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

Proceeding	91200832
Party	Defendant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.)
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Attachments	Motion to Strike.pdf(1208109 bytes )

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

BRIGGS & STRATTON CORPORATION and	)	
KOHLER CO.,	)	
	)	
Opposers,	)	Opposition No. 91200832 (parent)
	)	
v.	)	Opposition No. 91200146
	)	
HONDA GIKEN KOGYO KABUSHIKI	)	Application Serial No. 78924545
KAISHA,	)	
	)	
Applicant.	)	
	)	
	)	

**MOTION TO STRIKE**  
**IMPROPER EXPERT TESTIMONY OF FACT WITNESS JEFF WHITMORE**

Pursuant to Federal Rule of Civil Procedure 37(c) and 37 C.F.R. § 2.123(e)(3), Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) hereby moves to strike the undisclosed expert opinions of fact witness Jeff Whitmore.

During Mr. Whitmore’s June 24, 2015 testimony deposition, Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”) elicited expert testimony from Mr. Whitmore, a Briggs employee, despite having failed to name him as an expert witness in Opposers’ disclosures, and despite having failed to provide a summary of any expert opinions that Mr. Whitmore intended to offer. In accordance with 37 C.F.R. § 2.123(e)(3), Honda objected to this improper expert testimony during Mr. Whitmore’s testimony deposition, and conducted its cross-examination under protest. Because Opposers did not comply with the expert disclosure requirements of Federal Rule of Civil Procedure 26(a)(2) and

37 C.F.R. § 2.120(a)(2), Honda respectfully requests that the Board strike Mr. Whitmore's expert opinions from the record.<sup>1</sup>

## I. ARGUMENT

Pursuant to Federal Rule of Civil Procedure 26(a)(2), “a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.” Expert testimony “results from a process of reasoning which can be mastered only by specialists in the field.” Fed. R. Evid. 701, Advisory Committee Notes to the 2000 Amendments (internal quotations omitted). A classic example of expert testimony is when a witness offers an opinion as to what would happen in a hypothetical situation. *See, e.g., Monsanto Co. v. David*, 516 F.3d 1009, 1015 (Fed. Cir. 2008) (Unlike an ordinary witness . . . an expert is permitted wide latitude to offer opinions, including those that are not based on first hand knowledge.”); *AVM Technologies, LLC v. Intel Corp.*, 927 F. Supp. 2d 139, 146 (D. Del. 2013) (“[T]estimony as to what would have happened in a hypothetical negotiation would not be based on . . . personal knowledge and, therefore, is not admissible.”). By contrast, lay testimony “results from a process of reasoning familiar in everyday life,” and it may not be “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701 and Advisory Committee Notes to the 2000 Amendments.

The Board requires disclosure of expert testimony “in the manner and sequence provided in Federal Rule of Civil Procedure 26(a)(2), [and] [i]f the expert is retained after the deadline for disclosure of expert testimony, the party must promptly file a motion for leave to use expert

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<sup>1</sup> Attached as Exhibit A to the Declaration Of Shira Hoffman In Support Of Honda's Motion To Strike (“Hoffman Decl.”) is a highlighted copy of the transcript from Mr. Whitmore's testimony deposition. Honda respectfully requests that the highlighted portions be stricken as improper undisclosed expert testimony, for the reasons stated above. To avoid burdening the Board, Honda has attempted to be selective about what it moves to strike. However, Honda does not waive its objections to the portions of Exhibit A that have not been highlighted.

testimony.” *Zao Gruppa Predpriyatij Ost v. Zao Odessky Konjatschnyi Zawod*, Opposition No. 91161570, 2012 WL 9172066, at n.6 (T.T.A.B. 2012) (quoting 37 C.F.R. § 2.120(a)(2)). Absent such leave, expert testimony that has not been properly disclosed pursuant to Rule 26(a)(2) should be excluded. *See Pepsico, Inc. v. Pirincci*, Opposition No. 91187023, 2013 WL 8456132, at \*2 (T.T.A.B. 2013) (excluding expert witnesses that were not timely disclosed).

Opposers neither disclosed Mr. Whitmore as an expert before his testimony deposition, nor sought leave from the Board to use expert testimony that was not timely disclosed. Nevertheless, at Mr. Whitmore’s testimony deposition, Opposers asked Mr. Whitmore to offer and explain opinions on the alleged functionality of certain aspects of Honda’s claimed trademark that were not based on Mr. Whitmore’s personal knowledge of relevant facts. For example, after obtaining testimony that the Honda GX engine allegedly set the “industry standard shape and configuration,” Opposers asked:

Q. “If competitors were not allowed to use this shape and configuration we’ve been discussing, what would the effect be?” Hoffman Decl., Ex. A at 76:19-21.

Such questions, and the answers elicited thereto, are improper and should be stricken from the trial record in this proceeding.

**A. Opposers’ Failure To Disclose Mr. Whitmore As An Expert**

Opposers failed to properly disclose Mr. Whitmore as an expert witness despite their clear understanding of Rule 26(a)(2)’s requirements. Opposers adequately and timely disclosed four other individuals as experts in this proceeding, including two experts who are employees that Opposers claimed would offer a mix of fact and expert testimony. *See Hoffman Decl., Ex. B (Opposers’ Joint Disclosure of Rebuttal Expert Witnesses)*. Two others, Dr. John Reisel and Mr. Hal Poret, prepared written expert reports pursuant to Rule 26(a)(2)(B), and were deposed as

non-employee experts before trial. These disclosures demonstrate that Opposers clearly understood the procedures for making a proper and timely expert disclosure, but simply failed to do so with respect to Mr. Whitmore.

**B. Opposers Elicited From Mr. Whitmore Opinions Regarding Subject Matter Not Within His Personal Knowledge**

Opposers' questions to Mr. Whitmore during his trial deposition frequently were intended to elicit improper opinion testimony. Some of these questions called for Mr. Whitmore's general opinions about the functionality of horizontal shaft engine components. *See e.g.*, Hoffman Decl., Ex. A at 18:23-25 ("Generally speaking what kinds of design considerations go into designing a single cylinder horizontal shaft engine?"); 17:16 ("Who typically buys these engines?"). Others called on Mr. Whitmore to provide his opinion on *hypothetical* component designs and configurations. *See, e.g.*, Hoffman Decl., Ex. A at 42:9-11 (asking about the commercial viability of a hypothetical engine configuration); 45:15-16 (asking about a hypothetical fan cover); 76:19-21 ("If competitors were not allowed to use this shape and configuration we've been discussing, what would the effect be?").

The record clearly reflects that Mr. Whitmore was asked to testify about the functionality of the Honda GX engine's features, and functionality in general, as opposed to design decisions that Mr. Whitmore made in the course of his experience developing the Briggs 550 Series engine. For example, Opposers introduced a photograph of the Honda GX engine, asked Mr. Whitmore to identify the components, and then asked, "All the component parts we've been discussing, are these all necessary for a commercially viable engine?" Hoffman Decl., Ex. A at 17:6-7. Despite Honda's objections, Opposers continued to ask Mr. Whitmore questions about the alleged functionality of the Honda GX engine—questions he could not possibly answer from

personal knowledge because he has never worked for Honda or engineered a Honda engine. *See, e.g.,* Hoffman Decl., Ex. A at 17:11-12 (“Is this the typical configuration for a single cylinder horizontal shaft engine?”); 17:16 (“Who typically buys these engines?”); *see also* 151:1-15 (stating that Mr. Whitmore has not disassembled a Honda GX engine in over 20 years, and that he has only operated a Honda GX engine a couple of times).

Furthermore, many of Opposers’ questions presented hypotheticals that explicitly called for expert opinion testimony. For example, between pages 38 and 53 of Mr. Whitmore’s testimony deposition transcript, nearly every question posed to Mr. Whitmore contains language like “what would be the functional disadvantage of [changing the shape or position of a particular engine component]?” Below are a few such questions:

- Q. “Now, **would** there be any disadvantage, functional or commercial, to flipping the entire configuration of the engine so that all the parts that are currently on the left move to the right, and all the parts that are currently on the right move to the left and the fan cover orientation is also flipped?” Hoffman Decl., Ex. A at 40:24-41:4.)
- Q. “What **would** be the functional disadvantage, if any, of moving the air cleaner up?” Hoffman Decl., Ex. A at 49:14-15.
- Q. “**Would** there be any functional disadvantage to having the controls no longer be recessed?” Hoffman Decl., Ex. A at 53:17-18.
- Q. “**Would** there be a functional disadvantage to changing the direction of the seam [on the fuel tank] so it was no longer parallel with the ground?” Hoffman Decl., Ex. A at 54:23-25.

Mr. Whitmore’s answers to these “would” questions reflect the conditional reasoning that is the hallmark of opinion testimony, rather than a factual statement of his personal experience designing the Briggs 550 Series engine. Mr. Whitmore’s answer to a hypothetical question about the location of a fuel tank is illustrative:

Q. “Would there be any functional disadvantages of moving the fuel tank out to the right as we look at the front view of the engine?” Hoffman Decl., Ex. A at 50:22-25.

A. “[M]oving it to the right would require additional structure. It would require us to potentially change the structure for mounting in order to make the fuel tank stronger. So that would add cost into those components.” Hoffman Decl., Ex. A at 51:10-14.

Notably, Mr. Whitmore did not state that he considered moving the Briggs 550 Series engine’s fuel tank further to the right, but decided against it during the development process. Rather, Mr. Whitmore offered his opinion about how hypothetically moving the fuel tank would impact an engine’s cost and performance.

Following Honda’s objections to these questions and its cross-examination under protest, Opposers attempted to cure their improper questioning *post hoc* via redirect examination. In an attempt to reframe Mr. Whitmore’s opinions as arising from his work designing the Briggs 550 Series engine. Counsel for Briggs stated:

Q. “Earlier today I asked you a series of questions about the benefits of certain components. For instance, we talked about the benefits of having a high mount air cleaner, and we talked about the benefits of the shape of the air cleaner cover, talked about the benefits of the shape of the fuel tank and the location of that, and we talked about the benefits of the seam in the fuel tank, we talked about the benefits of the slant in the fan cover, and we talked about the benefits of the controls on the carburetor. Did you understand when I was asking those questions that I was asking them in the context of the Briggs 550 series engine?” Hoffman Decl., Ex. A at 183:20-184:7.

This transparent effort to cure the impropriety of Mr. Whitmore’s testimony was insufficient: the transcript clearly shows that Opposers solicited expert opinions about the Honda GX engine and hypothetical engine configurations, rather than facts about Mr. Whitmore’s work on the Briggs 550 Series engine, intending to offer such opinions to the Board.

**C. Opposers' Failure To Disclose Mr. Whitmore As An Expert Was Unjustified**

Dr. Reisel, Opposers' disclosed functionality expert, offered opinions on the alleged functionality of Honda's applied-for mark in his expert reports and during his discovery deposition. These opinions often differed from those elicited from Mr. Whitmore, particularly where Dr. Reisel acknowledged that the Honda GX engine's design elements are nonfunctional. For example, when asked about beveling on certain engine components, Dr. Reisel agreed that such a design element was not *per se* functional:

Q. "So having some beveling may serve some purpose from a manufacturing standpoint, but it's not necessary to have the particular beveling on the air cleaner cover and fuel tank on the GX engine, correct?"

A. "Correct." Hoffman Decl., Ex. C at 120:17-22 (Transcript of John Reisel's Discovery Deposition).

But Mr. Whitmore offered an opinion on the alleged functionality of air cleaner cover beveling that was never disclosed by Dr. Reisel:

Q. "Are there any functional advantages to having beveling on the top of the air cleaner cover?"

A. "The functional advantage of having the bevel at the top of the air cleaner, as I had mentioned before . . . the air cleaner cover serves to protect the air cleaner from the environment which one part of that protection is the impact resistance. So having that bevel at the top corner serves to make that top horizontal surface smaller. It makes that surface stronger by having that bevel come across there. So you end up with a more structurally sound part regarding impact." Hoffman Decl. Ex. A at 37:9-19.

Opposers retained Dr. Reisel to provide expert testimony on the issue of functionality. Having recognized that Dr. Reisel's testimony undermines their argument regarding the functionality of the claimed trademark, they should not be able now to shoehorn more favorable functionality opinions into the record via a fact witness. Courts disfavor such gamesmanship. *See, e.g., Arthrocare Corp. v. Smith & Nephew, Inc.*, 310 F. Supp. 2d 638, 668 (D. Del. 2004)

(stating that the court was “troubled” that “[d]espite identifying him as a fact witness, [defendant] appears to employ [the witness] as an expert . . .”). The fact that Mr. Whitmore was previously deposed *as a fact witness* does not cure Opposers’ failure to disclose him *as an expert* under Rule 26(a)(2). See *Wingates, LLC v. Commonwealth Ins. Co. of Am.*, 21 F. Supp. 3d 206, 216 (E.D.N.Y. 2014) (striking portions of affidavit that were “essentially a proffer of expert testimony,” and noting that disclosure and deposition of affiant as a lay witness “does not cure [the] failure to disclose him as an expert under Rule 26(a)(2)”).

## II. CONCLUSION

For the foregoing reasons, Honda respectfully moves that the Board strike Mr. Whitmore’s expert testimony from the trial record.

*Respectfully submitted,*

Dated: July 17, 2015

/s/ Shira Hoffman

John Regan  
Vinita Ferrera  
Carrie Seares  
Sarah Frazier  
Shira Hoffman  
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Attorneys for Honda Giken Kogyo  
Kabushiki Kaisha

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion to Strike Improper Expert Testimony of Fact Witness Jeff Whitmore was served by FedEx this 17th day of July, 2015 upon:

Kenneth Nowakowski  
Whyte Hirschboeck Dudek S.C.  
555 E. Wells Street, Suite 1900  
Milwaukee, Wisconsin 53202

And

Robert N. Phillips  
Seth B. Herring  
Reed Smith LLP  
101 Second Street  
Suite 1800  
San Francisco, California 941 05

/s/ Shira Hoffman  
Shira C. Hoffman

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

BRIGGS & STRATTON CORPORATION and KOHLER CO.,	)	
	)	
Opposers,	)	Opposition No. 91200832 (parent)
	)	
v.	)	Opposition No. 91200146
	)	
HONDA GIKEN KOGYO KABUSHIKI KAISHA,	)	Application Serial No. 78924545
	)	
Applicant.	)	
	)	
	)	

**DECLARATION OF SHIRA HOFFMAN IN SUPPORT OF  
APPLICANT’S MOTION TO STRIKE IMPROPER EXPERT TESTIMONY  
OF FACT WITNESS JEFF WHITMORE**

I, Shira C. Hoffman, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts. I am an Associate at the law firm Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Honda Giken Kogyo Kabushiki Kaisha (“Honda”), the Applicant in the above-entitled proceedings.

2. On June 24, 2015, Opposers Briggs and Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”) offered fact witness Jeff Whitmore for a testimony deposition. During this deposition, Opposers elicited testimony from Mr. Whitmore that Honda believes constitutes undisclosed expert opinion. This testimony is the subject of Honda’s Motion to Strike, filed herewith. A true and correct copy of Mr. Whitmore’s deposition transcript, is attached hereto as **Exhibit A**. Honda has highlighted the portions of Mr. Whitmore’s testimony in Exhibit A that are the subject of Honda’s Motion to Strike.

3. On November 21, 2012, Opposers' served their Joint Disclosure of Rebuttal Expert Witnesses, which disclosed both retained and employee expert witnesses. A true and correct copy of this disclosure is attached hereto as **Exhibit B**.

4. On June 21, 2015, Honda took the discovery deposition of Opposers' functionality expert, John Reisel. A true and correct copy of the transcript from this discovery deposition is attached hereto as **Exhibit C**.

Dated: July 17, 2015

/s/ Shira Hoffman  
Shira C. Hoffman (BBO No. 687898)

# Exhibit A

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

3 -----  
4 BRIGGS & STRATTON CORPORATION and Opposition No.

5 KOHLER COMPANY, 91200832 (parent)

6 Opposers, Opposition No.

7 vs. 91200146

8 HONDA GIKEN KOGYO KABUSHIKI

9 KAISHA, Application Serial

10 Applicant. No. 78924545

11 -----  
12  
13 DEPOSITION OF: MR. JEFF WHITMORE

14 TAKEN AT: WHYTE HIRSCHBOECK DUDEK, S.C.

15 LOCATED AT: 555 East Wells Street, Suite 1900

16 Milwaukee, Wisconsin

17 June 24, 2015

18 9:00 a.m. to 4:29 p.m.

19  
20 REPORTED BY:

21 VICKY L. ST. GEORGE, RMR.

22  
23  
24 JOB NO. 2089619

25 PAGES 1 - 196

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1	APPEARANCES:	1	Opposers' Exhibit 11
2	REED SMITH, by	2	Generac Advertising Literature 72
3	MR. SETH HERRING	3	Opposers' Exhibit 12
4	MR. ROBERT N. PHILLIPS	4	Generac Residential Power Washers
5	101 Second Street		Webpage Printout 73
6	San Francisco, California 94105	5	APPLICANT'S
	(415) 543-8700	6	Applicant's Exhibit 1
7	sherring@reedsmith.com	7	Patent No. 7441532 103
8	robphillips@reedsmith.com	8	Applicant's Exhibit 2
9	Appeared on behalf of the Opposers, Briggs and Stratton.	9	Patent No. D540928 106
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12	33 East Main Street, Suite 300	12	Applicant's Exhibit 4
13	Madison, Wisconsin 53701-1379	13	Letter Dated 8-24-2007 116
14	(608) 255-4440	14	Applicant's Exhibit 5
15	mgiftos@whdlaw.com	15	Brooks Stevens Documents 118
16	Appeared on behalf of the Opposers, Kohler Company.	16	Applicant's Exhibit 6
17		17	Notice of Publication 120
	WILMER CUTLER PICKERING HALE AND DORR, LLP, by	18	Applicant's Exhibit 7
18	MS. VINITA FERRERA	19	Victa Test Report 123
19	MS. CARRIE SEARES	20	Applicant's Exhibit 8
20	60 State Street	21	Presentation Entitled SH127cc FY12 129
21	Boston, Massachusetts 02109	22	Global Platform Revision Styling
22	(617) 526-6208		and Emissions
23	vinita.ferrera@wilmerhale.com	23	Applicant's Exhibit 9
24	carrie.seares@wilmerhale.com	24	Brooks Stevens 127 cc Engine Styling 187
25	Appeared on behalf of the Applicant, Honda.	25	Exploration 5-17-2010
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1	I N D E X	1	TRANSCRIPT OF PROCEEDINGS
2	WITNESS PAGE	2	MR. JEFF WHITMORE called as a witness
3	MR. JEFF WHITMORE	3	herein, after having been first duly sworn on oath,
4	DIRECT EXAMINATION BY MR. HERRING 5	4	was examined and testified as follows:
5	CROSS-EXAMINATION BY MS. FERRERA 93	5	DIRECT EXAMINATION
6	REDIRECT EXAMINATION BY MR. HERRING 177	6	BY MR. HERRING:
7	RECROSS-EXAMINATION BY MS. FERRERA 186	7	Q. Good morning, Mr. Whitmore.
		8	A. Good morning.
		9	Q. Can you please state your full name and address for
		10	the record?
		11	A. My name is Jeff Whitmore. And my address is 7198
		12	River Drive North, West Bend, Wisconsin.
		13	Q. First I want to ask you some questions about your
		14	educational background. Do you have a college
		15	degree?
		16	A. Yes, I do.
		17	Q. And where is that from?
		18	A. I received a bachelors of science in mechanical
		19	engineering from University of Wisconsin Milwaukee.
		20	Q. What are the disciplines that make up mechanical
		21	engineering?
		22	A. So mechanical engineering covers pretty much the
		23	entire range of sciences. It covers physics, it goes
		24	through structures of materials where we look at
		25	stresses, strains, it covers thermodynamics, air
1	E X H I B I T S		
8	OPPOSERS'		
9	NUMBER DESCRIPTION PAGE		
10	Opposers' Exhibit 1		
11	Photograph of Honda GX120 front view 11		
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13	Diagram of 550 Series Engine 22		
14	Opposers' Exhibit 3		
15	128 cc Horizontal Engine Styling Packet 26		
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1 flow, control systems, and there is even some, you  
 2 know, electronics education throughout that.  
 3 Q. And how does mechanical engineering tie into the  
 4 design of engines?  
 5 A. Engines are very much mechanical systems. Especially  
 6 with engines, can be very complex. Engines cover --  
 7 using my education within the mechanics of the  
 8 engine, it covers the stresses of the components,  
 9 engines deal with combustion, there is a lot of heat,  
 10 air flow into the engine so we have to worry about  
 11 making sure we get as much air as possible into the  
 12 engine. And a lot of different materials, so we work  
 13 with aluminums, we work with plastics, we work with  
 14 steels.  
 15 Q. Is mechanical engineering a common degree that you'll  
 16 see in an engine designer?  
 17 A. Most every engine, engineer will have a mechanical  
 18 engineering degree.  
 19 Q. While you were in undergrad did you take any course  
 20 work specifically related to engine design?  
 21 A. Yes, I had one class.  
 22 Q. And what was the title of that class?  
 23 A. The class was design of internal combustion engines.  
 24 Q. Did you do any graduate work?  
 25 A. Yes, I did.

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1 Q. Where was that?  
 2 A. So I received my -- I received an MBA from  
 3 Northwestern University's Kellogg School of  
 4 Management.  
 5 Q. Did you have a concentration at Northwestern?  
 6 A. Yes.  
 7 Q. What was that?  
 8 A. It was international business and strategy.  
 9 Q. Thanks. I want to ask you a few questions now about  
 10 your work background. Who is your current employer?  
 11 A. My current employer is Briggs and Stratton.  
 12 Q. And what's your current title at Briggs?  
 13 A. My current title is engineering senior manager for  
 14 the contract manufactured engines and also small  
 15 horizontal shaft new product development.  
 16 Q. What are your roles and responsibilities as  
 17 engineering senior manager?  
 18 A. So my roles and responsibilities, essentially I  
 19 manage three different groups of engineers. One  
 20 group is responsible for production support and  
 21 development of contract manufactured engines coming  
 22 from China. Another group is responsible for  
 23 development of engines, production support and new  
 24 product development for our twin cylinder Vanguard  
 25 engines that come from a joint venture in Japan, and

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1 then I also have a separate group of engineers that  
 2 handle all new product development for small single  
 3 cylinder horizontal shaft engines, whether it comes  
 4 from a Briggs factory or contract manufacturer.  
 5 Q. How long have you been working at Briggs?  
 6 A. I've worked at Briggs and Stratton for 17 years now.  
 7 Q. What was your first job at Briggs?  
 8 A. So my first job I had gone through the co-op program  
 9 during school. It was a program that alternated  
 10 terms between going to school for one term and then  
 11 working for one term.  
 12 Q. So is that similar to an internship?  
 13 A. Yeah, very similar to an internship.  
 14 Q. So walk me down the path of how you got from a  
 15 college intern at Briggs to now engineering senior  
 16 manager.  
 17 A. Sure. So I've been fortunate to have a broad range  
 18 of experiences at Briggs and Stratton. And  
 19 throughout that time I've done, you know, very well  
 20 in those various assignments and responsibilities.  
 21 So in starting out I went through the  
 22 co-op program. It was a great opportunity to get  
 23 exposure to the company throughout the whole range of  
 24 test environments that we have, various product  
 25 engineering groups, I had a manufacturing term. And

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1 then, you know, various stays within some of our  
 2 smaller labs. Then I also had a term within our  
 3 research and development group. After that I had --  
 4 so that was the co-op term during school.  
 5 With my performance through that program I  
 6 had then been asked to join Briggs and Stratton full  
 7 time when I graduated. There I moved into the  
 8 company in a role of warranty reduction engineer. I  
 9 was there for maybe seven months before I was asked  
 10 to join into our small engine division. That was the  
 11 group, I had a co-op term at that point, so I was  
 12 familiar with the manager and the people there. They  
 13 were interested in having me join their group and  
 14 help develop the engines that they were working on at  
 15 that time.  
 16 I was there for about five to six years.  
 17 2006 I was asked to move to China to help establish  
 18 an engineering facility just outside of Shanghai. In  
 19 that facility, you know, Briggs and Stratton was  
 20 looking to really try to expand our capabilities, you  
 21 know, trying to -- at the time there was a big  
 22 movement towards the belief in 24 hour engineering.  
 23 We were seeing a lot more of our engines coming from  
 24 China with our factory that we were developing there,  
 25 and we were -- as a company we were hoping to see a

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1 lot more growth within the Asia region, so we wanted  
 2 to have more local, localized support there.  
 3 So Briggs and Stratton was interested in  
 4 setting up a facility there that would work on  
 5 testing of equipment, development of equipment and  
 6 then also specific computerized design of, you know,  
 7 any equipment that Briggs and Stratton made.  
 8 So I was there, I was in that role working  
 9 on developing that facility for about a year. I had  
 10 moved back to the US to continue developing that --  
 11 the group of people that we had hired and started  
 12 training and developing, but very much from a US  
 13 side. So started to liaise with our project teams in  
 14 the US to be able to communicate and identify  
 15 projects and really work to get the group going.  
 16 From there is when I had really started  
 17 moving into development of our contract manufactured  
 18 engines which occurred in later 2007. So in that  
 19 role I was responsible for working to identify  
 20 opportunities with possible Chinese suppliers, figure  
 21 out what engines we wanted to do, and then  
 22 essentially work to develop both the supplier and the  
 23 engines.  
 24 As we've done pretty well with that and as  
 25 I've shown that I've been able to lead the efforts,

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1 lead the groups, over time that role has continued to  
 2 morph into the role I have today which is the sourced  
 3 engines from China, our group that deals with Japan,  
 4 and then also the new product development engineers  
 5 for small single cylinder horizontal engines.  
 6 Q. Thank you.  
 7 A. Kind of hard to summarize 17 years.  
 8 Q. You did a good job. I want to talk a little bit now  
 9 about horizontal shaft engines in general.  
 10 (Opposers' Exhibit 1 marked.)  
 11 BY MR. HERRING:  
 12 Q. The court reporter has just handed you what's been  
 13 marked as Exhibit 1. Can you identify the photograph  
 14 in Exhibit 1?  
 15 A. Yes.  
 16 Q. What is that?  
 17 A. The engine appears -- the picture appears to be of a  
 18 Honda GX 120 front view.  
 19 Q. Are you familiar with the Honda GX 120?  
 20 A. Yes.  
 21 Q. What kind of engine is the Honda GX 120?  
 22 A. The GX 120 would be considered a small horizontal  
 23 shaft single cylinder OHV engine.  
 24 Q. What does OHV stand for?  
 25 A. OHV stands for overhead valve.

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1 Q. Let's talk about some of the component parts on this  
 2 engine. Do you see the letter A there?  
 3 A. Yes.  
 4 Q. What is the letter A pointing to?  
 5 A. Letter A is pointing to the air cleaner cover.  
 6 Q. And what's the function of the air cleaner cover?  
 7 A. So --  
 8 MS. FERRERA: Objection.  
 9 BY MR. HERRING:  
 10 Q. Go ahead.  
 11 A. The function of the air cleaner cover is to -- so  
 12 underneath the air cleaner cover is the air filter  
 13 which is a critical part of the engine in cleaning  
 14 the air. The air cleaner cover then functions to go  
 15 over that filter and provide environmental protection  
 16 from that filter. It keeps water away from the  
 17 filter. It keeps impact away from the filter, and it  
 18 also helps to create the surfaces that guide the air  
 19 into the filter.  
 20 Q. So underneath the cover that A is pointing to is the  
 21 air filter?  
 22 A. Correct.  
 23 Q. And what does the air filter do?  
 24 A. So the air filter serves to filter out dirt, debris  
 25 and anything else that might be in the air as the air

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1 transfers into the engine. The engine -- engine  
 2 components are very sensitive to dirt and debris, so  
 3 any failure of the filter can cause early damage or  
 4 early repairs that are needed to the engine.  
 5 Q. Is there a name for this particular orientation of  
 6 air filter?  
 7 A. There is often times a number of names. Can be  
 8 called up style, it can be called high mount. Some  
 9 people might call it a cartridge style air cleaner.  
 10 Q. Okay. Let's go around the horn now to letter B. Do  
 11 you see letter B?  
 12 A. Yes.  
 13 Q. What is letter B pointing to?  
 14 A. B is pointing to the fuel tank.  
 15 Q. What's the function of the fuel tank?  
 16 A. So the fuel tank serves to contain the fuel that's  
 17 needed by the engine in running.  
 18 Q. Let's cross over now to letter C. Do you see letter  
 19 C?  
 20 A. Yes.  
 21 Q. And what's letter C pointing to?  
 22 A. C is pointing to the air cleaner base also known as a  
 23 carb cover.  
 24 Q. Does carb stand for carburetor?  
 25 A. Yes, carburetor cover.

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1 Q. What's the function of the carburetor?  
 2 A. So the carburetor is the device that serves to meter  
 3 the mixing of the fuel and air. Engines are  
 4 required to function under very specific range of  
 5 air/fuel ratio, so the carburetor is an important  
 6 part of that.  
 7 Q. And what's the function of the carburetor cover?  
 8 A. So the carburetor cover function is to -- is to  
 9 connect to the air cleaner. It serves as a base for  
 10 the filter element, and then it directs the air from  
 11 the filter into the carburetor.  
 12 Additionally, the breather from the  
 13 engine, the breather is a device that allows an oil  
 14 and gas mixture to come back out of the cylinder.  
 15 The oil and gas needs to be recirculated through the  
 16 engine in order to provide for proper environmental  
 17 protection. That breather is connected into the air  
 18 cleaner base so that the oils don't end up going into  
 19 the environment.  
 20 Q. Are there controls there that stick out through the  
 21 carburetor cover?  
 22 A. Yes.  
 23 Q. What are those two controls?  
 24 A. The top control is the choke lever, and the bottom  
 25 control is the fuel valve.

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1 Q. What does the choke lever do?  
 2 A. The choke lever is connected directly to the  
 3 carburetor, to the choke shaft on the carburetor.  
 4 And the choke is a mechanism that allows the user of  
 5 the equipment to restrict the air going into the  
 6 engine. That's used at start at -- at starting of  
 7 the engine to improve and aid easier starting.  
 8 Q. And at the risk of asking the obvious, what does the  
 9 fuel lever do?  
 10 A. The fuel lever provides a shut-off to prevent fuel  
 11 from traveling from the fuel tank down into the  
 12 carburetor. Many of these engines are used on mobile  
 13 equipment, they're used in construction applications,  
 14 they're transported from, you know, one area to the  
 15 next. So as the engines bounce around, then there is  
 16 a possibility that fuel can migrate from the  
 17 carburetor into the engine. When that happens, then  
 18 fuel would continue to feed from the fuel tank.  
 19 So if this fuel is allowed to move through  
 20 the engine when the engine is not running, when the  
 21 user goes to use the engine, the engine may either  
 22 fail to start or be damaged during operation. So the  
 23 fuel valve is important being able to prevent that  
 24 fuel movement when the engine is not in use.  
 25 Q. Is the fuel control lever also connected to the

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1 carburetor?  
 2 A. Correct.  
 3 Q. Let's move down now to letter D. Do you see letter  
 4 D?  
 5 A. Yes.  
 6 Q. What's letter D pointing to?  
 7 A. Letter D is pointing to the blower housing, also  
 8 known as the fan cover.  
 9 Q. What's the function of the fan cover?  
 10 A. So the fan cover serves as a mounting surface for the  
 11 rewind. Additionally, it provides protection around  
 12 the fan and serves to make sure the fan can function  
 13 properly in directing air that's coming into the  
 14 engine and directed up towards the hottest parts of  
 15 the engine. These engines are all air cooled, so  
 16 proper cooling, proper amounts of cooling and proper  
 17 cooling direction is important.  
 18 Q. Can you describe the direction of the air as it comes  
 19 into the engine and cools it?  
 20 A. So the air would come directly into the front of the  
 21 engine, so in the direction into the paper. There it  
 22 would meet up with the fan and through the blades  
 23 would get directed radially around -- against the  
 24 side of the blower housing in the area where the D is  
 25 pointing to. The air is directed upwards along that

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1 surface towards the upper left-hand corner of the fan  
 2 cover near the area where the little rabbit symbol  
 3 is. Then from there the air goes through the  
 4 cylinder head which is -- through the cylinder and  
 5 cylinder head area which is hot in that region.  
 6 Q. All the component parts we've been discussing, are  
 7 these all necessary for a commercially viable engine?  
 8 MS. FERRERA: Objection.  
 9 THE WITNESS: Yes.  
 10 BY MR. HERRING:  
 11 Q. Is this the typical configuration for a single  
 12 cylinder horizontal shaft engine?  
 13 MS. FERRERA: Objection.  
 14 THE WITNESS: Yes, it would be.  
 15 BY MR. HERRING:  
 16 Q. Who typically buys these engines?  
 17 MS. FERRERA: Objection.  
 18 THE WITNESS: These engines would  
 19 typically be bought by OEM companies that make  
 20 applications that might be within construction  
 21 equipment, lawn and garden equipment, other  
 22 utilities. Some people might buy engines just for  
 23 home projects.  
 24 BY MR. HERRING:  
 25 Q. What does OEM stands for?

1 A. OEM stands for original equipment manufacturer.  
 2 Q. What are these engines used to power?  
 3 A. So there is -- these engines are known as utility  
 4 engines. Basically they're used to power tremendous  
 5 number of different applications. Sometimes it could  
 6 be small tillers, generators, water pumps, edgers for  
 7 like sidewalks, many construction applications that  
 8 would be compactors, mortar mixers and even into  
 9 agricultural where there is various agricultural  
 10 equipment for rice transplanters, small harvesters  
 11 and other transportation equipment.  
 12 Q. Just a second ago we were talking about OEMs. Can  
 13 you give some examples of OEMs?  
 14 A. Some examples of OEMs in this space would be  
 15 companies like Husqvarna, Ariens, Troy-Bilt, Pacer.  
 16 Construction world there is companies like Bomag,  
 17 Wacker, Multiquip, Simplicity, Snapper and other  
 18 companies.  
 19 Q. Does Briggs and Stratton sell single cylinder  
 20 horizontal shaft engines?  
 21 A. Yes.  
 22 Q. Generally speaking what kinds of design  
 23 considerations go into designing a single cylinder  
 24 horizontal shaft engine?  
 25 MS. FERRERA: Objection.

1 compact of a package as possible is important.  
 2 Additionally, from a corporate standpoint  
 3 the smaller we can make the engine, the smaller the  
 4 shipping package becomes and allows us to get more  
 5 engines per container which ultimately reduces our  
 6 shipping cost and allows us to provide a more cost  
 7 advantageous product to our customers.  
 8 BY MR. HERRING:  
 9 Q. When Briggs is designing single cylinder horizontal  
 10 shaft engines, where do the design requirements  
 11 typically come from?  
 12 A. The design requirements typically come from a number  
 13 of different directions. They will come direct from  
 14 customers, you know, based on what the customers want  
 15 to see, what the applications need. It will come  
 16 from the salespeople and what they have heard from  
 17 customers or what they have seen themselves in  
 18 observing the market and competitive landscape, and  
 19 it comes internally from within our engine group  
 20 where we'll look at previous projects, we'll look at  
 21 previous engines, things that we've either done right  
 22 or, you know, especially done wrong, and we'll try to  
 23 improve on that.  
 24 Q. And when designing single cylinder horizontal shaft  
 25 engines, have you and your team received requirements

1 THE WITNESS: So for design considerations  
 2 we always prefer to be as market sensitive as  
 3 possible and really understand what our customers  
 4 need, what their applications are, what their  
 5 requirements are in order to be able to properly  
 6 power their equipment and allow for their users to  
 7 properly access it. So size, shape, overall power  
 8 level, usability of controls. Many of the aspects  
 9 that improve use of the engine, so things like fuel  
 10 tank volume which affects the run time of the engine  
 11 and anything we can do that either minimizes  
 12 serviceability or extends serviceability so  
 13 customers don't have to maintain engines as often or  
 14 it's cheaper for them to run.  
 15 BY MR. HERRING:  
 16 Q. You mentioned size. How does size factor into the  
 17 design?  
 18 MS. FERRERA: Objection.  
 19 THE WITNESS: Size is very important for  
 20 the design. One, because, you know, a lot of -- in  
 21 the applications many of these applications have a  
 22 very defined space that they have to work with.  
 23 There is a lot of other equipment that might be on  
 24 the applications from guards, pulleys, handlebars,  
 25 wheels, other aspects there. So being into as

1 from OEM customers?  
 2 A. Yes.  
 3 Q. What kind of requirements are those?  
 4 A. So requirements that we have is just the ability to  
 5 fit within a defined package space. We receive  
 6 requirements that the controls need to be within a  
 7 certain area. We receive requirements on fuel tank  
 8 volume. And there is various other smaller things.  
 9 The direction of the pull of the rewind handle, for  
 10 example, might be -- some applications might like the  
 11 rewind handle in one location, other applications  
 12 might like it in a different location.  
 13 Q. Have you ever gotten any requirements with respect to  
 14 the size of the engine?  
 15 A. Yes.  
 16 Q. Tell me about those.  
 17 A. So in respect to the size of the engine, as we seek  
 18 to compete, many applications have been built around  
 19 the Honda GX package. So as we seek to compete with  
 20 Honda, one of the requirements is that we're able to  
 21 fit within the Honda envelope. That includes things  
 22 like crank shaft height, it includes how far out the  
 23 fuel tank extends, where the air cleaner sits and how  
 24 far it extends.  
 25 Q. Are there any OEMs that require single cylinder

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1 horizontal shaft engines with shape and configuration  
 2 like the engine in Exhibit 1?  
 3 MS. FERRERA: Objection.  
 4 THE WITNESS: Yes, many do.  
 5 (Opposers' Exhibit 2 marked.)  
 6 BY MR. HERRING:  
 7 Q. The court reporter has just handed you what's been  
 8 marked as Exhibit 2. Do you recognize the engine  
 9 photographed in Exhibit 2?  
 10 A. Yes.  
 11 Q. What is that engine?  
 12 A. This is the Briggs and Stratton 550 series engine.  
 13 Q. And how do you know that's the Briggs and Stratton  
 14 550 series engine?  
 15 A. Based on the label that's on the air cleaner cover in  
 16 the upper left-hand corner near the A. It says  
 17 Briggs and Stratton, it says 550 series. The rewind,  
 18 in the center of the rewind there is also a big  
 19 Briggs and Stratton label.  
 20 Q. Is the Briggs 550 series a single cylinder horizontal  
 21 shaft engine?  
 22 A. Yes, it's a small horizontal single cylinder overhead  
 23 valve engine.  
 24 Q. Does that engine compete with the Honda GX we were  
 25 looking at in Exhibit 1?

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1 A. Yes.  
 2 Q. Did you play a role in designing or developing the  
 3 Briggs 550 series engine?  
 4 A. Yes, I led the development of the 550 series engine.  
 5 Q. Can you tell me a little bit more about your  
 6 involvement with the 550?  
 7 A. So my involvement with the 550, the 550 was the first  
 8 engine that we had done as a contract manufactured  
 9 engine. So at the time I was responsible for leading  
 10 all activities related to the contract manufacturing  
 11 that we were pursuing at the time. I worked with a  
 12 couple people directly in China to interface with our  
 13 supplier as we sought to develop this engine.  
 14 So development included, you know, from  
 15 the beginning we worked through industrial design,  
 16 worked on the styling of the engine. I would then  
 17 take that and communicate it to our team in China.  
 18 The supplier would work through the actual 3-D  
 19 modeling of the engine and communicate that back to  
 20 myself. At that time I would review the 3-D  
 21 modeling, provide feedback of any changes that I  
 22 wanted, any concerns that I had, any other  
 23 modifications.  
 24 Our team in China at that time was pretty  
 25 young, pretty inexperienced. So there is really a

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1 lot of expectation setting, there was a lot of  
 2 communication of our requirements to make sure that  
 3 they understood exactly what we needed. There was a  
 4 lot of Briggs-specific details that we were really  
 5 focused on making sure that it was the best engine.  
 6 So from that designed standpoint we moved  
 7 into prototype tooling, prototype parts. At that  
 8 time I had worked to set our testing and  
 9 qualification plan, how many engines we would run,  
 10 what parts we would test and then worked with our  
 11 team to execute that test plan, find any weak spots  
 12 that we had, reveal any problems and then essentially  
 13 work through root cause analysis and corrective  
 14 actions as we moved towards production.  
 15 Q. Can you describe a few types of testing that you did  
 16 with this engine?  
 17 A. Yes. So we have significant testing in our company  
 18 to make sure that the engines are performing  
 19 properly. So we would go through power testing to  
 20 make sure the power was acceptable, we test  
 21 emissions, we test startability, we perform other  
 22 special tests like a rain test to make sure that  
 23 water can't come in the muffler or the air cleaner or  
 24 the fuel tank, we check the governor performance, and  
 25 we'll go through application testing to make sure

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1 that when this engine is installed in applications,  
 2 it can perform properly.  
 3 Additionally, we run engines for a  
 4 significant number of hours to make sure that the  
 5 life of the engine is long enough.  
 6 Q. Did you play a role in the manufacture of the 550  
 7 series engine?  
 8 A. Yes, I worked directly with our supplier on making  
 9 sure they could manufacture it.  
 10 Q. Did you play a role in setting the manufacturing --  
 11 Strike that.  
 12 What functional design considerations went  
 13 into the ultimate design of the Briggs 550 series?  
 14 MS. FERRERA: Objection.  
 15 THE WITNESS: Functional design  
 16 considerations for the 550 series were things like  
 17 the fuel tank volume, it was the power level that we  
 18 needed to achieve, it was air cleaner design. We  
 19 had worked a lot on noise reduction, making sure  
 20 that we had proper noise performance, and then  
 21 overall improvement of components to make sure that  
 22 the life was acceptable.  
 23 BY MR. HERRING:  
 24 Q. Was size a consideration in designing the 550?  
 25 A. Size was very important with the 550.

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<p>1 Q. Why was it very important?</p> <p>2 A. Size was very important in the sense that as we</p> <p>3 target specific applications, specific customers</p> <p>4 serving into a market where we're going against a</p> <p>5 significant number of Chinese competitors on the low</p> <p>6 end and Honda on the high end, we need to be able to</p> <p>7 have an engine that competes within that market</p> <p>8 space.</p> <p>9 And size is important within that market</p> <p>10 space based on a lot of -- with that competition from</p> <p>11 all those ends, many applications are now designed</p> <p>12 around specific industry standard configuration. So</p> <p>13 it's important that Briggs and Stratton has a product</p> <p>14 within that configuration.</p> <p>15 Q. Before we were talking about the type of air cleaner</p> <p>16 in the Honda GX, and you mentioned that that was</p> <p>17 sometimes referred to as a high mount air cleaner; is</p> <p>18 that right?</p> <p>19 A. Correct.</p> <p>20 Q. Does the Briggs 550 shown in Exhibit 2 have the same</p> <p>21 configuration of air cleaner?</p> <p>22 A. Yes.</p> <p>23 Q. Did it always have that configuration of air cleaner?</p> <p>24 A. No.</p> <p>25 (Opposers' Exhibit 3 marked.)</p>	<p>1 BASCO0002782. Are you with me?</p> <p>2 A. Yes.</p> <p>3 Q. There is an illustration here of an engine. Is this</p> <p>4 illustration the final design for the Briggs 550?</p> <p>5 A. No.</p> <p>6 Q. What are the differences between this design and the</p> <p>7 ultimate design?</p> <p>8 A. So this would have been an early industrial design</p> <p>9 image that we had done which shows an engine of panel</p> <p>10 air cleaner configuration, plastic trim panel that</p> <p>11 contains the control decals and then a large muffler</p> <p>12 that extends across the left side of the engine.</p> <p>13 Q. So this does not have the high mount air cleaner</p> <p>14 configuration we were discussing?</p> <p>15 A. Correct.</p> <p>16 Q. What's the air cleaner configuration called for this</p> <p>17 engine in Exhibit 3?</p> <p>18 A. So this would be called a flat panel air cleaner.</p> <p>19 Q. And can you tell me where the air cleaner is on this</p> <p>20 illustration in Exhibit 3?</p> <p>21 A. So in this illustration the panel air cleaner is</p> <p>22 shown in the lower left-hand corner of the engine.</p> <p>23 It's underneath the illustrated label which says 525</p> <p>24 engine series, 5.25 foot pounds torque and 128 cc.</p> <p>25 Q. What are the differences between a panel style air</p>
Page 27	Page 29
<p>1 BY MR. HERRING:</p> <p>2 Q. The court reporter just handed you what's been marked</p> <p>3 as Exhibit 3. I'll give you a moment to look over</p> <p>4 this document.</p> <p>5 (Witness peruses document.)</p> <p>6 A. Okay.</p> <p>7 Q. Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. This would be I believe the first communication that</p> <p>11 I had sent to our team in China regarding the</p> <p>12 customization that we desired for the 550 series</p> <p>13 engine.</p> <p>14 Q. So when it says 128 cc horizontal engine, that's the</p> <p>15 engine that became the 550?</p> <p>16 A. Correct. At that time it was very early in the</p> <p>17 design stage, so our actual design ended up making a</p> <p>18 127 cc displacement. And we had done pretty well</p> <p>19 with our power level, so we were able to increase the</p> <p>20 series to 550.</p> <p>21 There is -- at Briggs and Stratton there</p> <p>22 is a linkage between the series number and how much</p> <p>23 torque the engine puts out.</p> <p>24 Q. Direct your attention to page 2 of Exhibit 3 that has</p> <p>25 a Bates number on the bottom right corner</p>	<p>1 cleaner and the top mount air cleaner?</p> <p>2 A. The panel style air cleaner contains all of the air</p> <p>3 filter media in a flat plane. The high mount style</p> <p>4 air cleaner typically involves an air cleaner that's</p> <p>5 in a cylindrical shape which might be a perfect</p> <p>6 cylinder or it might be a cylinder of more of an</p> <p>7 oval, oval shape.</p> <p>8 Q. So at some point the air cleaner for the Briggs 550</p> <p>9 went from the flat panel style to the top mount</p> <p>10 style, right?</p> <p>11 A. Correct.</p> <p>12 Q. Why did Briggs choose the top mount style air cleaner</p> <p>13 over the panel style?</p> <p>14 A. As we started developing the panel style air cleaner</p> <p>15 and really started looking into some of the</p> <p>16 applications, obtaining prototypes and started doing</p> <p>17 fit-ups, it quickly became apparent to us that the</p> <p>18 panel style air cleaner was going to give us a</p> <p>19 significant disadvantage and significant issues in</p> <p>20 attempting to work on many applications.</p> <p>21 Q. Can you describe some of those disadvantages?</p> <p>22 A. So the disadvantages are, you know, many of the</p> <p>23 applications are already being established around</p> <p>24 industry standard design. Customer applications are</p> <p>25 built where there is frames that may come up and</p>

1 around the engine to provide protection. There may  
2 be wheels that are built into the application to  
3 provide movement of the application. There might be  
4 things like handlebars that extend past the engine or  
5 other sort of guarding. So having the panel air  
6 filter hang down there, that creates interferences  
7 with many of those parts such that the engine  
8 wouldn't be able to be assembled.

9 Additionally, even when it can be  
10 assembled with those guards and frames and other  
11 structures around it, then it's possible that  
12 customers wouldn't be able to service their air  
13 filter, you know, to be able to provide proper  
14 maintenance and long run times.

15 Q. Were there any other functional problems with the  
16 panel style air cleaner?

17 MS. FERRERA: Objection.

18 THE WITNESS: Function of the panel air  
19 cleaner, we see some issues with the panel air  
20 cleaner in. I referenced before how the breather  
21 connects into the back. One of the downsides of the  
22 panel air cleaner is that as the oil and gas mixture  
23 comes into the engine, it's more difficult to  
24 contain and circulate all that oil back into the  
25 engine. Sometimes that causes the paper material to

1 potentially use the engine for a longer period of  
2 time before servicing the engine.

3 BY MR. HERRING:

4 Q. Now, you mentioned fit issues with the panel style  
5 air cleaner in certain applications. Do you have any  
6 examples of applications where fit for the panel  
7 style might be a problem?

8 A. Yes. So we had seen a number of water pumps where  
9 the fit was a problem. Water pumps tend to use a  
10 tubular frame that's formed and comes up and around  
11 the engine. That tubular frame tends to pass  
12 directly in front of the air cleaner creating an  
13 issue where the user can't then remove the filter.

14 Additionally, we had seen some  
15 interference with some edgers where that panel would  
16 interfere into wheels, the wheels of the application.

17 Q. Any other applications where fit was an issue with  
18 the panel style air cleaner?

19 A. Yeah, I know we had seen a number of cases where the  
20 fit was a problem and often ran into the guards. I  
21 believe there was a tiller where the handlebars came  
22 up the back and created an issue with the handlebars.

23 (Opposers' Exhibit 4 marked.)

24 BY MR. HERRING:

25 Q. The court reporter has just handed you what's been

1 become saturated with oil, it allows for gravity to  
2 pull that oil downwards and leak out of the bottom  
3 of the filter which becomes a nuisance issue for  
4 customers.

5 With the high mount air cleaner gravity  
6 helps pull all of that oil mixture into the engine  
7 where it's burned -- where it's burned upon  
8 recirculation.

9 BY MR. HERRING:

10 Q. How low to the ground are these engines typically  
11 mounted in their applications?

12 MS. FERRERA: Objection.

13 THE WITNESS: So often times many of these  
14 applications, you know, if they're in water pumps,  
15 other -- tillers, edgers, the engines are very low  
16 to the ground. It's a very dirty environment. As  
17 the engine pulls in the air with a panel style air  
18 cleaner, that air comes very low to the ground.  
19 There is often more dirt and debris than there would  
20 be if you were up, you know, even five inches or so  
21 like the high mount style.

22 So with the high mount style air cleaner,  
23 you can get up and away from some of the dirt and  
24 debris better, thus, making it so that your air  
25 cleaner life is longer and the operator can

1 marked as Exhibit 4. I'll give you a second to look  
2 through this document. Let me know when you're done.

3 (Witness peruses document.)

4 A. Okay.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. What is this document?

8 A. This is a document that was prepared at the time by a  
9 co-op that was in our application review center. He  
10 was looking at the fit of one of our early panel  
11 style air cleaner samples on a McLane edger.

12 Q. And was this the Briggs 550 series engine that's  
13 being tested?

14 A. Correct.

15 Q. Did the test review any problems with the panel style  
16 air cleaner configuration?

17 A. So this test had showed us that there was a  
18 significant interference between the panel air  
19 cleaner and the wheel of the edger.

20 Q. What kind of interference?

21 A. So the bottom of the panel air cleaner extended  
22 downwards into the area where the wheel sits. So the  
23 edge of the air cleaner interfered with the wheel.

24 Q. Would that put the product at a disadvantage?

25 A. This creates a disadvantage in the sense that the

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1 engine wouldn't be able to be used as is. This would  
 2 require the customer to make significant  
 3 modifications to their own application. And when  
 4 Briggs and Stratton is competing against a  
 5 significant number of other engine manufacturers, we  
 6 can't expect our customers to make changes when they  
 7 have other options that might be just a drop-in fit  
 8 for them. So it puts us at a real competitive  
 9 disadvantage.

10 Q. Was there a way that you could use the panel style  
 11 air cleaner with this edger that's shown in this  
 12 document?

13 MS. FERRERA: Objection.

14 THE WITNESS: As the document is showing,  
 15 the only way to use the edger was through spacers or  
 16 other modifications. But the engine, the way it was  
 17 designed with the panel style air cleaner, could not  
 18 be used on this application.

19 BY MR. HERRING:

20 Q. Did this particular test factor into Briggs's  
 21 decision to use a high mount air cleaner for the 550?

22 A. This was one piece of information that led us towards  
 23 developing the high mount air cleaner.

24 Q. Let's go back to Exhibit 2. Which letter is pointing  
 25 to the air cleaner cover?

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1 A. In this exhibit the air cleaner cover is letter A.  
 2 Q. What's the shape of the air cleaner cover in the  
 3 Briggs 550?

4 A. So this is the high mount air cleaner that's shown,  
 5 and this is a rectangular or cubic shape air cleaner.

6 Q. And why did Briggs choose that shaped air cleaner  
 7 cover for the Briggs 550?

8 A. So Briggs and Stratton chose the rectangular cubic  
 9 shaped air cleaner cover as we would seek to maximize  
 10 the air filter size, the air filter, again, sits  
 11 underneath it. We need to provide proper cover for  
 12 that air filter which is an oval, oval cylindrical  
 13 shape. So we need to cover that. And then we need  
 14 to provide area for air intake into that element. So  
 15 a shape surrounding an oval but still allowing some  
 16 air in then becomes a rectangular shape.

17 Q. And just so the record is clear, as you're looking at  
 18 the air cleaner from the top view of the engine, the  
 19 cleaner itself, it's shaped sort of like a racetrack?

20 A. That's correct.

21 Q. And the cover fits on top of that racetrack?

22 A. Correct.

23 Q. Were there any size considerations that went into the  
 24 shape of the air cleaner cover?

25 A. So this engine, needing to fit into a very compact

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1 package size as we discussed before based on  
 2 application requirements and competitive landscape  
 3 requirements, the amount of space that we have to use  
 4 is very small. And that space needs to be occupied  
 5 by the air cleaner, the muffler and the fuel tank.  
 6 So the size ends up being dictated based on a balance  
 7 of the design of all three of those components.

8 Q. Now, in the upper right and left corners of the air  
 9 cleaner cover there is a slight angle, do you see  
 10 that?

11 A. Yes.

12 Q. What is that angling called?

13 A. So that would be the bevel that goes around the edge  
 14 of the air cleaner.

15 Q. Is there any manufacturing advantage to having  
 16 beveling there?

17 MS. FERRERA: Objection.

18 THE WITNESS: From manufacturing advantage  
 19 these parts are formed in a tool. And it's a tool  
 20 that opens from the top and bottom. So this part  
 21 comes out very much like a cup would. The bevel at  
 22 the bottom serves some purpose to help make it so  
 23 that the end of that tool has a better transition,  
 24 so that the part can be manufactured easier, so that  
 25 that tool potentially has a longer life.

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1 BY MR. HERRING:

2 Q. When you say "bevel at the bottom," you mean the  
 3 bottom as it's manufactured which is the top as you  
 4 look at it?

5 A. Yeah, correct. Sorry. So the top as you look at it.

6 Q. Are there any functional advantages to having  
 7 bevelling on the top of the air cleaner cover?

8 MS. FERRERA: Objection.

9 THE WITNESS: The functional advantage of  
 10 having the bevel at the top of the air cleaner, as I  
 11 had mentioned before, that air cleaner serves to  
 12 protect -- sorry, the air cleaner cover serves to  
 13 protect the air cleaner from the environment which  
 14 one part of that protection is the impact  
 15 resistance. So having that bevel at the top corner  
 16 serves to make that top horizontal surface smaller.  
 17 It makes that surface stronger by having that bevel  
 18 come across there. So you end up with a more  
 19 structurally sound part regarding impact.

20 BY MR. HERRING:

21 Q. And why is the air cleaner on the left of the engine  
 22 as we look at it from the front?

23 A. The air cleaner is on the left of the engine based on  
 24 the positions of the carburetor. So the air cleaner,  
 25 again, needs to filter the air and direct it down

1 into the carburetor. So having that placed as close  
 2 to the carburetor as possible is ideal.  
 3 Q. Let's talk about the fuel tank. Which letter in  
 4 Exhibit 2 is pointing to the fuel tank?  
 5 A. The fuel tank is letter B.  
 6 Q. And how would you describe the placement of the fuel  
 7 tank?  
 8 A. The placement of the fuel tank is to the right side  
 9 of the engine located at the top right and is placed  
 10 directly above the rewind.  
 11 Q. Why is it in that placement?  
 12 A. The fuel tank is in that location essentially as a  
 13 resultant of the critical placement of the muffler  
 14 and the air cleaner. With the muffler and the air  
 15 cleaner placement being fixed, then essentially the  
 16 fuel tank occupies the remaining volume that exists  
 17 at the top of the engine.  
 18 Q. Why is the placement of the muffler fixed?  
 19 A. The placement of the muffler is fixed because of the  
 20 location where the exhaust gases come out is directly  
 21 behind, behind the carburetor. After the fuel and  
 22 air mixture goes into the engine, it's burned, it's  
 23 exhausted, so it goes into the muffler.  
 24 The muffler becomes fixed in order to  
 25 minimize the amount of size that the muffler takes

1 THE WITNESS: So if those parts were to be  
 2 flipped with the engine configuration the way it is,  
 3 essentially you end up with an air cleaner cover,  
 4 part C in the picture, that would have to be much  
 5 more significant. There would be significantly more  
 6 material that would be needed in order to transfer  
 7 the clean air from wherever the filter may be down  
 8 to the carburetor. So you would lose efficiencies  
 9 within your air flow, your engine performance would  
 10 suffer, and you'd have a significantly more  
 11 expensive component from your air cleaner.  
 12 BY MR. HERRING:  
 13 Q. Just to clarify, you called the air cleaner cover C  
 14 just now. Did you mean something different?  
 15 A. I'm sorry, I think I meant the carburetor cover. So  
 16 the carburetor cover needs to transfer the clean air  
 17 once it goes through the filter down to the  
 18 carburetor. So that carburetor cover would still  
 19 need to connect to the carburetor in the same  
 20 location.  
 21 So if you moved that filter, then your  
 22 carburetor cover or your air cleaner base would  
 23 become a significantly larger and more complex part.  
 24 Q. Now, would there be any disadvantage, functional or  
 25 commercial, to flipping the entire configuration of

1 up, in order to minimize the amount of hot surfaces  
 2 that exist, in order to minimize the length of the  
 3 manifold just so that the part as it's hot and as  
 4 it's running and vibrating will undergo a minimum  
 5 amount of stresses.  
 6 Q. Is there any functional advantage to having the fuel  
 7 tank be higher than the carburetor?  
 8 MS. FERRERA: Objection.  
 9 THE WITNESS: The -- with these engines  
 10 being gravity fed, the fuel is gravity fed into the  
 11 carburetor. The fuel tank is required to be  
 12 positioned vertically above the carburetor in order  
 13 for the fuel to run from the tank into the  
 14 carburetor.  
 15 If it were placed lower, then a fuel pump  
 16 would be required to get the fuel from the tank into  
 17 the carburetor. And those -- fuel pump would add  
 18 money and cost into it and put us at a competitive  
 19 disadvantage.  
 20 BY MR. HERRING:  
 21 Q. Why not flip the configuration of the fuel tank and  
 22 the air cleaner so that the fuel tank is on the left  
 23 side and the air cleaner is on the right side as you  
 24 look at the engine from the front?  
 25 MS. FERRERA: Objection.

1 the engine so that all the parts that are currently  
 2 on the left move to the right, and all the parts that  
 3 are currently on the right move to the left and the  
 4 fan cover orientation is also flipped?  
 5 MS. FERRERA: Objection.  
 6 THE WITNESS: That would be a very  
 7 difficult prospect in the sense that as we discuss  
 8 the requirement that these engines need to fit into  
 9 customer applications that are very much designed  
 10 around this industry standard platform, the parts of  
 11 the engine that would need to remain fixed in the  
 12 same location would be very much the location where  
 13 the rewind is currently shown. The crank shaft is  
 14 directly behind that which is one of the main parts  
 15 that connects to the application.  
 16 So with that component location being  
 17 fixed and the mounting of the engine being fixed,  
 18 then flipping all of those components essentially  
 19 makes it so that the engine would become wider to  
 20 the right and narrower to the left. So any of the  
 21 widening of the engine to the right would then get  
 22 outside of -- potentially interfere with customer  
 23 applications that are built around this current  
 24 configuration.  
 25 Many of those applications are also

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1 currently designed to deal with the extremely hot  
 2 exhaust gases that are coming out in the location  
 3 that they are. So moving the muffler to the right  
 4 side of the engine could potentially create issues  
 5 with either components on the application or  
 6 potentially where the operators of the engine might  
 7 be using the equipment.  
 8 BY MR. HERRING:  
 9 Q. Would such a reverse configuration from what we see  
 10 in Exhibit 2 result in a less commercially viable  
 11 engine?  
 12 MS. FERRERA: Objection.  
 13 THE WITNESS: Yes, it would be  
 14 significantly less commercially viable. It would be  
 15 very expensive to retool the engine, to design all  
 16 of the parts new, to pay for all of the tooling and  
 17 to create some of those customizations.  
 18 BY MR. HERRING:  
 19 Q. Let's look back at the fuel tank at letter B of  
 20 Exhibit 2. How would you describe the shape of that  
 21 fuel tank?  
 22 A. So that fuel tank is in a roughly rectangular shape.  
 23 Q. Why was a roughly rectangular shape chosen for the  
 24 fuel tank of the 550?  
 25 A. So in trying to serve into the very compact

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1 application space that we're allowed, having the  
 2 maximum -- and meeting customer expectations, you  
 3 know, a customer expects their engine to run as long  
 4 as possible. They're in the middle of the job. They  
 5 don't want to have the engine die and run back to  
 6 their garage to get more fuel or be on the job site  
 7 and have to have down time.  
 8 So the customer expects the longest run  
 9 time as possible. And having more fuel equates to a  
 10 longer run time. And having a defined space that we  
 11 need to fit into we designed the fuel tank as large  
 12 as possible which then ends up being this shape  
 13 that's seen which is roughly rectangular from the  
 14 front and cubic if you would see it from some sort of  
 15 perspective.  
 16 Q. And that defined space you just mentioned, you mean  
 17 the space defined in the application?  
 18 A. Correct. The space that the customer applications  
 19 are built around. So all of the frames and housings  
 20 and guards that I had talked about before.  
 21 Q. Now, I see a horizontal protrusion coming out of the  
 22 fuel tank towards the middle of it. Do you see that?  
 23 A. Yes.  
 24 Q. What is that?  
 25 A. That's the weld seam on the fuel tank.

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1 Q. What's the function of the weld seam?  
 2 A. So these fuel tanks are all metal fuel tanks. And in  
 3 order to manufacture them, it requires forming two  
 4 halves, one is the top half and the other is the  
 5 bottom half. When those halves are formed, they're  
 6 put together and then they're welded around that  
 7 entire edge in order to make sure that there is a  
 8 tight seal so that no fuel can leak out of the  
 9 engine -- so that no fuel can leak out of the fuel  
 10 tank, sorry.  
 11 Q. Does it matter where the seam is on the fuel tank?  
 12 MS. FERRERA: Objection.  
 13 THE WITNESS: Yes. We place the seam at  
 14 the center of the fuel tank. It's the ideal  
 15 location for ease of manufacturing. Essentially  
 16 you've got two steel pieces that can be a  
 17 complicated part to draw through the manufacturing  
 18 process, so there is -- the parts start out as a  
 19 flat piece of steel, then there is a tool that comes  
 20 together with a mating tool to create that form and  
 21 that shape. So we place the seam at the center so  
 22 that both the top piece and the bottom piece are  
 23 equally as difficult to manufacture.  
 24 BY MR. HERRING:  
 25 Q. Let's talk about the fan cover which I believe you

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1 also referred to as the blower housing. What letter  
 2 is pointing to that again?  
 3 A. That's letter D.  
 4 Q. And right where letter D is pointing to, is there a  
 5 slant there?  
 6 A. Yes.  
 7 Q. Does the slant have any functional benefits?  
 8 MS. FERRERA: Objection.  
 9 THE WITNESS: That slant is critical in  
 10 being able to direct the air that's coming in  
 11 through the rewind and fly wheel fan to direct that  
 12 air up towards the hot spot of the engine to provide  
 13 correct cooling.  
 14 BY MR. HERRING:  
 15 Q. Would other angles of that slant provide the same  
 16 benefit?  
 17 MS. FERRERA: Objection.  
 18 THE WITNESS: There is a small range of  
 19 angles that might be possible.  
 20 BY MR. HERRING:  
 21 Q. Why is that?  
 22 MS. FERRERA: Objection.  
 23 THE WITNESS: If the angle gets too low,  
 24 essentially, for one, you're moving into an area  
 25 that may, again, see some application interference.

1 But having that angle low makes it so that any  
2 cooling air would be directed to the wrong place of  
3 the engine. It would provide inadequate cooling to  
4 the warm areas of the engine and potentially shorten  
5 the life of the engine.

6 BY MR. HERRING:

7 Q. What about making the angle too high?

8 MS. FERRERA: Objection.

9 THE WITNESS: Similar problem. Making the  
10 angle too high directs the air to the incorrect  
11 place on the engine, reduces the amount of cooling  
12 that you're going to have and just add thermal  
13 stresses onto the components.

14 BY MR. HERRING:

15 Q. Let's talk about the control levers. It's a little  
16 hard to see from this photograph but are those  
17 located on the carburetor that C is roughly pointing  
18 to?

19 A. Yes, they're located there.

20 Q. And are those the same control levers we were  
21 discussing before with respect to the GX, the choke  
22 and the fuel?

23 A. Yes, very similar.

24 Q. And those are located on the carburetor, correct?

25 A. That's correct.

1 Q. What's the functional benefit, if any, to having  
2 those levers located on the carburetor?

3 MS. FERRERA: Objection.

4 THE WITNESS: The functional benefit of  
5 locating the levers on the carburetor is that the  
6 functions they're serving are located there. So the  
7 choke lever is easiest acting when it can be as  
8 close as possible to the choke shaft. It makes for  
9 a much simpler mechanism. It makes for a mechanism  
10 that's easiest to use when it's short and located  
11 directly to where it's operating on.

12 BY MR. HERRING:

13 Q. What about the fuel lever?

14 A. So again, the fuel lever, with the fuel valve being  
15 directly in that location, the functional benefit is  
16 just creating the most simple part, the most  
17 cost-effective part.

18 Q. So those levers control functions of the carburetor?

19 A. That's correct.

20 Q. And are those levers recessed?

21 A. Yes, they're tucked back into the carb cover.

22 Q. What's the functional benefit of having those levers  
23 recessed?

24 MS. FERRERA: Objection.

25 THE WITNESS: The functional benefit of

1 having them recessed, one, is to minimize the length  
2 of the levers. Having them shorter makes them  
3 stronger. Those are critical functions of the  
4 engine. Additionally, having them recessed back  
5 into the engine allows them to be protected from the  
6 environment, so from impacts that might happen to  
7 them, you know. If these engines are on  
8 applications that move on wheels, they may get  
9 banged into something. So having them tucked back  
10 into the engine provides protection against damage.

11 Additionally, with the rewind handle  
12 possibly being in various orientations, when a user  
13 let's go of the rewind handle, having them tucked  
14 back in helps to make sure that those levers aren't  
15 impacted by the rewind handle as it recoils.

16 BY MR. HERRING:

17 Q. Turning our attention back to the air cleaner cover,  
18 what would be the functional disadvantage of moving  
19 that component to the left as we're looking at the  
20 front part of the engine?

21 MS. FERRERA: Objection.

22 THE WITNESS: So the disadvantage of  
23 moving the air cleaner to the left is that, again,  
24 as we're seeking to fit into this compact shape and  
25 size, moving that air cleaner to the left creates a

1 situation where potentially it will be interfering  
2 with the customer applications.

3 Additionally, for the user, there is a  
4 spark plug that's located between the air cleaner  
5 and the muffler. The user needs to occasionally  
6 remove that spark plug for maintenance. So having  
7 that air cleaner moved to the left potentially  
8 creates an increased difficulty of removing that  
9 spark plug. The concern there is that you could  
10 potentially make it so that the user needs to get  
11 closer to the hot muffler surface which Briggs and  
12 Stratton would consider a safety hazard.

13 BY MR. HERRING:

14 Q. And what would be the functional disadvantage, if  
15 any, of moving the air cleaner cover up?

16 MS. FERRERA: Objection.

17 BY MR. HERRING:

18 Q. That would be in the vertical plane as we look  
19 directly at the front side of the engine.

20 A. So again, similar concern, just in, you know, as we  
21 fit into the compact package size, moving the air  
22 cleaner up potentially gets us into interferences for  
23 applications that are designed to only allow a  
24 certain amount of vertical travel of that filter  
25 cover when the air cleaner is serviced. If we move

1 it up more, there may be an interference there that  
 2 prevents users from removing the cover.  
 3 Additionally, moving that air cleaner up  
 4 would require additional material from the carb  
 5 cover, again, marked C in the picture. That  
 6 additional material would translate into a cost which  
 7 would then be a disadvantage competitively.  
 8 Q. Would there be shipping issues as well?  
 9 MS. FERRERA: Objection.  
 10 THE WITNESS: Yes. We -- as all of these  
 11 engines are shipped, you know, from China, from the  
 12 China supply base, part of staying into a small  
 13 package allows us to really maximize the number of  
 14 engines that we can get in a shipping container. So  
 15 any growth of the engine where it gets bigger in  
 16 different directions can potentially create a larger  
 17 cardboard package size for shipping. And that could  
 18 ultimately lead to us getting less engines per  
 19 container which then drives the cost up and creates  
 20 a disadvantage.  
 21 BY MR. HERRING:  
 22 Q. Let's talk about the fuel tank. Would there be any  
 23 functional disadvantages of moving the fuel tank out  
 24 to the right as we look at the front view of the  
 25 engine?

1 additionally with the shipping, making the cardboard  
 2 package size bigger in any direction reduces the  
 3 quantity of engines and increases shipping costs.  
 4 Shipping costs are a concern not only for us for our  
 5 engines but also customer applications. When the  
 6 customer puts their -- this engine onto their  
 7 equipment, they also need to consider package size  
 8 because they're turning around and shipping their  
 9 product to dealers, retailers, other things. So as  
 10 that fuel tank or other component would potentially  
 11 grow, then it may negatively impact their costs as  
 12 well.  
 13 BY MR. HERRING:  
 14 Q. Let's talk about the two control levers we've been  
 15 discussing, the choke and the fuel levers. Would  
 16 there be any functional disadvantage to moving the  
 17 location of those levers?  
 18 MS. FERRERA: Objection.  
 19 THE WITNESS: With the location of the  
 20 choke and the fuel valve fixed, if those levers were  
 21 to move, you would essentially be creating a longer,  
 22 more complicated mechanism that would need to  
 23 transfer the human motion of moving the lever and  
 24 transfer that motion back to the location it needs  
 25 to act upon.

1 MS. FERRERA: Objection.  
 2 THE WITNESS: So moving the fuel tank out  
 3 to the right as far as functional disadvantage, that  
 4 fuel tank contains a large amount of fuel which has  
 5 a significant weight to it. That weight is  
 6 currently placed roughly above the center of gravity  
 7 of the engine. If we move it to the right, it will  
 8 increase the stresses that that fuel tank will see  
 9 as vibrations and other things occur with the  
 10 engine. So moving it to the right would require  
 11 additional structure. It would require us to  
 12 potentially change the structure for mounting in  
 13 order to make the fuel tank stronger. So that would  
 14 add cost into those components.  
 15 Additionally, then the fuel tank would be  
 16 moving outside of the compact package that's defined  
 17 by the customer applications.  
 18 BY MR. HERRING:  
 19 Q. Would there be any functional disadvantage to moving  
 20 the fuel tank up vertically as we look at the front  
 21 side of the engine?  
 22 MS. FERRERA: Objection.  
 23 THE WITNESS: So similar concerns as the  
 24 other components. Moving it up, you potentially get  
 25 into the customer application concerns. And then

1 So you would end up with more complex  
 2 systems that would be more costly. And any system  
 3 in any complex system just has greater likelihood of  
 4 failure as compared to a more simple system. So we  
 5 would potentially see increased warranty or customer  
 6 dissatisfaction.  
 7 BY MR. HERRING:  
 8 Q. Would that affect the manufacturing cost for those  
 9 parts, too?  
 10 A. Yes.  
 11 MS. FERRERA: Objection.  
 12 THE WITNESS: Any additional parts  
 13 require -- any additional parts require additional  
 14 labor in order to assemble it and put it on the  
 15 engine. So that would increase manufacturing costs.  
 16 BY MR. HERRING:  
 17 Q. Would there be any functional disadvantage to having  
 18 the controls no longer be recessed?  
 19 MS. FERRERA: Objection.  
 20 THE WITNESS: The functional disadvantage  
 21 there I had referenced in a previous answer. Having  
 22 them stick out farther creates longer levers that  
 23 are potentially weaker. It puts the levers in the  
 24 position where they're more prone to be impacted  
 25 either by something falling or by being run into

1 something which could potentially damage them and  
2 create failures.

3 BY MR. HERRING:

4 Q. Let's talk about the seam on the fuel tank that we  
5 were discussing earlier. Is there a functional  
6 disadvantage to moving the location of that seam?

7 A. Yeah.

8 MS. FERRERA: Objection.

9 THE WITNESS: As I had stated, the seam is  
10 in the center as an ideal manufacturing location as  
11 we seek to balance the complexity of making the top  
12 half of the fuel tank and the bottom half of the  
13 fuel tank. If we would move the seam up, it would  
14 make an easier top part to manufacture as that steel  
15 wouldn't need to be drawn or formed as much, but it  
16 would create a much more difficult bottom part as  
17 that -- the draw of that steel in order to form it  
18 into a deeper shell would be a lot more complicated.

19 So any deviation from having that seam in  
20 the center would create a more difficult part to  
21 manufacture.

22 BY MR. HERRING:

23 Q. Would there be a functional disadvantage to changing  
24 the direction of the seam so it was no longer  
25 parallel with the ground?

1 additional labor.

2 MR. HERRING: I think this is a good time  
3 to take a break.

4 (Recess taken.)

5 MR. HERRING: Counsel, during the last  
6 session you made a number of objections without  
7 stating the basis, and per the TTAB rules we need to  
8 be given an opportunity to cure the testimony if  
9 something is objectionable. So I ask that you go  
10 back and say the basis for the objections that you  
11 made previously.

12 MS. FERRERA: Well, I think under the  
13 rules that's only required if it's something that  
14 can be cured. But our position is that Mr. Whitmore  
15 has given improper expert testimony for which there  
16 was an inadequate disclosure as required under the  
17 TTAB rules in this proceeding, and our -- we intend  
18 to cross-examine Mr. Whitmore under protest and  
19 reserve our right to file a motion to strike any  
20 portion of his testimony that constitutes improper  
21 expert opinion.

22 MR. HERRING: And which portion of his  
23 testimony does Honda believe constitutes improper  
24 expert testimony?

25 MS. FERRERA: Well, a large portion of it.

1 A. Changing the direction of the seam would then make it  
2 so that --

3 MS. FERRERA: Objection.

4 THE WITNESS: -- that maybe on part of the  
5 tank it might be a shallower draw. But on the other  
6 part of the tank where that seam would run  
7 downwards, that part of the tank would be more  
8 difficult. So you would have an overall more  
9 difficult component to manufacture.

10 BY MR. HERRING:

11 Q. Let's talk again about the slant in the fan cover  
12 that letter D is pointing to. What would be the  
13 functional disadvantage of getting rid of that slant?

14 MS. FERRERA: Objection.

15 THE WITNESS: In getting rid of that  
16 slant, you would negatively impact the ability to  
17 deliver the cooling air from the fan up to the  
18 cylinder head and the other warm areas or hot areas  
19 of the engine. So in order -- I mean so in order to  
20 then achieve the same cooling which you would need  
21 for a properly performing engine, you would have to  
22 use other sort of baffling or air direction methods  
23 to get the air there. So that would be added  
24 components which would increase cost through just  
25 additional components, additional manufacturing,

1 I think all of the questions relating to the  
2 functional benefits or functional disadvantages of  
3 various aspects of the components constitute  
4 improper expert testimony. I think virtually all of  
5 my objections have been on that basis.

6 MR. HERRING: Okay.

7 (Opposers' Exhibit 5 marked.)

8 BY MR. HERRING:

9 Q. Mr. Whitmore, the court reporter has just handed you  
10 an exhibit marked as Exhibit 5. Do you recognize the  
11 photograph in Exhibit 5?

12 A. Yes.

13 Q. And what is this a photograph of?

14 A. This is a photograph of the updated 550 series Briggs  
15 and Stratton small overhead valve horizontal shaft  
16 engine.

17 Q. So at a certain point Briggs updated the look of the  
18 550 engine?

19 A. That's correct.

20 Q. And were you involved in that?

21 A. Yes.

22 Q. What was your involvement?

23 A. So my involvement was in understanding the changes  
24 that were desired and then helping to communicate  
25 those to our team in China for modification.

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1 Q. Do you know why Briggs chose to update the look of  
 2 the 550?  
 3 A. The reason we chose to update the look of the 550 was  
 4 in response to some concerns that were expressed from  
 5 Honda and also to make sure that we aligned a look of  
 6 the engine across other projects that were going on.  
 7 MS. SEARES: Counsel, I apologize for  
 8 interrupting, but our real time is not working. Can  
 9 we take a quick break?  
 10 (Recess taken.)  
 11 BY MR. HERRING:  
 12 Q. Mr. Whitmore, just to orient everyone, before we went  
 13 off the record, we were talking about the updated 550  
 14 series engine, right?  
 15 A. Correct.  
 16 Q. And we were looking at Exhibit 5?  
 17 A. Yes.  
 18 Q. My question is what changed between the initial  
 19 design of the 550 that's shown in Exhibit 2 and the  
 20 updated 550 shown in Exhibit 5?  
 21 A. So the change that was made, the most significant  
 22 change was the addition of the trim panel that  
 23 extends -- that extends horizontally across the  
 24 engine starting below the 550 series label. So it  
 25 essentially begins in the area where the little

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1 rabbit symbol is, and it extends right across the  
 2 engine and wraps around the fuel tank. So that part  
 3 was added.  
 4 Additionally, there was a small change to  
 5 the shape of the air cleaner which isn't really  
 6 visible in this view, but from the top it took on a  
 7 slightly more rounded shape. Additionally, there was  
 8 a small change to the fuel spillway at the top of the  
 9 fuel tank and then small changes to the carb cover,  
 10 and side of the blower housing there was a little  
 11 raised area that was removed.  
 12 Q. How much flexibility did Briggs have in designing the  
 13 shape of the air cleaner cover of the 550?  
 14 A. Not very much flexibility.  
 15 Q. Can you explain why?  
 16 A. So essentially with this compact package being  
 17 designed, and again, to -- my previous statements  
 18 about trying to maximize the function of the air  
 19 cleaner within the small area that we have in the  
 20 upper left corner, we wanted to stay with the air  
 21 cleaner size that we had, so we were just able to  
 22 slightly round the edges of the cover.  
 23 Q. And that was the track-shaped oval air cleaner we  
 24 were discussing before?  
 25 A. Correct, the high mount air cleaner that takes on an

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1 oval shape if you view it from the top.  
 2 Q. When the -- when Briggs updated the look of the 550  
 3 series, did the overall shape and orientation of the  
 4 component parts change at all?  
 5 A. No.  
 6 Q. Why not?  
 7 A. The shape and location of the component parts are  
 8 functional. So any changes were just the small,  
 9 little decorative trim piece that we could do and the  
 10 other small tweaks. But based on the application  
 11 requirements and the base engine design, the location  
 12 of the components are functionally fixed.  
 13 MS. FERRERA: Move to strike the testimony  
 14 that the shape and location are functional and that  
 15 they're functionally fixed.  
 16 BY MR. HERRING:  
 17 Q. What did you mean when you said that the shape and  
 18 location of the component parts are functional?  
 19 A. So per previous testimony what I had stated --  
 20 MS. FERRERA: Objection.  
 21 THE WITNESS: -- before, the air cleaner  
 22 being in the upper left-hand corner is important  
 23 based on clearance within the applications, trying  
 24 to stay into a compact package. The air cleaner at  
 25 the top directs the air into the carburetor, so we

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1 try to stay high with the air cleaner to keep -- to  
 2 minimize the amount of debris that gets in. We stay  
 3 high with the air cleaner to prevent interference  
 4 with customer applications and equipment, and we try  
 5 to stay inwards as much as possible just for overall  
 6 compactness.  
 7 The fuel tank being in the upper  
 8 right-hand area is required based on that being the  
 9 only area that is remaining for the fuel tank to  
 10 occupy.  
 11 MS. FERRERA: Move to strike, improper  
 12 expert opinion testimony.  
 13 MR. PHILLIPS: So that we're not getting  
 14 interruption, can we agree that you have a  
 15 continuing objection on that basis?  
 16 MS. FERRERA: Sure, as long as -- right,  
 17 as long as we agree that you're not going to argue  
 18 that we've waived anything by not objecting, by not  
 19 moving to strike. I think I'll continue to object,  
 20 but I won't move to strike if that's what you're --  
 21 MR. PHILLIPS: I think it's clear that  
 22 you've already said your intention is to move to  
 23 strike based upon inadequate disclosure. We, of  
 24 course, contest that and contend otherwise. And we  
 25 don't need to debate the merits of that on the

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1 record. But I wanted to make it clear that you're  
 2 reserving your objection. And we, of course,  
 3 dispute that anything that the witness has testified  
 4 to is improper or not properly disclosed.  
 5 MS. FERRERA: Well, just to be clear, I  
 6 mean I think for purposes of the record it would be  
 7 preferable for me to object to the questions that I  
 8 think are objectionable. I mean some of them I may  
 9 not have an objection to, so I think it would make  
 10 sense to get that clear on the record.  
 11 MR. PHILLIPS: Okay. But you just don't  
 12 need to move to strike every time.  
 13 MS. FERRERA: I won't move to strike every  
 14 time, but I'm not waiving any objection to the  
 15 testimony.  
 16 MR. PHILLIPS: Understood.  
 17 MR. HERRING: Fine.  
 18 BY MR. HERRING:  
 19 Q. Mr. Whitmore, are you familiar with the manufacturing  
 20 cost of the updated 550 that we see here in Exhibit  
 21 5?  
 22 A. Yes.  
 23 Q. Are you familiar with the manufacturing costs of the  
 24 initial 550 that we were looking at in Exhibit 2?  
 25 A. Yes.

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1 Q. Which one is more costly to manufacture?  
 2 A. The updated style is more expensive.  
 3 Q. Why is that?  
 4 A. With the addition of the trim panel, the added part,  
 5 just creates inherent extra cost based on component  
 6 cost. It's an additional part that we need to  
 7 procure and purchase. And then additionally, that  
 8 part needs to be assembled onto the engine, so there  
 9 is additional labor required to assemble that part  
 10 onto the engine.  
 11 The attaching that trim panel to the fuel  
 12 tank also required an additional tab, mounting tab,  
 13 on the fuel tank. So there is added cost in the fuel  
 14 tank. And there is an added -- there is two added  
 15 fasteners in order to attach the trim panel to the  
 16 engine.  
 17 Q. We've been focusing our attention thus far on the  
 18 Briggs 550 series engine. Does Briggs sell other  
 19 single cylinder horizontal shaft engines?  
 20 A. Yes.  
 21 (Opposers' Exhibit 6 marked.)  
 22 BY MR. HERRING:  
 23 Q. The court reporter has just handed you what's been  
 24 marked as Exhibit 6. Go ahead and thumb through  
 25 those and let me know when you're finished.

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1 (Witness peruses document.)  
 2 A. Okay.  
 3 Q. Are these all engines that Briggs and Stratton  
 4 currently sells or has at one point sold?  
 5 A. Yes.  
 6 Q. Let's walk through and identify each of these, if you  
 7 will.  
 8 A. The first image marked 12 is the model 12 Intek Pro,  
 9 image marked 13 is the model 20 Intek Pro, image 205  
 10 is the 750 series 163 cc engine, the next image is  
 11 the 950 series 208 cc engine, the next image is 306  
 12 cc 1450 series engine, the next image is a 1650 420  
 13 cc engine, image 212 is the 2100 series 420 cc  
 14 engine, image 215 is the 6.5 horsepower Vanguard,  
 15 also known as model 13 internally, image 216 would be  
 16 our model 19 Vanguard labeled 10 horsepower.  
 17 Q. Are these all single cylinder horizontal shaft  
 18 engines?  
 19 A. Yes.  
 20 Q. Did these all have the high mount air cleaner design?  
 21 A. Yes.  
 22 Q. Are all of these engines used in similar applications  
 23 to the GX and Briggs 550?  
 24 A. They would all be similar applications with varying  
 25 sizes, power output requirements, et cetera.

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1 Q. Have you seen sales data for Briggs single cylinder  
 2 horizontal shaft engines?  
 3 A. Yes, I've seen some.  
 4 (Opposers' Exhibits 7-8 marked.)  
 5 BY MR. HERRING:  
 6 Q. The court reporter has just handed you two separate  
 7 exhibits. The first one is Exhibit 7, and that  
 8 begins Bates number BASCO0000103 to 107, and the  
 9 second one is BASCO0011398. That's Exhibit 8. Can  
 10 you identify Exhibits 7 and 8 for me, please, Mr.  
 11 Whitmore?  
 12 A. Yes. Sales data for Briggs and Stratton engines.  
 13 Q. Does Briggs maintain sales data like this in the  
 14 ordinary course of business?  
 15 A. Yes.  
 16 Q. What department's responsible for maintaining sales  
 17 data like we see in Exhibit 7 and 8?  
 18 A. So the department that maintains this data would be  
 19 our sales administration department.  
 20 Q. Do you know who prepared Exhibits 7 and 8?  
 21 A. It's my understanding that Ron Moore prepared this  
 22 data.  
 23 Q. What's Mr. Moore's title?  
 24 A. Mr. Moore is director of sales administration.  
 25 Q. Do you know at whose direction did Mr. Moore prepare

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<p>1 these documents?</p> <p>2 A. Ron Weber.</p> <p>3 Q. What's Mr. Weber's title?</p> <p>4 A. Mr. Weber's title, he was product manager.</p> <p>5 Throughout the time I've worked with him he was</p> <p>6 product manager for small horizontal engines. He had</p> <p>7 had a program manager job, and he's currently</p> <p>8 transitioning into an application engineering role.</p> <p>9 Q. At Briggs?</p> <p>10 A. At Briggs and Stratton, correct.</p> <p>11 Q. For what purpose was this sales data shown in</p> <p>12 Exhibits 7 and 8 compiled?</p> <p>13 A. For the purpose of this issue.</p> <p>14 Q. When you say "this issue," you mean this case?</p> <p>15 A. This case.</p> <p>16 Q. Now, Briggs single cylinder horizontal shaft engines,</p> <p>17 some of those engines only come with the panel style</p> <p>18 air cleaner cover, right?</p> <p>19 A. Correct.</p> <p>20 Q. And some like the 550 we've been talking about only</p> <p>21 come with the high mount style?</p> <p>22 A. Correct.</p> <p>23 Q. Are there some that come with a high mount option and</p> <p>24 a panel option?</p> <p>25 A. Yes.</p>	<p>1 would be from page 105, the UE, the line that starts</p> <p>2 with UE.</p> <p>3 Q. That's the 550 series?</p> <p>4 A. The 550 series engine. The line that starts with VB,</p> <p>5 the Vanguard 5.5 and 6.5 horsepower, and the line</p> <p>6 that starts with VF, the Vanguard 8 and 10</p> <p>7 horsepower.</p> <p>8 Q. Anything in Exhibit 7 page 103 that is only high</p> <p>9 mount style?</p> <p>10 A. No.</p> <p>11 Q. And in Exhibit 8 looking at the left-hand column, is</p> <p>12 it the same three engines, UE, VB and VF that are</p> <p>13 only available in high mount?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. The engines you haven't mentioned thus far in this</p> <p>16 line of questioning, are those available with high</p> <p>17 mount air cleaners and panel air cleaners -- or panel</p> <p>18 air cleaners, rather?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. And let's go through so the record is clear and</p> <p>21 identify those.</p> <p>22 A. So the engines that are available with -- in a</p> <p>23 configuration of either high mount or panel style</p> <p>24 engines -- I'm sorry, high mount or panel style air</p> <p>25 cleaners would be from page 103, the line starting</p>
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<p>1 Q. So let's start on Exhibit 7. Looking through the</p> <p>2 engines that are listed on the left-hand column of</p> <p>3 page 103 and the left-hand column of page 105, can</p> <p>4 you identify the engines that only come in the panel</p> <p>5 version air cleaner cover?</p> <p>6 A. So the engines that only come in the panel version of</p> <p>7 the air cleaner cover from page 103, that would be</p> <p>8 the lines that start with VA, VD and VG. So those</p> <p>9 would be old Vanguard engines.</p> <p>10 Q. And how about page 105?</p> <p>11 A. Page 105 the panel style only would again be VA, VD</p> <p>12 and VG.</p> <p>13 Q. And in Exhibit 8, is it also just VA, VD and VG that</p> <p>14 are panel style only?</p> <p>15 A. That's correct.</p> <p>16 Q. And what's happening to the sales of the Briggs</p> <p>17 single cylinder horizontal shaft engines that are</p> <p>18 only available with the panel style air cleaner?</p> <p>19 A. Those engines have either been already phased out of</p> <p>20 production or are currently in the planning stages of</p> <p>21 being removed from production and obsoleted.</p> <p>22 Q. Looking back at the same columns on Exhibits 7 and 8,</p> <p>23 can you identify which engine models are only</p> <p>24 available with the high mount air cleaner design?</p> <p>25 A. The engines only available with the high mount style</p>	<p>1 with UD which is the Intek, known as the Intek model</p> <p>2 12. On page 105 of Exhibit 7 the engines with high</p> <p>3 mount and panel air cleaners is the line beginning</p> <p>4 with UD, the line UF, the line UH which is the 2100</p> <p>5 series, the line beginning with UL and that's it.</p> <p>6 Q. How about on Exhibit 8?</p> <p>7 A. So Exhibit 8, again, high mount and panel style air</p> <p>8 cleaners would be UD, UF, UL and that's it.</p> <p>9 Q. Did you skip UH?</p> <p>10 A. I'm sorry, UH. The 2100 series has high mount and</p> <p>11 panel.</p> <p>12 Q. For the engines that have a panel and a high mount</p> <p>13 option, which one of those options is typically the</p> <p>14 bigger seller?</p> <p>15 MS. FERRERA: Objection.</p> <p>16 THE WITNESS: The high mount air cleaner</p> <p>17 tends to be the more common package based on</p> <p>18 application requirements.</p> <p>19 BY MR. HERRING:</p> <p>20 Q. You can set those exhibits aside. Are you aware of</p> <p>21 any engine manufacturers other than Honda and Briggs</p> <p>22 that sell single cylinder horizontal shaft engines?</p> <p>23 A. Yes.</p> <p>24 Q. Can you name some of those?</p> <p>25 A. Engine manufacturers other than Honda and Briggs that</p>

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1 sell single cylinder horizontal shafts would be  
 2 Kohler, Subaru, LCT, Generac, Yamaha and then a large  
 3 number of Chinese manufacturers, Jiangdong, Lifan,  
 4 Loncin, Zongshen and many other smaller  
 5 manufacturers.  
 6 Q. Are the engines sold by these manufacturers, do they  
 7 have the same component parts in the same relative  
 8 shape and location as the Honda GX?  
 9 MS. FERRERA: Objection.  
 10 THE WITNESS: Yes, typically.  
 11 (Opposers' Exhibit 9 marked.)  
 12 BY MR. HERRING:  
 13 Q. The court reporter is handing you what's been marked  
 14 as Exhibit 9 which appears to be a photograph of an  
 15 engine. Do you recognize this engine?  
 16 A. Yes.  
 17 Q. What is this engine?  
 18 A. From the picture, the labels on the engine would  
 19 indicate that this is a Subaru EX21 engine.  
 20 Q. This is a single cylinder horizontal shaft engine?  
 21 A. Yes.  
 22 Q. Do you know whether this engine is available for sale  
 23 in the United States?  
 24 A. Yes, it is.  
 25 Q. Do you know whether Briggs engines compete for sales

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1 of this engine in the United States?  
 2 A. Yes, they do.  
 3 Q. Do you know whether this engine has the same shape  
 4 and component orientation as the GX engine?  
 5 MS. FERRERA: Objection.  
 6 THE WITNESS: Yes, it does.  
 7 (Opposers' Exhibit 10 marked.)  
 8 BY MR. HERRING:  
 9 Q. Mr. Whitmore, our court reporter has just handed you  
 10 what's been marked as Exhibit 10. Do you recognize  
 11 this engine?  
 12 A. Yes, I do.  
 13 Q. Let me back up. This is a photograph of an engine in  
 14 Exhibit 10?  
 15 A. Yes.  
 16 Q. Is this a single cylinder horizontal shaft engine?  
 17 A. Yes, it is.  
 18 Q. What kind of engine is this?  
 19 A. This would be a small horizontal single cylinder  
 20 engine. I'm sorry, the question?  
 21 Q. It was a bad question. Who sells this engine?  
 22 A. According to the label this is an All-Power 208 cc  
 23 engine.  
 24 Q. Is this engine available for sale in the United  
 25 States to your knowledge?

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1 A. Yes, it is.  
 2 Q. Is this seller, All-Power, located in the United  
 3 States?  
 4 A. All-Power is a US subsidiary of Jiangdong based in  
 5 China.  
 6 Q. Do Briggs engines compete with this engine in Exhibit  
 7 10 for sales in the United States?  
 8 A. Yes, they do.  
 9 Q. And this engine in Exhibit 10 has the same shape and  
 10 overall orientation and location of component parts  
 11 as the GX?  
 12 MS. FERRERA: Objection.  
 13 THE WITNESS: Yes, same configuration with  
 14 a high mount air cleaner and a fuel tank mounted  
 15 above a blower housing with a slant angle directing  
 16 air upwards toward the cylinder head.  
 17 (Opposers' Exhibit 11 marked.)  
 18 BY MR. HERRING:  
 19 Q. Mr. Whitmore, you've just been handed Exhibit 11.  
 20 And before you mentioned Generac as a seller of  
 21 single cylinder horizontal shaft engines, correct?  
 22 A. Correct.  
 23 Q. And if you could turn to page 2, the second page of  
 24 this exhibit, I want to direct your attention to the  
 25 engine mounted on the power washer shown. Do you see

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1 that?  
 2 A. Yes.  
 3 Q. Do you recognize that engine?  
 4 A. Yes, I do.  
 5 Q. Is that a single cylinder horizontal shaft engine?  
 6 A. Yes, it is.  
 7 Q. Is Generac located in the United States?  
 8 A. Yes.  
 9 Q. Is the engine shown on the second page here of  
 10 Exhibit 11 available for sale in the United States?  
 11 A. Yes, I believe so.  
 12 Q. And do Briggs engines compete for sales with this  
 13 engine in the United States?  
 14 A. Yes.  
 15 Q. And this engine on the second page of Exhibit 11 has  
 16 the same shape and orientation of the component parts  
 17 as the GX engine?  
 18 A. Yes.  
 19 (Opposers' Exhibit 12 marked.)  
 20 BY MR. HERRING:  
 21 Q. Mr. Whitmore, the court reporter has just handed you  
 22 Exhibit 12. And this is also a Generac document. I  
 23 believe if you turn to the second page, you'll get a  
 24 clearer picture of the engine which, again, is  
 25 mounted on a -- is that a power washer?

1 A. Yes, it's a power washer.  
 2 Q. And does this show another Generac single cylinder  
 3 horizontal shaft engine?  
 4 A. Yes, it does.  
 5 Q. And is this engine available for sale in the United  
 6 States?  
 7 A. Yes.  
 8 Q. And Briggs engines compete with this engine as well  
 9 for sales in the United States?  
 10 A. That's correct.  
 11 Q. And this engine also has the same shape and  
 12 orientation as the GX?  
 13 MS. FERRERA: Objection.  
 14 THE WITNESS: Correct.  
 15 BY MR. HERRING:  
 16 Q. Based on your knowledge of the single cylinder  
 17 horizontal shaft engine industry, is there an  
 18 industry standard shape and configuration for those  
 19 engines?  
 20 MS. FERRERA: Objection.  
 21 THE WITNESS: Yes.  
 22 BY MR. HERRING:  
 23 Q. What is that industry standard shape and  
 24 configuration?  
 25 MS. FERRERA: Objection.

1 became -- Honda's GX engine became a dominant force  
 2 in the market based on performance, quality,  
 3 reliability, a lot of applications tended to be  
 4 built around that package size. It was a very  
 5 small, compact, light weight engine. People tended  
 6 to build applications around that.  
 7 Chinese competition came in, working to  
 8 take market. So at both ends of the market you now  
 9 have engines that are working towards applications  
 10 that are built around that small, compact size where  
 11 the air cleaner is upper left, the fuel tank is  
 12 upper right, you know, with a recoil and blower  
 13 housing below.  
 14 BY MR. HERRING:  
 15 Q. Is that the Honda package you were referring to  
 16 earlier in your testimony?  
 17 A. Yes, it's very much the Honda package that sets  
 18 expectations.  
 19 Q. If competitors were not allowed to use this shape and  
 20 configuration we've been discussing, what would the  
 21 effect be?  
 22 MS. FERRERA: Objection.  
 23 THE WITNESS: Competitors would find  
 24 themselves at a disadvantage in potentially not  
 25 fitting all applications in making it so that if

1 THE WITNESS: The industry standard  
 2 configuration would be the configuration where the  
 3 high mount air cleaner is in the upper left-hand  
 4 corner, the fuel tank is mounted directly to the  
 5 right of it, and then below that is a fan cover with  
 6 an upward slant towards the carb cover.  
 7 BY MR. HERRING:  
 8 Q. Is there an industry standard shape of the fuel tank?  
 9 MS. FERRERA: Objection.  
 10 THE WITNESS: Industry standard shape for  
 11 a fuel tank would be roughly -- would be a  
 12 rectangular shape when viewed from the front and  
 13 roughly cubic shape when viewed from a perspective.  
 14 BY MR. HERRING:  
 15 Q. Is there an industry standard shape of the air  
 16 cleaner cover?  
 17 MS. FERRERA: Objection.  
 18 THE WITNESS: Air cleaner covers tend to  
 19 be roughly rectangular when viewed from the front  
 20 and roughly cubic when viewed from a perspective.  
 21 BY MR. HERRING:  
 22 Q. How did these engine shapes and configurations become  
 23 industry standard?  
 24 MS. FERRERA: Objection.  
 25 THE WITNESS: So essentially as Honda

1 customers were to adopt their engine, they would  
 2 have to invest time, money and other resources in  
 3 adapting their applications. And ultimately with  
 4 the number of options that are available within this  
 5 industry standard configuration, potential customers  
 6 won't make the changes required when they have other  
 7 options.  
 8 BY MR. HERRING:  
 9 Q. Does Briggs -- based on your experience designing  
 10 engines at Briggs, does Briggs endeavor to design its  
 11 engines to fit within the Honda package?  
 12 A. Yes.  
 13 Q. Let's look back for a moment at Exhibit 6. Are there  
 14 any examples of Briggs engines in Exhibit 6 that do  
 15 not fit into the Honda package?  
 16 A. The Intek engines shown in image 12 and 13 do not fit  
 17 the Honda package. The engines, the 750, 950 series  
 18 engines, 1450 and 1650 all were designed to get as  
 19 close as possible to the Honda package. 2100 series  
 20 I believe fits in the Honda package. And the  
 21 Vanguard 6.5 and Vanguard 10 horsepower engines do  
 22 not fit in the Honda package size.  
 23 Q. And those last two engines you mentioned are on pages  
 24 215 and 216?  
 25 A. That's correct.

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1 Q. The two Intek engines you mentioned first on pages 12  
 2 and 13, why do these engines not fit into the Honda  
 3 package?  
 4 A. These engines don't fit in the Honda package size  
 5 because of the height that's designed into them.  
 6 They have a taller package, a taller overall package  
 7 size.  
 8 Q. And how are these two engines performing in the  
 9 marketplace?  
 10 A. Not well. The Intek Pro 305 has already been  
 11 obsoleted. That was removed from production about a  
 12 year ago. The Intek Pro 206 has seen significant  
 13 sales reductions, and there is early talk of  
 14 obsoleting that engine. That engine is no longer  
 15 being marketed for new sales. It's just in  
 16 continuing sales for customers that use it.  
 17 Q. And do the struggling sales of these two engines have  
 18 anything to do with the fact that they don't fit into  
 19 the Honda package?  
 20 MS. FERRERA: Objection.  
 21 THE WITNESS: Yes, I believe so.  
 22 BY MR. HERRING:  
 23 Q. How does that factor in?  
 24 A. That factors in as the competitive landscape has all  
 25 moved to a smaller, more compact size. There is a

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1 tremendous amount of competition out there that tries  
 2 to target any available application. So we have  
 3 competition coming at us for applications that we  
 4 currently power to take some of that business. And  
 5 additionally then where Briggs would try to grow this  
 6 market share where this engine doesn't fit on new  
 7 applications that are designed around the Honda  
 8 package, then we can't get sales into that  
 9 application because those customers won't -- aren't  
 10 willing to make changes and invest money.  
 11 Q. So now let's look at the two Vanguard engines that  
 12 you also testified don't fit into the Honda package  
 13 at pages 215 and 216. Can you tell me what it is  
 14 about these engines that make it so that it does not  
 15 fit into the Honda package?  
 16 A. So in my current role as engineering senior manager  
 17 for small, horizontal new product development, we  
 18 seek to understand opportunities that might exist in  
 19 the market where we can, you know, gain new business,  
 20 produce new products, whatever that might be.  
 21 In going through and understanding working  
 22 with our sales team to identify options, it's been  
 23 identified to me that the air cleaner cover, the air  
 24 cleaner system, so the cover and the base, don't fit  
 25 within the Honda package size, causing interference

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1 issues on applications, thus, not able to replace a  
 2 Honda or other industry standard configurations  
 3 because of that interference.  
 4 Q. What part of the air cleaner cover and base on these  
 5 Vanguard engines make it so that the engines don't  
 6 fit in the Honda package?  
 7 A. So from picture 215 and 216 the most left part of  
 8 that image is the corner of the air cleaner. So that  
 9 air cleaner sticks out forward and sticks to the left  
 10 too far such that it moves into an area that wouldn't  
 11 be occupied by part of Honda's engine.  
 12 Q. I want to talk a little bit more now about your  
 13 specific experience at Briggs over the last 17 years.  
 14 While you've been at Briggs, have you played any role  
 15 or had any experience in the manufacture of engines?  
 16 A. Yes.  
 17 Q. What has that experience been?  
 18 A. So my role in -- my roles that allowed me to gain  
 19 manufacturing experience started within the co-op  
 20 program when I was alternating between school and  
 21 work. I had a term there that allowed me to have  
 22 projects that focused on understanding -- at the time  
 23 Briggs had a paint facility, so I had a project where  
 24 I had to understand cost of paint and components.  
 25 As Briggs looked to either outsource

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1 painting to somebody else or potentially bring  
 2 external business into the company, we had to  
 3 understand what the painting cost was. So I worked  
 4 through understanding how the process worked, how  
 5 much paint was applied to an average part and then  
 6 come up with calculations to understand what the  
 7 labor cost associated with that was along with the  
 8 material cost to create an overall cost.  
 9 Additionally, in that term I had a project  
 10 that looked at time studies for carburetor  
 11 manufacturing to understand for carburetors that are  
 12 manufactured in Milwaukee, Wisconsin, what the  
 13 overall cycle time of manufacturing was in order to  
 14 build that into overall component -- component cost.  
 15 Moving on from there, as I was a product  
 16 engineer in small engine division, we had to work  
 17 very closely with our manufacturing facility. Those  
 18 engines within that division had significant volumes.  
 19 We would do millions of engines a year. We had very  
 20 significant capital costs within our factories, so we  
 21 had to pay very close attention to how our designs  
 22 would be -- would affect manufacturability.  
 23 So we needed to understand any change that  
 24 we made, whether that would add operators to the  
 25 assembly line, whether the changes that we made would

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1 affect our sub-supplier for components, how that  
 2 affected the tooling and any sort of modifications,  
 3 and then make sure that was all being incorporated  
 4 into the design.  
 5 Briggs and Stratton has a long  
 6 manufacturing history. It plays a big role in our  
 7 company, so any engineer works hard to understand the  
 8 manufacturing aspects of the product that they  
 9 design.  
 10 Q. And over the course of your 17 years at Briggs have  
 11 you been involved with or knowledge of shipping  
 12 requirements and parameters for engines?  
 13 A. Yes. So as I've worked with Jiangdong in contract  
 14 manufacturing engines in China since late 2007,  
 15 essentially my role in contract manufacturing engines  
 16 from Jiangdong covered at the early stages most all  
 17 aspects of our business. We didn't have a lot of  
 18 resources assigned to the project, so basically I was  
 19 responsible for handling everything from establishing  
 20 the first contract, making sure that we had accurate  
 21 and agreed-upon pricing with Jiangdong, making sure  
 22 that we had business processes established and making  
 23 sure that we had all the logistics details worked  
 24 out.  
 25 So within that logistics details it was

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1 understanding shipping costs, it was understanding  
 2 how many engines we were going to be able to get in a  
 3 package, it was then understanding how many of those  
 4 packages could go into containers as they were  
 5 shipped to the US or other places. So I've had, you  
 6 know, quite significant experience with trying to  
 7 understand shipping costs.  
 8 Q. Same question with respect to customer requirements  
 9 over your 17 years at Briggs. Have you been involved  
 10 with responding to customer requirements for engines?  
 11 A. Yes. So starting from very early on as a product  
 12 engineer in the small engine division I was  
 13 responsible for our Intek vertical -- model 12 Intek  
 14 vertical engine at that time. It was the premium  
 15 engine in our walk engine lineup. So that job I was  
 16 responsible for anything related to that engine.  
 17 So if we had customer complaints for  
 18 quality or performance, if we had customer  
 19 requirements for making modifications to the engine  
 20 to help power their application better, I would work  
 21 through all of those to make sure that we could  
 22 ensure that we have customer satisfaction.  
 23 Moving on from there, as I began working  
 24 with the contract manufactured engines, you know, the  
 25 customer expectations factored significantly into how

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1 we were designing the engines. The fact that we  
 2 changed from panel air cleaner to high mount air  
 3 cleaner was based on the customer expectation of the  
 4 specific package size. We'll make changes to other  
 5 areas of the engine. The muffler guard, for example,  
 6 we offer two different versions because certain  
 7 customers require a certain wire guard instead of  
 8 stamped guard.  
 9 And then additionally, as I picked up  
 10 engineering manager responsibility for our Vanguard V  
 11 twin engines, that gets into a different set of  
 12 customers, a lot of commercial customers that have  
 13 very high expectations or require significant  
 14 customization in order to power some very unique  
 15 applications. We end up with a lot of customer  
 16 interactions in order to understand what the  
 17 requirements are, any sort of difficulties they have  
 18 and then identify whether the changes can be  
 19 justified economically within our company based on  
 20 the resource allocation that we have and then proceed  
 21 with the project.  
 22 As I've gained recently the responsibility  
 23 for managing the small horizontal new product  
 24 development group, we've begun working on projects to  
 25 really identify where we can make significant gains

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1 in the market. And in doing so, we have a heavy  
 2 focus on this time at really working with customers  
 3 to find out how Briggs and Stratton can grow our  
 4 business in the face of the strength of Honda and the  
 5 strength of the Chinese manufacturers on the low end.  
 6 Q. Could you also talk about your experience with design  
 7 of single cylinder horizontal shaft engines over your  
 8 17 years at Briggs?  
 9 A. So my experience with design of horizontal shaft  
 10 engines, I had some minimal experience with  
 11 horizontal shaft engines when I was in small engine  
 12 division. The Intek -- the model 12 Intek was part  
 13 of the line-up of engines within that department at  
 14 the time, so I had a few projects there that dealt  
 15 with emissions reductions, with piston cost  
 16 reductions. I also had a couple projects where we  
 17 looked at using liquid gasket for the crank case  
 18 cover and the cylinder head. And then as I moved  
 19 into -- can you repeat the question? I lost track.  
 20 Q. Sure. We were talking about your design experience  
 21 over your 17 years at Briggs, specifically with  
 22 respect to single cylinder horizontal shaft engines.  
 23 A. Okay. So that was my initial exposure to the model  
 24 12 Intek when I was in small engine division. So  
 25 then moving on from there when I came back from China

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1 and was tasked to work with a contract manufacturer  
 2 to source engines, that's when I've had significant  
 3 experience in designing and developing the small  
 4 single cylinder engines. It started with the 550  
 5 series engine, you know, working through all aspects  
 6 of design and development from fuel tank  
 7 modifications, muffler modifications, you know,  
 8 pretty deep projects for mufflers to focus on quality  
 9 of noise and noise reduction, air cleaner  
 10 modifications to really focus on improving the air  
 11 filter quality and the function of the air cleaner to  
 12 make it so that it was as easy to use for customers  
 13 as possible. And then, you know, many of the  
 14 internal aspects of the engines as we looked at  
 15 ensuring we had the most power possible, that we had  
 16 a low vibration engine, and overall a good engine.  
 17 So that started with the 550 series engine.  
 18 From there we developed the 420 cc engine  
 19 which is known as the 2100 series. I worked on  
 20 the -- a 270 cc engine that we also did with  
 21 Jiangdong, 306 cc engine which is also known as a  
 22 1450 series, we did a version of the 420 cc engine  
 23 that reduced the package size to better fit into some  
 24 applications. That engine is known as both the 1650  
 25 and the 1850 series engine.

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1 And then I've also worked on -- Briggs and  
 2 Stratton still sells a very old design cast iron  
 3 engine that is specifically designed for some marine  
 4 and agriculture applications in Southeast Asia, and  
 5 we've moved manufacturing of that to Jiangdong.  
 6 And now as we move forward within small  
 7 horizontal new product development, it's continuing  
 8 efforts to try to understand new opportunities that  
 9 we may have.  
 10 Q. Over your 17 years as a Briggs engineer, has the  
 11 issue of fit of an engine within an application come  
 12 up?  
 13 A. Yes.  
 14 Q. And can you elaborate on that?  
 15 A. So as we saw in the 550 series as we worked through  
 16 the project when we originally started with the panel  
 17 style air cleaner, started to really look into how  
 18 that was going to fit-up on application, starting  
 19 would work on prototypes, and we saw many cases where  
 20 that air cleaner would interfere with the wheels,  
 21 with the frames, you know, other parts of the  
 22 application, the shields and guards.  
 23 Additionally, we've seen instances where  
 24 mufflers will extend too far into mounting surfaces.  
 25 And the back side of the engine has a mounting

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1 surface, and keeping clear of customer application  
 2 becomes very important. So any deviation that we get  
 3 from what's expected becomes a problem.  
 4 We had seen one issue where a fuel tank we  
 5 were designing for a snow engine -- so the engines I  
 6 had mentioned before that we developed, we've also  
 7 developed snow versions of the 1450, 1650 and 420 --  
 8 2100 series engine. And in one specific case we had  
 9 a fuel tank that was too tall. And when that  
 10 customer took that fuel tank, assembled it onto their  
 11 application and put it in the package, because we  
 12 failed to meet the desired or required height, that  
 13 customer could then no longer fit their required  
 14 number of boxes into a container for shipment. So we  
 15 were required to lower that fuel tank in order to  
 16 meet those expectations and ultimately allow the  
 17 customer to reduce their overall cost based on more  
 18 optimal and efficient shipping methods.  
 19 Q. Over the course of your 17 years at Briggs have you  
 20 been aware of the competitive landscape for single  
 21 cylinder horizontal shaft engines?  
 22 A. Yes.  
 23 Q. Tell me a little bit about that.  
 24 A. So most of my direct knowledge has come since I  
 25 started working on the 550 series engine. You know,

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1 as we worked to try to understand what our  
 2 requirements and expectations were from our product,  
 3 understanding the power output of the competitive  
 4 engines, you know, making sure that we had the same  
 5 sort of function in our engine to make sure that we  
 6 could produce the same power for customers, making  
 7 sure that when customers would go to use our engine,  
 8 that things like expectations of operator controls,  
 9 expectation of overall size, shape and compactness,  
 10 that we understood that so that we could offer them  
 11 an engine that they could accept from us, gain the  
 12 benefits that we can provide to them without causing  
 13 them to have to do significant development.  
 14 Q. Which horizontal shaft, single cylinder horizontal  
 15 shaft engines have you personally worked on at Briggs  
 16 and Stratton?  
 17 A. The Briggs and Stratton engines?  
 18 Q. Yes.  
 19 A. So I've personally worked on the 550 series engine,  
 20 the 1450 series engine, the 270 cc engine, the 1650,  
 21 1850 and 2100 series engine.  
 22 Q. Have you worked on the Vanguard engine?  
 23 A. I have not worked directly with the Vanguard other  
 24 than understanding the current performance aspects of  
 25 that engine, understanding the current overall layout

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1 of the function, the performance aspects of it in  
 2 order to help direct our new product development team  
 3 as we look at potential improvements from that engine  
 4 as it exists today.  
 5 Q. I think you mentioned the Intek engine as well?  
 6 A. I'm sorry, what was the question?  
 7 Q. You've had experience with the Intek engine as well?  
 8 A. Yes. The Intek engine I had experience when I was a  
 9 product engineer in small engine division working on  
 10 significant cost reductions for piston end-sourcing.  
 11 We moved pistons from an external supplier to an  
 12 internal supplier and had achieved a significant cost  
 13 reduction.  
 14 I focused on emissions improvements for  
 15 the model 12 Intek, and I had explored some potential  
 16 gasket improvements by using liquid gasket for crank  
 17 case covers and even head gaskets.  
 18 Q. Is the testimony that you've given today based on  
 19 your 17 years of experience as an engineer employee  
 20 at Briggs?  
 21 A. Yes.  
 22 MR. HERRING: Let's go off the record.  
 23 (Discussion off the record.)  
 24 BY MR. HERRING:  
 25 Q. Mr. Whitmore, for purposes of this case you provided

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1 certain files to counsel regarding the design and  
 2 development of the Briggs 550 series engine and the  
 3 engine redesign, right?  
 4 A. Yes, correct.  
 5 Q. And to your knowledge was that -- were those  
 6 documents produced to Honda?  
 7 A. Yes.  
 8 Q. And you've also had your deposition taken previously  
 9 in this case, right?  
 10 A. Correct.  
 11 Q. And that deposition was roughly seven hours on the  
 12 record?  
 13 A. Yes, that's what I remember.  
 14 MS. FERRERA: Objection.  
 15 BY MR. HERRING:  
 16 Q. A full day. And was counsel, Honda's counsel who is  
 17 here today, were they also there during your first  
 18 seven hour deposition?  
 19 A. Yes, I remember two people, one of whom was there  
 20 and -- two people that were there at the time, one of  
 21 whom is here today and one person is not here.  
 22 Q. And during that deposition did Honda's counsel ask  
 23 you about the same sort of subject matter that we've  
 24 been talking about today?  
 25 MS. FERRERA: Objection.

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1 THE WITNESS: Yes, very similar.  
 2 BY MR. HERRING:  
 3 Q. And you answered their questions fully and truthfully  
 4 on that day?  
 5 A. Yes.  
 6 MS. FERRERA: Objection.  
 7 MR. HERRING: Okay. Pass the witness.  
 8 MS. FERRERA: Can we go off the record?  
 9 (Discussion off the record.)  
 10 MS. FERRERA: So just to start, as I said  
 11 earlier on the record, applicant, Honda, objects to  
 12 a significant portion of Mr. Whitmore's direct  
 13 testimony on the grounds that in our view it  
 14 constitutes improper undisclosed expert opinion  
 15 testimony. So Honda will proceed with its  
 16 cross-examination of Mr. Whitmore under protest  
 17 pursuant to the TTAB rules, and we reserve our right  
 18 to object to the entry or the receipt of Mr.  
 19 Whitmore's direct testimony into evidence and into  
 20 the trial record for this proceeding. And we  
 21 reserve our right to file a motion to strike all or  
 22 portions of that testimony.  
 23 MR. HERRING: And Opposers disagree that  
 24 any of Mr. Whitmore's testimony is objectionable for  
 25 that reason.

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1 CROSS-EXAMINATION  
 2 BY MS. FERRERA:  
 3 Q. Mr. Whitmore, you testified earlier that you received  
 4 a bachelors degree in engineering; is that correct?  
 5 A. Correct.  
 6 Q. And you obtained that degree in 2000; is that  
 7 correct?  
 8 A. Yes, correct, December of 2000.  
 9 Q. And during that bachelors program, I think you told  
 10 us earlier that you took one class relating to engine  
 11 design specifically, correct?  
 12 A. Yes, specifically related to engine design.  
 13 Q. And in that class you didn't specifically study  
 14 horizontal shaft engines, correct?  
 15 A. Not specifically. We studied engines in general.  
 16 Q. But you didn't specifically study horizontal shaft  
 17 engines, right?  
 18 A. Correct.  
 19 Q. And you also did not specifically study the external  
 20 design of engines as part of that class, correct?  
 21 MR. HERRING: Object to form.  
 22 THE WITNESS: The significant portion of  
 23 the class was based more on the theory of the engine  
 24 design. I did have a specific project within that  
 25 class that we were able to do some project related

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1 to engine design. At that time my project there was  
 2 related to an air cleaner. Because I had just  
 3 previously completed my co-op term, my second term  
 4 where I was -- assigned to the small engine  
 5 division, I had gotten some exposure to our small  
 6 vertical shaft engines. So I had chosen to do for  
 7 my special project a project that focused on air  
 8 cleaners specifically related to cost reductions in  
 9 looking at an idea of maybe how you could eliminate  
 10 fasteners and use plastic snap latches to assemble  
 11 the air cleaner to the engine. So that was a  
 12 self-guided project.

13 BY MS. FERRERA:  
 14 Q. So other than that project that you just described as  
 15 part of your course work during your bachelors  
 16 program, you did not specifically study the external  
 17 design of engines, correct?  
 18 MR. HERRING: Object to form, "external  
 19 design" is vague and ambiguous.  
 20 THE WITNESS: External design would have  
 21 been related to the functions of the engine that may  
 22 be external to the basic crank case. So if the  
 23 crank case contains the crank shaft, piston, rods,  
 24 valves and those components inside of the engine,  
 25 external to the engine would have been the

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1 carburetor, air cleaners. So within the theory of  
 2 engine design, things like air flow, volumetric  
 3 efficiency, air fuel ratio are all controlled  
 4 through external components, and those were very  
 5 much covered in that class.

6 BY MS. FERRERA:  
 7 Q. As part of that class you did not study engine design  
 8 with respect to the external appearance of the  
 9 engine, correct?  
 10 MR. HERRING: Same objection.  
 11 THE WITNESS: That class didn't cover  
 12 appearance issues other than what would have been  
 13 established by the required components.

14 BY MS. FERRERA:  
 15 Q. Well, Mr. Whitmore, do you recall that you gave a  
 16 deposition in this case previously?  
 17 A. Yes.  
 18 Q. And you were under oath at the time that you -- at  
 19 the time that you gave that deposition?  
 20 A. Yes, I remember.  
 21 Q. And you had an opportunity after the deposition was  
 22 completed to review the transcript of your  
 23 deposition?  
 24 A. Yes.  
 25 Q. And you did review it, right?

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1 A. Yes, I did.  
 2 Q. And you made changes to your testimony as  
 3 appropriate, correct?  
 4 A. Correct.  
 5 Q. Would you turn to page 17 of the transcript I've just  
 6 handed you. First of all, is that the transcript of  
 7 your deposition that you're looking at right now?  
 8 A. Yes, it is.  
 9 Q. Would you turn to page 17 of the deposition and line  
 10 7. And do you see you were asked the question:  
 11 "Did you study engine design with respect  
 12 to the external design of the engine?"  
 13 Do you see that?  
 14 A. Yes, I do.  
 15 Q. And your answer in your deposition under oath was:  
 16 "Not that I can remember."  
 17 Do you see that?  
 18 A. That's correct.  
 19 Q. And that was truthful testimony when you gave it on  
 20 March 27th, 2014, correct?  
 21 A. Absolutely.  
 22 Q. And you have not altered that testimony since then,  
 23 correct.  
 24 A. Correct.  
 25 Q. Now, Mr. Whitmore, you received a masters degree in

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1 2010?  
 2 A. Yes, correct.  
 3 Q. And that masters was not in engineering, right?  
 4 A. That's correct.  
 5 Q. It was in business administration?  
 6 A. Yes.  
 7 Q. And fair to say that you didn't take any courses on  
 8 engine design as part of your masters program?  
 9 A. That's correct.  
 10 Q. Now, you began working full time at Briggs in 2001?  
 11 A. Yes, January 2001.  
 12 Q. And you've worked for Briggs ever since, correct?  
 13 A. That's correct. On your previous question, was that  
 14 stated as I worked full time?  
 15 Q. Full time, right.  
 16 A. Yes.  
 17 Q. And your first full time position with Briggs, I  
 18 think you told us earlier, was a warranty reduction  
 19 engineer?  
 20 A. Yes, that's correct.  
 21 Q. And you didn't have any projects that involved a  
 22 horizontal shaft engine as a warranty reduction  
 23 engineer, correct?  
 24 A. That's correct, not that I remember.  
 25 Q. And so you didn't have any products -- any projects

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<p>1 as a warranty reduction engineer involving the</p> <p>2 external appearance of horizontal shaft engines,</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And after that you became a product engineer in the</p> <p>6 small engine division?</p> <p>7 A. Yes.</p> <p>8 Q. And you didn't work on the external design for any</p> <p>9 horizontal shaft engines in that position, correct?</p> <p>10 MR. HERRING: Object to the form, external</p> <p>11 design is vague and ambiguous.</p> <p>12 MS. FERRERA: I'll ask the question again.</p> <p>13 BY MS. FERRERA:</p> <p>14 Q. In your position as a product engineer in the small</p> <p>15 engine division, you did not work on the external</p> <p>16 appearance of any horizontal shaft engines. Correct?</p> <p>17 MR. HERRING: Same objection.</p> <p>18 THE WITNESS: Sorry, can you read the</p> <p>19 question one more time?</p> <p>20 MS. FERRERA: Sure.</p> <p>21 BY MS. FERRERA:</p> <p>22 Q. In your role as a product engineer in the small</p> <p>23 engine division, you did not work on the external</p> <p>24 appearance for any horizontal shaft engines, correct?</p> <p>25 A. That's correct.</p>	<p>1 Q. And how long have you held that position?</p> <p>2 A. I received that promotion I believe it was April of</p> <p>3 2015.</p> <p>4 Q. Okay.</p> <p>5 A. It may have been March. I don't remember exactly.</p> <p>6 Q. Now, Mr. Whitmore, you're aware that Briggs and</p> <p>7 Stratton and Kohler have retained an expert in this</p> <p>8 case to provide opinions on the topic of</p> <p>9 functionality?</p> <p>10 A. Yes.</p> <p>11 Q. And you know that expert is Professor John Reisel?</p> <p>12 A. Yes.</p> <p>13 Q. Reisel. You're aware that he submitted several</p> <p>14 expert reports in this case?</p> <p>15 MR. HERRING: And I'm just going to</p> <p>16 caution the witness not to divulge any</p> <p>17 attorney/client privileged communication. But you</p> <p>18 can answer yes or no if you know.</p> <p>19 THE WITNESS: I'm not aware of how many he</p> <p>20 submitted but yes, I'm aware he submitted at least</p> <p>21 one.</p> <p>22 BY MS. FERRERA:</p> <p>23 Q. And have you read any of the reports that Professor</p> <p>24 Reisel submitted?</p> <p>25 A. I have read it prior to my initial deposition.</p>
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<p>1 Q. And after that role, you moved to Shanghai to help</p> <p>2 establish the China Design Center for Briggs and</p> <p>3 Stratton?</p> <p>4 A. Yes.</p> <p>5 Q. And you didn't directly work on any engine design</p> <p>6 while you were in Shanghai, did you?</p> <p>7 A. No, I didn't.</p> <p>8 Q. And then you returned to the United States and you</p> <p>9 continued to have responsibility for the China Design</p> <p>10 Center, correct?</p> <p>11 A. For a short time.</p> <p>12 Q. And during the time that you were continuing to be</p> <p>13 responsible for the China Design Center, you didn't</p> <p>14 do any engine design, correct?</p> <p>15 A. Correct.</p> <p>16 Q. After that role you became the project lead for</p> <p>17 contract manufactured engines?</p> <p>18 A. That's correct.</p> <p>19 Q. And that's the first time that you became involved</p> <p>20 with the design of the external appearance of</p> <p>21 horizontal shaft engines, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Now, you testified that your current title is</p> <p>24 engineering senior manager?</p> <p>25 A. That's correct.</p>	<p>1 Q. So you just read one of his reports as far as you</p> <p>2 recall?</p> <p>3 A. That's correct.</p> <p>4 Q. Are you aware that Professor Reisel's deposition has</p> <p>5 been taken in this proceeding?</p> <p>6 A. Yes.</p> <p>7 Q. And did you review the transcript of Professor</p> <p>8 Reisel's deposition?</p> <p>9 A. No.</p> <p>10 Q. Are you aware that Briggs and Kohler have offered</p> <p>11 Professor Reisel as an expert in this proceeding on</p> <p>12 the topic of functionality?</p> <p>13 A. I understand that he's an expert.</p> <p>14 Q. In your view he is an expert on the topic of --</p> <p>15 Strike that.</p> <p>16 Do you consider Professor Reisel to be an</p> <p>17 expert on the topic of the design of horizontal shaft</p> <p>18 engines?</p> <p>19 A. I don't really know enough about Mr. Reisel or what</p> <p>20 it takes to get expert classification.</p> <p>21 Q. But you understand that he's been offered on that</p> <p>22 topic by Briggs and Kohler in this case?</p> <p>23 A. Correct.</p> <p>24 Q. Now, Mr. Whitmore, unlike Professor Reisel, you have</p> <p>25 not been retained as an expert in this case, correct?</p>

<p>Page 102</p> <p>1 A. That's correct.</p> <p>2 Q. And to your knowledge have you been disclosed by</p> <p>3 either Briggs and Kohler as an expert in this case?</p> <p>4 A. I'm not sure what takes place during those -- the</p> <p>5 legal aspects of the case, so I'm not really aware of</p> <p>6 the details of any of that.</p> <p>7 Q. So you don't know one way or the other, correct?</p> <p>8 A. No.</p> <p>9 Q. And you've not prepared any kind of expert report in</p> <p>10 this case, have you?</p> <p>11 A. No, I haven't.</p> <p>12 Q. And you haven't submitted any invoices to either</p> <p>13 Briggs or Kohler as an expert?</p> <p>14 A. No.</p> <p>15 Q. And you haven't been compensated for your time to</p> <p>16 appear as an expert, correct?</p> <p>17 A. Not other than my normal salary.</p> <p>18 Q. So is it your understanding that you are testifying</p> <p>19 in this proceeding as a fact witness on behalf of</p> <p>20 Briggs and Kohler?</p> <p>21 MR. HERRING: Object to the form of the</p> <p>22 question. Calls for a legal conclusion.</p> <p>23 BY MS. FERRERA:</p> <p>24 Q. You can answer.</p> <p>25 A. One more time on the question, please?</p>	<p>Page 104</p> <p>1 BY MS. FERRERA:</p> <p>2 Q. Mr. Whitmore, you've been handed a document that is</p> <p>3 marked as Applicant's Trial Exhibit 1, and do you</p> <p>4 recognize that as United States Patent No. 7441532?</p> <p>5 A. Yes.</p> <p>6 Q. And you're named as an inventor on this patent; is</p> <p>7 that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And the title of this patent is four stroke internal</p> <p>10 combustion engine having reduced noise emissions, do</p> <p>11 you see that?</p> <p>12 A. That's correct.</p> <p>13 Q. And am I correct that Exhibit 1 is a utility patent</p> <p>14 relating to an air cleaner for small utility engines?</p> <p>15 A. I'm sorry, the question again?</p> <p>16 Q. Exhibit 1 is a utility patent for an air cleaner</p> <p>17 that's for use with small utility engines?</p> <p>18 A. Correct. Sorry.</p> <p>19 Q. Including potentially horizontal shaft engines,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Now, if you look at figures 5 and 6 of this document,</p> <p>23 Exhibit 1, those figures show an embodiment of one of</p> <p>24 the air cleaners that's the subject matter of your</p> <p>25 invention, correct?</p>
<p>Page 103</p> <p>1 Q. Is it your understanding that you are testifying</p> <p>2 today on behalf of Briggs and Kohler as a fact</p> <p>3 witness?</p> <p>4 MR. HERRING: Same objection.</p> <p>5 THE WITNESS: I'm not really sure what the</p> <p>6 definition of fact witness or any legal bounds of</p> <p>7 that are, so I'm unaware of a lot of the legal</p> <p>8 aspects of these proceedings. This is my first case</p> <p>9 I've been deposed in. This is my second deposition,</p> <p>10 so this is unfamiliar to me.</p> <p>11 BY MS. FERRERA:</p> <p>12 Q. Now, I handed you a copy of your deposition</p> <p>13 transcript from earlier in this proceeding. Did you</p> <p>14 review that transcript in preparing to testify here</p> <p>15 today?</p> <p>16 A. Yes.</p> <p>17 Q. Mr. Whitmore, you're named as an inventor on several</p> <p>18 patents, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you're named as an inventor on a utility patent</p> <p>21 related to an air cleaner?</p> <p>22 A. Yes.</p> <p>23 Q. And that's an air cleaner for an engine, right?</p> <p>24 A. Correct, for a vertical shaft engine.</p> <p>25 (Applicant's Exhibit 1 marked.)</p>	<p>Page 105</p> <p>1 A. Correct. This would be for the vertical shaft</p> <p>2 engine.</p> <p>3 Q. And figure 5 is an embodiment of the air cleaner</p> <p>4 assembly; is that correct?</p> <p>5 A. Yes, correct.</p> <p>6 Q. And then figure 6 is a drawing of the air cleaner</p> <p>7 cover portion of the assembly shown in figure 5,</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. Am I correct that the advantage of the air cleaner</p> <p>11 that you and your fellow inventors described in</p> <p>12 Exhibit 1 is that it reduces noise emissions?</p> <p>13 A. That's correct.</p> <p>14 Q. So the air cleaner served a function, correct?</p> <p>15 A. Sorry, the cover?</p> <p>16 Q. The air cleaner itself.</p> <p>17 A. This is for the cover. The air cleaner was the</p> <p>18 standard filter that we use on all of our engines.</p> <p>19 Q. The air cleaner assembly served a function, correct?</p> <p>20 A. The air cleaner cover served many functions. This</p> <p>21 patent was specifically related to the features that</p> <p>22 are shown as item 126 -- best described by item 126,</p> <p>23 130 and 150 in figure 5.</p> <p>24 Q. Okay.</p> <p>25 A. That was essentially the invention.</p>

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<p>1 Q. Figures 126, 130 and 150 were the invention of this 2 utility patent that's shown in Exhibit 1, correct? 3 A. Yes. 146 would also be the case. 4 Q. Now, you also are named as an inventor on a design 5 patent, correct? 6 A. That's correct. 7 (Applicant's Exhibit 2 marked.) 8 BY MS. FERRERA: 9 Q. Mr. Whitmore, do you recognize what's been handed to 10 you and marked as Applicant's Exhibit 2? 11 A. Yes, I do. 12 Q. This is another patent that you are named as an 13 inventor on? 14 A. Correct. 15 Q. And this is a US design patent, correct? 16 A. Correct. 17 Q. It has the number D540928? 18 A. Yes, correct. 19 Q. And the title of this patent is air cleaner cover, do 20 you see that? 21 A. Yes, I see that. 22 Q. And the drawing that's shown in figure 1 of Exhibit 23 2, does that correspond to the air cleaner cover 24 that's shown in figure 6 of the utility patent, 25 Exhibit 1?</p>	<p>1 Q. But the area in the solid line is considered part of 2 the invention, correct? 3 A. Correct. 4 Q. And so in your patent that's Exhibit 2, what you and 5 your fellow inventors consider to be the invention 6 was the oval portion, the oval portion that appears 7 towards the kind of bottom left-hand side of the 8 drawing? 9 A. That's correct. It was my understanding that the 10 intention of this design patent and what it covered 11 would be a relatively narrow window of coverage. And 12 our intention of filing that design patent was just 13 to prevent any sort of straight exact copying. This 14 air cleaner cover, the filter that's used in this is 15 used by many manufactures. Honda uses this exact 16 same filter, size and shape. 17 So what we were attempting to do, 18 especially in a world where there is increasing 19 Chinese competition at this point, is to make it so 20 that we were covered so somebody couldn't just scan 21 the part, make it and then copy it. 22 Q. Thank you, Mr. Whitmore, for that explanation, but my 23 question is simply you understand what you and your 24 co-inventors were calling ornamental in Exhibit 2 was 25 the elliptical portion that's shown on the bottom</p>
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<p>1 A. Yes, it does. 2 Q. In Exhibit 2 do you see in the right-hand column 3 there is a heading claim, right-hand column, the 4 cover page? 5 A. Yes. 6 Q. There is a heading that says claim? 7 A. I see that. 8 Q. And it says: The ornamental design for an air 9 cleaner cover as shown and described. 10 Do you see that? 11 A. I see that. 12 Q. And so at the time that you filed -- you and your 13 co-inventors filed the application for the design 14 patent that's Exhibit 2, you believe that certain 15 aspects of the air cleaner cover depicted there were 16 ornamental, correct? 17 A. Yes. So within this design patent most of the cover 18 is indicated by dashed lines calling out that that's 19 not what's being covered. To what I had previously 20 stated, just that oval area is the part that's being 21 covered under the design patent. 22 Q. So you understand that in design patents the area 23 that is shown in dashed lines is not considered part 24 of the invention? 25 A. Correct.</p>	<p>1 left-hand side of the drawing? 2 A. Yes, just that small feature. 3 Q. And also the portion of the cover that curved 4 downwards, kind of curved -- was curved? 5 A. Are you talking about the part that the air would 6 flow into? So the bottom corner? 7 Q. No. Do you see if you go along the upper edge of the 8 right-hand side of the drawing? 9 A. Yes, okay. 10 Q. And that's a solid line, and it is straight and then 11 it curves down, do you see that? 12 A. Yes, I see that. 13 Q. And so as it's a solid line, that's part of what you 14 were calling your invention, correct? 15 A. That's the way I would interpret it at this time. I 16 don't know that we would have believed it was part of 17 the invention at that time as we were mostly focused 18 on the intake. But it's obviously what's being 19 covered in this case. 20 Q. And I think if you turn back to Exhibit 1 and to 21 figure 5, you indicated earlier that 126 and 130 were 22 part of what you considered to be the invention of 23 Exhibit 1, correct? 24 A. Correct. 25 Q. And those are the same components that in Exhibit 2</p>

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<p>1 are the subject matter of the design patent, correct?</p> <p>2 MR. HERRING: Object to the form.</p> <p>3 Mischaracterizes the document.</p> <p>4 THE WITNESS: Sorry. Again, one more</p> <p>5 time.</p> <p>6 BY MS. FERRERA:</p> <p>7 Q. The component that's labeled 126 and 130 in figure 5</p> <p>8 of Exhibit 1 is the same component that is the</p> <p>9 subject of the design patent in Exhibit 2, correct?</p> <p>10 MR. HERRING: Same objection.</p> <p>11 THE WITNESS: It's a portion of that</p> <p>12 feature. That feature obviously includes additional</p> <p>13 aspects. The length that I tried to describe as</p> <p>14 being indicated by 150 and 146 earlier would be also</p> <p>15 part of the design patent.</p> <p>16 BY MS. FERRERA:</p> <p>17 Q. And when you filed the design patent that is Exhibit</p> <p>18 2, part of your goal in doing so was to ensure that</p> <p>19 that aspect of the air cleaner cover could not be</p> <p>20 used by other competitors, correct?</p> <p>21 MR. HERRING: I'm going to object to this</p> <p>22 entire line of questioning as irrelevant and outside</p> <p>23 the scope of the direct examination.</p> <p>24 BY MS. FERRERA:</p> <p>25 Q. You can answer.</p>	<p>1 any compensation from Briggs as part of your salary</p> <p>2 or bonus or otherwise?</p> <p>3 A. No, no.</p> <p>4 Q. Now, it's fair to say, is it not, that when Briggs is</p> <p>5 designing its engines, it wants those engines to have</p> <p>6 a unique look?</p> <p>7 A. That's correct.</p> <p>8 Q. And that's true with respect to its horizontal shaft</p> <p>9 engines as well, correct?</p> <p>10 A. Yes.</p> <p>11 Q. I'd like to show you Applicant's Exhibit 3.</p> <p>12 (Applicant's Exhibit 3 marked.)</p> <p>13 BY MS. FERRERA:</p> <p>14 Q. Mr. Whitmore, you've been handed Applicant's Exhibit</p> <p>15 3 which is a document that bears the Bates numbers</p> <p>16 BASCO0011272 through 277, do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And this is a presentation entitled Chinese engine</p> <p>19 sourcing service update, correct?</p> <p>20 A. Correct.</p> <p>21 Q. It's dated February 7th, 2008?</p> <p>22 A. Yes.</p> <p>23 Q. And this is a presentation that you prepared,</p> <p>24 correct?</p> <p>25 A. That's correct.</p>
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<p>1 A. I honestly, I remember sending an email to certain</p> <p>2 managers stating that I didn't even believe that we</p> <p>3 should be filing this patent. I didn't really</p> <p>4 understand some of the value in it. But my</p> <p>5 understanding is that it would have prevented -- it</p> <p>6 would have minimum protection over just a basic exact</p> <p>7 replica.</p> <p>8 Q. Even though you had misgivings, you signed a</p> <p>9 declaration permitting --</p> <p>10 A. Correct.</p> <p>11 Q. -- permitting this application to be filed with your</p> <p>12 name as an inventor, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So, Mr. Whitmore, when you filed the applications</p> <p>15 that led to the issuance of exhibits -- Applicant's</p> <p>16 Exhibits 1 and 2, you understood that an engine</p> <p>17 component such as an air cleaner cover can serve a</p> <p>18 function while also having ornamental features,</p> <p>19 correct?</p> <p>20 A. Yes. And this feature was specifically related to</p> <p>21 one application, one customer application.</p> <p>22 Q. Now, Mr. Whitmore, when you -- when you -- Strike</p> <p>23 that.</p> <p>24 In connection with any of the patents on</p> <p>25 which you were named as an inventor, do you receive</p>	<p>1 Q. And the purpose of this presentation was to help</p> <p>2 provide the service group at Briggs and Stratton some</p> <p>3 information about the product development efforts</p> <p>4 that were ongoing for Chinese sourced engines at that</p> <p>5 time, correct?</p> <p>6 A. Yes. This was very early in that process.</p> <p>7 Q. If you turn to the page that has the number 11275.</p> <p>8 A. Okay.</p> <p>9 Q. The title on that slide is utility engine priority.</p> <p>10 A. Okay.</p> <p>11 Q. And there is a reference there to 128 cc M9</p> <p>12 replacement, do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And that was a reference to the engine that</p> <p>15 eventually became the 550 engine, right?</p> <p>16 A. That's correct.</p> <p>17 Q. In the second bullet under that heading says: Unique</p> <p>18 B&amp;S style.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And that was referring to the external appearance of</p> <p>22 the engine, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. So in designing the 550 series engine, it was</p> <p>25 important to Briggs for it to have a unique style?</p>

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<p>1 A. Correct.</p> <p>2 Q. And the reason why you wanted it to have a unique</p> <p>3 style was to differentiate it from competitors'</p> <p>4 engines, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Earlier you talked about the design requirements that</p> <p>7 are communicated to Briggs by customers and others in</p> <p>8 connection with the development of its engines, do</p> <p>9 you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. And you listed a number of requirements, do you</p> <p>12 recall that?</p> <p>13 A. Yes.</p> <p>14 Q. It's true, is it not, that no customer has told</p> <p>15 Briggs that it needed a horizontal shaft engine that</p> <p>16 has the same external appearance and styling as the</p> <p>17 Honda GX engine, correct?</p> <p>18 MR. HERRING: Object to form, lack of</p> <p>19 foundation.</p> <p>20 THE WITNESS: I'm sorry, one more time</p> <p>21 with the question?</p> <p>22 BY MS. FERRERA:</p> <p>23 Q. It's true, is it not, that no customer has told</p> <p>24 Briggs and Stratton that it requires a horizontal</p> <p>25 shaft engine that has the same external appearance</p>	<p>1 competitively quoted, but we didn't work with them on</p> <p>2 the styling.</p> <p>3 Q. Do you understand that Renquist Designs submitted a</p> <p>4 competitive quote for work on the 550 engine?</p> <p>5 A. I believe I remember seeing that from my previous</p> <p>6 testimony.</p> <p>7 Q. Well, let's --</p> <p>8 (Applicant's Exhibit 4 marked.)</p> <p>9 BY MS. FERRERA:</p> <p>10 Q. Mr. Whitmore, you've been handed what's been marked</p> <p>11 Applicant's Trial Exhibit No. 4. And that is a</p> <p>12 document that bears the Bates number BASCO0002813, do</p> <p>13 you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And do you understand that this is a document that</p> <p>16 came from Briggs and Stratton's files in connection</p> <p>17 with this case?</p> <p>18 A. I'm not sure where it came from.</p> <p>19 Q. Do you know an individual by the name of Michael</p> <p>20 Braun?</p> <p>21 A. Yes.</p> <p>22 Q. Is he someone that worked on the design of the 550</p> <p>23 engine?</p> <p>24 A. No.</p> <p>25 Q. He's involved in product development at Briggs and</p>
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<p>1 and styling as the Honda GX engine?</p> <p>2 MR. HERRING: Same objection, and I'll add</p> <p>3 a vague and ambiguous.</p> <p>4 THE WITNESS: That's correct that</p> <p>5 customers are not coming to us asking for the Honda</p> <p>6 styling for our engines.</p> <p>7 BY MS. FERRERA:</p> <p>8 Q. And in fact Briggs' goal in designing its engines is</p> <p>9 to have a unique style, correct?</p> <p>10 A. To have a distinctive appearance, correct.</p> <p>11 Q. Now, in order to come up with the unique Briggs and</p> <p>12 Stratton style for the 550 engine, Briggs hired an</p> <p>13 industrial designer or industrial design firm,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And do you recall that one firm that you considered</p> <p>17 hiring to assist with the development of that unique</p> <p>18 B&amp;S style was a company called Renquist Design?</p> <p>19 A. I remember some of that information from the last</p> <p>20 deposition, but I don't remember working with them at</p> <p>21 this stage of the project in developing the 550</p> <p>22 series engine.</p> <p>23 Q. So you didn't work directly with Renquist Design in</p> <p>24 connection with the development of the 550 engine?</p> <p>25 A. Correct, not that I remember. They may have</p>	<p>1 Stratton?</p> <p>2 A. He's a product manager.</p> <p>3 Q. Was he involved in the 550 engine in any way to your</p> <p>4 knowledge?</p> <p>5 A. The updated version he would have had some</p> <p>6 involvement.</p> <p>7 Q. Do you know one way or the other whether he had any</p> <p>8 involvement in the original 550 engine?</p> <p>9 A. The 550 engine he did not have involvement in.</p> <p>10 Q. Ultimately, Briggs hired a firm by the name of Brooks</p> <p>11 Stevens to assist in the external styling for the 550</p> <p>12 engine, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Now, Mr. Whitmore, are you familiar with the term</p> <p>15 Briggs family look?</p> <p>16 A. Yes.</p> <p>17 Q. And am I correct that that's a term that Briggs uses</p> <p>18 to refer to the aspiration that engines within a</p> <p>19 particular product line have a similar appearance?</p> <p>20 A. Yes.</p> <p>21 Q. In connection with the 550 project, it's correct, is</p> <p>22 it not, that Briggs paid Brooks Stevens several</p> <p>23 thousand dollars to come up with the external styling</p> <p>24 for that engine?</p> <p>25 A. That's correct. I don't remember exactly how much.</p>

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<p>1 Q. Let's look at what's going to be marked as 2 Applicant's Exhibit 5. 3 (Applicant's Exhibit 5 marked.) 4 BY MS. FERRERA: 5 Q. And Mr. Whitmore, you've been handed what has been 6 marked as Applicant's Trial Exhibit 5, and it bears 7 the numbers Brooks000032 to 000040, do you see that? 8 A. Yes. 9 Q. And I'll represent to you that this is a document 10 that was produced by Brooks Stevens in connection 11 with this case? 12 A. Okay. 13 Q. And do you see on the first page under contact there 14 is a reference to Jeffrey Whitmore? 15 A. Yes. 16 Q. That's you? That's you, correct? 17 A. Correct, that's me. 18 Q. So were you the contact for Brooks Stevens in 19 connection with the 550 project? 20 A. Yes. 21 Q. And if you turn to the second page, do you see there 22 is a screen shot, and towards the top of the screen 23 shot there is a box that says project title? 24 A. Yes. 25 Q. And in that box it says 127 cc engine styling</p>	<p>1 connection with the redesign of the 550 engine; is 2 that correct? 3 A. Yeah. I don't know how much they were paid, but I 4 just know that they were paid for both, both 5 versions. 6 Q. Do you have any reason to doubt the information shown 7 in Applicant's Exhibit 5 that the total amount 8 invoiced in connection with the redesign was \$4,200? 9 A. I don't have any reason to doubt or know one way or 10 the other. 11 Q. Now, am I correct, Mr. Whitmore, that the Briggs 5500 12 engine was developed in order to replace an older 13 Briggs horizontal shaft engine that was called the 14 model 9H? 15 A. Correct. 16 Q. And that model 9H was phased out in the late summer, 17 early fall of 2009; is that correct? 18 A. That's correct. 19 Q. Now, earlier your counsel marked Opposers' Exhibit 2. 20 Can you take that out of your pile. 21 MS. FERRERA: I'm also going to ask the 22 reporter to mark Trial Exhibit 6. 23 (Applicant's Exhibit 6 marked.) 24 BY MS. FERRERA: 25 Q. So Opposers' Exhibit 2 was a photograph of the</p>
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<p>1 exploration, do you see that? 2 A. Yes. 3 Q. And do you understand that 127 cc engine was the name 4 that Brooks Stevens used to refer to the 550 project? 5 A. Yes. This would have been the updated, updated 6 version of the 550 series engine. 7 Q. Okay. So this is referring to the redesign of the 8 550 engine that you testified about earlier today? 9 A. That's correct. 10 Q. And so in connection with that redesign, do you see 11 that down towards the bottom of the screen shot there 12 is a line for total invoiced to date including 13 advances and expenses? 14 A. Yes. 15 Q. And it says \$4,200, do you see that? 16 A. Okay, I see it. 17 Q. Did Briggs and Stratton pay Brooks Stevens 18 approximately \$4,200 in connection with the redesign 19 of the 550 engine? 20 A. I don't really know. 21 Q. So you understand that Briggs and Stratton paid 22 Brooks Stevens several thousand dollars in connection 23 with the initial design of the 5500 engine? 24 A. Yes. 25 Q. And then they paid them several thousand more in</p>	<p>1 original design of the 550 engine, correct? 2 A. Correct. 3 Q. Now, Opposers -- Applicant's Trial Exhibit 6 is 4 entitled notice of publication, do you see that? 5 A. Yes. 6 Q. And if you turn to the last page of that exhibit, you 7 see there is a line drawing? 8 A. Okay. 9 Q. And you've seen that line drawing before, correct? 10 A. Yes. 11 Q. And you understand that that is a line drawing of the 12 external appearance of an engine that Honda is 13 seeking to trademark in this proceeding? 14 A. That's correct. 15 Q. And you understand that that is a line drawing of the 16 Honda GX engine? 17 A. Correct. 18 Q. Now, I'd like you to look at Opposers' Exhibit 2 and 19 the line drawing that appears in Applicant's Trial 20 Exhibit 6. 21 A. Okay. 22 Q. And if you compare those two images, is it your view 23 that the external appearance of the 550 engine as 24 shown in Exhibit 2 is visually distinctive from the 25 line drawing in Applicant's Trial Exhibit 6?</p>

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<p>1 A. Overall I think they're very similar.</p> <p>2 Q. So it's your opinion that they're very similar?</p> <p>3 A. Yeah, there are the same general similarities as far</p> <p>4 as configuration of the engine.</p> <p>5 Q. Isn't it true, Mr. Whitmore, that the engine shown in</p> <p>6 Opposers' Exhibit 2 and the line drawing in</p> <p>7 Applicant's Trial Exhibit 6 are visually distinctive</p> <p>8 from one another?</p> <p>9 A. Yes, they're distinctive through, you know, some of</p> <p>10 the family styling that I tried to pursue with the</p> <p>11 550 cc engine.</p> <p>12 Q. Now, during the development of the 550 engine, not</p> <p>13 everyone who saw that 550 engine agreed with you that</p> <p>14 it was visually distinctive from the GX engine,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And in fact you're aware of a company called Victa?</p> <p>18 A. Yes.</p> <p>19 Q. And that's a power company that Briggs and Stratton</p> <p>20 purchased around the time of the development of the</p> <p>21 550 engine, correct?</p> <p>22 A. Yes, it's an Australian lawn and garden company.</p> <p>23 Q. And during the development of the 550 engine Briggs</p> <p>24 and Stratton provided Victa a sample of the 550</p> <p>25 engine; is that correct?</p>	<p>1 A. Yes.</p> <p>2 Q. And then on page 3 there are -- there is a set of six</p> <p>3 pictures, and the pictures on the left are the Briggs</p> <p>4 and Stratton 5500 engine; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And the pictures on the right are a Honda GX 120</p> <p>7 engine, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Now, if you look at the numbered comments that appear</p> <p>10 on page 2, and in particular comments 3 and 4, do you</p> <p>11 see those?</p> <p>12 A. Yup.</p> <p>13 Q. So comment 3, the individuals at Victa said the</p> <p>14 engine seems to be a copy of a Honda engine GX120,</p> <p>15 see pictures below. And then comment 4 they say:</p> <p>16 Some people are worried that it looks too much like</p> <p>17 the Honda and B&amp;S will get criticized because of it.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And if you look at comment No. 6, they also say: A</p> <p>21 lot of the components are very similar to the Honda</p> <p>22 parts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Now, Briggs and Stratton did not make any changes to</p>
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<p>1 A. Correct.</p> <p>2 Q. I'd like to show you Applicant's Trial Exhibit 7.</p> <p>3 (Applicant's Exhibit 7 marked.)</p> <p>4 BY MS. FERRERA:</p> <p>5 Q. And you've seen Applicant's Trial Exhibit 7 before,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And just for the record, that's the document that</p> <p>9 bears the numbers BASCO000477 to 481. So Exhibit 7</p> <p>10 is a document that came from Victa, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And the title of the document is: Comments on B&amp;S</p> <p>13 128 cc horizontal shaft engine from China.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that that's -- that these are</p> <p>17 comments on the 550 engine?</p> <p>18 A. Yes.</p> <p>19 Q. So this is a report that Victa provided to Briggs and</p> <p>20 Stratton summarizing their comments on the 550 engine</p> <p>21 that they received a sample of?</p> <p>22 A. Yes.</p> <p>23 Q. If you turn to the second page of the document, there</p> <p>24 are 23 numbered comments on that page, do you see</p> <p>25 that?</p>	<p>1 any of the external components of the 550 engine in</p> <p>2 response to the comments that it received from Victa,</p> <p>3 correct?</p> <p>4 A. That's correct.</p> <p>5 Q. And that's because you did not agree with those</p> <p>6 comments, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Now, you also received feedback from an individual in</p> <p>9 Briggs and Stratton's European sales office regarding</p> <p>10 the 550 engine, do you recall that?</p> <p>11 A. I don't recall the exact feedback.</p> <p>12 Q. Do you recall that you received feedback from</p> <p>13 somebody in the European sales office that the 5500</p> <p>14 engines appear to look like a Honda GX engine?</p> <p>15 A. I don't remember exact feedback at this time.</p> <p>16 Q. Well, let's take a look at your deposition. And if</p> <p>17 you turn to page 128, if you look at line 13 you were</p> <p>18 asked the question:</p> <p>19 "Did you receive feedback from any others</p> <p>20 that the 550 engines appear to look like a Honda GX</p> <p>21 engine?"</p> <p>22 And your answer was:</p> <p>23 "I believe that there was a concern</p> <p>24 expressed by somebody in our European sales office."</p> <p>25 Do you see that?</p>

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<p>1 A. I see that.</p> <p>2 Q. Does that refresh your recollection that you received</p> <p>3 feedback from someone in the European sales office</p> <p>4 that the 550 engines appear to look like a Honda GX</p> <p>5 engine?</p> <p>6 A. Not really. At this time it's been a long time since</p> <p>7 this development. And from my testimony at the time,</p> <p>8 I mean it's clear that I didn't really remember any</p> <p>9 details. So I don't really remember the details at</p> <p>10 this time, whether there was or there wasn't. In</p> <p>11 reading this deposition, it would indicate that there</p> <p>12 was, but I don't remember anymore.</p> <p>13 Q. Okay. You don't have any reason to disagree with the</p> <p>14 testimony you gave back in 2012?</p> <p>15 A. I don't. I just don't remember.</p> <p>16 Q. And Briggs and Stratton did not make any changes to</p> <p>17 the external appearance of the 550 engine in response</p> <p>18 to comments that it received from the European sales</p> <p>19 office, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And again, that's because it was your view that the</p> <p>22 550 engine was visually distinctive from the GX</p> <p>23 engine, correct?</p> <p>24 A. It was my view that it was either visually</p> <p>25 distinctive or that the design was just part of the</p>	<p>1 Stratton labels, marketing labels on the air cleaner,</p> <p>2 that would be the visual distinction, not the engine</p> <p>3 configuration itself.</p> <p>4 Q. Mr. Whitmore, you believed that the 550 engine, the</p> <p>5 original 550 engine, was visually distinctive from</p> <p>6 the GX engine, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Now, at some point Briggs and Stratton did modify the</p> <p>9 external appearance of the 550 engine, right?</p> <p>10 A. Correct.</p> <p>11 Q. And that redesigned engine was introduced in early</p> <p>12 2012?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. When did the work on that redesigned engine begin?</p> <p>15 A. I don't remember exactly. If it was introduced in --</p> <p>16 it must have been probably 2011, but I don't remember</p> <p>17 the exact date. Just knowing our development</p> <p>18 circles, it would have to be in that timeframe.</p> <p>19 Q. So approximately how many months were spent on the</p> <p>20 redesign of the 550 engine?</p> <p>21 A. I don't remember anymore. Without knowing the exact</p> <p>22 time that we started, I don't know the exact number</p> <p>23 of months.</p> <p>24 Q. Was the work started in the winter of late 2011?</p> <p>25 A. I actually I don't remember at this time. In looking</p>
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<p>1 function of the engine.</p> <p>2 Q. Well, it was your view that the 550 was visually</p> <p>3 distinctive from the GX engine, correct, Mr.</p> <p>4 Whitmore?</p> <p>5 A. I didn't believe that the 550 was a copy of the GX</p> <p>6 120, so I had no reason to make any changes.</p> <p>7 Q. You believed the 550 was visually distinctive from</p> <p>8 the GX engine, correct?</p> <p>9 A. I'm not going to say that it was just visually</p> <p>10 distinctive. I knew it was not a copy.</p> <p>11 Q. Well, let's look again at your deposition testimony.</p> <p>12 Page 129. If you go to line 8, do you see you were</p> <p>13 asked the question:</p> <p>14 "So, was it your view that the 550 was</p> <p>15 visually distinctive from the GX engines?</p> <p>16 Answer: Yes."</p> <p>17 That was the question you were asked and</p> <p>18 the answer you gave at your deposition on March 27th,</p> <p>19 2014, correct?</p> <p>20 A. Yup. So the differences would be the visual</p> <p>21 distinction among the fact that it's also just -- the</p> <p>22 design of the engine is a -- just a functional</p> <p>23 requirement, you know. The visual distinctions come</p> <p>24 in the family look that we try to bring through it</p> <p>25 which would be the minor things like Briggs and</p>	<p>1 at the previous exhibit you had given me before for</p> <p>2 Exhibit 5, it would indicate that that work actually</p> <p>3 started in 2010 with those styling images from Brooks</p> <p>4 Stevens.</p> <p>5 Q. So the work on the redesign of the 550 engine may</p> <p>6 have started as early as 2010; is that correct?</p> <p>7 A. It could have. I don't remember. We have a lot of</p> <p>8 projects going on.</p> <p>9 Q. I think you indicated earlier that Briggs and</p> <p>10 Stratton again worked with Brooks Stevens on the</p> <p>11 redesign of the 550 engine?</p> <p>12 A. Correct.</p> <p>13 Q. I'd like to hand you --</p> <p>14 (Applicant's Exhibit 8 marked.)</p> <p>15 BY MS. FERRERA:</p> <p>16 Q. Mr. Whitmore, you've been handed what's been marked</p> <p>17 as Applicant's Trial Exhibit 8 which is a document</p> <p>18 bearing the Bates numbers BASCO0011550 to 11153, do</p> <p>19 you see that?</p> <p>20 A. I'm sorry, the number again?</p> <p>21 Q. 11150 to 11153?</p> <p>22 A. I have a different document.</p> <p>23 Q. I'm sorry. I'll take that one back from you. Now</p> <p>24 you have Applicant's Trial Exhibit 8 which has the</p> <p>25 numbers BASCO0011150 to 111 53, do you see that?</p>

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<p>1 A. Yes.</p> <p>2 Q. And this is a presentation entitled SH127cc FY12</p> <p>3 global platform revision styling and emissions, do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And have you seen this document before?</p> <p>7 A. I don't believe I have.</p> <p>8 Q. During the development of engines at Briggs and</p> <p>9 Stratton is it the practice to prepare documents such</p> <p>10 as Applicant's Trial Exhibit 8?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have any reason to doubt that this is a Briggs</p> <p>13 and Stratton document?</p> <p>14 A. No.</p> <p>15 Q. And am I correct that SH127cc was referring to the</p> <p>16 550 engine?</p> <p>17 A. Correct.</p> <p>18 Q. Now in the middle of the first page there is a series</p> <p>19 of boxes, do you see that, going from discovery to</p> <p>20 business case to preproduction to post launch?</p> <p>21 A. Yes.</p> <p>22 Q. And on this document the box post launch review is</p> <p>23 highlighted, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Does that indicate to you that this document was</p>	<p>1 external appearance of the engines, correct?</p> <p>2 A. So the visual brand language would be all the details</p> <p>3 that you use to communicate your brand. So from the</p> <p>4 pictures you see the Briggs and Stratton logo on the</p> <p>5 rewind which we use across the family, you see the</p> <p>6 air cleaner label which has a very consistent color,</p> <p>7 text format, and then you'll see smaller features</p> <p>8 like the rewind cover styling, the Y shape or the</p> <p>9 slots or just some of those small radiuses and</p> <p>10 contours.</p> <p>11 Q. So the visual brand language refers to the details of</p> <p>12 the external styling of the engine, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And HS engines here refers to horizontal shaft</p> <p>15 engines?</p> <p>16 A. Small horizontal. I'm sorry, the HS here refers to</p> <p>17 horizontal shaft.</p> <p>18 Q. And so it says: Achieve a unique B&amp;S VBL for the HS</p> <p>19 engines.</p> <p>20 Am I correct that one of the goals in the</p> <p>21 redesign of the 550 engine was to make the external</p> <p>22 appearance of that engine more similar to that of</p> <p>23 other engines in the Briggs and Stratton line?</p> <p>24 A. Yeah. At this time we had three projects going on</p> <p>25 that were not necessarily organized well, and the</p>
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<p>1 prepared after the 550 engine redesign had been</p> <p>2 introduced?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see at the bottom of the first page under</p> <p>5 project description, the first line says: Achieve a</p> <p>6 family look on 127 cc engine compatible with 163 cc</p> <p>7 and 420 cc engines?</p> <p>8 A. Yes.</p> <p>9 Q. And we talked earlier about the term "family look" at</p> <p>10 Briggs, do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. And does that term have the same meaning here as far</p> <p>13 as you know?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you go to the second page of the document, it</p> <p>16 says: Goals and achievements.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And the first line underneath that is: Achieve a</p> <p>20 unique B&amp;S VBL for the HS engines.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. And VBL means visual --</p> <p>24 A. Visual brand language.</p> <p>25 Q. -- brand language. And that's referring to the</p>	<p>1 engines were kind of going in different directions at</p> <p>2 the beginning. So the efforts were trying to pull</p> <p>3 everything back together so that they presented more</p> <p>4 of a small, medium, large size lineup.</p> <p>5 Q. And so that they had a consistent, unique Briggs and</p> <p>6 Stratton visual brand language, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Now, in the middle of the second page there are three</p> <p>9 engines shown, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And the one for this to the left is the original 550</p> <p>12 engine; is that correct?</p> <p>13 A. It would appear so.</p> <p>14 Q. The one in the middle is the redesigned 550 engine?</p> <p>15 A. Without seeing the label, I'm not sure if it was the</p> <p>16 550.</p> <p>17 Q. Do you see underneath that picture it says series</p> <p>18 redesign?</p> <p>19 A. Yes.</p> <p>20 Q. Does that indicate to you that it's the redesigned</p> <p>21 550 engine?</p> <p>22 MR. HERRING: Object to form, lacks</p> <p>23 foundation.</p> <p>24 THE WITNESS: It's part of our series. As</p> <p>25 to whether it was the 550, without seeing the label,</p>

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<p>1 I'm not sure.                  2 BY MS. FERRERA:                  3 Q. When you say it's part of the series, what do you                  4 mean by that?                  5 A. As we talked about before, the VBL that we try to                  6 take across the lineup, the visual brand language.                  7 So this would have been our series platform. So it's                  8 one of the engines within that series.                  9 Q. Including the 750 the 950?                  10 A. Correct.                  11 Q. And then the engine furthest to the right is an Intek                  12 engine; is that correct?                  13 A. Yes. That is labeled it's an Intek IC. The series                  14 and Intek are the same engine, just with different                  15 labeling depending on the region. So some regions                  16 still had used Intek, some regions used IC, some                  17 regions used series. So it was marketing.                  18 MR. PHILLIPS: Can we take a short break?                  19 MS. FERRERA: Yeah.                  20 (Recess taken.)                  21 BY MS. FERRERA:                  22 Q. Mr. Whitmore, during the break did you discuss the                  23 substance of any of your answers with counsel?                  24 A. No.                  25 Q. Still looking at Applicant's Trial Exhibit 8, do you</p>	<p>1 Q. And neither of those changes had any impact on the                  2 cost to manufacture the tank assembly, correct?                  3 A. It didn't have an impact on the cost that was given                  4 to Briggs and Stratton. As to whether the supplier                  5 may have been absorbing some cost, there is an                  6 additional metal piece and an additional welding                  7 operation, so there would be some implied cost with                  8 that. But none of that was passed on to Briggs and                  9 Stratton.                  10 Q. And you don't know what, if any, the increase in cost                  11 was to manufacture the fuel tank assembly, correct?                  12 A. Correct.                  13 Q. Now, the second component listed is the blower                  14 housing, do you see that?                  15 A. Yes.                  16 Q. And that's referring to the fan cover?                  17 A. That's correct.                  18 Q. And you described earlier that there was a change                  19 made to the fan cover on the 550, the redesigned 550                  20 engine, correct?                  21 A. That's correct.                  22 Q. And there was no change in the cost to manufacture                  23 that component either, correct?                  24 A. That's where we incurred the tooling cost that's                  25 shown there at \$6,923. So we had to change the tool</p>
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<p>1 see on page 3 of the document that bears the numbers                  2 11152.                  3 A. Yes.                  4 Q. There is a table.                  5 A. Yes.                  6 Q. And in the left-hand column of the table there are                  7 various components identified, do you see that?                  8 A. Yes.                  9 Q. And the first is the tank assembly?                  10 A. Yes.                  11 Q. That's referring to the fuel tank assembly; is that                  12 correct?                  13 A. Correct.                  14 Q. Now, on the redesigned version of the 550 engine,                  15 there were some changes made to the fuel tank                  16 assembly, correct?                  17 A. Correct.                  18 Q. Among other things the spill, spillway was made                  19 deeper; is that correct?                  20 A. Yes.                  21 Q. What other changes were made to the fuel tank                  22 assembly?                  23 A. The spillway was made deeper, and on the side of the                  24 fuel tank there was a small tab added for mounting of                  25 the trim panel.</p>	<p>1 to make the new shape, but that new shape was no                  2 different in cost.                  3 Q. Once you had changed the tool and acquired the new                  4 tool, there was no cost on a per unit basis, no                  5 difference in cost on a per unit basis, correct?                  6 A. Correct.                  7 Q. Now, if you go down a couple items there is a                  8 reference to speed control lever and control bracket,                  9 do you see that?                  10 A. Yes.                  11 Q. And that was a component that was changed on the                  12 redesigned 550 engine?                  13 A. Yes.                  14 Q. And so for that component there was a cost increase                  15 of 7 cents; is that correct?                  16 A. According to the document, that's what it appears to                  17 be.                  18 Q. Do you have any information to the contrary?                  19 A. No.                  20 Q. And then if you go down to air cleaner assembly,                  21 there is -- indicates no change, do you see that?                  22 A. Yes.                  23 Q. And so there was a change made to the air cleaner                  24 assembly on the redesigned 550 engine, correct?                  25 A. Yes.</p>

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<p>1 Q. The shape of that component was changed from a cubic 2 shape to an oval shape, correct? 3 A. It was changed from a cubic shape to a slightly less 4 cubic. So it's still rectangular from the front, but 5 from the top you pick up more of the rounded edges. 6 Q. And there was no increase in the per unit cost as a 7 result of that change, correct? 8 A. Correct. 9 Q. Now, earlier you testified that for the original 550 10 engine the reason that you chose a rectangular or 11 cubic shape for the air cleaner cover was in order to 12 insure that it covered the air filter and that it 13 allowed sufficient air flow around the air filter; is 14 that correct? 15 A. Correct. 16 Q. The redesigned air cleaner cover on the modified 550 17 engine still covers the air filter, does it not? 18 A. Correct, it does. 19 Q. And it still allows sufficient air flow around the 20 air filter, correct? 21 A. Yes. 22 Q. Mr. Whitmore, to your knowledge the redesigned 550 23 engine has the same overall performance as the 24 original 550, correct? 25 A. The same general performance. There is aspects of</p>	<p>1 Q. You haven't seen any such data, correct? 2 A. I don't remember at this time. It's been awhile. 3 Q. And have you seen any data comparing the impact on 4 intake noise from the new air filter as compared to 5 the old air filter? 6 A. We would have typically done an acoustic test on the 7 new design which would have done a noise source 8 breakdown comparing muffler, intake mechanical noise. 9 So I'm sure there is probably a test there, but I 10 don't remember it at this time. 11 Q. And you don't remember what, if any, difference there 12 was, correct? 13 A. I don't -- I wouldn't know the exact difference at 14 this point other than the older design would have had 15 silencing tubes that the new design doesn't. 16 Q. Have you -- has Briggs and Stratton informed any of 17 its OEMs that the new air filter performs worse than 18 the old air filter? 19 A. Not to my knowledge. 20 Q. Has it informed any of its OEMs that the new air 21 filter performs worse in terms of reducing intake 22 noise compared to the old air filter? 23 A. Not to my knowledge. 24 Q. And in terms of the overall performance, you agree 25 that the redesigned engine performs the same as the</p>
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<p>1 the air cleaner change that are not visible from the 2 outside that end up making the design of the air 3 cleaner less ideal than the original version. 4 Q. But those are changes to the internal components of 5 the engine, correct? 6 A. The internal design of the air cleaner that was 7 necessitated based on the changes to the outside. 8 Because the small curves were added to the corners, 9 we had to adjust the design to make sure we could 10 still get the same amount of air flow into the 11 engine. 12 Q. So you do still get the same amount of air flow into 13 the engine, correct? 14 A. We get the same air flow, but we end up with a system 15 that maybe doesn't filter the air quite as well. 16 Additionally, some of the features on the original 17 air cleaner that would have helped reduce intake 18 noise were subsequently removed in order to create 19 space for the air flow because we had a smaller 20 volume available to us. 21 Q. Have you quantified the difference in the ability of 22 the new air filter to filter the air as opposed to 23 the original air filter? 24 A. I don't know if we have any quantifiable data on the 25 air filter.</p>	<p>1 original 550 engine, correct? 2 A. I think in regards to the fact that the aspects of 3 the design that moved towards a less ideal state, you 4 can't really say that it generally performs the same, 5 you know, for every aspect. 6 Q. From an overall performance standpoint, the 7 redesigned performs the same, correct? 8 MR. HERRING: Object to the form, overall 9 performance is vague and ambiguous. 10 THE WITNESS: If you were to say overall 11 performance, I would need to include the performance 12 of the intake system in which we have a design 13 that's less ideal than where we had started. So I 14 would say it does not perform quite as well. 15 BY MS. FERRERA: 16 Q. Look at your prior deposition. If you turn to page 17 159. And if you start at line 19, you were asked the 18 question: 19 "Do you understand that the redesigned 550 20 engines performed the same or differently from the 21 original 550 engines?" 22 And your answer was: 23 "They perform relatively the same." 24 Do you see that? 25 A. Yes.</p>

<p>Page 142</p> <p>1 Q. And then you were asked the question:                  2 "And can you elaborate on what you mean by                  3 relatively the same?"                  4 And your answer was:                  5 "I think from an overall performance                  6 standpoint, durability, power, starting with all of                  7 those aspects, the redesign would perform the same."                  8 Do you see that?                  9 A. Yes.                  10 Q. And those were the questions you were asked on March                  11 27th, 2014, and those were the answers that you gave,                  12 correct?                  13 A. Yes. And I would give those same answers today. The                  14 durability, power and starting of this new version is                  15 very similar or the same as the old version. When we                  16 talk about details, when you say is the overall                  17 general performance the same and I specifically focus                  18 on details of the air cleaner, the performance is                  19 relatively the same. It's not exactly the same.                  20 Q. Performance is relatively the same, correct, Mr.                  21 Whitmore?                  22 A. Yes.                  23 Q. Now, if you would go back to Applicant's Trial                  24 Exhibit 8, the same page we were look being at, page                  25 11152. You've got it. It shows that as a result of</p>	<p>Page 144</p> <p>1 redesign, are you?                  2 A. I am not aware of specific details directly related                  3 to that. The fact that it adds money puts us at a                  4 competitive disadvantage.                  5 Q. But you're not aware of any impact on the sales as a                  6 result of the redesign of the 550 engine, correct?                  7 A. There is a lot of variables that go into affecting                  8 the sales, so it's hard to identify one cause.                  9 Q. You're not aware of any impact on the sales as a                  10 result of the redesign?                  11 A. No.                  12 Q. Correct?                  13 A. Correct.                  14 Q. Now, Mr. Whitmore, Briggs and Stratton makes                  15 different categories of its horizontal shaft engines?                  16 A. What do you mean by category?                  17 Q. In terms of quality, good, better, best?                  18 A. Yes.                  19 Q. And earlier today you testified about a product line                  20 that Briggs makes called the Vanguard engines?                  21 A. Yes.                  22 Q. And you would consider those to be the best category                  23 in terms of the horizontal shaft engines that Briggs                  24 sells, correct?                  25 A. Correct.</p>
<p>Page 143</p> <p>1 the changes to the speed control lever, control                  2 bracket and the trim panel, the increase in part cost                  3 was just 47 cents, correct?                  4 A. I'm sorry, one more time?                  5 Q. Sorry, that math is not even right. If you look at                  6 the -- as a result of the changes to the trim panel                  7 and the speed control lever and control bracket, the                  8 increase in part cost was 39 cents, correct?                  9 A. Correct.                  10 Q. And that increase in cost is primarily attributable                  11 to the addition of the trim panel; is that right?                  12 A. Correct. It's actually all related to the trim                  13 panel. The speed control lever had to change as a                  14 result of adding the trim panel.                  15 Q. Am I correct that the reason for adding the trim                  16 panel to the redesigned 550 engine was to conceal the                  17 brackets that hold up the fuel tank on the engine?                  18 A. No, I don't think so.                  19 MR. HERRING: I'm just going to caution                  20 the witness not to reveal any attorney/client                  21 communications. If you know the answer independent                  22 of attorney/client communications, you can answer.                  23 BY MS. FERRERA:                  24 Q. Now, Mr. Whitmore, you're not aware of any impact on                  25 the sales of the 550 engine as a result of the</p>	<p>Page 145</p> <p>1 Q. And you agree that the Vanguard engines compete                  2 directly with the Honda GX engine?                  3 A. Yes.                  4 Q. And then in terms of the better category, you would                  5 put the Intek engines that Briggs sells into that                  6 category, correct?                  7 A. Correct.                  8 Q. And you agree that those compete with the GX engine                  9 also?                  10 A. Yes.                  11 Q. And we talked about the Briggs 550 engine, you would                  12 put that in the better category as well; is that                  13 correct?                  14 A. Correct.                  15 Q. And you agree that that competes with the GX engine?                  16 A. Yes.                  17 Q. Can you take out Opposers' Exhibit 6 that your                  18 counsel showed you earlier today.                  19 A. Okay.                  20 Q. The first photograph in that exhibit is an Intek Pro                  21 206 engine; is that correct?                  22 A. Correct.                  23 Q. You were not involved in the design or development of                  24 that engine, correct?                  25 A. Correct.</p>

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<p>1 Q. And then if you look at the next one, that's an Intek 2 Pro 305? 3 A. Correct. 4 Q. And you were not involved in the design or 5 development of that engine either, correct? 6 A. That's correct. 7 Q. Go to the page having the number BASCO000215, it's 8 the second to the -- 9 A. I lost one. 10 Q. You don't have the whole thing? There you go. 11 A. 215? 12 Q. 215. That's one of the Vanguard engines? 13 A. Correct, 6.5 horsepower. 14 Q. You were not involved in the design and development 15 of that engine? 16 A. Correct. 17 Q. And then the last one is BASCO216, that's another 18 Vanguard engine, correct? 19 A. Correct. 20 Q. And you were not involved in the design and 21 development of that engine either? 22 A. That's correct. 23 Q. Now, if you could pull out Exhibits 7 and 8. Is the 24 Intek Pro 206 that we just looked at in Exhibit 6, is 25 that one of the engines that's listed in Exhibit 7</p>	<p>1 A. Yes. 2 Q. And am I correct that according to Exhibit 7, the 3 engine that produced the highest revenue from 1991 to 4 1998 was the VD engine? 5 A. Yes, that appears to be the case. 6 Q. And that was an engine that was available only with a 7 panel air cleaner cover, correct? 8 A. I believe so. 9 Q. And then according to Exhibit 7, the engine with the 10 second highest revenue from 1991 to 1998 was the V -- 11 sorry, the UD engine, correct? 12 A. Correct. 13 Q. And that's the Intek 206 engine that you just 14 mentioned? 15 A. Correct. 16 Q. And I think you told us earlier that that engine was 17 available as either a panel engine or a high mount -- 18 sorry, a panel air cleaner cover or a high mount air 19 cleaner cover? 20 A. That's correct. 21 Q. And you can't tell from Exhibit 7 what portion of the 22 revenue was attributable to sales of the engine with 23 a high mount versus panel air cleaner cover, correct? 24 A. Correct. 25 Q. Now, if you turn to page 106 -- sorry, 107. This</p>
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<p>1 and 8? 2 A. Yes, it's the series that's identified by the UD in 3 front of it. So it's the top line on all the 4 exhibits. 5 Q. Okay. And how about the 305? 6 A. The 305 can be found on page 105. So it's not shown 7 on page 103. It's shown on page 105 as the series 8 UL, the line that begins with the UL. And in Exhibit 9 8, again, it's the line UL. 10 Q. And then if you turn to page 215, is that engine 11 listed on either Exhibit 7 or 8? 12 A. The Vanguard 6.5 is not shown on page 103, it's shown 13 on page 105 under the line that begins with a VB. 14 Q. And how about the -- 15 A. Under Exhibit 8 it's, again, the line VB. 16 Q. Okay. And then how about the Vanguard engine that's 17 shown on page 216 of Exhibit 6, does that appear on 18 Exhibits 7 or 8? 19 A. So the Vanguard 10 horsepower is not shown on page 20 103. It's shown on page 105 with the line beginning 21 with VF and again the same beginning with VF in 22 Exhibit 8. 23 Q. Now, if you look at Exhibit 7 and page 104, see the 24 column furthest to the right as total revenue for the 25 years 1991 through 1998?</p>	<p>1 document shows revenues from sales of engines from 2 1999 through 2012? 3 A. Yes. 4 Q. And so if you look at the right-most column that 5 appears on page 107, that's the total revenue from 6 sales of the listed engines during that time period, 7 correct? 8 A. Correct. 9 Q. So as of 2012 am I correct that the two highest 10 revenue producing engines were the UD engine and the 11 UL engine? 12 A. That's correct. 13 Q. And the UD engine you told us was the Intek 206? 14 A. That's correct. 15 Q. And the UL was the Intek Pro 305 engine, right? 16 A. Correct. 17 Q. And both of those engines were available as either a 18 high mount or a panel style air cleaner cover, 19 correct? 20 A. That's correct. 21 Q. And you cannot tell from pages 105, 106 and 107 what 22 portion of the revenues for either of those engines 23 was attributable to the high mount versus the panel 24 air cleaner cover, correct? 25 A. That's correct.</p>

<p>Page 150</p> <p>1 Q. Now, as of -- Strike that.                  2 For the period 1999 through 2012, the third                  3 highest grossing engine in terms of revenues was the                  4 VD engine, correct?                  5 A. Yes, that's correct.                  6 Q. And I think you told us that that was available only                  7 as a panel air cleaner cover; is that right?                  8 A. Yes, that's correct.                  9 Q. If you turn to Exhibit 8, this Exhibit 8 shows                  10 revenues from sales of engines for the years 2013 and                  11 2014, correct?                  12 A. Correct.                  13 Q. And so for the years 2013 and 2014 the three highest                  14 grossing engines were the UD, the UF and the UL; is                  15 that right?                  16 A. Yes.                  17 Q. And all three of those engines are available both in                  18 the panel style air cleaner cover and the high mount                  19 air cleaner cover?                  20 A. Yes, at that time.                  21 Q. And you can't tell from this document what portion                  22 of the sales for each of those engines was                  23 attributable to the high mount versus the panel air                  24 cleaner cover, correct?                  25 A. Correct.</p>	<p>Page 152</p> <p>1 Q. What evaluation was performed on the Honda GX engine?                  2 A. We have performed a significant amount of testing to                  3 understand power, to understand governor droop                  4 performance. We've done noise testing, vibration                  5 testing. We have done other measurements to                  6 understand the -- to have a very clear understanding                  7 of the overall size and shape of the GX engine.                  8 Q. Have you done any testing on the air flow provided by                  9 the fan cover on the GX engine?                  10 A. No. We've measured temperatures of the engine for                  11 oil temperature and cylinder head.                  12 Q. Have you done any testing regarding the fuel tank                  13 capacity?                  14 A. No.                  15 Q. Have you done any testing regarding the performance                  16 of the air cleaner cover on the GX engine?                  17 A. No.                  18 Q. Have you done any testing regarding the performance                  19 of the carburetor cover on the GX engine?                  20 A. Some testing.                  21 Q. What testing?                  22 A. So actually if you include the entire air cleaner, so                  23 my previous answer about the air cleaner cover, if                  24 you -- the combined package of the air cleaner cover,                  25 the filter and the intake, we'll test power with and</p>
<p>Page 151</p> <p>1 Q. Now, Mr. Whitmore, you haven't disassembled a Honda                  2 GX engine in over 20 years, correct?                  3 A. I haven't directly disassembled the engine.                  4 Q. And you have not operated a Honda GX engine in that                  5 same timeframe, correct?                  6 A. I've operated the engine maybe a couple times. I can                  7 remember a specific case where we were doing a                  8 startability test comparing a GX engine to the 550.                  9 Q. When was that?                  10 A. I'm not sure. It was a few years ago.                  11 Q. Was it since your March 27th, 2014 deposition?                  12 A. Probably not.                  13 Q. So your memory is that you operated a GX engine maybe                  14 a couple times?                  15 A. Yeah. Not many times.                  16 Q. You never purchased a GX engine, have you?                  17 A. I have purchased. That's been since the deposition.                  18 So I believe at the deposition I hadn't, but recently                  19 I've purchased GX engines.                  20 Q. For what purpose?                  21 A. For competitive evaluation purpose.                  22 Q. In connection with this case?                  23 A. No, in connection to my new roles and                  24 responsibilities for managing our small horizontal                  25 new product development.</p>	<p>Page 153</p> <p>1 without that assembly on to understand the different                  2 power levels. So essentially how much restriction is                  3 within that air cleaner system.                  4 Q. But you haven't done any testing specifically focused                  5 on the air cleaner cover, correct?                  6 A. Not on the cover itself.                  7 Q. And you haven't done any testing specifically on the                  8 carburetor cover of the GX engine, correct?                  9 A. That's correct. Just the system as a whole.                  10 Q. Now, if you could take out Exhibit 1, Opposers'                  11 Exhibit 1. That's the picture of the GX engine that                  12 your counsel showed you, correct?                  13 A. Correct.                  14 Q. And you testified earlier today about the importance                  15 of the slant on the lower left side of the fan cover,                  16 do you recall that?                  17 A. Yes.                  18 Q. And I believe you testified that a small range of                  19 angles is possible?                  20 A. That's correct.                  21 Q. What is the angle of the slant on the GX engine?                  22 A. I don't have a specific quantifiable answer on that.                  23 Q. Have you measured that?                  24 A. No.                  25 Q. What is the smallest angle that that slant could take</p>

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<p>1 and provide the required air flow in order to cool</p> <p>2 the engine?</p> <p>3 A. I'm not aware of that.</p> <p>4 Q. What is the largest angle that that slant could take</p> <p>5 in order to provide the required air flow to cool the</p> <p>6 engine?</p> <p>7 A. I don't know that exact number. We don't typically</p> <p>8 have the ability to test the complete range and every</p> <p>9 possibility in our testing. We have a general</p> <p>10 understanding of the requirement to angle air from</p> <p>11 the fan up into the cylinder head and that there is a</p> <p>12 direct line from the start to finish. So the slant</p> <p>13 falls within that range. We don't have a reason to</p> <p>14 test the extents.</p> <p>15 Q. Do you know what the angle of the slant is on the 550</p> <p>16 engine?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know whether it's the same as the angle of the</p> <p>19 slant on the Honda GX engine?</p> <p>20 A. It's roughly the same.</p> <p>21 Q. Do you know whether it's the same?</p> <p>22 A. I don't know.</p> <p>23 Q. Am I correct that you're not aware of any data</p> <p>24 comparing the performance of the Honda GX fan cover</p> <p>25 to the performance of the fan cover on the 550</p>	<p>1 the air cleaner cover on the GX engine to the</p> <p>2 performance of the air cleaner cover on any</p> <p>3 horizontal shaft engine?</p> <p>4 A. I don't recall any at this time.</p> <p>5 Q. Have you seen any data comparing the performance of</p> <p>6 the fuel tank on the GX engine to the performance of</p> <p>7 the fuel take on any other horizontal shaft engine?</p> <p>8 A. We would have had comparison data I believe on the</p> <p>9 2100 series engine.</p> <p>10 Q. And what was the comparison?</p> <p>11 A. I don't remember that offhand.</p> <p>12 Q. Have you seen any data comparing the performance of</p> <p>13 the carburetor cover on the GX engine to the</p> <p>14 carburetor cover on the 550 engine?</p> <p>15 A. I don't remember offhand. There may have been some,</p> <p>16 but I don't remember.</p> <p>17 Q. Have you seen any data comparing the performance of</p> <p>18 the carburetor cover on the GX engine to the</p> <p>19 performance of the carburetor cover on any horizontal</p> <p>20 shaft engine?</p> <p>21 A. Yes, I believe I've seen at least some testing.</p> <p>22 Q. On what engine?</p> <p>23 A. It may have been a model 13 Vanguard.</p> <p>24 Q. What was the nature of the testing?</p> <p>25 A. I believe it was actually a different air cleaner.</p>
Page 155	Page 157
<p>1 engine?</p> <p>2 A. That's correct.</p> <p>3 Q. And you're not aware of any data comparing the</p> <p>4 performance of the fan cover on the GX engine to the</p> <p>5 performance of the fan cover on any horizontal shaft</p> <p>6 engine, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any data comparing the</p> <p>9 performance of the fuel tank on the GX engine to the</p> <p>10 performance of the fuel tank on the 550 engine,</p> <p>11 correct?</p> <p>12 A. I'm aware of fuel tank capacity testing that we've</p> <p>13 done to make sure we understand the capacity of the</p> <p>14 GX engine.</p> <p>15 Q. Have you seen any comparison of that to the capacity</p> <p>16 of the 550 engine?</p> <p>17 A. Yes.</p> <p>18 Q. And what's the comparison?</p> <p>19 A. I don't remember the exact numbers offhand, but I</p> <p>20 know we are roughly about the same.</p> <p>21 Q. Have you seen any data comparing the performance of</p> <p>22 the air cleaner cover on the GX engine to the air</p> <p>23 cleaner cover on the 550 engine?</p> <p>24 A. At this time I can't recall any testing.</p> <p>25 Q. Have you seen any data comparing the performance of</p>	<p>1 It was a cyclonic version comparing to Honda's other</p> <p>2 version.</p> <p>3 Q. So not the version that's shown in Opposers' Exhibit</p> <p>4 1?</p> <p>5 A. Not the version that's shown.</p> <p>6 Q. Have you seen any data on the performance of the</p> <p>7 speed control lever or the choke lever on the GX</p> <p>8 engine to those levers on the 550 engine?</p> <p>9 A. I don't recall much testing on that.</p> <p>10 Q. And so have you seen any data comparing the</p> <p>11 performance of the controls on the GX engine to the</p> <p>12 performance of those controls on any horizontal shaft</p> <p>13 engine?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Now, you testified earlier today about the benefits</p> <p>16 of having a roughly rectangular fuel tank, do you</p> <p>17 recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Is it your testimony sitting here today that in order</p> <p>20 to achieve the benefits -- Strike that.</p> <p>21 Is it your testimony sitting here today</p> <p>22 that in order to perform adequately, a fuel tank</p> <p>23 needs to have the exact appearance of the fuel tank</p> <p>24 shown in Opposers' Exhibit 1?</p> <p>25 A. The same general appearance.</p>

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<p>1 Q. Does it have to have the exact appearance?</p> <p>2 A. No.</p> <p>3 Q. And you testified about the position of the fuel tank</p> <p>4 earlier today, do you recall that?</p> <p>5 A. Yes.</p> <p>6 Q. Is it your testimony that the fuel tank cannot be</p> <p>7 moved to any extent to the right from where it is on</p> <p>8 Opposers' Exhibit 1?</p> <p>9 A. Yes, I know there is a -- there is a very limited</p> <p>10 range of moving it at all to the right. We start to</p> <p>11 get into application interference in that direction.</p> <p>12 That side sets a plane, so our packaging box gets</p> <p>13 very close on that side as well.</p> <p>14 Q. So is it your testimony that the fuel tank could not</p> <p>15 be moved a centimeter to the right?</p> <p>16 A. I wouldn't know an exact number without really doing</p> <p>17 some investigation, but there is a very small range</p> <p>18 of opportunity there.</p> <p>19 Q. So you don't know whether it could be moved a</p> <p>20 centimeter to the right, correct?</p> <p>21 A. I don't know exactly, but I would think that that</p> <p>22 would begin to give us problems.</p> <p>23 When we're going through our product</p> <p>24 development, we're looking at those dimensions in</p> <p>25 millimeters. So we're looking at very small</p>	<p>1 Q. Is it your testimony that the air cleaner cover</p> <p>2 cannot be moved to the left at all compared to</p> <p>3 Opposers' Exhibit 1?</p> <p>4 A. Yes. Again, I believe that any movement that you</p> <p>5 could do would be imperceivable from a look</p> <p>6 standpoint.</p> <p>7 Q. My question was slightly different, Mr. Whitmore. Is</p> <p>8 it your testimony that the air cleaner cover cannot</p> <p>9 be moved to the left at all as compared to the air</p> <p>10 cleaner cover on Opposers' Exhibit 1?</p> <p>11 A. Yes, I believe from a development standpoint we would</p> <p>12 be asking for problems if we started moving it.</p> <p>13 Q. So your position is it cannot be moved at all?</p> <p>14 A. Yes.</p> <p>15 Q. And it's also your position that it cannot be moved</p> <p>16 up at all, correct?</p> <p>17 A. Correct. Again, I think with a large number of</p> <p>18 customers and varying applications, we don't have</p> <p>19 control over how they have designed it. So for one</p> <p>20 customer one application maybe a slight movement</p> <p>21 would be okay, for others it might create a problem.</p> <p>22 So again, we've tried to fit into the most compact</p> <p>23 package as possible.</p> <p>24 Q. You also testified today about the location of the</p> <p>25 controls, the speed control lever and the choke</p>
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<p>1 measurements just in the package size it would fit</p> <p>2 within.</p> <p>3 Q. You don't know the exact amount by which the fuel</p> <p>4 tank could be moved to the right and still satisfy</p> <p>5 the packaging requirements, correct?</p> <p>6 A. I don't know.</p> <p>7 Q. And is it your testimony that the fuel tank cannot be</p> <p>8 moved up to any extent compared to the fuel tank in</p> <p>9 Opposers' Exhibit 1?</p> <p>10 A. Any movement of those sides begins to encroach on the</p> <p>11 area that's of concern. So it depends very</p> <p>12 specifically on the exact application, how it was</p> <p>13 designed. So any movement would be -- I believe any</p> <p>14 movement would be imperceivable in the general</p> <p>15 rectangular shape and cubic shape of that fuel tank.</p> <p>16 Q. Well, that wasn't quite my question, Mr. Whitmore.</p> <p>17 Is it your testimony that the fuel tank cannot be</p> <p>18 moved up at all compared to Opposers' Exhibit 1?</p> <p>19 A. From a project standpoint, I would be very hesitant</p> <p>20 to move that surface at all.</p> <p>21 Q. So your answer is it cannot be moved up at all?</p> <p>22 A. I would not choose to move it up.</p> <p>23 Q. And you also testified about the position of the air</p> <p>24 cleaner cover, do you recall that?</p> <p>25 A. Yes.</p>	<p>1 lever; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And is it your testimony that the location of those</p> <p>4 controls needs to be exactly the same as what's shown</p> <p>5 on Opposers' Exhibit 1?</p> <p>6 A. Any movement from that location would create a less</p> <p>7 ideal design.</p> <p>8 Q. So your position is they need to be in the exact</p> <p>9 location shown on Exhibit 1?</p> <p>10 A. I believe that any change would begin to start asking</p> <p>11 for problems.</p> <p>12 Q. So the answer to my question is yes?</p> <p>13 A. Yes.</p> <p>14 MS. FERRERA: Okay. Why don't we take a</p> <p>15 short break.</p> <p>16 (Recess taken.)</p> <p>17 BY MS. FERRERA:</p> <p>18 Q. Mr. Whitmore, you don't know how much it costs to</p> <p>19 manufacture the Honda GX engine, do you?</p> <p>20 A. I don't.</p> <p>21 Q. You don't know how much it costs to manufacture the</p> <p>22 fan cover on the Honda GX engine?</p> <p>23 A. I don't.</p> <p>24 Q. And you don't have any data comparing the cost to</p> <p>25 manufacture the fan cover on the GX engine to the</p>

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<p>1 cost to manufacture the fan cover on the 550 engine?                  2 A. I don't.                  3 Q. And you don't have any data comparing the cost to                  4 manufacture the fan cover on the GX engine to the                  5 cost to manufacture the fan cover on any horizontal                  6 shaft engine, correct?                  7 A. Correct.                  8 Q. You don't know how much it costs to manufacture the                  9 fuel tank on the GX engine, do you?                  10 A. No.                  11 Q. And you don't have any data comparing the cost to                  12 make the fuel tank on the GX engine to the cost to                  13 make the fuel tank on the 550 engine?                  14 A. Correct.                  15 Q. And you don't have any data comparing the cost to                  16 make the fuel tank on the GX engine to the cost to                  17 make the fuel tank on any horizontal shaft engine,                  18 correct?                  19 A. Correct.                  20 Q. You don't know how much it costs to make the air                  21 cleaner cover on the GX engine?                  22 A. Sorry, one more time on the question?                  23 Q. You don't know how much it costs to make the air                  24 cleaner cover on the GX engine?                  25 A. Correct.</p>	<p>1 controls on the GX engine?                  2 A. I don't know.                  3 Q. And you don't know how the cost to make the controls                  4 on the GX engine compares to the cost to make the                  5 controls on the 550 engine, correct?                  6 A. Correct.                  7 Q. And you don't know how much -- sorry.                  8 You're not aware of any comparison of the                  9 cost to make the controls on the GX engine to the                  10 cost to make the controls on any horizontal shaft                  11 engine, correct?                  12 A. Correct.                  13 Q. Would you take out exhibits -- Opposers' Exhibits 9,                  14 10 and 11, and 12 I guess.                  15 A. 9, 10, 11 and 12?                  16 Q. Right. Looks like they're at the bottom of your file                  17 there. Then if you could also find in your pile                  18 Applicant's Exhibit 6 which is the Honda GX engine                  19 trademark application. If you could turn to the line                  20 drawing on the last page.                  21 Now, looking at Exhibit 9, is it your                  22 testimony that there is no difference in the                  23 appearance of the engine shown in Exhibit 9 and the                  24 engine shown in Applicant's Exhibit 6 setting aside                  25 labels and the recoil cover?</p>
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<p>1 Q. And you don't know -- you don't have any data                  2 comparing the cost to make the GX engine air cleaner                  3 cover to the cost to make the 550 engine air cleaner                  4 cover, correct?                  5 A. Correct.                  6 Q. And you don't have any data comparing the cost to                  7 make the GX engine air cleaner cover to any                  8 horizontal shaft air cleaner cover?                  9 A. Correct.                  10 Q. You don't know how much it costs to make the                  11 carburetor cover on the GX engine?                  12 A. That's correct.                  13 Q. And you don't have any data comparing the cost to                  14 make the carburetor cover on the GX engine to the                  15 cost to make the carburetor cover on the 550 engine?                  16 A. That's correct.                  17 Q. And you don't have any data comparing the cost to                  18 make the carburetor cover on the GX engine to the                  19 cost to make the carburetor cover on any horizontal                  20 shaft engine, correct?                  21 A. That's correct.                  22 Q. And you don't know how much it costs to make the                  23 controls on the GX engine?                  24 A. Sorry, one more time on the question.                  25 Q. Sure. You don't know how much it costs to make the</p>	<p>1 A. Sorry, one more time?                  2 Q. Other than labels and the recoil cover, is it your                  3 testimony that there is no difference in appearance                  4 between the engine shown in Exhibit 9 and the engine                  5 shown in Applicant's Exhibit 6?                  6 A. There is -- the general design is the same.                  7 Q. So is it your testimony that there is no difference                  8 in appearance between the Subaru engine shown in                  9 Opposers' Exhibit 9 and the Honda engine shown in                  10 Applicant's Exhibit 6, other than labels and the                  11 recoil cover?                  12 A. No is extreme. That's the same general design                  13 but some small differences.                  14 Q. So you agree there are some differences in the                  15 appearance of those two engines?                  16 A. Yes.                  17 Q. So, for example, if you look at the air cleaner cover                  18 on the Subaru engine in Opposers' Exhibit 9, do you                  19 agree that the top of that air cleaner cover is                  20 slanted down towards the left?                  21 A. Yes, there is a slight slant.                  22 Q. And that's not true on the air cleaner cover in                  23 Applicant's Exhibit 6?                  24 A. It's a 2-D drawing that lacks perspective, so there                  25 is -- it's difficult to compare a 2-D image versus a</p>

<p>Page 166</p> <p>1 3-D picture that's at a slightly different angle.                  2 Q. Well, according to the line drawing in Applicant's                  3 Exhibit 6, the top of the air cleaner cover is flat,                  4 correct?                  5 MR. HERRING: Object to form,                  6 mischaracterizes the drawing.                  7 THE WITNESS: So from this 2-D image it                  8 would show a flat line.                  9 BY MS. FERRERA:                  10 Q. And if you look at the fuel tank in Opposers' Exhibit                  11 9, if you look at the bottom line, the bottom edge of                  12 that fuel tank, do you agree that there is a part                  13 that protrudes downward on the lower right-hand                  14 corner?                  15 A. In this picture the fuel tank is generally                  16 rectangular with that small area that goes downward.                  17 Q. So on the lower left edge of the fuel tank on the                  18 Subaru engine in Exhibit 9 -- sorry, lower right                  19 edge, there is a portion that protrudes downward,                  20 correct?                  21 A. Correct.                  22 Q. And on the GX engine shown in Applicant's Exhibit 6                  23 the bottom edge of the fuel tank is straight,                  24 correct?                  25 A. I don't know if you can say that because if you look</p>	<p>Page 168</p> <p>1 A. Correct. It's a subsidiary of Jiangdong.                  2 Q. And if you look -- well, is it your position that                  3 there are no differences in the external appearance                  4 of the engine shown in Opposers' Exhibit 10 and the                  5 engine shown in Applicant's Exhibit 6?                  6 A. I think they have the same general design with small,                  7 small differences.                  8 Q. So you agree there are some differences in the                  9 external appearance of the engine shown in Opposers'                  10 Exhibit 10 and the engine shown in Applicant's                  11 Exhibit 6?                  12 A. Slight differences.                  13 Q. But there are differences, correct?                  14 A. Slight differences.                  15 Q. For example, if you look at the air cleaner cover on                  16 the engine shown in Opposers' Exhibit 10, the left                  17 edge of that air cleaner cover is somewhat curved,                  18 correct?                  19 A. It's generally rectangle with a little curve.                  20 Q. The left edge is somewhat curved, correct?                  21 A. Correct.                  22 Q. And the left edge of the air cleaner cover in the --                  23 on the GX engine as shown in Applicant's Exhibit 6 is                  24 straight, correct?                  25 A. Again, on a 2-D drawing with a different perspective,</p>
<p>Page 167</p> <p>1 at the bottom right-hand corner of that fuel tank in                  2 this 2-D image, there is something happening in that                  3 area that because the drawing lacks a perspective, a                  4 actual picture, it's impossible to tell where this                  5 little area that bumps down is located.                  6 Q. There is a -- on the line drawing there is a portion                  7 that goes straight across the fuel tank, correct?                  8 A. Correct.                  9 Q. And if you look at the fan cover on the Subaru engine                  10 shown in Opposers' Exhibit 9, the lower left side is                  11 more curved than the lower left portion of the fan                  12 cover shown in Applicant's Exhibit 6, correct?                  13 A. Both have a general curve.                  14 Q. The one on the Subaru engine is more curved though,                  15 correct?                  16 A. I think, again, because the images are shown from a                  17 different angle and a different perspective, and the                  18 fact that one picture is an actual picture and the                  19 other one is just a 2-D image, it's impossible to                  20 tell.                  21 Q. So your position is you can't tell?                  22 A. Correct.                  23 Q. Would you turn to Opposers' Exhibit 10. And you                  24 identified this earlier as an engine sold by                  25 All-Power; is that correct?</p>	<p>Page 169</p> <p>1 that's correct.                  2 Q. And if you look at the carburetor cover in Opposers'                  3 Exhibit 10, the left edge of that is also slightly                  4 curved, correct?                  5 A. Yes, and with this engine because this is sold by                  6 Jiangdong, we have experience investigating this                  7 design iteration, and we know that this design                  8 iteration as it is does not fit within the Honda                  9 package size or that overall compact shape.                  10 Q. Well, I think you testified earlier today that this                  11 engine competes with the GX engine, correct?                  12 A. It attempts to compete where it can. So the fact                  13 that it does not fit within that small compact                  14 package puts it at a disadvantage, and they will have                  15 difficulties because of that.                  16 Q. Do you have any data comparing the sales of the                  17 engine shown in Opposers' Exhibit 10 to the GX                  18 engine?                  19 A. No, I don't.                  20 Q. Do you have any -- Strike that.                  21 Do you have any data showing the sales that                  22 the -- that Jiangdong lost to the Honda GX engine as                  23 a result of the differences in appearance of                  24 Opposers -- the engine shown in Opposers' Exhibit 10?                  25 A. No, I don't.</p>

<p>Page 170</p> <p>1 Q. And if you'd look at Opposers' Exhibit 11, is it your 2 testimony that the engine shown in Opposers' Exhibit 3 11 has no differences in external appearance from the 4 engine shown in Applicant's Exhibit 6? 5 MR. HERRING: Which engine are you looking 6 at? 7 MS. FERRERA: I guess the one on page 2. 8 I think that's the one that you testified about 9 earlier today, Mr. Whitmore. 10 THE WITNESS: Again, I think it's very 11 minimal differences. 12 BY MS. FERRERA: 13 Q. Are there -- do you agree that there are some 14 differences? 15 A. Again, comparing an actual picture to a 2-D line 16 drawing, there are some differences. 17 Q. On the picture that your counsel showed you earlier 18 today of the engine in Exhibit 11, Opposers' Exhibit 19 11, do you agree that the fuel tank has several 20 ridges along the top edge? 21 A. It's difficult to see, but it would appear that way. 22 Q. And there are no ridges on the top edge of the fuel 23 tank shown in Applicant's Exhibit 6, correct? 24 A. Correct. 25 Q. And on the air cleaner cover in Opposers' Exhibit 11</p>	<p>Page 172</p> <p>1 have a similar external appearance to the GX engine? 2 A. I would understand that to be engines that have -- 3 confusing image with the GX. 4 Q. Because they have similar external appearances, 5 correct? 6 A. Yes. 7 Q. And during the course of your work at Briggs you've 8 seen some Honda knockoff engines, correct? 9 A. Very few. 10 Q. You've seen Honda knockoff engines from Jiangdong? 11 A. I believe that Jiangdong produces a Chinese platform 12 engine. I wouldn't consider them Honda knockoffs. 13 Q. During your -- as part of your employment at Briggs, 14 you have seen at Briggs facilities Honda knockoff 15 engines, correct? 16 A. I don't know if it was at Briggs facilities or within 17 China. 18 Q. And I guess regardless of whether it was at Briggs 19 facilities or in China, some of those were 20 manufactured by Jiangdong, correct? 21 A. I wouldn't consider Jiangdong making a Chinese 22 knockoff engine. 23 Q. Well, let's turn to page 58 of your deposition. And 24 if you go to line 14, you were asked the question: 25 "Have you purchased the Honda knockoff</p>
<p>Page 171</p> <p>1 do you agree that on the left-hand side there appear 2 to be stepped areas? 3 A. Yes, there is a small step in the overall very cubic 4 rectangular shape. 5 Q. And there are no stepped areas at least visible in 6 the drawing shown in Applicant's Exhibit 6, correct? 7 A. Again, comparing to a 2-D drawing of a different 8 perspective, no, no reference can be seen in that 9 same area. 10 Q. And with respect to Opposers' Exhibit 11, there is 11 also a ridge on the left side of the carburetor 12 cover, correct? 13 A. That's correct. 14 Q. And there is no similar ridge on the left side of the 15 carburetor cover in Applicant's Exhibit 6, correct? 16 A. Again, the issue with the drawing, if there were, 17 from the perspective, it can't be seen in that 18 picture. 19 Q. You can't see any ridge in the picture in Applicant's 20 Exhibit 6, correct? 21 A. Correct. 22 Q. Mr. Whitmore, you're familiar with the term Honda 23 knockoff engine? 24 A. I may have heard it before. 25 Q. And you understand that term to mean engines that</p>	<p>Page 173</p> <p>1 engine?" 2 Your answer was: 3 "Myself purchased?" 4 And the question was: 5 "Either. Personally. Let's start with 6 personally." 7 Your answer was: 8 "Personally I haven't." 9 And then you were asked the question: 10 "How about with respect to your employment 11 at Briggs?" 12 You answered: 13 "We have engines around in our -- that 14 we've evaluated that I've seen. I don't remember if 15 I purchased any of them." 16 And the question was: 17 "And which engines are you referring to?" 18 Answer: We have a few Jiangdong engines. 19 Do you know the model number for those 20 engines? 21 Answer: JF190 maybe." 22 Do you see that testimony? 23 A. Yes. 24 Q. And those are the questions you were asked and the 25 answers that you gave during your deposition on March</p>

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<p>1 27th, 2014, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And when you identified Jiangdong engines in that</p> <p>4 testimony, you were doing that in response to a</p> <p>5 question that asked about Honda knockoff engines,</p> <p>6 correct?</p> <p>7 A. That's correct, which I think I was interpreting as</p> <p>8 China commodity engines.</p> <p>9 Q. So today your testimony is that when you hear the</p> <p>10 term "Honda knockoff engines," they are quote,</p> <p>11 unquote, China commodity engines?</p> <p>12 A. Correct. And I think my deposition testimony at the</p> <p>13 time went on further to clarify that where I had</p> <p>14 reference to an engine that I remember seeing where</p> <p>15 they were emulating the engine strictly by going with</p> <p>16 a white fuel tank and a red blower housing using a</p> <p>17 label that said Hongda, but I didn't say that I</p> <p>18 believed the engines were trying to emulate the look</p> <p>19 of a GX engine.</p> <p>20 Q. Well, with respect to the Hongda engine, it was your</p> <p>21 understanding that that company was trying to emulate</p> <p>22 the look of the GX engine, correct?</p> <p>23 A. Correct, that specific example was trying to emulate.</p> <p>24 But the other engines that I referenced I had</p> <p>25 indicated that I didn't believe they were trying to</p>	<p>1 red blower housing and some sort of labeling scheme</p> <p>2 that's meant to be deceptive, then I agree. In my</p> <p>3 time in China, I see a lot of knockoff products that</p> <p>4 are, you know, fashion products that are Gucci, and</p> <p>5 it's exactly the same, same colors, even the Gucci</p> <p>6 label. Those are knockoff products. They're not a</p> <p>7 product that's seeking to differentiate themselves.</p> <p>8 Q. Well, I'm not here to talk to you about Gucci jeans,</p> <p>9 Mr. Whitmore, I'm here to talk to you about engines.</p> <p>10 And my question is with respect Honda</p> <p>11 knockoff engines, your understanding is the reason</p> <p>12 why they're called knockoffs is because they are</p> <p>13 copying the external appearance of the GX engine,</p> <p>14 correct?</p> <p>15 A. I would consider a Honda knockoff an engine that has</p> <p>16 the appearance of a Honda engine using very similar</p> <p>17 contours with a white fuel tank, a red blower housing</p> <p>18 and some sort of deceptive labeling.</p> <p>19 Q. So one of the similarities is they have similar</p> <p>20 contours, correct?</p> <p>21 A. But that by itself would not create a knockoff.</p> <p>22 Q. But one of the similarities is that they have similar</p> <p>23 contours, correct?</p> <p>24 A. I think that that would be a small portion of it.</p> <p>25 Q. That's one of the similarities, correct?</p>
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<p>1 emulate the look of the GX engine based on the</p> <p>2 different color schemes, the different labeling, the</p> <p>3 fact that people were trying to establish their own</p> <p>4 brands and their other market. So I don't believe</p> <p>5 they're trying to emulate the Honda.</p> <p>6 Q. Nevertheless, you considered them Honda knockoff</p> <p>7 engines, correct?</p> <p>8 A. I believe they had the same general industry standard</p> <p>9 design of the Honda GX engine.</p> <p>10 Q. So is it your testimony that all -- Strike that.</p> <p>11 Does the 550 engine have the same general</p> <p>12 industry standard design of the Honda GX engine?</p> <p>13 A. Yes.</p> <p>14 Q. And is it your position that that is a Honda knockoff</p> <p>15 engine?</p> <p>16 A. No.</p> <p>17 Q. So there is some difference between the Honda</p> <p>18 knockoff engines and engines having the -- what you</p> <p>19 consider the general industry standard design,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And the Honda knockoff engines are -- that's because</p> <p>23 the Honda knockoff engines are substantially the same</p> <p>24 in appearance to the GX engine, correct?</p> <p>25 A. By appearance if you mean the white fuel tank and the</p>	<p>1 A. A small portion of it.</p> <p>2 MS. FERRERA: Let's take a break. We</p> <p>3 might be done.</p> <p>4 (Recess taken.)</p> <p>5 MS. FERRERA: I have no further questions.</p> <p>6 Thank you, Mr. Whitmore.</p> <p>7 REDIRECT EXAMINATION</p> <p>8 BY MR. HERRING:</p> <p>9 Q. I have just a brief redirect. You just testified</p> <p>10 to -- in response to Honda's counsel that -- about</p> <p>11 your external -- your experience with the external</p> <p>12 appearance of horizontal shaft engines, do you</p> <p>13 remember that?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have any experience with the external</p> <p>16 appearance of horizontal shaft engines while you were</p> <p>17 at co-op with Briggs?</p> <p>18 A. During my manufacturing term, the co-op term that I</p> <p>19 had under manufacturing engineering, the project I</p> <p>20 think I had referenced earlier about understanding</p> <p>21 paint process, some of those components that were</p> <p>22 being painted at the time were actually fan covers</p> <p>23 for horizontal shaft engines.</p> <p>24 Q. And can you describe that particular project?</p> <p>25 A. So that project was basically to look at any part</p>

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<p>1 that Briggs and Stratton was painting through our                  2 internal e-coat -- sorry, liquid paint process, to                  3 understand when we applied our paint, you know, which                  4 is an appearance item, how much that was going to                  5 cost us, whether it was cheaper for us to outsource                  6 that aspect or whether we should continue to do that                  7 inside, internally to Briggs and Stratton.                  8 Q. And that paint was on the -- was on an external                  9 component of a horizontal shaft engine?                  10 A. Correct.                  11 Q. Could you pull out Exhibit 3 from the Applicant's                  12 exhibits. And then turn to page 275. It's the                  13 fourth page in. You were asked some questions about                  14 the unique Briggs and Stratton style that's                  15 referenced on this page.                  16 A. Correct.                  17 Q. Can you explain what goes into the unique Briggs and                  18 Stratton style?                  19 A. So the unique B&amp;S style was essentially to make sure                  20 that we had proper labeling that connected us -- that                  21 connected that engine into our lineup. Again, the                  22 Briggs and Stratton label in the center, most                  23 predominantly the Briggs and Stratton label in the                  24 center of the rewind, the secondary marketing label                  25 that goes onto an air cleaner cover, and then as</p>	<p>1 engine, there is sort of a Y pattern that's directing                  2 out from there.                  3 Q. Can you turn back quickly to now we're looking at                  4 Opposers' exhibits from this morning, Exhibit 2. Can                  5 you point out where the rewind cover is on this                  6 exhibit or describe it?                  7 A. So the rewind cover is the black component that's at                  8 the essentially the lower right-hand area. It has                  9 the Briggs and Stratton logo placed predominantly in                  10 the center, and you can see that Y shape that I                  11 referenced kind of directed outward from that.                  12 Q. So the slots on the rewind cover we've been                  13 discussing are sort of those holes in the black                  14 circle in the lower right component of the 550 in                  15 Exhibit 2?                  16 A. Correct. Those are the slots that direct upward to                  17 the right, upward to the left and then directly                  18 downwards.                  19 Q. Okay. There has also been some testimony questioning                  20 around Briggs family look and Briggs visual brand                  21 language. Are those the same as the unique style you                  22 just described?                  23 A. Yes.                  24 Q. Does the Briggs unique style or family look or visual                  25 brand language have anything to do with the location,</p>
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<p>1 minor details just some of the rewind handle being                  2 similar or air cleaner knob. So some of those small                  3 touch points that people might come in contact with                  4 if they're familiar with one engine, it might feel                  5 the same on the other. But small details from those                  6 aspects.                  7 Q. Feel the same physically you mean like touching?                  8 A. Correct.                  9 Q. Anything else goes into the Briggs unique style?                  10 A. So with our rewind style, we had done, you know, some                  11 minor details just on what would appear to be a small                  12 Y with some slots through that. And generally we                  13 would use a color scheme that would be a black tank                  14 and a red blower housing.                  15 Q. And those were also components of the Briggs unique                  16 style?                  17 A. With the fuel tank fixed and blower housing and air                  18 cleaner essentially were left with just some of those                  19 small features, you know, to help clarify the                  20 branding image.                  21 Q. And just for clarity of the record, when you say the                  22 slots on the rewind cover, what are you referring to?                  23 A. So the slots form a sort of a Y, Y shape. So that as                  24 somebody looks at that Briggs and Stratton label on                  25 the front to identify that it's a Briggs and Stratton</p>	<p>1 orientation of the component parts?                  2 A. No.                  3 Q. Are those unique to Briggs?                  4 A. I'm sorry, question again?                  5 Q. The location and orientation of the component parts,                  6 are those unique to Briggs?                  7 A. No, those are very much set by the industry standard                  8 design.                  9 Q. You also testified that you think the 550 series                  10 Briggs single cylinder horizontal shaft engine is                  11 visually distinctive from the Honda GX, do you                  12 remember that?                  13 A. Yes.                  14 Q. What makes the -- let's start with the 550 series.                  15 What makes the 550 series visually distinctive?                  16 A. I believe the 550 series is visually distinctive from                  17 the Honda in the sense that, you know, we have the                  18 corporate marketing labels, we've got the Briggs and                  19 Stratton label in the center. Honda, of course, has                  20 the Honda. We've got our secondary marketing label                  21 on the air cleaner cover, and we pursue a different                  22 color scheme than what Honda does on their GX                  23 engines.                  24 Q. So the labeling and the color scheme. Anything else                  25 make the two engines visually distinctive from the</p>

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1 front?

2 A. Those are the predominant identifying features.

3 Again, we go for some small details, things like

4 maybe the rewind handle. If somebody is familiar

5 with pulling that rewind handle on another engine,

6 they may have, we try to create that linkage through

7 some of that feel or, again, with the air cleaner

8 knob, you know, trying to use some of those common

9 parts across Briggs and Stratton engines.

10 Q. And what makes the GX engine visually distinctive?

11 MS. FERRERA: Objection.

12 THE WITNESS: I believe the GX engine is

13 visually distinctive based on the white fuel tank,

14 red blower housing and the big Honda logo that's

15 always present on the rewind.

16 BY MR. HERRING:

17 Q. Let's look at Exhibit 8, Applicant's Exhibit 8. And

18 if you could please turn to the third page that ends

19 in 152.

20 A. Okay.

21 Q. And there is an indication there that the Briggs

22 redesign for the 550 cost 47 cents, do you see that?

23 A. Yes.

24 Q. Is that 47 cents total or 47 cents per engine?

25 A. That's 47 cents per engine.

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1 Q. And is that -- does that 47 cents represent the

2 entire cost of the redesign?

3 A. No.

4 Q. What does that represent?

5 A. That represents only the cost of the added components

6 per engine.

7 Q. Were there additional costs associated with the

8 redesign?

9 A. Yes.

10 Q. What were those?

11 A. So as is also seen in the -- in this file, there is

12 all of the tooling costs in the column that says

13 investment at product development. So those would

14 have been one-time charges that Briggs and Stratton

15 had to pay for some of the changes that we pursued.

16 And then additionally what's not

17 identified is significant engineering testing cost

18 and the salaries of people that needed to perform the

19 work.

20 Q. Earlier today I asked you a series of questions about

21 the benefits of certain components. For instance, we

22 talked about the benefits of having a high mount air

23 cleaner, and we talked about the benefits of the

24 shape of the air cleaner cover, talked about the

25 benefits of the shape of the fuel tank and the

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1 location of that, and we talked about the benefits of

2 the seam in the fuel tank, we talked about the

3 benefits of the slant in the fan cover, and we talked

4 about the benefits of the controls on the carburetor.

5 Did you understand when I was asking those

6 questions that I was asking them in the context of

7 the Briggs 550 series engine?

8 MS. FERRERA: Objection.

9 THE WITNESS: Yes.

10 BY MR. HERRING:

11 Q. And you were giving answers to those questions as to

12 the Briggs 550 series engine?

13 A. Correct.

14 MS. FERRERA: Objection.

15 BY MR. HERRING:

16 Q. Did you lead the design of the Briggs 550 series

17 engine?

18 A. Yes.

19 Q. Similarly we walked through some functional

20 disadvantages of certain differences in component

21 shape and location and orientation from the Briggs

22 550 series engine. What was your understanding when

23 I was asking you those of which, if any, engines I

24 was referring to?

25 MS. FERRERA: Objection.

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1 THE WITNESS: The 550 series Briggs and

2 Stratton engine.

3 BY MR. HERRING:

4 Q. Were those all alternatives that you considered in

5 designing and developing the Briggs 5500 series?

6 MS. FERRERA: Objection.

7 THE WITNESS: One more time with the

8 question, please?

9 BY MR. HERRING:

10 Q. Were those all alternatives you considered in

11 designing the Briggs 550 series?

12 MS. FERRERA: Objection.

13 THE WITNESS: Can you go back to that

14 previous one?

15 MR. HERRING: Sure.

16 BY MR. HERRING:

17 Q. We were talking about the series of questions from

18 this morning that related to disadvantages in doing

19 things differently from the 550 series shown in

20 Exhibit 2, different shape of certain components,

21 different orientation of certain components. Were

22 those differences alternatives that you considered in

23 designing the Briggs 5500 series?

24 MS. FERRERA: Objection.

25 THE WITNESS: The various alternatives

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<p>1 that we discussed based on even some of the</p> <p>2 documents we looked at earlier where we had</p> <p>3 alternative designs that were done that showed</p> <p>4 problems, that was, you know, showing some</p> <p>5 consideration of alternative designs.</p> <p>6 Additionally, other variations of the</p> <p>7 designs from engineering experience, engineering</p> <p>8 judgment, education, you know, we're able to rule</p> <p>9 out designs without actually prototyping or making</p> <p>10 every possible alternative.</p> <p>11 BY MR. HERRING:</p> <p>12 Q. When you say "we were able to rule out designs," do</p> <p>13 you mean rule out designs for any particular engine?</p> <p>14 A. Specifically related to the engine 550 that we're</p> <p>15 working on.</p> <p>16 MR. HERRING: No further questions.</p> <p>17 RE-CROSS-EXAMINATION</p> <p>18 BY MS. FERRERA:</p> <p>19 Q. Mr. Whitmore, you gave some testimony just now about</p> <p>20 some work you did during your co-op program as part</p> <p>21 of your bachelors degree, correct?</p> <p>22 A. Correct.</p> <p>23 Q. That was sometime prior to the year 2000, right?</p> <p>24 A. Correct.</p> <p>25 Q. So that was more than 15 years ago?</p>	<p>1 Stevens for you, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And this was in connection with the redesign of the</p> <p>4 550 engine, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And under design direction, the first item listed</p> <p>7 there says: Would like two to three major versions.</p> <p>8 Do you see that?</p> <p>9 A. Sorry, can you ask your question?</p> <p>10 Q. Sure, is there a heading that says design direction?</p> <p>11 A. Yeah.</p> <p>12 Q. And under that there are some numbered items, do you</p> <p>13 see that?</p> <p>14 A. Yes.</p> <p>15 Q. The first one is: Would like two to three major</p> <p>16 versions.</p> <p>17 A. Yes.</p> <p>18 Q. And then A says: One version should be minimal</p> <p>19 impact changes which would be mostly centered on</p> <p>20 tooling modifications with minimal part cost</p> <p>21 increase.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then in parentheses it refers to the AC cover,</p> <p>25 base and fuel tank changes we discussed among other</p>
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<p>1 A. Yes.</p> <p>2 Q. And that did not involve designing or developing the</p> <p>3 shape of the fan cover on a horizontal shaft engine,</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. It did not involve designing or developing the</p> <p>7 appearance of any other component on a horizontal</p> <p>8 shaft engine, correct?</p> <p>9 A. Correct.</p> <p>10 Q. You testified just now about what you believe the</p> <p>11 term "unique Briggs and Stratton style" means, do you</p> <p>12 recall that?</p> <p>13 A. Yes.</p> <p>14 Q. As part of the development of the 550 engine, you</p> <p>15 paid Brooks Stevens thousands of dollars to work on</p> <p>16 the unique Briggs and Stratton style, correct?</p> <p>17 A. Correct.</p> <p>18 MS. FERRERA: And if I can have marked</p> <p>19 Applicant's Exhibit 9.</p> <p>20 (Applicant's Exhibit 9 marked.)</p> <p>21 BY MS. FERRERA:</p> <p>22 Q. This is a document bearing the Bates numbers</p> <p>23 BASCO0002916 to 2917, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And this is a memo that was prepared by Brooks</p>	<p>1 potential ideas.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And AC cover refers to the air cleaner cover?</p> <p>5 A. Correct.</p> <p>6 Q. Base refers to the air cleaner base or the carburetor</p> <p>7 cover?</p> <p>8 A. Yes.</p> <p>9 Q. And the fuel tank refers to the fuel tank, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And so as part of working on the unique Briggs and</p> <p>12 Stratton style, Brooks Stevens considered or worked</p> <p>13 on alternative designs for the air cleaner cover, the</p> <p>14 carburetor cover and the fuel tank, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And if you go down to item 5, it says changes that</p> <p>17 should be included in all renderings.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And A says: Remove bump from side of blower housing?</p> <p>21 A. Yes.</p> <p>22 Q. Do you see that? That's referring to the fan cover,</p> <p>23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. So as part of working on the unique Briggs and</p>

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<p>1 Stratton style, Brooks Stevens also made changes to 2 the shape of the fan cover, correct? 3 A. That was just a small bump that protruded from the 4 fan cover. 5 Q. Right. So Brooks Stevens made changes to the shape 6 of the fan cover as part of working on the unique 7 Briggs and Stratton style, correct? 8 A. Yes. 9 Q. Mr. Whitmore, you gave your opinion a short while ago 10 that the GX engine is visually distinctive because of 11 its color scheme and its labeling, do you recall 12 that? 13 A. Yes. 14 Q. You haven't conducted any surveys to determine what 15 features of the external appearance of the GX engine 16 consumers recognize, have you? 17 A. I'm not in a position that would conduct that 18 marketing research. 19 Q. You haven't conducted such surveys, correct? 20 A. Correct. 21 Q. You haven't seen any such data, correct? 22 A. Correct. 23 Q. Mr. Whitmore, if you would take out Opposers' Exhibit 24 1. It's the picture of the GX engine. 25 A. Okay.</p>	<p>1 THE WITNESS: No, I think from my previous 2 testimony, you know, we have -- if you refer to 3 appearance, you know, color is part of the 4 appearance. So, you know, Honda with the white fuel 5 tank, red blower housing and Honda GX labeling, 6 there is slight differences in the pattern of the 7 rewind. Honda uses a different handle. 8 So like I said, with Briggs and Stratton 9 trying to pursue a family look and VBL, we choose to 10 use slightly different knobs and slightly different 11 rewind handles. So that creates some 12 differentiation through our labeling and through 13 those features which creates a slight distinction. 14 BY MS. FERRERA: 15 Q. Is it your testimony sitting here today that in order 16 to perform the same as the GX engine, the single 17 cylinder horizontal shaft needs to have a fuel tank 18 that has the exact same shape, an air cleaner cover 19 that has the exact same shape, a carburetor cover 20 that has the exact same shape and a fan cover that 21 has the exact same shape as what's shown in Opposers' 22 Exhibit 1? 23 A. I think the general configuration of the engine needs 24 to be exactly the same in order to optimize 25 performance of the engine. Whether it's some small</p>
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<p>1 Q. Sitting here today, is it your testimony that a 2 single cylinder horizontal shaft engine needs to have 3 the exact same appearance as the engine that's shown 4 in Opposers' Exhibit 1 in order to perform the same 5 as a GX engine? 6 MR. HERRING: Object to the form, asked 7 and answered. 8 BY MS. FERRERA: 9 Q. You can answer. 10 A. Sorry, can you ask the question again? 11 Q. Sure. Sitting here today, is it your testimony that 12 a single cylinder horizontal shaft engine needs to 13 have the exact same appearance as the engine shown in 14 Opposers' Exhibit 1 in order to perform the same as a 15 GX engine? 16 A. I believe the configuration of the engine needs to be 17 the same -- in the same industry standard 18 configuration. 19 Q. Is it your testimony that an engine needs to have the 20 exact appearance, not merely the same location of the 21 components but the exact appearance of the engine 22 shown in Opposers' Exhibit 1 in order to perform the 23 same as the GX engine? 24 MR. HERRING: Object to form, same 25 objection as before.</p>	<p>1 details that might come in through what we talked 2 about with VBL, you know, that's some of the minimal 3 opportunity that is available for differentiation. 4 Q. Mr. Whitmore, that wasn't my question. My question 5 is -- 6 A. I'm sorry. 7 Q. -- is it your testimony that in order to perform the 8 same as a GX engine, single cylinder horizontal shaft 9 needs to have the exact same shape as the fuel tank 10 on the Honda engine, the exact same shape as the air 11 cleaner cover, the exact same shape as the carburetor 12 cover and the exact same shape as the fan cover as 13 what's shown in Honda Opposers' Exhibit 1? 14 A. I believe the general shapes need to be the same. 15 Q. Do they need to have the exact same shape? 16 A. Exact is a very specific word that would get you down 17 to the tiniest measurement. So that's too exacting 18 of a question. They need to be very, very similar, 19 same general appearance or same general shape, to 20 occupy the areas that are needed in order to optimize 21 the performance. 22 Q. So they don't need to have the exact same shape, 23 correct? 24 A. The shape needs to be -- the shape is within a very 25 defined range.</p>

1 Q. They don't need to be exactly the same, correct?  
 2 A. I believe my answer speaks for itself.  
 3 Q. So the answer to my question is --  
 4 A. They're generally the same.  
 5 Q. Yes -- that's not my question. They don't need to be  
 6 exactly the same, correct?  
 7 A. So if you mean exact whereas parts could be scanned  
 8 and have no differentiation, then they're not exactly  
 9 the same. But they're within the same general size  
 10 and shape.  
 11 MS. FERRERA: No further questions.  
 12 MR. HERRING: We're also done.  
 13 (At 4:29 p.m., the deposition concluded.)  
 14 \* \* \*

1 CERTIFICATE  
 2 STATE OF WISCONSIN )  
 ) SS  
 3 MILWAUKEE COUNTY )  
 4 I, VICKY L. ST. GEORGE, Registered Merit  
 5 Reporter and Notary Public in and for the State of  
 6 Wisconsin, do hereby certify that the preceding deposition  
 7 was recorded by me and reduced to writing under my  
 8 personal direction.  
 9 I further certify that said deposition was  
 10 taken at the offices of WHYTE HIRSCHBOECK DUDEK, S.C., 555  
 11 East Wells Street, Suite 1900, Milwaukee, Wisconsin on  
 12 June 24, 2015, commencing at 9:00 a.m. and concluding at  
 13 4:29 p.m.  
 14 I further certify that I am not a relative or  
 15 employee or attorney or counsel of any of the parties, or  
 16 a relative or employee of such attorney or counsel, or  
 17 financially interested directly or indirectly in this  
 18 action.  
 19 In witness whereof, I have hereunto set my hand  
 20 and affixed my seal of office at Milwaukee, Wisconsin,  
 21 this 1st day of July, 2015.  
 22  
 23 \_\_\_\_\_  
 24 VICKY L. ST. GEORGE  
 25 Notary Public in and for the  
 State of Wisconsin  
 Commission Expires 1/29/2017

1 I declare under penalty of perjury  
 2 under the laws that the foregoing is  
 3 true and correct.  
 4  
 5 Executed on \_\_\_\_\_, 20\_\_\_\_,  
 6 at \_\_\_\_\_, \_\_\_\_\_.  
 7  
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 10  
 11 \_\_\_\_\_  
 12 JEFF WHITMORE  
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# Exhibit B

ESTTA Tracking number: **ESTTA507205**

Filing date: **11/21/2012**

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

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation
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Signature	/s/
Date	11/21/2012
Attachments	Opposers' Joint Disclosure of Rebuttal Expert Witnesses.pdf ( 4 pages )(12739 bytes )



upon functional advantages, and are not purely cosmetic;

5. The GX Engine fuel tank is above the fan cover on the right for functional reasons;
6. The GX Engine air filter is above the fan cover on the left for functional reasons;
7. The GX Engine muffler is behind the air filter on the left for functional reasons;
8. The GX Engine air filter is a cartridge-style filter and has functional advantages over panel-style filters;
9. The GX Engine fuel tank has a rectangular shape and horizontal seam for functional reasons;
10. The GX Engine air filter is located above the carburetor for functional reasons;
11. The GX Engine carburetor control levers are located close to the carburetor and in a recessed area for functional reasons;
12. The GX Engine fan cover is slanted for functional reasons;
13. In order to compete for OEM business, engine manufacturers must be able to offer engines that have substantially the same overall compact, cubic design as the Honda GX Engine that will fit within the OEM's equipment specifications.

Dated: November 21, 2012

By: /s/ Robert N. Phillips

Robert N. Phillips  
Seth B. Herring  
Nina Habib Borders  
Reed Smith LLP  
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San Francisco, CA 94105

Attorneys for Opposer Briggs & Stratton  
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Dated: November 21, 2012

By: /s/ Donald A. Daugherty, Jr.  
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**CERTIFICATE OF SERVICE**

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing OPPOSERS' JOINT DISCLOSURE OF REBUTTAL EXPERT WITNESSES was served on the following counsel of record for Applicant, by depositing same in the U.S. mail, first class postage prepaid, this 21st day of November, 2012:

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*/s/ Deborah L. Kalahale*  
\_\_\_\_\_  
Deborah L. Kalahale

# Exhibit C

JOHN REISEL, Ph.D.

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

-----  
BRIGGS & STRATTON CORPORATION  
and KOHLER CO.,

Opposers,

Opposition No. 91200832  
(parent)

-vs-

Opposition No. 91200146

HONDA GIKEN KOGYO KABUSHIKI  
KAISHA,

Application Serial No.  
78924545

Applicant.

-----  
Examination of JOHN REISEL, Ph.D., taken  
at the instance of the Applicant, under and pursuant to  
all applicable rules, before DANNIELLE K. COPELAND,  
Registered Merit Reporter, Certified Realtime Reporter  
and Notary Public in and for the State of Wisconsin, at  
Whyte Hirschboeck Dudek, S.C., 555 East Wells Street,  
Suite 1900, Milwaukee, Wisconsin, on May 21, 2015,  
commencing at 9:02 a.m. and concluding at 5:01 p.m.

JOHN REISEL, Ph.D.

1 APPEARANCES

2 WILMER, CUTLER, PICKERING, HALE and DORR, LLP, by

3 MS. VINITA FERRERA,

4 MS. SIRA HOFFMAN,

5 60 State Street,

6 Boston, Massachusetts 02109,

7 appeared on behalf of the Applicant.

8 REED SMITH, LLP, by

9 MR. SETH HERRING,

10 101 Second Street, Suite 1800,

11 San Francisco, California 94105,

12 appeared on behalf of Opposer Briggs & Stratton.

13 WHYTE HIRSCHBOECK DUDEK, S.C., by

14 MS. MELINDA S. GIFTOS,

15 555 East Wells Street, Suite 1900,

16 Milwaukee, Wisconsin 53202-3819,

17 appeared on behalf of Opposer Kohler Co.

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1 TRANSCRIPT OF PROCEEDINGS

2 JOHN REISEL, Ph.D., called as a witness

3 herein, having been first duly sworn on oath, was

4 examined and testified as follows:

5 EXAMINATION

6 BY MS. FERRERA:

7 Q Good morning.

8 A Good morning.

9 Q Professor Reisel, Dr. Reisel, what do you prefer

10 to go by?

11 A Either one.

12 Q Professor Reisel, my name is Vinita Ferrera and

13 I'm one of the attorneys that represents Honda in

14 this proceeding. I would like to go over some

15 preliminaries before we get started. Could you

16 first state and spell your name for the record?

17 A John Reisel, J-O-H-N, R-E-I-S-E-L.

18 Q And where do you live?

19 A The exact address?

20 Q Yes.

21 A 7415 North Lombardy Road, L-O-M-B-A-R-D-Y, and

22 that's in Fox Point, Wisconsin.

23 Q And what's your business address?

24 A 3200 North Cramer Street, C-R-A-M-E-R, in

25 Milwaukee, Wisconsin.

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\*\*\*\*\*

Disposition Of Original Exhibit/s:

Attached To Original Transcript.

\*\*\*\*\*

[Page 3]

1 Q Have you ever been deposed before, sir?

2 A No.

3 Q So let me -- your counsel's probably explained

4 some of the procedures for you, but let me just

5 give you a few ground rules before we get started.

6 I'm going to be asking you questions over the

7 course of the day, and hopefully you're going to

8 be answering those questions.

9 As you can see, your testimony is being

10 recorded by a stenographer, so it's important that

11 you give verbal answers to all of my questions.

12 The transcript can't record shaking and nodding.

13 If it's possible, it would be helpful if you could

14 wait until I've finished asking my question before

15 you start answering the question so that we can

16 get a clear transcript, and I will, of course, try

17 to avoid speaking over you when you're answering

18 your question.

19 If your counsel objects to any of my

20 questions, unless they specifically tell you not

21 to answer, you should still go ahead and give an

22 answer, and I'll remind you if that is needed.

23 If you have any questions or don't

24 understand any of my questions, please let me

25 know. I'll be happy to try and rephrase them for

[Page 5]

**JOHN REISEL, Ph.D.**

<p>1 you or clear them up, but if you answer the 2 question, I'll assume that you understood what the 3 question meant. 4 We'll take breaks as necessary. If you 5 need to take a break at any time, just let me 6 know. My only request would be that if I have 7 asked you a question, that you answer the question 8 before we take a break. And do you have any 9 questions about the process? 10 A No. 11 Q Okay. You do understand that your testimony is 12 being given under oath and that's the same oath 13 that you would be administered if you were 14 testifying in court? 15 A Yes. 16 Q Is there any reason that you're unable to 17 completely and accurately answer the questions 18 here today? 19 A Not that I'm aware of. 20 Q Have you ever been retained to serve as an expert 21 witness in a case before? 22 A Not before this case. 23 Q Other than this case, have you -- have you been 24 required to give testimony in any proceeding 25 before?</p> <p style="text-align: right;"><b>[Page 6]</b></p>	<p>1 A Yes. 2 Q Okay. 3 MS. FERRERA: I'm going to ask the 4 reporter to mark Exhibit 1. 5 (Discussion off the record.) 6 (Exhibit No. 196 was marked.) 7 BY MS. FERRERA: 8 Q Professor Reisel, do you recognize what's been 9 marked as Exhibit 196? 10 A Yes. 11 Q And is that a copy of your CV? 12 A Yes. 13 Q I believe this is the copy that was attached to 14 your supplemental report that was submitted just a 15 couple months ago, as far as you know is this 16 version up to date? 17 A It is as up to date as relevant. It's up to date. 18 We don't have our latest teaching evaluations from 19 this semester yet, so those couldn't have been 20 included, and in the last two months I haven't had 21 another paper published, so -- and this is the 22 correct graduation of the students, so yeah, it's 23 up to date. 24 Q Okay. So on the first page, I guess it actually 25 says Page 14 at the bottom, there's a description</p> <p style="text-align: right;"><b>[Page 8]</b></p>
<p>1 A Would you include an on-campus issue on a 2 disciplinary matter as part of that? 3 Q Sure. 4 A Then in that case, there was one situation where I 5 was asked to give testimony that then they threw 6 out anyway. 7 Q Okay. And what was the nature of that 8 disciplinary action? 9 A It was a faculty rights and responsibilities 10 committee hearing on discipline against one of the 11 faculty members in our department. 12 Q And what was your role in that matter? 13 A My role -- well, at this point that's unclear as 14 to what my role was in that matter. It was 15 originally to give my interpretation of some of 16 the university procedures on what was not being 17 followed correctly. 18 Q Okay. And were you under oath when you gave that 19 testimony? 20 A I believe I was under oath. 21 Q And so as of today that's the only other time that 22 you've given testimony -- 23 A Yes. 24 Q -- in any kind of a proceeding, whether in court 25 or some other setting?</p> <p style="text-align: right;"><b>[Page 7]</b></p>	<p>1 of your education. Do you see that? 2 A Yes. 3 Q And is that correct? 4 A Yes. 5 Q Okay. So you obtained your bachelor's in 6 mechanical engineering from Villanova University? 7 A Yes. 8 Q In 1989? 9 A Yes. 10 Q When did you start that program? 11 A The fall of 1985. 12 Q So you completed it in the standard four years? 13 A Yes. 14 Q And did you go straight through from that to your 15 master's program or was there any break in 16 between? 17 A Just the break for the summer, so I started the 18 master's in September -- or August of 1989. 19 Q And you completed that two years later in 1991? 20 A Yes. 21 Q Was there any break in that program? 22 A No. 23 Q And then you started your Ph.D. program 24 immediately after that or was there a break? 25 A It was ongoing. I was working on the same</p> <p style="text-align: right;"><b>[Page 9]</b></p>

**[3] (Pages 6 to 9)**

**JOHN REISEL, Ph.D.**

1 project, so other than maybe taking a day off  
2 after defending my thesis, I just kept working on  
3 it in the lab.  
4 **Q** And so you started that sometime in 1991?  
5 **A** Yes.  
6 **Q** Approximately when in 1991?  
7 **A** May of -- I would say June of 1991. I didn't -- I  
8 graduated with my master's in August of 1991 just  
9 because I saw no reason to rush and meet the  
10 deadlines for the May 1991 graduation because I  
11 was going to be going on with the same project.  
12 **Q** And then you completed your Ph.D. in 1994?  
13 **A** Yes, May of 1994.  
14 **Q** And did you take any break in between June of '91  
15 and May of 1994 in terms of your Ph.D. program?  
16 **A** No.  
17 **Q** So looking at Exhibit 196, under your Ph.D. it  
18 says that your fields of study were combustion,  
19 thermodynamics, fluid mechanics and optics, is  
20 that correct?  
21 **A** That is correct.  
22 **Q** And were those also the fields of study for your  
23 master's program, or was there some difference?  
24 **A** It was the same project. Those were the same  
25 fields of study.

[Page 10]

1 **Q** And so what does -- what does combustion refer to?  
2 **A** Combustion would be referring to the chemical  
3 reactions -- exothermic chemical reactions between  
4 a fuel and an oxidizer, primarily the purpose of  
5 releasing heat.  
6 **Q** And how about thermodynamics?  
7 **A** Thermodynamics would be, essentially, the study of  
8 energy.  
9 **Q** And fluid mechanics?  
10 **A** Fluid mechanics would be the study of how fluids,  
11 which would include liquids and gases, flow  
12 through systems or how they interact with -- as a  
13 stationary fluid in terms of producing pressure on  
14 an -- on objects.  
15 **Q** And how about optics?  
16 **A** Optics would be the use of light and the study of  
17 light and its manipulation.  
18 **Q** At any time during either your undergraduate or  
19 graduate education, did you study engines in any  
20 context?  
21 **A** No, I did not. My graduate project was related to  
22 supporting gas turbine combustion development.  
23 **Q** And when you say "gas turbine combustion  
24 development," what kind of machinery or equipment  
25 does that relate to?

[Page 11]

1 **A** The project was -- back in the early 1990s and  
2 late 1980s the U.S. government was interested in  
3 producing or developing and supporting the  
4 development of a new speed -- a new supersonic  
5 transport for people, civil -- for civil purposes,  
6 and so this was for the aircraft engines, although  
7 I tend to think that our results helped diminish  
8 the interest in the development of that product.  
9 **Q** Okay. And were you researching or looking at any  
10 particular components for the gas turbine project?  
11 **A** What we were looking at is we were looking at the  
12 chemistry of the combustion process to try to  
13 understand nitric oxide formation. Nitric oxide  
14 is a pollutant. There was concern that if you  
15 were to have a fleet of these aircraft flying in  
16 the stratosphere, the nitric oxide that would be  
17 produced would be damaging to the ozone layer, and  
18 so we were trying to study whether there were  
19 ways -- so we wanted to understand how the nitric  
20 oxide was being formed in the flames in the first  
21 place, and if there were ways to develop  
22 combustors that would minimize that production.  
23 **Q** At any time during your -- either your  
24 undergraduate or graduate education did you study  
25 engine design?

[Page 12]

1 **A** No.  
2 **Q** And --  
3 **A** By "engine design," I am interpreting that as  
4 reciprocating internal combustion engines.  
5 **Q** When you say "reciprocating internal combustion  
6 engines," what do you mean by that?  
7 **A** The reciprocating internal combustion engine would  
8 be what most people think of as an engine in terms  
9 of it having the piston moving back and forth in  
10 the cylinder, as opposed to some other internal  
11 combustion engine designs.  
12 You can consider a gas turbine combustor  
13 an internal combustion engine -- or a gas turbine  
14 engine as an internal combustion engine, but most  
15 people wouldn't look at it that way.  
16 **Q** So for example, the engine in your car would be a  
17 reciprocating internal combustion engine?  
18 **A** In my cars, yes, and in most cars yes. There are  
19 some engines that -- some vehicles that do have  
20 rotary engines that would be also an internal  
21 combustion engine.  
22 **Q** Okay.  
23 **A** But those are very few.  
24 **Q** You understand that one of the products that is at  
25 issue in this case is the Honda GX engine?

[Page 13]

[4] (Pages 10 to 13)

**JOHN REISEL, Ph.D.**

1 A Yes.  
2 Q And is that a reciprocating internal combustion  
3 engine?  
4 A Yes.  
5 Q At any time during your undergraduate and graduate  
6 education did you have occasion to design any  
7 reciprocating internal combustion engines?  
8 A No.  
9 Q At any time during your undergraduate or graduate  
10 education did you take any courses relating to  
11 manufacturing processes?  
12 A There was a required manufacturing processes  
13 course in my undergraduate curriculum that I took.  
14 Q And in the context of that course did you -- did  
15 you study how to develop cost analysis for  
16 manufacturing products?  
17 A In that particular course I don't remember. We  
18 did cover development of such things in some of  
19 our design courses in our undergraduate  
20 curriculum.  
21 Q Okay. So tell me what -- what courses you studied  
22 the development of cost analysis for manufacturing  
23 projects?  
24 A That would have been part of our senior -- or  
25 capstone senior design project course.

[Page 14]

1 Q And what was the senior design course?  
2 A The title of the course?  
3 Q What was the subject matter of that course?  
4 A The purpose of -- it was a two-part course. It  
5 started with the first semester where you would  
6 develop your design proposal or -- and learn about  
7 economic analysis, cost analysis as part of that  
8 process. And then the second semester of the  
9 course was then developing the actual design as  
10 part of the team.  
11 Q And what was the product that was the subject of  
12 your proposal?  
13 A Our team developed a portable hydroelectric  
14 generator.  
15 Q And in the context of that project did you learn  
16 about how to evaluate different -- the differences  
17 in manufacturing costs between alternative  
18 designs?  
19 A We would have considered those aspects as part of  
20 the design. Whether we were formally learning  
21 that material as part of that course, I don't  
22 remember.  
23 Q Okay. Other than in the context of that course,  
24 did you study or perform any kind of cost analysis  
25 of different manufacturing options for mechanical

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1 products as part of your education?  
2 A I would say no.  
3 Q Okay.  
4 A Again, it may have been part of another project as  
5 well somewhere along the lines, but 20-some years  
6 later I don't necessarily remember exactly what we  
7 did for each project.  
8 Q Sure. So in terms of your fields of study,  
9 starting with combustion, what -- what components  
10 of a reciprocal -- reciprocating internal  
11 combustion engine are involved in that process?  
12 A Well, clearly the combustion is powering the  
13 engine in the first place, so that's an integral  
14 part of that -- thermodynamics encompasses  
15 combustion, and also would encompass some of the  
16 heat management aspects of the engine, and the  
17 fluid mechanics would describe -- and would be  
18 used to describe how the air and fuel flow through  
19 the engine and end up coming out as exhaust  
20 products.  
21 Q And so starting with combustion, which components  
22 in an engine are involved in that process?  
23 A The engine cylinder is where the combustion is  
24 going to be taking place. The intake system  
25 impacts the performance of the combustion inside

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1 the cylinder by delivering the fuel and the air to  
2 the system, and then it has to go through the  
3 valves, which would be part of the intake system,  
4 but the primary location would be the cylinder.  
5 Q And how about with respect to thermodynamics, what  
6 components of an engine are involved in that?  
7 A If you brought in the thermodynamics to include  
8 all of the heat transfer issues, one could argue  
9 that almost all of the components are in some way  
10 related to -- or somehow being affected by  
11 thermodynamics.  
12 Q And how about fluid mechanics?  
13 A Fluid mechanics would be concerned with all of the  
14 passageways that have the air and/or fuel going  
15 through it or residing in it, so again, perhaps  
16 not the walls of the cylinder, that may not be  
17 impacted by the fluid mechanics, but the intake  
18 system, the air cleaner, the valves, the  
19 in-cylinder motion of the fluids, the exhaust  
20 system, the muffler, the fuel tank, the fuel  
21 delivery system, the cooling system for the -- in  
22 this case for the air flowing over the engine.  
23 All of that would be involving fluid mechanics.  
24 Q And how about optics? What components of an  
25 engine are involved in optics?

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[5] (Pages 14 to 17)

## JOHN REISEL, Ph.D.

<p>1 A None, unless you are building a special engine to 2 study what's happening inside the engine. 3 Q What did you do after you have completed your 4 Ph.D. in 1994? 5 A The next couple months -- next three months after 6 I completed my Ph.D. I continued working in my 7 laboratory there as a graduate student as a 8 postdoc and then I began my professional teaching 9 career at the University of Wisconsin in Milwaukee 10 in the fall or August of 1994. 11 Q So you started -- when did you start your postdoc? 12 A May of 1994. 13 Q And you completed that in the fall, you said? 14 A August of 1994. 15 Q And can you describe what you were doing as 16 your -- in your postdoc fellowship? 17 A I was continuing the research that I had been 18 doing, with tying up a few loose ends from my 19 dissertation work as well as helping some of the 20 newer students in the lab learning how to conduct 21 the experiments and run the computer programs. So 22 basically I was using the time and not being 23 unemployed. 24 Q So according to your CV, your dissertation for 25 your Ph.D. program was laser-induced fluorescence</p> <p style="text-align: right;">[Page 18]</p>	<p>1 A Yes. With no breaks. 2 Q Okay. All right. So if you could look at Pages 3 16 and 17 of your CV, starting at the bottom of 4 Page 16 and continuing to the top of Page 17 5 there's a list of courses that you've taught? 6 A Yes. 7 Q And is that list complete? 8 A As of today, yes. I'll have a new course next 9 spring, but that obviously hasn't been done yet. 10 Q Which, if any, of the courses listed on Pages 16 11 and 17 of your CV relate to engines? 12 A To include at least parts of engines and aspects 13 that would be involved with engines, ME 301, ME 14 302, ME 321, ME 402, ME 432 and ME 702 and ME 703. 15 Not all of the content of those courses will be 16 only related to engines. The only one that would 17 fit into that category would be ME 432, Internal 18 Combustion Engines. 19 Q So I guess with respect to ME 301, 302, 321, 402 20 and 703, as part of those courses do you 21 specifically talk about engines in any of them? 22 A Well, 30 -- first of all, 302 and 402 are 23 essentially the same course, we changed the 24 curriculum and changed the numbers and changed 25 content slightly but they're essentially the same</p> <p style="text-align: right;">[Page 20]</p>
<p>1 measurements and modeling of nitric oxide in 2 high-pressure premixed flames, is that correct? 3 A Yes. 4 Q And did that relate to the gas turbine 5 combustion -- 6 A It related -- 7 Q -- program that we talked about earlier? 8 A Yes. It was supported by that program, again 9 looking at the fundamental chemistry and what was 10 going on in the flames. 11 Q And that's what you were continuing to do in your 12 postdoc program? 13 A Yes. 14 Q During your postdoc program did you do any 15 research regarding engines? 16 A No. 17 Q Did you design any engines? 18 A No. 19 Q Did you teach any courses on engine design? 20 A No. 21 Q So after you completed your postdoc program you 22 started at the University of Wisconsin in 23 Milwaukee? 24 A Yes. 25 Q And that's where you've been ever since?</p> <p style="text-align: right;">[Page 19]</p>	<p>1 course. 2 In ME 301 and ME 302 and 402 courses we 3 talk about cycles, thermodynamic cycles that are 4 describing the fundamental processes that are 5 occurring inside engines, so we do refer to 6 engines frequently as part of that -- as part of 7 that content of the course, not throughout the 8 entire course. 9 ME 302 and -- ME 302/402 combination and 10 the ME 703 both will have sections, if not the 11 majority of the course, on combustion as well, and 12 the combustion will usually -- I'll usually at 13 least relate that to the potential of using that 14 into an -- in an engine as an example application. 15 ME 321, I taught once back in the fall 16 of 1994, and I cannot remember if I brought the 17 heat transfer applications, connected that to 18 engines in any way 21 years ago. 19 Q So with respect to the classes that you relate -- 20 that you said related to thermodynamic cycles, you 21 said those relate to processes occurring inside 22 the engines, correct? 23 A Correct. It's the -- it would be -- the 24 thermodynamic cycle would be the series of 25 processes in the piston, cylinder system that are</p> <p style="text-align: right;">[Page 21]</p>

[6] (Pages 18 to 21)

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<p>1 leading to the production of the power out of the 2 engine.</p> <p>3 Q So to the extent that you talk about engines in 4 the context of those courses, you're talking about 5 things that are going on inside the engines, 6 correct?</p> <p>7 A Correct.</p> <p>8 Q And with respect to combustion, the courses in 9 which you talk about combustion, am I correct that 10 those also relate to processes occurring inside 11 the engines?</p> <p>12 A Assuming that everything's working properly, yes, 13 that's occurring inside the engine.</p> <p>14 Q Now, ME 432, the title of the course is Internal 15 Combustion Engines, and first of all, how many 16 times have you taught that course?</p> <p>17 A You could count that up on the next page, but it 18 is probably -- I taught it this last semester so 19 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 -- I would say 20 13 times. Maybe 14. I may have missed the one. 21 It may be 14 times.</p> <p>22 Q And generally what is the subject matter of that 23 course?</p> <p>24 A The subject matter of that course is as the title 25 says: Internal Combustion Engines. We look at</p> <p style="text-align: right;">[Page 22]</p>	<p>1 components?</p> <p>2 Q Fair enough. Let me rephrase the question. 3 In the context of that course has there 4 been any discussion of the external appearance of 5 the engine?</p> <p>6 A No.</p> <p>7 Q And in the context of that course has there been 8 any discussion of costs to manufacture an engine 9 or any of its components?</p> <p>10 A As part of the lecture, probably not; however, 11 each of the students will be working on their own 12 particular chosen design project for the engine or 13 for an engine, and so there will be discussions 14 that I may have with an individual student or 15 group of students regarding the costs of a 16 particular component.</p> <p>17 They will have to do cost analysis as 18 part of their design depending on what they have 19 chosen as their design project. So that has come 20 up from time to time, but in a more informal 21 setting than in a formal lecture setting.</p> <p>22 Q Okay. So is it fair to say that in the context of 23 your lectures and -- strike that. 24 In the context of your lectures you do 25 not discuss or teach the development of cost</p> <p style="text-align: right;">[Page 24]</p>
<p>1 performance characteristics, design components, 2 defining different terms that are used in the 3 design of the engine and the engine components.</p> <p>4 We look at thermodynamic cycles for the 5 engines. We look at the combustion from a 6 chemical standpoint. We look at what happens to 7 the air and the fuel as they flow through the 8 different components of the engine, turning into 9 exhaust products and then flowing out of the 10 engine.</p> <p>11 We consider the emissions control 12 systems of the engines and what the -- the 13 behavior of those and how those work. We look at 14 the heat transfer issues and the thermo 15 temperature management issues in the engine, and 16 depending on the semester, we look at -- in terms 17 of various depth, at some of the lubrication and 18 friction issues in the engines. That's the last 19 week, and so sometimes we've got more time for it 20 than others.</p> <p>21 Q Okay. In that class -- in any of the sessions of 22 that class that you taught has there been any 23 discussion of the design of any of the external 24 components of the engine?</p> <p>25 A What are you referring to as the external</p> <p style="text-align: right;">[Page 23]</p>	<p>1 analysis for an engine in the ME 432 course?</p> <p>2 A Not in a formal way. We will discuss relative 3 costs of various options and why you might choose 4 one option over another from an economic 5 standpoint, but to actually formally go through 6 and do the cost analysis there really would not be 7 time in that course to be introducing that.</p> <p>8 Q So in terms of the discussion of relative costs of 9 various options and why you might choose one 10 option over another, what types of things have you 11 discussed in that -- in that course?</p> <p>12 A Well, for example, we will consider as a reason as 13 to why you might choose -- an example would be why 14 you might choose a carburetor over a fuel injector 15 for introducing fuel into the system.</p> <p>16 The one benefit of a carburetor is it 17 would be less expensive and less expensive to 18 manufacture, less -- and more -- I don't want to 19 say more reliable, but it's less expensive, 20 whereas the fuel injector is going to give you 21 better performance overall. So you might put that 22 fuel injector on a more expensive engine, such as 23 in an automobile, but if you were looking at a 24 utility engine or a lawnmower, you're just adding 25 complexity and cost that you're trying to avoid</p> <p style="text-align: right;">[Page 25]</p>

[7] (Pages 22 to 25)

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<p>1 adding in those situations.</p> <p>2 Q Any other examples?</p> <p>3 A I do it at other times. I can't -- probably later</p> <p>4 today I'll think of more examples of that because</p> <p>5 it is used in other cases. It might come up when</p> <p>6 we discuss -- oh, engine lubrication systems.</p> <p>7 A splash-type lubrication system inside</p> <p>8 the engine where the oil is just being splashed</p> <p>9 onto the components is going to be less expensive</p> <p>10 than a pressurized oil delivery system where</p> <p>11 you're going to pipe the oil through different</p> <p>12 passageways to deliver it to particular locations.</p> <p>13 So again, with an engine whose goal is to be less</p> <p>14 expensive, lower weight, you're going to be using</p> <p>15 a splash delivery system for the oil rather than a</p> <p>16 pressurized fuel oil pump system.</p> <p>17 Q Any other examples that you can think of sitting</p> <p>18 here right now?</p> <p>19 A Not quickly. Again, it's probably done, but</p> <p>20 again, it took me a minute to figure out --</p> <p>21 remember the lubrication system one. Oh, all</p> <p>22 right.</p> <p>23 Air cooling versus liquid cooling an</p> <p>24 engine. An air-cooled engine where you just have</p> <p>25 fins on the exterior and are using the passage of</p> <p style="text-align: right;">[Page 26]</p>	<p>1 Q In any of the courses other than ME 432 have</p> <p>2 you -- that you've taught have you discussed the</p> <p>3 design -- the design of any -- strike that.</p> <p>4 In any of the courses other than ME 432</p> <p>5 have you discussed designing the external</p> <p>6 appearance of an engine?</p> <p>7 A No.</p> <p>8 MR. HERRING: Object to form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. FERRERA:</p> <p>11 Q And in any of the courses other than ME 432 have</p> <p>12 you taught -- or lectured on costs to manufacture</p> <p>13 an engine or engine components?</p> <p>14 A No.</p> <p>15 Q In the ME 432 course have you lectured</p> <p>16 specifically on the subject of utility engines?</p> <p>17 A Not -- there's not been a specific lecture. They</p> <p>18 have been discussed as part of examples as to when</p> <p>19 you might use something or not use something, but</p> <p>20 there's not been a specific lecture devoted to</p> <p>21 utility engines.</p> <p>22 Q And just so we can get some definitions here, what</p> <p>23 do you consider to be a utility engine?</p> <p>24 A I would consider a utility engine to be a</p> <p>25 relatively small, general purpose engine to be</p> <p style="text-align: right;">[Page 28]</p>
<p>1 air over the exterior of the engine to cool it,</p> <p>2 especially if it's a moving engine, is going to be</p> <p>3 less expensive than using a liquid cooling system</p> <p>4 where you're pumping the coolant through the</p> <p>5 engine block and delivering that to a radiator.</p> <p>6 So on a lawnmower or motorcycle you're more likely</p> <p>7 to see the lower cost, lower weight air-cooled</p> <p>8 system, whereas an automobile, where you can</p> <p>9 handle the extra weight and the extra cost, you're</p> <p>10 going to see the liquid cooling systems.</p> <p>11 Q In the ME 432 course do you actually design any</p> <p>12 engines?</p> <p>13 A As -- again, as part of the formal course we do</p> <p>14 not design the engine, but the students have a</p> <p>15 design project where they will be designing an</p> <p>16 engine component of their choice to meet certain</p> <p>17 needs and goals that they have defined as part of</p> <p>18 their project proposal.</p> <p>19 Q So they would be designing a particular engine</p> <p>20 component?</p> <p>21 A Typically, yes. There are a few other options</p> <p>22 that they might design computer software to</p> <p>23 analyze something, they might design a larger,</p> <p>24 more general design of an engine, but for the most</p> <p>25 part they're designing an engine component.</p> <p style="text-align: right;">[Page 27]</p>	<p>1 used on small pieces of equipment, such as</p> <p>2 pressure washers, generator -- small generator,</p> <p>3 electrical generators, things of that nature.</p> <p>4 Q And when you say "relatively small," how do you</p> <p>5 define that?</p> <p>6 A I would say that in general, less than 25</p> <p>7 horsepower in terms of power, and being something</p> <p>8 that's physical size, while maybe not be able to</p> <p>9 be lifted by everybody, you could have a couple</p> <p>10 people lift it up and move it somewhere as</p> <p>11 necessary, so something much smaller than you</p> <p>12 would expect to see in an automobile engine.</p> <p>13 Q In any of the courses that you've taught have you</p> <p>14 discussed horizontal shaft engines versus vertical</p> <p>15 shaft engines?</p> <p>16 A Not specifically.</p> <p>17 Q And for definitional purposes what do you consider</p> <p>18 to be a horizontal shaft engine?</p> <p>19 A A horizontal shaft engine would be one whose crank</p> <p>20 shaft is in the horizontal plane, so parallel --</p> <p>21 roughly parallel to the ground.</p> <p>22 Q And how about a vertical shaft engine?</p> <p>23 A Vertical shaft engine would be one whose crank</p> <p>24 shaft is coming out such that it's going to be</p> <p>25 primarily perpendicular to the ground.</p> <p style="text-align: right;">[Page 29]</p>

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1 Q Are you familiar with something called a side  
2 valve engine?  
3 A Yes.  
4 Q And is that the same thing as a horizontal shaft  
5 engine or a vertical shaft engine?  
6 A They are unrelated.  
7 Q What's the difference -- I guess what is a side  
8 valve engine?  
9 A A side valve engine will have its intake and  
10 exhaust valves mounted towards the sides, although  
11 not necessarily specifically in the sides of the  
12 cylinder, but off towards the side -- off towards  
13 the side of the cylinder.  
14 Q Can a horizontal shaft engine be a side valve  
15 engine?  
16 A Yes.  
17 Q And can a vertical shaft engine be a side valve  
18 engine?  
19 A Yes.  
20 Q What are the other alternatives besides a side  
21 valve engine?  
22 A The primary alternative would be an overhead valve  
23 engine where the valves are located above the  
24 cylinder or in the cylinder head above the piston.  
25 Those are the primary ones. There are a whole set  
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1 of other possible ways that you could do this.  
2 You don't even need to have valves. You can have  
3 ports in side walls of the cylinder where the air  
4 can flow in and out of the engine cylinder.  
5 Q Now, am I correct that in addition to being a  
6 professor at the university, you're also the  
7 associate director of the Center for Alternative  
8 Fuels at the University of Wisconsin?  
9 A Technically, yes, but we could get into a very  
10 long story about the current status of the Center  
11 for Alternative Fuels. Right now it is existing  
12 in name only. When it was a physical location  
13 that had stuff, I was a much more active associate  
14 director of it.  
15 Q Okay. What was the Center For Alternative Fuels  
16 when it was active?  
17 A It was a center that was created primarily through  
18 the -- by the State of Wisconsin to look at -- in  
19 it from a broad standpoint, the use of  
20 alternative -- the promotion and use of  
21 alternative fuels, such as ethanol or compressed  
22 natural gas inside -- in vehicles as their fuel  
23 source.  
24 We spent most of our efforts looking at  
25 how well the engines performed in the field using  
[Page 31]

1 the alternative fuel, so we would have fleets that  
2 would use some of our -- some of their engines  
3 would be alternative fuel vehicles, some would not  
4 be. We would run tests on how their emissions,  
5 how their performance went. We would gather  
6 results from the drivers as to how well the engine  
7 performed in their experiences with that.  
8 We also -- as part of that facility we  
9 would also do some small engine work. We were  
10 doing some small engine work looking at the  
11 impacts of different fuels on the engine  
12 performance initially, and then that moved into  
13 more studies of some of the air pollution as  
14 expects of the engines, and it actually eventually  
15 drifted -- from that standpoint it drifted away  
16 from the alternative fuel standpoint.  
17 Q So primarily your interest in -- in the Center for  
18 Alternative Fuels was engines for automobiles?  
19 A My primary interest was with it in the use of  
20 smaller utility engines. The director's primary  
21 interest was with it from truck and automobile  
22 engines.  
23 Q And so -- I guess let me ask you first, what were  
24 your responsibilities as the associate director?  
25 A My responsibilities were to try to bring in  
[Page 32]

1 funding, with again, emphasizing smaller utility  
2 engines as a funding source for that, supervising  
3 students, providing general -- assistance with  
4 management decisions, directions for the center,  
5 and so forth.  
6 Q And in terms of small utility engines in  
7 particular, what type of research or projects did  
8 you undertake?  
9 A We were focusing primarily on lawnmower engines.  
10 We were looking initially, as I said, at the  
11 emissions from the engines for different blends of  
12 ethanol and oxygen -- not oxygen, ethanol and  
13 gasoline.  
14 We then moved from there into looking at  
15 the lifetime -- life cycle emissions from the  
16 engines and their deterioration as the engines  
17 aged and characterizing that.  
18 We then moved from there into  
19 determining why the hydrocarbon emissions from the  
20 engines were deteriorating over time, what was --  
21 and was primarily coming about from oil being  
22 introduced into the engine cylinder, so then the  
23 question was which mechanism for oil introduction  
24 into the cylinder was becoming most relevant and  
25 what we do to try to minimize that, and then we  
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[9] (Pages 30 to 33)

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<p>1 ended up looking at the use of catalytic 2 converters on the exhaust systems to determine 3 whether that was an effective way to try to reduce 4 the deterioration of the engine -- of the 5 emissions of the engines. 6 Q And you mentioned lawnmower engines. Did you 7 study any other type of engines? 8 A Our work was just on the lawnmower engines. 9 Q And were the engines on those lawnmowers what you 10 would consider to be utility engines? 11 A I would consider them as vertical shaft utility 12 engines, and even then as a rather smaller version 13 of a utility engine; about six horsepower. 14 Q Did you study engines from any particular 15 manufacturer? 16 A The project was supported through -- by the 17 Wisconsin Small Engine Consortium, which was 18 funded half from the State of Wisconsin, we 19 changed departments as to which was funding it 20 over time, and half by some of the small engine 21 manufacturers in Wisconsin, so Briggs &amp; Stratton, 22 Kohler, Mercury Marine, Harley-Davidson, and 23 another company that was working with catalytic 24 converters out in Stoughton, which I can never 25 remember their name, at least at this point after</p> <p style="text-align: right;">[Page 34]</p>	<p>1 comparing at overhead valve and side valve engines 2 and seeing how side valve engines were just bad in 3 comparison from an emission standpoint. 4 It would have included the exhaust 5 system. That additional catalytic converter, 6 which was not on the engines but it was added in 7 for the project, crank case, the breather element 8 between the -- or to release some of the pressure 9 in the crank case. I think that pretty much 10 covers what components were involved on the 11 valve -- the valve system and the valve stems and 12 valve seals. 13 Q So you said that the external appearance of the 14 engines was not the focus. Did the external 15 appearance of the engines influence the 16 performance of the engines, at least in the 17 context of your research? 18 MR. HERRING: Object to form. 19 THE WITNESS: I don't know if we can 20 answer that question. It's -- it was something 21 that we weren't considering, but because the 22 external appearance and the configuration of the 23 engine would have been influencing the air flow 24 and the fuel flow, it likely did impact the 25 performance but it wasn't something that we were</p> <p style="text-align: right;">[Page 36]</p>
<p>1 so many years I can't remember their name. 2 The engines we were looking at were 3 Briggs &amp; Stratton and Kohler, as they were in the 4 lawnmower business from those companies -- 5 lawnmower engine business. 6 Q As part of your research on the lawnmower engines 7 at the Center for Alternative Fuels, did you 8 analyze or study the external appearance of any of 9 the engines? 10 MR. HERRING: Object to form. 11 THE WITNESS: We were not studying the 12 external appearance because that wasn't the focus 13 of our research project. We were studying the 14 performance of the engine. We could observe the 15 external appearance, but it wasn't the focus of 16 the project. 17 BY MS. FERRERA: 18 Q And when you say that your concern was with the 19 performance of the engines, what components were 20 involved in that performance? 21 A Over the years with the project, that would have 22 included the intake system, carburetor and air 23 intake system would have been part of that. The 24 engine cylinder, the engine valves, for instance 25 one of the projects we did was looking and</p> <p style="text-align: right;">[Page 35]</p>	<p>1 considering alternatives or studying how a 2 particular -- and because we weren't considering 3 alternatives of that, we wouldn't have been 4 considering how one component was going to be 5 different from a different component or something 6 along those lines. 7 BY MS. FERRERA: 8 Q So you didn't study the influence of the external 9 appearance of the engine on the performance of the 10 engines? 11 MR. HERRING: Object to form. 12 THE WITNESS: Not directly. 13 BY MS. FERRERA: 14 Q Did you study it indirectly? 15 A Well, again, as part of the fact that those 16 components could -- would be influencing the 17 performance, it was being studied, but it was not 18 a focal point of our research. It was influencing 19 the performance, but not in any way that we were 20 studying how that was influencing the performance. 21 Q Right. So you didn't -- whether or not it was 22 influencing the performance, you didn't study how 23 the external appearance might have influenced -- 24 or was influencing the performance of the engines? 25 MR. HERRING: Object to form.</p> <p style="text-align: right;">[Page 37]</p>

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1 THE WITNESS: I would tend to agree with  
2 that statement, that we did not study that  
3 particular aspect.  
4 BY MS. FERRERA:  
5 Q As part of that project did you design any  
6 engines?  
7 A No.  
8 Q As part of that project did you design any engine  
9 components?  
10 A My students would have been involved in some of  
11 the engine design -- the design of some of the  
12 engine components, the undergraduate and graduate  
13 students who we had employed to work on that would  
14 have been there and I would have provided some  
15 input to that.  
16 Q What components?  
17 A The components would have involved, at this point,  
18 would have -- the one that I can think of most  
19 easily is the design of the breather element to  
20 vent that into the -- well, to vent that into the  
21 atmosphere as opposed to into the intake system.  
22 Q Any others that you can think of?  
23 A Not offhand.  
24 Q As part of that project did you make any  
25 recommendations to any of the engine manufacturers  
[Page 38]

1 regarding the design of any engines?  
2 A I would say that our recommendations came in our  
3 project results, and so whether we formally  
4 recommended that they use -- that they try to move  
5 away from, at least for the U.S. market, the side  
6 valve engine design versus the overhead valve  
7 engine design, it was clear in the data that that  
8 was what would be suggested.  
9 From that I don't know if we -- again,  
10 that's looking back maybe 15 years so I don't  
11 remember if we said specifically do this but not  
12 that. We made recommendations, again, through the  
13 data, as to what parts needed further study for  
14 redesign in terms of cutting down on the oil that  
15 was getting into the engine cylinder and where  
16 they should devote most of their efforts in terms  
17 of trying to do that, and with the catalytic  
18 converter I don't know if we ever came up with the  
19 recommendation that the approach they were taking  
20 wasn't good, but it was pretty clear from the  
21 results that it wasn't good.  
22 Q And in terms of the parts needing further study  
23 for redesign in terms of cutting down the oil  
24 getting into the engine, what parts were those?  
25 A That was dealing primarily with trying to reduce  
[Page 39]

1 the flow of oil that might be leaking past the  
2 valves and into the engine, and so improving the  
3 valve seals, and I believe we may have also  
4 suggested, again, this is looking back ten years,  
5 trying to filter out some of the oil before it  
6 gets into the breather element.  
7 Q When did this project start?  
8 A I want to say around 1998 --  
9 Q And what -- sorry.  
10 A I've got -- I'm looking through my vitae here  
11 where I've got our funding research grants, so  
12 that can tell me -- go back to the first one of  
13 them. From my involvement, 1998. There had been  
14 a little bit of involvement from the director of  
15 the Center for Alternative Fuels before I got  
16 involved with the center significantly.  
17 Q And how long did it continue? When did it  
18 continue to?  
19 A I want to say about ten years. Let me just look  
20 here. Nope, that's not it. Doesn't help that I'm  
21 going in the wrong direction on pages here.  
22 2007/2008. It was about a 10-year -- 10-,  
23 11-year-long project that had several different  
24 aspects. It was all several different projects  
25 that were all flowing into the next one.  
[Page 40]

1 Q All involving the vertical shaft --  
2 A Yes.  
3 Q -- lawnmower engines?  
4 A Yes.  
5 Q If you would look at Page 19 of your CV, towards  
6 the bottom there's a heading, Books Published?  
7 A Yes.  
8 Q And then continuing through on Page 28, is that a  
9 complete list of all of your publications?  
10 A I believe so. I -- yes. As far as I'm aware,  
11 yes.  
12 Q Okay. And can you identify -- I realize it's a  
13 somewhat lengthy list, but can you identify which,  
14 if any, of those publications or presentations  
15 related to engine design?  
16 A Specifically engine design or also looking at  
17 engine analysis from a pollution production  
18 standpoint?  
19 Q Either one.  
20 A Okay. I will neglect the ones that are dealing  
21 with the production of ethanol which can then be  
22 used as a vehicle fuel, because I think that those  
23 are beyond the scope of your question.  
24 On Page 22, No. 25 was involved, but not  
25 from an engine design or analysis standpoint. It  
[Page 41]

[11] (Pages 38 to 41)

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<p>1 was looking at the students and their effects of 2 working on the project that was this 10- or 3 11-year-long project from that. No. 27, on Page 4 22. No. 30. No. 32. No. 35. No. 37. No. 39. 5 And then under Conference Presentations, 6 which would be starting on Page 25, we would have 7 No. 6, No. 7, No. 9, No. 10, No. 12, No. 14. 8 And then under Technical Reports, No. 1, 9 No. 2, No. 3, and that takes you through all of 10 those. 11 Q Okay. And just so that -- just for completeness' 12 sake, could you look at No. 40 on Page 23? 13 A If I didn't mention that one, then yes, that is 14 also included. 15 Q Okay. Are all of the publications or 16 presentations that you identified arising out of 17 the work that you described at the Center for 18 Alternative Fuels? 19 A Yes, with the possible exception -- well, no, yes. 20 25, again -- let's just forget the 20- -- it 21 involved students and their impacts or how the 22 project affected them and their behavior, but it 23 wasn't actually anything to do with the engines, 24 so let's kind of forget 25. 25 Q Okay. And is it fair to say that all of the</p> <p style="text-align: right;">[Page 42]</p>	<p>1 Q In connection with any of your research, either in 2 undergraduate -- your undergraduate education, 3 your graduate education or since becoming a 4 professor, have you studied or analyzed the 5 external appearance of any engines? 6 MR. HERRING: Object to form. 7 THE WITNESS: What do you mean by 8 "studied"? 9 BY MS. FERRERA: 10 Q Has that been the subject matter of your research? 11 A No. 12 Q In connection with any of your research from 13 undergraduate from through today have you analyzed 14 the external appearance of any engine outside of 15 the context of this case? 16 MR. HERRING: Object to form. 17 THE WITNESS: What would the analysis -- 18 what would be the purpose of the analysis? 19 BY MS. FERRERA: 20 Q To determine the influence of the external 21 appearance on any aspect of the engine? 22 MR. HERRING: Object to form. 23 THE WITNESS: I would say that we have 24 not had a formal research project involving the 25 form of the engine from a stylistic standpoint,</p> <p style="text-align: right;">[Page 44]</p>
<p>1 articles and presentations that you identified 2 related to the emissions from the small utility 3 engines that you were studying? 4 A From the emissions and from their formation in the 5 engines, yes. 6 Q None of the publications or presentations that you 7 identified related to -- or discussed the external 8 appearance of any of the engines, correct? 9 MR. HERRING: Object to form. 10 THE WITNESS: They did not -- they did 11 not discuss the details of the external form, but 12 they would have had -- at least some of them would 13 have had an overview as to what the engine was, so 14 enough information so that people could identify 15 which engine -- or what type of engine was being 16 referred to. 17 BY MS. FERRERA: 18 Q Beyond that, there was no discussion of the 19 external appearance of any of the engines in the 20 publications or articles that you identified, 21 correct? 22 A Not that I -- 23 MR. HERRING: Object to form. 24 THE WITNESS: Not that I recall. 25 BY MS. FERRERA:</p> <p style="text-align: right;">[Page 43]</p>	<p>1 no. 2 BY MS. FERRERA: 3 Q Now, Professor Reisel, am I correct that since you 4 graduated from high school you have not held any 5 job outside of academia? 6 A That is incorrect. 7 Q What jobs have you held outside academia? 8 A In summer -- I had summer jobs while in college 9 working in retail. 10 Q Other than that? 11 A And the food industry. 12 Q Okay. 13 A But no, there's been no professional job in -- 14 outside of academia. 15 Q And the jobs that you held in the retail and food 16 industry in your summer positions didn't relate to 17 engines in any way, correct? 18 A No. 19 Q So outside of your summer jobs you've never held 20 any position outside of academia since graduating 21 from high school, correct? 22 A Correct. 23 Q Have you ever worked for a company that designed 24 or manufactured engines? 25 A No.</p> <p style="text-align: right;">[Page 45]</p>

[12] (Pages 42 to 45)

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1 Q Have you done any consulting for any company that  
2 designs or manufactures engines?  
3 A If you are not considering doing the -- if you're  
4 considering something beyond doing -- working with  
5 the research project, then the answer would be no.  
6 Q And by the research project you're referring to  
7 the work that you did for the Center for  
8 Alternative Fuels that we discussed earlier?  
9 A Yes.  
10 Q Yes, so excluding that, have you done any  
11 consulting for --  
12 A Actually, do I have my consulting listed back  
13 here -- I think I have it listed here because a  
14 long time ago, in a previous millennium -- I have  
15 my consulting activity here. I guess I don't have  
16 it in here.  
17 Back in the 1990s I may have consulted  
18 for an hour or two with the Indian branch of  
19 Briggs & Stratton, possibly, but it was a very  
20 minor situation with answering -- or just helping  
21 with, like, a couple questions on that. It's --  
22 if I had my promotion portfolio for when I went up  
23 for full professor, then I would have that in  
24 there, but -- and that was -- that was in the  
25 1990s for a couple hours. I generally have done  
[Page 46]

1 very little consulting work with other companies.  
2 Q Okay. And what was the subject matter of the one  
3 to two hours' worth of consulting you did back in  
4 the 1990s?  
5 A I don't remember.  
6 Q Did it relate to engines?  
7 A It had something to do with engines. I don't  
8 remember what.  
9 Q Do you remember what kind of engine?  
10 A They would have been utility engines. It was --  
11 actually, I -- I believe it was utility engines.  
12 It may have been something that was a little bit  
13 larger than what I would have defined as a utility  
14 engine.  
15 Q And you don't remember what the questions were  
16 that they were seeking your advice on?  
17 A I do not remember.  
18 Q Do you remember if it related to the external  
19 appearance of the engines in any way?  
20 A I don't remember.  
21 Q So other than maybe having done some consulting  
22 back in the 1990s for a couple hours, have you  
23 done any consulting for any companies that make or  
24 sell engines outside of your work for the Center  
25 of Alternative Fuels?  
[Page 47]

1 A No. No. I -- I would have talked with some of  
2 the automobile manufacturers with some engines,  
3 but not any formal consulting, and the nature of  
4 that, again, you're going back a long time, and  
5 what it would have been, I don't remember.  
6 Q Approximately when would have that -- when would  
7 that have been?  
8 A The late 19- -- somewhere in the 1990s. For  
9 example, in some of my research as a graduate  
10 student, one of the projects we worked with a  
11 couple other people, engineers, at General Motors,  
12 but it was again looking at the pollution and the  
13 combustion, it wasn't anything to do with the  
14 engine itself.  
15 Q So, Professor Reisel, at any time in your  
16 professional career have you designed or assisted  
17 in the design of any engines?  
18 A I would have provided input that could have been  
19 used by others in the design of their engines, but  
20 I did not formally sit down and design the engine.  
21 Q And that's input that you would have provided to  
22 your students?  
23 A The students or the feedback from the projects  
24 that we conducted to the companies.  
25 Q Again, you're talking about the projects --  
[Page 48]

1 A Yes.  
2 Q -- at the Center for Alternative Fuels?  
3 A Yes.  
4 Q Have you actually ever sat down and attempted to  
5 design an engine?  
6 A No.  
7 Q Have you ever attempted to design a component for  
8 any engine?  
9 A To design a component to actually be used, I would  
10 say no.  
11 Q Have you ever provided any input into the design  
12 of the external appearance of any engine?  
13 MR. HERRING: Object to form.  
14 THE WITNESS: Not to any engine company.  
15 So I may have made comments to students or to  
16 other people saying, well, you want to do this for  
17 this reason or this for that reason, but I have  
18 not made any recommendations to companies on what  
19 to do.  
20 BY MS. FERRERA:  
21 Q And do you actual -- do you recall actually having  
22 provided input to students about the external  
23 design of any engine components?  
24 MR. HERRING: Object to form.  
25 THE WITNESS: I am very confident that  
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1 as part of their design projects over the years I  
2 have made suggestions or recommendations, but  
3 could not point to any exact specific example of  
4 it.  
5 BY MS. FERRERA:  
6 Q Have you ever provided any input into the design  
7 of a fan cover for an engine?  
8 A No.  
9 Q Have you ever provided any input into the design  
10 of a fuel tank for an engine?  
11 A I may have there because some of the student  
12 projects have involved the fuel tanks.  
13 Q Do you recall specifically having done that?  
14 A Specifically, no, but I suspect that I have.  
15 Q On how many occasions?  
16 A I have no idea.  
17 Q Do you -- with respect to a fuel tank, do you  
18 recall having given any input regarding the  
19 appearance of the fuel tank?  
20 A I cannot recall doing so.  
21 Q Have you given any input into the design of an air  
22 cleaner cover?  
23 A I cannot recall doing so because most -- I can't  
24 recall any student projects worrying about that  
25 detail of an engine.

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1 Q Have you given any input into the design of a  
2 carburetor cover?  
3 A I cannot recall the cover. I have probably given  
4 some input into the carburetor internal workings.  
5 Q But not the cover?  
6 A Probably not.  
7 Q Have you given any input into the design of the  
8 external controls of any engine?  
9 A Probably not.  
10 Q Have you given any input into the design of the  
11 overall appearance of any engine?  
12 MR. HERRING: Object to form.  
13 THE WITNESS: Probably not to the  
14 students because the students have not been  
15 designing the entire configuration of the engine.  
16 I would have provided input as -- into the  
17 potential of fitting components into their  
18 proposed -- their proposed components into their  
19 engine system, which therefore would be involving  
20 their external appearance, but not the entire  
21 structure.  
22 BY MS. FERRERA:  
23 Q So in terms of the overall external appearance  
24 you've never provided any input with respect to  
25 that, correct?

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1 MR. HERRING: Object to form.  
2 BY MS. FERRERA:  
3 Q Yeah, let me ask that question again.  
4 You've never provided any input into the  
5 overall external appearance of an engine, correct?  
6 MR. HERRING: Same objection.  
7 THE WITNESS: The complete appearance,  
8 no. The individual ways of fitting the components  
9 together, yes, I have provided that input.  
10 BY MS. FERRERA:  
11 Q But as to the complete appearance, you've never  
12 provided any input as to the overall external  
13 appearance of an engine, correct?  
14 MR. HERRING: Object to form.  
15 THE WITNESS: I would say that I have  
16 not looked at the complete appearance because the  
17 students have not designed complete engines.  
18 BY MS. FERRERA:  
19 Q Okay. Have you ever designed any applications  
20 that use a utility engine?  
21 A No -- oh, no.  
22 Q And prior to this litigation have you ever  
23 analyzed the cost to manufacture an engine?  
24 A No -- on a relative basis, yes. Looking at  
25 relative costs, that would have been considered as

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1 part of developing and presenting the ME 432  
2 material, but specific costs, no.  
3 Q And I'm sorry, can you explain to me how you're  
4 distinguishing between relative costs and specific  
5 costs?  
6 A Well, relative would be which is going to cost  
7 more, which is going to cost less. Specific cost  
8 would be giving an exact dollar-and-cents value,  
9 which is -- which when you're looking at a -- a  
10 broader perspective and are dealing with a whole  
11 range of engines you can't really say that this is  
12 going to cost X number of dollars and cents,  
13 because it's going to vary for the application.  
14 Q Prior to this litigation have you ever analyzed  
15 the relative costs between different types of --  
16 between different fan covers?  
17 A No.  
18 Q Prior to this litigation have you ever analyzed  
19 the relative cost between different fuel tanks?  
20 A No.  
21 Q Prior to this litigation have you ever analyzed  
22 the relative costs between different air cleaner  
23 covers?  
24 A No.  
25 Q And prior to this litigation have you ever

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1 analyzed the relative cost difference between  
2 different carburetor covers?  
3 A No.  
4 Q Prior to this litigation have you ever analyzed  
5 the relative cost differences between different  
6 external control systems?  
7 A No.  
8 Q And prior to this litigation have you ever  
9 analyzed the relative cost differences between  
10 different overall appearances for a complete  
11 engine?  
12 MR. HERRING: Object to form.  
13 THE WITNESS: No.  
14 BY MS. FERRERA:  
15 Q Have you ever purchased a utility engine yourself?  
16 A I have purchased the utility engines that would be  
17 on a lawnmower.  
18 Q For purposes of the research that you did at the  
19 Center For Alternative --  
20 A No, to cut my lawn.  
21 Q Okay. Are those the only types of utility engines  
22 that you've ever purposed -- purchased?  
23 A Snow thrower, engines that would be on the snow  
24 thrower as well, and that would be to clear my  
25 driveway.

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1 Q How about any other types of engines, utility  
2 engines?  
3 A Utility engines. Not that I can think of.  
4 Q And so other than the lawnmower engines and the  
5 snow thrower engine, have you ever used any small  
6 utility engines?  
7 A I would say no.  
8 Q Incidentally, the snow thrower engines, what type  
9 of utility engines were those?  
10 A I would have to look at it. I was primarily  
11 purchasing the snow thrower which included the  
12 engine and didn't really look at the engine  
13 itself.  
14 Q Do you know whether they were vertical shaft or  
15 horizontal shaft?  
16 A My guess is they would be horizontal, but I didn't  
17 look at it, and usually if I'm using it I'm not  
18 thinking about it all that much.  
19 Q So you don't know sitting here today whether they  
20 were vertical or horizontal?  
21 A I don't know.  
22 Q Do you know what brand they were?  
23 A No. The lawnmower engine was Briggs & Stratton,  
24 because that label is sitting out there looking at  
25 me every week as I use it. The snow thrower, I do

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1 not know.  
2 Q Okay. So sitting here today, do you recall ever  
3 having used a horizontal shaft engine?  
4 A With certainty, no, because of the issue as to the  
5 layout of the engine in the snow thrower. If it  
6 is horizontal shaft, then I have used it.  
7 Q And you've never done any research on a horizontal  
8 shaft engine, correct?  
9 A Correct.  
10 Q You've never designed a horizontal shaft engine,  
11 correct?  
12 A Correct.  
13 Q Prior to this proceeding have you ever heard of  
14 the Honda GX engine?  
15 A No.  
16 Q Prior to this proceeding had you heard of any  
17 horizontal shaft utility engine?  
18 A The specific names, I cannot recall, but there  
19 being uses and their presence, I would have been  
20 familiar with that.  
21 Q In other words, you were aware of horizontal shaft  
22 utility engines prior to this case?  
23 A Yes.  
24 Q Were you aware of any particular brands or models  
25 of horizontal shaft utility engines?

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1 A I cannot recall, but most likely no, in terms of  
2 models. Brands, I would have been -- I would have  
3 surmised various companies that would have made  
4 them.  
5 Q What companies would you have surmised?  
6 A I would have surmised Briggs & Stratton, Kohler,  
7 Honda, Kawasaki.  
8 Q Why would you have surmised those companies?  
9 A Well, Briggs & Stratton and Kohler and Honda from  
10 my familiarity with their use with other -- with  
11 lawnmower engines, and Kawasaki with the  
12 application of -- for motorcycles.  
13 MS. GIFTOS: It's getting close to  
14 10:30, do you think we should take a break?  
15 MS. FERRERA: Yeah, we can take a break,  
16 sure.  
17 (Discussion off the record.)  
18 (Exhibit Nos. 197 through 211 were marked.)  
19 BY MS. FERRERA:  
20 Q Professor Reisel, earlier you referred to  
21 something called a breather element. What is a  
22 breather element?  
23 A A breather element is a device to reduce the  
24 pressure that builds up inside the crank case when  
25 you've got blow-by of the air and fuel mixture or

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<p>1 the exhaust products past the piston rings into 2 the crank case. 3 If you don't release them, that pressure 4 is going to force the piston to push -- and the 5 power stroke is going to try to force the piston 6 into a higher-pressure environment, which is going 7 to reduce the performance of the engine. It's 8 going to get less power out. 9 <b>Q</b> Is that a component that's found inside an engine? 10 <b>A</b> It would have to go in the engine into the -- it 11 has to be vent -- the vent has to then take the 12 flow somewhere else, so it may eventually exit the 13 engine, depending on the style of the system 14 that's being used. 15 <b>Q</b> So based on your prior testimony, am I correct 16 that the only research that you've conducted on 17 small utility engines has been the work that you 18 did at the Center for Alternative Fuels? 19 <b>A</b> Yes. 20 <b>Q</b> And that was all research that was funded by the 21 Wisconsin Small Energy -- Small Engine Consortium? 22 <b>A</b> Yes. 23 <b>Q</b> Okay. So I'm handing you a whole bunch of 24 pictures. That's Exhibit 197. Exhibit 198. 25 Exhibit 199. Exhibit 200. Exhibit 201. A few [Page 58]</p>	<p>1 itself or a picture of this engine prior to -- 2 <b>A</b> Correct. 3 <b>Q</b> -- this litigation, correct? 4 <b>A</b> Correct. 5 <b>Q</b> Could you -- and just for the record, do you 6 understand that Exhibit 197 is a Kohler Command 7 Pro 7 -- a picture of a Kohler Command Pro 7 8 engine? 9 <b>A</b> Yes. 10 <b>Q</b> Exhibit 198, you understand that that is a picture 11 of a Kohler Command Pro 6 engine? 12 <b>A</b> Yes. 13 <b>Q</b> And had you ever seen either a picture of the 14 Kohler Command Pro 6 or an actual engine prior to 15 this litigation? 16 <b>A</b> I don't remember. 17 <b>Q</b> Have you seen either a picture of the Kohler 18 Command Pro or the actual engine in the context of 19 this litigation? 20 <b>A</b> I may have seen a picture. 21 <b>Q</b> You don't specifically remember? 22 <b>A</b> I don't -- I've seen lots of pictures of engines 23 in the context of this. 24 <b>Q</b> Would you turn to Exhibit 199? Do you recognize 25 that to be a -- or do you understand that that's a [Page 60]</p>
<p>1 more. Exhibit 202. Exhibit 203. Exhibit 204. 2 Exhibit 205. Exhibit 206. Exhibit 207. Exhibit 3 208. Exhibit 209. Exhibit 210. And Exhibit 211. 4 So can you tell me if you've seen 5 Exhibit 197 before? 6 <b>A</b> I have seen that picture. 7 <b>Q</b> And have you seen the engine that's depicted in 8 Exhibit 197 before? 9 <b>A</b> I can't remember. 10 <b>Q</b> Have you seen it in the context of this 11 litigation? 12 <b>A</b> Do you mean the picture or the engine? 13 <b>Q</b> Either the engine or a picture of the engine? 14 <b>A</b> I have seen the picture in the context of the 15 litigation. I cannot remember if I saw the engine 16 in the context of the litigation. 17 <b>Q</b> And am I correct that you had seen neither the 18 picture nor the engine prior to this litigation? 19 <b>A</b> I cannot remember. I probably did not see this 20 specific picture but I may have seen a picture of 21 it at some point in time. 22 <b>Q</b> You don't specifically -- 23 <b>A</b> And I wasn't really worried about that specific 24 engine. 25 <b>Q</b> You don't remember having seen either the engine [Page 59]</p>	<p>1 Kawasaki 8.0 engine? 2 <b>A</b> Yes. 3 <b>Q</b> Have you seen either a picture of that engine or 4 that engine itself in the context of this 5 litigation? 6 <b>A</b> Yes. 7 <b>Q</b> Have you -- had you seen either a picture of the 8 engine or the engine itself prior to this 9 litigation? 10 <b>A</b> I can't remember. 11 <b>Q</b> And then if you turn to Exhibit 200, do you 12 understand that that's a Briggs &amp; Stratton Intek 13 900 engine? 14 <b>A</b> Yes. 15 <b>Q</b> And had you seen -- have you seen either a picture 16 of that engine or that engine itself in the 17 context of this case? 18 <b>A</b> Yes. 19 <b>Q</b> Had you seen either a picture of the engine or the 20 engine itself prior to this case? 21 <b>A</b> I do not remember. 22 <b>Q</b> And if you look at Exhibit 201, do you understand 23 that that's a Subaru EX35? 24 <b>A</b> Based on the website, yes. I cannot -- or there's 25 Subaru. Yes, I can -- yes. [Page 61]</p>

[16] (Pages 58 to 61)

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1 Q Have you seen a picture of that engine or the  
2 engine itself in the context of this case?  
3 A I have seen Subaru engines. Whether it was this  
4 specific one, I cannot remember.  
5 Q And am I correct that you hadn't seen that engine  
6 or a picture of that engine prior to this case?  
7 A I cannot remember.  
8 Q Would you turn to Exhibit 202? And do you  
9 understand that that's a picture of a Subaru EX17  
10 engine?  
11 A Yes.  
12 Q Have you seen a picture of that engine or that  
13 engine itself during this litigation?  
14 A Again, it's -- I have seen pictures of Subaru  
15 engines. I don't recall if it was this particular  
16 engine.  
17 Q Have you seen that engine or a picture of that  
18 engine prior to this litigation?  
19 A Not that I remember.  
20 Q And then if you turn to Exhibit 203, do you  
21 understand that that's a Briggs & Stratton  
22 Vanguard engine?  
23 A Yes.  
24 Q And have you seen a picture of that engine or that  
25 engine itself during this litigation?

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1 A I believe I have seen that -- a picture of that.  
2 Q Have you seen that engine or a picture of that  
3 engine prior to this case?  
4 A I can't remember.  
5 Q And then if you turn to Exhibit 204, do you  
6 understand that those are pictures of a Kawasaki  
7 5.5 engine?  
8 A Yes.  
9 Q Or a --  
10 A Or at least the front of it, yes.  
11 Q And it's also -- it also says it's a Kawasaki FE  
12 170. Do you see that?  
13 A At least the front of it. The back of it is not  
14 identified.  
15 Q Okay. Have you seen a picture of a Kawasaki FE170  
16 in the context of this case?  
17 A Again, I've looked at Kawasaki engines. Whether I  
18 looked at this particular one, this particular  
19 model, I cannot remember.  
20 Q Had you seen a Kawasaki FE170 prior to this case,  
21 or a picture of one?  
22 A I can't remember.  
23 Q Would you turn to Exhibit 205? Do you understand  
24 that that's a Subaru SP170 engine?  
25 A Yes.

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1 Q And had you seen a picture of that engine in the  
2 context of this case?  
3 A Again, that is a Subaru engine. I've seen Subaru  
4 engines. The particular model number I cannot  
5 recall at this time.  
6 Q And had you seen a Subaru SP170 engine prior to  
7 this case?  
8 A I can't remember.  
9 Q And then if you turn to Exhibit 206, do you  
10 understand that that's a Briggs & Stratton 750  
11 Series engine?  
12 A Yes.  
13 Q And have you seen a picture of that engine in the  
14 context of this case?  
15 A Actually, I think yes. I've looked at a whole  
16 series of Briggs & Stratton engines, so I believe  
17 that I've seen this as part of the case.  
18 Q Do you recall having seen a picture of that engine  
19 or having seen that engine prior to this case?  
20 A I cannot remember.  
21 Q And then if you look at Exhibit 207, do you  
22 understand that that's a Predator 346cc engine?  
23 A Yes.  
24 Q And had you seen a picture of that engine in the  
25 context of this case?

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1 A Yes.  
2 Q Have you seen -- or had you seen a picture of that  
3 engine prior to this case?  
4 A Not that I can remember.  
5 Q If you look at Exhibit 208, do you understand that  
6 that is a Lifan 190F engine?  
7 A Yes.  
8 Q And had you seen a picture of that engine in the  
9 context of this case?  
10 A Yes.  
11 Q Had you seen one prior to this case?  
12 A No.  
13 Q And then if you look at Exhibit 209, do you  
14 understand that that's a picture of a Champion  
15 338cc engine?  
16 A Yes.  
17 Q Had you seen that picture in the context of this  
18 case?  
19 A It was -- I've seen a picture of that engine. I  
20 do not remember if it was exactly this picture.  
21 Q You've seen a picture of this engine --  
22 A Yes.  
23 Q -- in this case?  
24 Had you seen one prior to this case?  
25 A Not that I remember.

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[17] (Pages 62 to 65)

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<p>1 Q And if you turn to Exhibit 210, that's a Kawasaki 2 FJ180. Do you see that? 3 A Yes. 4 Q Had you seen a picture of that engine in this 5 case? 6 A I believe so. 7 Q And had you seen one prior to this case? 8 A Not that I can remember. 9 Q And lastly, if you turn to Exhibit 211, do you 10 understand that that's an All Power 208cc engine? 11 A Yes. 12 Q Have you seen a picture of that engine in this 13 case? 14 A I have seen the pictures of the All Power engines 15 of this series. I do not at this time recall if 16 it was exactly the 208. 17 Q And -- 18 A No. 19 Q -- had you seen one prior to this case? 20 With respect to any of -- all of 21 Exhibits 197 through 211, do you agree that they 22 all depict horizontal shaft utility engines? 23 A Yes. 24 Q And do you agree that all of the engines depicted 25 in Exhibits 197 through 211 are suitable for use [Page 66]</p>	<p>1 fuel tank, it may be demanding a particular 2 location for the air cleaner, and so if an OEM is 3 demanding a larger fuel tank, one of these engines 4 are a smaller fuel tank that may not be able to 5 satisfactorily meet the demands of that OEM, or if 6 they're saying we're insisting on a front air 7 cleaner, then having, for instance, in Exhibit 197 8 the high-mount air cleaner would not be an 9 appropriate substitute for that, but barring those 10 particular details, in general they would be 11 suitable for replacements for particular 12 applications. 13 Q Replacements for the comparable horsepower GX 14 engine? 15 A Yes. 16 Q Do you consider all of the engines shown in 17 Exhibits 197 through 211 to have a cubic design, 18 as you've used that term? 19 A I would say that they all have essentially the 20 cubic design. There are two examples, I believe 21 203 and -- which was the other one here -- 199, 22 where the -- the engine components are projecting 23 more off the left side as we look at it from the 24 front than would perhaps be characterized as a 25 cubic design. It's essentially a cubic design as [Page 68]</p>
<p>1 in similar applications as the Honda GX engine? 2 MR. HERRING: Object to form. 3 THE WITNESS: Depending on the size of 4 the -- the power requirement from the particular 5 GX engine of their -- of their model line, yes, 6 they would be a -- I believe they would be a 7 suitable counterpart for a similar power engine. 8 BY MS. FERRERA: 9 Q Okay. 10 A Because these engines will have different powers. 11 Q Sure. So you agree that all of the engines shown 12 in Exhibits 197 through 211 are suitable for use 13 in similar applications as the comparable 14 horsepower GX engine? 15 MR. HERRING: Object to form. 16 THE WITNESS: They would be at least 17 suitable for particular applications as different 18 applications may have different requirements for 19 component location, and so they would have to 20 match up to the same requirements for the product 21 that it's being used for. 22 BY MS. FERRERA: 23 Q Can you give me an example of that? 24 A Depending on the application that's being used, 25 you may be -- the OEM may be demanding a larger [Page 67]</p>	<p>1 I've used the term, but they're starting to push a 2 little bit away from there. 3 Q Okay. So setting aside Exhibits 199 and 203, you 4 agree that the rest of the engines depicted in 5 Exhibits 197 through 211 have a cubic design, as 6 you've used that term? 7 A I would say that they essentially have a cubic 8 design. 9 Q And setting aside Exhibits 199 and 203, do you 10 agree that all of the engines shown in Exhibits 11 197 to 211 are compact? 12 MR. HERRING: Object to form. 13 THE WITNESS: Yes, what do you mean by 14 "compact"? 15 BY MS. FERRERA: 16 Q Well, you've used the term "compact" in the 17 context of this case, have you not? 18 A Yes. 19 Q And how have you understood that term? 20 A My understanding of compact is taking up a small 21 volume, and so with respect to that, I would say 22 that these engines are compact. 23 Q Would you say that the engines shown in Exhibits 24 199 and 203 are compact? 25 A The engine in 199 is compact, and the engine in [Page 69]</p>

[18] (Pages 66 to 69)

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1 203 is compact as well.  
2 Q Are you aware of any differences in performance  
3 between any of the engines shown in Exhibits 197  
4 through 211 in the comparable horsepower Honda GX  
5 engine?  
6 A No.  
7 Q Are you aware of any differences in performance  
8 between any of the -- sorry, let me start that one  
9 over.  
10 Are you aware of any differences in  
11 manufacturing cost between the engines shown in  
12 Exhibits 197 through 211 and the Honda GX engine?  
13 A In terms of specific costs, no, and in terms of  
14 the specific cost to the manufacturer, no, but  
15 with certain -- there are -- I would surmise that  
16 there were some differences based on some of the  
17 components as to what I would anticipate their  
18 cost to be, but the specific cost, no.  
19 Q Are you thinking of any particular engines in that  
20 answer?  
21 A It would be more towards the individual  
22 components, the -- and I would also want to be  
23 comparing the same power engines as well, so for  
24 some of these the larger engine -- the larger  
25 versions of these engines I would automatically  
[Page 70]

1 expect to be more expensive to manufacture because  
2 they're larger and require more material in their  
3 production.  
4 Some of the individual components, it's  
5 difficult to tell if there's plastic versus metal  
6 on some of the components, so -- from just the  
7 picture, so that would be influencing their cost,  
8 and some of the shapes of the fuel tanks would  
9 likely be -- have different costs associated with  
10 them based on the complexity of the shape, as some  
11 examples.  
12 So for example, the fuel tank on Exhibit  
13 202 appears to be simpler in geometry from this  
14 picture, we may not see alternative parts of it  
15 from the side, than the fuel tank, and despite  
16 them both being Subaru engines, 201, and I would  
17 anticipate, because of the additional shapes that  
18 are put into the 201 fuel tank, that it would be  
19 more expensive than the 202 fuel tank.  
20 Q Okay. Maybe we'll deal with those on a  
21 component-by-component basis, then.  
22 Are you aware of in any event evidence  
23 that any of the engines in Exhibits 197 through  
24 211 are at a competitive disadvantage to the  
25 comparable horsepower Honda GX engine?  
[Page 71]

1 MR. HERRING: Object to form.  
2 THE WITNESS: I am not aware of a  
3 particular disadvantage for a particular engine,  
4 based on their configuration. That does not mean  
5 that for certain applications they would not be at  
6 a disadvantage.  
7 So for a similar horsepower engine, so for  
8 example, if an OEM wants a -- for example in  
9 Exhibit 201 if they want a high-mount air cleaner  
10 and Subaru is trying to sell them that they have  
11 to have this front-mount air cleaner, then it  
12 would be at a competitive disadvantage.  
13 BY MS. FERRERA:  
14 Q Setting aside the issue of the front-mount air  
15 cleaner versus the top-mount air cleaner are you  
16 aware of any competitive disadvantage that any of  
17 the engines in Exhibits 197 through 211 would  
18 suffer with respect to the comparable horsepower  
19 GX engine?  
20 A The other potential area that they could suffer  
21 from would be fuel tank size, if you're looking  
22 just at horsepower if an application is looking  
23 for a longer-lasting between-fuel refills  
24 application, if they were having a smaller fuel  
25 tank for the same horsepower to be at competitive  
[Page 72]

1 disadvantage.  
2 Q Do you know whether any of the fuel tanks shown in  
3 Exhibits 197 through 211 have a smaller capacity  
4 than the comparable horsepower GX engine?  
5 A I do not know without having the physical  
6 component -- the physical dimensions of the  
7 components here.  
8 Q You haven't seen any of those dimensions in your  
9 research in this case, have you?  
10 A I have seen a few of the dimensions for a couple  
11 of the engines with their fuel tank size, but not  
12 for the majority of these.  
13 Q Do you know which ones you've seen the dimensions  
14 for?  
15 A I would have seen it for a couple of the Briggs --  
16 a couple of the Briggs & Stratton engines, and I  
17 do not remember what the dimensions were.  
18 Q Do you remember them being different from the  
19 Honda GX fuel tank dimensions?  
20 A I don't remember.  
21 Q For the comparable horsepower?  
22 A I don't remember.  
23 Q So sitting here today, you're not aware of any  
24 competitive disadvantage that any of the engines  
25 shown in Exhibits 197 through 211 have with  
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[19] (Pages 70 to 73)

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1 respect to the comparable horsepower GX engine in  
2 terms of fuel tank size?  
3 MR. HERRING: Object to form.  
4 THE WITNESS: I'm not specifically  
5 aware, particularly, if they are set up for the  
6 same application.  
7 (Exhibit No. 212 was marked.)  
8 BY MS. FERRERA:  
9 Q Professor Reisel, I'm handing you what's been  
10 marked as Exhibit 212. Do you recognize that  
11 document?  
12 A Yes.  
13 Q And am I correct that that's a copy of the first  
14 expert report that you submitted in this case?  
15 A Yes.  
16 Q And if you turn to Page 22, which I think should  
17 be the last page, is that your signature that  
18 appears towards the bottom of that page?  
19 A Yes. It's a copy of it, but yes.  
20 Q And did you sign the original version of this  
21 document on September 28th, 2012?  
22 A Yes.  
23 Q And when you signed exhibit -- the original  
24 version of Exhibit 212 in September of 2012, did  
25 you believe that it completely and accurately

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1 summarized your opinions in this case at that  
2 time?  
3 A Yes.  
4 Q Have you become aware of any errors requiring  
5 correction in Exhibit 212?  
6 A No.  
7 Q Can you tell me how that report was prepared?  
8 MR. HERRING: Object to form.  
9 THE WITNESS: How so?  
10 BY MS. FERRERA:  
11 Q Well, did you draft it?  
12 A Yes.  
13 Q Did you have any -- did you actually put pen to  
14 paper or --  
15 A Fingers to keyboard.  
16 Q -- did you actually type?  
17 A Yes.  
18 Q Did you have any assistance from anyone in  
19 drafting Exhibit 212?  
20 A Assistance how?  
21 Q In terms of suggesting language, content, making  
22 revisions.  
23 A Attorneys for -- attorneys represented by their  
24 predecessors made suggestions on the phrasing of  
25 things from a legal stand -- to make it more legal

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1 sounding.  
2 Q The first draft of the report was prepared by you?  
3 A Yes.  
4 Q Were there any portions of Exhibit 212 that were  
5 drafted in the first instance by attorneys?  
6 A No.  
7 Q Did you make any changes to the substance of the  
8 report in response to any comments from the  
9 attorneys?  
10 A To the substance, no.  
11 Q Do you remember the nature of any of the comments  
12 provided by the attorneys?  
13 A I don't remember. The nature was surrounding  
14 phrasing.  
15 Q Approximately how -- well, how many drafts of  
16 Exhibit 212 were prepared before you finalized it?  
17 A Are you including drafts that I would have written  
18 and then edited myself without anybody seeing them  
19 as separate drafts, or things that people may have  
20 seen going forward and getting -- and receiving  
21 comments back on?  
22 Q The latter.  
23 A The latter, I believe it was two or three.  
24 Q And approximately how many hours did you spend  
25 drafting Exhibit 212?

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1 A Are you including work in doing background study  
2 on -- to prepare my opinions or just actually  
3 physically typing up and writing it out?  
4 Q Both.  
5 A Both?  
6 Q Yes.  
7 A Okay. Total time spent on it was in the  
8 neighborhood of 40, 41, 42 hours on this project,  
9 and the report itself was probably ten hours, ten  
10 to -- somewhere in that range.  
11 Q Now, you signed this report in September of 2012.  
12 Do you remember when you first began working on  
13 this matter?  
14 A I believe I was first contacted the previous  
15 winter.  
16 Q So winter of 2012?  
17 A I'm going to say November/December of 2011, I  
18 think.  
19 Q Who contacted you?  
20 A I was contacted by Rob Phillips.  
21 Q And when were you first retained?  
22 A Shortly thereafter. I want to say a few weeks  
23 later or a month later, somewhere in that range.  
24 Q And did you begin work immediately or soon after  
25 you were retained?

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1 A Yes.  
2 Q So the 40 hours total is from approximately the  
3 end of 2011 through September 2012?  
4 A Yes.  
5 Q Would you turn in Exhibit 212 to Page 6? And  
6 starting about halfway down the page there's a  
7 paragraph that starts, I've reviewed and  
8 considered the following materials and information  
9 in connection with preparation of this report. Do  
10 you see that?  
11 A Yes.  
12 Q And then there's a bullet point listing of various  
13 documents?  
14 A Yes.  
15 Q And information?  
16 Is this a complete list of the  
17 information that you had reviewed in connection  
18 with this case prior to submitting this report?  
19 A Yes, although you did ask earlier if there was  
20 a -- something to be corrected. The S63-3234 is  
21 missing a digit in there.  
22 Q So you're looking at --  
23 A Like the seventh --  
24 Q Bullet down?  
25 A Yeah, Japanese patent, then the last one in the  
[Page 78]

1 line there is missing a digit.  
2 Q Should be 3230 -- 32334, right?  
3 A I believe so, yes.  
4 Q Okay. So two bullets below that there's a  
5 reference to interviews of engineers from Briggs  
6 and Kohler, do you see that?  
7 A Yes.  
8 Q What interviews -- what engineers from Briggs and  
9 Kohler did you speak with prior to submitting this  
10 report?  
11 A I don't remember, and to further expand on that,  
12 I'm really lousy with remembering names.  
13 Q Okay. Well, how many people did you speak with at  
14 Briggs and Kohler prior to submitting this report?  
15 A From Briggs, it was approximately four, and  
16 Kohler, again, three or four.  
17 Q Do you recall the name Peter Hotz?  
18 A No.  
19 Q You don't recall having spoken with a Peter Hotz  
20 in connection with this case?  
21 A I don't recall the name. I may have. I may not  
22 have.  
23 Q Do you recall the name Jeff Whitmore?  
24 A I recall the name Jeff Whitmore from a subsequent  
25 deposition.  
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1 Q You read his deposition?  
2 A Yes.  
3 Q You don't remember if you spoke with him?  
4 A I do not remember if I spoke with him.  
5 Q Do you recall the name Cam, Cameron or Cam Litt?  
6 A That name is familiar.  
7 Q Do you recall the name Manny Rumao?  
8 A I don't recall that name.  
9 Q Did you speak with the approximately four Briggs &  
10 Stratton engineers prior to September 2012 --  
11 28th, 2012?  
12 A I spoke to them prior to the submission of this  
13 report, yes.  
14 Q Do you remember the titles or kind of general  
15 roles, if any, of the individuals you spoke with  
16 at Briggs & Stratton?  
17 A I want to say senior design engineer would have  
18 been in there, and comparable positions, but  
19 that's about it that I can remember.  
20 Q Were these four separate conversations?  
21 A This was one group conversation.  
22 Q So there was one group conversation and there were  
23 approximately four Briggs & Stratton engineers  
24 involved?  
25 A Yes, three; three or four.  
[Page 80]

1 Q And when did this conversation take place?  
2 A I could actually look that up but at this time I  
3 don't recall. It would have been in late 2011,  
4 early 2012. The specific date I don't remember.  
5 Q Was it in person or was it by the phone?  
6 A It was in person.  
7 Q Where was it?  
8 A It was at Briggs & Stratton in Wauwatosa.  
9 Q How long did it last?  
10 A Approximately two hours.  
11 Q And did you look at any documents during that  
12 meeting or conversation?  
13 A Documents, I can't recall.  
14 Q Did you look at any pictures of engines?  
15 A Pictures of engines, no. Physical engines, yes.  
16 Q How many?  
17 A 10 to 15.  
18 Q Were they all Briggs & Stratton engines?  
19 A I believe they were not all Briggs & Stratton  
20 engines.  
21 Q Do you recall what other brand engines they were?  
22 A There may have been a Kohler engine in there.  
23 There may have been the Honda GX in there. I --  
24 that's about all I can remember. There may have  
25 been another one in there as well.  
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[21] (Pages 78 to 81)

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1 Q Were there any attorneys present during this  
2 meeting?  
3 A Rob Phillips was there, and Briggs -- an  
4 attorney -- corporate attorney inside of Briggs  
5 may have been there as well.  
6 Q Any attorney for Kohler?  
7 A I don't believe at that meeting.  
8 Q Did you rely on any of the information that you  
9 learned in that meeting in forming your opinions  
10 in this case?  
11 A Yes.  
12 Q What -- what questions did you ask at the meeting?  
13 A I don't remember.  
14 Q What did you -- what information was conveyed to  
15 you in that meeting by the Briggs & Stratton  
16 engineers?  
17 A What we discussed was a general discussion of the  
18 layout of the engine, reasons behind design  
19 choices that may have been made by them in the  
20 engines, expectations from OEMs as to what they  
21 are looking for from the engines.  
22 Q Anything else?  
23 A Things -- that's about all I can remember.  
24 Q What did you discuss regarding the general layout  
25 of the engine?

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1 A Some of their thinking behind why the components  
2 were aligned in certain positions.  
3 Q What did they tell you?  
4 A We -- I mean, we discussed the specific reasons as  
5 to why you would have the air cleaner where it's  
6 located, why you would have the muffler where it's  
7 located, why you would have the fuel tank where  
8 it's located, why you would use other engine -- I  
9 mean, why you would recess the engine levers, what  
10 they're -- and this is their thinking behind why  
11 you would have the layout, the flat back -- or the  
12 back edge to meet together with other  
13 components -- or of other products, fan cover  
14 design, the fan shape in there. Those were the  
15 types of things that were discussed.  
16 Q When you say this was their thinking, did -- did  
17 any of the Briggs & Stratton engineers tell you  
18 that that was why the components on the Briggs &  
19 Stratton engines were located where they were?  
20 A I suppose as part of why they chose to locate them  
21 in particular positions would have described why  
22 they were there for those engines.  
23 Q They didn't -- did they actually say that or are  
24 you surmising that?  
25 A I don't remember.

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1 Q Other than the location of the various components,  
2 did the Briggs & Stratton engineers say anything  
3 else with respect to the general layout of the  
4 engine in that meeting?  
5 A By the general layout, you're referring to how the  
6 engine is -- the engine components are configured,  
7 correct?  
8 Q Well, let me ask you, what do you mean by the  
9 general layout of the engine?  
10 A That's what I mean on how the engine components  
11 are configured -- configured and placed together.  
12 Q And by configured, do you mean how -- the  
13 placement of their components?  
14 A By their placement.  
15 Q And so when you refer to the general discussion of  
16 the layout of the engine, you were referring to  
17 the placement of the components of the engine?  
18 A Yes.  
19 Q What did the Briggs & Stratton engineers tell you  
20 about the reasons for any of their design choices?  
21 A The reasons for their design choices were to meet  
22 the requirements of the marketplace and to provide  
23 them with the best possible performance that they  
24 could get within the constraints of the  
25 requirements of the marketplace.

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1 Q Do you remember specifically any information that  
2 the Briggs & Stratton engineers provided in terms  
3 of the reasons for the particular appearance of  
4 the components on their engines?  
5 MR. HERRING: Object to form.  
6 BY MS. FERRERA:  
7 Q External appearance?  
8 A For some of the individual components they brought  
9 up manufacturing considerations and ease of  
10 manufacturing and cost of manufacturing  
11 considerations, so for instance with the fuel tank  
12 or the air cover -- air cleaner cover.  
13 Q So what did they say with respect to the fuel tank  
14 and the reasons for their design choices?  
15 A The reasons for their design choices included both  
16 safety and providing a product that was still cost  
17 effective to manufacture.  
18 Q And so what design choices did they say they made  
19 in order to meet safety requirements?  
20 A To meet safety requirements or -- or safety  
21 expectations would have been putting it on to the  
22 right side of the engine, away from the hottest  
23 parts of the engine, located over the cylinder  
24 head, and to provide a recessed area to gather up  
25 any fuel leakage before it spills onto the entire

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1 engine, so if somebody was filling the engine with  
2 fuel and spilled some, it would stay on the top of  
3 the engine instead of dripping all over.  
4 **Q** Okay. Anything else with respect to the fuel  
5 tank?  
6 **A** Possibly, but not that I can recall at this time.  
7 **Q** And what did the Briggs & Stratton engineers say  
8 regarding design choices for the fuel tank and  
9 cost considerations?  
10 **A** They -- they went with the overall rectangular  
11 design from a manufacturing and cost consideration  
12 standpoint, as well as trying to maximize the fuel  
13 volume available in the space that they could fit  
14 the fuel tank and still fit inside other products.  
15 **Q** Anything else?  
16 **A** Not that I remember.  
17 **Q** Do you recall what particular Briggs & Stratton  
18 engine they were talking about with respect to  
19 these design choices?  
20 **A** There were several engines in the same series of  
21 engines. I don't remember which ones specifically  
22 they were referring to.  
23 **Q** Earlier -- now I have to figure out which numbers  
24 they were, but earlier we looked at Exhibit 200.  
25 **A** Um-hum.

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1 **Q** Was that one of the engines that you discussed?  
2 **A** I don't think with the front-mounted air cleaner.  
3 **Q** Looking at Exhibit 203, was that one of the  
4 engines you discussed in this meeting with the  
5 Briggs & Stratton engineers?  
6 **A** I don't believe so.  
7 **Q** Looking at Exhibit 206, was that one of the  
8 engines you discussed with the Briggs & Stratton  
9 engineers?  
10 **A** I believe at least a engine in that series, yes,  
11 and possibly multiple engines in that series.  
12 **Q** Other than the fuel tank, do you recall discussing  
13 any other components in the design choices that  
14 the Briggs & Stratton engineers made?  
15 **A** Well, they made choices with the air cleaner  
16 cover. They made choices with the muffler  
17 location. They made choices with fan cover  
18 design. They made choices where to put control  
19 levers. I believe -- those are the ones that I  
20 recall.  
21 **Q** And these are the ones that you recall discussing  
22 with the Briggs & Stratton engineers?  
23 **A** Yes.  
24 **Q** Okay. So with respect to the air cleaner cover,  
25 what did they tell you about the design choices

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1 they made?  
2 **A** Well, the one thing that they wanted -- A, they  
3 wanted to have it close to the -- they wanted to  
4 have it close to the cylinder head so that you  
5 would have less leakage potential of air getting  
6 into the system after it's passed the cleaner  
7 itself.  
8 They also wanted the design for the air  
9 cleaner cover as a high-mount design above the  
10 cylinder head with a rectangular shape to give  
11 them adequate air flow into and then through the  
12 air cleaner.  
13 They chose -- they preferred to use a  
14 cylindrical air cleaner as opposed to a flat panel  
15 air cleaner because it can be fit into a smaller  
16 space for the same surface area -- well, that is  
17 my -- that last part is my subsequent  
18 interpretation. They were looking at it also from  
19 a manufacturing standpoint that it was easier to  
20 make it rounded in their system, the cleaner  
21 element itself.  
22 **Q** I'm sorry, so which part was your subsequent  
23 interpretation?  
24 **A** That was on the size, the calculation on how much  
25 volume you would need to put the same surface area

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1 for the air cleaner element.  
2 **Q** So they told you that they preferred to use a  
3 cylindrical air cleaner as opposed to a flat panel  
4 air cleaner?  
5 **A** Yes.  
6 **Q** But they didn't tell you that that was because of  
7 the size?  
8 **A** I can't recall if they brought up the size of it.  
9 I do recall them discussing the manufacturing  
10 considerations of that.  
11 **Q** And that's the manufacturing consideration that  
12 it's easier to make it rounded?  
13 **A** Yes.  
14 **Q** And when you say "rounded," what do you mean by  
15 that?  
16 **A** Circular in shape as opposed to a flat piece of  
17 paper.  
18 **Q** You're talking about the air cleaner element  
19 itself?  
20 **A** Yes, the air cleaner element itself.  
21 **Q** Anything else with respect to the air cleaner  
22 cover?  
23 **A** The cover, other than making it so that you  
24 would -- that the rectangular shape that they  
25 would typically use was simpler to manufacture and

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<p>1 provided good air flow inside the -- inside 2 underneath the air cover itself to get adequate 3 air flow into the engine. 4 <b>Q</b> Anything else? 5 <b>A</b> That's what I can recall right now. 6 <b>Q</b> Okay. How about with respect to the fan cover, 7 what did the Briggs &amp; Stratton engineers tell you 8 about their design choices? 9 <b>A</b> Well, the fan cover is something that they had to 10 choose to not go with their optimal design because 11 what happens is as the air spirals around and 12 through the scroll inside there, you have to 13 round -- you have to flatten off the bottom in 14 order to have a flat surface for the engine to be 15 resting on, and so one of the points that they 16 made is that in order to -- that they have to go 17 with something that is less than optimal, in fact, 18 most -- most if not all of the manufacturers have 19 to go with something that is less than optimal to 20 flatten off that bottom, and then you want that 21 air to be directed up towards the cylinder and 22 then towards the cylinder head, and you want it to 23 go towards the cylinder head and back towards the 24 hottest components, so you have to angle that 25 upwards to get it flowing in the correct [Page 90]</p>	<p>1 bring in the fresh intake air -- actually, did 2 they say that or did I surmise that? Well, they 3 want the muffler towards the back so that the hot 4 muffler is covered and separated away from where 5 anybody might potentially run into it 6 accidentally. And they probably discussed other 7 things, but right now I can't remember what was 8 said exactly three and a half years ago. 9 <b>Q</b> Did you take any notes during this meeting? 10 <b>A</b> I did take notes. 11 <b>Q</b> Do you still have those notes? 12 <b>A</b> I still have those notes. 13 <b>Q</b> Did you take them electronically or by hand? 14 <b>A</b> No, they're with my really bad handwriting so it's 15 really difficult for anybody else in the world to 16 read what they say. 17 <b>Q</b> Other than that one meeting that you had with the 18 Briggs &amp; Stratton engineers back in late 2011 or 19 early 2012, have you spoken with any Briggs &amp; 20 Stratton engineers about this case? 21 <b>A</b> No. The reason why I'm thinking there is that one 22 of their engineers is -- teaches occasionally a 23 course at UW-M and I have talked to her, but 24 nothing about this case. 25 <b>Q</b> Do you know whether she's involved in the design [Page 92]</p>
<p>1 direction. 2 <b>Q</b> Anything else regarding the fan cover? 3 <b>A</b> Possibly, but not what I recall at this time. 4 <b>Q</b> And you also mentioned the control levers. What 5 did the Briggs &amp; Stratton engineers convey to you 6 regarding the control levers? 7 <b>A</b> The control levers would be preferred to be as 8 close as possible to the carburetor, so that you 9 have a simpler system -- actually, they did not 10 say to have a simpler system, that was my 11 subsequent interpretation of that, but you want 12 them to have close to the carburetor and you want 13 to make sure that they're not interfering with the 14 starting of the engine and that they aren't 15 sticking out in such a way as to potentially be 16 broken off more easily by something bumping into 17 the engine or walking next to it or something to 18 those -- to that effect. 19 <b>Q</b> Do you remember -- other than what you've 20 described so far, do you remember any other 21 information that the Briggs &amp; Stratton engineers 22 conveyed to you regarding the design choices they 23 made in designing any of their engines? 24 <b>A</b> Well, they want the muffler back towards the back 25 part of the engine with the -- and you want to [Page 91]</p>	<p>1 or development of utility engines for Briggs &amp; 2 Stratton? 3 <b>A</b> Well, from the standpoint that most of their 4 engines are utility engines of some sort, she is 5 involved with that, but I don't know if she's 6 looked at horizontal shaft. I would tend to 7 think -- I know that the work she's done mostly in 8 the past has been more vertical shaft. 9 <b>Q</b> Okay. You also mentioned that you had spoken with 10 three or four Kohler engineers at some point, 11 correct? 12 <b>A</b> Correct. 13 <b>Q</b> When -- how many such conversations have you had 14 with Kohler engineers? 15 <b>A</b> Regarding this case, one. 16 <b>Q</b> And when did that conversation occur? 17 <b>A</b> That was I would say a couple months after the 18 meeting with the Briggs engineers. 19 <b>Q</b> So sometime in 2012, probably? 20 <b>A</b> Yes. 21 <b>Q</b> And where did -- was that in person or over the 22 phone? 23 <b>A</b> That was in person at Kohler. 24 <b>Q</b> How long did it last? 25 <b>A</b> Again, an hour and a half to two hours. [Page 93]</p>

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<p>1 Q Did you look at any documents during that meeting? 2 A Not that I can recall. 3 Q Did you look at any pictures of any engines? 4 A Not that I can recall. 5 Q Did you look at any actual engines? 6 A Yes. 7 Q Do you recall what engines you looked at? 8 A Those were I believe all Kohler engines, but the 9 specific models I do not remember. 10 Q Was there -- were there any attorneys present at 11 that meeting? 12 A There were attorneys present. 13 Q Who was present? What attorneys were present? 14 A Nina Borders was present. Kohler had an attorney 15 present, if not two, and I do not recall if there 16 was outside counsel from -- for Kohler there as 17 well. I don't remember that. 18 Q And I'm sorry, who is Nina Borders? 19 A She is from Seth's firm. 20 Q Okay. 21 A But I don't know if she's still there. 22 Q Your understanding is she was there on behalf of 23 Briggs &amp; Stratton? 24 A Yes. 25 Q Okay. What did you discuss with the Kohler [Page 94]</p>	<p>1 cleaner element, were there any differences in 2 what the Kohler engineers conveyed versus the 3 Briggs &amp; Stratton engineers? 4 A Not that I can recall. 5 Q Did you take any notes of that conversation? 6 A Yes. 7 Q Did you -- and do you still have those notes? 8 A Yes. 9 Q Have you spoken with anyone at Kohler regarding 10 this case since that one conversation? 11 A No. 12 Q If you look at Exhibit 212, actually the bullet 13 point above the reference to the interviews of 14 engineers from Briggs and Kohler, there's a 15 reference to images of engines manufactured by 16 companies other than Honda. Do you see that? 17 A Yes. 18 Q And if you turn to page -- Pages 20 and 21 of your 19 report? 20 A Yes. 21 Q There's images of a number of engines there. Do 22 you see that? 23 A Yes. 24 Q Are those the images that you're referring to in 25 the bullet point on Page 6? [Page 96]</p>
<p>1 engineers? 2 A The same basic things that were discussed with the 3 Briggs engineers regarding their operation of 4 their engines, their design choices. Those basic 5 types of things. 6 Q Did you learn anything about the design choices 7 made by the Kohler engineers that differed from 8 what you learned from the Briggs &amp; Stratton 9 engineers? 10 A Not significantly. 11 Q How about insignificantly? 12 A Insignificantly, there may have been some debate 13 between the two as to one aspect of -- well, I 14 think -- I think what it would come down to is 15 that Kohler for their air cleaner element and 16 system was more willing to take on a more 17 expensive product and design choice, and that's 18 about what it came down to in terms of the 19 differences. 20 Q And so how did that translate into differences in 21 an air cleaner element or cover? 22 A Their air cleaner element cover -- their cover was 23 going to be more cylindrical in shape. 24 Q Okay. Other than the air cleaner element, were 25 there any -- or discussion regarding the air [Page 95]</p>	<p>1 A Primarily. There were probably a few other images 2 that were getting excessive in putting in the 3 report. 4 Q Do you recall what those engines were? 5 A I believe there was a Jiangdong engine in there as 6 well. There were other -- other engines from 7 these different companies, as well, that were -- 8 that I didn't bother to put in. There were images 9 that were not as clear, which again I don't 10 remember which particular engines they were. 11 Q Did you exclude any images because you didn't 12 think they supported your opinions? 13 A No, other than ones that you couldn't really see 14 what in the world the engine was doing and they 15 weren't showing much of anything. 16 Q Okay. 17 (Exhibit No. 213 was marked.) 18 BY MS. FERRERA: 19 Q Professor Reisel, you should have Exhibit 213, I 20 think, in front of you? 21 A Yes. 22 Q Do you recognize that document? 23 A Yes. 24 Q Is that a copy of the rebuttal report that you 25 submitted in this case? [Page 97]</p>

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1 A Yes.  
2 Q And if you turn to the last page, Page 9, at the  
3 top, is that your signature that appears on that  
4 page?  
5 A It's a copy of my signature, yes.  
6 Q And did you sign the original version of this  
7 document on November 21st, 2012?  
8 A Yes.  
9 Q As of that date did you believe this accurately  
10 summarized your -- any additional opinions you'd  
11 formed since the submission of your first report?  
12 A This accurately reflected my opinions at the time,  
13 yes.  
14 Q Okay. Since signing this document on November  
15 21st, have you become aware of any errors or  
16 corrections that need to be made with the rebuttal  
17 report?  
18 A I believe not in this one, no.  
19 Q Okay. And did you draft Exhibit 213 yourself?  
20 A Yes.  
21 Q Did you receive any input from counsel for either  
22 Briggs or Kohler?  
23 A Yes.  
24 Q Did they provide you any substantive comments?  
25 A No.

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1 Q Approximately how long did you spend drafting  
2 Exhibit 213?  
3 A If we include going over Mr. Mieritz' report,  
4 which I was refuting in this, it was probably in  
5 the neighborhood of 10 to 15 hours.  
6 (Exhibit No. 214 was marked.)  
7 BY MS. FERRERA:  
8 Q And you should have now Exhibit 214?  
9 A Yes.  
10 Q And do you recognize that document?  
11 A Yes.  
12 Q Is this a copy of the supplemental report that you  
13 submitted in this case on April 16th --  
14 A Yes.  
15 Q -- 2015?  
16 A Yes.  
17 Q And if you turn to Page 12, at the bottom of the  
18 page do you see a copy of a signature?  
19 A Yes.  
20 Q Is that a copy of your signature?  
21 A Yes.  
22 Q And did you sign this on April 16th, 2015?  
23 A The original, yes.  
24 Q And when you signed it on that date, did you  
25 believe that it accurately reflected your -- any

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1 additional opinions you'd formed since the  
2 submission of your prior reports?  
3 A Yes.  
4 Q Have you become aware of any errors or corrections  
5 that need to be made?  
6 A The naming of the -- or the last figure on  
7 Page 12, that's an image of -- I believe it's the  
8 APE 7007 series. The 7006 V is right next to it  
9 on the website, so I pulled off the wrong name.  
10 Q Other than that you're not aware of any errors in  
11 this report?  
12 A There was a grammatical error but I don't think  
13 you're worried about that.  
14 Q Okay. And did you draft Exhibit 214 yourself?  
15 A Yes.  
16 Q Did counsel for either Briggs and Kohler provide  
17 any substantive input?  
18 A No.  
19 Q How long did it take you to draft Exhibit 214?  
20 A This is -- again, if we were going to consider the  
21 working on -- or preparing the -- studying the  
22 documents and working on that, it's about 15  
23 hours.  
24 Q Okay. Sitting here today do you believe that  
25 Exhibits 212, 213 and 214 accurately and

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1 completely reflect your opinions in this case?  
2 A They accurately reflect my opinions. Completely,  
3 there's one issue that I was starting to debate  
4 last night as to -- and late last night in my mind  
5 as to whether or not -- it doesn't -- it changes  
6 the potential functionality of making something  
7 functional that I had said wasn't.  
8 Q And what is that?  
9 A Those are the horizontal lines on the GX  
10 carburetor cover, and that I believe that they,  
11 depending on how they are configured, may serve a  
12 functional purpose.  
13 Q What purpose?  
14 A They could cool the air -- they could -- depending  
15 on how they are designed and incorporated into the  
16 carburetor cover, they could potentially act as  
17 fins, which would enhance the heat transfer from  
18 the carburetor and cool the carburetor, which  
19 would then potentially result in less fuel  
20 vaporizing in the carburetor system, which could  
21 impact the amount of air flow and the fuel flow  
22 into the engine and increase the horsepower of the  
23 engine. It would not be a major change, but it  
24 could potentially improve the performance.  
25 Q When did you first begin to think that the

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[26] (Pages 98 to 101)

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1 horizontal lines on the GX engine carburetor cover  
2 might have a functional purpose?  
3 A It was about 10:30 last night.  
4 Q What caused you to have that thought?  
5 A I was trying to go to sleep and thinking about  
6 this, and then it occurred to me, wait a minute,  
7 those things might actually act as fins.  
8 Q In any of the discussions that you've had with the  
9 Briggs & Stratton or Kohler engineers has anyone  
10 suggested to you that those lines on the GX engine  
11 carburetor cover served a functional purpose?  
12 A No.  
13 Q Have you discussed the lines on the GX engine  
14 carburetor cover with either the Briggs & Stratton  
15 or Kohler engineers?  
16 A They were discussed, I believe, back in 2011/2012  
17 as them not seeing them as serving a functional  
18 purpose.  
19 Q So the Briggs & Stratton and Kohler engineers  
20 didn't believe they served a functional purpose?  
21 A I do not recall that they thought they served a  
22 functional purpose.  
23 Q Do you have any evidence that the horizontal lines  
24 on GX engine carburetor covers in fact do serve a  
25 functional purpose?  

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1 A The evidence, no, because I was also coming up  
2 with experiments that would have to be run because  
3 it would be a extremely difficult problem to try  
4 and look at analytically. You would have to run a  
5 whole series of experiments and probably not see a  
6 great difference with them or not, but it is --  
7 technically, it is possible that it is improving  
8 the performance of the engine.  
9 Q But sitting here today you have no evidence that  
10 in fact the horizontal lines on the GX carburetor  
11 cover improves the performance of the engine?  
12 A Correct.  
13 Q And sitting here today you have no evidence that  
14 in fact those horizontal lines are functional?  
15 A No evidence, correct. Just -- just new  
16 speculation that now I want to have somebody go  
17 off and study. It would actually be a good  
18 master's project for a student.  
19 Q Do you anticipate supplementing any --  
20 supplementing your reports to address that issue?  
21 A I do not anticipate it, no.  
22 Q Other than the engines that you saw at your  
23 meetings with the Briggs & Stratton and Kohler  
24 engineers back in late 2011 and early 2012, have  
25 you seen any actual horizontal shaft engines in  

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1 connection with this case?  
2 A In connection with the case, no. Having seen them  
3 in products in stores, but not as -- in part of  
4 the case.  
5 Q Have you examined any of the horizontal shaft  
6 engines that you've seen in stores?  
7 A In great detail, no, not -- as part of just a  
8 quick overall impression and looking at it, yes,  
9 but not studying the intricate details, no.  
10 Q You said that at your meeting with the Briggs &  
11 Stratton engineers you saw -- you believe there  
12 was a GX engine present?  
13 A I believe so.  
14 Q Other than that one time, have you seen a Honda GX  
15 engine in person?  
16 A I don't recall.  
17 Q So sitting here today the only time you can recall  
18 having seen a Honda GX engine in person was at  
19 that one meeting with Briggs & Stratton back in  
20 late 2011, early 2012?  
21 A Was probably at that meeting.  
22 Q Okay.  
23 (Discussion off the record.)  
24 BY MS. FERRERA:  
25 Q Professor Reisel, I've handed you what's been  

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1 marked exhibit -- previously marked as Exhibit 3.  
2 Do you see that?  
3 A Yes.  
4 Q And do you understand that that is a printout from  
5 the USPTO website of the description of the Honda  
6 GX trademark that's at issue in this case?  
7 A Yes.  
8 Q And you've seen this before, correct?  
9 A Yes.  
10 Q You relied on it in forming your opinions in this  
11 case, correct?  
12 A I relied on the description and the content of it.  
13 The particular website printout, no.  
14 Q Right. You relied on the description and the  
15 picture that's shown on that page, correct?  
16 A Yes.  
17 Q And you understand that the trademark that's being  
18 claimed is what's shown in the picture on  
19 Exhibit 3?  
20 A Yes.  
21 Q And you understand that the trademark that's being  
22 claimed excludes the recoil cover?  
23 A Not that it excludes the re- -- do you mean the --  
24 okay, so for the cover itself, it would be  
25 involving the orientation and distribution of the  

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[27] (Pages 102 to 105)

1 slots, correct?  
2 Q Well, I guess I'll -- I'll represent to you that  
3 in fact if you look at the last line of the  
4 description, it says that --  
5 A Okay.  
6 Q -- the broken lining in the drawing is not part of  
7 the mark and serves only to indicate position. Do  
8 you see that?  
9 A Yes.  
10 Q And do you see that in the picture, the recoil  
11 cover is all shown in a broken line?  
12 A Yes.  
13 Q Okay. So I'll represent to you that no aspect of  
14 the recoil cover is part of the claimed mark in  
15 this case. Do you understand that?  
16 A Yes.  
17 Q Okay. And so do you understand that everything  
18 else that's shown with a solid line is part of the  
19 claimed trademark in this case?  
20 A Yes.  
21 Q Now, you -- you understand that one of the  
22 elements that is being claimed is the overall  
23 cubic design of the engine?  
24 A Yes.  
25 Q And what do you understand the cubic design to  
[Page 106]

1 refer to?  
2 A I believe -- I interpret -- or I understand it to  
3 include both from a general viewpoint of it,  
4 standing back from the engine, viewing the engine  
5 as fitting in a roughly squarish box, that you  
6 could fit a square box around the entire frontal  
7 view of the engine, as well as having the  
8 individual components, such as the air cleaner  
9 cover and the fuel tank taking on a boxy design,  
10 having roughly straight lines on the sides and top  
11 and having primarily straight lines throughout  
12 other portions of the design, such as the bottom  
13 of the fan cover -- fan cover and the top of the  
14 fan cover, those things being roughly straight  
15 lines or straight lines.  
16 Q Okay. Would you turn to Exhibit 212, which is  
17 your opening report? Can you look at  
18 Paragraph 11? Do you see there, in the second  
19 sentence you say that you interpret a cubic design  
20 as one with approximately flat surfaces meeting at  
21 roughly 90 degree angles rather than being a true  
22 geometric cube?  
23 A Yes.  
24 Q And is that the definition of cubic design that  
25 you applied throughout your reports in this case?  
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1 A In later reports I expanded that, especially with  
2 the supplemental report I expanded that to include  
3 the more boxy designs of the individual components  
4 as well.  
5 Q So at the time that you submitted your opening  
6 report you had a different interpretation of cubic  
7 design than when you submitted your supplemental  
8 report?  
9 A I would say that the definition was expanded to  
10 include, based on the testimony from Mr. Fujita at  
11 Honda, the additional components being boxy in  
12 nature as well, whereas in my original report I  
13 was looking more at the cubic -- from the general  
14 broad standpoint cubic aspect and then with -- in  
15 order to fit things into that space resulting in  
16 it being a boxy design. I look at it as a very  
17 similar interpretation with perhaps some  
18 refinement.  
19 Q So your current interpretation of cubic design is  
20 that the overall design of the engine is one with  
21 approximately flat surfaces meeting at roughly 90  
22 degree angles and that the individual components  
23 have a boxy appearance?  
24 A Yes, so it expands the entire design and also into  
25 the individual components with roughly the flat  
[Page 108]

1 surfaces meeting at roughly 90 degree angles.  
2 Q So your current interpretation of cubic design is  
3 that the overall engine should have approximately  
4 flat surfaces meeting at roughly 90 degree angles  
5 and that the individual components should have  
6 approximately flat surfaces meeting at roughly 90  
7 degree angles?  
8 MR. HERRING: Object to form.  
9 THE WITNESS: Essentially, yes. So  
10 boxes. Putting boxes together, rectangular boxes.  
11 BY MS. FERRERA:  
12 Q And what is the basis for that interpretation?  
13 A Which interpretation? The -- the overall -- the  
14 cubic design or the individual components? The  
15 overall fitting into a cube or the individual  
16 components fitting being cubic-like?  
17 Q Well, I guess let me -- let me ask you with  
18 respect to the statement in Paragraph 11 of your  
19 opening report, what was the basis for your  
20 interpretation of cubic design set forth there?  
21 A That would be the definition of cube.  
22 Q So your understanding of the definition of cube is  
23 that it's something having approximately flat  
24 surfaces meeting at roughly 90 degree angles?  
25 A My interpretation -- understanding of the  
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<p>1 definition of cube is that it has six flat 2 surfaces of equal size meeting at 90 degree 3 angles, and that when you start to apply that to 4 a -- a -- a physical object that is consisting of 5 a bunch of components, it's likely to be 6 approximately flat surfaces at roughly 90 degree 7 angles. 8 Q And in your answer just now you referred to six 9 flat surfaces of equal size. In your opening 10 report in Paragraph 11 when you gave your 11 interpretation of cubic design you didn't say 12 anything about surfaces of equal size, correct? 13 A Correct. 14 Q Was that part of your interpretation as of the 15 submission of your opening report? 16 A I was just providing you with the definition -- 17 mathematical definition of a cube. 18 Q Okay. But in terms of your interpretation of 19 cubic design in this case, it doesn't have to have 20 sides of equal size, correct? 21 A Correct. I put the cubic in quotation marks to 22 indicate that it did not need to have the same 23 height, width and depth exactly, so that there was 24 no need for it to be as deep as it was wide. It 25 would still be rectangular in shape but not [Page 110]</p>	<p>1 have approximately flat surfaces meeting at 2 roughly 90 degree angles, the individual 3 components should have flat surfaces meeting at 90 4 degree angles, and that straight lines and 5 vertical lines should be used throughout the 6 design of the individual components? 7 MS. GIFTOS: Object to form. 8 THE WITNESS: Straight lines do not need 9 to necessarily be vertical or horizontal, they 10 could be at an angle but primarily horizontal or 11 vertical, but yes, that is my interpretation. 12 BY MS. FERRERA: 13 Q And is it your opinion that having straight lines, 14 whether they're vertical or horizontal or 15 otherwise, is a competitive necessity? 16 MR. HERRING: Object to form. 17 THE WITNESS: What are you referring to 18 competitive necessity as? 19 BY MS. FERRERA: 20 Q You've used that term in various places in your 21 report, have you not? 22 MR. HERRING: Object to form. 23 BY MS. FERRERA: 24 Q Well, let's look at Paragraph 19 of your opening 25 report. You say, "In summary, a cubic design is [Page 112]</p>
<p>1 necessarily -- or prismatic in shape, 2 rectangular/prismatic in shape rather than cubic. 3 Q And so as of your opening report, the basis for 4 that interpretation was the definition of a cube? 5 A Yes. 6 Q Anything else? 7 (Discussion off the record.) 8 THE WITNESS: For my initial 9 interpretation, that was what I was going off of. 10 BY MS. FERRERA: 11 Q And then in terms of your expansion of that to 12 include the individual components, what was the 13 basis for your -- 14 A That was primarily -- 15 Q -- understanding? 16 A -- based on Mr. Fujita's deposition from, I 17 believe, earlier this year -- last year -- well, 18 his deposition on what his view of this was, and I 19 didn't see any fundamental difference between how 20 I was interpreting it and how he was defining it, 21 but I'm now expanding it formally to be including 22 the individual components and the straight lines 23 throughout. 24 Q And so to be clear, your interpretation of cubic 25 design today is that the overall engine should [Page 111]</p>	<p>1 necessary for operational purposes, manufacturing 2 purposes and economic competitiveness purposes." 3 Do you see that? 4 A Yes. 5 Q So is it your opinion that having the overall 6 engine design be one with approximately flat 7 surfaces meeting at roughly 90 degrees is 8 necessary for operational purposes, manufacturing 9 purposes and economic competitiveness purposes? 10 A It is necessary for economic purposes as the OEMs 11 are expecting to have flat surfaces to fit in -- 12 many of the OEMs are expecting to have flat 13 surfaces to fit this into. It reduces 14 manufacturing costs, which is going to -- it's 15 going to make it more economically competitive 16 through its manufacturing processes, and from an 17 operational standpoint, the cubic design is 18 generally going to be more stable. So there are 19 operational purposes that it is advantageous to 20 have this cubic design, yes. 21 Q And with respect to the individual components, is 22 it your opinion that having approximately flat 23 surfaces meeting at roughly 90 degrees -- 90 24 degree angles is necessary for operational 25 purposes, manufacturing purposes and economic [Page 113]</p>

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<p>1 competitiveness purposes? 2 A The individual components may vary with respect to 3 those different aspects, but from -- certainly 4 from an economic standpoint and from a 5 manufacturing standpoint, the cubic design, as I 6 interpret it, is -- is necessary. 7 The operational, it's -- it's going to 8 depend a little bit more on the individual 9 components. So there's the possibility of having 10 a bit more flexibility from an operational 11 standpoint and have the equipment still work, but 12 not necessarily be easy to manufacture or be 13 competitive economically. 14 Q With respect to the overall design of the engine, 15 would you agree that the engine could have 16 approximately flat surfaces meeting at roughly 90 17 degree angles without having an overall square 18 appearance when viewed from the front? 19 A An engine could be rectangular in appearance from 20 that, but whether that particular engine would fit 21 the market that these engines are often designed 22 for is uncertain. 23 Q Okay. Let me ask the question slightly 24 differently. 25 Do you agree that an engine could meet</p> <p style="text-align: right;">[Page 114]</p>	<p>1 previously been marked as Exhibit 192, and do you 2 understand that that is a copy of a declaration of 3 Motohiro Fujita in support of Honda's opposition 4 to a motion for summary judgment filed by Briggs &amp; 5 Stratton and Kohler in this case? 6 A Yes. 7 Q And you've seen Exhibit 192 before, correct? 8 A I am not sure. 9 Q Well, if you look at your supplemental report, 10 which I think is Exhibit 214, if you look at 11 Paragraph 5, do you see that you refer to a 12 declaration of Mr. Motohiro Fujita identified as 13 Exhibit 192? 14 A Okay, yes, this is then part of his deposition. 15 Yes. 16 Q Right. It was marked -- 17 A Right. 18 Q -- in his deposition as well? 19 A Right. 20 Q So does that -- 21 A I was thinking as a separate document, no, I 22 couldn't recall that, but yes, I do remember 23 seeing it in there. Yes. 24 Q Okay. And if you look at Paragraph 12 of 25 Exhibit 192, you see that Mr. Fujita explains that</p> <p style="text-align: right;">[Page 116]</p>
<p>1 your definition of cubic design without having an 2 overall square appearance from the front? 3 A It will be predominantly squarish from the front. 4 There -- it may be slightly elongated in one 5 direction, but it's going to be generally 6 appearing to fit into a square or nearly-square 7 rectangular box from the front. 8 Q Square and rectangular are not necessarily -- 9 A Nearly rectangular -- I said nearly rectangular. 10 Q So it could be -- 11 A Or nearly-square rectangular, it was a 12 nearly-square -- with a hyphen -- rectangular. 13 Q So an engine could meet your definition of cubic 14 design and be slightly more tall than it is wide, 15 correct? 16 A Correct. 17 Q And an engine could meet your definition of cubic 18 design and be slightly more wide than it is tall, 19 correct? 20 A Correct. 21 Q Doesn't have to be exactly square? 22 A It doesn't have to be exactly square as none of 23 these engines -- or very few of these engines are 24 exactly square, including Honda's. 25 Q Professor Reisel, I'm handing you what's</p> <p style="text-align: right;">[Page 115]</p>	<p>1 the styling design team chose to introduce many 2 straight lines to create a linear appearance and 3 thereby contribute to the overall cubic impression 4 of the GX engine. Do you see that? 5 A Yes. 6 Q And then in Paragraphs 13, 14 and 15 he gives 7 examples of the way in which straight lines were 8 introduced to create a linear appearance? 9 A Yes. 10 Q And he -- one of the examples that he gives is 11 that the top and left sides of the fan cover are 12 straight. Do you see that? 13 A Yes. 14 Q And is it your opinion that having the top and 15 left sides of the fan cover being straight is a -- 16 is functionally and competitively necessary? 17 MR. HERRING: Object to form. 18 THE WITNESS: The top and left sides of 19 the fan cover being straight -- being exactly 20 straight is not necessary. They're going to be -- 21 there may be some curve to it. For example, you 22 could curve or round off that top left corner a 23 bit as well, but I do not believe that they -- 24 those need to be straight to be -- straight lines 25 meeting at essentially a 90 degree angle to be</p> <p style="text-align: right;">[Page 117]</p>

[30] (Pages 114 to 117)

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1 competitive.  
2 BY MS. FERRERA:  
3 Q So do you believe that having the top and left  
4 sides of the fan cover straight is functional?  
5 MR. HERRING: Object to form.  
6 THE WITNESS: It may serve some  
7 function, but I do not recognize what that  
8 function would be.  
9 BY MS. FERRERA:  
10 Q So sitting here today you're not aware of any  
11 functional purpose served by having the top and  
12 left sides of the fan cover be straight?  
13 A Correct.  
14 Q And then in Paragraph 14 of Exhibit 192 Mr. Fujita  
15 states that the styling design team also designed  
16 the air cleaner cover and fuel tank to have the  
17 same height, have similar beveling with sharper  
18 angles on the outside edges than on the inside and  
19 to have similar vertical lines where the right  
20 vertical line of the air cleaner cover was  
21 designed to mirror the left vertical line of the  
22 fuel tank and to include a belt on the bottom of  
23 the air cleaner cover that aligns with the seam on  
24 the fuel tank. Do you see that?  
25 A Yes.

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1 Q Do you have any opinion as to whether having the  
2 air cleaner cover and fuel tank be the same height  
3 is functional?  
4 A Yes.  
5 Q And what's your opinion?  
6 A My opinion is that if -- depending on the  
7 application, if it needs to fit into a particular  
8 height object, those are likely to end up being  
9 the same -- or at least approximately the same  
10 height.  
11 Q Can you think of an application -- an application  
12 where that's the case?  
13 A A specific application, not off the top of my  
14 head, but anything that would have a restriction  
15 on the top of this engine where you were trying to  
16 fit it into an envelope with that fixed top, if  
17 that was a lower top and you were going to have a  
18 tight fit for the whole engine you're going to  
19 want those to be approximately the same height.  
20 Q But sitting here today you can't think of any  
21 particular application where that would be the  
22 case, correct?  
23 A No.  
24 Q Has any Briggs & Stratton or Kohler engineer ever  
25 told you that that is required to be the case in

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1 any application?  
2 A I don't recall.  
3 Q And then the next portion of that description was  
4 the similar beveling with sharper angles on the  
5 outside edges than on the inside for the air  
6 cleaner cover and fuel tank, correct?  
7 A Correct.  
8 Q Do you have any opinion as to whether having  
9 similar beveling on the air cleaner cover and fuel  
10 tank is functional?  
11 A The beveling would have minimal functionality,  
12 other than perhaps easing some of the  
13 manufacturing just having beveling in general, but  
14 to have the specific description of the similar  
15 beveling on the two parts, no, it would not  
16 necessary -- it would not be functional.  
17 Q So having some beveling may serve some purpose  
18 from a manufacturing standpoint, but it's not  
19 necessary to have the particular beveling on the  
20 air cleaner cover and fuel tank on the GX engine,  
21 correct?  
22 A Correct.  
23 Q And then Mr. Fujita refers to similar vertical  
24 lines where the right vertical line of the air  
25 cleaner cover was designed to mirror the left

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1 vertical line of the fuel tank. Do you see that?  
2 A Yes.  
3 Q And you're not aware of any functional reason to  
4 have similar vertical lines for the right vertical  
5 line of the air cleaner cover and the left  
6 vertical line of the fuel tank, correct?  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: To have them lining up and  
9 being on the same plane, I do not see a functional  
10 reason for that. Having a line in general, yes,  
11 but they do not have to be lining up.  
12 BY MS. FERRERA:  
13 Q Okay. And Mr. Fujita also refers to a belt on the  
14 bottom of the air cleaner cover that aligns with  
15 the seam on the fuel tank. Do you see that?  
16 A Yes.  
17 Q And you're not aware of any functional reason  
18 why -- first of all, why there needs to be a belt  
19 on the bottom of the air cleaner cover?  
20 A Correct. There -- it's not functional.  
21 Q And similarly, you're not aware of any functional  
22 reason why it's necessary to have a belt on the  
23 bottom of the air cleaner cover that aligns with  
24 the seam on the fuel tank?  
25 A Correct.

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1 Q And then would you look at Paragraph 15,  
2 Mr. Fujita explains that the styling design team  
3 also intended for the top right side of the fuel  
4 tank and the lower left side of the fan cover to  
5 have similar angles. Do you see that?  
6 A Yes, I see that.  
7 Q And are you aware of any functional reason why the  
8 top right side of the fuel tank and the lower left  
9 side of the fan cover would need to have similar  
10 angles?  
11 A Top right, lower left side. No.  
12 Q And Mr. Fujita also refers to the angle of the  
13 lower left side of the fan cover continuing  
14 unobstructed to the left edge of the carburetor  
15 cover. Do you see that?  
16 A Yes.  
17 Q And are you aware of any functional reason why the  
18 angle of the lower left side of the fan cover  
19 would need to continue unobstructed to the left  
20 edge of the carburetor cover?  
21 A You're going to want to have the fan cover -- that  
22 angled fan cover being present to help promote --  
23 to help cover the direction of the flow towards  
24 the components that are trying to be cooled, but  
25 to be angled specifically at that lower corner as

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1 opposed to being perhaps a little bit above or a  
2 little bit below, no, that would not be  
3 functional.  
4 Q So you need to have an angle or a slant on that  
5 portion of the fan cover, but it doesn't need to  
6 be the exact angle that is used on the GX engine  
7 fan cover, correct?  
8 A Correct.  
9 Q And it doesn't need to line up with the angle of  
10 the carburetor cover, correct?  
11 A Correct.  
12 Q Would you look at Exhibit 212, which is your  
13 opening report? And if you turn to Paragraph 12,  
14 in that paragraph you talk about the back surface  
15 of the engine. Do you see that?  
16 A Yes.  
17 Q And you opine that it needs to be flat to meet  
18 typical OEM requirements?  
19 A Yes.  
20 Q You understand that the back surface of the engine  
21 is not part of the trademark, GX engine trademark  
22 application, correct?  
23 A At this time, yes.  
24 Q Did you not understand that when you submitted  
25 your opening report?

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1 A At the time I was looking there as a cubic design,  
2 and so the cube would have flat surfaces on all  
3 six sides.  
4 Q Okay. But you -- sitting here today you  
5 understand that having a cubic design on the back  
6 of the engine is not part of what Honda's claiming  
7 as part of its trademark?  
8 A Yes.  
9 Q Okay. And then in Paragraph 13 you talk about the  
10 front surface of the engines. Do you see that?  
11 A Yes.  
12 Q And you opine that it needs to be approximately  
13 flat in order to avoid blocking any of the air  
14 flow passages and to enable the operator to easily  
15 pull the rewind handle and start the engine,  
16 correct?  
17 MS. GIFTOS: Object to form.  
18 THE WITNESS: Yes.  
19 BY MS. FERRERA:  
20 Q If you look at Exhibit 3, which was the trademark  
21 application, can you tell from the picture that's  
22 shown there whether the front surface of the GX  
23 engine is flat?  
24 A From a two-dimensional picture you cannot tell  
25 that.

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1 Q And so you understand that having a flat front  
2 surface is not part of the GX engine trademark  
3 that's being claimed?  
4 A Yes.  
5 Q Let's go back to your opening report and look at  
6 Paragraph 14, and in that paragraph you talk about  
7 the right side of the engine, correct?  
8 A Yes.  
9 Q And it's your opinion that the right side of the  
10 engine should be -- strike that.  
11 It's your opinion that on right side of  
12 the engine the edge of the fuel tank should be  
13 roughly aligned with the right side of the engine  
14 block, correct?  
15 A Yes.  
16 Q And that's because, in your view, moving the fuel  
17 tank out further to the right any significant  
18 degree would require additional support, which  
19 would increase the cost to manufacture the engine?  
20 MS. GIFTOS: Object to form.  
21 THE WITNESS: As one reason, yes.  
22 BY MS. FERRERA:  
23 Q Any other reasons?  
24 A The other reason is that if it -- if the engine is  
25 expected to fit into a particular opening, you --

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1 if you project the fuel tank out further to the  
2 right, it's less likely to fit into a particular  
3 opening that would be flat or it would require a  
4 much larger opening to incorporate the entire  
5 engine into it.  
6 Q Okay. So in terms of the support, again, would  
7 you look at Exhibit 3, the trademark application?  
8 A Yes.  
9 Q And it's maybe a little bit hard to see, but if  
10 you look at the right side of the GX engine, do  
11 you see that there are brackets that support the  
12 fuel tank?  
13 MR. HERRING: Object to form.  
14 THE WITNESS: On the application I see  
15 that there is something there.  
16 BY MS. FERRERA:  
17 Q In any of your -- I guess in the -- when you saw  
18 the Honda GX engine in person at Briggs &  
19 Stratton, do you recall whether or not there were  
20 brackets supporting the fuel tank?  
21 A At the -- at Briggs & Stratton I don't recall, but  
22 I have seen clearer pictures of it that show that  
23 there is a bracket.  
24 Q So you're aware that there is a bracket --  
25 A Yes --

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1 Q -- on the GX engine? And is that what you mean by  
2 a cantilever support?  
3 A A cantilever support would be a larger bracket  
4 that would have to be extending outwards and have  
5 greater support at the center. So here the way  
6 that this is designed, and the current bracket,  
7 the weight is being carried basically by the  
8 engine and that bracket is to hold it in place.  
9 The further you put that out, the  
10 greater torque you're going to be putting onto the  
11 fuel tank and you'll need to have stronger  
12 supports as well to hold that in place over the  
13 engine.  
14 Q You would need -- you would need a bigger bracket  
15 or you would need more brackets?  
16 A Potentially both. You would also probably need  
17 stronger bolts or bigger bolts.  
18 Q Okay. And how much -- how much would the engine  
19 have to protrude -- sorry, how much would the fuel  
20 tank have to protrude out from the rest of the  
21 engine in order to require larger or additional  
22 support?  
23 A I would look at that if it were protruding out --  
24 now it's going to depend on the whole size of the  
25 engine in the first place, but for an average size

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1 utility engine here, if it starts going out beyond  
2 perhaps an inch, inch to two inches you're going  
3 to need to have more support, and the further it  
4 goes out the stronger that support will have to  
5 become.  
6 Q So you would expect that the fuel tank could  
7 extend out up to approximately an inch without  
8 requiring additional support, correct?  
9 A Correct; however, that may not allow it to fit  
10 inside the envelope that's expected of it.  
11 Q Okay. Well, let's talk about that. So in terms  
12 of the envelope, are you aware of any applications  
13 where having the fuel tank extend out up to an  
14 inch would preclude it from fitting?  
15 A I am not aware of any specific applications. I  
16 can envision it causing problems for certain  
17 applications, depending on how a generator is  
18 designed; for example, there could be problems  
19 associated with it, but especially if it had -- if  
20 it was an application with open sides it would be  
21 less of an issue. Any application with a closed  
22 side it's going to be an issue.  
23 Q Other than maybe a generator, can you think of any  
24 application where it would be an issue?  
25 A The generator is what comes to mind quickest.

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1 Q Have you actually seen a generator in which having  
2 the fuel tank extend out up to an inch would be a  
3 problem?  
4 A Not that I can recall.  
5 Q Would you consider an engine in which the fuel  
6 tank extends out -- extends out on the right side  
7 up to an inch to still be cubic?  
8 A Yes.  
9 Q Would you consider it still to be compact?  
10 A I would consider it less compact.  
11 Q But as long as it fit into the application, it  
12 wouldn't -- that wouldn't be an issue, right?  
13 A Correct.  
14 Q Now, if you look at Paragraph 15 of your opening  
15 report you talk about the left side of the engine.  
16 Do you see that?  
17 A Yes.  
18 Q And there you opine that on the left side the  
19 muffler and air filter cannot be moved outwards to  
20 the left very far because the operator still needs  
21 to be able to access the spark plug for servicing.  
22 Do you see that?  
23 A Yes.  
24 Q But you agree that the -- both the muffler and the  
25 air filter could be moved out a small amount

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1 without interfering with the ability to access the  
2 spark plug for servicing, correct?  
3 A What's a small amount?  
4 Q That was going to be my next question.  
5 A Right, because I --  
6 Q Yeah, let me just ask the question slightly  
7 differently.  
8 How far out could the air cleaner cover  
9 and the muffler cover be moved without interfering  
10 with the ability to access the spark plug for  
11 servicing?  
12 A Without interfering, a minimal distance. The --  
13 the close -- the further they move out the more  
14 interference they cause, so it would become up to  
15 the operator of the engine, the purchaser of the  
16 engine, to design how much they were willing to  
17 tolerate the increased interference for servicing.  
18 Q What would be a -- what would be the maximum  
19 distance that it could be -- they could be moved  
20 out without interfering at all?  
21 A I would -- it would be my opinion that as they  
22 move out at all, it's going to interfere.  
23 Q What do you -- what would you expect would be the  
24 maximum amount they could be moved out without  
25 causing any significant interference?  
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1 MR. HERRING: Object to form.  
2 THE WITNESS: It depends on what the  
3 individual operator would consider significant.  
4 If the --  
5 BY MS. FERRERA:  
6 Q In your discussions with the -- either the Briggs  
7 & Stratton or Kohler engineers, did you discuss  
8 with them whether it is possible for the muffler  
9 or -- well, air cleaner cover to protrude out on  
10 the left side without causing any significant  
11 interference with the spark plug?  
12 A If I recall correctly with the Briggs engineers it  
13 was also their opinion that any movement outward  
14 was going to continually cause more interference  
15 for servicing the spark plug.  
16 Q So is it your testimony that having the muffler  
17 and air cleaner cover protrude out half a  
18 centimeter is going to interfere with servicing  
19 the spark plug?  
20 MS. GIFTOS: Object to form.  
21 THE WITNESS: It will interfere with  
22 servicing the spark plug. It may still be very  
23 serviceable but it may cause increased difficulty.  
24 BY MS. FERRERA:  
25 Q At what -- how far out could the muffler and air  
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1 cleaner cover move and yet permit servicing of the  
2 spark plug?  
3 A Permit servicing of the spark plug? They could  
4 move out significantly. But whether anybody would  
5 tolerate the increased difficulty is -- would be  
6 up to the individual who's having to service it.  
7 Q Is there -- from an engine manufacturer  
8 standpoint, do you believe that there is any  
9 flexibility in terms of the amount that they would  
10 be willing to have the muffler and air cleaner  
11 cover protrude out from the left side?  
12 MR. HERRING: Object to form.  
13 THE WITNESS: They would have to deal --  
14 they would have to consult with the potential  
15 buyers of the engine while deciding on how far  
16 they would allow that to move out. If they make  
17 the decision on their own and the marketplace  
18 decides that this is not an acceptable servicing  
19 possibility, it's just too much effort so that  
20 nobody buys the engine, then they're going to be  
21 in trouble.  
22 BY MS. FERRERA:  
23 Q And from the OEM standpoint, do you have any  
24 understanding as to what their -- what they  
25 consider to be the maximum amount that the air  
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1 cleaner cover and the muffler could protrude out  
2 from the left side?  
3 MR. HERRING: Object to form.  
4 THE WITNESS: They would have to be  
5 consulting with the actual operators of the  
6 engines to see what they're willing to tolerate.  
7 BY MS. FERRERA:  
8 Q But you don't know --  
9 A I do not know.  
10 Q -- based on that what they would tolerate, either  
11 the OEMs or the actual operators would tolerate?  
12 MR. HERRING: Object to form.  
13 THE WITNESS: I don't know. It would be  
14 an individual decision of the individual operator.  
15 BY MS. FERRERA:  
16 Q Are you aware of any applications in which having  
17 the muffler and air cleaner cover protrude out  
18 from the left side would cause problems in terms  
19 of the application -- the engine fitting into the  
20 application?  
21 A Specific application, no, but again, if you've got  
22 something with a fixed side such as a generator,  
23 it's going to -- if it protrudes outwards, again,  
24 it's not going to fit into as small of a space.  
25 Q And have you particularly seen any applications in  
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1 which having the engine protrude out from the left  
2 side would cause it not to fit?  
3 A No.  
4 Q Can you identify any applications where having  
5 the -- where having the engine be taller than a GX  
6 engine would cause it not to fit?  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: Any specific application,  
9 no, but it's my understanding that Honda developed  
10 this shaped engine because OEMs were not happy  
11 with the height of their predecessor engines.  
12 BY MS. FERRERA:  
13 Q Okay. So previously they were making side valve  
14 engines that were taller in height, correct?  
15 A Correct.  
16 Q In the context of horizontal shaft engines can you  
17 think of any application where having the engine  
18 be somewhat taller than a GX engine would cause it  
19 not to fit?  
20 MR. HERRING: Object to form.  
21 THE WITNESS: Their previous  
22 application, side valve and horizontal shaft, are  
23 not comparable descriptive -- or are not contrary  
24 descriptive statements.  
25 BY MS. FERRERA:  
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1 Q Okay. Fair enough. Are you aware of any  
2 applications involving an overhead valve engine in  
3 which having it be taller than the GX engine would  
4 cause it not to fit into the application?  
5 A That's where the problem was coming in, in which  
6 the applications had been designed for the side  
7 valve engine and the overhead valve engine was  
8 going to be taller and not fit into that envelope,  
9 and so that's why they had to turn it into a  
10 horizontal -- a slanted cylinder.  
11 Q Okay. So the solution to the problem that you  
12 described was to use an incline cylinder, correct?  
13 A Yes.  
14 MS. GIFTOS: Object to form.  
15 BY MS. FERRERA:  
16 Q Are you aware of any horizontal shaft engines  
17 today that did not use an incline cylinder?  
18 A I am not aware of them in the United States, but  
19 they may very well be used elsewhere.  
20 Q You understand that the trademark at issue here is  
21 only for use within the United States, correct?  
22 A Yes, but you did not ask if they were only in the  
23 United States.  
24 Q I understand, but you understand that here we're  
25 talking about the U.S. market, correct?  
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1 A Yes.  
2 Q So in the U.S. market you're not aware of any  
3 horizontal shaft engines that don't use an incline  
4 cylinder?  
5 A I am not aware of them, but that doesn't mean that  
6 they aren't there. There are older engines that  
7 may be in equipment that are still in operation.  
8 Q Okay. So restricting yourself to horizontal shaft  
9 engines with incline cylinders, are you aware of  
10 any applications in which having the engine be  
11 taller than the comparable horsepower GX engine  
12 would cause it not to fit?  
13 A I am not aware of any applications because I  
14 believe that they've designed them to fit into the  
15 same component profile. So an engine might have a  
16 taller fuel tank that if it was to be designed  
17 would no longer fit into that application, but I'm  
18 not aware of any specific ones. So I can see the  
19 potential for it happening, but I'm not aware of  
20 any specific ones.  
21 Q Okay. So sitting here today you're not aware of  
22 any specific applications where having a  
23 horizontal shaft incline cylinder engine with a  
24 fuel tank or an air cleaner cover that is taller  
25 than the GX engine would prevent it from being  
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1 used in that application, correct?  
2 MS. GIFTOS: Object to form.  
3 THE WITNESS: I am not aware of it.  
4 MS. FERRERA: Why don't we go ahead and  
5 break for lunch now?  
6 (Recess taken.)  
7 BY MS. FERRERA:  
8 Q Professor Reisel, if you could take out the photos  
9 of the engines that we marked earlier, Exhibits  
10 199 to 211, I believe it was, and in particular if  
11 you could look at Exhibit 199.  
12 I think you agreed that this -- the  
13 engine shown in Exhibit 199 is essentially cubic  
14 in shape using your definition, correct?  
15 A Essentially. I think this was one that I was  
16 saying was protruding a bit out the left and so  
17 it's starting to push the envelope of that  
18 definition, but yes.  
19 Q But it does -- it may be on the cusp but it fits  
20 within the definition of a cubic design, correct?  
21 A Yes.  
22 Q And you would agree that on this -- on the engine  
23 in Exhibit 199 the right side of the engine is not  
24 a -- is not a flat surface?  
25 MR. HERRING: Object to form.  
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1 THE WITNESS: The top part is a flat  
2 surface and then it appears to be indented a bit  
3 and then it's a flat surface, so it's not a single  
4 flat surface.  
5 BY MS. FERRERA:  
6 Q And when you talked about an approximately flat  
7 surface as part of the understanding of a cubic  
8 design, you were talking about a single flat  
9 surface, correct?  
10 A Yes.  
11 Q And you would agree that the left side of this  
12 engine is also not a flat surface?  
13 A Yes.  
14 Q Do you consider the individual components on this  
15 engine to have a boxy appearance?  
16 A From what I can see, yes.  
17 Q Even show the fuel tank on this engine is more  
18 rectangular in appearance rather than square?  
19 A Yes. I believe that it -- before I was saying it  
20 would be rectangular in appearance.  
21 Q And do you consider the air cleaner cover on this  
22 engine to have a boxy appearance?  
23 A It would appear to be two boxy components, but  
24 yes.  
25 Q Why do you say that?

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1 A Well, you've got the left side that's a little  
2 bit -- you've got the left side, you've also got  
3 the carburetor here that it's not a rectangle, it  
4 looks to be like one rectangle next to another  
5 rectangle, but yes, I would still say a boxy  
6 appearance.  
7 Q But you would agree that the air cleaner cover on  
8 this engine looks very different than the air  
9 cleaner cover on the GX engine?  
10 A Yes.  
11 Q You would agree that the overall appearance of the  
12 engine in Exhibit 199 is different from the  
13 appearance of the GX engine as shown in the  
14 trademark application?  
15 A Yes.  
16 MS. GIFTOS: Object to the form.  
17 THE WITNESS: Yes.  
18 BY MS. FERRERA:  
19 Q Are you aware of any performance differences  
20 between the engine shown in Exhibit 199 and the GX  
21 engine?  
22 A I am not aware of the performance differences.  
23 Q Are you aware of any differences in the relative  
24 costs to manufacture the engine in Exhibit 199 and  
25 the GX engine?

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1 A I am not aware of any.  
2 Q Are you aware of any evidence that the differences  
3 in the external appearance of the engine in  
4 Exhibit 199 reduce its competitiveness in the  
5 marketplace relative to the GX engine?  
6 A The engine in Exhibit 199 would be noncompetitive  
7 for an application where the OEM wished to have a  
8 high-mount air cleaner.  
9 Q Other than that, is there any reason why you think  
10 the engine in Exhibit 199 would be at a  
11 competitive disadvantage relative to the GX  
12 engine?  
13 A That's a significant difference seeing that it's  
14 targeted for a different market.  
15 Q Are there applications that you're aware of in  
16 which either a high-mount or top-mount air cleaner  
17 cover or a panel air cleaner cover such as this  
18 would be suitable?  
19 MR. HERRING: Object to form.  
20 THE WITNESS: There are undoubtedly  
21 applications that have been requested by  
22 particular OEMs for this.  
23 BY MS. FERRERA:  
24 Q Sorry, I guess I'm not sure that that was exactly  
25 my question. My question was: Are you aware of

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1 applications in which either an engine with a  
2 top-mounted air cleaner cover or an engine with a  
3 panel air cleaner such as is in Exhibit 199 would  
4 be -- would work?  
5 A There are likely applications that both would be  
6 acceptable designs to meet an eventual need or  
7 demand for providing for a particular application,  
8 which may or may not be the desire of the  
9 particular manufacturer, that application to have  
10 one design or the other.  
11 Q Are there some applications where a panel air  
12 cleaner would be preferable to a top-mounted air  
13 cleaner?  
14 A My understanding is that there are such  
15 applications.  
16 Q So it's not the case that in every application a  
17 top-mounted air cleaner cover is the preferred  
18 design?  
19 A That is my understanding.  
20 Q Would you look at Exhibit 197? With respect to  
21 Exhibit 197, I think you agreed that this -- the  
22 engine depicted in Exhibit 197 meets your  
23 definition of a cubic design?  
24 A Yes.  
25 Q Would you agree that this engine has a more

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1 rectangular appearance overall than the GX engine?  
2 MR. HERRING: Object to form.  
3 THE WITNESS: It appears to be slightly  
4 elongated in the horizontal direction, but not  
5 significantly.  
6 BY MS. FERRERA:  
7 Q Do you consider the individual components on the  
8 engine in Exhibit 197 to have a boxy shape?  
9 A From a front, two-dimensional view, yes.  
10 Q You would agree that the fuel tank on the engine  
11 in Exhibit -- Exhibit 197 has a different  
12 appearance than the fuel tank on the GX engine?  
13 A Yes. There are a couple of differences with it.  
14 Q The seam is at a different angle than on the GX  
15 engine?  
16 A Yes.  
17 Q And the shape of the top portion and the bottom  
18 portion is slightly different than on the GX  
19 engine?  
20 MR. HERRING: Object to the form.  
21 THE WITNESS: By "portion" are you  
22 referring to the entire section underneath the  
23 seam or just the bottom?  
24 BY MS. FERRERA:  
25 Q Sure. So would you agree that the shape of the --  
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1 strike that.  
2 This is a metal fuel tank, correct?  
3 A I can't tell from the picture.  
4 Q Okay. Is it true that in general metal fuel tanks  
5 require a seam?  
6 A Yes.  
7 Q Because they're usually made in two portions and  
8 attached via the seam --  
9 A Yes.  
10 Q But based on the fact that this engine has a seam,  
11 would you expect that it's a metal fuel tank?  
12 A Plastic fuel tanks can also have seams.  
13 Q So you don't know one way or the other whether the  
14 engine on Exhibit 197 has a metal or a plastic  
15 fuel tank?  
16 A I cannot tell from this picture.  
17 Q And you don't know from what you've seen about  
18 this -- the Kohler Command Pro engine?  
19 A Correct, I don't recall one way or the other.  
20 Q Okay. So in any event, you would agree that the  
21 fuel tank in Exhibit 197 is made up of two  
22 separate pieces?  
23 A At least two, yes.  
24 Q And there's a -- a top half and a bottom half  
25 joined at a seam?  
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1 A A top portion and a bottom portion joined at a  
2 seam, yes.  
3 Q And would you agree that the top portion on this  
4 engine looks different than the top portion on the  
5 GX engine fuel tank?  
6 MR. HERRING: Which GX engine are you  
7 talking about?  
8 MS. FERRERA: The one shown in the  
9 trademark application.  
10 MR. HERRING: Okay.  
11 THE WITNESS: Yes.  
12 BY MS. FERRERA:  
13 Q And would you agree that the bottom portion of the  
14 fuel tank on Exhibit 197 looks different than the  
15 GX engine as shown in the trademark application?  
16 A Yes.  
17 Q And you would agree that the air cleaner cover on  
18 this engine looks -- has a different appearance  
19 than the air cleaner cover on the GX engine?  
20 A Yes.  
21 Q And you would agree that the carburetor cover on  
22 this engine has a different appearance than the  
23 carburetor cover on the GX engine?  
24 A Yes.  
25 Q And would you agree that the fan cover on this  
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1 engine has a different appearance than the fan  
2 cover on the GX engine?  
3 A Not significantly.  
4 Q Well, would you agree that on this engine the  
5 lower left side is curved rather than straight?  
6 MS. GIFTOS: On which engine are we  
7 talking about here?  
8 MS. FERRERA: Sure, on Exhibit 197.  
9 THE WITNESS: From this picture, I would  
10 say that while there might be a slight curve to  
11 it, it's giving the appearance of being straight.  
12 BY MS. FERRERA:  
13 Q It's at a different angle than the lower left edge  
14 of the fan cover on the GX engine, correct?  
15 A It has the appearance of having a different angle,  
16 but without measuring it, I cannot be certain of  
17 that.  
18 Q And if you look at the bottom edge of the fan  
19 cover on Exhibit 197, would you agree that that's  
20 rounded?  
21 MR. HERRING: Object to form.  
22 THE WITNESS: I would say that the very  
23 bottom is flattened out and the -- there is -- but  
24 not for a particularly long distance.  
25 BY MS. FERRERA:  
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1 Q Would you agree that the bottom portion on the --  
2 of the fan cover on the GX engine is more of a  
3 straight line than the bottom portion on the  
4 engine in Exhibit 197?  
5 A If we're referring to the picture on the trademark  
6 application, it would appear that the bottom  
7 portion on the trademark application is longer as  
8 a straight section.  
9 Q Okay. Are you aware of any differences in  
10 performance between the engine in Exhibit 197 and  
11 the engine -- the Honda GX engine?  
12 MS. GIFTOS: Object to form.  
13 THE WITNESS: In what performance  
14 characteristics?  
15 BY MS. FERRERA:  
16 Q In any characteristics.  
17 A I am not aware of any specific performance  
18 differences between the engines, other than  
19 Kohler's reputation of generally being a  
20 higher-end engine.  
21 Q So it's your belief or your understanding that the  
22 Kohler engines are higher-performing engines than  
23 the GX engines?  
24 A Either --  
25 MR. HERRING: Object to form.  
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1 THE WITNESS: Higher performing either  
2 in terms of longevity, durability or power per  
3 displacement volume of the engine.  
4 BY MS. FERRERA:  
5 Q And what's your basis for that belief?  
6 A That is the reputation of people I've encountered  
7 in the engine industry and in the combustion --  
8 the combustion community.  
9 Q Have you actually seen any data to that effect?  
10 A No.  
11 Q And do you know whether that reputation applies in  
12 particular to the engine shown in Exhibit 197?  
13 A To that particular engine as opposed to the entire  
14 brand? No.  
15 Q So sitting here today you're not aware of any  
16 performance differences between the engine shown  
17 in Exhibit 197 and the GX engine, correct?  
18 MR. HERRING: Object to form.  
19 THE WITNESS: I cannot concretely point  
20 to any specific, other than its reputation.  
21 BY MS. FERRERA:  
22 Q Are you aware of any differences in the cost to  
23 manufacture the engine shown in Exhibit 197 and  
24 the comparable horsepower GX engine?  
25 A I am not aware of specific costs, although I do  
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1 see areas that should be more expensive to  
2 manufacture.  
3 Q Which areas?  
4 A The slanted connect -- joint on the fuel cover  
5 should require additional effort to manufacture  
6 and make those parts up as opposed to putting two  
7 horizontal surfaces together, you have gravity  
8 that's going to be tending to want to pull down on  
9 the top portion, so you need to stabilize that  
10 before you join the two pieces together, and then  
11 the air cleaner design, being a more cyclonic air  
12 cleaner design for the Kohler engine, should be a  
13 somewhat more expensive part to make rather than  
14 just the boxy form with the air filter used in the  
15 other engine -- in the GX engine.  
16 Q Is it your belief that the air filter on the  
17 engine shown in Exhibit 197 is a different type of  
18 air filter than on the GX engine?  
19 A I believe it is different.  
20 Q It's a cyclone-type air filter?  
21 A That is my understanding.  
22 Q Are you aware of any other -- or do you believe  
23 there would be any other differences in the cost  
24 to manufacture the engine shown in Exhibit 197  
25 versus the GX engine?  
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1 A Well, the area underneath the carburetor cover or  
2 the extension of the carburetor cover, however you  
3 want to look at that, is extra material that  
4 should cost a small amount of additional money,  
5 but other than that, it should not have a dramatic  
6 difference in cost.  
7 Q Any other differences that you would expect in  
8 terms of cost?  
9 A No.  
10 Q Do you have any reason to believe that the engine  
11 shown in Exhibit 197 is at a competitive  
12 disadvantage to the GX engine as a result of its  
13 external appearance?  
14 MR. HERRING: Object to form.  
15 THE WITNESS: As a result of its  
16 external appearance, no.  
17 BY MS. FERRERA:  
18 Q Do you have any reason to believe it's at a  
19 competitive disadvantage to the GX engine for any  
20 reason?  
21 MR. HERRING: Object to form.  
22 THE WITNESS: The points that I  
23 mentioned regarding the likely additional  
24 manufacturing costs could put it out of the range  
25 of some very inexpensive applications where you're  
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1 looking at having as cheap of an engine as  
2 possible in place.  
3 BY MS. FERRERA:  
4 Q Can you think of any particular applications?  
5 A For any particular applications, no. I would just  
6 be looking at OEMs who are looking at mass  
7 producing a lower-priced product and not being as  
8 concerned about durability.  
9 Q Okay. Could you look at Exhibit 198? You agree  
10 that this engine has a cubic design?  
11 A Yes.  
12 Q Do you agree that the overall appearance of this  
13 engine is different from the Honda GX engine as  
14 shown in the trademark application?  
15 MS. GIFTOS: Object to form.  
16 MR. HERRING: Object to form.  
17 THE WITNESS: The primary difference  
18 that I see would be the extension on the  
19 carburetor cover of the engine in 198.  
20 BY MS. FERRERA:  
21 Q Do you agree that the shape of the fuel tank on  
22 the engine shown in Exhibit 198 differs somewhat  
23 in the shape of the fuel tank in Honda's trademark  
24 application?  
25 A I would say that differs minimally.

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1 Q Do you agree that the top portion of the fuel tank  
2 has more vertical sides than on the GX engine fuel  
3 tank?  
4 MS. GIFTOS: Object to form.  
5 THE WITNESS: It has an indentation  
6 around the fuel tank opening that would be there  
7 to potentially catch any overflow, but other than  
8 that, I don't see much in the way of any vertical  
9 difference at the top.  
10 BY MS. FERRERA:  
11 Q So you would agree that the top surface of the  
12 fuel tank is not flat as in the GX engine fuel  
13 tank?  
14 MR. HERRING: Object to form.  
15 THE WITNESS: Looking at the trademark  
16 application, the GX engine is not completely flat  
17 at the top. It's rounded slightly.  
18 BY MS. FERRERA:  
19 Q And --  
20 A The engine in Exhibit 198 is closer to being flat.  
21 Q Okay. So the Honda GX engine fuel tank does not  
22 have a completely flat surface, is your -- is your  
23 opinion?  
24 A Correct. That fuel tank is such that it would  
25 promote spillage of any overflow of the fuel onto

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1 parts of the engine.  
2 Q So the appearance of the fuel tank in the GX  
3 engine is actually less preferable, is your  
4 opinion?  
5 MS. GIFTOS: Object to form.  
6 BY MS. FERRERA:  
7 Q From a performance standpoint?  
8 A I would say that it is less safe.  
9 Q Which makes it less preferable?  
10 MR. HERRING: Object to form.  
11 THE WITNESS: It depends on what  
12 somebody wants from their engine.  
13 BY MS. FERRERA:  
14 Q Well, most people want a safe engine?  
15 A If they're trying to create a fire to burn down  
16 their building, then they probably would want it  
17 to be less safe.  
18 Q In the case of most people who aren't trying to  
19 commit arson, would you agree that a safer  
20 engine -- a safer fuel tank is a preferred design?  
21 A Yes.  
22 Q Okay.  
23 A And I would say that my understanding with the  
24 Honda GX engine is they have modified their engine  
25 tank design to more accommodate those safety

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1 features.  
2 Q The fuel tank that's shown in the trademark  
3 application, Exhibit 3, you would agree, at least  
4 in your opinion, is a less preferable design than  
5 the fuel tank shown in Exhibit 198, correct?  
6 A From a safety --  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: From a safety standpoint.  
9 BY MS. FERRERA:  
10 Q Would you agree that the beveling on the two top  
11 edges on the fuel tank in Exhibit 198 is more  
12 pronounced than the beveling on the fuel tank in  
13 Exhibit 3?  
14 A No, I would say they're very similar.  
15 Q You don't think that the beveling in Exhibit 198,  
16 the length of the beveling, is longer than the  
17 beveling in Exhibit 3 on the fuel tank?  
18 A You would have to be speaking in terms of relative  
19 links because, again, when you've got different  
20 power engines they're going to be different sizes,  
21 and so a longer engine is going to have a longer  
22 bevel associated with that, but I would say that  
23 essentially they are the same length, relatively  
24 speaking, to the engine size.  
25 Q And then if you look at the bottom portion of the

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1 fuel tank in Exhibit 198, the bottom line, would  
2 you agree that that's not a straight line?  
3 MR. HERRING: Object to form. I don't  
4 think you can make out the --  
5 THE WITNESS: I can't see the bottom of  
6 the tank.  
7 BY MS. FERRERA:  
8 Q So you can't -- you can't see it in this picture,  
9 is that your testimony?  
10 A Yes.  
11 Q So you don't know whether the bottom of the fuel  
12 tank in Exhibit 198 is a straight line as in the  
13 fuel tank in Exhibit 3?  
14 A I cannot tell from this picture.  
15 Q Do you consider the components in this engine to  
16 have a boxy appearance, the engine in Exhibit 198?  
17 A Yes.  
18 Q Do you agree that the carburetor cover in  
19 Exhibit 198 is not rectangular?  
20 A Yes.  
21 Q That it's still a boxy shape, in your opinion?  
22 A It's not meeting at right angles, at least all the  
23 angles are not right angle, so -- but it still has  
24 a boxy appearance. It appears to be more of an  
25 angled box.

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1 Q So a boxy appearance, in your view, doesn't mean  
2 it has to be rectangular in shape?  
3 A It does not have to be completely rectangular in  
4 shape. As I just said, this appears to be an  
5 angled box rectangular shape next to a triangular  
6 shape.  
7 Q And if you look at the fan cover, would you agree  
8 that on the top left side, that's not a vertical  
9 line as in the GX engine shown in Exhibit 3?  
10 MS. GIFTOS: Object to form.  
11 THE WITNESS: It's a bit difficult to  
12 tell from this picture. It has an appearance of  
13 being rounded, but depending on some of the  
14 details of this engine that aren't particularly  
15 clear in the picture, it may be straight.  
16 BY MS. FERRERA:  
17 Q Are you aware of any evidence that the -- strike  
18 that.  
19 Are you aware of any differences in  
20 performance as between the engine shown in  
21 Exhibit 198 and the comparable power GX engine?  
22 A Other than what we discussed for the other Kohler  
23 engine of anecdotal evidence, I do not have any  
24 specific evidence of a difference in performance.  
25 Q And have you seen any data as to any differences

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1 in the manufacturing cost for the engine in  
2 Exhibit 198 versus the GX engine?  
3 A I have not seen such data.  
4 Q Are you aware of any differences in the  
5 manufacturing cost for the exhibit -- engine in  
6 Exhibit 198 versus the GX engine?  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: I am not aware of such --  
9 of any differences and would not expect a dramatic  
10 difference in the cost.  
11 BY MS. FERRERA:  
12 Q Are you aware of any reason why the engine shown  
13 in Exhibit 198 would be at a competitive  
14 disadvantage to the comparable power GX engine?  
15 A No.  
16 Q Would you turn to Exhibit 200? And I think you  
17 agreed earlier that you would consider the engine  
18 shown in Exhibit 200 to have a cubic design?  
19 A Yes.  
20 Q Do you consider the individual components of the  
21 engine in Exhibit 200 to have a boxy appearance?  
22 A Yes.  
23 Q And you would agree, would you not, that the top  
24 surface of the engine in Exhibit 200 is not an  
25 approximately flat surface?

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1 A It is not -- it is not flat across the entire  
2 surface, no.  
3 Q The fuel tank has ridges and an indentation?  
4 A Yes, and it is raised at a slightly higher height  
5 than the muffler.  
6 Q Okay. And if you look at the right side of the  
7 engine, you would agree -- sorry, the left side of  
8 the engine, you would agree that that's also not  
9 an approximately flat surface?  
10 MS. GIFTOS: Are we again talking about  
11 200?  
12 MS. FERRERA: Yes, sorry.  
13 THE WITNESS: Again, it appears that the  
14 muffler cover is sticking out slightly from that.  
15 Although depending on the overall size of this  
16 engine, that may be a minimal difference. I don't  
17 know how much the picture's been blown up or  
18 shrunk.  
19 BY MS. FERRERA:  
20 Q Would you agree that the fuel tank on the engine  
21 in Exhibit 200 has a different appearance than the  
22 fuel tank on the GX engine as shown in Exhibit 3?  
23 A Yes.  
24 Q And would you agree that the air cleaner cover on  
25 the engine in Exhibit 200 has a different

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1 appearance than the air cleaner core on the GX  
2 engine as shown in Exhibit 3?  
3 A It's a different air cleaner cover location; of  
4 course it's got a different appearance.  
5 Q This is a panel air cleaner cover, is that right?  
6 A Yes.  
7 Q Would you agree that the fan cover on the engine  
8 in Exhibit 200 has a different appearance than the  
9 fan cover on the GX engine in Exhibit 3?  
10 A There are some differences with it, yes.  
11 Q The top edge is not a straight line?  
12 A Yes.  
13 Q The left edge is not a straight line?  
14 A With the --  
15 MS. GIFTOS: Object to form.  
16 THE WITNESS: With the overlap of the  
17 panel air cleaner in front of the edge of that fan  
18 cover, I can't tell if it's a straight line or  
19 not.  
20 BY MS. FERRERA:  
21 Q Sorry, if I can ask you to go back for a second to  
22 Exhibit 197, and if you could look at the controls  
23 on the engine in Exhibit 197, would you agree that  
24 the panel in which those controls are located has  
25 a different appearance than the panel in the GX  
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1 engine --  
2 MR. HERRING: Object to form.  
3 BY MS. FERRERA:  
4 Q -- as shown on Exhibit 3?  
5 A With the panel -- with the panel control -- the  
6 control panel on Exhibit 3 being extremely small,  
7 it does look like they are slightly, somewhat  
8 different.  
9 Q And if you look at Exhibit 200 -- getting myself  
10 confused here. Let's look at Exhibit 198 first.  
11 Would you agree that the -- well, first  
12 of all, can you see where the controls are located  
13 on Exhibit 198?  
14 A Not very well on this picture.  
15 Q Do they appear to have a different -- a different  
16 location than the controls on Exhibit 3?  
17 A Yes, probably. Again, with not being able to see  
18 exactly where they are, we can't be certain of  
19 that, but they appear to be in a different spot.  
20 Q And if we look at Exhibit 199, can you see the  
21 controls on that engine?  
22 A Yes.  
23 Q And do you agree that those are in a different  
24 location than the controls on Exhibit 3?  
25 A Yes.  
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1 Q And if you look at Exhibit 200, would you agree  
2 that the controls in that engine are in a  
3 different location than on Exhibit 3?  
4 A Yes. They have to be due to the location of the  
5 air cleaner.  
6 Q Are you aware of any difference in performance  
7 between the engine in Exhibit 200 and the  
8 comparable power GX engine?  
9 A I am not aware of any differences.  
10 Q Are you aware of any differences in the cost to  
11 manufacture the engine shown in Exhibit 200 and  
12 the comparable GX engine?  
13 A I am not specifically aware. I would expect that  
14 the Exhibit 200 engine's fuel tank would be a bit  
15 more expensive because of the top shape being  
16 different, the top portion of it being a different  
17 shape with the indentation, and I would expect  
18 there to be differences in the cost of the flat  
19 panel versus high-mount panel air cleaner cover,  
20 air cleaner and air cleaner cover.  
21 Q Can you tell whether the fuel tank on the engine  
22 in Exhibit 200 is a plastic fuel tank versus a  
23 metal one?  
24 A I cannot tell from the picture.  
25 Q If it were a plastic one, would you expect that it  
[Page 160]

1 would be less expensive to manufacture than the  
2 fuel tank in Exhibit 3?  
3 MR. HERRING: Object to form.  
4 THE WITNESS: Well, you would have to --  
5 first have to define a size for the fuel tank in  
6 Exhibit 3, but I would think actually the  
7 manufacturing cost may be a little bit more  
8 expensive for the -- the actual manufacturing  
9 might be a little bit more expensive for a tank of  
10 a plastic nature in Exhibit 200, but the material  
11 cost would be less than the metal.  
12 BY MS. FERRERA:  
13 Q So on balance you don't know how the cost to  
14 manufacture the fuel tank in Exhibit 200 would  
15 compare with the cost to manufacture a tank for a  
16 comparable power GX engine?  
17 MR. HERRING: Object to form.  
18 THE WITNESS: Are we including the  
19 material cost in that?  
20 BY MS. FERRERA:  
21 Q Yeah. Both the material cost and the  
22 manufacturing cost?  
23 A The material cost on the plastic would likely make  
24 it a little bit less expensive, if indeed that's  
25 plastic.  
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<p>1 Q Right. Other than the fact that Exhibit 200 has a 2 panel air cleaner cover, are you aware of any 3 reason why the engine shown in Exhibit 200 would 4 be at a competitive disadvantage to the comparable 5 power GX engine? 6 MS. GIFTOS: Object to form. 7 THE WITNESS: It -- the location of the 8 controls being further away from the carburetor 9 lend them -- lend the potential for more potential 10 internal breaking of the controls, so if somebody 11 were even thinking about that when they were 12 buying the engine, that might put it at a 13 disadvantage. 14 BY MS. FERRERA: 15 Q In your discussions with any of the Briggs &amp; 16 Stratton engineers did they express any concern 17 about the location of the controls on the engine 18 shown in Exhibit 200 being less desirable? 19 MS. GIFTOS: Object to form. 20 THE WITNESS: They commented for their 21 engines in general that they would prefer to have 22 the controls as close as possible to the 23 carburetor. They did not specifically then point 24 to this engine and say, we don't like them over 25 here.</p> <p style="text-align: right;">[Page 162]</p>	<p>1 to breaking because of their location? 2 A Direct evidence and proof of this happening, I do 3 not, but the engine -- but the controls have to be 4 longer and a more complicated mechanism, making 5 them more prone to breakage just from general 6 engineering design principles. 7 Q You haven't seen any data indicating that in fact 8 that is the case, correct? 9 A Not for this particular engine. 10 Q Could you look at Exhibit 201? And you consider 11 the engine shown in Exhibit 201 to have cubic 12 design, correct? 13 A Yes. 14 Q And you consider the individual components on this 15 engine to be boxy in appearance? 16 A Yes. 17 Q Would you agree that the fuel tank on the engine 18 in Exhibit 201 differs in appearance from the fuel 19 tank in Exhibit 3? 20 A Considering that this is an angled shot of the 21 engine, it does appear that there is still the 22 indentation on the top of the fuel tank, making it 23 different in appearance. 24 Q And the bottom edge of the fuel tank in 25 Exhibit 201 is not a straight line either,</p> <p style="text-align: right;">[Page 164]</p>
<p>1 BY MS. FERRERA: 2 Q Are you aware of any evidence that consumers in 3 fact prefer the location of the GX engine controls 4 to the location of the controls on the engine in 5 Exhibit 200? 6 A I do not have evidence of general consumer 7 preference on the matter. 8 Q So other than the fact that this engine has a 9 panel air cleaner, do you have any -- any evidence 10 that the engine shown in Exhibit 200 is at a 11 competitive disadvantage to the engine shown in 12 Exhibit 3 for a comparable power? 13 A I would -- 14 MS. GIFTOS: Object to form. 15 THE WITNESS: I would maintain that the 16 location of the control levers, if people had an 17 engine and the control levers broke more readily 18 than people who had control levers at the 19 carburetor, that they would be less inclined to 20 buy the engine in the future, but going into the 21 purchase of the engine, I would not expect them to 22 necessarily have that thought in mind. 23 BY MS. FERRERA: 24 Q Are you aware of any evidence that the controls on 25 the engine in Exhibit 200 actually are more prone</p> <p style="text-align: right;">[Page 163]</p>	<p>1 correct? 2 A That appears to not be a straight line. 3 Q But you still consider that fuel tank to be boxy 4 in appearance? 5 A Yes, because the bottom of it blends in with the 6 rest of the engine, which is going to reduce the 7 obviousness of it not being a straight line. 8 Q Would you agree that the air cleaner cover on the 9 engine in Exhibit 201 differs in appearance from 10 the air cleaner cover in Exhibit 3? 11 A Yes. 12 Q And this is a panel air cleaner cover, correct? 13 A Yes. 14 Q Would you agree that the location of the controls 15 on the engine in Exhibit 201 differs from the 16 location of the controls on Exhibit 3? 17 A I would say that that was a marginal difference. 18 There is the same approximate position on the 19 engine. 20 Q There's no recessed portion in the carburetor 21 cover where the controls are located in 22 Exhibit 201, correct? 23 A I cannot tell that from this picture. 24 Q Is there a carburetor cover in Exhibit 201? 25 A It -- it would appear that the air cleaner cover</p> <p style="text-align: right;">[Page 165]</p>

[42] (Pages 162 to 165)

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1 is acting as the carburetor cover.  
2 **Q** So there would not be a separate carburetor cover  
3 in Exhibit 201?  
4 **A** There would not appear to be from this picture.  
5 **Q** And there doesn't appear to be a recessed portion  
6 in the air cleaner cover where the controls are  
7 housed, correct?  
8 **A** I can't tell from this picture.  
9 **Q** Would you look at the fan cover in Exhibit 201 and  
10 would you agree that that differs in appearance  
11 from the fan cover in Exhibit 3?  
12 **A** Yes.  
13 **Q** The top surface is not a straight line?  
14 **A** Yes.  
15 **Q** The left edge is not a straight line?  
16 **A** Yes.  
17 **Q** The bottom left edge is more rounded in appearance  
18 than in Exhibit 3?  
19 **A** I would not agree with that from this picture.  
20 **Q** Can you tell one way or the other from this  
21 picture?  
22 **A** I cannot tell. It looks to be essentially --  
23 both -- I mean, it looks to be essentially  
24 straight except at the very bottom corner, but  
25 Exhibit 3 appears to be slightly rounded at the  
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1 very bottom corner as well, left corner.  
2 **Q** Can you tell from Exhibit 201 whether the right  
3 side of the fan cover is completely circular?  
4 **MR. HERRING:** Object to form.  
5 **THE WITNESS:** I can't tell from the  
6 picture. That part is blocked.  
7 **BY MS. FERRERA:**  
8 **Q** Does it appear in Exhibit 201 that on the right  
9 side the fan cover has little portions that  
10 protrude out?  
11 **MS. GIFTOS:** Object to form.  
12 **THE WITNESS:** There is something that  
13 protrudes out, but I cannot be certain that that's  
14 on the fan cover.  
15 **BY MS. FERRERA:**  
16 **Q** Are you aware of any evidence that the engine  
17 shown in Exhibit 201 differs in terms of its  
18 performance from the comparable power GX engine?  
19 **A** I am not aware of any.  
20 **Q** Are you aware of any evidence that the engine  
21 shown in Exhibit 201 differs in terms of its  
22 manufacturing cost from the comparable horsepower  
23 GX engine?  
24 **A** Other than what we've talked about with the  
25 difference in air cover -- air fill -- the air  
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1 filter design, air cleaner design, I would expect  
2 that it's possibly a bit more expensive to  
3 manufacture the fuel tank, but not dramatically  
4 so.  
5 **Q** You don't know that for sure, correct?  
6 **A** I don't know that. I'm speculating on that.  
7 **Q** So with the exception of the fact that this -- the  
8 engine in Exhibit 201 has a panel air cleaner  
9 cover, do you have any reason to believe that that  
10 engine is at a competitive disadvantage to the  
11 comparable power GX engine?  
12 **MS. GIFTOS:** Object to form.  
13 **THE WITNESS:** I do not have evidence if  
14 it's at a competitive disadvantage, although from  
15 this picture and looking at the location of the  
16 starter handle, there would appear to me to be  
17 interference between the air panel -- the panel  
18 air filter and where that is supposed to be pulled  
19 to be starting the engine, which would potentially  
20 lead to a competitive disadvantage.  
21 **BY MS. FERRERA:**  
22 **Q** You see that on the recoil cover in Exhibit 201  
23 there are screws?  
24 **A** Yes.  
25 **Q** And do you understand that that recoil cover can  
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1 be turned so that the starter handle can be pulled  
2 out at a different angle?  
3 **A** It could be turned -- it could be turned, yes, but  
4 the way that this is shown in this picture, it  
5 isn't.  
6 **Q** But this isn't -- the recoil cover is not fixed in  
7 either this engine or in Exhibit 3, correct?  
8 **MS. GIFTOS:** Object to form.  
9 **THE WITNESS:** The -- I cannot tell if  
10 it's fixed in Exhibit 3 or not.  
11 **BY MS. FERRERA:**  
12 **Q** Okay. But at least in Exhibit 201 you know it's  
13 not fixed, right?  
14 **A** It would appear to be able to be moved.  
15 **Q** Okay. Would you look at the engine in  
16 Exhibit 202? You agree that this is a cubic  
17 design?  
18 **A** Yes.  
19 **Q** Would you consider the appearance of the  
20 components in Exhibit 202 to be boxy?  
21 **A** Yes.  
22 **Q** Would you agree that the fuel tank in Exhibit 202  
23 differs from the -- in appearance from the fuel  
24 tank in Exhibit 3?  
25 **A** There appears to be a slight difference towards  
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1 the bottom right.  
2 **Q** Right, on the fuel tank in Exhibit 202 --  
3 **A** In exhibit -- yeah.  
4 **Q** The fuel tank in Exhibit 202, the bottom line is  
5 not a straight line, correct?  
6 **A** Correct.  
7 **Q** Would you agree that the air cleaner cover in  
8 Exhibit 202 differs in appearance from the air  
9 cleaner cover in Exhibit 3?  
10 **A** Inasmuch as the top part of it appears to be more  
11 rounded rather than a straight line, yes.  
12 **Q** And it slopes down toward the left, correct?  
13 **A** Correct.  
14 **Q** Would you agree that the carburetor cover in  
15 Exhibit 202 differs in appearance from the  
16 carburetor cover in Exhibit 3?  
17 **A** Inasmuch as it's lacking the straight lines on the  
18 Exhibit 3 carburetor cover, yes.  
19 **Q** And would you agree that the area where the  
20 controls are located in Exhibit 202 differs in  
21 appearance from Exhibit 3?  
22 **A** They appear to be arranged differently.  
23 **Q** And in Exhibit 202 the carburetor cover has a  
24 cutout where the controls -- a control is located,  
25 correct?  

**[Page 170]**

1 **A** Yes.  
2 **Q** It's not just a recessed portion of the carburetor  
3 cover?  
4 **A** Yes.  
5 **Q** Would you agree that the fan cover in Exhibit 202  
6 differs in appearance from the fan cover in  
7 Exhibit 3?  
8 **A** Yes.  
9 **Q** On the top portion in Exhibit 202 the fan cover is  
10 rounded and then slopes up, correct?  
11 **A** Yes.  
12 **Q** And the left side of the fan cover in Exhibit 202  
13 is rounded rather than straight?  
14 **A** Yes, although part of that is lost by the piece  
15 behind it being straighter coming up and to the  
16 left.  
17 **Q** And on the left lower portion of the fan cover  
18 would you agree that that's more rounded rather  
19 than straight?  
20 **A** That is a more pronounced roundedness than we've  
21 seen in some of the other engines.  
22 **Q** Are you aware of any differences in performance as  
23 between the engine in Exhibit 202 and the  
24 comparable power GX engine?  
25 **A** No.  

**[Page 171]**

1 **Q** Are you aware of any differences in the cost to  
2 manufacture the engine in Exhibit 202 versus the  
3 comparable power GX engine?  
4 **A** No.  
5 **Q** Can you think of any reason why the engine shown  
6 in Exhibit 202 would be at a competitive  
7 disadvantage compared to the comparable power GX  
8 engine?  
9 **A** Well, the -- with the more complicated shape and  
10 configuration of the carburetor cover, while I'm  
11 not aware of that being more expensive, it  
12 wouldn't surprise me to be more expensive, and so  
13 that might drive the price slightly higher, but  
14 not dramatically so.  
15 **Q** And you're not aware of any actual evidence that  
16 the carburetor cover in Exhibit 202 is more  
17 expensive to make than the carburetor cover in  
18 Exhibit 3?  
19 **A** Correct.  
20 **Q** Would you look at Exhibit 203, please? And I  
21 think this was one that you said was on the cusp,  
22 but would you consider this to be a cubic design?  
23 **A** A generally cubic design, from this angle from the  
24 picture it is a little bit hard to tell, but it  
25 is -- it has elements of a cubic design in it.  

**[Page 172]**

1 **Q** You would agree that -- well, I guess let me just  
2 ask: Do you consider the components on the engine  
3 in Exhibit 203 to be boxy in appearance?  
4 **A** The components' boxiness, yes, I would consider  
5 those to be primarily boxy.  
6 **Q** You would agree that on the left side of the  
7 engine in Exhibit 203, that's not an approximately  
8 flat surface?  
9 **A** Correct.  
10 **Q** And on the right side of the engine, would you  
11 agree that that also is not a flat surface?  
12 **MR. HERRING:** Object to form.  
13 **THE WITNESS:** From this angle of the  
14 picture, I would not agree that that is not a flat  
15 surface. That -- from my view -- stand -- view on  
16 this, it would be very close to being a flat  
17 surface, but the picture is really not very clear.  
18 **BY MS. FERRERA:**  
19 **Q** Okay. You would agree that the fuel tank on the  
20 engine in Exhibit 203 differs in appearance from  
21 the fuel tank in Exhibit 3?  
22 **A** Yes.  
23 **Q** And the air cleaner cover in Exhibit 203 differs  
24 in appearance from the air cleaner cover in  
25 Exhibit 3?  

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1 A It's a bit difficult from this picture to  
2 determine what exactly is the air cover cleaner,  
3 but yes, it is not -- it does not look like --  
4 nothing on this looks like -- in terms of the air  
5 cover area what Figure 3 looks like.  
6 Q And do you know whether the engine in Exhibit 203  
7 has a panel air cleaner cover versus a top-mounted  
8 air cleaner cover?  
9 A I do not know.  
10 Q Would you agree that the carburetor cover in  
11 Exhibit 203 differs in appearance from the  
12 carburetor cover in Exhibit 3?  
13 A That gets back to the issue of what is the air  
14 cover cleaner and what is the carburetor cover  
15 cleaner in here. It does not appear to be the  
16 same appearance as -- let's put it this way:  
17 Whatever is in Figure 3 does not appear to be  
18 here.  
19 Q And Exhibit 203?  
20 A Yes.  
21 Q Would you agree that the location of the controls  
22 in Exhibit 203 differs from Exhibit 3?  
23 A Well, from this picture it would appear that there  
24 is -- that there are at least a couple of the  
25 controls over towards the right side of the  
[Page 174]

1 engine, although this choke on the left side of  
2 the engine would be in approximately the same spot  
3 as the Figure 3 controls.  
4 Q Okay. Are you aware of any differences in  
5 performance between the engine in Exhibit 203 and  
6 the comparable power GX engine?  
7 A Specifically aware, no, but it would appear that  
8 the 203 engine has a larger fuel tank so I would  
9 expect it to last longer before needing refueling.  
10 Q So that's --  
11 A Or conversely being very inefficient from a fuel  
12 economy standpoint.  
13 Q So to the extent that it lasts longer before  
14 requiring refueling, that would make it -- give it  
15 a competitive advantage relative to the comparable  
16 power GX engine?  
17 MS. GIFTOS: Object to form.  
18 THE WITNESS: If that was a desirable  
19 attribute from the customer, yes, it would have a  
20 competitive advantage.  
21 BY MS. FERRERA:  
22 Q Would you consider the ability to run longer  
23 between fuel fill-ups to be a desirable feature on  
24 an engine?  
25 A It would depend on the application. There are  
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1 some applications that if you don't use the device  
2 frequently, you aren't going to want to have a  
3 larger fuel tank that's full of fuel that then is  
4 not getting used with the fuel then deteriorating  
5 over time, as to in that situation you would end  
6 up having to run the fuel out of the engine or  
7 drain the engine and it would be at a disadvantage  
8 if you had filled it up all the way, but for many  
9 applications that would be -- for a frequently  
10 used device it would be better to have it be  
11 fueled less frequently.  
12 Q Are you aware of any differences in the costs to  
13 manufacture the engine in Exhibit 203 versus the  
14 comparable power GX engine?  
15 A Considering the substantially different design of  
16 some of the components I will expect there to be  
17 differences in costs to manufacture.  
18 Q And which would you expect be more expensive to  
19 manufacture?  
20 A The larger fuel tank should be more expensive.  
21 Whatever the configuration of the carburetor and  
22 air filter is on engine 203 may be more expensive  
23 to manufacture. We can't even see the muffler  
24 here, so we don't know what kind of difference  
25 that might be.  
[Page 176]

1 Q But you haven't seen any data showing the  
2 difference -- any difference in cost to  
3 manufacture the engine in Exhibit 203 versus the  
4 comparable GX engine, correct?  
5 A I have not seen data, no.  
6 Q Would you look at Exhibit 204? I believe you  
7 testified earlier that you consider the engine  
8 shown in -- at least in the top picture to be a  
9 cubic design?  
10 A Yes. I consider the bottom picture also to be the  
11 cubic design, I just don't know if that's the  
12 bottom of the -- or I mean the back of the  
13 front -- of the top engine.  
14 Q So all of my questions are going to relate to the  
15 picture at the top, the front of the engine.  
16 Do you consider the components in --  
17 shown in Exhibit 204, in that picture, to be boxy  
18 in appearance?  
19 A Yes.  
20 Q And would you agree that the fuel tank in  
21 Exhibit 204 differs somewhat in appearance from  
22 the fuel tank in Exhibit 3?  
23 A There are some slight differences. It appears to  
24 be a little larger. The top appears to have a  
25 recessed area for fuel capture, but other than  
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<p>1 that, they appear to be basically the same. It 2 might be bolted on so the -- the two parts might 3 be mated together differently as well. 4 <b>Q</b> And the air cleaner cover in Exhibit 204 differs 5 in appearance from the air cleaner cover in 6 Exhibit 3? 7 <b>A</b> Yes, as that's a side mount -- or a side panel 8 cleaner. 9 <b>Q</b> The location of the controls in Exhibit 204 10 differs from Exhibit 3? 11 <b>A</b> Again, with this being a side panel air filter, 12 they've had to move the controls. 13 <b>Q</b> And the shape of the fan cover in Exhibit 204 14 differs from the fan cover in Exhibit 3? 15 <b>A</b> It's -- it's a little difficult to tell from the 16 picture, but yes, it appears to be somewhat 17 different. 18 <b>Q</b> Are you aware of any differences in performance, 19 again, between the engine shown in Exhibit 204 and 20 the comparable power GX engine? 21 <b>A</b> No, I'm not aware of any differences. 22 <b>Q</b> Are you aware of any differences in the cost to 23 manufacture the engine in Exhibit 204 versus the 24 comparable power GX engine? 25 <b>A</b> I am not aware of any such differences. [Page 178]</p>	<p>1 could be. I can't tell from this picture. 2 <b>Q</b> Okay. In any event, the bottom edge of the fuel 3 tank in Exhibit 205 does not look like the bottom 4 edge of the fuel tank in Exhibit 3? 5 <b>A</b> It is not a horizontal straight line. 6 <b>Q</b> Okay. The air cleaner cover in Exhibit 205 7 differs in appearance from the air cleaner cover 8 in Exhibit 3, correct? 9 <b>A</b> There are some differences, yes. 10 <b>Q</b> The top surface is more rounded in Exhibit 205? 11 <b>A</b> There is a curve to the top surface, yes. 12 <b>Q</b> And it slopes down toward the left in Exhibit 205, 13 correct? 14 <b>A</b> Yes. 15 <b>Q</b> And would you agree that the -- strike that. 16 The air cleaner cover in Exhibit 205 17 doesn't have a belt-like portion? 18 <b>A</b> I cannot see one in this picture, but if it were 19 to be a thin black line there might be a belt-like 20 portion. 21 <b>Q</b> Do you agree that the carburetor cover in 22 Exhibit 205 differs in appearance from the 23 carburetor cover in Exhibit 3? 24 <b>A</b> Yes. 25 <b>Q</b> And would you agree that the appearance of the [Page 180]</p>
<p>1 <b>Q</b> And again other than the fact that the engine in 2 Exhibit 204 has a panel air cleaner, are you aware 3 of any reasons why it would be at a competitive 4 disadvantage to the comparable power GX engine? 5 <b>A</b> No. 6 <b>Q</b> Would you look at Exhibit 205? And that also is a 7 cubic design? 8 <b>A</b> It appears to be an elongated, in the horizontal 9 direction, cubic-like design, but with the angle 10 of the picture it's a little bit difficult to say 11 for certain. 12 <b>Q</b> Do you consider the components on the engine in 13 Exhibit 205 to be boxy? 14 <b>A</b> Yes. 15 <b>Q</b> Would you agree that the fuel tank in Exhibit 205 16 differs in appearance from the fuel tank in 17 Exhibit 3? 18 <b>A</b> Yes. It's with the top indentation, and the 19 bottom right appears to be rounded. 20 <b>Q</b> The bottom edge is not a straight line as in 21 Exhibit 3? 22 <b>A</b> I'll stick with the appearing to be rounded. I 23 can't actually see what happens to the bottom 24 edge, so it might be an angled straight line as it 25 goes to the left. It would be strange, but it [Page 179]</p>	<p>1 controls or where the controls are located in 2 Exhibit 205 differs from Exhibit 3? 3 <b>A</b> Some of the controls are in the same location. It 4 looks one of the -- the speed control is over a 5 bit to the right. 6 <b>Q</b> And in Exhibit 205, in the carburetor cover 7 there's a -- a cutout for one of the controls, 8 correct? 9 <b>A</b> It would appear that way. 10 <b>Q</b> It's not recessed? 11 <b>A</b> I can't see what the back of it looks like, but -- 12 so it appears to be cutout but I can't be certain 13 that the -- there's not a surface in the back that 14 actually would make it a deep recessed area. 15 <b>Q</b> Would you agree that the fan cover in Exhibit 205 16 differs in appearance from the fan cover in 17 Exhibit 3? 18 <b>A</b> Yes. 19 <b>Q</b> Are you aware of any differences in performance 20 between the engine in Exhibit 205 and the 21 comparable power GX engine? 22 <b>A</b> No. 23 <b>Q</b> Are you aware of any differences in the cost to 24 manage -- start that one over. 25 Are you aware of any differences in of [Page 181]</p>

[46] (Pages 178 to 181)

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1 the cost to manufacture the engine in Exhibit 205  
2 and the comparable power GX engine?  
3 A Other than the likely additional cost for some of  
4 the more complex geometries or cutouts, I am not  
5 aware of anything that would likely make it more  
6 expensive.  
7 Q And you don't have any actual data showing that  
8 it -- the costs to manufacture any of the  
9 components in Exhibit 205 are greater than the  
10 costs to manufacture the components in Exhibit 3?  
11 A Correct. Such hard data is not easy to come by.  
12 Q Are you aware of any reason why the engine in  
13 Exhibit 205 would be at a competitive disadvantage  
14 to the engine in Exhibit 3?  
15 A If this engine is elongated in the horizontal  
16 direction and that was making it so that it would  
17 not fit into a particular envelope, it would --  
18 other than that, I don't see where it would have a  
19 competitive disadvantage.  
20 Q You don't know what the actual dimensions are of  
21 the engine in Exhibit 205, correct?  
22 A Correct.  
23 Q So you don't know whether it actually is unable to  
24 fit in any applications?  
25 A Correct.

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1 Q Sorry, a few more. Exhibit 206, please.  
2 Would you agree that this engine is --  
3 the engine shown in Exhibit 206 is cubic?  
4 A Yes.  
5 Q And do you agree that the components on the engine  
6 in Exhibit 206 are boxy in appearance?  
7 A Yes.  
8 Q And would you agree that the fuel tank in Exhibit  
9 206 differs in appearance from the fuel tank in  
10 Exhibit 3?  
11 A Yes.  
12 Q And the air cleaner cover in Exhibit 206 differs  
13 in appearance from the air cleaner cover in  
14 Exhibit 3?  
15 A Oh, the -- sorry, I was getting ahead of you  
16 there. It is slight differences, but it's very  
17 similar.  
18 Q The air cleaner cover in Exhibit 206 is  
19 cylindrical in shape, correct?  
20 MR. HERRING: Object to form.  
21 THE WITNESS: I view that as being more  
22 of a rounded-edge box rather than a cylinder.  
23 BY MS. FERRERA:  
24 Q A rounded-edge box?  
25 A So taking a rectangular box and just rounding off

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1 the edges or rounding off the corners.  
2 Q The air cleaner cover in Exhibit 3 is -- is not a  
3 rounded-edge box, correct?  
4 A Correct.  
5 Q And the carburetor cover in Exhibit 206 differs in  
6 appearance from the carburetor cover in Exhibit 3,  
7 correct?  
8 A Yes.  
9 Q And do you consider the fan cover in Exhibit 206  
10 to have a different appearance from the fan cover  
11 in Exhibit 3?  
12 MR. HERRING: Object to form.  
13 THE WITNESS: Which aspect of the fan  
14 cover?  
15 BY MS. FERRERA:  
16 Q Any aspect of the shape.  
17 A Well, the bottom and the left appear to be very  
18 similar in shape between the two exhibits. The  
19 problem with Exhibit 206 is it would appear to  
20 have an additional piece of metal or plastic  
21 bolted over what would be the top of the fan  
22 cover, so I can't really judge what's happening up  
23 there.  
24 Q Okay. And are you aware of any differences in  
25 performance between the engine in Exhibit 206 and

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1 the comparable power GX engine?  
2 A No.  
3 Q Are you aware of any differences in the cost to  
4 manufacture the engine in Exhibit 206 versus the  
5 comparable power GX engine?  
6 A Other than the typical things with the fuel tank  
7 and this additional piece of metal that appears to  
8 be bolted over part of it, no.  
9 Q So when you talk about the differences in the fuel  
10 tank, what aspects do you think would affect the  
11 cost?  
12 A The more complex geometry on the top portion of  
13 the tank may make it more expensive, then again  
14 this may be a plastic fuel tank, which would then  
15 have lower material property -- or the material  
16 costs.  
17 Q So you don't know whether the fuel tank in  
18 Exhibit 206 would be more expensive or less  
19 expensive to manufacture than the fuel tank in  
20 Exhibit 3?  
21 A Without knowing the material, no.  
22 Q And then you mentioned the additional piece of  
23 metal. You're referring to the piece that is  
24 between the fuel tank and the fan cover?  
25 A Yes.

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1 Q Okay. Is it fair to say that you don't know  
2 whether -- in fact whether the engine in Exhibit  
3 206 is more or less expensive to manufacture than  
4 the engine -- comparable power GX engine?  
5 A Yes.  
6 Q Are you aware of any evidence that the engine in  
7 Exhibit 206 is at a competitive disadvantage to  
8 the comparable power GX engine?  
9 A No.  
10 Q Would you look at Exhibit 207? And you agreed  
11 that this is a cubic design, correct?  
12 A Yes.  
13 Q And you consider the individual components to be  
14 boxy in appearance?  
15 A Yes.  
16 Q Do you agree that the fuel tank in Exhibit 207  
17 differs in appearance from the fuel tank in  
18 Exhibit 3?  
19 A There appears to be more ridges on the top, but  
20 it's very similar to that in Figure 3.  
21 Q And on the bottom edge of the fuel tank in  
22 Exhibit 207, that's not a straight line either,  
23 correct?  
24 A Right. The left side of that appears to be  
25 rounded.

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1 Q And do you agree that the air cleaner cover in  
2 Exhibit 207 differs in appearance from the air  
3 cleaner in Exhibit 3?  
4 A Yes. Like a few of the others it is not straight  
5 on the top, it's rounded and curves downwards to  
6 the left.  
7 Q And the carburetor cover in Exhibit 207 differs in  
8 appearance from Exhibit 3?  
9 A There are some differences. It doesn't have the  
10 straight lines and there's the additional  
11 triangular segment at the bottom.  
12 Q Are you aware of any performance differences  
13 between the engine in Exhibit 207 and the  
14 comparable power GX engine?  
15 A No.  
16 Q Are you aware of any differences in the cost to  
17 manufacture the engine in Exhibit 207 and the  
18 comparable power GX engine?  
19 A No.  
20 Q Are you aware of any reason why the engine in  
21 Exhibit 207 would be at a competitive disadvantage  
22 to the comparable power GX engine?  
23 A No.  
24 Q Would you look at Exhibit 208? And you agree that  
25 that's a cubic design?

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1 A Yes.  
2 Q Do you agree that the components in Exhibit 208  
3 are boxy in appearance?  
4 A For the most part. The fuel tank is a little  
5 strange looking, but yes.  
6 Q So you would agree that the fuel tank in  
7 Exhibit 208 differs in appearance from the fuel  
8 tank in Exhibit 3?  
9 A The right side of it looks similar, but then the  
10 left side is looking a little bit different, so  
11 yes, and it's a little bit more rounded on the top  
12 and not straight on the top, so yes, it's not the  
13 same.  
14 Q And the bottom is not straight either in  
15 Exhibit 208?  
16 A Yeah, there's something weird happening with how  
17 it's bolted, yes.  
18 Q Okay. And the air cleaner cover in Exhibit 208  
19 differs in appearance from the air cleaner cover  
20 in Exhibit 3, correct?  
21 A Yes.  
22 Q And the carburetor cover in Exhibit 208 differs in  
23 appearance from the carburetor cover in Exhibit 3?  
24 A Other than the lack of the four lines, it's very  
25 similar in appearance but it doesn't have those

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1 four lines.  
2 Q And would you agree that in Exhibit 208 the fan  
3 cover on the left-hand side looks different from  
4 the left-hand side of the fan cover in Exhibit 3?  
5 A Yes, it appears to -- the triangle that's formed  
6 with the slanted line and the top appears to  
7 extend further outward, so it appears that there's  
8 a difference.  
9 Q Are you aware of any differences in performance  
10 between the engine in Exhibit 208 and the  
11 comparable power GX engine?  
12 A No.  
13 Q You are aware of any differences to manufacture --  
14 differences in the cost to manufacture the engine  
15 in Exhibit 208 and the comparable power GX engine?  
16 A No.  
17 Q Are you aware of any reason why the engine in  
18 Exhibit 208 would be at a competitive disadvantage  
19 to the comparable power GX engine?  
20 A No.  
21 Q Okay. Exhibit 209. You agree that the engine in  
22 Exhibit 209 is cubic in appearance?  
23 A Yes.  
24 Q And would you consider the component on this  
25 engine to be boxy?

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1 A Yes.  
2 Q Would you agree that the fuel tank in Exhibit 209  
3 differs in appearance from the fuel tank in  
4 Exhibit 3?  
5 A It appears to be even more boxy than the tank in  
6 Figure 3. So it appears to be a little bit -- and  
7 the top back there might be a little bit  
8 different.  
9 Q Do you --  
10 A But part of that is because we're seeing that at  
11 an angle, whereas if you look in the front it  
12 isn't going to look significantly different.  
13 Q Viewed from the front would you agree that the  
14 fuel tank in Exhibit 209, the top portion -- well,  
15 strike that.  
16 Would you agree that in Exhibit 209 the  
17 location of the seam on the fuel tank is kind of  
18 further down than on Exhibit 3?  
19 A It would appear to be a little further down.  
20 Q And the bottom portion of the fuel tank in  
21 Exhibit 209 looks different than in Exhibit 3,  
22 correct?  
23 A From a frontal view, instead of the side view that  
24 we have, it is looking like a straight horizontal  
25 line there.

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1 Q And then there's another portion beneath that that  
2 conforms to the shape of the fan cover, correct?  
3 A Correct.  
4 Q Okay. Would you agree that the air cleaner cover  
5 in Exhibit 209 differs in appearance from the air  
6 cleaner cover in Exhibit 3?  
7 A It appears to have less pronounced beveling.  
8 Q And it's also proportionally larger than the air  
9 cleaner cover in Exhibit 3, correct?  
10 A It does appear that it pushes further over towards  
11 the right.  
12 Q Okay.  
13 A Or that the fuel tank pushes further to the left.  
14 That intersection between the two did you see not  
15 appear to be in the same spot.  
16 Q Right, and viewed from the front the fuel tank in  
17 Exhibit 209 appears smaller than the fuel tank in  
18 Exhibit 3, correct?  
19 A That would be my opinion from this, trying to look  
20 at the picture at an angle.  
21 MS. GIFTOS: I'll object and note that  
22 we don't have a front view, so that would be --  
23 MS. FERRERA: Okay.  
24 BY MS. FERRERA:  
25 Q Would you agree that the carburetor cover in

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1 Exhibit 209 differs in appearance from the  
2 carburetor cover in Exhibit 3?  
3 A Inasmuch as it appears to have an additional  
4 section at the bottom, yes, I would say it differs  
5 in appearance.  
6 Q Are you aware of any differences in performance  
7 between the engine in Exhibit 209 and the  
8 comparable power GX engine?  
9 A No.  
10 Q Are you aware of any differences in the cost to  
11 manufacture the engine in Exhibit 209 versus the  
12 comparable power GX engine?  
13 A No.  
14 Q Are you aware of any reason why the engine in  
15 Exhibit 209 would be at a competitive disadvantage  
16 to the comparable power GX engine?  
17 A Well, it appears that they're having it with a key  
18 start and people may not want to lose their keys  
19 to start their utility engine, so from that  
20 standpoint, yes, but from the rest of it, no.  
21 Q And are you aware that some GX engines come with a  
22 key start as well?  
23 A I was not aware of that.  
24 MR. HERRING: Object to form.  
25 BY MS. FERRERA:

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1 Q The engine in Exhibit 209 also has a recoil  
2 starter, correct?  
3 A Yes.  
4 Q Other than -- strike that.  
5 A One thing I will like to point out about  
6 Exhibit 209 is that the label of the -- the label  
7 above the picture of a 196cc overhead valve engine  
8 does not match the engine or the description on  
9 the right of a 338cc engine.  
10 Q They might need to fix their website.  
11 So other than the fact that the engine  
12 in Exhibit 209 appears to be a key start, are you  
13 aware of any reason why that engine would be at a  
14 competitive disadvantage to the comparable power  
15 GX engine?  
16 A No.  
17 MS. GIFTOS: Object to form.  
18 THE WITNESS: No.  
19 BY MS. FERRERA:  
20 Q And then if you look at Exhibit 210, would you  
21 agree that that engine is -- has a cubic design?  
22 A It is -- I would agree it's an approximately cubic  
23 design. From the angle we're at, it's a little  
24 bit difficult to say how well the sides line up on  
25 a straight line.

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1 Q Do you consider the components on this engine to  
2 be -- the engine in Exhibit 210 to be boxy in  
3 appearance?  
4 A Yes.  
5 Q And would you agree that the fuel tank in  
6 Exhibit 210 differs in appearance from the fuel  
7 tank in Exhibit 3?  
8 A Yes. The bottom looks a bit more rounded or not  
9 straight.  
10 Q Okay. And would you agree that the air cleaner  
11 cover in Exhibit 210 differs in appearance from  
12 the air cleaner in Exhibit 3?  
13 A That's difficult to say without having a direct  
14 frontal view because from this angle we're able to  
15 see some more rounding on the sides, but a frontal  
16 view may have that appear very similar.  
17 Q And if you look at the top edge of the air cleaner  
18 cover in Exhibit 210, it slopes down toward the  
19 left?  
20 A The top left edge or the top right edge?  
21 Q Well, both, actually.  
22 A Well, each slope down, but that's mimicking, to a  
23 large extent, the beveling in Exhibit 3.  
24 Q So you think the top -- the top left edge of the  
25 air cleaner cover in Exhibit 210 is similar in  
[Page 194]

1 appearance to the top left edge on Exhibit 3?  
2 A The -- again, if we had a frontal -- direct  
3 frontal view, it would be easier to tell. It is  
4 possible that this protrusion up on the left-hand  
5 side does make that look a little bit different,  
6 but other than that, they're very similar.  
7 Q And if you look at the carburetor cover in  
8 Exhibit 210, that looks different than the  
9 carburetor cover in Exhibit 3 as well, correct?  
10 A Yeah.  
11 MR. HERRING: Object to form.  
12 THE WITNESS: Yes.  
13 BY MS. FERRERA:  
14 Q And if you look at the fan cover in Exhibit 210,  
15 would you agree that differs in appearance from  
16 the fan cover in Exhibit 3?  
17 A Yes.  
18 Q And do you have any evidence that the engine in  
19 Exhibit 210 differs in terms of its performance  
20 compared to the comparable power GX engine?  
21 A No.  
22 Q Are you aware of any differences in the cost to  
23 manufacture the engine in Exhibit 210 versus the  
24 comparable power GX engine?  
25 A No.  
[Page 195]

1 Q Are you aware of any reason why the engine in  
2 Exhibit 210 would be at a competitive disadvantage  
3 relative to the comparable power GX engine?  
4 A Other than it looking cheaper and flimsier, no.  
5 So no, I don't have any evidence that people would  
6 not be buying it for that reason.  
7 Q And what aspects of the engine in Exhibit 210 make  
8 it look cheaper and flimsier in your view?  
9 A In my mind some of these exposed components --  
10 again, some of those may not be visible from the  
11 front, but it just looks like they were trying to  
12 minimize any additional covering of components to  
13 save money. I mean, it's just my impression of  
14 it.  
15 Q Okay. But you don't have any actual evidence that  
16 consumers would choose -- choose not to buy the  
17 engine in Exhibit 210 because of its appearance?  
18 A No.  
19 Q And then if you would look at Exhibit 211. Would  
20 you agree that that's a cubic design?  
21 A Yes.  
22 Q And you consider the components in Exhibit 211 to  
23 be boxy in appearance?  
24 A Yes.  
25 Q Would you agree that the fuel tank in Exhibit 211  
[Page 196]

1 differs in appearance from the fuel tank in  
2 Exhibit 3?  
3 A The top appears to have more capacity to handle a  
4 spillage, but otherwise no.  
5 Q Would you agree that the bottom line on the fuel  
6 tank in Exhibit 211 is not a straight line?  
7 A From this picture it would only be the bottom  
8 right corner would appear to be a bit rounded,  
9 much like the Exhibit 3 bottom right corner.  
10 Q Do you see in Exhibit 211 that on the bottom --  
11 the bottom line goes down slightly on the right  
12 side?  
13 A I think if I hold this picture up at an angle to  
14 the light, I can see that.  
15 Q Okay. And then if you look at the air cleaner  
16 cover in Exhibit 211, that looks different than  
17 the air cleaner cover in Exhibit 3, correct?  
18 A It looks different from a little bit more rounding  
19 on the left side and without having the belt.  
20 Q Okay. And would you agree that the carburetor  
21 cover in Exhibit 211 differs in appearance from  
22 the carburetor cover in Exhibit 3?  
23 A Yes. That looks more rounded.  
24 Q And would you agree that the fan cover in  
25 Exhibit 211 looks different from the fan cover in  
[Page 197]

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1 Exhibit 3?  
2 A From what I can see, there are minimal differences  
3 between them.  
4 Q If you look at the top edge of the fan cover in  
5 Exhibit 211, on the right side it's rounded,  
6 correct?  
7 A Yes.  
8 Q And then towards the left side it slants upwards,  
9 correct?  
10 MS. GIFTOS: I'm going to object to  
11 form.  
12 THE WITNESS: Towards the left side  
13 there is a component that slants upward, but the  
14 component -- the engine right behind that is a  
15 straight line going across, so looking backward  
16 back at this from a distance it does not look  
17 different.  
18 BY MS. FERRERA:  
19 Q But the fan cover itself is -- the top line is  
20 different than the fan cover in Exhibit 3,  
21 correct?  
22 A Possibly.  
23 MS. GIFTOS: I'm going to point out for  
24 the record that this picture in 211 is very  
25 pixilated in the areas that we're talking about  
[Page 198]

1 here.  
2 BY MS. FERRERA:  
3 Q If you look at the left side of the fan cover in  
4 Exhibit 211, the top left side is not a straight  
5 line, correct?  
6 A I can't tell from this picture.  
7 Q Are you aware of any differences in performance  
8 between the engine in Exhibit 211 and the  
9 comparable power GX engine?  
10 A No.  
11 Q Are you aware of any differences in the cost to  
12 manufacture the exhibit -- the engine in  
13 Exhibit 211 versus the comparable power GX engine?  
14 A No.  
15 Q And are you aware of any reason why the engine in  
16 Exhibit 211 would be at competitive disadvantage  
17 to the comparable power GX engine?  
18 A No.  
19 MS. FERRERA: Let's take a break for  
20 about five minutes.  
21 (Discussion off the record.)  
22 BY MS. FERRERA:  
23 Q Professor Reisel, before the break we looked at a  
24 number of pictures of horizontal shaft utility  
25 engines that you agreed were essentially cubic in  
[Page 199]

1 design, correct?  
2 A Yes.  
3 Q Would you agree that it's possible to have an  
4 engine -- a horizontal shaft utility engine that  
5 is cubic in design, as you've defined that term,  
6 and still have many options available in terms of  
7 styling?  
8 MS. GIFTOS: Object to form.  
9 THE WITNESS: I would say that there  
10 would be a few options in styling for different  
11 components.  
12 BY MS. FERRERA:  
13 Q Would you agree that it's possible to have a  
14 horizontal shaft utility engine that's cubic in  
15 design, as you've defined that term, and have it  
16 look different than the engine shown in Exhibit 3?  
17 MR. HERRING: Object to form.  
18 THE WITNESS: In small details, yes,  
19 and -- yes.  
20 BY MS. FERRERA:  
21 Q Would you agree that it's possible to have a  
22 horizontal shaft utility engine with boxy  
23 components and still have options in terms of  
24 styling each of those components?  
25 MS. GIFTOS: Object to form.  
[Page 200]

1 THE WITNESS: In the styling of the  
2 components, yes.  
3 BY MS. FERRERA:  
4 Q And would you agree that it's possible to have a  
5 horizontal shaft utility engine with boxy  
6 components and have them -- have those components  
7 look different than the components in Exhibit 3?  
8 MR. HERRING: Object to form.  
9 THE WITNESS: Yes. Just a second here.  
10 MS. FERRERA: Sure.  
11 (Discussion off the record.)  
12 BY MS. FERRERA:  
13 Q Now, Professor Reisel, in some of the -- on some  
14 of the engines that we looked at earlier you noted  
15 that they had panel air cleaners rather than  
16 top-mounted air cleaners, correct?  
17 A Yes.  
18 Q And you would agree that a panel air cleaner is an  
19 alternative to using a cylindrical air cleaner as  
20 in the GX engine?  
21 MR. HERRING: Object to form.  
22 THE WITNESS: It is an alternative.  
23 BY MS. FERRERA:  
24 Q But it's your opinion that in some applications at  
25 least a panel air cleaner -- strike that.  
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[51] (Pages 198 to 201)

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1 In some applications panel air cleaners  
2 are less desirable than top-mounted air cleaners,  
3 in your opinion, is that correct?  
4 A Yes.  
5 Q And what is that opinion based on?  
6 A That is based on the testimony in their  
7 depositions of Mr. Conner from Honda and  
8 Mr. Whitmore.  
9 Q Anything else?  
10 A It's also based on the ability to make a  
11 high-mount cylindrical air cleaner in a more  
12 compact shape.  
13 Q Anything else?  
14 A And in the ability to make the high-mount air  
15 cleaner be less of a hindrance to potentially  
16 starting an engine and interfering with the  
17 starting of an engine that you may get with a  
18 side -- or a panel air cleaner.  
19 Q Anything else?  
20 A Those are the primary aspects.  
21 Q And what in Mr. Conner's deposition testimony are  
22 you relying on for your conclusion that panel air  
23 cleaners are less desirable?  
24 A May I refer back to my reports?  
25 Q Sure.

[Page 202]

1 A Where I've got that stated. In my rebuttal  
2 report, in Paragraph 7, which is where I'm getting  
3 this from, Mr. Conner, in his deposition of  
4 August 9th to 10th, 2012, on Pages 407 through 409  
5 and 421 to 422 confirm that various OEMs have the  
6 preference of a high top-mounted air cleaner.  
7 Q Do you remember specifically what Mr. Conner said  
8 in those portions of his deposition that leads you  
9 to believe that OEMs prefer the high-mounted air  
10 cleaners?  
11 A Not the specific wording, no.  
12 Q And you also mentioned the deposition of  
13 Mr. Whitmore, correct?  
14 A Yes.  
15 Q And what in Mr. Whitmore's deposition leads you to  
16 conclude that the high-mounted air cleaners are  
17 preferred?  
18 A On Page 121 -- okay, well, this is going back to  
19 my supplemental report in Paragraph 19, and then  
20 Section B3 of Paragraph 19, in his deposition on  
21 Page 92 he said that he explored using a flat  
22 panel style air cleaner but realized the flat  
23 panel presents significant challenges for many  
24 applications regarding servicing the engine and in  
25 fitting the engine into applications, and then on

[Page 203]

1 Page 121 he stated that functionality -- or that  
2 functionally most of the applications we were  
3 serving into required a high-mount styled air  
4 cleaner.  
5 Q And I think you agreed earlier that there are some  
6 applications in which a panel air cleaner is  
7 preferred over a high-mounted air cleaner,  
8 correct?  
9 MS. GIFTOS: Object to form.  
10 THE WITNESS: I believe I stated earlier  
11 that there would be some OEMs who would prefer to  
12 have the panel air cleaner.  
13 BY MS. FERRERA:  
14 Q And would you agree that there are some  
15 applications where either a panel air cleaner or a  
16 high-mounted air cleaner would be appropriate?  
17 A There would likely be some applications that  
18 either could be used. One might be preferred over  
19 the other, but they could both be used.  
20 Q Other than the testimony of Mr. Conner and  
21 Mr. Whitmore, have you spoken with any engine  
22 designers who have stated that panel air cleaners  
23 are less desirable in some applications?  
24 A That may have come up in my discussion with the  
25 Briggs and Kohler engineers back in 2011/12.

[Page 204]

1 Q You don't recall one way or the other sitting here  
2 today?  
3 A I don't recall at this point, no.  
4 Q Have you spoken with any OEMs regarding whether  
5 panel air cleaners versus high-mounted air  
6 cleaners are preferable?  
7 A No.  
8 Q Would you look at your rebuttal report, which is  
9 Exhibit 213? And if you turn to Paragraph 3, at  
10 the top of Page 3, the first complete sentence  
11 there says that "The significantly smaller housing  
12 needed for a cylindrically shaped air cleaner  
13 reduces cost and improves the compactness of the  
14 overall design." Do you see that?  
15 A Yes.  
16 Q What's the basis for that statement?  
17 A The smaller shape is going to require less  
18 material to make, which is going to drive down the  
19 cost, and the smaller shape by definition is more  
20 compact.  
21 Q Have you seen any actual comparison of the costs  
22 to manufacture a panel air cleaner versus a  
23 high-mounted air cleaner?  
24 A No.  
25 Q Have you seen any comparison of the cost to

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1 manufacture a panel air cleaner cover versus a  
2 high-mounted air cleaner cover?  
3 A No. Such costs are not readily available to the  
4 public.  
5 Q You didn't ask Briggs & Stratton if they had any  
6 comparison of those costs, correct?  
7 A No.  
8 Q You didn't ask Kohler if they had any comparison  
9 of those costs, correct?  
10 A No.  
11 Q Are you aware that for a top-mounted air cleaner  
12 cover it's necessary to use a hold-down plate?  
13 A Yes.  
14 Q And that's not required for a panel air cleaner  
15 cover, correct?  
16 A It would not require a hold-down plate, but it  
17 does need to be joined into the engine.  
18 Q The -- on a top-mounted air cleaner cover the  
19 hold-down plate would add some cost, correct?  
20 A I do not know.  
21 Q You don't know one way or the other?  
22 A Correct.  
23 Q And on engines where you have a panel air cleaner  
24 cover, it's often the case that that also serves a  
25 function of a carburetor cover, correct?  

[Page 206]

1 A Sometimes. Usually not.  
2 Q Are you aware of any of the horizontal shaft  
3 utility engines in which there is both a panel air  
4 cleaner cover as well as a carburetor cover?  
5 A Exhibit 200 appears to have that. That's the only  
6 one of these that would be clear on that.  
7 Q So if you look at Exhibit 199, that has a panel  
8 air cleaner cover, correct?  
9 A Yes.  
10 Q And would you agree that that does not have a  
11 separate carburetor cover?  
12 A No. I cannot tell what is happening with the  
13 carburetor behind the panel air cleaner. There  
14 may be back coverings on it.  
15 Q So you just don't know one way or the other?  
16 A Correct.  
17 Q And on Exhibit 200, you said you believe it does  
18 have a separate carburetor cover?  
19 A Yes.  
20 Q Can you describe to me where you see that in this  
21 picture?  
22 A I see the front air panel cleaner behind that, and  
23 then at least it appears to me that there's at  
24 least an additional cover behind that to be  
25 covering up the carburetor.  

[Page 207]

1 Q You're referring to the top --  
2 A Yes.  
3 Q -- portion between the muffler and the air cleaner  
4 cover that's kind of slightly --  
5 A Yes.  
6 Q -- behind the air cleaner cover?  
7 A That would be what I would -- would appear to be  
8 the cover. But with all these front pictures we  
9 really can't see what's happening to the rest of  
10 the carburetor in terms of protecting its back and  
11 top and bottom.  
12 Q Would you agree that in some cases when you have a  
13 panel air cleaner cover you do not also need a  
14 carburetor cover?  
15 MS. GIFTOS: Object to form.  
16 THE WITNESS: In some cases you do not  
17 have one. It may not be optimal in the design.  
18 BY MS. FERRERA:  
19 Q And in the cases where the panel air cleaner cover  
20 also serves as the carburetor cover, that provides  
21 a cost savings, correct?  
22 MS. GIFTOS: Object to form.  
23 THE WITNESS: I do not know.  
24 BY MS. FERRERA:  
25 Q Just don't know one way or the other?  

[Page 208]

1 A Right.  
2 Q Now, you also mentioned that panel air cleaner  
3 covers are less advantageous from a size  
4 standpoint or in terms of compactness, is that  
5 correct?  
6 A Yes.  
7 Q How does using a top-mounted air cleaner cover  
8 improve compactness?  
9 A Well, if we're using a cylindrical top-mounted air  
10 cover cleaner as opposed to a flat panel cleaner  
11 mounted on the top, you're able to put in a -- the  
12 same surface area for the filter into a more  
13 compact design by curving it instead of having it  
14 laying flat, which enables you to have a container  
15 that's going to be smaller, potentially, to cover  
16 that -- that smaller filter element.  
17 Q In the case of a panel air cleaner cover, those  
18 usually are on the front of the engine, correct?  
19 A Correct.  
20 Q And they're usually flat, correct?  
21 A Correct.  
22 Q And they're relatively thin in terms of their  
23 profile?  
24 MS. GIFTOS: Object to form.  
25 THE WITNESS: In comparison -- their  

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1 thickness in comparison to a cylindrical filter  
2 element cover would be generally thinner, but they  
3 do not have to be.  
4 BY MS. FERRERA:  
5 Q And given that the flat -- the panel air cleaner  
6 covers are usually on the front of the engine,  
7 that would mean they're -- that would tend to mean  
8 that they're not covered or restricted in any way  
9 in terms of the application, correct?  
10 MS. GIFTOS: Object to form.  
11 THE WITNESS: They should be accessible.  
12 BY MS. FERRERA:  
13 Q I guess let me try the question a little bit  
14 differently.  
15 In an application in which you would  
16 find a horizontal shaft utility engine, there's  
17 generally not any kind of a cover or wall  
18 restricting the front side of the engine, correct?  
19 MS. GIFTOS: Object to form.  
20 THE WITNESS: In most applications, no,  
21 there would not be.  
22 BY MS. FERRERA:  
23 Q And so having the panel air cleaner cover on the  
24 front protruding out slightly from the front  
25 wouldn't cause an issue in terms of fitting into  
[Page 210]

1 OEM applications, correct?  
2 A It would depend on what was done with the rewind  
3 system and whether or not that is protruding  
4 further outwards to allow you to avoid pulling it  
5 in and hitting the air cleaner cover.  
6 Q And as we looked at earlier, at Exhibit 200, for  
7 example, you see the starter handle comes out of  
8 the recoil cover --  
9 A Yes.  
10 Q -- in Exhibit 200?  
11 A Yes.  
12 Q And the recoil cover has bolts enabling it to be  
13 turned?  
14 A Yes.  
15 Q And when it's turned, the recoil -- the starter  
16 handle would not -- there would be no risk of the  
17 starter handle -- strike that.  
18 When it's turned, there would be no risk  
19 of the air cleaner cover in Exhibit 200  
20 interfering with the starter handle, correct?  
21 MR. HERRING: Object to form.  
22 MS. GIFTOS: Object to form.  
23 THE WITNESS: It would not -- if it were  
24 turned, it would not interfere with the cover, but  
25 may be more difficult to start.  
[Page 211]

1 BY MS. FERRERA:  
2 Q Why is that?  
3 A If you notice the design on this, it's set up such  
4 that a right-handed individual would be grabbing  
5 that recoil -- or would be grabbing the handle and  
6 pulling upwards towards them where they'll have  
7 great strength.  
8 If you rotate that 180 degrees, they  
9 would be pulling it into the ground, making it  
10 difficult to start. If you rotate 90 degrees,  
11 they're going to be pulling it basically straight  
12 up, which is also not going to be easy. So the  
13 way that this is mounted is what's going to be  
14 best for the majority of people who are  
15 right-handed to start the engine.  
16 Q In any of your discussions with the Briggs &  
17 Stratton engineers did you ask them why they use a  
18 panel air cleaner cover on the engine depicted in  
19 Exhibit 200?  
20 A No.  
21 Q Did you ask them whether having a panel air  
22 cleaner cover on that engine has ever caused  
23 issues in terms of pulling the starter handle?  
24 A No.  
25 Q Are you aware of any evidence that in fact having  
[Page 212]

1 a panel air cleaner cover on the engine in  
2 Exhibit 200 causes issues in terms of starting the  
3 engine?  
4 MS. GIFTOS: Object to form.  
5 THE WITNESS: Evidence, no. I'm just  
6 using common sense there, based on engineering  
7 design principles.  
8 BY MS. FERRERA:  
9 Q Do you -- would you agree that it's possible to  
10 have a panel air cleaner cover that does not  
11 protrude out so much as to cause interference with  
12 the starter handle?  
13 A It is possible, particularly if you push out the  
14 starter handle further.  
15 Q Have you heard any complaints from anyone about  
16 being unable to -- or having difficulties starting  
17 a horizontal shaft utility engine with a panel air  
18 cleaner cover?  
19 A No. I have not heard anybody say praise that  
20 they're able to start it either.  
21 Q Right. You just haven't heard one way or the  
22 other that in fact having a panel air cleaner  
23 cover has posed any difficulties in terms of  
24 starting the engine?  
25 A Or had any benefits, no.  
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1 Q Do you have any reason to believe that it's harder  
2 to replace the air cleaner element with a panel  
3 air cleaner versus a high-mounted air cleaner  
4 cover?  
5 A A high -- a high-mount cylindrical air cover  
6 cleaner is easily -- or fairly easily screwed on  
7 and screwed off so you can remove the cover  
8 easily, pull that out. You can't have as easy of  
9 a -- like a wing nut connection on the panel  
10 cleaner without that sticking out further,  
11 making -- if you'll notice, for instance, in  
12 Exhibit 200, you would need to have a -- not a  
13 screwdriver, essentially a socket wrench or a  
14 wrench to loosen up that bolt and then remove the  
15 front panel and then remove the cleaner and then  
16 reattach that bottom. So being able to use just  
17 the fingers to turn a wing nut on a top-mounted  
18 cleaner would be easier to change.  
19 Q Okay. Would you look at Paragraph 4 in your  
20 rebuttal report? In Paragraph 4 you opine that in  
21 the case of the panel filter, a larger seal is  
22 required to reduce the risk of leaks, is that  
23 correct?  
24 A Yes.  
25 Q And what's the basis for that opinion?  
[Page 214]

1 A That's calculating the perimeter of a comparable  
2 area taken up -- or a comparable length taken up  
3 by a cylindrical filter versus the perimeter of  
4 a -- the same area of a panel air filter, a flat  
5 panel.  
6 Q Have you seen any data comparing the incidence of  
7 leaks for panel air filters versus high-mounted  
8 air filters?  
9 A No.  
10 Q Have you seen any data comparing the performance  
11 of engines with panel air cleaners versus  
12 top-mounted air cleaners?  
13 A No.  
14 Q Have you seen any evidence that debris is a bigger  
15 problem with panel air cleaners versus top-mounted  
16 air cleaners?  
17 MS. GIFTOS: Object to form.  
18 THE WITNESS: I have not seen data, no.  
19 BY MS. FERRERA:  
20 Q But it's your opinion that that would be more of a  
21 problem --  
22 A It is my opinion --  
23 Q -- for panel air cleaners, correct?  
24 A It is my opinion that it's potentially a greater  
25 problem.  
[Page 215]

1 Q What's the basis for that?  
2 A The lower mounting of the filter onto the side  
3 puts it closer to the ground where you're going to  
4 have more dust available to be sucked into the  
5 cleaner, and thus clog up the filter more rapidly  
6 than you would from a top-mounted design.  
7 In addition, when you've got the air  
8 being brought into the bottom of a cartridge  
9 design, a high-mount design, that gives gravity  
10 the greater opportunity to work on pulling out any  
11 of the larger particles that would not be pulled  
12 out going through the side of the side panel.  
13 Q And again, you said you haven't seen any data  
14 showing that in fact debris is a bigger issue with  
15 panel air cleaners versus top-mounted air  
16 cleaners?  
17 A Correct, I have not seen any data.  
18 Q So your opinion in that regard is just based on  
19 your own speculation?  
20 MR. HERRING: Object to form.  
21 THE WITNESS: It's based on engineering  
22 and science principles.  
23 BY MS. FERRERA:  
24 Q Did anyone at Briggs & Stratton tell you that  
25 debris is a bigger issue with their engines having  
[Page 216]

1 panel air cleaners versus top-mounted air  
2 cleaners?  
3 A The Briggs & Stratton engineers mentioned that you  
4 had the advantages with the top-mounted design  
5 having the likelihood of gravity helping to pull  
6 that out, out the debris.  
7 Q Okay. So looking at the engine in Exhibit 200,  
8 which is the Briggs Intek engine, did you discuss  
9 with the Briggs & Stratton engineers why they have  
10 chosen to use a panel air cleaner on that engine  
11 in spite of the problems that you believe would  
12 result from that?  
13 A I did not discuss it with this specific engine,  
14 but they did discuss that they would base the air  
15 filter location and design based on what the OEM  
16 asked them to have, and that they would work with  
17 the manufacturer to decide how that was going to  
18 be done.  
19 Q Did you ask them with respect to any of the  
20 engines that Briggs & Stratton manufactures that  
21 use a panel air cleaner why they use the panel air  
22 cleaner instead of a top-mounted air cleaner?  
23 A That's what I just answered, with it being pretty  
24 much up to what the OEM wanted.  
25 Q So based on that information, is it your  
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1 understanding that in some cases the OEMs actually  
2 have required a panel air cleaner?  
3 A Yes, and at the same time they've at times  
4 required a high-mount air cleaner.  
5 Q Professor Reisel, are you named as an inventor on  
6 any patents?  
7 A No.  
8 Q And do you have any experience prior to this case  
9 reading or interpreting patents?  
10 A No.  
11 Q Have you been involved in helping to prepare  
12 prosecute any patents?  
13 A No.  
14 Q In your reports you cite a number of U.S. patents  
15 that you contend support your opinion that the GX  
16 engine trademark is functional, correct?  
17 A Yes.  
18 (Exhibit No. 215 was marked.)  
19 BY MS. FERRERA:  
20 Q Professor Reisel, you have in front of you Exhibit  
21 215, which is a U.S. Patent No. 7,086,389. Do you  
22 see that?  
23 A Yes.  
24 Q And is this one of the patents that you considered  
25 in forming your opinions in this case?  
[Page 218]

1 A I will check on that. Yes.  
2 Q Would you turn to Column 1 in the patent? And do  
3 you see, towards the top of that column there's a  
4 heading, "Field of the Invention"?  
5 A Yes.  
6 Q And under that it says, "The present invention  
7 relates to a general purpose engine having a  
8 canister to adsorb fuel vapor that has evaporated  
9 within a fuel tank, wherein fuel vapor desorbed  
10 from the canister is guided to an intake system in  
11 communication with an engine main body." Do you  
12 see that?  
13 A Yes.  
14 Q And do you understand that to be describing the  
15 subject matter of the invention claimed in the 389  
16 patent?  
17 MR. HERRING: Object to form.  
18 MS. GIFTOS: Object to form.  
19 THE WITNESS: Yes.  
20 BY MS. FERRERA:  
21 Q Do you agree that the components that are --  
22 strike that.  
23 The system that is being described in  
24 the field of the invention relates to internal  
25 components of the engine, correct?  
[Page 219]

1 A Yes.  
2 Q And the components that are being described in --  
3 under the field of the invention in Column 1 are  
4 not components that are visible from the outside,  
5 correct?  
6 MR. HERRING: Object to form.  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: Yes.  
9 BY MS. FERRERA:  
10 Q They're not visible in Exhibit 3, correct?  
11 A Correct.  
12 MS. GIFTOS: Object to form.  
13 BY MS. FERRERA:  
14 Q If you would look in Column 1, starting around  
15 Line 15?  
16 A Yes.  
17 Q There's a sentence that reads, "A general purpose  
18 engine usually needs to be compact so that a work  
19 machine that includes the general purpose engine  
20 does not become large." Do you see that?  
21 A Yes.  
22 Q And that's one of the sentences that you cite in  
23 your report, correct?  
24 A Yes.  
25 Q Would you agree that that sentence is just  
[Page 220]

1 describing, in general, the advantage of having a  
2 compact engine?  
3 MR. HERRING: Object to form.  
4 THE WITNESS: I would agree with that,  
5 and that was my purpose in using that statement.  
6 BY MS. FERRERA:  
7 Q You don't understand that statement to require  
8 that the engine look like the engine shown in  
9 Exhibit 3, correct?  
10 MS. GIFTOS: Object to form.  
11 THE WITNESS: That statement does not  
12 require it to look identical to that in figure --  
13 in Exhibit 3.  
14 BY MS. FERRERA:  
15 Q In fact, if you look in Exhibit 389 -- sorry, if  
16 you look in Exhibit 215, 215, there's no  
17 description of what the front side of the engine  
18 should look like, correct?  
19 MS. GIFTOS: Object to form.  
20 THE WITNESS: Directly, no, but Figure 1  
21 is looking at the back side of the engine, from  
22 which you can infer the location of the fuel tank  
23 and the muffler and the air cover cleaner --  
24 BY MS. FERRERA:  
25 Q Okay. But --  
[Page 221]

**JOHN REISEL, Ph.D.**

1 A -- in respect to where the crankshaft is located.  
2 **Q** Okay. So other than the location of the  
3 components, there's no description in Exhibit 215  
4 of the front side of the engine?  
5 MS. GIFTOS: Object to form.  
6 THE WITNESS: Again, the shape of the  
7 fuel tank is clearly illustrated in Figure 1 and  
8 that's going to look the same from the front.  
9 BY MS. FERRERA:  
10 **Q** Well, you don't know if there's some other  
11 component on the front that would change that  
12 appearance, correct?  
13 A Correct. It might change the frontal -- it might  
14 change the very front top and the middle of the  
15 front or the -- it's not going to change the  
16 sides, though.  
17 **Q** And you can't see what the air cleaner cover looks  
18 like in Exhibit 215, correct?  
19 A You cannot see what the frontal appearance of the  
20 air cleaner cover is.  
21 **Q** And if you look at the claims in Exhibit 215,  
22 which start at the bottom of Column 9 and continue  
23 on to Column 10, you agree that none of the claims  
24 relate to the appearance of the engine from the  
25 front?  
[Page 222]

1 MR. HERRING: Object to form.  
2 THE WITNESS: The claims do not refer to  
3 the specific appearance from the frontal view.  
4 BY MS. FERRERA:  
5 **Q** And so you would agree, would you not, that the  
6 389 patent does not require the engine to look  
7 like Exhibit 3 in order to be compact, correct?  
8 MS. GIFTOS: Object to form.  
9 THE WITNESS: I do not agree with that  
10 statement in terms of a broad outline of the  
11 engine, but just -- but it does have -- it does  
12 not require the specific elements -- some of the  
13 specific elements seen in the front view of  
14 Figure 3 -- in Exhibit 3.  
15 BY MS. FERRERA:  
16 **Q** When you say you do not agree in terms of a broad  
17 outline of the engine, what do you mean?  
18 A The location of the fuel tank. The location of  
19 the muffler. The location of the air -- air  
20 cover. Those appear outlined in Figure 1.  
21 **Q** Other than the location of the components, you  
22 would agree that there's nothing in the 389  
23 patent, Exhibit 215, that requires the engine to  
24 look like the engine shown in Exhibit 3?  
25 MS. GIFTOS: Object to form.  
[Page 223]

1 BY MS. FERRERA:  
2 **Q** The front?  
3 A The Figure 1 also shows the seam in the fuel tank,  
4 and it shows some of the beveling in Figure 1.  
5 **Q** The invention that's claimed in the 389 patent has  
6 nothing to do with the beveling or the seam on the  
7 fuel tank correct?  
8 MS. GIFTOS: Object to form.  
9 THE WITNESS: I do not know.  
10 BY MS. FERRERA:  
11 **Q** Well, you read the 389 patent, correct?  
12 A They're drawing pictures of those in there which  
13 would seem to suggest that that was important.  
14 **Q** Do you understand that in a utility patent, what  
15 defines the invention is the claims of the patent?  
16 A No.  
17 **Q** So you don't understand what the significance of  
18 the drawings is in a utility patent and whether or  
19 not those are --  
20 MS. GIFTOS: Object to form.  
21 MS. FERRERA: Strike that. Let me start  
22 over.  
23 BY MS. FERRERA:  
24 **Q** You don't understand what the significance is of  
25 the drawings in a utility patent?  
[Page 224]

1 A From a legal standpoint, no.  
2 **Q** And you don't know whether in order to practice  
3 the invention that's claimed in a utility patent,  
4 it's necessary or unnecessary to look like what's  
5 shown in the drawings?  
6 MS. GIFTOS: Object to form.  
7 THE WITNESS: I do not know.  
8 BY MS. FERRERA:  
9 **Q** But you would agree that with the exception of  
10 what's shown in Figure 1 there's nothing in the  
11 389 patent that gives any guidance as to what the  
12 front and side of the engine should look like?  
13 MS. GIFTOS: Object to form.  
14 THE WITNESS: According to the brief  
15 description of the drawings, Figure 1 is claiming  
16 to be a front view of the engine.  
17 BY MS. FERRERA:  
18 **Q** Is that what you consider to be the front side of  
19 an engine?  
20 A It would appear to be the back side of an engine,  
21 but it states Figure 1 is a front view of the  
22 engine, according to the preferred embodiment of  
23 this invention.  
24 **Q** Well, you would agree that Figure 1 doesn't look  
25 like Figure 3 -- to Exhibit 3, correct?  
[Page 225]

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<p>1 A I would -- 2 MS. GIFTOS: Object to form. 3 THE WITNESS: I would agree with that. 4 I believe that they have inverted our opinion of 5 the front and rear view of the engines. 6 BY MS. FERRERA: 7 Q Okay. Regardless of that, setting aside Figure 1, 8 is there anything in the 389 patent that requires 9 -- strike that. 10 Setting aside Figure 1, is there 11 anything in the 389 patent, Exhibit 215, that 12 gives any guidance with respect to the front and 13 side of the engine as we've been referring to it? 14 MS. GIFTOS: Object to form. 15 THE WITNESS: I would say no. 16 (Exhibit No. 216 was marked.) 17 BY MS. FERRERA: 18 Q Professor Reisel, you have in front of you now 19 what's been marked as Exhibit 216, which is U.S. 20 Patent No. 6,941,919. Do you see that? 21 A Yes. 22 Q And sorry, with respect to Exhibit 215, I was 23 referring to it from time to time as the 389 24 patent. Are you familiar with the invention 25 referring to utility patents by their last three [Page 226]</p>	<p>1 Q Does the 919 patent give any guidance as to the 2 appearance of the engine from the front at all? 3 MS. GIFTOS: Object to form. 4 THE WITNESS: From the patent -- what's 5 being patented specifically, no. 6 BY MS. FERRERA: 7 Q And you would agree that none of the claims in the 8 919 patent relate to the appearance of the engine 9 from the front, correct? 10 MS. GIFTOS: Object to form. 11 THE WITNESS: No. 12 BY MS. FERRERA: 13 Q And none of the drawings are of the front side of 14 the engine, correct? 15 A In as we've been referring to the front, no. 16 Q So you would agree that there's nothing in 17 Exhibit 216 that requires the engine to look like 18 what's shown in Exhibit 3, the GX engine trademark 19 application? 20 MS. GIFTOS: Object to form. 21 THE WITNESS: Again, we've got the 22 location of the fuel tank with respect to the 23 crankshaft. We've got an incline cylinder, very 24 slightly inclined cylinder, in these drawings, 25 which are going to be influencing the front design [Page 228]</p>
<p>1 numbers? 2 A As that makes things much briefer, I understood 3 what you were talking about. 4 Q Okay. So I may refer to Exhibit 216 as the 919 5 patent from time to time, and hopefully -- 6 A And I will not get confused by that. 7 Q Okay. Exhibit 216 is another U.S. patent that you 8 considered in forming your opinions in this case, 9 correct? 10 A Correct. 11 Q And if you would turn to Column 1, under the field 12 of the invention, and since it's rather long I'll 13 just ask you to read it to yourself. 14 A Okay. 15 Q Are any of the features that are described as 16 being part of the invention of the 919 patent 17 under the field of the invention visible in the GX 18 engine trademark application, Exhibit 3? 19 MS. GIFTOS: Objection to form. 20 THE WITNESS: Not as I can tell. 21 BY MS. FERRERA: 22 Q Does the 919 patent, Exhibit 216, say anything 23 about the engine having a cubic design? 24 A Without rereading the entire patent, it would -- I 25 would say no. [Page 227]</p>	<p>1 or the front appearance of the engine, but it does 2 not directly require that of Exhibit 3. 3 BY MS. FERRERA: 4 Q And in terms of the location of the components, 5 you're just basing that on what's -- what appears 6 in Figure 1, correct, in Exhibit 216? 7 A Yes. Figure 1 is the same as on the front page, 8 so yes. 9 Q All right. There's nothing in the claims that 10 requires a particular location for the components, 11 correct? 12 MS. GIFTOS: Object to form. 13 THE WITNESS: With respect to the fuel 14 tank, no, and -- 15 BY MS. FERRERA: 16 Q And the air cleaner cover? 17 A Correct. 18 Q And the muffler? 19 A Correct. 20 (Exhibit No. 217 was marked.) 21 BY MS. FERRERA: 22 Q You should have now Exhibit 217, which is U.S. 23 Patent No. 4,813,385. Do you see that? 24 A Yes. 25 Q Which I'll refer to as the 385 patent. This is [Page 229]</p>

[58] (Pages 226 to 229)

**JOHN REISEL, Ph.D.**

1 another U.S. patent that you considered in forming  
2 your opinions in this case, correct?  
3 A Correct.  
4 Q And it's your position that this patent requires  
5 the same general arrangement of the components as  
6 in the GX engine trademark application, correct?  
7 A Correct.  
8 Q And by that you mean the location of the fuel tank  
9 and the air cleaner cover and the muffler?  
10 A Correct.  
11 Q Do you mean anything else when you talk about the  
12 general arrangement of the components?  
13 A That's what I'm primarily referring to, yes. I  
14 suppose the carburetor location as well.  
15 Q If you turn to Column 1 under the background of  
16 the invention, starting on Line 9 and continuing  
17 down to Line 15, you can read that to yourself.  
18 A Um-hum.  
19 Q Would you agree that the invention to which the  
20 385 patent is directed is an internal -- general  
21 purpose internal combustion engine having an air  
22 cleaner with a pre-cleaner?  
23 A Yes.  
24 Q And the 385 patent relates to the design of that  
25 pre-cleaner, correct?  

[Page 230]

1 A Correct.  
2 Q The GX engine trademark as shown in Exhibit 3 does  
3 not include a pre-cleaner, correct?  
4 A That's correct.  
5 Q If you look at Column 4 in the 385 patent, around  
6 Line 50- -- got the line number wrong here --  
7 yeah, around line -- hang on. Oh,  
8 Column 3, sorry.  
9 Around Line 57, do you see it says "A  
10 fuel tank 4 is disposed on the upper surface of  
11 the engine unit 1 and one side thereof"?  
12 A Yes.  
13 Q And it doesn't say whether it's on the right or  
14 left side of the engine, correct?  
15 A Correct.  
16 Q And then it goes on to say, "A main air cleaner 6  
17 coupled with a cyclone-type pre-cleaner 5 and a  
18 muffler 7 are disposed laterally of the fuel tank  
19 4 parallel to each other, and the main air cleaner  
20 6 and the pre-cleaner 5 being located closely to  
21 the recoil starter 3." Do you see that?  
22 A Yes.  
23 Q And that doesn't say that the air cleaner and the  
24 muffler need to be located on the left side of the  
25 engine, correct?  

[Page 231]

1 MR. HERRING: Object to form.  
2 THE WITNESS: It does not say that they  
3 have to be on the left side.  
4 BY MS. FERRERA:  
5 Q And so based on that the muffler and the air  
6 cleaner could be located on either the right or  
7 the left side of the engine, correct?  
8 MR. HERRING: Object to form.  
9 THE WITNESS: There are many things that  
10 can be done with an engine that are not practical  
11 or logical, and that would be an example of  
12 something that would not be logical in putting the  
13 air cleaner and the muffler on the opposite side  
14 from the valves.  
15 BY MS. FERRERA:  
16 Q Okay, but based on what this patent says about the  
17 location of the components, it didn't require the  
18 components, the muffler and the air cleaner, to be  
19 located on the left side of the engine, correct?  
20 MS. GIFTOS: Object to form.  
21 MR. HERRING: Object to form.  
22 THE WITNESS: This paragraph does not  
23 say that they have to be on the left side.  
24 BY MS. FERRERA:  
25 Q Is there anyplace else in the description of the  

[Page 232]

1 invention that you're aware of where it says that  
2 the air cleaner and muffler should be on the left  
3 side of the engine?  
4 A No.  
5 Q Is there anyplace else in the description of the  
6 invention in the 385 patent that says that the  
7 fuel tank needs to be on the right side?  
8 A No.  
9 MR. HERRING: Object to form on the last  
10 question.  
11 BY MS. FERRERA:  
12 Q Now, in your reports you point to Claim 2 of the  
13 385 patent, and you state that it requires the  
14 fuel tank to have a rectangular shape. Do you  
15 recall that? It's -- if you look in your opening  
16 report, Paragraph 46?  
17 A 46. Yes.  
18 Q Okay. Let's look at Claim 2. It states that "A  
19 general purpose internal combustion engine,  
20 according to Claim 1, wherein each of said fuel  
21 tank, said muffler and said main air cleaner is  
22 substantially rectangularly shaped as viewed in  
23 plan." Do you see that?  
24 A Yes.  
25 Q And based on that it's your interpretation that  

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[59] (Pages 230 to 233)

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1 the fuel tank needs to be rectangular when viewed  
2 from the front?  
3 A Yes.  
4 Q Let's look at Column 3 of the patent, the 385  
5 patent. And do you see about halfway down there's  
6 a brief description of the drawings?  
7 A Yes.  
8 Q And it says, "Figure 2 is a plan view of the  
9 general purpose internal combustion engine"?  
10 A Yes.  
11 Q If you look at Figure 2, that's looking at the  
12 engine from above, correct?  
13 A Yes.  
14 Q So do you understand that when this patent talks  
15 about looking at things in plan, it's talking  
16 about looking at them from above?  
17 MR. HERRING: Object to form.  
18 THE WITNESS: It would appear to be  
19 using that, but it is not precluding looking at  
20 other two-dimensional views of it.  
21 BY MS. FERRERA:  
22 Q Sure, but when the patent talks about the shape of  
23 something when viewed in plan, it's talking about  
24 the shape that you can see when viewing it from  
25 above, correct?

[Page 234]

1 MR. HERRING: Object to the form.  
2 MS. GIFTOS: Object to the form.  
3 THE WITNESS: It is describing how it is  
4 looked at in a two-dimensional view that it has  
5 been using to look at the top.  
6 BY MS. FERRERA:  
7 Q Okay. So when you look at --  
8 A Apparently.  
9 Q So when you look at Claim 2, which says that "Each  
10 of said fuel tank, said muffler and said main air  
11 cleaner is substantially rectangularly shaped as  
12 viewed in plan," do you understand that to mean  
13 that each of those components is substantially  
14 rectangularly shaped as viewed from above?  
15 A I understand that that is one interpretation of  
16 it.  
17 Q Do you have any basis for interpreting it as  
18 requiring a rectangular shape when viewed from the  
19 front?  
20 A Others may consider viewing in plan a view from  
21 the front.  
22 Q But when this patent talks about in plan, you  
23 understand it to be talking about viewing it from  
24 above, correct?  
25 MR. HERRING: Object to the form.

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1 THE WITNESS: I do not see a definition  
2 of a plan view.  
3 BY MS. FERRERA:  
4 Q You agree that according to the description of the  
5 drawings Figure 2 is a plan view, correct?  
6 A I agree that it is a plan view, but it does not  
7 say that it is the only definition of a plan view.  
8 Q And then when you look at figure -- the  
9 description of Figure 3, it refers to it as an  
10 enlarged front elevational view, correct? That's  
11 not what I want.  
12 Sorry, if you look at Figure 1, the  
13 description is a perspective view of the general  
14 purpose internal combustion engine. Do you see  
15 that?  
16 A Yes, and that is not looking straight on in a  
17 two-dimensional view. It's a perspective view.  
18 Q So none of the drawings in the 385 patent are a  
19 straight-on view of the front side of the engine,  
20 correct?  
21 A Correct. At this time, I cannot think, though,  
22 looking around all of this, how looking at  
23 something from the top and saying that it's  
24 rectangular would not then also look rectangular  
25 from the front.

[Page 236]

1 Q Well, you would agree that you don't know what the  
2 bottom edge of the fuel tank looks like in  
3 Figure 2?  
4 A Correct.  
5 Q And you don't know what the left and right side of  
6 the fuel tank look like in Figure 2?  
7 A They appear to be straight.  
8 Q Well, they could be indented in, correct?  
9 A It is possible that they are indented in.  
10 Q It could have some kind of a jog?  
11 A It is possible. It may still look essentially  
12 rectangular.  
13 Q But you don't know one way or the other, correct?  
14 MS. GIFTOS: Object to form.  
15 THE WITNESS: I do not know one way or  
16 the other, other than greatly increasing the  
17 complexity of the manufacturing process how that  
18 would not look rectangular from the front.  
19 BY MS. FERRERA:  
20 Q Okay. But there's nothing in this patent that  
21 requires the front side of the fuel tank to be  
22 rectangular --  
23 MS. GIFTOS: Object to form.  
24 BY MS. FERRERA:  
25 Q -- in appearance, correct?

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1 A As the -- as there is no specific definition of  
2 what is referred to as a plan view, I do not agree  
3 with that statement.  
4 Q If you -- accepting for purposes of my questions  
5 that plan view in the 385 patent refers to what  
6 you can see from Figure 2, would you agree that  
7 there's no description in the 385 patent of what  
8 the fuel tank looks like from the front?  
9 MR. HERRING: Object to form.  
10 THE WITNESS: I don't accept that. I  
11 don't accept the premise.  
12 BY MS. FERRERA:  
13 Q Because you don't know one way or the other  
14 whether plan view refers to what you can see from  
15 the front versus from above?  
16 A Inasmuch as there is no specific definition of  
17 what is referred to as a plan view in this patent.  
18 Q Okay. Other than the language about the  
19 appearance of the components as viewed in plan, is  
20 there any requirement in the 389 patent regarding  
21 the appearance of the components from the front?  
22 MS. GIFTOS: Object to form.  
23 THE WITNESS: I would say no.  
24 BY MS. FERRERA:  
25 Q And other than Claim 2, is there any claim  
[Page 238]

1 relating to the appearance of the engine from the  
2 front?  
3 MS. GIFTOS: Same objection.  
4 THE WITNESS: Claim 1 specifies that it  
5 has a fuel tank disposed over the crank case, for  
6 instance, as opposed to being over the cylinder  
7 head.  
8 BY MS. FERRERA:  
9 Q Anything else?  
10 A And then in -- from inference of that if you have  
11 to have the air cleaner and muffler on the lateral  
12 of the fuel tank and parallel, then they are not  
13 over the crank case, or it's a very small fuel  
14 tank.  
15 Q Anything else?  
16 A In terms of the appearance, the air cleaner is in  
17 alignment -- alignment with what? It's got a  
18 vertical air filter, so that's not going to be  
19 obvious once it's under a cover.  
20 Q Would you agree, Professor Reisel, that there's  
21 nothing in the 389 patent that requires an engine  
22 to look like the engine shown in Exhibit 3?  
23 MS. GIFTOS: Object to the form.  
24 THE WITNESS: Are you referring to the  
25 385 patent? You said 389.  
[Page 239]

1 BY MS. FERRERA:  
2 Q Sorry, yes, let me ask the question again.  
3 Would you agree that there's nothing in  
4 the 385 patent that requires the engine to look  
5 like the engine shown in Exhibit 3?  
6 MS. GIFTOS: Object to form.  
7 THE WITNESS: I disagree with that, with  
8 the elements that were in the claim that I just  
9 stated, and that those elements are setting up the  
10 design in Figure -- Exhibit 3.  
11 BY MS. FERRERA:  
12 Q Well, you agreed earlier, did you not, that the  
13 requirement that the fuel tank be disposed over  
14 the crank case doesn't specify whether it's on the  
15 right or left side?  
16 MS. GIFTOS: Object to form.  
17 THE WITNESS: I will agree with that if  
18 you want to build an engine that is not designed  
19 to match OEM expectations for the location of the  
20 crankshaft.  
21 BY MS. FERRERA:  
22 Q But Claim 1 doesn't say anything about that,  
23 correct.  
24 A Correct.  
25 Q And you agreed that based on the language --  
[Page 240]

1 strike that.  
2 Would you agree that based on the  
3 language in Claim 1 of the 385 patent there's no  
4 requirement that the air cleaner and the muffler  
5 be on the left side of the engine?  
6 A Again, with the caveat that if you're going to  
7 design an engine with the expected location of the  
8 crankshaft -- if you're going to ignore that  
9 element of the design, then yes, they do not need  
10 to be on the left side of the engine.  
11 Q And again, Claim 1 doesn't say anything about OEM  
12 requirements, right?  
13 A Correct.  
14 Q So based on -- other than Claim 2 would you agree  
15 that none of the claims require an engine to look  
16 like the engine in Exhibit 3?  
17 MR. HERRING: Object to form.  
18 MS. GIFTOS: Object to form.  
19 THE WITNESS: In terms of it being that  
20 specific form and not just a mirror image of that  
21 form, yes.  
22 BY MS. FERRERA:  
23 Q And even -- strike that.  
24 In terms of the -- strike that.  
25 Other than the location of the  
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1 components; in other words, the fuel tank on the  
2 left side and -- on the right side and the air  
3 cleaner cover and the muffler on the right side,  
4 is there any requirement in the 385 patent that an  
5 engine look like the engine in Exhibit 3?  
6 MS. GIFTOS: Object to form.  
7 THE WITNESS: Again, I would maintain  
8 that it's requiring it to be substantially  
9 rectangular in shape for the fuel tank, from the  
10 frontal appearance.  
11 BY MS. FERRERA:  
12 Q But you would agree that an engine can be  
13 substantially rectangular in appearance and not  
14 look like -- sorry, the fuel tank can be  
15 substantially rectangular in appearance and not  
16 look exactly like the fuel tank in Exhibit 3,  
17 correct?  
18 A It can take on different aspect ratios from the  
19 rectangle, yes.  
20 Q And the bottom edge might not be straight?  
21 A Just as the bottom edge in Exhibit 3 is rounded  
22 towards the edges, yes, the bottom edge does not  
23 have to be straight.  
24 Q And the bottom edge might have some indentations?  
25 A It's possible. We've seen that in the other  
[Page 242]

1 engines.  
2 Q And the top edge might not be completely straight  
3 either, correct?  
4 A Correct.  
5 Q And the right and the left side might not be  
6 completely straight either, correct?  
7 A Correct.  
8 Q Now, in your reports you also refer to a number of  
9 Japanese patent documents that you reviewed,  
10 correct?  
11 A Correct.  
12 Q And do you understand that all of the Japanese  
13 patent documents that you reviewed are utility --  
14 utility model publications or patent applications?  
15 A Yes.  
16 Q Prior to this case had you ever seen any Japanese  
17 patent documents?  
18 A No.  
19 Q Did you have any experience reading or  
20 interpreting Japanese patent documents?  
21 A No.  
22 Q Do you have any familiarity with the process for  
23 filing or obtaining a Japanese utility patent or a  
24 Japanese utility model?  
25 A No.  
[Page 243]

1 Q Do you know what the requirements are for  
2 obtaining a Japanese utility model application?  
3 A No.  
4 Q Do you know how they compare to the requirements  
5 for a U.S. utility patent?  
6 A No.  
7 Q Do you know whether any of the Japanese patent  
8 documents that you reviewed in connection with  
9 this case have been reviewed by a patent examiner  
10 or undergone any kind of scrutiny by a patent  
11 office?  
12 A By the U.S. Patent Office?  
13 Q By the Japanese Patent Office?  
14 A No.  
15 Q Or the U.S. Patent Office?  
16 A No.  
17 Q To your knowledge, have any of the Japanese patent  
18 documents that you reviewed in connection with  
19 this case been approved or issued?  
20 A No.  
21 Q You don't know whether they have or you know they  
22 have not?  
23 A I do not know one way or the other.  
24 Q Okay.  
25 (Exhibit No. 218 was marked.)  
[Page 244]

1 BY MS. FERRERA:  
2 Q Professor Reisel, you have in front of you what's  
3 been marked as Exhibit 218, which is a Japanese  
4 utility model application publication  
5 No. S63-22344. Do you understand that?  
6 A Yes.  
7 Q And this is one of the Japanese patent documents  
8 that you considered in forming your opinions in  
9 this case?  
10 A Yes.  
11 Q Is there anything in Exhibit 218 that discusses  
12 having an engine with a cubic design viewed from  
13 the front?  
14 MS. GIFTOS: Object to form.  
15 THE WITNESS: Specifically using those  
16 words, no.  
17 BY MS. FERRERA:  
18 Q Is there anything in Exhibit 218 that describes  
19 having a cubic design without specifically using  
20 those words?  
21 MS. GIFTOS: Object to form.  
22 THE WITNESS: Some of the claims are  
23 describing what has resulted in the cubic design.  
24 BY MS. FERRERA:  
25 Q What are you referring to in particular?  
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<p>1 A Fuel tank located above the crank case, which 2 is -- with the cylinder being slightly increased 3 from horizontal, and so from the location of the 4 crank case is going to result in the cylinder -- 5 or the fuel tank being above that crank case. The 6 muffler's positioning above the cylinder head. 7 The air cleaner being located above the cylinder 8 head. So these elements that have gone into the 9 general square layout are being described in this. 10 Q Okay. You could have an engine that has a fuel 11 tank located above the crank case and cylinder and 12 an air cleaner located above the cylinder and a 13 muffler located above the cylinder and yet not 14 have a cubic design, correct? 15 MR. HERRING: Object to form. 16 THE WITNESS: I would disagree, 17 especially with the basically horizontal cylinder, 18 when you put these elements above there, unless 19 you were to -- have them be ridiculously removed 20 from the engine, you're going to end up with a 21 cubic design. 22 BY MS. FERRERA: 23 Q Other than the location of the components, would 24 you agree that Exhibit 218 does not describe the 25 appearance of the engine from the front? [Page 246]</p>	<p>1 Q The appearance of the individual components may 2 differ though, correct? 3 A There may be differences in the appearance of the 4 components. 5 (Exhibit No. 219 was marked.) 6 BY MS. FERRERA: 7 Q Professor Reisel, you have Exhibit 219 which is a 8 Japanese patent document with the number 9 S57-30407. Do you see that? 10 A Yes. 11 Q And actually, it's a translation of that Japanese 12 patent document, correct? 13 A Yes, that's nice to see. 14 Q And this is another one of the documents that you 15 considered in forming your opinions in this case? 16 A Yes. 17 Q And am I correct that it's your opinion that this 18 Exhibit 219 demonstrates that a casing is 19 necessary on the engine in order to prevent debris 20 entering the cooling air passages and clogging 21 those passages? 22 A Yes. 23 Q And that just means that there needs to be a fan 24 cover, correct? 25 A Correct. [Page 248]</p>
<p>1 MS. GIFTOS: Object to form. 2 THE WITNESS: Yes, although describing 3 the location of the components is a significant 4 factor in its frontal appearance. 5 BY MS. FERRERA: 6 Q And there's no drawing of the front side of the 7 engine in Exhibit 218, correct? 8 A Again, we have the rear view of the engine or what 9 we have been terming the rear view of the engine. 10 Q There's no drawing of the front side of the 11 engine, correct, in Exhibit 218? 12 A Correct, again with our terminology they're 13 actually saying it's the front view, but not what 14 we've been calling the front. 15 Q And so other than the position of the components, 16 would you agree that there's nothing in 17 Exhibit 218 that requires an engine to look like 18 the engine shown in Exhibit 3? 19 MS. GIFTOS: Object to form. 20 MR. HERRING: Object to form. 21 THE WITNESS: I would agree with that 22 with the stipulation that the location of the 23 components really influences the frontal view of 24 it. 25 BY MS. FERRERA: [Page 247]</p>	<p>1 Q Doesn't require the fan cover to have any 2 particular appearance, correct? 3 A As provided that the fan cover is covering the 4 fan, no, it doesn't require that. 5 Q It doesn't require the fan cover to look like the 6 fan cover in Exhibit 3? 7 MS. GIFTOS: Object to form. 8 THE WITNESS: Correct. 9 BY MS. FERRERA: 10 Q And other than the fan cover, there's no 11 description of any other component -- strike that. 12 Other than the fan cover, there's no 13 description of any other aspect of the GX engine 14 trademark as shown in Exhibit 3, correct? 15 MS. GIFTOS: Object to form. 16 THE WITNESS: Correct. 17 BY MS. FERRERA: 18 Q And none of the claims in Exhibit 219 relate to 19 the appearance of the engine from the front? 20 MS. GIFTOS: Object to form. 21 THE WITNESS: Again, the claims are that 22 it's got to have a casing, a cover on there, so 23 the fact that it has a cover would be related to 24 what the front is going to look like. The shape 25 of the cover, no, that's not particularly covered, [Page 249]</p>

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<p>1 no pun intended. 2 BY MS. FERRERA: 3 Q In other words, Exhibit 219 does not require that 4 the front of the engine have any particular 5 appearance other than having a fan cover? 6 MS. GIFTOS: Object to form. 7 THE WITNESS: Correct. 8 (Exhibit No. 220 was marked.) 9 BY MS. FERRERA: 10 Q Professor Reisel, you have Exhibit 220. You 11 understand that that's a Japanese patent document 12 with a number S63-35160? 13 A Yes. 14 Q And this is another one of the Japanese patent 15 documents that you considered in forming your 16 opinions in this case? 17 A Yes. 18 Q Now, if you look at the page having the number 19 AHJX00636246. 20 A Um-hum. 21 Q The third paragraph, you can go ahead and read 22 that to yourself. 23 A Um-hum. Yes. 24 Q And do you agree that that paragraph is describing 25 that typically the fan cover is curved on the [Page 250]</p>	<p>1 MS. GIFTOS: Object to form. 2 THE WITNESS: I'm not sure if it is 3 compensating for it or just accounting for it. 4 BY MS. FERRERA: 5 Q Okay. Either way, what this -- what Exhibit 220 6 describes is making some modifications to the 7 internal components of the engine, correct? 8 A Yes. 9 Q And other than what's shown in Figure 1 in 10 Exhibit 220, there's no description of what the 11 top and left sides of the fan cover look like, 12 correct? 13 MS. GIFTOS: Object to form. 14 THE WITNESS: Yes. 15 BY MS. FERRERA: 16 Q And other than what's shown in Figure 2, there's 17 no description of any other aspect of the frontal 18 appearance of the engine, correct? 19 MS. GIFTOS: Object to form. 20 THE WITNESS: Do you mean Figure 1? 21 BY MS. FERRERA: 22 Q Did I say Figure 2? 23 A Yes. 24 Q I meant Figure 1. 25 A That's what Figure 1 is showing, yes. Figure 2, [Page 252]</p>
<p>1 bottom? 2 A So you're referring to Paragraph 3 of the detailed 3 description of the -- 4 Q Yes, sorry, the paragraph that starts "In such a 5 case, the fan cover 5." 6 A Yes. It would be implying that that's what should 7 happen, yes. 8 Q And what this -- what Exhibit 220 describes is 9 that when you have an inclined cylinder, the 10 bottom portion of the fan cover might no longer be 11 curved, correct? 12 MS. GIFTOS: Object to form. 13 THE WITNESS: Correct. I discussed that 14 earlier today. 15 BY MS. FERRERA: 16 Q Okay. And what Exhibit 220 indicates is that that 17 actually causes the cooling to be less efficient, 18 correct? 19 MS. GIFTOS: Object to form. 20 THE WITNESS: Yes, I believe I said that 21 earlier today. 22 BY MS. FERRERA: 23 Q And so the innovation of this patent is making 24 some modifications to the internal features of the 25 engine in order to compensate for this, correct? [Page 251]</p>	<p>1 just for the record, isn't showing much of 2 anything from the front. 3 Q Right. So let me just ask the question again to 4 get a clear record. 5 Other than what's shown in Figure 1, 6 there's no description of the appearance of the 7 front side of the engine, correct? 8 MS. GIFTOS: Object to form. 9 THE WITNESS: Some of the text is 10 describing the flattened portion at the bottom, 11 which is shown in Figure 1. 12 BY MS. FERRERA: 13 Q Okay. And there's nothing in Exhibit 220 that 14 says that the engine has to look like the engine 15 in Exhibit 3, correct? 16 MS. GIFTOS: Object to form. 17 THE WITNESS: With respect to the other 18 components, no. With the -- with respect to the 19 flattening out of the fan cover, or shape, yes, 20 but the other components, no. 21 BY MS. FERRERA: 22 Q So with -- so there's nothing in Exhibit 220 that 23 requires any of the other components to look as 24 they do in Exhibit 3? 25 MS. GIFTOS: Object to form. [Page 253]</p>

[64] (Pages 250 to 253)

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1 THE WITNESS: Correct.  
2 BY MS. FERRERA:  
3 Q And with respect to the fan cover, there's nothing  
4 in Exhibit 220 that requires the fan cover to have  
5 the same left and top surfaces as shown in  
6 Exhibit 3, correct?  
7 MS. GIFTOS: Object to form.  
8 THE WITNESS: I do not see any text that  
9 refers to that.  
10 (Exhibit No. 221 was marked.)  
11 BY MS. FERRERA:  
12 Q Professor Reisel, you have now Exhibit 221, which  
13 is a Japanese patent document having the number  
14 S59-40536?  
15 A Yes.  
16 Q And that's another one of the Japanese patent  
17 documents that you considered in forming your  
18 opinions in this case, correct?  
19 A Yes.  
20 Q And am I correct that it's your opinion that this  
21 document, Exhibit 221, describes placing the speed  
22 control on the outside of the engine to allow for  
23 ease of use by the operator? Paragraph 42, if  
24 you're looking at your report, if you --  
25 A I was actually -- yes.

**[Page 254]**

1 Q Exhibit 221 doesn't actually say anything about  
2 ease of use, though, correct?  
3 A No, it does not.  
4 Q And other than saying that the speed control lever  
5 should protrude -- a portion of the speed control  
6 lever should protrude out the engine, Exhibit 221  
7 doesn't say anything about where on the engine the  
8 speed control lever should be located, correct?  
9 MS. GIFTOS: Object to form.  
10 THE WITNESS: It does state that it  
11 should be between the engine section and the fuel  
12 tank.  
13 BY MS. FERRERA:  
14 Q But it could be on the front of the engine, it  
15 could be on the right side of the engine?  
16 A It could be.  
17 Q And if it's on the front of the engine, it could  
18 be on either the left or right side of the engine?  
19 A The left or right of the front?  
20 Q Right.  
21 A Yes.  
22 Q And there's nothing in Exhibit 221 that requires  
23 there to be a recessed portion in the carburetor  
24 cover from which the speed control lever  
25 protrudes?

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1 A It does not require that.  
2 Q And there's nothing in Exhibit 221 that describes  
3 the frontal appearance of the engine, correct?  
4 MS. GIFTOS: Object to form.  
5 THE WITNESS: That's correct, but I  
6 would also like to go back a bit. The drawings  
7 indicate where the throttle lever would be.  
8 Figure 6 indicates that it's over by -- on the --  
9 well, in this picture beneath the air cover -- air  
10 filter cover.  
11 BY MS. FERRERA:  
12 Q Other than Figure 6 there's nothing in the patent  
13 that requires the speed control lever to be on a  
14 particular side of the engine, correct?  
15 MS. GIFTOS: Object to the form.  
16 THE WITNESS: Correct.  
17 BY MS. FERRERA:  
18 Q And just so that we're clear, there's nothing in  
19 Exhibit 221 that describes the frontal appearance  
20 of the engine, correct?  
21 MS. GIFTOS: Object to form.  
22 THE WITNESS: It's indicating where that  
23 lever would be. We cannot determine from Figure 6  
24 whether that is on the front or back of the  
25 engine.

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1 BY MS. FERRERA:  
2 Q And other than the location of the lever there's  
3 nothing in Exhibit 221 that describes the frontal  
4 appearance of the engine, correct?  
5 MS. GIFTOS: Object to form.  
6 THE WITNESS: Correct.  
7 BY MS. FERRERA:  
8 Q There's no drawing of the front side of the  
9 engine?  
10 A Again, it looks to be a drawing of the back of the  
11 engine as we've been referring to it.  
12 Q And none of the claims relate to the frontal  
13 appearance of the engine, correct?  
14 MS. GIFTOS: Object to form.  
15 THE WITNESS: The written claims,  
16 correct.  
17 BY MS. FERRERA:  
18 Q So there's nothing in Exhibit 221 that requires  
19 the engine to look like the engine shown in  
20 Exhibit 3?  
21 MS. GIFTOS: Object to form.  
22 MR. HERRING: Object to form.  
23 THE WITNESS: Correct.  
24 (Exhibit No. 222 was marked.)  
25 BY MS. FERRERA:

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1 Q Professor Reisel, you have Exhibit 222, and that's  
2 a Japanese patent document having the number  
3 62-33961, correct?  
4 A Yes.  
5 Q And that's another of the Japanese patent  
6 documents that you considered in this case?  
7 A Yes.  
8 Q And it's your opinion that this Exhibit 222, 222,  
9 describes placing all of the control levers,  
10 including the rewind handle, in the same plane on  
11 the engine?  
12 A Yes.  
13 Q If you would turn to the bottom of page AHGX61144,  
14 and continuing to the top of 61145, do you see the  
15 sentence that starts, "In the foregoing  
16 construction"?  
17 A Yes.  
18 Q Actually, if you could just read to yourself that  
19 paragraph that starts on the bottom of 61144 and  
20 finishes on 61145.  
21 A Okay.  
22 Q What do you understand that paragraph to mean when  
23 it says, "If the controls are arranged on a single  
24 plane"?  
25 A My understanding of that is that they all are  
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1 aligned essentially in a straight line.  
2 Q What do you --  
3 A There can be some variation to that straight --  
4 it's not necessarily a line, you can have some  
5 thickness to it, but it's --  
6 Q What do you base that on?  
7 A The interpretation of that and what they're  
8 referring to as being -- that you would have --  
9 okay. You would have the levers protruding  
10 outward so 27 and 26 are going to be in a plane,  
11 and then the recoil starter is going to be pointed  
12 up in that direction as shown in Figure 1,  
13 although here it's not -- the levers and the stop  
14 switch are clearly on the same horizontal plane  
15 going across there.  
16 Q The same horizontal plane?  
17 A Yes.  
18 Q Which is the stop switch?  
19 A That is No. 28 in Figure 1.  
20 Q So the stop switch and the -- well, strike that.  
21 It's not the case that all of the  
22 controls are on a single plane as you've defined  
23 it, correct?  
24 A They are not on a straight line across there.  
25 They are in a narrow rectangle across there, and a  
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1 plane would be -- have width associated with it.  
2 Q So the last sentence in the paragraph says, "Thus,  
3 the throttle lever 25, the choke lever 26, the  
4 fuel valve lever 27, are arranged in a plane that  
5 includes the rate coil starter knob 15, and a stop  
6 switch 28 is provided on the side of the fan cover  
7 13 under the fuel tank."  
8 A All right. I was misreading some of that. That  
9 makes a little bit more sense with 15 fitting into  
10 there. So 15, 25, 26 and 27 are therefore along a  
11 vertically oriented plane.  
12 Q And how about 28?  
13 A 28 is off on its own.  
14 Q But this -- according to Exhibit 222, all of those  
15 controls are, quote, on a single plane, correct?  
16 A That's -- this is Exhibit 222 we're looking at,  
17 right?  
18 Q Yeah.  
19 A Actually, as I read that again, the stop -- it's  
20 just saying that the stop switch is provided on  
21 the side of the fan cover under the fuel tank, so  
22 that the controls are -- so that it's separating  
23 them off from the other controls and would not  
24 appear to be including the stop switch as a  
25 control of the engine.  
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1 Q So your interpretation of that statement is it  
2 that the throttle lever, the choke lever, the fuel  
3 valve lever and the recoil starter knob are all in  
4 a vertical plane?  
5 A Yes, and -- and that they are considering that the  
6 controls of the engine to be the throttle lever,  
7 the choke lever and the fuel valve lever.  
8 Q Okay. There's nothing in Exhibit 222 that  
9 requires those controls to be located in a  
10 recessed portion of the carburetor cover, correct?  
11 MR. HERRING: Object to form.  
12 THE WITNESS: The choke lever and valve  
13 lever are to protrude outward through long holes  
14 formed in the carburetor cover.  
15 BY MS. FERRERA:  
16 Q It doesn't say anything about the carburetor cover  
17 having a recessed portion from which those  
18 controls protrude, correct?  
19 A A re -- recessed portion and long holes are  
20 certainly very similar, but it is not specifically  
21 a recessed portion.  
22 Q It could just be a cutout in the carburetor cover,  
23 correct?  
24 A Yes.  
25 Q As we saw in some of the examples of the other  
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1 engines earlier today?  
2 A Yes.  
3 Q And there's no description in Exhibit 22 of what  
4 any of the other components of the engine should  
5 look like, correct?  
6 MS. GIFTOS: Object to form.  
7 MS. FERRERA: Sorry, I think I misstated  
8 the exhibit number.  
9 BY MS. FERRERA:  
10 Q There's no description in Exhibit 222 of what any  
11 of the other components of the engine should look  
12 like, correct?  
13 MS. GIFTOS: Same objection.  
14 THE WITNESS: Their specific appearance,  
15 no. The location of them is included somewhat  
16 with the air cleaner.  
17 BY MS. FERRERA:  
18 Q What are you referring to for that statement?  
19 A The aforementioned levers: 25, 26 and 27, are  
20 arranged under the air cleaner and the cover is  
21 suspended downward from the case, but the actual  
22 physical form of those, no, but their basic  
23 relation -- location is included.  
24 Q So other than the location, there's no description  
25 in Exhibit 222 of what the other components of the  
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1 engine should look like?  
2 MS. GIFTOS: Object to form.  
3 THE WITNESS: Correct.  
4 BY MS. FERRERA:  
5 Q So you would agree, would you not, that  
6 Exhibit 222 does not require the engine to look  
7 like the engine in Exhibit 3?  
8 MS. GIFTOS: Object to form.  
9 MR. HERRING: Object to form.  
10 THE WITNESS: It does not require it to  
11 look like figure -- or Exhibit 3. The Figure 1 is  
12 a similar diagram of the arrangement, though, and  
13 it -- and that is showing the front view of a  
14 general purpose engine. It does not say the front  
15 view of any possible general purpose engine or  
16 every possible general purpose engine.  
17 BY MS. FERRERA:  
18 Q But would you agree that the claims in Exhibit 222  
19 do not require the engine to look like what's in  
20 Figure 1?  
21 MS. GIFTOS: Object to form.  
22 THE WITNESS: The claim --  
23 BY MS. FERRERA:  
24 Q Other than the location?  
25 A It requires the locations of the air cleaner  
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1 located above the carburetor, and the location of  
2 the levers as well.  
3 Q Okay. So other than location, the claims in  
4 Exhibit 222 do not require the engine to look like  
5 Figure 1, correct?  
6 MS. GIFTOS: Object to form.  
7 THE WITNESS: Correct.  
8 BY MS. FERRERA:  
9 Q And other than the location, the claims do not  
10 require the engine to look like exhibit -- the  
11 engine in Exhibit 3?  
12 MS. GIFTOS: Object to form.  
13 THE WITNESS: Correct.  
14 BY MS. FERRERA:  
15 Q Professor Reisel, you were retained in this case  
16 as an expert by Briggs & Stratton and Kohler, is  
17 that correct?  
18 A Correct.  
19 Q Were you actually retained by both of them or just  
20 one of them?  
21 A My recollection of this is that it was initially  
22 by Briggs and shortly thereafter by Kohler.  
23 Q Currently you're retained by both?  
24 A Yes.  
25 Q And at what rate are you being compensated for  
[Page 264]

1 your work in this case?  
2 A \$200 an hour.  
3 Q How many hours have you spent on this case,  
4 approximately, to date?  
5 A Won't include today -- well, maybe we will include  
6 today. I'm adding up my total from this year as  
7 opposed to the previous total, which I will  
8 include in the total. I would say at this point  
9 it's in the neighborhood of 70 hours.  
10 Q And so approximately how much have you been paid  
11 to date for your work in this case?  
12 A I believe it is \$8,200. Might be 84.  
13 Q And do you have any invoices outstanding?  
14 A I have not invoiced them for my work this year as  
15 of this point in time.  
16 Q Okay. So how much additional are you owed?  
17 A My guess right at this moment in time is about  
18 \$6,000.  
19 Q And is the arrangement that Briggs & Stratton and  
20 Kohler each pay half of your invoices?  
21 A Yes, at least that's what it was with the first  
22 one.  
23 Q Would you turn in your CV, which I believe is  
24 Exhibit 196, to Page 30?  
25 A Okay.  
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<p>1 Q And that's -- starting on the top of Page 30 and 2 continuing to almost the bottom of Page 31, is a 3 list of the research grants and funding that 4 you've received? 5 A Um-hum. Yes. 6 Q Is that list complete as of today? 7 A Unless I got an e-mail today funding me on another 8 proposal, yes. 9 Q As far as you know, it's complete, correct? 10 A Yes. 11 Q Okay. And so as of today you've received five 12 grants from the Wisconsin Small Engine Consortium, 13 correct? 14 A Correct. 15 Q And those are all grants relating to the work that 16 we talked about earlier today at the Center for 17 Alternative Fuels? 18 A Correct. 19 Q And I think you indicated earlier today that the 20 Wisconsin Small Engine Consortium has several 21 companies that are its members? 22 A Yes. 23 Q And that includes Briggs &amp; Stratton? 24 A Yes. 25 Q And it includes Kohler?</p> <p style="text-align: right;"><b>[Page 266]</b></p>	<p>1 have any operations in Wisconsin, they still are 2 not. 3 Q Have you received any grants from the Wisconsin 4 Small Engine Consortium other than those listed in 5 Paragraphs -- Pages 30 and 31? 6 A No. 7 Q And totaling it up, am I correct that the grants 8 from the Wisconsin Small Engine Consortium add up 9 to about \$270,000? 10 A Yeah, 260 or 270. Yeah. 11 Q And that accounts for about 12 percent of your 12 funding over the last 12 years, correct -- sorry, 13 20 years? 14 MS. GIFTOS: Object to form. 15 THE WITNESS: Yeah, that's less than it. 16 You're missing the educational grants, which 17 include another \$2 million, another \$600,000. 18 BY MS. FERRERA: 19 Q What's the difference between the educational 20 grants and the research grants? 21 A The research grants are specifically looking at 22 research topics. The educational grants are 23 providing money for projects that we are working 24 on developing various educational programs. For 25 instance, the \$2 million -- nearly \$2 million one</p> <p style="text-align: right;"><b>[Page 268]</b></p>
<p>1 A Yes. 2 Q Do you recall the names of any of the other 3 companies that are members? 4 A As I mentioned this morning, Harley-Davidson, 5 Mercury Marine, the company that I can't remember 6 in Stoughton, their name. OMC was a member until 7 they kind of -- first of all, moved from Wisconsin 8 and then disappeared as a separate company and was 9 taken over by Bombardier, and I don't know if they 10 then later joined the consortium, and around the 11 time that I was ending my work with the 12 consortium, there was a question as to whether or 13 not Polaris was going to be joining. They were 14 interested in joining but weren't certain of how 15 it was going to work out, so they may or may not 16 be today. 17 Q The grants that the Wisconsin Small Engine 18 Consortium hands out, are those funded by its 19 members as well? 20 A As I explained this morning, half of the funding 21 comes from the State of Wisconsin and half of it 22 comes from the members. 23 Q Honda is not a member of the small -- Wisconsin 24 Small Engine Consortium, is it? 25 A They were not while I was there, and if they don't</p> <p style="text-align: right;"><b>[Page 267]</b></p>	<p>1 involved really trying to change our freshman 2 experience for the students, so I actually did 3 research on some of the aspects and the results of 4 that project, but its primary focus was to provide 5 educational enhancements for undergraduate 6 students, because all the research grants are also 7 helping some of the education, but not some of the 8 formal aspects. I don't know if you want me to go 9 into details on that. 10 Q No, that's fine. So in terms of the grants 11 directed to your research, the grants that you 12 received from the Wisconsin Small Engine 13 Consortium accounted for approximately 12 percent 14 of your funding, correct? 15 A Correct. 16 Q Over the last 20 years? 17 A Of my research funding. I'm extremely active in 18 educational development, so to discount the 19 support that I've gotten from those is not fair. 20 Q Okay. In terms of your research funding, the 21 Wisconsin Small Engine Consortium grants account 22 for about 12 percent over the past 20 years, 23 correct? 24 A Yes. 25 Q Has the Wisconsin Small Engine Consortium funded</p> <p style="text-align: right;"><b>[Page 269]</b></p>

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1 any of your education grants?  
2 A They are just worried about the funding of the  
3 research, so no.  
4 Q On Page 30 there's also a reference to a grant  
5 that you received from the Southeastern Wisconsin  
6 Energy Technology Research Consortium. Do you see  
7 that?  
8 A Yes.  
9 Q In 2009 and 2010?  
10 A Yes.  
11 Q And the amount of that grant was about \$85,000?  
12 A Yes.  
13 Q And what is that organization?  
14 A That organization, at least back then, it's  
15 changed names since then and broadened out from  
16 just southeastern Wisconsin. That is a group of  
17 companies who are involved in some way or another  
18 in energy, and it's everything in energy. It goes  
19 from power lines to -- in this case it was water  
20 heaters that we were looking at.  
21 It's funded -- but with input from those  
22 companies and from the U.S. Department of Energy  
23 providing funds, at least it did provide, I don't  
24 know if they still are providing any funds into  
25 that consortium, but when I was -- got that

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1 project, they were providing some of the funds.  
2 The projects were designed to be  
3 collaborations between faculty at one or three  
4 schools at the time, and it's broadened out to an  
5 additional school or two beyond that, as well as a  
6 particular company.  
7 The project referred to there was  
8 working with people from A.O. Smith on water  
9 heaters, and as far as I can recall, none of the  
10 small engine companies are involved with them, or  
11 at least were involved with them.  
12 Q All right. So your -- it's your -- strike that.  
13 Were you aware that, or are you aware  
14 that Briggs & Stratton is a member of that  
15 consortium?  
16 MR. HERRING: Object --  
17 THE WITNESS: I am not aware if they  
18 currently are and I also haven't been seeking  
19 funding from them for years.  
20 BY MS. FERRERA:  
21 Q You don't know whether they were a member at the  
22 time you obtained funding from that consortium?  
23 A I cannot recall them being a member at that time.  
24 Q Do you know for a fact that they were not?  
25 A I would have to look back on which projects were

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1 funded, but I cannot recall a project relating to  
2 them.  
3 Q Okay. Are you aware whether Kohler is a member of  
4 that consortium?  
5 A Same answer. I don't know their current status  
6 and I cannot recall them being a member and  
7 involved in any way back then.  
8 Q Are you aware that Whyte Hirschboeck is a member  
9 of that consortium?  
10 A I don't think they are because they aren't an  
11 energy company or a company involved in energy.  
12 Q And if they're listed on the consortium's website,  
13 that would come as a surprise to you?  
14 A That would come as a surprise, it also would  
15 represent the expansion of how that consortium has  
16 changed since I haven't been working with them.  
17 Q As far as you know, Honda has never been a member  
18 of that consortium, correct?  
19 A Correct, and again, certainly when I was doing  
20 work with them, neither of those companies were.  
21 Q The work that you did based on the grants that you  
22 received from the Southeastern Wisconsin Energy  
23 Technology Research Consortium did not involve  
24 engines, correct?  
25 A No, they were gas water heaters.

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1 Q Do you currently have any applications for grants  
2 pending with either the Wisconsin Small Engine  
3 Consortium -- or the Midwest -- I guess it's now  
4 called the Midwest Energy Research Consortium?  
5 A No.  
6 Q Professor Reisel, what did you do to prepare for  
7 your deposition today?  
8 A I reviewed my previous materials, counsel for  
9 Briggs and Kohler described what would be  
10 happening for that, and they provided some  
11 discussions as things that you might be likely to  
12 be asking questions on.  
13 Q Did you review any documents?  
14 A The documents that were contained in my -- or  
15 referred to in my reports, I re-reviewed some of  
16 those.  
17 Q Did you review any documents that you hadn't seen  
18 prior to the submission of any of your reports?  
19 A It is my understanding that you had sent counsel  
20 three pictures of engines and I had looked at  
21 those.  
22 Q Those are the only new documents that you saw?  
23 A Yes, and I don't even know if they're new because  
24 I've seen pictures at least like those. They may  
25 not be new documents.

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**JOHN REISEL, Ph.D.**

1 Q When did you meet with the attorneys?  
2 A I met with the attorneys last Thursday and  
3 yesterday.  
4 Q What attorneys did you meet with last Thursday?  
5 A I met with Mindy, I met with Ken Nowakowski, and  
6 Seth was on the phone.  
7 Q And how long did that meeting take place?  
8 A That went for about five hours.  
9 Q And have you met with them subsequently?  
10 A I met with --  
11 Q Any subset of them?  
12 A -- Mindy and Seth, yes.  
13 Q And how long was that meeting?  
14 A That meeting was about three hours.  
15 Q Other than counsel for either Briggs & Stratton or  
16 Kohler and other than the meeting with Briggs &  
17 Stratton back in 2011/2012 and the meeting with  
18 Kohler in 2012, have you discussed this case with  
19 anyone else, in substance?  
20 A Other than telling people that I'm working on this  
21 and here's what they're saying and this, no.  
22 Q Has --  
23 A And those would be people who wouldn't have any  
24 idea what I was talking about anyway, like my  
25 wife.

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1 Q Have you had any conversations with anyone other  
2 than that list that I gave you in which you  
3 obtained information that you relied on in forming  
4 your opinions in this case?  
5 A No.  
6 MS. FERRERA: Okay. Why don't we go off  
7 the record?  
8 (Discussion off the record.)  
9 MS. FERRERA: Thank you, Professor  
10 Reisel. I have no further questions at this time.  
11 THE WITNESS: You're welcome.  
12 (Proceedings concluded at 5:01 p.m.)  
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[Page 275]

1 STATE OF WISCONSIN )  
 ) SS:  
2 COUNTY OF MILWAUKEE )  
3  
4 I, DANNIELLE K. COPELAND, Registered  
5 Merit Reporter, Certified Realtime Reporter and Notary  
6 Public in and for the State of Wisconsin, do hereby  
7 certify that the above deposition of JOHN REISEL,  
8 Ph.D., was recorded by me on May 21, 2015, and reduced  
9 to writing under my personal direction.  
10 I further certify that I am not a  
11 relative or employee or attorney or counsel of any of  
12 the parties, or a relative or employee of such attorney  
13 or counsel, or financially interested directly or  
14 indirectly in this action.  
15 In witness whereof I have hereunder set  
16 my hand and affixed my seal of office at Milwaukee,  
17 Wisconsin, this 28th day of May, 2015.  
18  
19  
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22  
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25

\_\_\_\_\_  
Notary Public  
In and for the State of Wisconsin

My Commission Expires: October 18th, 2015.

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1 I have read the foregoing transcript of  
2 my deposition given on May 21, 2015, and  
3 it is true, correct and complete, to the best  
4 of my knowledge, recollection and belief,  
5 except for the corrections noted hereon  
6 and/or list of corrections, if any, attached  
7 on a separate sheet herewith.  
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\_\_\_\_\_  
JOHN REISEL, Ph.D.

Subscribed and sworn to  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public



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

BRIGGS & STRATTON CORPORATION and	)	
KOHLER CO.,	)	
	)	
Opposers,	)	Opposition No. 91200832 (parent)
	)	
v.	)	Opposition No. 91200146
	)	
HONDA GIKEN KOGYO KABUSHIKI	)	Application Serial No. 78924545
KAISHA,	)	
	)	
Applicant.	)	
	)	
	)	
	)	

**[PROPOSED] ORDER GRANTING APPLICANT’S  
MOTION TO STRIKE IMPROPER EXPERT TESTIMONY  
OF FACT WITNESS JEFF WHITMORE**

WHEREFORE, having considered the submissions, arguments, facts, and circumstances of the parties presented to the Trademark Trial and Appeal Board, it is hereby ORDERED that Applicant Honda Giken Kogyo Kabushiki Kaisha’s Motion to Strike Improper Expert Testimony of Fact Witness Jeff Whitmore is GRANTED.

The following sections of Mr. Whitmore’s June 24, 2015 testimony deposition transcript are hereby stricken:

- Page 17, lines 6-17
- Page 18, line 22 to page 20, line 7
- Page 21, line 25 to page 22, line 4
- Page 31, line 9 to page 32, line 2
- Page 36, lines 15-25
- Page 37, line 6 to page 38, line 2
- Page 38, line 11 to page 42, line 17
- Page 44, lines 11-23
- Page 45, line 7 to page 46, line 13
- Page 47, lines 1-17
- Page 47, line 22 to page 56, line 1

- Page 60, lines 7-8 (“The shape and location of the component parts are functional.”)
- Page 60, lines 10-12 (“But based on the application requirements and the base engine design, the location of the components are functionally fixed.”)
- Page 60, line 16 to page 61, line 10
- Page 74, line 16 to page 77, line 7
- Page 182, lines 10-15
- Page 183, line 20 to page 184, line 14
- Page 184, line 19 to page 186, line 10

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_

By the Trademark Trial and Appeal Board