

APPENDIX 2-2

Pope B PLAYED on 5_4 20151007 PA DC on 5-1-17

Scene	Designation	Source	Tx Duration	Elapsed	Remains	Media File	Barcode
1	7:23 -7:25	Pope, Barry 2015-10-07 7:23 Q. Could you please state your full name for 7:24 the record. 7:25 A. Barry William Pope.	00:00:04	00:00:00	00:45:19	Pope_B-100715-1of.	M4.1
2	9:15 -9:17	Pope, Barry 2015-10-07 9:15 Q. And you understand that you are testifying 9:16 under oath today? 9:17 A. I do.	00:00:04	00:00:04	00:45:15	Pope_B-100715-1of.	M4.2
3	11:2 -11:14	Pope, Barry 2015-10-07 11:2 Could you please give just a general 11:3 overview of your educational background post high 11:4 school? 11:5 A. I graduated from -- do you want from high 11:6 school? 11:7 Q. After high school. 11:8 A. After high school. Okay. 11:9 I graduated from Michigan State in 1984 as 11:10 a packaging engineer, and then I also have a 11:11 master's from DePaul University. I think it's 11:12 1995. 11:13 Q. What is your master's in? 11:14 A. MBA with marketing emphasis.	00:00:31	00:00:08	00:45:11	Pope_B-100715-1of.	M4.3
4	22:10 -22:16	Pope, Barry 2015-10-07 22:10 Q. Do you remember approximately what year 22:11 you started with Sears? 22:12 A. I'm thinking it was 2010. 22:13 Q. And what was your initial position at 22:14 Sears? 22:15 A. Initial and only. I was the product 22:16 manager for Craftsman hand tools.	00:00:20	00:00:39	00:44:40	Pope_B-100715-1of.	M4.4
5	24:10 -24:13	Pope, Barry 2015-10-07 24:10 Q. Do you currently work for Sears? 24:11 A. I do not. 24:12 Q. When did you leave Sears? 24:13 A. In 2014.	00:00:05	00:00:59	00:44:20	Pope_B-100715-1of.	M4.5
6	25:7 -25:20	Pope, Barry 2015-10-07 25:7 Q. What were your -- can you give me an 25:8 overview of what your general responsibilities 25:9 were? 25:10 A. So this was a great position. It would	00:00:50	00:01:04	00:44:15	Pope_B-100715-1of.	M4.6

25:11 have the traditional product management, new
 25:12 product development, but here we were actually
 25:13 operating kind of as a buyer, working with our
 25:14 vendors. Sears does not manufacture anything, and
 25:15 yet we have a whole engineering team, and we do our
 25:16 design and development and features. We may take
 25:17 products and improve on them, and -- but,
 25:18 otherwise, too, we would have vendors come to us,
 25:19 and we'll say show us and try to convince us that
 25:20 we could take their product on.

7	28:14 -28:21	Pope, Barry 2015-10-07	00:00:22	00:01:54	00:43:25	Pope_B-100715-1of.	M4.7
		28:14 What did you do to prepare for today's					
		28:15 deposition?					
		28:16 A. We had meeting where we just went over to					
		28:17 refresh my memory yesterday.					
		28:18 Q. Who is "we"?					
		28:19 A. The two gentlemen that are sitting here.					
		28:20 Q. That would be Mr. Hilmert and Mr. Lenihan?					
		28:21 A. That is correct.					
8	29:3 -29:5	Pope, Barry 2015-10-07	00:00:10	00:02:16	00:43:03	Pope_B-100715-1of.	M4.8
		29:3 Q. Approximately how long did this meeting					
		29:4 last?					
		29:5 A. Five hours, six hours.					
9	29:10 -29:15	Pope, Barry 2015-10-07	00:00:21	00:02:26	00:42:53	Pope_B-100715-1of.	M4.9
		29:10 Q. Did you review any documents yesterday in					
		29:11 preparation for today's deposition?					
		29:12 A. We went over e-mails.					
		29:13 Q. Did those e-mails refresh your					
		29:14 recollection about past events?					
		29:15 A. It helped a little bit.					
10	30:11 -30:13	Pope, Barry 2015-10-07	00:00:04	00:02:47	00:42:32	Pope_B-100715-1of.	M4.10
		30:11 Q. Did you sign any type of representation					
		30:12 agreement with Mr. Hilmert's firm?					
		30:13 A. Yes.					
11	30:25 -31:11	Pope, Barry 2015-10-07	00:00:39	00:02:51	00:42:28	Pope_B-100715-1of.	M4.11
		30:25 Q. Are you paying Mr. Hilmert or his firm for					
		31:1 their representation today?					
		31:2 A. I am not.					
		31:3 Q. Do you know who is?					
		31:4 A. It would be speculation, but since you					
		31:5 have these gentlemen here and the introductory					
		31:6 comments said Sears and Apex.					
		31:7 Q. Are you being compensated for your					
		31:8 testimony today?					

31:9 A. I am being compensated for the time lost.
 31:10 Q. How much are you being compensated?
 31:11 A. \$125 an hour.

12 **31:12 -31:21** Pope, Barry 2015-10-07 00:00:29 00:03:30 00:41:49 Pope_B-100715-1of. M4.12

31:12 Q. And is that for the time you spend at
 31:13 today's deposition?
 31:14 A. Yes.
 31:15 Q. Does that include the time that you spent
 31:16 yesterday preparing?
 31:17 A. Yes.
 31:18 Q. Is there any other time that you're being
 31:19 compensated for other than today's time and
 31:20 yesterday's preparation time?
 31:21 A. Just travel time to and from.

13 **36:13 -36:20** Pope, Barry 2015-10-07 00:00:24 00:03:59 00:41:20 Pope_B-100715-1of. M4.13

36:13 Q. Mr. Pope, you've just been handed
 36:14 Exhibit 3. At the bottom of this document is what
 36:15 we call a Bates stamp. That's where it says
 36:16 SEARS_003129.
 36:17 A. Yes.
 36:18 Q. The top of this document, it says from Dan
 36:19 Brown, and it says to Barry Pope; do you see that?
 36:20 A. Yes.

14 **36:23 -37:13** Pope, Barry 2015-10-07 00:00:49 00:04:23 00:40:56 Pope_B-100715-1of. M4.14

36:23 Q. And this e-mail is dated November 1, 2010;
 36:24 is that correct?
 36:25 A. Yes.
 37:1 Q. Do you see where it says "Barry, It was
 37:2 great meeting you at the ACE show"?
 37:3 A. That would be the "ACE show."
 37:4 Q. What is the "ACE show"?
 37:5 A. Ace Hardware.
 37:6 Q. Is this an annual show?
 37:7 A. I think they have it a couple of times.
 37:8 They have what we call a spring show and a fall
 37:9 show.
 37:10 Q. Do you recall if this was the first time
 37:11 that you ever met Mr. Brown?
 37:12 And feel free to review the e-mail.
 37:13 A. I would believe, yes.

15 **38:11 -38:24** Pope, Barry 2015-10-07 00:00:39 00:05:12 00:40:07 Pope_B-100715-1of. M4.15

38:11 Q. Do you recall anything else about your
 38:12 conversation with Mr. Brown related to the Ace
 38:13 show?

38:14 A. I only recall a total of like, I think,
 38:15 two conversations with him.
 38:16 What was interesting on this one, where he
 38:17 intrigued me was in the conversation here we talked
 38:18 about him being an inventor and then teaching at
 38:19 Northwestern. And the intrigue on my part was I
 38:20 always wanted to teach at the college level in the
 38:21 product management realm, but I didn't know that
 38:22 even existed. So it was more focused on, we'll
 38:23 say, outside work communication and opportunities
 38:24 versus even this here.

16 **39:25 -40:11** Pope, Barry 2015-10-07 00:00:40 00:05:51 00:39:28 Pope_B-100715-1of. M4.16

39:25 Q. Mr. Pope, can you tell me what the Max
 40:1 Axxess Locking Wrench is?
 40:2 A. Max Axxess Locking Wrench is a combination
 40:3 of a wrench that as you squeeze the handles, it
 40:4 will tighten, and then it brings in the feature of
 40:5 the locking mechanism, which, in turn, allows you
 40:6 to give a lot more torque from an application
 40:7 standpoint, which is similar to the vice grip
 40:8 locking pliers, and then from that standpoint, too,
 40:9 is you don't have to -- when you lock it, you don't
 40:10 have to keep releasing and changing. You can lock
 40:11 it once and keep moving on.

17 **40:12 -40:14** Pope, Barry 2015-10-07 00:00:09 00:06:31 00:38:48 Pope_B-100715-1of. M4.17

40:12 Q. Do you recall when Sears first started
 40:13 development of the Max Axxess Locking Wrench?
 40:14 A. Yes.

18 **41:3 -41:16** Pope, Barry 2015-10-07 00:00:44 00:06:40 00:38:39 Pope_B-100715-1of. M4.18

41:3 Q. Can you describe what your involvement was
 41:4 with the Max Axxess Locking Wrench and its
 41:5 development?
 41:6 A. So I am the product manager, and as the
 41:7 product manager, one of the main functions is
 41:8 project management. As we talked earlier, I don't
 41:9 have people directly reporting to me, but I'm the
 41:10 leader of a cross-functional team. My
 41:11 responsibility is to make sure everything is done
 41:12 in a timely fashion to appease the customer and to
 41:13 make sure that it is designed and functions
 41:14 properly, to make sure that from a project
 41:15 management standpoint, that we'll say the Is are
 41:16 dotted and the Ts are crossed.

19 **41:21 -42:12** Pope, Barry 2015-10-07 00:00:52 00:07:24 00:37:55 Pope_B-100715-1of. M4.19

41:21 Q. Why did Sears become interested in
 41:22 developing the Max Axess Locking Wrench?
 41:23 A. So when we develop a product, our main
 41:24 customer from the group that I worked in is Sears
 41:25 Holdings -- excuse me -- I worked for Sears
 42:1 Holdings Company. The group that I worked for is
 42:2 called KCD, which stands for Kenmore, Craftsman and
 42:3 Diehard, which are their main brands that Sears
 42:4 owns.
 42:5 Our No. 1 customer is Sears. So Sears
 42:6 approached us and said "We may have an opportunity
 42:7 for you. Would you be interested?"
 42:8 And the answer is "Of course." Always
 42:9 interested in any opportunity that is presented to
 42:10 us.
 42:11 Q. Who approached you?
 42:12 A. It would be Stephanie Kaleta.

20	42:16 -42:21	Pope, Barry 2015-10-07	00:00:16	00:08:16	00:37:03	Pope_B-100715-1of.	M4.20
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42:16 Q. Do you recall any particular reasons she
 42:17 gave for this -- for having this development
 42:18 opportunity?
 42:19 A. Yes, I do.
 42:20 She was having potential vendor issues,
 42:21 and we'll say had a big need to be filled.

21	43:5 -43:11	Pope, Barry 2015-10-07	00:00:15	00:08:32	00:36:47	Pope_B-100715-1of.	M4.21
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43:5 Q. So is it correct then that Ms. Kaleta
 43:6 approached you with this opportunity to develop a
 43:7 new wrench; is that correct?
 43:8 A. Yes.
 43:9 Q. Did you approach Apex in actually
 43:10 designing and manufacturing the wrench?
 43:11 A. Yes.

22	43:12 -44:8	Pope, Barry 2015-10-07	00:01:32	00:08:47	00:36:32	Pope_B-100715-1of.	M4.22
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43:12 Q. You personally?
 43:13 A. So when you look at it -- I mentioned I
 43:14 have 120 plus vendors. In reality, it's like an
 43:15 inverted triangle. Out of those 120 vendors, maybe
 43:16 20 of them, I did a lot of business with; that is,
 43:17 you come down to the point, I probably had six
 43:18 vendors that I would entrust to develop a product
 43:19 for me. And by "entrust" I mean they, in turn,
 43:20 would have the capability to do something.
 43:21 My key vendor was a company called Western
 43:22 Forge out of Colorado. They made my pliers, and

43:23 they made my screwdrivers. And in the same token
 43:24 is Apex made our mechanic's tools. When you look
 43:25 at these two companies, they are very different.
 44:1 Apex is a very dynamic company, a lot of
 44:2 brands, an excellent engineering group and
 44:3 creative; where Western Forge is an older,
 44:4 traditional forging manufacturing company, high
 44:5 quality, next to no, in fact, no innovation or no
 44:6 design and development standpoint. So two very
 44:7 different companies. So that would be why we
 44:8 approached Apex.

23 **45:15-45:17** Pope, Barry 2015-10-07 00:00:14 00:10:19 00:35:00 Pope_B-100715-1of. M4.23

45:15 Q. Mr. Pope, you've just been handed what we
 Link > P347.1 45:16 are marking as Exhibit 4. This is a document
 45:17 bearing Bates label SEARS_0000305 through 306.

24 **45:20-46:1** Pope, Barry 2015-10-07 00:00:23 00:10:33 00:34:46 Pope_B-100715-1of. M4.24

45:20 I'd like to start on the second page.
 Link > P347.2 45:21 This is an e-mail string. So it's going to be the
 Link > P347.2.1 45:22 first e-mail in time. It's from Jill Lowe. It's
 45:23 dated March 9, 2012, at 12:16 p.m., and you see
 45:24 it's sent to you and Mr. McDonnell; is that
 45:25 correct.
 46:1 A. That is correct.

25 **46:21-48:5** Pope, Barry 2015-10-07 00:02:03 00:10:56 00:34:23 Pope_B-100715-1of. M4.25

46:21 Q. The next item, it says Bionic Wrench; do
 Link > P347.2.2 46:22 you see that?
 46:23 A. I do, yes.
 46:24 Q. What does Bionic Wrench refer to in this
 46:25 case?
 47:1 A. Well, I mean it was no surprise to anybody
 47:2 that we were looking at it that the Bionic Wrench
 47:3 was a potential competitive tool that we could win
 47:4 some business from.
 47:5 Q. When you say "it was no surprise to
 47:6 anybody," what do you mean by that?
 47:7 A. I mean the opportunity that had been
 47:8 presented was that she had issue and then our
 Link > Hide 47:9 opportunity was targeted towards the Bionic Wrench.
 47:10 Q. Do you know if the opportunity was driven,
 47:11 in part, by the sales of the Bionic Wrench in the
 47:12 prior years?
 47:13 A. Yes.
 47:14 Q. Could you elaborate?
 47:15 A. So in 2011, you know, I know that that was

47:16 a very successful thing for Sears. Along those
 47:17 lines is, as we progress each year, we're given
 47:18 objectives to achieve, sales objectives or
 47:19 whatever. So when -- Stephanie's objectives, you
 47:20 know, are based on sales. Mine are based on sales
 47:21 and meeting dates and launches. It was a big
 47:22 number, I guess, you know, a million or more.
 47:23 And so that would already -- I mean,
 47:24 unfortunately, you don't go backwards. A company
 47:25 does not make any money when the sales decline.
 48:1 They want to either keep them the same or grow
 48:2 them, and I hope they want to grow them for future
 48:3 successes. So I mean we did have an inkling, and
 48:4 we'll say knowledge that they had had a successful
 48:5 year.

26	48:6 -48:10	Pope, Barry 2015-10-07	00:00:14	00:12:59	00:32:20	Pope_B-100715-1of.	M4.26
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48:6 Q. So would it be fair to say that Sears just
 48:7 kind of wanted to develop their own tools so
 48:8 basically they could potentially, you know, have
 48:9 greater margins on the sale of that tool as opposed
 48:10 to, you know, working with an outside vendor?

27	48:13 -49:9	Pope, Barry 2015-10-07	00:01:20	00:13:13	00:32:06	Pope_B-100715-1of.	M4.27
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48:13 THE WITNESS: So when we choose a vendor, we
 48:14 qualify the vendors to make sure, you know, there
 48:15 is no human right issue or if they are manufactured
 48:16 overseas or we pool -- like I said, I had 120
 48:17 existing vendors.
 48:18 But the key thing, too, is if you go in a Sears
 48:19 store, you will see what I'll call national brands,
 48:20 and you'll see Craftsman. And Craftsman, you know,
 48:21 is the key, I'll guess, almost a private label
 48:22 brand of Sears.
 48:23 The benefit that we have of Craftsman or that
 48:24 we sell to the consumer, one is, in hand tools, the
 48:25 unconditional warranty. The other one is when we
 49:1 design the tools, you know, we have the engineering
 49:2 team in place. We utilize our vendor's engineering
 49:3 team to come up with a tool that surpasses even the
 49:4 national brand tool, whether it be superior
 49:5 function, additional functionality, and then we
 49:6 also incorporate what we call our VBL, which is
 49:7 visual brand language. And what that is is the
 49:8 look, the feel of Craftsman tools. It's the
 49:9 branding.

28	50:1 -50:5	Pope, Barry 2015-10-07	00:00:19	00:14:33	00:30:46	Pope_B-100715-1of.	M4.28
	Link > P347.1.3	50:1 Q. If you could turn to the first page of 50:2 Exhibit 4. The second e-mail string, there is an 50:3 e-mail from Eric Broadaway. It's dated Monday, 50:4 March 12, 2012, at 9:24 a.m.; do you see that? 50:5 A. I do, yes.					
29	50:17 -51:11	Pope, Barry 2015-10-07	00:01:06	00:14:52	00:30:27	Pope_B-100715-1of.	M4.29
	Link > P347.1.4 Link > P347.1	50:17 Q. Do you see the subject line? It says 50:18 "Craftsman replacement for Bionic Wrench"; do you 50:19 see that? 50:20 A. I do see that, yes. 50:21 Q. I'd like to go to the e-mail above that. 50:22 It's dated March 12 at 8:32 a.m.; do you see that? 50:23 A. I do, yes. 50:24 Q. Do you see the picture there? 50:25 A. Yes. 51:1 Q. Can you tell me what that is? 51:2 A. That is, it looks like, when I say "a 51:3 picture," it looks like a rendering of potential 51:4 mechanism for our Max Axess. This would have been, 51:5 I'm assuming, based on the e-mail here, a very 51:6 initial look at it. Link > Hide 51:7 Q. And based on the date of this e-mail, does 51:8 that refresh your recollection at all as to when 51:9 the development of the Max Axess Locking Wrench 51:10 began? 51:11 A. It would be around this time period.					
30	52:24 -53:2	Pope, Barry 2015-10-07	00:00:16	00:15:58	00:29:21	Pope_B-100715-1of.	M4.30
		52:24 Q. Mr. Pope, we just handed you Exhibit 5, 52:25 Bates number for this document is SEARS_0000405 53:1 through 406. Take a moment, if you'd like, to skim 53:2 over this e-mail.					
31	53:4 -54:14	Pope, Barry 2015-10-07	00:01:48	00:16:14	00:29:05	Pope_B-100715-1of.	M4.31
		53:4 Q. At the very top of this e-mail, it says 53:5 from Barry Pope to Jill Lowe, Matt McDonnell, and 53:6 it's dated March 9, 2012, at 1:57 p.m.; do you see 53:7 that? 53:8 A. I do, yes. 53:9 Q. And do you see you wrote "Updates in red 53:10 below"; do you see that? 53:11 A. Yes. 53:12 Q. If we look at No. 4, under Bionic Wrench. 53:13 A. Correct. 53:14 Q. Do you see where you included comments					

53:15 below that where it says "Huge interest. Can you
 53:16 work miracles and get this in time for Q4? It's
 53:17 good to reach for the stars"?
 53:18 A. Correct.
 53:19 Q. Could you elaborate on what you meant by
 53:20 "huge interest"?
 53:21 A. Again, based on what we knew from prior
 53:22 years in the sales, that this was, you know, a big
 53:23 dollar volume potential.
 53:24 Q. And what did you mean when you wrote "Can
 53:25 you work miracles and get this in time for Q4"?
 54:1 A. So I think I had alluded to that a little
 54:2 bit prior when I said I had my two vendors. These
 54:3 are the monster vendors for the hand tools. You
 54:4 had -- excuse me -- Western Forge and Apex. When
 54:5 you develop the products, you go through a whole
 54:6 variety of different steps from design to
 54:7 development to prototypes to production to shipping
 54:8 and everything, and there is lots of in between,
 54:9 and that's what I mean by project management.
 54:10 This would have been one to hit Q4 that a
 54:11 lot of extra effort and prioritization had to be
 54:12 done to be able to meet a ship time of Q4.
 54:13 Q. What sort of extra effort was needed?
 54:14 A. Just prioritization. Maybe resources.

32 **55:13 -55:22** Pope, Barry 2015-10-07 00:00:50 00:18:02 00:27:17 Pope_B-100715-1of. M4.32

Link > P345.1

55:13 Q. Mr. Hope, you've just been handed what's
 55:14 marked as Exhibit 6. It bears Bates No.
 55:15 SEARS_0000249 through 250. Take a moment to review
 55:16 this document.
 55:17 If you look at the second e-mail on the
 55:18 string on page 249, this is an e-mail from
 55:19 Mr. McDonnell. It's dated March 16, 2012, at
 55:20 2:07 p.m., and it's to a number of people,
 55:21 including you; is that correct?
 55:22 A. That is correct.

33 **55:23 -57:1** Pope, Barry 2015-10-07 00:01:45 00:18:52 00:26:27 Pope_B-100715-1of. M4.33

Link > P345.1.1

Link > Hide

55:23 Q. And it says "Hello, creative giants. We
 55:24 have had luck in the past with this style of
 55:25 virtual brainstorming"; do you see that?
 56:1 A. Yes.
 56:2 Q. What can you tell me about the style of
 56:3 virtual brainstorming.
 56:4 A. One of the things Sears likes to do is to
 56:5 give names to the product. Some companies do; some

56:6 companies don't. A lot of times a name to a
 56:7 product in a retail environment is important. It
 56:8 gives you a different way to identify the product.
 56:9 Here, what we do as a group -- and these are all --
 56:10 for the most part, these are engineers, product
 56:11 managers, and when I'm saying engineers -- let me
 56:12 just scan this. These are industrial engineers.
 56:13 So these are the ones who are working on that VBL.
 56:14 And then we have -- we include the buying
 56:15 team, and that buying team on here was Adam
 56:16 Whitney, Stephanie Kaleta and Stephanie Cromer, and
 56:17 the rest, like behind that are the product -- it's
 56:18 the product team. So you have industrial
 56:19 designers, the product team. Colin Knight is an
 56:20 engineer. He's in charge of engineering.
 56:21 And so what we are doing is with this
 56:22 being part of your creative team and working on it,
 56:23 we just have internal competition per se, and as
 56:24 you can see from above is they'll throw out a whole
 56:25 variety of names, and you know, then, ultimately,
 57:1 usually, we'll pick one.

34	57:22 -58:1	Pope, Barry 2015-10-07	00:00:12	00:20:37	00:24:42	Pope_B-100715-1of.	M4.34
	57:22	Q. Is it your understanding that the locking					
	57:23	mechanism is the only difference between the tool					
	57:24	that Sears and Apex were developing versus what was					
	57:25	in the market?					
	58:1	A. Nope.					

35	58:2 -59:4	Pope, Barry 2015-10-07	00:01:35	00:20:49	00:24:30	Pope_B-100715-1of.	M4.35
	58:2	Q. What were the other differences that you					
	58:3	were aware of?					
	58:4	A. So when you do product development, of					
	58:5	course you have -- we'll say you do research on or					
	58:6	the engineers do, I should say, we'll go back and					
	58:7	look at patents. Whether it be patents for the					
	58:8	existing item that we're competing against or going					
	58:9	to compete against, which would come out, or for,					
	58:10	I'll call it, prior artwork, and so in this case,					
	58:11	obviously, that was done.					
	58:12	It was done by both Apex, and then our					
	58:13	group of engineers review that. And so the					
	58:14	mechanism or the way that we were conducting the					
	58:15	clamping and everything was done entirely					
	58:16	different. Engineers will say it's part of their					
	58:17	task, I guess, to do design-arounds. That's what					
	58:18	competition is, to look at something and figure out					

58:19 a different way to do it. We'll say create a
 58:20 better mouse trap.
 58:21 And so the locking feature, like I said,
 58:22 was an add that we had. We knew that it brought it
 58:23 benefit. Part of that, too, I mean I knew
 58:24 firsthand of the benefit, having dealt with locking
 58:25 wrenches, which has the synonymous name of vice
 59:1 grip. They are called locking wrench pliers. And
 59:2 then, you know, again, the way we were achieving
 59:3 our mechanism was different, the gripping
 59:4 mechanism.

36 **59:9 -60:3** Pope, Barry 2015-10-07 00:01:06 00:22:24 00:22:55 Pope_B-100715-1of. M4.36

59:9 Q. Do you know if the patents -- if
 59:10 Loggerhead's patents were reviewed in connection
 59:11 with any design-around or the designing of the Max
 59:12 Axxess Locking Wrench?
 59:13 A. That would have been included in the
 59:14 patents. So, again, as the project manager portion
 59:15 of a product manager, my job is to make sure that
 59:16 we are not infringing on patents, and by that
 59:17 I don't personally look at that. I rely on the
 59:18 resources and those much more talented than I,
 59:19 which would be the engineers.
 59:20 In this case, the engineers, the group was
 59:21 from Apex that we had hired on to help design and
 59:22 manufacture this, and then I also utilize my
 59:23 engineering manager who acts more as a manager in
 59:24 the sense may not necessarily have to do, I'll call
 59:25 it, the ground work. That would be Iqbal Singh.
 60:1 But I mean that's done on whether it be on the
 60:2 LoggerHead project or any project. That's basic
 60:3 product development.

37 **66:5 -66:7** Pope, Barry 2015-10-07 00:00:10 00:23:30 00:21:49 Pope_B-100715-1of. M4.37

[Link > P360.1](#)

66:5 Q. Mr. Pope, you've just been handed what
 66:6 we're marking as Exhibit 8. It's a document,
 66:7 single-page document SEARS_000048.

38 **66:9 -66:9** Pope, Barry 2015-10-07 00:00:03 00:23:40 00:21:39 Pope_B-100715-1of. M4.38

66:9 MR. HILMERT: 00408 for the record, not 48.

39 **66:13 -66:19** Pope, Barry 2015-10-07 00:00:21 00:23:43 00:21:36 Pope_B-100715-1of. M4.39

66:13 Q. The second e-mail in the middle of the
 66:14 page is from Kimberly Flanagan. It's dated
 66:15 April 17, 2012, at 9:36 a.m.; do you see that?
 66:16 A. I do, yes.
 66:17 Q. Ms. Flanagan is national account manager

66:18 for Apex Tool Group; is that correct?
 66:19 A. Correct.

40 **67:2-67:11** Pope, Barry 2015-10-07 00:00:22 00:24:04 00:21:15 Pope_B-100715-1of. M4.40

67:2 Q. And this e-mail was sent to you as well;
 67:3 is that correct?
 67:4 A. It was sent to myself and Matt, yes.
 Link > P360.1.1 67:5 Q. And it says "I'm going to be bringing the
 67:6 Bionic Wrench prototype by for your meeting at
 67:7 2:00 o'clock"; do you see that?
 67:8 A. I do, yes.
 67:9 Q. Do you recall if Ms. Flanagan actually
 67:10 brought a prototype?
 67:11 A. She did bring a prototype, yes.

41 **70:15-71:4** Pope, Barry 2015-10-07 00:00:48 00:24:26 00:20:53 Pope_B-100715-1of. M4.41

70:15 Q. Perhaps this will help. I am handing you
 Link > P349.1 70:16 a document that's being marked as Exhibit 10. It
 70:17 bears Bates No. 00000309.
 70:18 This document was produced to us by Sears
 70:19 natively, hence the placeholder, and the actual
 70:20 native document is the second page. At the top you
 Link > P349.1.1 70:21 see it says "Product Design and Intent Proposal
 70:22 Bionic 2.0 Wrench"; do you see that?
 70:23 A. I do, yes.
 70:24 Q. Do you recall having seen this document
 70:25 before?
 71:1 A. Sure, yes.
 71:2 Q. And this wrench was intended to be a
 71:3 version of LoggerHead Bionic Wrench; is that
 71:4 correct?

42 **71:6-71:19** Pope, Barry 2015-10-07 00:00:51 00:25:14 00:20:05 Pope_B-100715-1of. M4.42

Link > Hide 71:6 THE WITNESS: Absolutely not a version of
 71:7 Loggerhead's. Again, as I said, from a product
 71:8 standpoint, we looked at the competitive landscape
 71:9 that was out there of which, of course, the bionic
 71:10 was part of that. The opportunity was presented,
 71:11 but this was designed in such a manner that we had
 71:12 done all of the dotting of the Is, crossing of the
 71:13 Ts in regard to patent reviews. The mechanism on
 71:14 here is different and then, again, adding features,
 71:15 which would be the locking mechanism, calling out
 71:16 the size, that little window that you see here and
 71:17 then adding what I'll call is Craftsman VBL, which
 71:18 is handle design, the graphics, the color, all of
 71:19 those different elements.

Pope B PLAYED on 5_4 20151007 PA DC on 5-1-17

43	71:21 -72:6	Pope, Barry 2015-10-07	00:00:34	00:26:05	00:19:14	Pope_B-100715-1of.	M4.43
		71:21 Q. What is your understanding of why it says					
		71:22 "Bionic 2.0 Wrench" in the title?					
		71:23 A. So when you label a project, I mean, we'll					
		71:24 always give them different names, and bionic,					
		71:25 obviously, is coming from -- that was the					
		72:1 competition. I mean there is no secret to that,					
		72:2 and 2.0, I don't know what they are referring to					
		72:3 that.					
		72:4 Q. So would it be correct to say that the Max					
		72:5 Axess Locking Wrench is what's pictured here?					
		72:6 A. This looks pretty darn close, yeah.					
44	77:17 -77:19	Pope, Barry 2015-10-07	00:00:11	00:26:39	00:18:40	Pope_B-100715-2of.	M4.44
		77:17 Q. Mr. Pope, we've just handed you what we					
		77:18 marked as Exhibit 12. It's a document Bates					
		77:19 numbered SEARS_0000314.					
45	77:20 -78:12	Pope, Barry 2015-10-07	00:01:08	00:26:50	00:18:29	Pope_B-100715-2of.	M4.45
		77:20 Once again, this document was produced to					
		77:21 us natively. So the first page is a placeholder,					
		77:22 and the following two pages are the actual native					
Link > P350R.3		77:23 file. Do you see the first page where it says "Max					
		77:24 Axess Adjustable Wrench"?					
		77:25 A. I do, yes.					
		78:1 Q. Can you tell me what this program summary					
		78:2 is?					
		78:3 A. So Apex, as a vendor, when they would put					
		78:4 together a program for us, would do exactly what					
		78:5 you see here, the description. This is kind of a					
		78:6 quick overview of what the product is					
		78:7 accomplishing, and then below you see the items					
		78:8 that are included in that. They would give them a					
		78:9 couple different ways of pricing, give estimated					
		78:10 margin, their suggested retail price, and then also					
		78:11 on here we'll see where they aren't listed though					
Link > Hide		78:12 is pack quantities.					
46	79:11 -79:13	Pope, Barry 2015-10-07	00:00:08	00:27:58	00:17:21	Pope_B-100715-2of.	M4.46
		79:11 Q. And everyday retail price, is this what					
		79:12 Apex suggested this sell for?					
		79:13 A. This is what they suggested it sells for.					
47	79:16 -80:1	Pope, Barry 2015-10-07	00:00:30	00:28:06	00:17:13	Pope_B-100715-2of.	M4.47
		79:16 Do you know what factors go into					
		79:17 determining the everyday retail price?					
		79:18 A. So they have, with the amount of business					
		79:19 they do with us, they know, we'll say, what we					

79:20 consider or what Sears, in this instance, considers
 79:21 acceptable margin ranges. The other thing, again,
 79:22 on any product development part of what you're
 79:23 doing is a competitive analysis or what we call
 79:24 landscape where you will look and see what the
 79:25 competition is selling their product for so that
 80:1 you're competitive with that.

48 **80:18 -80:20** Pope, Barry 2015-10-07 00:00:10 00:28:36 00:16:43 Pope_B-100715-2of. M4.48
 80:18 Q. Are there guidelines for what the ultimate
 80:19 margin would need to be in terms of developing a
 80:20 tool?

49 **80:23 -81:1** Pope, Barry 2015-10-07 00:00:13 00:28:46 00:16:33 Pope_B-100715-2of. M4.49
 80:23 THE WITNESS: Not that I, you know, not that
 80:24 I know of, I mean, because margins themselves come
 80:25 in a whole range depending on the product. There
 81:1 is so many factors that go into it, you know.

50 **81:3 -81:10** Pope, Barry 2015-10-07 00:00:25 00:28:59 00:16:20 Pope_B-100715-2of. M4.50
 81:3 Q. Let me try to narrow it a little bit.
 81:4 For hand tools, is there any type of
 81:5 general guideline that Sears requires? For
 81:6 example, hand tools need to be between 30 percent
 81:7 or higher? Anything like that?
 81:8 A. On a general basis, no. Obviously, you
 81:9 want to make as much money as you can, but you need
 81:10 to be competitive.

51 **81:11 -81:17** Pope, Barry 2015-10-07 00:00:17 00:29:24 00:15:55 Pope_B-100715-2of. M4.51
 81:11 Q. Do you know if the estimated landed
 81:12 margin, if that was the ultimate -- strike that.
 81:13 Did these estimates wind up being
 81:14 accurate, to your knowledge?
 81:15 A. I don't know.
 81:16 Q. Who would know that?
 81:17 A. That would be Stephanie.

52 **81:21 -81:24** Pope, Barry 2015-10-07 00:00:16 00:29:41 00:15:38 Pope_B-100715-2of. M4.52
 81:21 Q. Mr. Pope, we just handed you what's been
 81:22 marked as Exhibit 13. It's Bates No. 00000318
 81:23 through 321. Take a moment, if you need to, to
 81:24 review the document.

[Link > P352.1](#)

53 **81:25 -82:2** Pope, Barry 2015-10-07 00:00:07 00:29:57 00:15:22 Pope_B-100715-2of. M4.53
 81:25 I only want to ask questions about the
 82:1 first page.
 82:2 A. I'm good on the first page.

54 **82:3 -82:9** Pope, Barry 2015-10-07 00:00:21 00:30:04 00:15:15 Pope_B-100715-2of. M4.54

82:3 Q. This is an e-mail from Jill Lowe, which
 82:4 was sent to you on May 16, 2012, at 9:59 a.m.; is
 82:5 that correct?
 82:6 A. So, again, I guess just for clarification,
 82:7 it's really -- yes, I am one of those, but this is
 82:8 -- the primary people on this are the two
 82:9 Stephanies, the buyers, again.

55 **83:4-83:19** Pope, Barry 2015-10-07 00:00:44 00:30:25 00:14:54 Pope_B-100715-2of. M4.55

Link > P352.1.1 83:4 Q. Under subpart (b), Stephanie -- or sorry
 83:5 -- Jill says "You had commented that you felt the
 83:6 price was too high based on your quote from your
 83:7 current vendor"; do you see that?
 83:8 A. Yes.
 83:9 Q. Do you know who "current vendor" refers
 83:10 to?
 83:11 A. I would assume that is LoggerHead.
 83:12 So a function of any buyer, as soon as
 83:13 they get a price, to beat the hell out of them and
 83:14 get the best price that they can.
 Link > P352.1.2 83:15 Q. The last sentence in subpart (b) says "You
 83:16 understand the CM version is upgraded from the
 83:17 bionic version -- locking feature and cushion grip
 83:18 handles"; do you see that?
 83:19 A. Yes.

56 **83:22-84:7** Pope, Barry 2015-10-07 00:00:47 00:31:09 00:14:10 Pope_B-100715-2of. M4.56

83:22 Q. And, again, the only two distinguishing
 83:23 features that are in this e-mail are the locking
 83:24 features and the cushion grip handles; is that
 83:25 correct?
 84:1 A. So those are the two features that had
 84:2 been added. The other thing -- and I just wanted
 84:3 to see if it's on here where we talk about the grip
 84:4 strength. Those are the ones that are mentioned
 84:5 within here, yes, and those are being mentioned --
 84:6 again, as a vendor, she's trying to battle back
 84:7 with Stephanie on why the price is what it is.

57 **85:20-86:9** Pope, Barry 2015-10-07 00:00:41 00:31:56 00:13:23 Pope_B-100715-2of. M4.57

Link > P352.1.3 85:20 Q. It says, at the very end, "It's possible
 85:21 to change and not alter the size range of the
 85:22 wrench which matches the Bionic Wrench today"; do
 85:23 you see that?
 85:24 A. Yes.
 85:25 Q. Is it always the intention to have a
 86:1 handle width be the same as the Bionic Wrench --

86:2 LoggerHead Bionic Wrench?
 86:3 A. It was not.
 86:4 Q. Do you know if the width of Loggerhead's
 86:5 handle was measured and consulted in the design
 86:6 process of the Max Axess Locking Wrench?
 86:7 A. I don't believe it was.
 86:8 Q. It just, by happenstance, wound up being
 86:9 the exact same size?

58 **86:11 -86:15** Pope, Barry 2015-10-07 00:00:15 00:32:37 00:12:42 Pope_B-100715-2of. M4.58
[Link > Hide](#)

86:11 THE WITNESS: Again, when you're doing a
 86:12 benchmarking, you take into consideration
 86:13 everything, and if that is an element that helps on
 86:14 the size range, that would be something that would
 86:15 be reviewed.

59 **86:17 -86:24** Pope, Barry 2015-10-07 00:00:25 00:32:52 00:12:27 Pope_B-100715-2of. M4.59

86:17 Q. And was it a goal in designing the Max
 86:18 Axess Locking Wrench to make sure that it would
 86:19 accommodate the same size of more pieces as
 86:20 LoggerHead's Bionic Wrench?
 86:21 A. When you are making an item, especially a
 86:22 Craftsman, it can't be worse than the competition
 86:23 that you're going after. We make it equal to or
 86:24 better, and we add extra features.

60 **88:4 -88:6** Pope, Barry 2015-10-07 00:00:11 00:33:17 00:12:02 Pope_B-100715-2of. M4.60
[Link > P346.1](#)

88:4 Q. Mr. Pope, we just handed you what is
 88:5 marked as Exhibit 14. It's a document that bears
 88:6 Bates No. SEARS_0000266 through 269.

61 **92:21 -93:11** Pope, Barry 2015-10-07 00:00:47 00:33:28 00:11:51 Pope_B-100715-2of. M4.61
[Link > Hide](#)

92:21 Q. Do you know why you were asked to compare
 92:22 the strength between the Max Axess Wrench and
 92:23 LoggerHead?
 92:24 A. Well, again, as I mentioned, as we put
 92:25 together a Craftsman tool, you want to be equal or
 93:1 better to in, we'll say, performance specifications
 93:2 with enhancements in regards to product features,
 93:3 and so he was just asking me in regards to the
 93:4 comparable.
 93:5 The other thing is you'll see that when we
 93:6 lock it, we actually get more torque strength. So
 93:7 that was one of the benefits of the locking
 93:8 mechanism.
 93:9 And, actually -- I'm sorry. I did read it
 93:10 before, but as I read it again, he makes mention of
 93:11 that again, about the locking position.

62 **93:23-95:11** Pope, Barry 2015-10-07 00:02:09 00:34:15 00:11:04 Pope_B-100715-2of. M4.62

93:23 Q. Before we go to this, I want to ask you,
93:24 when the Max Axess was being developed, what
93:25 sort -- what sources were used for determining its
94:1 design?
94:2 A. Design from what standpoint?
94:3 As I said -- well, I'll just leave it at
94:4 that.
94:5 Q. Did you seek to design the tool from
94:6 scratch?
94:7 A. No.
94:8 Q. Did you use any other products as a basis?
94:9 A. Sure. As I've mentioned, I think numerous
94:10 times in the deposition, one of the key things that
94:11 you do in any product development is benchmarking.
94:12 So you'll look at -- part of the benchmarking is
94:13 looking at competitive tools. And, obviously, as
94:14 product people, we have targets on who -- and
94:15 knowledge of who those are. So that's where that
94:16 would come from.
94:17 Q. So I believe you testified earlier the
94:18 Bionic Wrench was one of the --
94:19 A. That is correct.
94:20 Q. Did you look at any other products in
94:21 designing the Max Axess Locking Wrench?
94:22 A. Well, and, again, we talked about,
94:23 especially with my background being with American
94:24 Tool, the vice grip pliers, which, again, has -- is
94:25 another type of pliers, call it a mouse trap, if
95:1 you would allow me, and so the advantage of a vice
95:2 grip was the locking mechanism. So, yes, I mean
95:3 we'll take features from different items, similar
95:4 in nature, and combine them.
95:5 Q. Other than Loggerhead's Bionic Wrench and
95:6 the vice grip, do you recall any other tools with
95:7 different inspiration?
95:8 A. Those were, I think, the primaries.
95:9 And, I guess, you know, the other thing
95:10 that you're looking at too, is pliers, you know, in
95:11 general.

63 **95:12-96:6** Pope, Barry 2015-10-07 00:01:05 00:36:24 00:08:55 Pope_B-100715-2of. M4.63

95:12 Q. Were any instructions given to the design
95:13 team or Apex to make the Max Axess Locking Wrench
95:14 look similar to the Bionic Wrench?
95:15 A. No.

95:16 I guess I would like to elaborate a little
 95:17 bit. Again, we talked about that VBL, and VBL,
 95:18 visual brand language, is one of the key elements
 95:19 of any Craftsman tool. As I mentioned, we have
 95:20 this whole variety of vendors, and what the
 95:21 industrial designers do through VBL is try to
 95:22 convey the best they can or police, actually, the
 95:23 way items look. So we do not design things to look
 95:24 like, we'll say, our competition.
 95:25 Q. Do you design them to function the same
 96:1 way as your competition?
 96:2 A. No.
 96:3 MR. BLOCK: Just to clarify for the record,
 96:4 that was a no?
 96:5 THE WITNESS: No. I'm sorry. Stronger, no,
 96:6 absolutely not.

64	117:7 -117:14	Pope, Barry 2015-10-07	00:00:29	00:37:29	00:07:50	Pope_B-100715-2of.	M4.64
	Link > P359.1	117:7 Q. Mr. Pope, I've just handed you Exhibit 21.					
		117:8 It's a document bearing Bates No. SEARS_0000393.					
	Link > P359.1.1	117:9 This is an e-mail from Amy Trainer to you					
		117:10 dated December 6, 2012, at 3:43 p.m., correct?					
		117:11 A. Yes.					
		117:12 Q. And the title of this e-mail is the					
		117:13 Craftsman Max Axess Wrench, right?					
		117:14 A. Correct.					
65	117:15 -117:20	Pope, Barry 2015-10-07	00:00:15	00:37:58	00:07:21	Pope_B-100715-2of.	M4.65
		117:15 Q. Do you know what Ms. Trainer's role was					
		117:16 within --					
		117:17 A. She was on the true what we'll call it					
		117:18 marketing side. She was part of KCD, which is the					
		117:19 team that I'm on, and then she was on the marketing					
		117:20 and the branding.					
66	117:21 -118:3	Pope, Barry 2015-10-07	00:00:18	00:38:13	00:07:06	Pope_B-100715-2of.	M4.66
	Link > P359.1.2	117:21 Q. And she says "Hi Barry, Can you send me					
		117:22 all images of Bionic Wrench"; do you see that?					
		117:23 A. Yes.					
		117:24 Q. Do you know why she's asking you for					
		117:25 images of Bionic Wrench?					
		118:1 A. She is not asking for images of the Bionic					
		118:2 Wrench. She was asking for the Max Axess Locking					
		118:3 Wrench.					
67	118:4 -118:12	Pope, Barry 2015-10-07	00:00:27	00:38:31	00:06:48	Pope_B-100715-2of.	M4.67
		118:4 Q. Do you think she is confused with regards					
		118:5 to the names of the products?					

118:6 A. No.
 118:7 Again, the -- you know, whether it be --
 118:8 and the reason I'll say no is because you have
 118:9 Craftsman Max Axess. She does not have locking,
 118:10 but it's wrench on here. And here she's calling
 118:11 essentially, that was a title that was thrown out
 118:12 being a project name.

68 **118:13 -118:17** Pope, Barry 2015-10-07 00:00:11 00:38:58 00:06:21 Pope_B-100715-2of. M4.68

118:13 Q. But you -- so -- just so I am clear, you
 118:14 understand when she says images of the Bionic
 118:15 Wrench, do you believe her to be asking for images
 118:16 of the Max Axess Locking Wrench?
 118:17 A. I do, yes.

69 **119:4 -119:13** Pope, Barry 2015-10-07 00:00:36 00:39:09 00:06:10 Pope_B-100715-2of. M4.69

119:4 Q. What do you understand her to be asking?
 119:5 A. She's -- I mean, again, I go back -- she's
 119:6 asking for what images I would have of our existing
 119:7 product. This -- looking at this, this is a Sears
 119:8 website. We had our own, which was Craftsman, and
 119:9 Innovation Tools. Those are going to be ones they
 119:10 are going to feature. I don't -- I honestly don't
 119:11 know if this is, we'll say live, or if this is an
 119:12 internal that goes live ultimately. I'd be
 119:13 speculating on that.

70 **119:14 -119:16** Pope, Barry 2015-10-07 00:00:04 00:39:45 00:05:34 Pope_B-100715-2of. M4.70

[Link > P359.1.3](#)

119:14 Q. The next sentence says "This link also has
 119:15 the video of the competitor"; do you see that?
 119:16 A. Right.

71 **119:24 -120:2** Pope, Barry 2015-10-07 00:00:08 00:39:49 00:05:30 Pope_B-100715-2of. M4.71

119:24 Q. What do you understand the word
 119:25 "competitor" -- who do you understand the word
 120:1 "competitor" to refer to here?
 120:2 A. Bionic Wrench.

72 **120:8 -120:17** Pope, Barry 2015-10-07 00:00:24 00:39:57 00:05:22 Pope_B-100715-2of. M4.72

120:8 Q. And even though the subject of her e-mail
 120:9 is the Craftsman Max Axess Wrench, you still
 120:10 believe that when she says Bionic Wrench, she's
 120:11 referring to the Max Axess Wrench?
 120:12 A. When she's asking for images, yes.
 120:13 Q. Even though she's used virtually the
 120:14 correct tool name and the subject line and it
 120:15 references --
 120:16 A. Correct.
 120:17 Q. -- competitor's videos on the website?

73	120:18 -121:11	Pope, Barry 2015-10-07	00:01:09	00:40:21	00:04:58	Pope_B-100715-2of	M4.73
		120:18 A. Correct. So when you see this, it looks					
		120:19 like someone contacted her to get those images,					
		120:20 which would be the images of our product from					
		120:21 Sears. I'm talking what I think. And the reason					
		120:22 I say it is because it says www.Sears.com. She's					
		120:23 an employee, as I am, of Craftsman.com. So there					
		120:24 is a couple different websites within here.					
		120:25 So Sears would have -- Sears.com would					
		121:1 have national brands, and it would have -- which					
		121:2 we'll call it a bionic, a Stanley or whatever, and					
		121:3 Craftsman, but Craftsman would only have Craftsman.					
		121:4 So she's assisting somebody, and, again, it					
		121:5 wouldn't be for me to know necessarily who that					
		121:6 was.					
	Link > P359.1.4	121:7 Q. And then she says "When are we allowed to					
		121:8 start showing the item online," question mark,					
		121:9 "November 1," question mark; do you see that?					
		121:10 A. Right. So typically we don't show an item					
		121:11 until it's available to be shipped.					
74	136:19 -136:21	Pope, Barry 2015-10-07	00:00:13	00:41:30	00:03:49	Pope_B-100715-2of	M4.74
	Link > P469.1	136:19 Q. Mr. Pope, I just handed you Exhibit 27.					
		136:20 It's a document bearing Bates numbers SEARS_0005527					
		136:21 to 5528.					
75	136:22 -137:1	Pope, Barry 2015-10-07	00:00:18	00:41:43	00:03:36	Pope_B-100715-2of	M4.75
	Link > P469.1.1	136:22 A. Okay.					
		136:23 Q. On page 5527, at the very bottom, there is					
		136:24 an e-mail from you to Matthew McDonnell dated					
		136:25 May 31, 2012, at 12:02 p.m.; do you see that?					
		137:1 A. Yes.					
76	138:4 -138:15	Pope, Barry 2015-10-07	00:00:34	00:42:01	00:03:18	Pope_B-100715-2of	M4.76
	Link > P469.1.2	138:4 Q. The next e-mail up in the string, it's					
		138:5 from you to Stephanie Kaleta on June 1, 2012, at					
		138:6 11:06 a.m.; do you see that?					
		138:7 A. Yes.					
	Link > P469.1.3	138:8 Q. Under No. 2 it says "China will be stamped					
		138:9 in an area where part number and date code will be					
		138:10 this is then black oxide so it will be less					
		138:11 conspicuous"; do you see that?					
		138:12 A. Yes.					
		138:13 Q. Was it important to -- why was it					
		138:14 important to put the China label in an					
		138:15 inconspicuous area?					
77	138:18 -138:19	Pope, Barry 2015-10-07	00:00:05	00:42:35	00:02:44	Pope_B-100715-2of	M4.77

138:18 THE WITNESS: I mean you're just not
 138:19 advertising. We are not advertising for China.

78 138:21 -138:23 Pope, Barry 2015-10-07 00:00:06 00:42:40 00:02:39 Pope_B-100715-2of. M4.78

138:21 Q. Were you aware that LoggerHead's tool is
 138:22 manufactured in the United States?
 138:23 A. Yes.

79 138:24 -139:10 Pope, Barry 2015-10-07 00:00:44 00:42:46 00:02:33 Pope_B-100715-2of. M4.79

138:24 Q. Would it have been at a competitive
 138:25 disadvantage to advertise your tool being from
 139:1 China when theirs was manufactured in the U.S.?
 139:2 A. No.
 139:3 Q. Why do you say no?
 139:4 A. I have worked, as I said before, for
 139:5 American Tool Company, and we have done research on
 139:6 made in America versus Taiwan, and that research
 139:7 really has indicated that it's not a predominant
 139:8 feature, the country of manufacture. You are not
 139:9 advertising it as an advantage either, but it's not
 139:10 a negative.

80 144:4 -144:17 Pope, Barry 2015-10-07 00:00:38 00:43:30 00:01:49 Pope_B-100715-2of. M4.80

[Link > P472.1](#)

144:4 Q. Mr. Pope, we just handed you Exhibit 30.
 144:5 It's Bates number SEARS_0005542 to 5543.
 144:6 In the middle of the first page, there is
 144:7 an e-mail from you to an Iqbal Singh dated
 144:8 March 30, 2012, at 1:13 p.m.; do you see that?
 144:9 A. Yes.
 144:10 Q. It says "Iqbal, Need you to develop and
 144:11 send Eric at Apex our performance specifications
 144:12 for Item No. 1, Bionic II Wrench"; do you see that?
 144:13 A. Yes.
 144:14 Q. Would these be the performance
 144:15 specifications for the tool that ultimately became
 144:16 the Max Axess Locking Wrench?

[Link > Hide](#)

144:17 A. Yes.

81 144:18 -145:13 Pope, Barry 2015-10-07 00:01:10 00:44:08 00:01:11 Pope_B-100715-2of. M4.81

144:18 Q. How were the performance specifications
 144:19 determined?
 144:20 A. Again, they would be determined by
 144:21 combining existing specifications that might exist
 144:22 in regards to similar products and modifying them
 144:23 based on the operations and then by competitive
 144:24 analysis.
 144:25 Q. And am I correct that Iqbal was the one
 145:1 who was responsible for developing these

145:2 specifications?
145:3 A. He would be, yes.
145:4 Q. Were these specifications reviewed or
145:5 approved by anybody?
145:6 A. Collectively, we -- again, I guess I said
145:7 -- and maybe shame on me -- is from a generality
145:8 is, you know, it's meet or beat the competition,
145:9 and then he would be working with Apex.
145:10 Q. Do you know if he got any specifications
145:11 from Apex?
145:12 A. He would have worked with them to develop
145:13 it.

Play Time for this Script: 00:45:19

Total time for all Scripts in this report: 00:45:19