

1 SCOTT BENNETT Ph.D.

2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. I can imagine that to be the case.

5 If -- you know, if one had a -- a --  
6 some kind of a subject term thesaurus.

7 BY MS. ASCARRUNZ:

8 Q. Of the subject terms that are reflected  
9 in Attachments 1b, 1c, and 1d, are you able to take  
10 an opinion that those terms are meaningful to a  
11 person of ordinary skill in the art looking to  
12 investigate the inhaled administration of  
13 Treprostinil for the treatment of pulmonary  
14 hypertension?

15 A. It would be my opinion that the person --  
16 such a person, such an ordinarily skilled person  
17 would not be looking in the wrong place if he or she  
18 were looking in the journal circulation or in the --  
19 what's it called -- the abstracts.

20 Q. Okay. In Paragraph 32 of your  
21 declaration you conclude that it is your opinion that  
22 Document 1 was publicly available, at least by  
23 December 2004; correct?

24 A. Yes, I say that that's my opinion.

25 Q. Okay. But you did not provide an exact

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2 date that the document was publicly available;  
3 correct?

4 A. Well, again, everything turns -- turns on  
5 what you mean by exact.

6 What I say is December.

7 Q. And you say at least by December?

8 A. I'm sorry. You're quite right. At least  
9 by December.

10 Q. You attach in your declaration,  
11 Attachment 1f.

12 Attachment 1f is a Scopus index  
13 record for a review article that in turn cites to the  
14 Voswinckel abstract; correct?

15 A. Yes, as I say in Paragraph 33, Attachment  
16 1f is a copy of a Scopus record for a review article  
17 that cites Document 1.

18 Q. You did not provide a Scopus index record  
19 for the Voswinckel reference itself; right?

20 A. Correct.

21 Q. Did you search for a Scopus index record  
22 for the Voswinckel abstract itself?

23 A. I am confident that my business partner,  
24 Helen Sullivan, looked for it.

25 Q. And one is not included in the

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2 attachments to your declaration because there is no  
3 Scopus index record for the Voswinckel reference;  
4 correct?

5 A. That's a reasonable conclusion.

6 Q. Why is the Scopus reference that you do  
7 include as Attachment 1f relevant to whether  
8 Voswinckel itself was publicly accessible and  
9 properly indexed?

10 MR. SOMMER: Object to form.

11 BY THE WITNESS:

12 A. You will see in Paragraph 23 the  
13 statement that a citation of a document, which is  
14 what we're talking about in this case, is evidence  
15 that the document was publicly available and in use  
16 by researchers no later than the publication date of  
17 the citing document.

18 Q. Do you know how the authors of that  
19 review article Poon and Sulica obtained the  
20 Voswinckel abstract?

21 A. In Paragraph 6 I assert that in the  
22 several ways previously enumerated I have a general  
23 knowledge of how researchers work, so, yes, I know  
24 how they found it in the way that any researcher  
25 would find it, any other, you know, ordinarily

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2 skilled researcher would find it.

3 Q. How did they find it?

4 A. One very common way is word of mouth.

5 Hey, did you see? Another common way is trooping off  
6 to the library to look at the new issue of the  
7 journals that they -- that the researcher keeps up  
8 with.

9 Q. Is it possible that the authors obtained  
10 the Voswinckel reference by attending the scientific  
11 sessions at which they were presented?

12 A. That, too.

13 Q. Is it possible that the authors obtained  
14 the Voswinckel reference directly from the Voswinckel  
15 authors?

16 A. You're asking about what is possible;  
17 and, of course. So one can imagine, just to imagine  
18 it, a colleague says, "Have you seen this?"

19 "No. But I know Voswinckel, so I'll  
20 get in touch with Voswinckel."

21 Sure there's a range of  
22 possibilities here.

23 Q. You don't know directly whether any  
24 particular search was done by the citing authors to  
25 find Voswinckel; correct?



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2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. Would you care to define directly?

5 BY MS. ASCARRUNZ:

6 Q. Let me rephrase my question.

7 You don't have any firsthand  
8 personal knowledge of how the authors came into  
9 possession of the Voswinckel reference; correct?

10 MR. SOMMER: Object to form.

11 BY THE WITNESS:

12 A. No. No.

13 BY MS. ASCARRUNZ:

14 Q. And in your declaration you have not  
15 provided any other reference that cites the  
16 Voswinckel reference; correct?

17 A. That is true of the declaration. It  
18 doesn't mean, by the way, that there aren't any.

19 It means that it's true of this  
20 declaration, that this is the one that we provided,  
21 and I'll just mention, by the by, that it's our  
22 practice to mention only one citation and the  
23 earliest one we could find.

24 Q. Are you aware of whether you found any  
25 other citations to that article?

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2 A. This happened -- this is work that Helen  
3 Sullivan did nine months ago, and so I have no  
4 present knowledge.

5 Q. Let's look at Document 1f a little more  
6 closely, and in particular at Page 45 of 74.

7 A. I'm sorry. 45 of 74. Thank you.

8 Q. And Citation 51 is a citation that you  
9 reference to the Voswinckel abstract; correct?

10 A. That is correct.

11 Q. And the next citation, 52, is to an  
12 article by author Arai and others.

13 Do you see that?

14 A. I do.

15 Q. Do you know why Reference 52 is  
16 highlighted in blue and Reference 51 to the  
17 Voswinckel reference is not?

18 A. No, I do not.

19 Q. Do you know why some of the references  
20 are highlighted in orange?

21 A. No, I do not.

22 Q. Do you know why Reference 52 indicates  
23 that it was cited 2,269 times and Reference 51, the  
24 Voswinckel abstract, gives no number of times it was  
25 cited?

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2 A. No, I do not.

3 Q. In Paragraph 30 of your declaration  
4 towards the end of that paragraph you conclude that  
5 it is your opinion that circulation and its abstract  
6 supplements were sufficiently accessible to the  
7 public interested in the art, and an ordinarily  
8 skilled researcher exercising reasonable diligence  
9 would have no difficulty finding copies of circulation  
10 in its abstract supplements.

11 My question is what do you mean by,  
12 quote, exercising reasonable diligence?

13 A. Well, I know as a researcher myself, and  
14 I know from working with researchers and for  
15 researchers that discovering the published literature  
16 relevant to your subject requires some work. I mean  
17 it just doesn't fall out of the heaven.

18 And so doing that work, for  
19 instance, tracking some of the chief publications --  
20 periodical publications in your field is part of  
21 exercising reasonable diligence.

22 If you don't do that, then you're  
23 going to miss literature relevant to your subject  
24 matter.

25 Q. Okay. Referring to Document 1e, you --

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2 and in particular Page 37 of 74.

3 A. Thank you.

4 Q. You refer to a few dates that are visible  
5 on that page; correct?

6 A. Could we look at the text of the  
7 declaration that you're interested in?

8 Q. I think it's generally in Paragraph 31.

9 A. Okay.

10 Q. One is the date label at the top cover  
11 that indicates in your opinion that the October 2004  
12 issue of circulation was processed on 22, November,  
13 2004; correct?

14 A. Yes.

15 Q. That label does not actually on its face  
16 indicate that the issue was processed on that date;  
17 correct?

18 A. What do you mean by processed?

19 Q. What do you mean by processed?

20 A. In this case what I mean is that the  
21 label --

22 Q. Was affixed on that date?

23 A. Yes.

24 Q. Okay. You don't claim to have firsthand  
25 personal knowledge of who affixed that label;



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2 correct?

3 A. That is correct.

4 Q. And you don't claim to have firsthand  
5 personal knowledge of what was done with this  
6 document at the time of affixing that label; correct?

7 A. You did say firsthand personal?

8 Q. Yes.

9 A. Yes -- no, I do not claim to have  
10 firsthand personal knowledge of what happened at the  
11 British Library.

12 Q. And on this same page you also refer to  
13 another label indicating, in your opinion, that the  
14 restriction on reading room only use of the  
15 supplement expired on 22, May, 2005; correct?

16 A. Yes. What I say is the third label on  
17 the cover indicates restriction on reading room use  
18 only, expired on the 22nd of May.

19 Q. You don't claim to have firsthand  
20 personal knowledge that reading room use only access  
21 expired on the 22nd of May; correct?

22 A. What I affirm is -- is the evidence of  
23 this label.

24 Q. Okay. Do you know who affixed that  
25 label?

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2 A. No. What I do affirm is that I do not  
3 see any indications or have any reason to believe  
4 that this date label or the other labels evident in  
5 this copy were affixed by anyone other than library  
6 personnel on or about the date indicated by the  
7 label.

8 Q. Do you know why the date on the loan ban  
9 label is crossed out?

10 A. No, I do not.

11 Q. Okay. We've discussed Scopus --

12 MR. SOMMER: Object to form of the last  
13 question.

14 BY MS. ASCARRUNZ:

15 Q. We've discussed Scopus and the Statewide  
16 Illinois Library Catalog; right?

17 A. We have talked about records from the  
18 Illinois Library Catalog Record and Cat -- Catalog  
19 and Scopus.

20 Q. Okay. In your time as a librarian, did  
21 you also become familiar with MEDLINE or PubMed?

22 A. Yes.

23 Q. Do you agree that PubMed is a critical  
24 tool in biomedical electronic research?

25 A. Yes.

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2 Q. Do you agree that PubMed is very popular  
3 and used widely with clinicians and medical  
4 researchers?

5 A. Yes.

6 Q. Do you agree that PubMed is the most  
7 popular among clinicians and medical researchers?

8 A. Well, taken as a very large group, that  
9 is probably true.

10 One can imagine specialists within  
11 that very large group having other sources that are  
12 more popular even.

13 Q. Do you agree that one of the major  
14 benefits of PubMed is the ability to search by author  
15 and keyword?

16 A. Yes.

17 Q. In your declaration you did not provide a  
18 PubMed entry for the Voswinckel abstract; correct?

19 A. That is correct.

20 Q. Did you look for one?

21 A. As I said before, this work was done by  
22 Helen Sullivan nine months ago, and I cannot -- do  
23 not recall the specifics of her work. I think it  
24 quite likely that she looked there.

25 Q. Are you surprised to learn that the

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2 Voswinckel abstract does not have a PubMed entry?

3 A. No.

4 Q. I'd like to look at Attachment 1a?

5 A. 1a.

6 Q. And in particular Page 26 of 74.

7 A. Page 26 of 74.

8 Q. I think you might have alluded to this  
9 earlier.

10 What is WTS?

11 A. What? I'm sorry.

12 Q. At the top of the page it says, "WTS  
13 Article Delivery."

14 What is WTS?

15 A. It's a document delivery service offered  
16 by the University of Wisconsin at Madison Library.

17 Q. And what is this page?

18 A. This is the cover page that WTS uses to  
19 record each of its service transactions.

20 Q. Do you see under "Instructions" there's  
21 some text there that starts with, "We need copy...?"

22 A. Yes, I see that.

23 Q. Do you know who wrote this text?

24 A. Yes, I do.

25 Q. Who did?



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A. Helen Sullivan.

Q. Do you have an understanding of what she meant when she wrote, "We have not been able to obtain a copy with a date stamp," and then the sentence continues?

A. I'm sorry. What's the question?

Q. Sure.

Do you have an understanding of what she meant by: "We have not been able to obtain a copy with the date stamp"?

A. Yes.

Q. What did she mean?

A. It means that we, that is she and we collectively as a firm, have not been able to obtain a copy with a date stamp.

Q. Of the Voswinckel abstract?

A. No. Of the supplement to circulation that includes the abstract.

Q. Okay. Is it unusual to have difficulty obtaining a copy with the date stamp of reference?

MR. SOMMER: Object to form.

BY THE WITNESS:

A. Unusual? Well, date stamping is a very widely practice -- is very widely practiced in

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2 processing competitive journals.

3 This is a practice that -- that has  
4 gone on for decades. There's -- libraries vary  
5 somewhat.

6 So is it unusual? Yes, one might  
7 say, given, you know, a general impression of decades  
8 of practice it is unusual.

9 Does it -- does one with some  
10 frequency find issues of periodicals without date  
11 stamps, yes.

12 So everything in your question turns  
13 on what you mean by unusual.

14 And all I can answer is really, yes,  
15 the practice varies, but generally we are able --  
16 generally, I emphasize, we are able to find date  
17 stamps.

18 Q. Okay. At Page 36 of 74 as part of  
19 Attachment 1e --

20 A. Thank you.

21 Q. -- there's another WTS document?

22 A. Yes.

23 Q. And this one reflects that the requester  
24 was Steve Wesclitz.

25 Do you know who that is?

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2 A. No. I only know that he is identified as  
3 working for Winston & Strawn.

4 Q. Do you have any knowledge of why he made  
5 the request that's reflected on this page?

6 MR. SOMMER: I'm going to object; and to the  
7 extent that you know why, you would have learned that  
8 from us, and I'm going to instruct you not to answer  
9 on grounds of attorney work product.

10 BY MS. ASCARRUNZ:

11 Q. All right. Let's look at Attachment 1a,  
12 and in particular Page 29 of 74, and it says at the  
13 top, "Supplements to Circulation Published in 2004."

14 Are we on the same page?

15 A. We on the same page.

16 Q. Okay. Do you see the last entry on that  
17 page?

18 MR. SOMMER: Object to form.

19 BY MS. ASCARRUNZ:

20 Q. Where it reads: "Abstracts From  
21 Scientific Sessions 2004"?

22 A. I see that, yes.

23 Q. Do you recognize that to be the citation  
24 to the volume and issue of the abstracts supplement  
25 to circulation in which the Voswinckel abstract is

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2 found?

3 A. Yes, I recognize that as a reference to  
4 the physical volume in which these abstracts were  
5 published.

6 Q. Do you know what it means where it says,  
7 "Pages III-1-III-1102"?

8 MR. SOMMER: Object to form.

9 BY THE WITNESS:

10 A. I suppose that the first element in that,  
11 which is Roman numeral three relates to the Roman  
12 numerals one, two, three, and four elsewhere evident  
13 on this page, so we're probably -- probably talking  
14 about four supplements, each of which has its own  
15 separate pagination.

16 So in the case of the abstracts  
17 we're dealing with a -- a publication that -- that  
18 has page numbers ranging from Roman numeral three,  
19 Arabic numeral one, through Arabic -- Roman numeral  
20 three, Arabic numeral 1102.

21 And if you look on Page 32 of 74, at  
22 the top you will see the page number there is Roman  
23 numeral three, Arabic numeral 295.

24 Q. Okay. So this volume and issue of the  
25 abstract supplement contains likely 1,102 pages;



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2 correct?

3 A. That would be my conclusion, yes.

4 Q. Do you know how many abstracts were  
5 included in that supplement?

6 A. No, I do not.

7 Q. Do you see that the Voswinckel abstract  
8 is labeled as Abstract No. 1414?

9 A. Yes, I see that.

10 Q. So there were at least 1414 abstracts in  
11 this issue; correct?

12 A. Yes.

13 Q. And that's only as far as Page 295 out of  
14 1,102 pages; correct?

15 A. Correct.

16 Q. So we would expect that the number of  
17 abstracts to be at least double 1,414; correct?

18 MR. SOMMER: Object to form.

19 BY THE WITNESS:

20 A. We would expect to find a very large pile  
21 of abstracts.

22 BY MS. ASCARRUNZ:

23 Q. Do you know how many pages are contained  
24 in all supplements to circulation from 1950 through  
25 2004?

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2 A. No, I don't.

3 Q. Do you know how many pages are contained  
4 in all circulation abstracts from 1964 through 2004?

5 A. No, I don't.

6 Q. And you don't know how many pages are  
7 contained in all circulation, periodicals, and  
8 supplements from 1950 through 2004; correct?

9 A. That is correct.

10 Q. And you don't know how many references  
11 are located in all circulation, periodicals, and  
12 supplements from 1950 through 2004; correct?

13 MR. SOMMER: Object to form.

14 THE WITNESS: So would you repeat the  
15 question?

16 BY MS. ASCARRUNZ:

17 Q. You don't know how many references are  
18 located in all circulation, periodicals, and  
19 supplements from 1950 through 2004?

20 MR. SOMMER: Object to form.

21 BY THE WITNESS:

22 A. By references you mean discrete  
23 publications?

24 No, I don't know that.

25

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2 BY MS. ASCARRUNZ:

3 Q. In your work in this case did you attempt  
4 to locate the Voswinckel abstract at any of the  
5 institutions where you had been involved as a  
6 librarian?

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

9 A. I don't know. We do know that  
10 Ms. Sullivan reported not being able to find one with  
11 the date stamp.

12 So one could imagine that she looked  
13 at the University of Illinois, found the journal,  
14 didn't find a date stamp, and kept going.

15 As I say, that's speculative on my  
16 part. I don't know what -- I don't have a specific  
17 recollection of what she may have done nine months  
18 ago.

19 BY MS. ASCARRUNZ:

20 Q. But certainly nowhere in the declaration  
21 or attachments is there documentation showing that  
22 you obtained either of the Voswinckel abstract or the  
23 Giovannini reference at any of the institutions where  
24 you were employed previously as a librarian; correct?

25 A. That is correct.

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2 Q. So earlier when we were talking about  
3 exercising reasonable diligence, you indicated that  
4 often researchers have to do the work, and things  
5 obviously just don't fall out of the heavens.

6 Do you remember that discussion?

7 A. I do remember that very phrase.

8 Q. Is it your opinion that it is exercising  
9 reasonable diligence to locate the one paragraph  
10 Voswinckel abstract for a person of ordinary skill in  
11 the art to review every issue of all monthly  
12 periodicals spanning over 50 years that are indexed  
13 with the subject cardiology?

14 MR. SOMMER: Object to form.

15 THE WITNESS: Would you repeat the question,  
16 please?

17 BY MS. ASCARRUNZ:

18 Q. Is it your opinion that it is exercising  
19 reasonable diligence to locate the one paragraph  
20 abstract -- the one paragraph Voswinckel abstract for  
21 a person of ordinary skill in the art to review every  
22 issue of all monthly periodicals spanning over 50  
23 years that are indexed with the subject cardiology?

24 MR. SOMMER: Object to form.  
25



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2 BY THE WITNESS:

3 A. If I'm an ordinarily diligent -- what's  
4 the phrase -- reasonably diligent investigator of  
5 Subject A, in the first instance I don't have to --  
6 I'm especially in medicine let's say -- I don't have  
7 to research what happened 50 years ago.

8 I probably am looking -- probably --  
9 looking for something more recent than the literature  
10 published 50 years ago.

11 So your question doesn't describe to  
12 me a set of reasonable assumptions about due dil --  
13 due -- a reasonable diligence.

14 So I don't know how to answer your  
15 question because it doesn't -- doesn't describe  
16 something that I -- that I understand.

17 BY MS. ASCARRUNZ:

18 Q. Okay. When I refer to a person of  
19 ordinary skill in the art, I'm referring to the  
20 paragraphs we discussed earlier, Paragraphs 11 and  
21 12, of how that was defined --

22 A. Uh-huh.

23 Q. -- for you by counsel.

24 A. Uh-huh.

25 Q. Can you -- do you understand that that's

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2 what I mean when I say a person of ordinary skill in  
3 the art?

4 A. Right.

5 Q. Okay. So I'm speaking about a person of  
6 ordinary skill in the art specifically in this  
7 context, not in some abstract general research.

8 A. Uh-huh. Okay.

9 Q. Okay. Is it your opinion that it is  
10 exercising reasonable diligence to locate the one  
11 paragraph Voswinckel abstract for a person of  
12 ordinary skill in the art to review every recent  
13 issue of all monthly periodicals that are indexed  
14 with the subject cardiology?

15 MR. SOMMER: Object to form.

16 BY THE WITNESS:

17 A. I can imagine that being the case. I can  
18 imagine some other set of behaviors that I would also  
19 describe as reasonably diligent.

20 BY MS. ASCARRUNZ:

21 Q. Is it your opinion that it is exercising  
22 reasonable diligence to locate the one paragraph  
23 Voswinckel abstract for a person with experience in  
24 the investigation or treatment of pulmonary  
25 hypertension to review every recent issue of all

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2 monthly periodicals indexed with the subject  
3 cardiology?

4 MR. SOMMER: Object to form.

5 THE WITNESS: Have you changed your question?

6 MR. SOMMER: Uh-huh.

7 THE WITNESS: Just help me understand how  
8 this question differs from the previous one.

9 MS. ASCARRUNZ: Sure.

10 BY MS. ASCARRUNZ:

11 Q. The previous question referred  
12 specifically to the person of ordinary skill in the  
13 art.

14 A. Yeah.

15 Q. The second question used the term a  
16 person with experience in the investigation of  
17 treatment of pulmonary hypertension.

18 And I can tell you for your  
19 understanding and context that there is a dispute in  
20 this case as to what a person of ordinary skill in  
21 the art is.

22 I understand in your opinion you  
23 employed the definition given to you by Watson's  
24 counsel.

25 A. Okay.

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2 Q. And I'm just --

3 A. So you're now asking me about --

4 Q. A person with experience in the  
5 investigation or treatment of pulmonary hypertension.

6 A. Well, understanding that the only thing  
7 that has changed between the previous question and  
8 this question is the definition of the person we're  
9 talking about, then the answer has to be the same.

10 I can imagine that to be the case,  
11 but I can imagine other behaviors that one would also  
12 describe as reasonably diligent.

13 Q. So I want to ask a few more questions as  
14 to what some of those other behaviors are.

15 So I understand your testimony that  
16 you can certainly imagine other -- other behaviors  
17 being also reasonably diligent.

18 A. Uh-huh.

19 Q. I just want to try to understand the  
20 parameters of what that is, and so the questions that  
21 I'm asking you are, you know, specific to one  
22 particular behavior, is it reasonable or not?

23 A. Thank you.

24 Q. In your opinion is it exercising  
25 reasonable diligence to locate the one paragraph



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2 Voswinckel abstract for a person of ordinary skill in  
3 the art to review every recent issue of  
4 circulation -- to review every recent issue of  
5 circulation?

6 MR. SOMMER: Object to form.

7 BY THE WITNESS:

8 A. On the assumption that circulation is a  
9 crit -- it publishes critically important information  
10 for the person we're talking about, yes, it would  
11 be -- it would be my opinion that -- there are just  
12 too many terms floating around here.

13 It would be my opinion that looking  
14 at every issue of circulation would represent -- help  
15 me with the term we're -- reasonable diligence?  
16 What's the term?

17 Q. Reasonable diligence.

18 A. Thank you.

19 Q. Okay. And you indicated on the  
20 assumption that circulation is critically important  
21 for the person that we're talking about?

22 A. Yes.

23 Q. Do you have any basis on which to make  
24 that assumption? -- let me put it this way.

25 Are you purporting to put forward an

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2 opinion that circulation is critically important for  
3 a person of ordinary skill in the art?

4 A. No, no such assertion is made in my  
5 declaration.

6 Q. Is it your opinion that it is exercising  
7 reasonable diligence to locate the one paragraph  
8 Voswinckel abstract for a person of ordinary skill in  
9 the art to review every abstract of the scientific  
10 sessions of the American Heart Association and annual  
11 meetings because they are indexed under cardiology?

12 MR. SOMMER: Object to form.

13 BY THE WITNESS:

14 A. You ask is it reasonable for a person to  
15 do that? I can imagine doing it. Is it an  
16 obligation that I would lay on a person and say if  
17 she didn't do it, it's not reasonably diligent, no.

18 BY MS. ASCARRUNZ:

19 Q. Is it your opinion that it is exercising  
20 reasonable diligence to locate the one paragraph  
21 Voswinckel abstract for a person of ordinary skill in  
22 the art to review over 2500 abstracts, over 1000  
23 pages, and because the full 1000 page is indexed as  
24 relating to medicine, biotechnology, and  
25 pharmaceutical chemistry?

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2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. Well, everything in your question turns  
5 around what's reasonable, and I can imagine that  
6 being reasonable. I can imagine some other standard  
7 behavior being reasonable.

8 I must say that what -- what I do  
9 not know right now is what's -- I don't know how all  
10 these abstracts are arranged within the abstract  
11 supplement, and so I'm really at a loss to deal with  
12 your questions because I don't have the relevant  
13 facts at hand.

14 So, for instance, if we had a  
15 complete volume here, we might -- I might be able to  
16 respond more reasonably to your questions.

17 BY MS. ASCARRUNZ:

18 Q. In your preparation and work for this  
19 case, did you ever have the full issue of the  
20 circulation abstracts in front of you at any point in  
21 time?

22 A. In front of me personally? No.

23 Q. In your experience as a researcher, did  
24 you ever find it reasonable to review over 2500  
25 abstracts, over 1000 pages, to locate a one paragraph

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2 reference?

3 MR. SOMMER: Object to form.

4 BY THE WITNESS:

5 A. I needed at one point as a researcher to  
6 construct as comprehensive a list as I could of the  
7 periodicals published in Great Britain in the 1820s.

8 Happily, I was doing this in the  
9 1960s, so I was working with the print version of the  
10 British Library catalog. I was in the British  
11 Library.

12 Happily, the British Library has a  
13 set of volumes in its printed catalog called  
14 periodicals.

15 I went through all those volumes  
16 looking for titles that were published in the 1820s.

17 I'm am sure that I looked at many  
18 thousands of entries.

19 So if I thought that behavior was  
20 reasonable then, I cannot say that a very laborious  
21 search of many thousands of entries for what one is  
22 looking for would be unreasonable now.

23 BY MS. ASCARRUNZ:

24 Q. Do you equate your task of having to  
25 construct a comprehensive listing of all periodicals



1 SCOTT BENNETT Ph.D.

2 published in Great Brittain in the 1820s with the  
3 administration of Treprostnil for the treatment of  
4 pulmonary hypertension?

5 A. Indeed I do not. No patient's lives were  
6 at stake in identifying the periodicals published in  
7 Brittain in 1820 -- in the 1820s.

8 Q. And the task of creating a comprehensive  
9 list of the periodicals published in Great Brittain  
10 in the 1820s was, by definition, a task of going  
11 through and identifying all of a certain type of  
12 publication; correct?

13 A. Identifying periodical publications of a  
14 certain date.

15 Q. Do you purport to be in a position to  
16 define what research is reasonably diligent for a  
17 person of ordinary skill in the art?

18 A. I assert in Paragraph 6 that I have a  
19 general knowledge of how researchers work.

20 I don't believe I have made any  
21 other assertion in this declaration about how  
22 researchers work.

23 Q. But do you purport to be in a position to  
24 define what research is reasonably diligent for a  
25 person of ordinary skill in the art?

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MR. SOMMER: Object to form.

BY THE WITNESS:

A. Well, I do not claim the attributes that are described in Paragraph 12.

BY MS. ASCARRUNZ:

Q. Okay. But do you purport to be able to speak for people with the attributes described in Paragraph 12 as to what is or is not reasonably diligent research?

MR. SOMMER: Object to form.

BY THE WITNESS:

A. No, I do not claim to speak for those people.

BY MS. ASCARRUNZ:

Q. And do you purport to be able to assess what is reasonably diligent research to those people?

A. Yes, in the sense that if such a person described what he or she thought was reasonable, I could assess whether I, too, thought it reasonable.

Q. And if a person did not describe what he or she thought was reasonable, could you still assess whether certain research was reasonably diligent or not?

MR. SOMMER: Object to form.

1 SCOTT BENNETT Ph.D.

2 BY THE WITNESS:

3 A. Well, you asked me to assess something.

4 How does the something that I'm  
5 supposed to assess come into existence? I mean what  
6 is it that I'm assessing?

7 BY MS. ASCARRUNZ:

8 Q. Whether certain research was reasonably  
9 diligent or not.

10 MR. SOMMER: Object to form.

11 BY THE WITNESS:

12 A. I understand the question. The question  
13 is certain research. Well, certain research doesn't  
14 describe anything. I need -- that I can assess.

15 I mean certain has to be spelled  
16 out, has to be given meaning.

17 If it's given meaning, I did this, I  
18 did that, then based on my general knowledge of  
19 research, I could assess whether I thought, yeah,  
20 that's reasonable; no, that's not.

21 BY MS. ASCARRUNZ:

22 Q. Okay. Do you claim to be an expert in  
23 research into the treatment of pulmonary  
24 hypertension?

25 A. No.

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2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. Sorry.

5 No, I do not.

6 BY MS. ASCARRUNZ:

7 Q. Do you claim to be an expert in research  
8 into the treatment of pulmonary hypertension with  
9 Treprostinil?

10 MR. SOMMER: Same objection.

11 BY THE WITNESS:

12 A. No, I do not.

13 BY MS. ASCARRUNZ:

14 Q. Do you claim to be an expert in research  
15 into the development of potential drug candidates?

16 A. No, I make no such claim. No such claim  
17 is advanced in my declaration.

18 MS. ASCARRUNZ: Okay. I have no further  
19 questions.

20 MR. SOMMER: Dr. Bennett, I do have a couple  
21 of follow-up questions.

22 EXAMINATION

23 BY MR. SOMMER:

24 Q. How much experience would you say you  
25 have -- and I'll call it library science, but you can



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2 correct me if you'd rather use some other term.

3 How much experience do you have in  
4 library science?

5 MS. ASCARRUNZ: Objection to form.

6 BY THE WITNESS:

7 A. Library science is a perfectly fine term.

8 I first engaged -- I first engaged  
9 with library science in 1974, so we're talking about  
10 40 plus years of study of engagement in, practice of,  
11 scholarly publications on library science.

12 BY MR. SOMMER:

13 Q. And during that 40 plus years of  
14 experience in library science, did you gain certain  
15 knowledge that -- about library practices that are  
16 not held by lay people?

17 MS. ASCARRUNZ: Objection. Form. Objection.  
18 Scope.

19 BY THE WITNESS:

20 A. Yes.

21 BY MR. SOMMER:

22 Q. And did that knowledge include practices  
23 that libraries undertake when they receive new  
24 volumes or books or publications for their  
25 collections?

1 SCOTT BENNETT Ph.D.

2 A. Yes.

3 Q. And did you rely on that knowledge when  
4 you formed your opinions set forth in your  
5 declarations?

6 MS. ASCARRUNZ: Objection. Form.

7 BY THE WITNESS:

8 A. Yes.

9 BY MR. SOMMER:

10 Q. In Paragraph 15 of your declaration you  
11 talk about publications in series, and I'd like to  
12 direct you to the last sentence.

13 A. I see Paragraph 15.

14 Q. The last sentence refers to institution's  
15 holdings records, and made available very soon  
16 thereafter, normally within a few days of receipt or  
17 (at most) within a few weeks of receipt."

18 What's the basis for that opinion?

19 MS. ASCARRUNZ: Objection. Form. Objection.  
20 Leading.

21 BY THE WITNESS:

22 A. Well, as a library user of periodicals, I  
23 would often show up at the library and notice that  
24 the copies of the periodicals I wanted to read had  
25 library date stamps on them.

1 SCOTT BENNETT Ph.D.

2 When we were renovating the  
3 periodicals room at Sterling Memorial Library at  
4 Yale, I got up close and intimate with the processing  
5 of periodicals in that reading room.

6 Those are offered to you as  
7 personal, firsthand, direct knowledge about the  
8 processing of journals.

9 I had a cataloging course at the  
10 University of Illinois Library School in which the  
11 processing of periodicals was a topic of some  
12 consequence since so much of cataloging involves  
13 periodicals.

14 Both at Hopkins and at Yale I had  
15 direct reporting responsibility for the cataloging  
16 departments.

17 At Northwestern I didn't have direct  
18 reporting responsibility for the Cataloging  
19 Department because I was a Collection Development  
20 Officer there. My and the other Collection  
21 Development Officer's interactions with the  
22 Cataloging Department and the Serials Department were  
23 very important, so there were lots and lots of  
24 discussions there.

25 That probably constitutes the

1 SCOTT BENNETT Ph.D.

2 highlights of my knowledge of -- of what is said in  
3 Paragraph 15.

4 BY MR. SOMMER:

5 Q. In your 40 plus years of experience, are  
6 you aware of any instance in which a library would  
7 take in a periodical, stamp it as received, and then  
8 not shelf it within a few weeks of receipt?

9 MS. ASCARRUNZ: Objection. Form. Objection.  
10 Foundation. Objection. Scope. Objection. Leading.

11 BY THE WITNESS:

12 A. Well, I can imagine that happening, but  
13 your question was: Am I aware of any such behavior?  
14 No. It would be certainly unusual.

15 BY MR. SOMMER:

16 Q. And so unusual that in your 40 plus years  
17 of experience you can't recall a single instance in  
18 which it took more than a few weeks to get something  
19 on the shelf after it was received in the libraries  
20 that you have personal knowledge of?

21 MS. ASCARRUNZ: Objection. Form. Objection.  
22 Foundation. Objection. Leading. Objection. Scope.

23 BY THE WITNESS:

24 A. Well, I have no recollection of such an  
25 event. If it happened, it would happen as a -- a



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2 failure of processing.

3 And if one learned about it, one  
4 would come to try and understand why the process  
5 failed and correct the process.

6 BY MR. SOMMER:

7 Q. In formulating your opinions set forth in  
8 your declaration about Documents 1 and 2, did you  
9 rely on the opinion set forth in Paragraph 15 that we  
10 were just speaking about?

11 MR. SOMMER: Objection. Form.

12 BY THE WITNESS:

13 A. The opinions expressed in the declaration  
14 are conditioned by and reflect the opinion expressed  
15 in Paragraph 15.

16 BY MR. SOMMER:

17 Q. And so when you calculated the -- well,  
18 when you rendered your opinion that, for example,  
19 Document 1 was publicly available to researchers by  
20 December of 2004, did you use that statement, the  
21 opinion in Paragraph 15, to reach that conclusion  
22 about Document 1, about its availability date?

23 A. Yes.

24 MS. ASCARRUNZ: Objection. Form.

25

1 SCOTT BENNETT Ph.D.

2 BY MR. SOMMER:

3 Q. Okay. And did you use the opinion in  
4 Paragraph 15 to reach your conclusion about the  
5 public availability of Document 2?

6 MS. ASCARRUNZ: Objection. Form.

7 BY THE WITNESS:

8 A. Yes.

9 BY MR. SOMMER:

10 Q. Briefly, counsel for patent owner had  
11 asked you a number of questions about locating a  
12 specific abstract in a large volume containing many  
13 abstracts, and so I'd like to just ask you a question  
14 about Attachment 1a to your declarations.

15 Did you have before you any kind of  
16 a table of contents or anything when you were  
17 answering those questions?

18 MS. ASCARRUNZ: Objection. Leading.

19 Objection. Form.

20 BY THE WITNESS:

21 A. Did you mean when I was answering  
22 counsel's questions today?

23 BY MR. SOMMER:

24 Q. Yes.

25 A. What I had in front of me was what you

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2 have in Attachment 1a.

3 Q. Is there a table of contents?

4 A. Forgive me. My papers are hopelessly  
5 confused by now, so I'm going to shift to a less  
6 confused set of papers.

7 MS. ASCARRUNZ: Objection. Form. Objection.  
8 Leading.

9 BY THE WITNESS:

10 A. Your question is whether there is a table  
11 of contents in Exhibit A1?

12 BY MR. SOMMER:

13 Q. Attachment 1a to your declaration, yes.

14 A. Attachment 1a.

15 The answer is no.

16 Q. As part of ordinary diligence in  
17 conducting research, do researchers consider table of  
18 contents in evaluating whether they should look  
19 further in a particular reference work?

20 MS. ASCARRUNZ: Objection. Leading.  
21 Objection. Scope.

22 BY THE WITNESS:

23 A. Well, that's certainly -- you're asking a  
24 general question here.

25 That is certainly true of books. It

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2 is true of the table of contents of periodicals.

3 So as a scholar I would -- I would  
4 look through the table of contents of Victorian  
5 Studies and say, "Oh, I need to read that. No, I  
6 don't need to read that."

7 BY MR. SOMMER:

8 Q. Okay. And on Page 32 of 74, so this is  
9 still in Attachment 1a, you have a photocopy of a  
10 document you say was obtained from the British  
11 Library in your declaration.

12 Do you have the remaining abstracts  
13 that deal with pulmonary arterial hypertension new  
14 therapies before you?

15 MS. ASCARRUNZ: Objection. Form. Objection.  
16 Foundation. Objection. Leading.

17 BY THE WITNESS:

18 A. No, I do not have that before me. It's  
19 not in Attachment 1a.

20 BY MR. SOMMER:

21 Q. And so when you were answering counsel's  
22 questions earlier today about whether it's reasonable  
23 to look through 70 years of circulation and thousands  
24 of abstracts in a single volume, you didn't -- you  
25 don't have the complete work before you to judge what



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2 is and what is not reasonable for the researcher to  
3 find this particular abstract at this point in time;  
4 is that right?

5 MS. ASCARRUNZ: Objection. Leading.

6 Objection. Form. Objection. Foundation.

7 BY THE WITNESS:

8 A. No, the only thing in front of us is a --  
9 a boldface title of a session on pulmonary arterial  
10 hypertension new therapies.

11 BY MR. SOMMER:

12 Q. And when you were answering counsel's  
13 questions, were you aware that this is an abstract of  
14 a talk given at a conference in Louisiana on some  
15 time between November 7 and 10 of 2004?

16 MS. ASCARRUNZ: Objection. Foundation.

17 Objection. Leading. Objection. Form.

18 MR. SOMMER: What's the form objection?

19 If you don't have one, that's okay.

20 BY THE WITNESS:

21 A. In Paragraph 26 I observe that Document 1  
22 comes from a supplement that contains abstracts from  
23 Scientific Sessions 2004, which is a conference held  
24 at the American Heart Association in New Orleans on  
25 the 7th through the 10th of November 2004.

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2 Did I have that fact in front of my  
3 mind when I was responding to counsel? No, I didn't.

4 BY MR. SOMMER:

5 Q. So another way that the -- let me  
6 rephrase the question.

7 Counsel for patent owner was asking  
8 you about Attachment 1f and how those authors may  
9 have possibly gotten a copy of the paper or the  
10 abstract set forth in Attachment 1a.

11 Isn't it also possible that they  
12 actually attended the conference and heard one of the  
13 authors of that paper present their findings?

14 MS. ASCARRUNZ: Objection. Leading.

15 BY THE WITNESS:

16 A. Yes, that is certainly possible.

17 BY MR. SOMMER:

18 Q. Okay. And that wasn't in your mind  
19 about -- when you were answering questions about what  
20 is reasonable or unreasonable diligence; is that  
21 right?

22 A. To the best of my recollection, we'd have  
23 to look at the transcript. We identified that  
24 possibility in the original questioning, but that  
25 possibility was not at the front of my mind when I

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SCOTT BENNETT Ph.D.

was responding to counsel's questions about reasonable diligence.

MR. SOMMER: Okay. I have no further questions.

MS. ASCARRUNZ: No questions.

Thank you for your time, sir.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Going off the record.

The time is 12:45 p.m.

MS. REPORTER: Are you ordering the transcript at this time?

MS. ASCARRUNZ: I think we've already taken care of all that.

MS. REPORTER: Would you like a copy?

MR. SOMMER: No.

MS. REPORTER: And signature, waived or reserved?

MR. SOMMER: Actually, that's a good point.

Technically the rules don't provide for -- these are Federal Rules of Civil Procedure.

Actually, I will take a copy of the final, and I will reserve signature for what it's worth. I think we actually are obligated to sign.

MS. REPORTER: Okay. But you do want a copy?

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2 MR. SOMMER: I do want a copy of the final,  
3 yes.

4 (Whereupon, at 12:45 p.m.  
5 the deposition was  
6 concluded.)  
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I, SCOTT BENNETT Ph.D., the  
witness herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.

\_\_\_\_\_  
SCOTT BENNETT Ph.D.

Sworn and subscribed to before  
me, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2018.

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

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CERTIFICATE  
OF  
CERTIFIED SHORTHAND REPORTER

I, Lynn A. McCauley, a Certified  
Shorthand Reporter of the State of Illinois, CSR,  
RPR, License No. 84-003268, do hereby certify:

That previous to the commencement of the  
examination of the aforesaid witness, the witness was  
duly sworn by me to testify the whole truth  
concerning the matters herein;

That the foregoing deposition transcript  
was reported stenographically by me, was thereafter  
reduced to typewriting under my personal direction  
and constitutes a true and accurate record of the  
testimony given and the proceedings had at the  
aforesaid deposition;

That the said deposition was taken before  
me at the time and place specified;

That I am not a relative or employee or  
attorney or counsel for any of the parties herein,  
nor a relative or employee of such attorney or  
counsel for any of the parties hereto, nor am I  
interested directly or indirectly in the outcome of

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this action.

IN WITNESS WHEREOF, I do hereunto set my  
hand at Chicago, Illinois, this 2nd day of April  
2018.



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LYNN A. MC CAULEY, CSR, RPR

License No. 84-003268

## INSTRUCTIONS TO WITNESS

1  
2  
3 Please read your deposition over carefully  
4 and make any necessary corrections. You should state  
5 the reason in the appropriate space on the errata  
6 sheet for any corrections that are made.

7 After doing so, please sign the errata sheet  
8 and date it.

9 You are signing same subject to the changes  
10 you have noted on the errata sheet, which will be  
11 attached to your deposition.

12 It is imperative that you return the original  
13 errata sheet to the deposing attorney within thirty  
14 (30) days of receipt of the deposition transcript by  
15 you. If you fail to do so, the deposition transcript  
16 may be deemed to be accurate and may be used in court.

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## ERRATA

I wish to make the following changes to my deposition transcript:

<i>Page</i>	<i>Line</i>	<i>Change</i>	<i>Reason</i>
23	24	"at" change to "and"	mistranscription
31	7	"Ghofani" change to "Ghofrani"	misspelling
32	4	"Ghofani" change to "Ghofrani"	misspelling
32	7	"Giovanninii" change to "Ghofrani"	misspelling
32	13	"Giovanninii" change to "Ghofrani"	misspelling
32	24	"Giovanninii" change to "Ghofrani"	misspelling
35	13	"Ghofani" change to "Ghofrani"	misspelling
35	21	"Giovanninii" change to "Ghofrani"	misspelling
37	11	"researches" change to "searches"	mistranscription
3	41	"Giovanninii" change to "Ghofrani"	misspelling
60	4	"circulation" change to "Circulation"	journal title; not a common noun
60	17	"circulation" change to "Circulation"	journal title; not a common noun
61	3	"circulation" change to "Circulation"	journal title; not a common noun
61	4	"circulation" change to "Circulation"	journal title; not a common noun
61	4	"circulation" change to "Circulation"	journal title; not a common noun
61	12	"circulation" change to "Circulation"	journal title; not a common noun
61	15	"circulation" change to "Circulation"	journal title; not a common noun
63	4	"circulation" change to "Circulation"	journal title; not a common noun
63	11	"circulation" change to "Circulation"	journal title; not a common noun
63	25	"circulation" change to "Circulation"	journal title; not a common noun
66	19	"publication" change to "publication in"	mistranscription

70	18	"Giovanninii" change to "Ghofrani"	misspelling
76	5	"circulation" change to "Circulation"	journal title; not a common noun
82	18	"circulation" change to "Circulation"	journal title; not a common noun
83	2	"competitive" change to "academic"	mistranscription
84	25	"Giovanninii" change to "Ghofrani"	misspelling
88	23	"Giovanninii" change to "Ghofrani"	misspelling
94	4	"Giovanninii" change to "Ghofrani"	misspelling
94	5	"Giovanninii" change to "Ghofrani"	misspelling
94	8	"Giovanninii" change to "Ghofrani"	misspelling
94	20	"Giovanninii" change to "Ghofrani"	misspelling
95	2	"Giovanninii" change to "Ghofrani"	misspelling




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Witness's Signature

25 April 2018

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Date



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