three-way combination. Correct?</p> <p>9 A That's correct.</p> <p>10 Q In claim 17 you talk about combining Wu with</p> <p>11 Parienti, that you would modify Parienti to combine it</p> <p>12 with Wu. Right?</p> <p>13 A That's correct.</p> <p>14 Q And in 19 you say Chaffee could be combined</p> <p>15 with Wu.</p> <p>16 A Yes.</p> <p>17 Q And that's it. That's all the times that</p> <p>18 you use Wu. Correct?</p> <p>19 A I don't see any others.</p> <p>20 (Plaintiff's Deposition Exhibit 365 marked</p> <p>21 for identification and attached to the deposition.)</p> <p>22 BY MR. HARKINS:</p> <p>23 Q I've marked the Wu patent as Plaintiff's</p> <p>24 Exhibit 365.</p> <p>25 A Yes.</p>



800.211.DEPO (3376)
EsquireSolutions.com

Page 137

1 Q And you're familiar with this patent.
2 Right?
3 A Yes, I am.
4 Q Okay. The version I've marked as Exhibit
5 365, does it have Bates numbers at the bottom of it?
6 It does, right?
7 A Yes.
8 Q I think it's Intex Bates numbers 35581
9 through 35590.
10 A Yes.
11 Q What is the field of invention for this
12 patent which is discussed at the top of column one?
13 MR. DODGE: Objection. Form.
14 A It says the controlling of flow of air to
15 and from chambers of a low air loss patient supported
16 air mattress.
17 BY MR. HARKINS:
18 Q Okay. And that's what the inventor listed
19 as the field of invention of that patent. Right?
20 A That's correct.
21 Q Okay. What is a low air loss patient
22 supporting air mattress?
23 A As described in the patent itself, it looks
24 like it's a mattress that has some venting associated
25 with it.

Page 138

1 Q And when you say some venting associated
2 with it, you mean that it's got holes in various
3 chambers of the mattress?
4 A Yes.
5 Q Okay. Why?
6 A These, I think, were for medical -- that
7 particular application is for medical -- let me get
8 the exact reason here. It's in my report. I've
9 looked at the patent.
10 Q Let me draw your attention to one thing. At
11 column two around line 59 it says: Air mattress 400
12 has a large number of small holes in its upper
13 surfaces to permit air to constantly circulate around
14 a supported patient.
15 A Yes. That's what I was looking for.
16 Q So the holes are actually there for a
17 reason. Right?
18 A In this particular embodiment, yes.
19 Q Right. I mean, the reason that -- that's
20 what a low air loss mattress is. The field of the
21 invention low air loss mattress is meaning that it's
22 supposed to lose air at a certain rate. Correct?
23 A Yeah. That would be a low air loss
24 mattress.
25 Q Okay. And that's the field of invention

Page 139

1 that the inventor said he was --
2 A That's what he described as his field of
3 invention, yes.
4 Q Okay. So the mattress that's discussed in
5 this patent is specifically designed to circulate air
6 around a patient.
7 A That's one of them. They also talk about,
8 you know, that the system itself could be used for --
9 is more versatile than that and could be used for -- I
10 forgot the exact words, but other types of mattresses
11 as well, so it lists those somewhere. I'd have to
12 find it again. He talks about some constant pressure
13 mattresses and a rotational mattress. It certainly
14 could be used for other types of mattresses as well.
15 Q Well, a constant pressure -- there is such a
16 thing as a low air loss constant pressure mattress.
17 Right?
18 A He's talking about other types of
19 mattresses, so I viewed that as talking about not low
20 air loss mattresses but I could use it for other types
21 of mattresses and that he was talking about the
22 versatility of the system.
23 Q Are you familiar with the area of medical
24 patient supporting mattresses that use air? Are you
25 familiar with that as a general category?

Page 140

1 A I wouldn't say I know everything about all
2 the air supplying mattresses in the medical community.
3 Q Have you ever gone to like a website where
4 they sell these kinds of medical beds?
5 A I have not.
6 Q Okay. So you're not aware whether or not a
7 low air loss mattress can also be a constant pressure
8 mattress?
9 A Well, I think it probably can. I'm not
10 saying that. I just think that what he's talking is
11 other types of mattresses.
12 Q Do you think that he's talking about other
13 types of non-medical mattresses?
14 A I thought he could be, yes.
15 Q Even though constant pressure is a kind of
16 patient mattress that you would use low air loss for.
17 A I think that would be very similar to the
18 type of mattress that he's already got which is
19 porous.
20 Q Right. The field of use is a porous
21 mattress. That's what he's talking about as a --
22 that's what he's defining as the field of the
23 invention here.
24 MR. DODGE: Objection. Form.
25 A I think he's talking about I could go



800.211.DEPO (3376)
EsquireSolutions.com

<p style="text-align: right;">Page 141</p> <p>1 outside of that field as well.</p> <p>2 BY MR. HARKINS:</p> <p>3 Q Is that your understanding, that when an</p> <p>4 inventor defines a field of invention what they're</p> <p>5 trying to do is go beyond that field of invention in</p> <p>6 the patent?</p> <p>7 A Well, let me find the exact words.</p> <p>8 Q You've got your report in front of you. If</p> <p>9 you're relying on something you can look at it. I'm</p> <p>10 not trying to hide anything from you.</p> <p>11 A It basically says the correlating system ten</p> <p>12 is highly versatile and can be used to supply air to</p> <p>13 various types of air mattresses such as a rotational</p> <p>14 therapy mattress, a pulsating mattress or a constant</p> <p>15 pressure mattress.</p> <p>16 Q Those are all patient based mattresses.</p> <p>17 Right?</p> <p>18 MR. DODGE: Objection. Form.</p> <p>19 A I just call it various types of air</p> <p>20 mattresses. It doesn't say various types of patient</p> <p>21 air mattresses.</p> <p>22 BY MR. HARKINS:</p> <p>23 Q The three that you list are all ones you'd</p> <p>24 find in medical mattresses. Correct?</p> <p>25 MR. DODGE: Objection. Form.</p>	<p style="text-align: right;">Page 143</p> <p>1 know, porous parts to it, yes.</p> <p>2 Q Okay. And you expect there to be porous</p> <p>3 parts to it because that's how you treat things like</p> <p>4 skin ulcers and avoid skin breakdown in patients.</p> <p>5 Correct?</p> <p>6 A That's certainly -- it says it here, and I</p> <p>7 agree with it.</p> <p>8 Q This also says -- and so these types of</p> <p>9 mattresses -- I think you mentioned this before. The</p> <p>10 types of mattresses that they're talking about in Wu</p> <p>11 are supposed to be in continuous use, right, not just</p> <p>12 for ten minutes, but cycling or potentially staying on</p> <p>13 for a long time. Right?</p> <p>14 MR. DODGE: Objection. Form.</p> <p>15 A Certainly, if you have continuous flow</p> <p>16 through it you've got to have your fan or blower</p> <p>17 operating.</p> <p>18 BY MR. HARKINS:</p> <p>19 Q I want to turn your attention to the second</p> <p>20 page of this Exhibit 366. And then this talks about</p> <p>21 how combination low air loss with alternating pressure</p> <p>22 works. That was another type of mattress that you</p> <p>23 mentioned basically in the Wu patent. Right?</p> <p>24 A Yes, that's correct.</p> <p>25 Q Okay. And the last sentence here says:</p>
<p style="text-align: right;">Page 142</p> <p>1 A You certainly can find rotational therapy</p> <p>2 mattresses there and a pulsating mattress, but a</p> <p>3 constant pressure mattress could be a lot of different</p> <p>4 things.</p> <p>5 BY MR. HARKINS:</p> <p>6 Q Okay. So given that he's defined the field</p> <p>7 of this invention as being low air loss patient</p> <p>8 supporting mattresses and the examples he's giving are</p> <p>9 all things that are available with that kind of</p> <p>10 mattress, you nonetheless think that he was actually</p> <p>11 telling people to go beyond the patient therapy area</p> <p>12 and look to have other applications. Is that your</p> <p>13 testimony?</p> <p>14 A I think that's one way to read what he's got</p> <p>15 here, that this could be used for other mattresses.</p> <p>16 (Plaintiff's Deposition Exhibit 366 marked</p> <p>17 for identification and attached to the deposition.)</p> <p>18 BY MR. HARKINS:</p> <p>19 Q I've marked as Exhibit 366 a web printout</p> <p>20 that I just pulled offline about how low air loss</p> <p>21 mattresses work. Have you done any investigation into</p> <p>22 how low air loss mattresses work other than reading</p> <p>23 Wu?</p> <p>24 A Other than that, I knew that you could have</p> <p>25 low air loss mattresses, and I expect there to be, you</p>	<p style="text-align: right;">Page 144</p> <p>1 Higher powered pumps and blowers are required to</p> <p>2 attain true low air loss. Is that correct?</p> <p>3 A That's what it says, yes.</p> <p>4 Q And do you have any reason to think that</p> <p>5 that's an incorrect statement?</p> <p>6 A No, I don't think it's incorrect.</p> <p>7 (Plaintiff's Deposition Exhibit 367 marked</p> <p>8 for identification and attached to the deposition.)</p> <p>9 BY MR. HARKINS:</p> <p>10 Q I've marked as Exhibit 367 another page from</p> <p>11 the same website. It's just an example of one of the</p> <p>12 low air loss mattresses that's being offered. The</p> <p>13 first page just ended up printing up blank, basically</p> <p>14 blank for some reason. Do you see the picture on the</p> <p>15 second page, the picture at the top of the second</p> <p>16 page?</p> <p>17 A Yes.</p> <p>18 Q And you'll see it says prevent, treat and</p> <p>19 manage pressure ulcers.</p> <p>20 A Yes.</p> <p>21 Q This is the type of air mattress that Wu is</p> <p>22 talking about, isn't it? This is an example of that?</p> <p>23 MR. DODGE: Objection. Form.</p> <p>24 A This is certainly one of the types he's</p> <p>25 talking about, yes.</p>

Page 145

1 BY MR. HARKINS:
2 Q So do you know, is the anticipated use for
3 this type of mattress that it's going to be like
4 resident in a larger bed frame on an ongoing basis?
5 MR. DODGE: Objection. Form.
6 A Whether they would use this in a larger bed
7 frame?
8 BY MR. HARKINS:
9 Q That's how you typically find this kind of
10 mattress. It's a patient mattress that tends to be
11 used in a commercial setting. Right?
12 A Yeah. This particular mattress, I wouldn't
13 expect it to be in a larger bed frame.
14 Q Okay. If you're going to -- do you see that
15 this has a separate control panel? Right?
16 A Yes.
17 Q And that's the way the Wu patent is done.
18 It has a separate pump and control panel from the
19 actual air mattress itself?
20 MR. DODGE: Objection. Form.
21 A I believe that's correct.
22 BY MR. HARKINS:
23 Q Okay. So even though -- so this mattress
24 that we're talking about in 367, I mean, this -- I
25 think this says actually you can use this at home,

Page 146

1 too. Right? This is for -- this one is a more
2 versatile commercial and home model?
3 A I'm sorry. Which one now?
4 Q 367. It says you can use these for home
5 term care.
6 A You're talking about this 367.
7 Q Right.
8 A I'm sorry. Let me look just a second.
9 Q It's page three of seven at the bottom that
10 says prevent, treat and manage pressure ulcers in the
11 home. Do you see that?
12 A Not yet, but I'm looking. Where it says Med
13 Aire right here?
14 Q Underneath that, the first words in the
15 description.
16 A I'm sorry. I've got it, yeah.
17 Q And then if you look at the next page, when
18 it talks about alternating pressure it talks about how
19 you can cycle these things for 25 minutes. Right?
20 A 10, 15, 25 and 25, yes.
21 Q And that doesn't mean it turns off after 25
22 minutes. That alternating pressure is putting
23 different amounts of pressure in each of the different
24 cells in a cycle. Correct?
25 MR. DODGE: Objection. Form.

Page 147

1 A Yeah. It looks like you're cycling the
2 bladders. It's called bladders here, yeah.
3 BY MR. HARKINS:
4 Q And in this model you can actually -- this
5 is one that you can actually roll up and store.
6 Right? Let's go to the next page 5 of 7 under Product
7 Features.
8 A Product rolls up for easy storage and
9 handling, yes.
10 Q But, nonetheless, the control unit is
11 external to the mattress.
12 MR. DODGE: Objection. Form.
13 A Yes. It shows an external controller, yeah.
14 BY MR. HARKINS:
15 Q Have you done any investigation to determine
16 whether people have ever decided to start building
17 pumps into the side of this kind of a mattress in your
18 life over the last 20 years?
19 MR. DODGE: Objection. Form.
20 A No. I didn't do any study on this kind of
21 mattress.
22 BY MR. HARKINS:
23 Q You said somebody 20 years ago -- excuse
24 me -- that somebody in the 2000-2001 time frame would
25 be motivated to take the pump, the external pump, and

Page 148

1 put it into -- build it into the mattress. Right?
2 A Well, you still have the motivations, and
3 then if you have these things sticking out the back
4 this actually could get hit. I mean, there's some
5 motivation for why you'd want to invent these in.
6 Q Okay. So you admit that Wu does not
7 disclose a built-in pump. Correct?
8 A That's correct.
9 Q Okay. But what you say in all four of your
10 obviousness arguments is that somebody would be
11 motivated to modify Wu to build the pump in in the
12 year 2000 and 2001. Right?
13 A Yes.
14 Q But for the last 18 years people have seen
15 that there's built-in pumps in the marketplace in air
16 beds. Right?
17 MR. DODGE: Objection. Form.
18 A Yes. I think that's correct.
19 BY MR. HARKINS:
20 Q And even knowing, even actually having
21 hindsight and knowing that that exists in the
22 marketplace, they're not building the pumps into these
23 types of mattresses in the commercial setting today.
24 Right?
25 MR. DODGE: Objection. Form.



800.211.DEPO (3376)
EsquireSolutions.com

<p style="text-align: right;">Page 149</p> <p>1 A That, I don't know.</p> <p>2 BY MR. HARKINS:</p> <p>3 Q Did you do any investigation to determine if</p> <p>4 that's true?</p> <p>5 A Whether people are building these into the</p> <p>6 beds?</p> <p>7 Q Sure.</p> <p>8 A No, I have not.</p> <p>9 Q I mean, if you're trying to say it would be</p> <p>10 obvious to do it and you have 20 years of hindsight to</p> <p>11 be able to see if it ever actually happened with the</p> <p>12 benefit of knowing about this invention, don't you</p> <p>13 think that's something that you would want to know for</p> <p>14 your analysis?</p> <p>15 MR. DODGE: Objection. Form.</p> <p>16 A Well, this particular document doesn't say</p> <p>17 people haven't done it.</p> <p>18 BY MR. HARKINS:</p> <p>19 Q You didn't find out. Right?</p> <p>20 A I think that's true.</p> <p>21 Q Okay. You don't have any example sitting</p> <p>22 here today that anybody's ever built a pump into the</p> <p>23 side of one of these medical low air loss mattresses</p> <p>24 sitting here right now, do you?</p> <p>25 A No, I do not.</p>	<p style="text-align: right;">Page 151</p> <p>1 alternative mattresses. It doesn't necessarily have</p> <p>2 to be this kind of mattress.</p> <p>3 BY MR. HARKINS:</p> <p>4 Q So you're going back to the one where the</p> <p>5 alternative mattresses it gives gives examples of</p> <p>6 other patient supporting mattresses, and you're saying</p> <p>7 that your opinion is that that means you would apply</p> <p>8 it to air beds.</p> <p>9 MR. DODGE: Objection. Form.</p> <p>10 A It just says it's highly versatile. So if</p> <p>11 I'm asking, let's say, my students to come up with</p> <p>12 something for inflating beds, I definitely would</p> <p>13 expect they would find this material. And it talks</p> <p>14 about how I could do it to inflate and deflate, so I'd</p> <p>15 expect them to know how to do it.</p> <p>16 Q Looking at the Wu patent -- you've got that</p> <p>17 in front of you. Right?</p> <p>18 A Yes.</p> <p>19 Q Exhibit 365. Column one, line 35, it says:</p> <p>20 Another object of the present invention is to provide</p> <p>21 an air mattress, air supply and control system having</p> <p>22 a fan and motor that will not overheat, as is now the</p> <p>23 case with many existing systems. Right?</p> <p>24 A Yes.</p> <p>25 Q So the concept that you could have this</p>
<p style="text-align: right;">Page 150</p> <p>1 Q Okay. But you still opine that it would</p> <p>2 have been obvious to do so.</p> <p>3 A Yes.</p> <p>4 Q Do you know what the price range for this</p> <p>5 type of mattress is?</p> <p>6 A Well, it looks like it's a thousand dollars.</p> <p>7 Q That's the one for home use. Right? That's</p> <p>8 the one you can roll up and store and use at your</p> <p>9 house. Okay? You know they go for a lot more than</p> <p>10 that as well. Correct?</p> <p>11 MR. DODGE: Objection. Form.</p> <p>12 A I'm sure they could, yes.</p> <p>13 BY MR. HARKINS:</p> <p>14 Q Okay. Do you have any idea about the market</p> <p>15 for this type of an air mattress, what the pricing is,</p> <p>16 other than the fact that that one lists for a discount</p> <p>17 of a thousand bucks?</p> <p>18 A I don't know exactly what the medical</p> <p>19 community pays for air mattresses.</p> <p>20 Q The beds that you would actually see with</p> <p>21 this kind of an invention, the Wu invention in it,</p> <p>22 they're a considerably higher price point than your</p> <p>23 average air bed that you find at a Wal-Mart. Right?</p> <p>24 MR. DODGE: Objection. Form.</p> <p>25 A Except it says it can be used for</p>	<p style="text-align: right;">Page 152</p> <p>1 overheat was a problem that was identified in Wu.</p> <p>2 Correct?</p> <p>3 A Yes.</p> <p>4 MR. DODGE: Objection to form.</p> <p>5 BY MR. HARKINS:</p> <p>6 Q And the specific design that's shown in</p> <p>7 figure one, one of the objects of the present</p> <p>8 invention was to avoid overheating. Right?</p> <p>9 A This particular mattress that's continually</p> <p>10 flowing, yes.</p> <p>11 Q Okay. That's one of the reasons why the</p> <p>12 components are separate. Right?</p> <p>13 MR. DODGE: Objection. Form.</p> <p>14 A I don't know why that would matter in terms</p> <p>15 of the components being separate.</p> <p>16 BY MR. HARKINS:</p> <p>17 Q Well, if you have access to better airflow</p> <p>18 might not putting them in close quarters, that could</p> <p>19 help with heat management. Right?</p> <p>20 MR. DODGE: Objection. Form.</p> <p>21 A Well, but their solution they talked about</p> <p>22 in here was to continually vent things out to the</p> <p>23 atmosphere so you have a high enough flow rate, but</p> <p>24 there's other ways around that problem. That's not</p> <p>25 the only way you can do it.</p>

Page 153

1 BY MR. HARKINS:
2 Q So Wu has separate components and it
3 continually vents air as well. Correct?
4 MR. DODGE: Objection. Form.
5 A I'm not sure the separate components matters
6 that much. These are kind of done schematically
7 anyway. They're not really drawn to scale here.
8 BY MR. HARKINS:
9 Q Well, not to scale, but these are -- I mean,
10 these are not just done schematically. I mean,
11 there's actual separate components shown in figure
12 one. Right?
13 MR. DODGE: Objection. Form.
14 A Well, I even looked at the one you gave me,
15 and it looks like they packaged everything into a
16 housing.
17 BY MR. HARKINS:
18 Q Okay. This is a commercial product that's
19 like 18 years later or 20 years later than Wu, right,
20 that you're looking at right now?
21 MR. DODGE: Objection. Form.
22 A I don't know what the date on this document
23 is.
24 BY MR. HARKINS:
25 Q All right. In Wu it shows in figure one a

Page 154

1 variable speed blower 15. Right?
2 A Yes, it does.
3 Q Okay. And then it's got a control unit 50
4 that's listed separately and shown on the other side
5 of the page. Correct?
6 A Yes.
7 Q And it's got a control -- one second. And
8 it's got this rotary valve 100 that has various lines
9 coming out of it. Correct?
10 A Is that the rotary gate valve?
11 Q Yes. And the way that this is designed is
12 that it actually has separate lines going to each of
13 the cells in the air mattress. Correct?
14 MR. DODGE: Objection. Form.
15 A This particular one, that's correct, and so
16 these are controlled obviously by different sensors.
17 BY MR. HARKINS:
18 Q You say this particular one. This is the
19 embodiment of the patent. Right? Is there some other
20 embodiment of the patent that you're thinking about?
21 MR. DODGE: Objection to form.
22 A It just talks about that I could use this
23 for a variety of mattresses.
24 BY MR. HARKINS:
25 Q It doesn't define what -- I mean, other than

Page 155

1 saying these are other mattresses that you could use a
2 multi-chamber air bed with, it doesn't define what it
3 means by other mattresses. Right?
4 MR. DODGE: Objection to form.
5 A One of them is a constant pressure mattress,
6 which the simplest one has an airtight mattress.
7 BY MR. HARKINS:
8 Q Is it your testimony that a constant
9 pressure mattress means it's not in the configuration
10 shown in figure one?
11 MR. DODGE: Objection. Form.
12 A If what you're after is a constant pressure
13 mattress, assuming these constant, you would want to
14 have separate chambers.
15 BY MR. HARKINS:
16 Q Are you familiar with the commercial term
17 "constant pressure mattress" in the medical field?
18 MR. DODGE: Objection. Form.
19 A I'm not as familiar with that, no.
20 BY MR. HARKINS:
21 Q Okay. Would it surprise you to find that
22 they use that term to talk about the kind of mattress
23 that's shown in figure one?
24 MR. DODGE: Objection. Form.
25 A I don't know if it would surprise me. I

Page 156

1 just haven't seen it.
2 Q This does have pressure sensors in each of
3 the cells. Right?
4 A Yeah. That's to actually run different
5 pressures in different spots.
6 Q It could do both. Right? It could run
7 different pressures in different spots or it could run
8 the same pressure across all the spots. Right?
9 A But that would be a really expensive way to
10 do it.
11 Q If you wanted the versatility of being able
12 to do it either way you can use the sensors for the
13 same purpose. Right?
14 A If you wanted to do it both ways, yes.
15 Q You said this has a statement in it that you
16 could use this invention with a variety of mattresses.
17 Is there anything other than figure one that's
18 discussed that is actually called a separate
19 embodiment in the patent?
20 MR. DODGE: Objection. Form.
21 A I don't believe so.
22 BY MR. HARKINS:
23 Q You're an inventor on some patents. Right?
24 A Yes, I am.
25 Q And you've analyzed patents before.

<p style="text-align: right;">Page 157</p> <p>1 A I have, yes.</p> <p>2 Q Okay. As an expert witness.</p> <p>3 A Yes, I have.</p> <p>4 Q And the word "embodiment" in patents has a</p> <p>5 meaning. Right?</p> <p>6 A Yes, it does.</p> <p>7 Q It's their fully realized examples of the</p> <p>8 patent that the patent needs presenting. Correct?</p> <p>9 MR. DODGE: Objection. Form.</p> <p>10 A Yes.</p> <p>11 BY MR. HARKINS:</p> <p>12 Q So saying that you can use this in other</p> <p>13 settings is not an embodiment in the patent, is it?</p> <p>14 MR. DODGE: Objection. Form.</p> <p>15 A It may not be covered by the claims. That's</p> <p>16 correct.</p> <p>17 MR. HARKINS: Let's take a break.</p> <p>18 THE VIDEOGRAPHER: We are off the record at</p> <p>19 2:08.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: Here begins media number</p> <p>22 three in the video recorded deposition of Dr. Joseph</p> <p>23 Beaman. We're back on the record at 2:21.</p> <p>24 BY MR. HARKINS:</p> <p>25 Q Can you look at your report on page A-45,</p>	<p style="text-align: right;">Page 159</p> <p>1 Excuse me. A-108.</p> <p>2 A Yes.</p> <p>3 Q In paragraph 177 you say: Wu disclosed</p> <p>4 several of the claimed features, see green</p> <p>5 highlighting, but not all, see red highlighting.</p> <p>6 Correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. When you say claimed features,</p> <p>9 though, you just said you're not relying on these</p> <p>10 charts to say that it actually meets the claims in</p> <p>11 this case. Right?</p> <p>12 A No, because the claim elements are much more</p> <p>13 detailed than this.</p> <p>14 Q Okay. So if we want to know what your</p> <p>15 analysis of claimed elements is we can't use these</p> <p>16 charts. We have to go and look at what you said in</p> <p>17 the body of the text where you talked about those.</p> <p>18 Right?</p> <p>19 A Yes.</p> <p>20 Q Okay. The red shaded ones, those are things</p> <p>21 you say are not in Wu. Correct?</p> <p>22 A Yeah. Built into inflatable body and</p> <p>23 components contained in a housing, yes.</p> <p>24 Q Okay. So in that case those were two things</p> <p>25 you said Wu does not disclose. Right?</p>
<p style="text-align: right;">Page 158</p> <p>1 please?</p> <p>2 A Yes.</p> <p>3 Q Okay. On this page you line the '394 patent</p> <p>4 out to something called a basic design table. Is that</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q Are you relying on -- you have a lot of</p> <p>8 these basic design tables throughout the '394</p> <p>9 discussion. Correct?</p> <p>10 A Yeah. I have various ones of these, yes.</p> <p>11 Q These are not -- these design options that</p> <p>12 you've got in here, these are not the exact claim</p> <p>13 language for the claims that are being asserted for</p> <p>14 the '394 patent. Right?</p> <p>15 A No. These are more about looking at the</p> <p>16 prior art and history and if I was really designing</p> <p>17 this or my students were designing this what things</p> <p>18 they would actually look at to build something.</p> <p>19 Q Are you relying on the basic design table in</p> <p>20 the shaded regions you have here to find invalidity</p> <p>21 due to prior art?</p> <p>22 MR. DODGE: Objection. Form.</p> <p>23 A No.</p> <p>24 BY MR. HARKINS:</p> <p>25 Q All right. Let's turn to page A-114.</p>	<p style="text-align: right;">Page 160</p> <p>1 A In terms of these design features, yes.</p> <p>2 Q Okay. All right. So then after you do the</p> <p>3 design features you actually start on page A-109</p> <p>4 talking about -- and I want to make sure I have the</p> <p>5 context correct. Let's back up for a second. A-107</p> <p>6 is the beginning of your discussion of ground one of</p> <p>7 invalidity. Do you see that?</p> <p>8 A Yes, I do.</p> <p>9 Q Okay. And we talked about ground one of</p> <p>10 invalidity is that you would take Wu, the design of</p> <p>11 Wu, and modify it based on what you learned from</p> <p>12 Chaffee. Correct?</p> <p>13 A In view of in combination with Chaffee, yes.</p> <p>14 Q All right. So after the tables you get to</p> <p>15 the actual claim language of claim one starting at</p> <p>16 page A-109. Is that right?</p> <p>17 A Yes.</p> <p>18 Q Okay. And we can skip the preamble. On</p> <p>19 page A-112 you talk about inflatable body.</p> <p>20 A Yes.</p> <p>21 Q Okay. You say in paragraph 183: Wu</p> <p>22 disclosed an inflatable body in the form of an air</p> <p>23 mattress. Is that right?</p> <p>24 A Yes.</p> <p>25 Q Okay. Not according to the court's claim</p>

Page 161

1 construction, though. Right?

2 MR. DODGE: Objection. Form.

3 A Yes. I was basically saying that a constant

4 pressure mattress would likely be basically an

5 airtight mattress.

6 BY MR. HARKINS:

7 Q You're saying that Wu is disclosing an

8 airtight mattress?

9 A Based on the constant pressure disclosure.

10 Q We talked about how you could use pressure

11 sensors that are already disclosed in Wu to maintain

12 constant pressure with the holes still being in the

13 chambers. Right?

14 MR. DODGE: Objection. Form.

15 A But that would be using exactly the same

16 type mattress, not an alternative mattress.

17 BY MR. HARKINS:

18 Q You're basing this on the word "constant

19 pressure" as an actual disclosure in Wu, but you told

20 me that constant pressure doesn't necessarily disclose

21 a mattress with no holes in it.

22 MR. DODGE: Object to the form of the

23 question.

24 A No. I just said that you could make a

25 mattress be all constant pressure under that system,

Page 162

1 but if I have an alternative mattress I wouldn't want

2 to have all those chambers. There would just be one

3 chamber. And I wouldn't want to have porous things

4 out of it. I would want to make it constant pressure.

5 BY MR. HARKINS:

6 Q But in Wu you want those things because

7 that's what Wu is talking about, a patient supporting

8 mattress. Right?

9 MR. DODGE: Objection. Form.

10 A In the first air mattress, but not these

11 alternative air mattresses.

12 BY MR. HARKINS:

13 Q Okay. So the alternative air mattresses we

14 talked about don't necessarily disclose mattresses

15 that don't have holes in them. It doesn't say one way

16 or the other. Right?

17 MR. DODGE: Objection. Form.

18 A Other than it says it's --

19 BY MR. HARKINS:

20 Q Constant pressure.

21 A Let me get to my report. It says an

22 alternative air mattress is a constant air mattress.

23 Q A constant pressure mattress. Right?

24 A A constant pressure mattress. I'm sorry. I

25 basically said that I think that would be a single

Page 163

1 chamber structure.

2 Q What are you basing that on? That's not

3 said in Wu. Right?

4 A It's not, but I think you would understand

5 it that way, because if I want it to be the same

6 pressure everywhere why would I have separate

7 chambers?

8 Q Because otherwise your patient gets ulcers.

9 MR. DODGE: Objection. Form.

10 BY MR. HARKINS:

11 Q Because that's what Wu is talking about.

12 The field of the invention for Wu is a low air loss

13 patient supporting mattress.

14 A I disagree.

15 Q I'm sorry. You disagree that that's the

16 field of invention for Wu?

17 A No. I disagree that this particular

18 disclosure is talking about a porous mattress. This

19 one is basically a single chamber and to make it

20 constant pressure, most of the usual ones of those are

21 airtight.

22 Q Does Wu say anywhere single chamber? Is

23 that actually disclosed in Wu? Does it say a single

24 chamber?

25 A No, it does not.

Page 164

1 Q Okay. You've interpreted the words

2 "constant pressure" to mean single chamber. Right?

3 That's your interpretation.

4 A That's what I would understand it to --

5 Q But we also talked about how you could do

6 constant pressure using the sensors that Wu already

7 discloses. Right?

8 A Well, not if it's the alternative air

9 mattress, because that would be going back to the

10 former air mattress.

11 Q So that's what -- where does it -- okay.

12 Hold on a second. Just give me a second here. Where

13 does the word "alternative" appear in column four?

14 A I'm sorry. It talks about connecting to

15 another type of mattress.

16 Q It says various types of air mattresses.

17 Right? It doesn't say another type of air mattress.

18 It says various types of air mattresses.

19 MR. DODGE: Objection. Form.

20 A In column four, line 38: System 10 may also

21 be connected to another type of mattress.

22 BY MR. HARKINS:

23 Q Right. Okay. The other type is still a

24 multi-chambered mattress that it's talking about.

25 A It says: It can be highly versatile and can

<p style="text-align: right;">Page 165</p> <p>1 be used to supply air to various types. 2 Q Right. And the various types it talks about 3 are rotational therapy, pulsating mattress or constant 4 pressure mattress. Those are the types. 5 A Or constant pressure mattress, right. 6 Q And do you know whether or not the patent 7 discloses that it can actually use the sensors to 8 maintain pressure in the compartment? 9 MR. DODGE: Objection to form. 10 A I'm sorry. 11 BY MR. HARKINS: 12 Q Do you know whether or not this actually 13 patent discloses that it can use the sensors in the 14 chambers to maintain particular pressure in those 15 chambers? 16 MR. DODGE: Same objection. 17 A It probably does. I mean, I'd have to look 18 at the claims. 19 BY MR. HARKINS: 20 Q At paragraph 185 -- 21 A Do you want me to look at -- 22 Q I just wanted to know if you knew or not. 23 You said you'd have to go back and -- 24 A I'd have to go and read it. 25 Q I have time limitations. Let's move to the</p>	<p style="text-align: right;">Page 167</p> <p>1 Q Okay. The embodiment is actually the 2 example that's described in the specification. Right? 3 That's what an embodiment is. Right? 4 A Yeah, but I'm talking about the claims 5 themselves, whether they actually say anything about 6 porous mattresses. I don't actually see it yet. 7 Q The only figure that shows the actual air 8 mattress in Wu is figure one. Is that correct? 9 A It's the only one that shows a mattress, 10 yes. 11 Q Okay. And that one is porous. Right? 12 Correct? 13 A As described in the specification. 14 Q If you take figure one and you turn off the 15 pump the chambers in the air mattress will lose air. 16 Correct? 17 A Of this particular mattress, yes. 18 Q Under ground one your opinion is that you 19 would start with Wu, you would look at Chaffee, and 20 you would modify Wu to use an airtight bladder. Is 21 that right? 22 MR. DODGE: Objection. Form. 23 A On the first ground I said that Wu discloses 24 a constant air pressure mattress which I view to be as 25 substantially airtight.</p>
<p style="text-align: right;">Page 166</p> <p>1 next paragraph, 185 on page A-113 in your report. 2 Actually, I'm interested in the top of A-114. It's 3 the last sentence. You say: Therefore, Wu's porous 4 air mattress does not constitute an inflatable body as 5 the court construed this term to include a 6 substantially airtight requirement. 7 Did I read that correctly? 8 A Yes. 9 Q And that is your opinion in this case. 10 Right? 11 A Yeah. Wu's porous air mattress, right. 12 Q And the only embodiment that's actually 13 enabled or like that's described fully in Wu, if you 14 turn off the pump it will -- the bed will lose air. 15 Correct? 16 MR. DODGE: Objection. Form. 17 BY MR. HARKINS: 18 Q The air mattress. 19 A The reason I'm reading this is because 20 you're asking me an embodiment which now would be a 21 claim. 22 Q Well, an embodiment may or may not be 23 claimed. 24 A I'm just looking at the claims now. I'm not 25 sure it claims anything about porous mattresses.</p>	<p style="text-align: right;">Page 168</p> <p>1 BY MR. HARKINS: 2 Q So you're not using Chaffee to say that you 3 would modify Wu to make it airtight? 4 MR. DODGE: Objection. Form. 5 A Let me look through my report. I do not 6 think in ground one that is true. Under inflatable 7 body -- I do say if the court finds that this constant 8 pressure mattress does not constitute an inflatable 9 body it would have found this to be obvious in view of 10 Chaffee's substantially fluid impermeable body. 11 BY MR. HARKINS: 12 Q Okay. If you're taking Wu and you modify it 13 to make the whole thing airtight, that no longer 14 provides the ventilation objective that Wu sets out. 15 Is that correct? 16 MR. DODGE: Objection to form. 17 A It wouldn't be porous. 18 BY MR. HARKINS: 19 Q At page 116 you have the next limitation in 20 the '394 patent, a housing built into the inflatable 21 body, the housing having an interior region. Do you 22 see that? 23 A Yes. 24 Q Okay. Now, your opinion here is that Wu 25 does not disclose that. Correct?</p>

Page 169

1 A Yes. He does not have a housing.
2 Q Does Wu -- to your mind, does Wu provide
3 reasons why it's a good idea to have the pump outside
4 of the air mattress?
5 MR. DODGE: Object to the form of the
6 question.
7 A I'm sorry. Ask the question again. Sorry.
8 BY MR. HARKINS:
9 Q Well, having read Wu, do you think there's
10 some advantage to having the pump outside of the air
11 mattress in Wu?
12 MR. DODGE: Same objection.
13 A No. I don't think it specifically said
14 there was some advantage to having it outside.
15 BY MR. HARKINS:
16 Q Well, as an engineer do you think there are
17 some advantages to having the pump outside the
18 mattress in a system like figure one in Wu?
19 MR. DODGE: Same objection.
20 A I don't think there's any advantages to
21 keeping separate components, if that's what you mean.
22 I think it would be better to house them.
23 BY MR. HARKINS:
24 Q Okay. Does Wu say the components are not
25 housed?

Page 170

1 A I don't think he says that they're not
2 housed, but he doesn't disclose that they're housed.
3 Q All right. Fine. My question was actually
4 a totally different question. My question was: Are
5 there some advantages that you can think of as to why
6 you would want the pump to be external to the air
7 mattress in Wu?
8 A I could probably think of something. You
9 know, maybe you could replace the components easier or
10 something.
11 Q Anything else?
12 A Nothing comes to mind. I think it would be
13 better to actually get them into a housing and out of
14 the way.
15 Q Okay. Whether it's in a housing or not,
16 that's really a separate issue from whether that
17 housing is then incorporated into the air mattress,
18 though. Right?
19 A Yes, but if you bring that out there's more
20 space saving, and I know hospitals are going to worry
21 about space saving. I don't think that's going to go
22 away.
23 Q Okay. So then since this patent's been
24 around and commercial products have been around for
25 the better part of 20 years we should be seeing that

Page 171

1 happen in the marketplace today, right, that hospitals
2 will put the pump inside the air bed?
3 MR. DODGE: Objection to form.
4 A I'm not going to make suggestions like that.
5 That gets into all kinds of marketing regions. I do
6 know Wu had another patent after this and he did put
7 components in a housing.
8 BY MR. HARKINS:
9 Q In a housing, right, but the housing not
10 inside the inflatable chamber?
11 A I don't think it was inside the chamber.
12 Q And you talked about other Wu patents. In
13 the '394 patent, this patent wasn't necessarily
14 disclosed or looked at by the Patent Office, but there
15 were three other patents by the same inventor that
16 were a part of that process. Right?
17 A I believe that's correct.
18 Q Why don't you go ahead and verify that?
19 A '394, right?
20 Q Yeah.
21 A I do see two here. There was a '629 and a
22 '630.
23 Q Okay. And then there's another --
24 A There the other one. Right. '242.
25 Q And these patent claims issued over those Wu

Page 172

1 patents. Right?
2 A Again, I don't know if those are prior art,
3 though. Are those prior art?
4 Q You didn't look at that as part of your
5 analysis?
6 A I think they were not prior art, but I'd
7 have to look. I'd have to really at those. I don't
8 know when they issued.
9 Q Did you take a look at those as part of your
10 analysis for this case?
11 A I looked at the -- I know the one with the
12 housing. One did have a housing. I don't think I
13 looked at all three of them.
14 Q Okay. We talked about the housing built
15 into the inflatable body. That's at A-116 that we
16 were talking about. Correct?
17 A The housing built into the inflatable body,
18 yes.
19 Q Okay. And it's your opinion that that's not
20 disclosed in Wu. Correct?
21 A That's correct.
22 Q Okay. And what you rely on is that somebody
23 would see Chaffee and be able to use that to build the
24 housing into the inflatable body, and that's the
25 combination that would render this claim obvious. Is



800.211.DEPO (3376)
EsquireSolutions.com

<p style="text-align: right;">Page 173</p> <p>1 that right?</p> <p>2 A Certainly, it would get this element.</p> <p>3 Q Okay. If the jury finds that Chaffee</p> <p>4 doesn't disclose a housing built into an inflatable</p> <p>5 body in terms of this, then they would have to find</p> <p>6 that this ground doesn't render this obvious. Right?</p> <p>7 MR. DODGE: Objection to form.</p> <p>8 A Yes. I think I am relying on Chaffee to get</p> <p>9 a housing built into an inflatable body.</p> <p>10 BY MR. HARKINS:</p> <p>11 Q On page A-132, paragraph 218, the claim</p> <p>12 limitation -- we're still on claim one of the '394 --</p> <p>13 it says movable air conduit at least partially</p> <p>14 disposed in housing. Do you see that?</p> <p>15 A Yes, I do.</p> <p>16 Q In this one you say that Wu discloses a</p> <p>17 unidirectional pump assembly. Correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. In order to meet this claim and to</p> <p>20 have it built into the inflatable body, then, you</p> <p>21 would have to take the actual structure of the pump of</p> <p>22 Wu and take that and put it into the inflatable body.</p> <p>23 Right? You're not -- that's what you're saying here?</p> <p>24 MR. DODGE: Objection. Form.</p> <p>25 A Well, some of what Wu describes is actually</p>	<p style="text-align: right;">Page 175</p> <p>1 based prior art reference. Is that right?</p> <p>2 MR. DODGE: Objection. Form.</p> <p>3 A Do you have the patent?</p> <p>4 Q Yeah. Let's get that.</p> <p>5 (Plaintiff's Deposition Exhibit 368 marked</p> <p>6 for identification and attached to the deposition.)</p> <p>7 THE WITNESS: I'm not sure it said</p> <p>8 "patient." It certainly has porous structures.</p> <p>9 Q Porous structures meaning it's got holes in</p> <p>10 it. Right?</p> <p>11 A Yes, and it had a spring mattress.</p> <p>12 Q And the very beginning of the patent says:</p> <p>13 This invention patent relates to improvements in</p> <p>14 mattresses and has particular reference to the type</p> <p>15 known as, quote, inner spring mattresses, end quote.</p> <p>16 Right?</p> <p>17 A Yes. Where did you see that? I'm just</p> <p>18 trying to --</p> <p>19 Q That's the very first sentence of the --</p> <p>20 A The very first sentence. Okay.</p> <p>21 Q That's what we would refer to as like a</p> <p>22 regular mattress. Right?</p> <p>23 A Normally, an inner spring mattress would be</p> <p>24 a regular mattress, but this particular one has some</p> <p>25 porous holes in it.</p>
<p style="text-align: right;">Page 174</p> <p>1 -- it talks about a blower. It doesn't say what size</p> <p>2 and things of that nature, so it wouldn't be exactly</p> <p>3 that shape a blower, but basically what's taught there</p> <p>4 is a blower and a gate valve.</p> <p>5 BY MR. HARKINS:</p> <p>6 Q Okay. So you take the blower and the gate</p> <p>7 valve of Wu and you would combine it in a housing with</p> <p>8 the other components, and then what, shrink them down?</p> <p>9 MR. DODGE: Objection. Form.</p> <p>10 A I don't think there's any size really right</p> <p>11 now associated with the disclosure in Wu, other than</p> <p>12 it shows a blower and a gate and a valve, and some</p> <p>13 other things, too, obviously.</p> <p>14 BY MR. HARKINS:</p> <p>15 Q So you'd have to figure out how big to make</p> <p>16 this to keep the components of Wu but fit them in a</p> <p>17 housing and then fit the housing into the side of the</p> <p>18 air bed?</p> <p>19 A Yeah. That's what you'd do.</p> <p>20 Q Let's go to ground two. It starts at page</p> <p>21 A-174. For ground two again you're starting with Wu,</p> <p>22 but you're using the teachings of Goldsmith to modify</p> <p>23 Wu. Is that correct?</p> <p>24 A That's correct.</p> <p>25 Q Okay. Goldsmith is another kind of patient</p>	<p style="text-align: right;">Page 176</p> <p>1 Q Right. This is basically modifying the</p> <p>2 design of a regular mattress by making sure that</p> <p>3 you've got porous holes in it so that it will blow air</p> <p>4 out through the top. Correct?</p> <p>5 MR. DODGE: Objection. Form.</p> <p>6 A It certainly has outlets for air, yes.</p> <p>7 BY MR. HARKINS:</p> <p>8 Q And they're at the top of the mattress, and</p> <p>9 the idea is that they actually blow air at whoever's</p> <p>10 on the mattress. Correct?</p> <p>11 A Let's see. Yes.</p> <p>12 Q And the purpose of the invention in</p> <p>13 Goldsmith is to blow warmer or cooler air, depending</p> <p>14 on how you want air blown at you through the mattress.</p> <p>15 Correct?</p> <p>16 A I do know it has ways of heating the air. I</p> <p>17 don't remember if it talked about measuring the</p> <p>18 temperature.</p> <p>19 Q Okay. I mean, I don't --</p> <p>20 A Any desired temperature, yeah, so having</p> <p>21 means connected thereby for regulating to any desired</p> <p>22 temperature, yes.</p> <p>23 Q And the way it does that is there's a</p> <p>24 heating element, and you either blow air across the</p> <p>25 heating element or you turn it off and you just blow</p>

<p style="text-align: right;">Page 177</p> <p>1 air.</p> <p>2 A Yeah. It's mostly for heating air.</p> <p>3 Q Mostly for heating air. Okay. Using the</p> <p>4 court's construction of inflatable body, this is not</p> <p>5 an inflatable body. Right?</p> <p>6 A I did not use it for inflatable body.</p> <p>7 Q Right. You're combining it with Wu and</p> <p>8 you're saying Wu has an inflatable body.</p> <p>9 A Yes, for the same reasons we talked about.</p> <p>10 Q And the reason is because of that constant</p> <p>11 pressure.</p> <p>12 A Yes.</p> <p>13 Q Okay. And that's a disclosure that you said</p> <p>14 would let one of skill in the art know that it could</p> <p>15 be an airtight structure because it says constant</p> <p>16 pressure. That was your testimony?</p> <p>17 MR. DODGE: Objection. Form.</p> <p>18 A No. I just think that the mattress it</p> <p>19 starts with is porous, and so if it's an alternative</p> <p>20 and it's constant pressure, I think that the vast</p> <p>21 number of constant pressure mattresses are airtight.</p> <p>22 BY MR. HARKINS:</p> <p>23 Q Okay. Now, when it said constant pressure</p> <p>24 remember it didn't use the word "alternative" for</p> <p>25 that. Right?</p>	<p style="text-align: right;">Page 179</p> <p>1 necessarily comes from the teachings of the patent.</p> <p>2 Correct?</p> <p>3 MR. DODGE: Objection. Form.</p> <p>4 A Yes, I think that's true.</p> <p>5 BY MR. HARKINS:</p> <p>6 Q Okay. And you've already said that while</p> <p>7 you think one possibility of the disclosure of</p> <p>8 constant pressure is that it could be an airtight</p> <p>9 chamber that it also could also be using the pressure</p> <p>10 sensors to maintain constant pressure. Right?</p> <p>11 A Well, I don't think you'd want to use those</p> <p>12 pressure sensors to maintain constant pressure.</p> <p>13 Q You said it could be done.</p> <p>14 A It could be done, yeah.</p> <p>15 Q Okay. So it's not necessary that you make</p> <p>16 it an airtight chamber. Right?</p> <p>17 MR. DODGE: Objection. Form.</p> <p>18 A I think that's what it's disclosing. I</p> <p>19 believe that's what it's disclosing. When it starts</p> <p>20 talking about -- not all the types -- I forgot the</p> <p>21 exact word now. But, to me, when I read that at a</p> <p>22 constant pressure that it's going to be airtight, but</p> <p>23 also I note that if it was found not to be the case</p> <p>24 then I would use Chaffee's --</p> <p>25 BY MR. HARKINS:</p>
<p style="text-align: right;">Page 178</p> <p>1 A No, but it talked about other types of</p> <p>2 mattresses.</p> <p>3 Q It talked about various types of mattresses.</p> <p>4 A And various types of mattresses, right.</p> <p>5 Q Okay. And the alternative it talked about</p> <p>6 was just orienting the cells in a different direction.</p> <p>7 That's what we looked at. Correct?</p> <p>8 A Orienting --</p> <p>9 MR. DODGE: Objection to form.</p> <p>10 BY MR. HARKINS:</p> <p>11 Q Orienting the chambers of the -- when it</p> <p>12 said alternative it was talking about the orientation</p> <p>13 of the chambers of the --</p> <p>14 A The first one.</p> <p>15 Q Yes.</p> <p>16 A The first one, right.</p> <p>17 Q So are you familiar with the concept of</p> <p>18 inherency?</p> <p>19 A Yeah, some. Sure.</p> <p>20 Q We talked about that at the beginning of the</p> <p>21 deposition today, what you said about that in your</p> <p>22 report. Correct?</p> <p>23 A Yes.</p> <p>24 Q And you said it's not enough that it's</p> <p>25 possible or even probable, it has to be something that</p>	<p style="text-align: right;">Page 180</p> <p>1 Q But you can't do that for round two.</p> <p>2 A That's right.</p> <p>3 Q Okay. So if it turns out that you're wrong</p> <p>4 and constant pressure is something that's used to talk</p> <p>5 about porous air beds in the industry, then ground two</p> <p>6 doesn't work for obviousness. Right?</p> <p>7 MR. DODGE: Objection. Form.</p> <p>8 A If the constant pressure mattress is not an</p> <p>9 airtight structure, then, you know, I think that's</p> <p>10 correct.</p> <p>11 BY MR. HARKINS:</p> <p>12 Q Wu talks about being concerned with heat.</p> <p>13 Right? That's one of the things that it addresses?</p> <p>14 MR. DODGE: Objection. Form.</p> <p>15 A Yes, it does.</p> <p>16 BY MR. HARKINS:</p> <p>17 Q You don't want to introduce extra heat in</p> <p>18 Wu, correct, like it's trying to keep the temperature</p> <p>19 down?</p> <p>20 MR. DODGE: Objection to form.</p> <p>21 A It is trying with this blower to basically</p> <p>22 make sure that it doesn't overheat, yes.</p> <p>23 BY MR. HARKINS:</p> <p>24 Q In Goldsmith they put a heating element in</p> <p>25 the blower. Right?</p>

<p style="text-align: right;">Page 181</p> <p>1 A Yes.</p> <p>2 Q Let a talk about ground three. It starts at</p> <p>3 A-188. This ground three is Wu again, and this time</p> <p>4 it's being modified in light of Parienti. Correct?</p> <p>5 A Wu in combination with Parienti, yes.</p> <p>6 Q Okay. And Parienti is a solar photovoltaic</p> <p>7 powered air bed pump and cooler design. Right?</p> <p>8 MR. DODGE: Objection. Form.</p> <p>9 A Well, if I could get the patent first, I</p> <p>10 guess. I'm not disagreeing, I just --</p> <p>11 Q That's right.</p> <p>12 (Plaintiff's Deposition Exhibit 369 marked</p> <p>13 for identification and attached to the deposition.)</p> <p>14 BY MR. HARKINS:</p> <p>15 Q Parienti is by its own title an</p> <p>16 automatically inflatable, deflatable and foldable</p> <p>17 solar powered cooler mattress with a sunshade.</p> <p>18 Correct?</p> <p>19 A That is correct.</p> <p>20 Q And here you're using Parienti as an</p> <p>21 alternative for inflatable body if one finds that Wu</p> <p>22 doesn't disclose it. Right?</p> <p>23 A Yeah. Let me just find it for sure.</p> <p>24 Q I'm sorry. I'm looking at page 191.</p> <p>25 A 191. Okay. Yeah. Parienti discloses an</p>	<p style="text-align: right;">Page 183</p> <p>1 BY MR. HARKINS:</p> <p>2 Q Take a moment. I'd like to get it nailed</p> <p>3 down.</p> <p>4 A So housing built into the inflatable body,</p> <p>5 housing built into the inflatable body. You had to</p> <p>6 have a housing. Yes, I believe that's correct.</p> <p>7 Q All right. And in ground four you go back</p> <p>8 to the ground two where you combined Wu with</p> <p>9 Goldsmith, and the difference in ground four -- what's</p> <p>10 the difference in ground four?</p> <p>11 A Yeah. Let me just -- obvious in view of</p> <p>12 ground two in further combination with Chaffee and</p> <p>13 that Wu does not disclose an inflatable body and then</p> <p>14 Chaffee does disclose such a structure in bladder 20,</p> <p>15 including a substantially fluid impermeable bladder.</p> <p>16 Q So what you're doing is in the event that</p> <p>17 somebody finds Wu does not disclose -- if you don't</p> <p>18 have an inflatable body with Wu, that's what you're</p> <p>19 using Chaffee for in that combination. Is that right?</p> <p>20 A That is correct.</p> <p>21 Q All right. Are you using Chaffee for</p> <p>22 anything else in that combination?</p> <p>23 MR. DODGE: Objection. Form.</p> <p>24 A Let me look. I believe that's what we use</p> <p>25 it for.</p>
<p style="text-align: right;">Page 182</p> <p>1 inflatable mattress 5 for automatically inflating and</p> <p>2 deflating a mattress.</p> <p>3 Q Okay. And so for inflatable body the</p> <p>4 obviousness is if the jury finds that Wu doesn't</p> <p>5 disclose an inflatable body they can look at Parienti</p> <p>6 for that. Is that what you're saying?</p> <p>7 MR. DODGE: Objection to form.</p> <p>8 A Well, yeah, to the extent that Wu does not</p> <p>9 satisfy this limitation. That's correct.</p> <p>10 BY MR. HARKINS:</p> <p>11 Q Okay. And then the next limitation, the</p> <p>12 housing built into the inflatable body, we talked</p> <p>13 about that, and Wu doesn't have that. Right?</p> <p>14 A Wu does not have that, yes.</p> <p>15 Q Okay. And so in this combination under</p> <p>16 ground three you're relying on Parienti to fill that</p> <p>17 gap. Right?</p> <p>18 A Housing built into the inflatable body?</p> <p>19 Both of these features, yes.</p> <p>20 Q Okay. And otherwise -- I mean, that's it.</p> <p>21 I mean, those are the two things that you're trying to</p> <p>22 take from Parienti and add to Wu. Right?</p> <p>23 MR. DODGE: Objection. Form.</p> <p>24 A I want to -- I think that's correct, but I</p> <p>25 have to --</p>	<p style="text-align: right;">Page 184</p> <p>1 BY MR. HARKINS:</p> <p>2 Q Okay. And those are all the combinations</p> <p>3 where you say Wu is the primary reference for</p> <p>4 obviousness of the '394. Correct?</p> <p>5 A Yes, that is correct.</p> <p>6 (Plaintiff's Deposition Exhibit 370 marked</p> <p>7 for identification and attached to the deposition.)</p> <p>8 BY MR. HARKINS:</p> <p>9 Q I'm handing you what's been marked as</p> <p>10 Plaintiff's Exhibit 360 -- excuse me -- 370,</p> <p>11 Plaintiff's Exhibit 370. Do you recognize that?</p> <p>12 A Yes. This is the patent of Walker.</p> <p>13 Q This is the Walker patent. Okay. And the</p> <p>14 Walker patent is used as a primary reference for the</p> <p>15 next four grounds in your report. Correct?</p> <p>16 A That is correct.</p> <p>17 Q Now, the Walker patent was already reviewed</p> <p>18 by the Patent Office as part of the prosecution of the</p> <p>19 '394 patent. Right?</p> <p>20 A Let me just look. I think that's correct.</p> <p>21 Yes.</p> <p>22 Q And the Patent Office decided that '394</p> <p>23 patent claims were patentable over Walker. Right?</p> <p>24 MR. DODGE: Objection to form.</p> <p>25 A I'd have to go look at the actual -- it</p>

Page 185

1 certainly issued, but I don't know if it was
2 considered. I'd have to go back and look at the --
3 BY MR. HARKINS:
4 Q Well, if it's listed on the face of the
5 patent it's something that was disclosed to the Patent
6 Office, they had an opportunity to look at it, and
7 they issued the patent anyway. Is that right?
8 MR. DODGE: Objection. Form.
9 A Yes, I believe that, but I don't know if it
10 was exactly looked at.
11 BY MR. HARKINS:
12 Q Look at the other two patents. The other
13 two patents -- I want to confirm that Walker was also
14 looked at with respect to the other two patents.
15 A So this is the '018.
16 Q Okay, the '018 patent.
17 A What did I do with Walker? Oh, right here.
18 Yes, it was definitely on the face of the '018.
19 Q And on the '018 there's an asterisk that
20 indicates that it was cited by the examiner. Right?
21 A Yes, I believe that's correct.
22 Q Now let's look at the '950 patent.
23 A Actually, I'm taking your word for it that
24 that's what the asterisk means. I didn't actually
25 know that. Is that what it means?

Page 186

1 Q Don't worry about it. Don't care. Let's
2 just move on. Let's look at the '950.
3 A I actually didn't know that. It makes life
4 easier. And then the other one is the --
5 Q '950.
6 A The '950. Yes, it has an asterisk, too.
7 Q Okay. So Walker was -- so all three of
8 these patents issued over the Walker reference.
9 Correct?
10 MR. DODGE: Objection. Form.
11 A Yes, although I don't exactly know what was
12 discussed. I don't remember. I mean, I did read what
13 was discussed during the patent prosecution regarding
14 Walker and what elements were involved.
15 BY MR. HARKINS:
16 Q Okay. So we've talked about how Walker's
17 used for the '394 patent. Let's look at that. So
18 ground five you've got Walker in combination with
19 Chaffee. Correct?
20 A This is Walker in combination with Chaffee,
21 yes.
22 Q All right. And ground five isn't based on
23 any other art, it's just those two. Correct?
24 MR. DODGE: Objection. Form.
25 A It has those as the prior art references.

Page 187

1 BY MR. HARKINS:
2 Q And, again, you have on page -- let's go to
3 the ground. Are you at ground five?
4 A Yes.
5 Q Okay. And on page 205 you have these design
6 charts, but you say that's not what you're using for
7 your analysis of invalidity, you need to go to the
8 claim language for that. Correct?
9 A That is correct.
10 Q Walker is another bed with an external pump.
11 Right?
12 A This has -- yeah. It's a mattress, or an
13 inflatable product anyway, and it has a pump which is
14 in a housing but not built into the body itself.
15 Q All right. And if we go to A-210, that's
16 where we're getting to the point that you just talked
17 about with the housing built into the inflatable body.
18 That's what's missing from Walker, and you're using
19 Chaffee to find a motivation to combine the two.
20 Correct?
21 MR. DODGE: Objection to form.
22 A It has to have an interior region and the
23 housing built into the inflatable body, yes.
24 BY MR. HARKINS:
25 Q On page 211, figure 20, that's out of

Page 188

1 Walker. Correct?
2 A That figure 20 is from Walker.
3 Q Okay. And I think you say at paragraph 359
4 Walker does not disclose its housing is built into the
5 inflatable body.
6 A Yes, that's what it says.
7 Q And that's your opinion in this case.
8 A That is my opinion.
9 Q This figure 20 that you refer to on page
10 211, that shows different air outlets on it. Correct?
11 MR. DODGE: Objection. Form.
12 A Yes, it does.
13 BY MR. HARKINS:
14 Q Where are those?
15 A Do you want to do ambient or --
16 Q Ambient, yes.
17 A I guess 333 and 374.
18 Q Okay. And so the 374, that's on the same
19 side as the other as 378 and 377. Right?
20 A That is correct.
21 Q And 376?
22 A 376, yes.
23 Q Do you know why it shows air outlet openings
24 on more than one side of the pump?
25 MR. DODGE: Objection. Form.



800.211.DEPO (3376)
EsquireSolutions.com