

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WATSON LABORATORIES, INC.,)
Petitioner,)
vs.) IPR NO. 2017-01621
UNITED THERAPEUTICS CORP.,) IPR NO. 2017-01622
Patent Owner.)

The videotaped deposition of SCOTT BENNETT, Ph.D., called for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Lynn A. McCauley, CSR No. 84-003268, RPR, a Certified Shorthand Reporter of the State of Illinois, at 35 West Wacker Drive, 48th Floor, Chicago, Illinois, on March 29, 2018, at 9:34 a.m.

Job No. 54282

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PRESENT:

Appeared on behalf of Petitioner:

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and

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I N D E X

WITNESS:
SCOTT BENNETT

EXAMINATION BY:	Page	Line
MS. ASCARRUNZ	5	10
MR. SOMMER	101	23

EXHIBITS:	DESCRIPTION	Page	Line
Exhibit 1013	Copy of declaration by Dr. Bennett that was submitted in trial No. IPR 2017-01621 in connection with Patent 9,358,240	8	5
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*** Attorney retained all exhibits.

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THE VIDEOGRAPHER: We are now on the record.

This marks the beginning of Media No. 1 in the deposition of Scott Bennett in the matter of Watson Laboratories, Inc. versus United Therapeutics Corporation in the U.S. District Court, District of New Jersey.

This deposition is being held at 35 West Wacker Drive, Chicago, Illinois, on March 29, 2018, and the time is now 9:34 a.m.

Will attorneys please identify themselves.

MS. ASCARRUNZ: My name is Veronica Ascarrunz from the law firm of Wilson Sonsini Goodrich & Rosati representing the patent owner.

MR. SOMMER: My name is Andrew Sommer from Winston & Strawn representing the petitioner.

I do want to clarify though. During the read on, the caption for a District Court case was read. This is not a District Court case.

This is a matter in the United States Patent and Trademark Office before the Patent Trial and Appeal Board.

These are two inter partes review proceedings numbered 2017-01621 and 01622.

1 SCOTT BENNETT Ph.D.

2 THE VIDEOGRAPHER: Will the court reporter
3 please swear in the witness.

4 (WHEREUPON, the witness was
5 duly sworn.)

6 SCOTT BENNETT, Ph.D.
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MS. ASCARRUNZ:

11 Q. Good morning, Dr. Bennett.

12 A. Good morning.

13 Q. Could you please state your full name for
14 the record?

15 A. My name is Scott Bennett.

16 Q. And what is your current address?

17 A. My address is 711 South Race Street,
18 Urbana, Illinois.

19 Q. And have you been deposed before?

20 A. Yes, I have.

21 Q. How many times?

22 A. Six or seven times.

23 Q. Okay. Have you been deposed in a patent
24 proceedings before?

25 A. Yes.

1 SCOTT BENNETT Ph.D.

2 Q. And proceedings before the United States
3 Patent and Trademark Office?

4 A. Yes.

5 Q. So having been deposed now six or seven
6 times, I'm sure you know the rules and the procedure;
7 but just so that we're on the same page, I'll go over
8 a few of them right now.

9 You understand that you are under
10 oath today and that you are to answer the questions
11 that I ask truthfully just as if you were in front of
12 the Board or a courtroom?

13 A. Yes, I do understand that.

14 Q. Okay. And so that the court reporter can
15 take down all of our answers, I will endeavor not to
16 speak over you and ask that you do the same.

17 Is that fair?

18 A. It certainly is.

19 Q. And please wait, therefore, until I
20 finish asking my question -- some of them are
21 actually pretty lengthy -- before you start to
22 answer.

23 Is that fair?

24 A. That is fair.

25 Q. Okay. And if you don't understand any of

1 SCOTT BENNETT Ph.D.

2 my questions, please let me know, and I will try to
3 rephrase it so that you do understand.

4 Is that fair?

5 A. That is fair.

6 Q. And if you don't understand one of my
7 questions -- or if you answer, I will assume that you
8 have understood my questions.

9 Fair.

10 A. That, too, is fair.

11 Q. We will try to take a break periodically.
12 I may need one more frequently than usual just to
13 give my voice a break; but if you need a break at any
14 point in time, just please let me know.

15 A. I will do so.

16 Q. The only thing I ask is if I have a
17 question pending, let's answer the question before we
18 ask for a break.

19 Is that fair?

20 A. That is fair.

21 Q. Okay. Are you aware of anything that
22 would prevent you from testifying truthfully and
23 completely today?

24 A. No, I am not.

25 MS. ASCARRUNZ: Okay. So I'm going to hand

1 SCOTT BENNETT Ph.D.

2 you the first exhibit.

3 (Whereupon, a certain
4 document was marked
5 Exhibit 1013 for
6 identification.)

7 MS. ASCARRUNZ: And, for the record, this is
8 Exhibit 1013 in IPR Proceeding Trial No. IPR
9 2017-01622.

10 BY MS. ASCARRUNZ:

11 Q. Dr. Bennett, is this a copy of your
12 declaration that was submitted in trial No. IPR
13 2017-01622 in connection with Patent 9,339,507?

14 MR. SOMMER: Object to form.

15 BY THE WITNESS:

16 A. The patent number you just provided does
17 not match the patent number on the cover page.

18 Do I fail to mis -- do I fail to
19 understand something?

20 BY MS. ASCARRUNZ:

21 Q. Let me make sure I handed you -- okay.

22 So let me rephrase the question
23 then.

24 Is this a copy of your declaration
25 that was submitted in trial No. IPR 2017-01621 in

1 SCOTT BENNETT Ph.D.

2 connection with Patent 9,358,240?

3 A. It appears to be so.

4 Q. Okay. And on Page 16 of this document is
5 that your signature?

6 MR. SOMMER: Object to form.

7 BY MS. ASCARRUNZ:

8 Q. Let me clarify. For the record, it's
9 numbered Page 16 of the document, but at the bottom
10 it says, "Page 18 of 74."

11 Is that your signature on this page?

12 A. Yes, it is.

13 Q. Okay. And Exhibit A to this declaration
14 is a copy of your current CV?

15 A. Exhibit A is a copy of my CV, which was
16 current at the time that I signed this declaration,
17 which was the 20th of June, 2017.

18 Q. Okay. Is it current as of today?

19 A. No.

20 Q. Okay. What would the changes be to this
21 CV that would make it current as of today?

22 A. If you'll look on Page 17 of the
23 declaration, which is Page 19 of 74 of the document,
24 you'll see in the first bulleted item under
25 "Employment" a description of my work for Prior Art

1 SCOTT BENNETT Ph.D.

2 Documentation Services, LLC.

3 We're in the process of closing the
4 business, and so, for instance, the website no
5 longer -- the website listed there no longer provides
6 information about our business.

7 Q. Okay. And why are you closing the
8 business?

9 A. We're closing the business because we got
10 more business than was -- than we wanted to handle.

11 Q. Okay.

12 A. The other change, just to be complete
13 about it, is the second bulleted item says that I'm a
14 consultant on library space planning.

15 I've also closed that business, and
16 the website listed there is no longer -- no longer
17 provides information about that business.

18 Q. Okay. With respect to the Prior Art
19 Documentation Services, LLC, you said you're in the
20 process of closing it.

21 I guess I'm trying to understand
22 what exactly does that mean?

23 A. In September of 2017 we stopped taking
24 new clients.

25 Q. Okay.

1 SCOTT BENNETT Ph.D.

2 A. And we said that we would support the
3 needs of our former clients through calendar year
4 2018. The primary needs envisioned at that time were
5 depositions, such as this morning's deposition.

6 Q. Okay. Understood.

7 And with respect to the consultant
8 as a library space design, I think you also stated
9 that you were in the process of closing that.

10 Is -- what does that mean with
11 respect to that particular task?

12 A. That business is closed.

13 Q. Okay.

14 A. I am no longer providing consulting
15 services on library space planning.

16 Q. Okay. Thank you.

17 And after you finalize the closing
18 of Prior Art Documentation Services, LLC, do you have
19 plans to restart or open a similar business?

20 A. No.

21 MS. ASCARRUNZ: Okay. I will hand to you the
22 next exhibit.

1 SCOTT BENNETT Ph.D.

2 (Whereupon, a certain
3 document was marked
4 Exhibit 1014 for
5 identification.)

6 BY MS. ASCARRUNZ:

7 Q. And, as with the other one, you can look
8 through as much of it as you need to, and at any
9 point that I ask any questions -- you have now I
10 think in front of you both of your declarations.

11 You can -- at any point if you need
12 to go look through a document, please feel free to do
13 so.

14 So my question to you on this one
15 is: Is this a copy of your declaration that was
16 submitted in Trial No. IPR 2017-01622 in connection
17 with Patent 9,339,507?

18 A. It appears to be.

19 Q. And that -- is that your signature on
20 Page 16 of the document, page 18 of 74 on the stamp
21 at the bottom?

22 A. Yes, it is.

23 Q. Are these, in fact, the same identical
24 declaration --

25 MR. SOMMER: Object to form.

1 SCOTT BENNETT Ph.D.

2 BY MS. ASCARRUNZ:

3 Q. -- the first exhibit and the second
4 exhibit that I handed you?

5 MR. SOMMER: Object to form.

6 BY THE WITNESS:

7 A. They are substantively the same document.

8 BY MS. ASCARRUNZ:

9 Q. Are you aware of any differences apart
10 from the coverage page?

11 A. I'm aware of no substantive difference
12 between the two aside from the cover page.

13 Q. Okay. And so is it fair to say that your
14 opinions don't differ depending on which of the two
15 proceedings we're talking about?

16 A. Yes, that is a fair statement.

17 Q. Okay. So in our discussion today when I
18 refer to your opinion, I will be referring to your
19 opinion in connection with both proceedings; is that
20 fair?

21 A. Yes, that is fair.

22 MS. ASCARRUNZ: And, Andrew, I notice at the
23 beginning you clarified the record to indicate both
24 docket numbers.

25 Can we agree that this deposition

1 SCOTT BENNETT Ph.D.

2 transcript will be entered and used for both IPR
3 proceedings?

4 MR. SOMMER: Yes.

5 BY MS. ASCARRUNZ:

6 Q. Okay. Dr. Bennett, I'd like to talk a
7 little bit now about your background and your
8 expertise.

9 I understand that you're a retired
10 librarian; is that correct?

11 A. That is correct.

12 Q. Okay. And you retired approximately 16
13 years ago?

14 A. I retired in 2001.

15 Q. And Paragraph 2 of your declaration
16 indicates that you were -- that you are working as a
17 managing partner of the firm Prior Art Documentation,
18 LLC; is that correct?

19 A. That is correct as of the date that I
20 signed this declaration.

21 Q. Okay. And as we discussed, as of now
22 that entity is in the process of being closed down;
23 correct?

24 A. That is correct.

25 Q. Okay. When and why did you open Prior

1 SCOTT BENNETT Ph.D.

2 Art Documentation, LLC?

3 MR. SOMMER: Object to form.

4 MS. ASCARRUNZ: Let me take one at a time.

5 BY MS. ASCARRUNZ:

6 Q. When did you open Prior Art
7 Documentation, LLC?

8 A. We opened Prior Art Documentation, LLC in
9 2015.

10 Q. And why did you open that business?

11 A. I had a call from a patent attorney
12 asking me about a document that was classified using
13 what is called the old Yale classification scheme.

14 The patent attorney, seeing that I
15 had worked at Yale, thought I might be able to help.

16 I was able to help, authenticate and
17 date the document, the patent attorney observed that
18 there was a business -- very likely a good business
19 opportunity here, and that led me to identify a
20 couple of partners, and we opened the business.

21 Q. Okay. Which partners did you open the
22 business with?

23 A. One of the partners is Helen Sullivan,
24 also a managing partner in Prior Art Documentation
25 Services. Her work for our firm is described in

1 SCOTT BENNETT Ph.D.

2 page -- in Paragraph 46 of the declaration.

3 The other partner is Robert Berger.

4 He also is a managing partner.

5 Q. And what are their current roles now that
6 Prior Art Documentation, LLC is in the process of
7 being closed down?

8 A. Like me, they stand ready to support any
9 needs of our former clients.

10 Q. Okay. And you mentioned Yale.

11 You have experience working as a
12 librarian at three institutions; correct?

13 A. No.

14 Q. Why is that incorrect?

15 A. The number is four.

16 Q. Okay. And Paragraph 5 of your
17 declaration indicates you also worked as a
18 researcher; is that correct?

19 A. That is correct.

20 Q. What kind of researcher?

21 A. My research interests were textual
22 editing, British publishing history, the preservation
23 of library materials, the management of library
24 collections, and the future -- the future direction
25 of academic libraries, and library space planning.

1 SCOTT BENNETT Ph.D.

2 Q. Okay. Have you worked as a scientific or
3 medical researcher?

4 A. No, I have not.

5 Q. And you indicated that you have some
6 general knowledge of how researchers work; is that
7 correct?

8 A. I do say at the end of Paragraph 6 that
9 in these several ways enumerated in Paragraph 6 I
10 have a general knowledge of how researchers work.

11 Q. Okay. But you don't claim to be an
12 expert in scientific research; do you?

13 MR. SOMMER: Object to form.

14 BY THE WITNESS:

15 A. Perhaps you would identify what you mean
16 by an expert in scientific research.

17 BY MS. ASCARRUNZ:

18 Q. Do you consider yourself an expert in
19 medical research?

20 MR. SOMMER: Same objection.

21 BY THE WITNESS:

22 A. I can't answer your question without
23 knowing what you mean by an expert in medical
24 research.

25

1 SCOTT BENNETT Ph.D.

2 BY MS. ASCARRUNZ:

3 Q. Which -- is your concern with the word
4 medical research, is that vague to you?

5 A. It's imprecise.

6 Q. Okay. Have you yourself performed any
7 medical research?

8 MR. SOMMER: Object to form.

9 BY THE WITNESS:

10 A. As I mentioned, the term medical research
11 is an imprecise term.

12 BY MS. ASCARRUNZ:

13 Q. Okay.

14 A. And without further specification, I
15 don't know how truthfully and accurately to answer
16 your question.

17 Q. Sure. Let me try to come at it a
18 different way.

19 A. Thank you.

20 Q. Have you published any peer review
21 publications in any medical journals?

22 A. No.

23 Q. Have you published any peer review
24 publications in any scientific journals?

25 A. No.

1 SCOTT BENNETT Ph.D.

2 Q. Have you researched such publications in
3 the source of your work?

4 MR. SOMMER: Object to form.

5 BY THE WITNESS:

6 A. Could you tell me, please, what you mean
7 by researched?

8 BY MS. ASCARRUNZ:

9 Q. Have you reviewed peer review
10 publications in scientific journals for purposes of
11 performing literature research?

12 MR. SOMMER: Object to form.

13 BY THE WITNESS:

14 A. Yes.

15 BY MS. ASCARRUNZ:

16 Q. Okay. In what context?

17 A. In the context of being an academic
18 librarian and in the context of being a managing
19 partner in Prior Art Documentation Services.

20 Q. Okay. Is it fair to say that your
21 declaration was written from your perspective as an
22 expert?

23 MR. SOMMER: Object to form.

24 BY THE WITNESS:

25 A. It's fair to say that the declaration

1 SCOTT BENNETT Ph.D.

2 reflects expert knowledge.

3 BY MS. ASCARRUNZ:

4 Q. And what is your expert knowledge in?

5 A. If you'll look at Paragraph 5, you'll see
6 there that my expertise involves extensive experience
7 with catalog records and online library management
8 systems built around Machine-Readable cataloging
9 standards.

10 My expertise also relates to having
11 substantial experience in authenticating printed
12 documents and establishing the date when they were
13 accessible to researchers.

14 In Paragraph 6 you will see that my
15 expertise relates to having some knowledge of the
16 voluminous professional literature on the information
17 seeking behaviors of academic researchers.

18 And my expertise also relates to
19 being an educator where I have a broad knowledge --
20 this also in Paragraph 6 -- a broad knowledge of the
21 ways in which students in a variety of disciplines
22 learn to master the bibliographic resources used in
23 their disciplines.

24 Q. Okay. And then the following sentence
25 says, "In all of these ways I have a general

1 SCOTT BENNETT Ph.D.

2 knowledge of how researchers work."

3 Do you claim to have expert
4 knowledge of how researchers work?

5 A. The word experts in general are terms
6 describing relative degrees of things.

7 So I certainly have more knowledge
8 of the way in which researchers work than most people
9 do.

10 One might say that that's a general
11 knowledge. One might also say that that's an
12 expert's knowledge.

13 It -- it -- you need to give me the
14 comparison, and then I will -- I will answer your
15 question as to the degree of expertise.

16 Q. Well, I'd like to know what you say.

17 Do you consider yourself an expert
18 in how researchers work?

19 MR. SOMMER: Object to form.

20 BY THE WITNESS:

21 A. What I say is what I wrote, which is that
22 I have a general knowledge of how researchers work.

23 BY MS. ASCARRUNZ:

24 Q. And the sentence -- the second to the
25 last sentence in Paragraph 6 you also allowed into

1 SCOTT BENNETT Ph.D.

2 the record and states that as an educator you have a
3 broad knowledge of the ways in which students in a
4 variety of disciplines learn to master the
5 bibliographic resources used in their disciplines.

6 What do you mean in that sentence
7 by -- or actually let me rephrase that.

8 When you refer to students in a
9 variety of disciplines, which disciplines are you
10 talking about?

11 A. Well, your question is best answered, I
12 believe, by mentioning that between 2004 and 2009 I
13 was a consultant -- oops, I'm sorry. Between 2001
14 and 2009 I was a senior advisor for the library
15 programs at the Council of Independent Colleges.

16 This is mentioned in Appendix A,
17 which is on Page -- the third bulleted item, Page 17,
18 or Page 19 of 74 in the declaration.

19 My work during those eight years was
20 to advise the Council of Independent Colleges on its
21 program fostering what librarians call information
22 literacy.

23 The Council of Independent Colleges
24 has over 500 liberal arts colleges at university
25 members. At the time they were a -- the council and

1 SCOTT BENNETT Ph.D.

2 its members were interested in enhancing the
3 information literacy of its students. We offered
4 workshops for about 250 of those members. The
5 workshops were attended, therefore, by nearly 1000
6 people representing those institutions. Those
7 institutions have academic programs in almost all
8 disciplines.

9 So to go back to Page 3 about which
10 you asked, I meant to reflect that experience in
11 saying that I have a broad knowledge of the way in
12 which students in a variety of disciplines, that is,
13 the disciplines taught at these 250 institutions,
14 learned to master bibliographic resources because
15 that's what our workshops were about.

16 Q. I understand. Thank you.

17 You don't -- you don't claim to be
18 an expert in the law; correct?

19 A. In Paragraph 7 I assert that I am not a
20 lawyer and am not rendering an opinion on a legal
21 question.

22 Q. Okay. So that's right, you don't claim
23 to be an expert in the law; correct?

24 A. That's a reasonable inference from what I
25 say in the declaration.

1 SCOTT BENNETT Ph.D.

2 Q. And you're not rendering an opinion on
3 whether or not any document is prior art under the
4 law; correct?

5 A. I -- so I say that explicitly in
6 Paragraph 7.

7 Q. And you're not rendering an opinion on
8 whether or not any document is a printed publication
9 under the law; correct?

10 A. I'm sorry. That is what I say in the
11 declaration.

12 Q. Okay.

13 A. In Paragraph 7.

14 Q. In Paragraphs 10 through 12 of your
15 report -- oh, I'm sorry -- your declaration -- you
16 began several statements indicating that you were
17 told several things by counsel.

18 Do you see that?

19 A. I do see that.

20 Q. Are you providing your own opinion
21 regarding the matters in Paragraphs 10 through 12?

22 A. No.

23 Q. So, for example, you're not providing any
24 opinion about what the patents in these proceedings
25 relate to; correct?

1 SCOTT BENNETT Ph.D.

2 A. I'm providing opinions about documents
3 that I presume relate to the patents.

4 Q. Okay. Have you reviewed the patents at
5 issue in these proceedings at all?

6 A. No, I have not.

7 Q. Okay. And you're not claiming to have
8 any expertise in drug administration; right?

9 A. No, I am not -- do not.

10 Q. And you're not claiming to have any
11 expertise in pulmonary hypertension; correct?

12 A. Correct.

13 Q. And you're not claiming to have any
14 expertise in the administration of inhaled drugs;
15 correct?

16 A. I claim no such expertise.

17 Q. And you're -- you don't claim to have any
18 expertise in pulse ultrasonic nebulizers; correct?

19 A. No expertise there, either.

20 Q. And in Paragraphs 11 and 12 of your
21 declaration you indicate there that you were informed
22 by counsel of what a person of ordinary skill in the
23 art is; is that right?

24 A. That is correct.

25 Q. Is that a term that you've become

1 SCOTT BENNETT Ph.D.

2 familiar with in the -- in connection with your work?

3 A. Yes.

4 Q. But in this proceeding you're not
5 yourself providing a definition of what a person of
6 ordinary skill in the art is; correct?

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

9 A. Well, this paragraph describes what --
10 a -- some attributes of a person of ordinary skill in
11 this subject.

12 BY MS. ASCARRUNZ:

13 Q. And those attributes are not ones that
14 you chose or decided on, they were provided to you by
15 counsel; is that fair?

16 A. That is correct.

17 Q. Okay. Does your opinion regarding --
18 well, strike that.

19 Does your opinion in your
20 declaration depend on this understanding of what a
21 person of ordinary skill in the art is?

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

24 A. My declaration depends upon it only to
25 the degree specified in Paragraph 13 about which you

1 SCOTT BENNETT Ph.D.

2 have not yet asked --

3 BY MS. ASCARRUNZ:

4 Q. Okay.

5 A. -- where I do express an opinion about
6 what one would suppose to be the case about a person
7 of ordinary skill in the art, who is, I remind us, a
8 hypothetical person.

9 Q. Okay. And your opinion set forth in
10 Paragraph 13 and -- well, let's start with just
11 Paragraph 13.

12 Your opinion set forth in
13 Paragraph 13 considering the person of ordinary skill
14 in the art as it was defined to you by counsel; is
15 that right?

16 A. The assertions -- I'm sorry -- the
17 opinions expressed in 13 relate to the kind of person
18 described in Paragraphs 11 and 12.

19 Q. Okay. And apart from the kind of person
20 described in Paragraphs 11 and 12, you didn't
21 consider any alternative type of person; is that
22 right?

23 MR. SOMMER: Object to form.

24 BY THE WITNESS:

25 A. Well, I think that's right if I

1 SCOTT BENNETT Ph.D.

2 understand your question.

3 BY MS. ASCARRUNZ:

4 Q. All right. Let me make sure that you do
5 understand my question because that was a good
6 objection. That was really rather a cumbersome
7 question.

8 What I'm trying to get at is you
9 took the person of ordinary skill as it was defined
10 to you by counsel and applied that in your opinions;
11 is that fair?

12 A. Yes, that is fair.

13 Q. Okay. Did you consider -- and that is
14 the only person of ordinary skill that you considered
15 in forming your opinions?

16 A. Well, if you mean that I did not have in
17 my imagination a different set of attributes
18 different from those described, for instance, in
19 Paragraph 12, that is correct, yes.

20 Q. Okay. Thank you. You phrased that far
21 better than I could have. Thank you.

22 You yourself do not claim to be a
23 person of ordinary skill in the art; is that right?
24 Let me rephrase that.

25 You yourself do not claim to be a

1 SCOTT BENNETT Ph.D.

2 person of ordinary skill in the art as defined in
3 Paragraphs 11 and 12?

4 A. That is right.

5 Q. Okay. And you have never been a person
6 of ordinary skill in the art as defined in Paragraphs
7 11 and 12?

8 A. That, too, is right.

9 Q. And you are also not a person of
10 extraordinary skill in the art of the subject matters
11 in Paragraphs 11 and 12; is that right?

12 A. That -- true. That is also right.

13 Q. Is any statement in Paragraphs 11 and 12
14 an opinion that you personally are taking based on
15 your expertise?

16 A. There is nothing in Paragraphs 11 and 12
17 that I would state differently based on my own
18 expertise.

19 Q. So that's a little bit of a different
20 question than the one I asked.

21 A. I'm sorry.

22 Q. Is there any statement in Paragraphs 11
23 and 12 that are your expert opinion on the matter
24 stated, or are these assumptions that were given to
25 you by counsel?

1 SCOTT BENNETT Ph.D.

2 A. Paragraphs 11 and 12 are definitions of a
3 person of ordinary skill provided to me by counsel.

4 Q. You don't claim to be an expert in the
5 treatment of pulmonary hypertension; right?

6 A. No, I make no such claim.

7 Q. And you don't claim to be a person of
8 ordinary skill in the art in the treatment of
9 pulmonary hypertension; correct?

10 A. I make no such claim.

11 Q. Before this case had you ever heard of
12 pulmonary hypertension?

13 A. Possibly.

14 Q. Do you recall having heard of pulmonary
15 hypertension before this case?

16 A. No, I have no positive recollection.

17 Q. And before this case had you ever heard
18 of Treprostinil?

19 A. Almost surely not.

20 Q. Okay. In your declaration you address
21 the accessibility of two individual documents; right?

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

24 A. I discuss the authenticity of two
25 separate documents and the public availability of two

1 SCOTT BENNETT Ph.D.

2 separate documents.

3 BY MS. ASCARRUNZ:

4 Q. Okay.

5 A. That is correct.

6 Q. Okay. And the two documents are the
7 Voswinckel abstract and the Ghofani reference; is
8 that right?

9 Let me back up. I just want to make
10 sure moving forward in the deposition that when --
11 that we're both sort of on the same page as to what
12 we're talking about so.

13 A. Uh-huh.

14 Q. One of the documents that you address is
15 an abstract from author Voswinckel and others, and
16 you refer to that as Document 1; is that right?

17 A. That is correct.

18 Q. Okay. So when you talk about the
19 Voswinckel abstract, sometimes possibly
20 interchangeable with document one, we both understand
21 that we're talking about this particular abstract?

22 A. Yes, we understand that.

23 Q. Okay. Thank you.

24 And then when we're talking about
25 Document 2, what reference do you understand that to

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2 be referring to?

3 A. Document 2 is a paper published in the
4 journal Herz written by Ghofani as one author,
5 Voswinckel as another, and still others as well, and
6 is described on Page 12 of the declaration.

7 Q. Okay. So if I refer to the Giovannini
8 reference going forward, will you understand that
9 this is the document that I'm talking about?

10 A. Yes, I'll understand that.

11 Q. Okay. Thank you.

12 So first I'd like to ask you some
13 questions about Document 2, which is the Giovannini
14 article.

15 And in particular in Paragraph 38 of
16 your declaration you introduce Attachment 2c.

17 Do you see that?

18 A. I'm looking at Paragraph 38.

19 Q. Okay. And Document 2c is a table of
20 contents for the June 2005 issue of Herz from
21 SpringerLink; is that correct?

22 A. Yes, that is correct.

23 Q. And you attached to this to demonstrate
24 that the Giovannini article was readily available
25 online; is that correct?

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2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. That is correct.

5 BY MS. ASCARRUNZ:

6 Q. And you indicate that SpringerLink is the
7 online source for journals published by Springer
8 Publishing, including Herz; and is, therefore, a
9 place where Document 2 would likely be found;
10 correct?

11 A. It's a place where document -- that is
12 correct in the sense that it's a place where, if
13 authentic, Document 2 would be found.

14 Q. Why do you add that "if authentic"?

15 A. The purposes of Paragraphs 35 through 40
16 is to establish the authenticity of Document 2, so
17 Paragraph 38 is part of the effort to establish the
18 authenticity of the Document 2.

19 It seemed -- seems appropriate to
20 reference the purpose of this paragraph and of this
21 attachment.

22 Q. Okay. Why did you find it relevant to
23 provide this exhibit from the source that publishes
24 Herz?

25 A. As I just mentioned, what we're -- what I

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2 was trying to do in these paragraphs is to establish
3 authenticity, that is, the document is what it
4 appears to be.

5 The availability in SpringerLink is
6 one relevant piece of evidence about authenticity.

7 Q. Why is the availability on SpringerLink a
8 relevant piece of evidence?

9 MR. SOMMER: Object to form.

10 BY THE WITNESS:

11 A. Well, I can only answer that
12 hypothetically.

13 So let's imagine hypothetically that
14 we had the online list of volume contents and
15 Document 2 wasn't there, if you knew that, you would
16 say, "Ah, there is significant question, therefore,
17 about the authenticity of the document."

18 I wanted to make sure there was no
19 significant question about the authenticity of the
20 document.

21 BY MS. ASCARRUNZ:

22 Q. And was it important in that regard to
23 take into account that SpringerLink is the publisher
24 that puts out Herz?

25 MR. SOMMER: Object to form.

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2 BY THE WITNESS:

3 A. It is certainly relevant.

4 BY MS. ASCARRUNZ:

5 Q. This Attachment 2c does not anywhere
6 state when the table of contents for the June 2005
7 issue of Herz was available online; correct?

8 A. That is correct.

9 All I'm trying to do in Paragraph
10 38, and indeed Paragraphs 35 through 40, is to
11 establish the authenticity of the document.

12 Q. And this attachment does not anywhere
13 state when the Ghofani article was available online
14 through SpringerLink; correct?

15 A. That is correct, and I will repeat that
16 the effort in Paragraphs 35 through 40 is to
17 establish the authenticity and endeavor separate from
18 the question of when the document was publicly
19 available.

20 Q. And you also introduce Attachment 2e,
21 which is the Scopus record for the Giovannini review;
22 correct?

23 A. Yes. The Scopus record is introduced as
24 Attachment 2e in Paragraph 39.

25 Q. And Scopus is the largest database of

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2 abstracts and citations of peer-reviewed literature;
3 correct?

4 A. That is what is said about Scopus in
5 Paragraph 25.

6 Q. Why did you include the Scopus record?

7 A. The effort in Paragraphs 35 through 40 is
8 to establish the authenticity of Document 2.

9 The fact that there is a record, an
10 index record for Document 2 in Scopus serves -- helps
11 to establish the authenticity of the document.

12 Q. So I understand you're relying on
13 Attachment 2e for purposes of establishing
14 authenticity; correct?

15 A. That is the purpose of referencing
16 Attachment 2e in Paragraph 39.

17 Q. Are you also relying on Attachment 2e to
18 establish public accessibility?

19 A. No.

20 Q. Thank you. In Paragraph 39 you state
21 that Attachment 2e shows the many indexed words by
22 which an ordinarily skilled researcher exercising
23 reasonable diligence can find Document 2.

24 Do you see that?

25 A. I do.

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2 Q. Why does the Scopus record demonstrate
3 that an ordinarily skilled researcher exercising
4 reasonable diligence could find Document 2?

5 A. In Paragraph 12 on Page 5 -- this is also
6 Page 7 of 74 of the declaration -- it stated that
7 this person, that is a person of ordinary skill in
8 the art, would regularly review literature about
9 pharmaceutical sciences and drug delivery and would
10 know how to carry out library research using library
11 researches to find out more information about areas
12 being researched.

13 Attachment 2e is an example of the
14 sort of thing that the person described in
15 Paragraph 6 would be using to discover information.

16 Q. Okay. You refer to the many indexed
17 keywords in Attachment 2e; right?

18 A. That is correct.

19 Q. And some of those many indexed keywords
20 include author keywords, EMTREE terms, and MeSH
21 terms; correct?

22 A. That is correct.

23 Q. Are these typically useful kinds of terms
24 under which to index references?

25 MR. SOMMER: Object to form.

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2 BY THE WITNESS:

3 A. In Paragraph 22 of the declaration I
4 observe that indexing services use a wide variety of
5 controlled vocabularies to provide subject access and
6 other means of discovering the content of documents.
7 These -- the formats in which these access terms are
8 presented vary from service to service.

9 The index terms listed here are
10 certainly appropriate to the discipline or
11 disciplines involved.

12 Q. Are you familiar with EMTREE terms?

13 A. Could you define entry terms for me,
14 please?

15 Q. Well, actually that might have been a
16 better question because I don't know the answer to
17 that.

18 Do you know what EMTREE terms are?

19 MR. SOMMER: I just want to make sure because
20 I think he said entry.

21 MS. ASCARRUNZ: EMTREE. I think we're both
22 reading the same document so it should be clear.

23 MR. SOMMER: Okay. Well, I --

24 MS. REPORTER: I'm hearing entry.

25 MS. ASCARRUNZ: EMTREE, e-m-t-r-e-e.

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MR. SOMMER: That's what I heard from him.

MS. ASCARRUNZ: As used in Attachment 2e.

MR. SOMMER: I know the font is small, Scott.

THE WITNESS: No, I -- thank you. I see
EMTREE, e-m-t-r-e-e.

Now, if you would -- since we're now
clear about the term, would you please repeat your
question?

MS. ASCARRUNZ: Yes.

BY MS. ASCARRUNZ:

Q. Do you know what EMTREE terms are?

A. I know that they are index terms.

If you ask me what EMTREE stands
for, the answer is no.

Q. Do you know what MeSH terms are?

A. Yes.

Q. What are MeSH terms?

A. They are terms used by -- what is it?

They are terms used by the principal
indexing service for medical literature.

Q. Okay. And among the terms that are
included in this Attachment 2e, are included
pulmonary hypertension; right?

A. Well, I see in Attachment 2e at least one

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2 search term called pulmonary hypertension.

3 There may be others.

4 Q. Okay. And also included is prostacyclin
5 as a term; correct?

6 And if you'll permit me a hint, it's
7 under "author keywords."

8 A. Thank you. That's very helpful.

9 I do see it there under "author
10 keywords."

11 Q. And this Scopus entry also demonstrates
12 that the article is indexed by authors; right?

13 A. Scopus records are indexed by authors.

14 Q. And the institution at which they work?

15 MR. SOMMER: Object to form.

16 BY THE WITNESS:

17 A. I don't know that that is the case.

18 BY MS. ASCARRUNZ:

19 Q. Okay. This particular Scopus index does
20 reflect the institution at which the authors work;
21 correct?

22 A. That is correct.

23 Q. Okay. When was this Scopus index
24 created?

25 A. I do not know.

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2 Q. Do you know from any of the exhibits to
3 your declaration when the Giovannini review article
4 was indexed on Scopus?

5 A. No.

6 Q. Do you know when Scopus was launched?

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

9 A. I might at one point have known, but I do
10 not this morning know.

11 BY MS. ASCARRUNZ:

12 Q. Do you have a ballpark recollection of
13 the decade in which it was launched?

14 A. No.

15 Q. Do you know what the original scope of
16 Scopus included when it was launched?

17 A. No.

18 MS. ASCARRUNZ: We've been going
19 approximately an hour. I have a small handful of
20 remaining questions on Document 2. Do you want to
21 keep pushing through, or do you want to take a break?

22 THE WITNESS: It's your deposition.

23 MS. ASCARRUNZ: I want to make sure that your
24 comfortable.

25 THE WITNESS: I'm comfortable.

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MS. ASCARRUNZ: I can keep pressing through
if --

THE WITNESS: I'm comfortable. Thank you.

MS. ASCARRUNZ: -- you're fine with that.

BY MS. ASCARRUNZ:

Q. Okay. I'd like to turn to Attachment 2f
now.

A. 2f?

Q. Yes. And this is a printout from the
Statewide Illinois Library Catalog; right?

I apologize. Let me give you time
to find it?

A. Thank you.

Q. 2f.

A. I'm not sure that it's included in this
packet.

Q. Oh, that's a problem.

A. But let me see if it's in this one.

MR. SOMMER: For the record, it's on Page 74
of 74.

THE WITNESS: Thank you.

MS. ASCARRUNZ: I just want to make sure.

So it was complete?

THE WITNESS: No, it is not.

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MS. ASCARRUNZ: It's not complete. Okay.

THE WITNESS: But...

MS. ASCARRUNZ: I apologize for that. I guess it being the last page, it probably fell off somewhere.

THE WITNESS: I have Page 74 of 74 in front of me. Thank you.

BY MS. ASCARRUNZ:

Q. So this Attachment 2f is a printout from the Statewide Illinois Library Catalog?

A. That is, correct.

Q. And it shows that Herz is indexed and available in 97 libraries worldwide; correct?

A. Correct.

Q. Why did you include this attachment?

A. The effort in Paragraphs 41 through 43 is to establish the public availability of Document 2.

The public availability in this case is a question of availability in academic libraries.

And the point here is that one can find Document 2 in something like 97 different libraries if one chose to look for it.

And that's evidence, as I say in Paragraph 41, that the journal Herz was sufficiently

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2 accessible to the public interested in the art and an
3 ordinarily skilled researcher exercising reasonable
4 diligence would have had no difficulty finding copies
5 of Herz.

6 Q. Okay. So you indicated that one can find
7 Document 2 in something like 97 different libraries.

8 This index in Attachment 2f is not
9 for Document 2; correct, it's for Herz as a whole as
10 a periodical?

11 A. That is correct.

12 Q. Okay. 97 libraries worldwide is a pretty
13 modest distribution; isn't it?

14 A. That's a matter of judgment. I think
15 you're free to draw your own conclusions.

16 Q. When was this index created?

17 A. Would you define this index, please?

18 Q. Yes. When was the entry that is
19 reflected in Attachment 2f created?

20 A. Herz is, of course, a periodical
21 publication, and I discuss periodical publications in
22 Paragraph 19 and 20 of the declaration, and I say in
23 Paragraph 19 that a library typically creates a
24 catalog record for a periodical publication when the
25 library receives its first issue.

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2 So the library -- the catalog record
3 on which Attachment 2f is based was probably created
4 in a -- in an unknown -- in a library unknown to me
5 sometime soon after the first issue of Herz was
6 received by that library probably sometime in 1976.

7 Q. And this particular catalog record covers
8 at least quarterly or bimonthly issues since 1976;
9 correct?

10 A. In Attachment 2f, about half way down the
11 list of entry lines, there is a line labeled,
12 "Frequency," that is the frequency with which the
13 periodical is published, and there we are told that
14 from 2007 on 8 issues were issued a year, previously
15 to that quarterly or bimonthly.

16 Q. In Paragraph 41 of your declaration you
17 refer to Attachment 2a, and you indicate that it
18 includes a library date stamp indicating that the
19 June 2005 issue of Herz was processed on 22, June,
20 2005; correct?

21 MR. SOMMER: Object to form.

22 BY THE WITNESS:

23 A. I believe we're referring to
24 Paragraph 42.

25 MS. ASCARRUNZ: Thank you for that

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2 correction.

3 BY THE WITNESS:

4 A. And there I do observe that Attachment 2a
5 includes a library date stamp including that of the
6 June issue of Herz which was processed on the 22nd of
7 June 2005.

8 BY MS. ASCARRUNZ:

9 Q. Okay. Can you show me where that stamp
10 is on the document?

11 A. If you will look on Page 58 of 73, this
12 is still Attachment 2a, you will see there a PDF of
13 the title or the cover probably of Herz, and you will
14 see about a third of the way down in the middle a
15 rubber stamp that says, "Biomedical Library" -- oh,
16 that says, "July," J-u-l, "22, 2005, University of
17 California, Los Angeles."

18 Q. So is that a typographical error in the
19 paragraph of your declaration that should read July
20 instead of June?

21 A. Yes.

22 Q. Okay. And the stamp you refer to simply
23 says, "Biomedical Library, July 22, 2005, University
24 of California, Los Angeles."

25 It doesn't anywhere state that the

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2 issue was processed on that date; correct?

3 A. Please help me understand what you mean
4 by processed.

5 Q. Sure.

6 In your Paragraph 42 you indicate
7 that that stamp indicates that this issue of Herz was
8 processed on a particular date?

9 A. Uh-huh.

10 Q. The stamp itself does not say that it was
11 processed on that date; correct?

12 A. Well, it is the case that there -- that
13 this rubber stamp does not include the word
14 processed.

15 The fact that a rubber stamp was
16 applied to the cover of Herz on July 22 is clear
17 evidence that at the University of California
18 biomedical library this copy of Herz was processed,
19 that is, date stamped on the 22nd of July 2005.

20 Q. Okay. Apart from stamping the cover with
21 the stamp, what else does it mean when you say, "was
22 processed"?

23 A. Academic libraries process their
24 periodicals in a variety of ways.

25 In this case the evidence suggests

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2 that Herz was delivered directly to the biomedical
3 library, perhaps by the post, perhaps coming from
4 some central distribution point at -- at the
5 University of California libraries, but Herz arrived
6 in the biomedical library and was there date stamped,
7 that is, an employee of the biomedical library date
8 stamped this copy of Herz on the 22nd of July, and
9 that was done as part of the process of moving this
10 copy of Herz from, as I would imagine, the biomedical
11 library receiving unit to the shelves where it would
12 be publicly available.

13 Q. Okay. So I understand based on your
14 experience in libraries, that you've made several
15 deductions as to how this issue of Herz was processed
16 by the University of California, Los Angeles; is that
17 a fair statement?

18 MR. SOMMER: Object to form.

19 MS. ASCARRUNZ: Let me strike that.

20 BY MS. ASCARRUNZ:

21 Q. You don't claim to have personal
22 firsthand knowledge of who applied this stamp;
23 correct?

24 A. That is correct.

25 Q. And you don't claim to have personal

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2 firsthand knowledge of when they applied this stamp;
3 correct?

4 A. If by personal firsthand you mean was I
5 standing there watching the person applying this date
6 stamp, that is correct.

7 Q. And you don't have any personal firsthand
8 knowledge of the processing procedures used by the
9 University of California, Los Angeles on this issue
10 of Herz; correct?

11 A. Well, everything turns here on the
12 definition of -- of firsthand, so would you describe
13 that? Tell me what you mean by firsthand.

14 Q. Sure. So you understood me correctly
15 before.

16 Did you see it with your own, you
17 know, eyes or were you present, or did somebody
18 directly involved tell you, you know, what the
19 procedures were?

20 A. You are correct that I do not have
21 firsthand knowledge of that sort.

22 Q. So I believe I'm done asking questions
23 about Document 2, but since we did identify a
24 typographical error, I just want to make sure the
25 record is clear as to what the impact of that is.

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So if we look at Paragraph 42, that is one of the locations we found an error; correct?

A. It is correct that the date on attachment -- the date stamp on Attachment 2a reads July 22, 2005 rather than what is asserted in Paragraph 42, the 22nd of June 2005.

Q. So --

A. The rest of the -- of Paragraph 42 remains accurate.

Q. So in Paragraph 42 would you change both instances of June to July?

A. Yes, I certainly would.

Q. Okay. And would you also change the instance of June in Paragraph 43 to July?

A. Yes, I would.

Q. And the statement in Paragraph 43 that Document 2 was publicly available at least by early July 2005 would also be incorrect?

A. That's true. That would have to be early August 2005.

MS. ASCARRUNZ: Okay. I am done with Document 2, so this probably is a good time for a break.

I'm sorry. You might want to say

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2 something?

3 THE WITNESS: You might want to look at
4 Paragraph 44.

5 MS. ASCARRUNZ: Okay.

6 BY MS. ASCARRUNZ:

7 Q. Okay. What change would you make there?

8 A. Well, the same issue of error about date.

9 Q. So that instance of July should read
10 August?

11 A. Yes, early August 2005.

12 Q. Okay. The statement that the Document 2
13 would be publically available to researchers at least
14 by early August 2005 is based on your observation of
15 the July 2005 stamp on the cover of Herz?

16 A. That is correct.

17 Q. Why does that stamp on the cover of Herz
18 demonstrate that it would in turn be publicly
19 available to researchers?

20 A. The business of libraries, not least of
21 all biomedical libraries, is to make the material
22 that they collect available to researchers and to do
23 that with some promptitude.

24 So based on my experience of
25 academic libraries generally and based on my close

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2 involvement with the medical libraries at John
3 Hopkins University and at Yale University, it is my
4 opinion, as expressed in Paragraph 19, that after
5 issues or volumes of a periodical are checked in,
6 often using a date stamp, as is the case here, and
7 added to the institution's holdings records, those
8 issues are made public -- made available very soon
9 thereafter, normally within a few days of receipt, or
10 at most, within a few weeks of receipt.

11 I regard that July 22, 2005 date as
12 indication that this issue of Herz had been received
13 in the biomedical library at the University of
14 California as of that date, and so it is my opinion
15 that it would have been publicly available at the
16 biomedical library very soon thereafter.

17 Q. Do you know for certain that that was the
18 case?

19 A. What do you mean by for certain?

20 Q. I'm looking back over your previous
21 answer, and you used words such as often using the
22 date stamp, normally within a few days, which to me
23 sounds like there's room for error or delay, so my
24 question is: Do you know for certain that the issue
25 of Herz reflected in Document 1 was, in fact, made

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2 publicly available within a few days of receipt and
3 stamping?

4 MR. SOMMER: Object to form.

5 BY THE WITNESS:

6 A. Well, with respect, you have cited the
7 language I use, and we're -- both agreed that that is
8 the language in the declaration, and you have
9 introduced a new term for certain that I've asked you
10 to define; and, as I say, with respect, you haven't
11 defined it, you've only given me my words back.

12 So I can't answer your question
13 without a proper definition of what you mean by for
14 certain.

15 Q. Okay. Do you know for a fact that the
16 issue of Herz reflected in Document 1 was made
17 publicly available within a few days of receipt and
18 stamping at the University of Los Angeles?

19 MR. SOMMER: Object to form.

20 BY MS. ASCARRUNZ:

21 Q. The University of California,
22 Los Angeles. I apologize.

23 MR. SOMMER: Same objection.

24 BY THE WITNESS:

25 A. Well, I do not assert, as a matter of

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2 fact, but I do -- it is my opinion, as registered in
3 Paragraph 44 and 43, it is my opinion that Document 2
4 is publicly available at least by early, as we now
5 say August 2005.

6 That is my opinion. That is my
7 expert opinion based on a very wide knowledge of
8 academic libraries, based on the practices of two
9 medical libraries comparable in stature, mission,
10 purpose to the biomedical library at the University
11 of California at Los Angeles.

12 MS. ASCARRUNZ: Okay. This is probably a
13 good time to take a break.

14 THE VIDEOGRAPHER: Going off the record.

15 The time is 11:00 a.m.

16 (WHEREUPON, a recess was
17 had.)

18 THE VIDEOGRAPHER: Going on the record. This
19 marks the beginning of Media No. 2.

20 The time is now 11:06 a.m.

21 BY MS. ASCARRUNZ:

22 Q. Okay. Dr. Bennett, the next set of
23 questions will be on Document 1.

24 A. Thank you.

25 Q. Which I often refer to as the Voswinckel

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2 abstract, so if I say the Voswinckel abstract, are we
3 agreed that I'm talking about Document 1?

4 A. We do agree on that.

5 Q. Okay. Did you obtain the Voswinckel
6 abstract from the British Library?

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

9 A. We did obtain a copy of Document 1 from
10 the British Library.

11 BY MS. ASCARRUNZ:

12 Q. And when you say, "we did," did you
13 personally, or did someone under your direction
14 obtain it from the British Library?

15 A. As explained in Paragraph 46 of the
16 declaration, my colleague Helen Sullivan -- well, I'm
17 sorry. It's Paragraph 45 that says that my -- one of
18 the primary responsibilities of my colleague, Helen
19 Sullivan, is to secure the bibliographic
20 documentation used in the attachments.

21 So in all probability Ms. Sullivan
22 obtained Document 1 for our use.

23 Q. When did she obtain Document 1 from the
24 British Library?

25 A. As stated in Paragraph 47, all

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2 attachments, including Attachment 1a, which is the
3 copy of Document 1 we're talking about, all
4 attachments were created on the 9th through the 12th
5 of June, so sometime between the 9th and the 12th of
6 June.

7 Q. Did you mean 16th?

8 A. Yeah. I'm sorry. Yes. The 9th and the
9 16th of June Ms. Sullivan obtained the copy of
10 Document 1 represented in Attachment 1.

11 Q. And apart from that instance of getting
12 access to the Voswinckel abstract from the British
13 Library, you can't provide any evidence in your
14 declaration that the Voswinckel abstract was, in
15 fact, accessed by anyone else at that library;
16 correct?

17 MR. SOMMER: Object to form.

18 BY THE WITNESS:

19 A. Would you mind clarifying your question
20 for me?

21 BY MS. ASCARRUNZ:

22 Q. Sure.

23 So I understand that Ms. Sullivan
24 obtained the Voswinckel abstract from the British
25 Library sometime between June 9 through 16 of 2017;

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2 correct?

3 A. Correct.

4 Q. Are you aware of anyone else having
5 obtained the Voswinckel abstract from the British
6 Library at any other point in time?

7 A. Yes.

8 Q. And what are the circumstances of that?

9 A. If you'll look in Paragraph 31, but at
10 the text on Page 11, which is also Page 13 of 74, you
11 will see there that I describe Attachment 1e, which
12 is a second copy different from Attachment 1a, a
13 second copy of Document 1 from the British Library
14 supplied by counsel.

15 So I know for a fact that the
16 counsel who asked for this declaration had secured a
17 copy of Document 1 from the British Library.

18 Q. Do you know when they secured that copy?

19 A. If you'll look at Attachment 1a, and
20 specifically at Page 36 of 74, you will see a
21 processing cover sheet by the WTS document delivery
22 service.

23 This is a Wisconsin based --
24 University of Wisconsin based service, and you will
25 see toward the top of that an entry called "Request

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2 Date," which indicates that WTS received the request
3 for this copy of attachment -- of Document 1 on the
4 7th of February 2017.

5 MR. SOMMER: Scott, did you mean 1a or 1e.

6 THE WITNESS: 1E. This is the copy -- 1e is
7 the copy provided by counsel.

8 BY MS. ASCARRUNZ:

9 Q. Okay. So we've got a copy of Voswinckel
10 being obtained by the British Library by counsel
11 sometime on or after February of 2017; correct?

12 A. Well, that's a reasonable inference.

13 What I can state as a matter of fact
14 is that this request was recorded by WTS on
15 February 7, 2017.

16 I infer that it's the request made
17 by counsel since this is where I got the document.

18 Q. Okay. So apart from the obtaining of
19 Voswinckel from the British Library by counsel and by
20 Ms. Sullivan in the two instances we just discussed,
21 are you aware of any other person obtaining a copy of
22 Voswinckel from the British Library at any point in
23 time?

24 MR. SOMMER: Object to form.
25

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2 BY THE WITNESS:

3 A. Well, the words aware and any other
4 person cover an awfully lot of ground.

5 Would you care to specify your
6 question a little more precisely?

7 BY MS. ASCARRUNZ:

8 Q. Apart from counsel and Ms. Sullivan
9 obtaining a copy of the Voswinckel abstract from the
10 British Library as reflected in Attachments 1a and
11 1e, is there any other documentation within the body
12 of your declaration or the attachments that reflect
13 that any other person also obtained a copy of the
14 Voswinckel abstract from the British Library?

15 A. No, there is no such documentation in my
16 declaration.

17 Q. Let's turn to Paragraph 30 of your
18 declaration, and beginning with this paragraph you
19 address the public accessibility of the Voswinckel
20 reference and conclude that it was sufficiently
21 accessible to the public interested in the art;
22 correct?

23 A. It is correct that in Paragraph 34 I
24 express the opinion that Document 1 is an authentic
25 document that was publicly available to researchers

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2 at least by December 2004.

3 Q. Okay. And you also conclude, based on
4 Attachment 1c, that circulation, the periodical, was
5 cataloged or indexed in a meaningful way in the
6 Statewide Illinois Library Catalog; correct?

7 A. I express that -- that opinion in
8 Paragraph 30.

9 Q. And that is because Document 1c lists as
10 subjects certain subjects, including cardiology,
11 cardiovascular system, hypertension, and then the
12 same words in Spanish, French, and Portuguese;
13 correct?

14 A. I see those words, yes, in Attachment 1c.

15 Q. And those words in Attachment 1c, are
16 those the basis on which you conclude that
17 circulation as a periodical was indexed in a
18 meaningful way?

19 A. Yes.

20 Q. When was this reference in Attachment 1c
21 indexed?

22 A. In Paragraph 19 I affirm that a library
23 typically creates a catalog record for a periodical
24 publication when the library receives its first
25 issue.

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2 So a library unknown to me created
3 a -- a record for circulation probably in the year
4 1950 when circulation was first published.

5 And that record and others are the
6 basis for the catalog record in Attachment 1c.

7 Q. And the catalog record in Attachment 1c
8 covers circulation as a periodical as a whole;
9 correct?

10 A. That is correct.

11 Q. There's not a record for any specific
12 issue or reference in circulation; correct?

13 A. That is correct.

14 Q. And the record in Attachment 1c covers
15 over 50 years of monthly periodicals of circulation;
16 correct?

17 MR. SOMMER: Object to form.

18 BY THE WITNESS:

19 A. If you look in the 1c record at the
20 frequency entry, you will see that it -- that it
21 appeared weekly, so one might say over 50 years of
22 publication that would be correct.

23 BY MS. ASCARRUNZ:

24 Q. So it would also be correct to say that
25 this record covers over 50 years of publication with

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2 a frequency of sometimes weekly, sometimes monthly
3 publications?

4 A. Yes, that would be correct.

5 Q. Do you know how many pages that covers?

6 A. No, I don't. Many.

7 Q. Do you know how many individual
8 references that covers?

9 MR. SOMMER: Object to form.

10 BY THE WITNESS:

11 A. No, I do not.

12 BY MS. ASCARRUNZ:

13 Q. Okay. The attachment -- the record in
14 Attachment 1c does not separately index the specific
15 volume or issue of the circulation abstracts that
16 contain the Voswinckel abstract; correct?

17 A. That is correct.

18 And I will add it is the nature of
19 records such as this not to do that, and that's why
20 we have indexing services.

21 Q. And you did provide that some libraries
22 do separately catalog the supplements to circulation;
23 correct? And I think you were referring to
24 Attachment 1d?

25 A. Yes.

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2 In Paragraph 30 I say, "Some
3 libraries have separately cataloged the supplements
4 to circulation."

5 And Attachment 1d is a true and
6 accurate copy of such a record.

7 Q. Okay. And Attachment 1d is also from the
8 Statewide Illinois Library Catalog; correct?

9 A. That is correct.

10 Q. And Attachment 1d is a record for all of
11 the supplements to circulation and not one in
12 particular; correct?

13 A. Yes, that is correct.

14 Q. And the record at Attachment 1d refers to
15 all abstracts over the span of more than 50 years;
16 correct?

17 A. That is correct.

18 Q. And, again, you don't know how many pages
19 that covers; correct?

20 A. I do not know how many pages.

21 Q. And you don't know how many individual
22 references are covered?

23 A. No, I do not.

24 Q. And the record at Attachment 1d does not
25 index the specific volume or issue of circulation

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2 abstracts that contain the Voswinckel abstract;
3 correct?

4 A. That is correct.

5 Q. And you indicated that Attachment 1d
6 demonstrates that the abstract supplements were
7 cataloged or indexed in a meaningful way; is that
8 correct?

9 A. What I say: In a meaningful way,
10 including being cataloged by subject, that is
11 correct.

12 Q. Okay. And by cataloged by subject,
13 you're referring to the descriptors indicating
14 arteriosclerosis congresses, cardiology congresses,
15 thrombosis congresses, and then arteriosclerosis
16 cardiology and thrombosis repeated; correct?

17 A. Correct.

18 Q. Is it your opinion that the words
19 arteriosclerosis, cardiology, and thrombosis provide
20 indexing in a meaningful way for all abstracts
21 published over a span of more than 50 years?

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

24 A. Well, your question turns on the question
25 of all; doesn't it?

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2 So one can imagine -- I speak
3 hypothetically now -- of a -- an abstract that might
4 have been best identified by some term other than
5 those listed here.

6 Relevant to your question and my
7 answer is the fact that librarians -- catalog
8 librarians have some discretion in the number of
9 indexing terms -- subject term, sorry, that they use.

10 A good cataloger -- or I should say
11 good cataloging practice stipulates that at least
12 three such subject terms should be provided. You can
13 provide more, you can provide fewer.

14 The understanding is, however, that
15 the terms provided do a good job of describing most,
16 but not necessarily literally all of the contents of
17 the document that you were using these terms to
18 describe.

19 Q. You don't purport to know how the words
20 arteriosclerosis, cardiology, and thrombosis relate
21 to pulmonary hypertension; correct?

22 A. Correct.

23 Q. Is it your opinion that subjects such as
24 medicine, biotechnology, and pharmaceutical chemistry
25 provide a meaningful index and catalog by subject?

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2 And if it helps, I'm referring to
3 the subject words in Attachment 1b.

4 A. Well, your question turns on what one
5 means by meaningful. One certainly would not expect
6 to find articles about Joseph Conrad in a publication
7 with these subject terms, so, yes, that's meaningful.

8 Q. Okay. Throughout your declaration you
9 use the word meaningful yourself; right?

10 A. I do.

11 Q. And usually in the context of providing a
12 meaningful -- strike that.

13 Is it your opinion that subjects
14 such as medicine, biotechnology, and pharmaceutical
15 industry provide a meaningful index for finding the
16 Voswinckel abstract?

17 A. As we observed in questions a few -- a
18 few minutes ago, this record does not provide access
19 to Document 1 it provides access to the publication
20 which Document 1 appeared. That's the job, that's
21 the task of this record. This record is not meant to
22 provide access to Document 1. It is meant to provide
23 access to the publication in which Document 1
24 appeared.

25 So this record does a reasonable job

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2 of providing meaningful access to the publication in
3 which Document 1 appeared.

4 Q. Okay. So none of Attachments 1b, 1c, and
5 1d index the Voswinckel reference specifically;
6 correct?

7 A. I'm sorry. You're asking me about which
8 attachments, please?

9 Q. Sure.

10 None of Attachments 1b, 1c, and 1d.

11 A. Yes, Attachments 1b, 1c, and 1d are all
12 records for -- that relate to the publication in
13 which Document 1 appeared, but they do not provide
14 direct access to Document 1.

15 Q. Okay. And none of Attachments 1b, 1c,
16 and 1d index the reference by author or institution;
17 correct?

18 A. These are catalog records for the
19 publication in which Document 1 appeared.

20 It is not the job of catalog records
21 to provide indexes to the contents of periodicals.

22 Q. And none of Attachments 1b, 1c, and 1d
23 index the reference by subjects, including pulmonary
24 hypertension, PAH, Treprostinil, inhalation, or
25 nebulizer; correct?

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A. Did you ask me whether these attachments provide index records to index entries, index terms to Document 1? Is that what you asked me?

Q. Let me. Let me repeat the question.

None of Attachments 1b, 1c, and 1d index the reference reflected in each of those documents by subjects that include any of pulmonary hypertension, PAH, Treprostinil, inhalation, or nebulizer; correct?

MR. SOMMER: Object to form.

BY THE WITNESS:

A. I'm sorry. I -- I got lost about -- well, I don't know. The second clause in your --

MS. ASCARRUNZ: Okay. Let's try to break it up.

BY MS. ASCARRUNZ:

Q. So, again, I'm referring to Documents 1b, 1c, and 1d?

A. Got that.

Q. I understand that each index are referenced?

A. No, they don't.

Q. Not an individual reference, a periodical in some instances supplementing some other instances.

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2 A. Could we say, rather than index, that
3 they catalog, they provide a catalog record for a
4 publication? Can we say that?

5 Q. Perfect?

6 A. Okay.

7 Q. So each of the Attachments, 1b, 1c, and
8 1d, reflect a catalog record?

9 A. Yes.

10 Q. Okay. None of those catalog records
11 include references to subject matters that include
12 pulmonary hypertension, PAH, Treprostinil,
13 inhalation, or nebulizers; correct?

14 A. Well, you use the word include, and I
15 would assume that hypertension is a term that should
16 be understood to include the more specialized terms
17 you just mentioned, if I followed your question
18 correctly.

19 Q. You don't purport to understand the
20 difference between hypertension, systemic
21 hypertension, and pulmonary hypertension; correct?

22 A. That's right.

23 Q. Are you taking an opinion that the term
24 hypertension sufficiently includes pulmonary
25 hypertension?