

1 MAUREEN DONOVAN, Ph.D.

2 of pulmonary delivery in particular,  
3 reproducibility was certainly important, and  
4 there's always a question about even what's --  
5 what amount of drug emitted from any device  
6 what amount of that gets to the lungs. There's  
7 loss between the device, the mouth, and then  
8 subsequently the lungs, and many accept that  
9 the ability to accurately know the exact amount  
10 that got to the lungs is not something that we  
11 use to evaluate or derive dosing strategies or  
12 evaluate the particular system. It's the that  
13 it was presented in a fashion that it could  
14 have delivered the same amount each time the  
15 device was used.

16 Q. Is there a teaching in Patton  
17 on how long a patient needs to inhale after  
18 they know that the bolus of medicine is ready  
19 for inhalation?

20 A. My recollection is Patton  
21 doesn't describe the time, but the device is  
22 designed to contain -- the aerosol is emitted  
23 into a volume that is a volume that a typical  
24 user would be able to inhale under their use  
25 conditions with a single inhalation. It's

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2 based on lung volume, in essence, but if for  
3 some patient it -- they weren't able to inhale  
4 that volume, that the opportunity to follow up  
5 with another breath is certainly part of the  
6 device design based on the valve system.

7 The speed with which the  
8 person inhales, you know, how fast they inhale,  
9 whatever isn't described, and this device is  
10 intended to potentially even limit some the  
11 needs to specify those additional requirements  
12 that were known as part of other devices at the  
13 time.

14 Q. Does Patton disclose an  
15 ultrasonic nebulizer?

16 A. It's not my recollection that  
17 Patton included ultrasonic nebulizers. It's  
18 certainly in his initial summary of the  
19 invention he describes using a predetermined  
20 volume of gas usually air as the material that  
21 aerosolizes the drug-containing formulation,  
22 but later in the patent I know that there is  
23 other discussion of other ways to accomplish  
24 some of the workings of the invention he is  
25 describing, and I just don't remember among all

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2 of the possible alternatives and directional  
3 changes and so forth whether he opens or openly  
4 describes that this might be further modified  
5 for use with an ultrasonic system.

6 Q. Okay. My question might have  
7 been too broad to be fair. So why don't we do  
8 it this way.

9 If you could -- if I could  
10 direct your attention to paragraph 90 of your  
11 declaration. You state there that: "Patton  
12 teaches a system that generates aerosol using  
13 gas; i.e., a jet nebulizer."

14 So do you understand Patton to  
15 be discussing the use of a jet nebulizer?

16 MR. MATHAS: Object to the form.

17 BY THE WITNESS:

18 A. Well, in the same way a jet  
19 nebulizer uses a gas to form the aerosol that's  
20 intended to be inhaled, Patton also primarily  
21 describes the formation of an aerosol brought  
22 forth by a volume of gas, usually a compressed  
23 gas. So there -- that's where they are  
24 similar.

25 The methodologies that

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2 traditional jet nebulizers use to form aerosols  
3 are not the same methodologies that Patton's  
4 description uses to form the aerosol.

5 Q. I am not sure I understand.

6 So are you saying that Patton  
7 does not teach the use of a jet nebulizer?

8 A. No, I am saying that both jet  
9 nebulizers and Patton's invention description  
10 describe using a gas, typically a compressed  
11 gas to form the aerosol. That's their  
12 similarity. The mechanism by which a jet  
13 nebulizer -- the traditional jet nebulizers  
14 form that aerosol is different than the  
15 mechanism by which the aerosol is formed by the  
16 gas described in the invention described in  
17 Patton.

18 Q. Got it. Okay. And neither a  
19 traditional jet nebulizer or the device that's  
20 taught in Patton is an ultrasonic nebulizer,  
21 correct?

22 A. As described in this paragraph  
23 what I mean by jet nebulizer, no, there's not  
24 an ultrasonic source, a sound source that's  
25 forming the aerosol, nor in most of the

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2 description in Patton does he describe using an  
3 ultrasonic power or an ultrasonic energy source  
4 to form the aerosol.

5 Q. You said most of the  
6 description in Patton does not describe using  
7 an ultrasonic power energy source.

8 Is there any discussion in  
9 Patton that does talk about ultrasonic power?

10 A. Again, I don't recall all of  
11 the details regarding other aspects of the  
12 invention. So I just don't know whether the  
13 word ultrasonic or ultrasound appears anywhere  
14 in the patent document, but it's certainly not  
15 the original design of the invention that's  
16 being described primarily in the document.

17 Q. So we have been going 21  
18 minutes since we last talked about breaking.  
19 Is this a good time to break?

20 A. It's a good time for me.

21 THE VIDEOGRAPHER: Going off the  
22 record. The time is 12:17 p.m.

23 (WHEREUPON, a recess was had at  
24 12:17 p.m. until 1:23 p.m.)

25 THE VIDEOGRAPHER: Going on the

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2 record. This marks the beginning of media  
3 number 3. The time is now 1:23 p.m.

4 BY MS. ASCARRUNZ:

5 Q. Dr. Donovan, when we were  
6 discussing Patton, I think we talked about the  
7 use of a compressor, correct?

8 A. We were talking about  
9 compressed air and jets, yes.

10 Q. Okay. And it's your opinion  
11 that Patton teaches the use of a light and  
12 sound that is -- that meets the claim  
13 limitation for an opto-acoustical trigger,  
14 correct?

15 A. Well, it has a light device, a  
16 sound device that signals the user. So, yes,  
17 it's an opto-acoustic device.

18 Q. Okay. And do you consider it  
19 to be an opto-acoustical trigger?

20 A. Well, it's a device that has a  
21 light and a sound. They have a meaning to the  
22 user based on the instructions, and so if you  
23 want to call that an opto-acoustic trigger, it  
24 can be viewed as an opto-acoustic trigger under  
25 that set of conditions.

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2 Q. Okay. I will come back to  
3 that.

4 The light and the sound comes  
5 on immediately after the operation of the  
6 compressor ceases, correct?

7 A. That's how it's described,  
8 yes.

9 Q. You agree with me that all of  
10 the claims of both patents require an  
11 opto-acoustical trigger, right?

12 A. Well, based in the description  
13 in claim 1 that describes a pulsed ultrasonic  
14 nebulizer that aerosolizes -- oh, next one  
15 second --

16 THE COURT REPORTER: Wait, I'm  
17 sorry.

18 BY THE WITNESS:

19 A. I'm sorry. Said pulsed  
20 ultrasonic nebulizer comprising an  
21 opto-acoustic trigger as stated in claim 1 of  
22 both patents, and the fact that all of the rest  
23 of the claims are dependent to claim 1, there's  
24 a requirement for an opto-acoustic trigger.

25

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2 BY MS. ASCARRUNZ:

3 Q. Okay. And that applies to  
4 both patents, correct?

5 A. It's my interpretation because  
6 of the dependency of the rest of the claims,  
7 yes.

8 Q. Do you agree with me that the  
9 word trigger must itself mean something in the  
10 claims?

11 MR. MATHAS: Object to the form.

12 BY THE WITNESS:

13 A. I don't think so. I don't  
14 recall in the specification where trigger is  
15 specifically defined in the terminology of the  
16 patent writer.

17 BY MS. ASCARRUNZ:

18 Q. Okay. So let me ask it this  
19 way.

20 Let's look at the '507 patent,  
21 and you see that claim 1 claims a kit for  
22 treating pulmonary hypertension comprising, and  
23 then has several paragraphs following?

24 A. Okay.

25 Q. The section labeled Romanette



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2 ii reads: "A pulsed ultrasonic nebulizer  
3 comprising an opto-acoustical trigger."

4 Do you agree with me that  
5 claim 1 and, therefore, all claims of this  
6 patent by dependency require a pulsed  
7 ultrasonic nebulizer comprising an  
8 opto-acoustical trigger?

9 A. I agree that that's what's  
10 stated in claim 1, Roman Numeral II.

11 Q. The word trigger in that claim  
12 language, what does that mean to a person of  
13 ordinary skill in the art?

14 A. I think the best synonym for  
15 that for a POSA would be the word indicator.

16 Q. And it's your opinion that  
17 Patton expressly teaches the need and function  
18 of an opto-acoustical trigger, right?

19 A. Well, Patton describes the  
20 usage of an opto-acoustic indicator in the  
21 device that he has designed as a way of  
22 demonstrating that the aerosol containing the  
23 medicament has been placed into the chamber.

24 Q. The word trigger doesn't carry  
25 a specific -- it's not a term of art that's

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2 used in the art of inhalation therapies,  
3 correct?

4 A. Not in the art that I am most  
5 familiar, no.

6 Q. Okay. And it's your opinion  
7 that, as used in the claims, the word trigger  
8 is synonymous with indicator?

9 A. That's the way -- that's the  
10 synonym I use for that word, and I anticipate a  
11 number of other POSAs would use that term also  
12 or use that synonym also.

13 Q. So in your opinion is any  
14 signal that would demonstrate to the patient  
15 that a device is ready for the patient to  
16 inhale is a trigger within the meaning of the  
17 claims?

18 MR. MATHAS: Object to the form.

19 BY THE WITNESS:

20 A. That can either -- restate  
21 that. I am going to have to ask you to break  
22 that down.

23 BY MS. ASCARRUNZ:

24 Q. Okay. In your opinion is a --  
25 is an indicator that demonstrates to the

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2 patient that a device is ready for the patient  
3 to inhale is a trigger within the meaning of  
4 the claims?

5 MR. MATHAS: Same objection.

6 BY THE WITNESS:

7 A. Well, I think, as I stated,  
8 when I read the descriptor for Roman Numeral  
9 II, my interpretation of the meaning of that is  
10 I could substitute the word indicator for  
11 trigger. That that was the intended meaning  
12 and no further meaning implied to some term the  
13 word used trigger.

14 BY MS. ASCARRUNZ:

15 Q. Okay. Since we were focusing  
16 on the '507 patent, can I ask is it also your  
17 opinion with respect to the word trigger in the  
18 '240 patent that you could substitute the word  
19 trigger for indicator and that would cover the  
20 intended meaning of the word?

21 A. The phrase in the '240 patent  
22 is different than the phrase in the '507. So  
23 in this case said pulsed ultrasonic nebulizer  
24 comprising an opto-acoustic trigger which  
25 allows said human to synchronize each breath to

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2 each pulse, and in the case of this phrase  
3 within this claim, yes, as a POSA, my equal  
4 interpretation to the word trigger is  
5 indicator.

6 Q. Okay. In paragraph 125 of  
7 your '240 declaration, you state that: "A POSA  
8 would be motivated to combine Voswinckel's  
9 teaching of a therapeutically efficacious  
10 treatment using a pulse nebulizer with Patton's  
11 teachings on reliability, precision, and  
12 efficiency."

13 Do you see that?

14 A. Yes.

15 Q. Why would a POSA be motivated  
16 to combine those two references in that way?

17 A. Well, because at the time it  
18 was well known in the art that there were human  
19 factors involved in the therapeutic efficacy of  
20 inhaled dosage forms, and there was a  
21 motivation to try to make the devices that were  
22 being used as -- as obvious and easy for  
23 patients to use them correctly as possible.  
24 And so including additional indicators that  
25 allowed the patient to use the device as

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2 designed was a motivation for everybody  
3 involved in pulmonary device development at the  
4 time.

5 Q. Okay. Is there any statement  
6 in Voswinckel itself that provides a specific  
7 motivation to modify the nebulizer disclosed?

8 MR. MATHAS: Object to the form.

9 BY THE WITNESS:

10 A. Well, there's nothing specific  
11 in the Circulation abstract, but even comparing  
12 the European Heart Journal abstract to the  
13 Circulation abstract, it's obvious that the --  
14 that Voswinckel changed nebulizers. So he was  
15 certainly aware that one could select a  
16 different nebulizer for whatever purpose one  
17 needed to during a -- you know, during a series  
18 of investigations.

19 So it doesn't expressly state  
20 that, but I think there's a clear indication  
21 that by just comparing those two abstracts,  
22 that Voswinckel and certainly others in the art  
23 were open to selecting a device where they were  
24 confident that that device was accomplishing  
25 what they desired for patient treatment.

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2 BY MS. ASCARRUNZ:

3 Q. Okay. So you referred to the  
4 European Heart Journal abstract, and what I am  
5 trying to do is focus just on your statement in  
6 paragraph 125 about a motivation to combine  
7 Voswinckel's teachings with Patton's teachings.

8 So -- and I understand your  
9 testimony that you believe there are human  
10 factor considerations that a POSA would  
11 consider that would guide the motivation to  
12 combine those teachings in particular ways.  
13 Did I understand your testimony correctly?

14 A. Yes.

15 Q. What I am trying to understand  
16 is is there a statement in either of those two  
17 references explicitly in Voswinckel or in  
18 Patton that motivates a person of ordinary  
19 skill in the art to modify one or the other to  
20 arrive at the invention that is claimed in the  
21 patents at issue?

22 MR. MATHAS: Object to the form.

23 BY THE WITNESS:

24 A. Well, again, a POSA is -- is  
25 aware of the activities surrounding device

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2 development for inhalation delivery, and  
3 certainly understood the teachings of Patton  
4 and some of the -- both the technology to form  
5 the aerosol and other portions of the device  
6 that Patton describes and their attributes and  
7 understands the attributes of other devices,  
8 some of which were more readily available  
9 potentially in particular regions.

10 And as a result, there's a  
11 motivation from the POSA to always try to --  
12 try to identify some of the best qualities of  
13 the art at the time and include them in a next  
14 stage in this case we are talking about  
15 devices.

16 BY MS. ASCARRUNZ:

17 Q. Okay. So I understand you  
18 said there's a motivation from the POSA to  
19 always try to identify the best qualities of  
20 the art at the time, but my question is you  
21 don't identify an explicit statement in either  
22 of Voswinckel or Patton that directly invites a  
23 POSA to modify the teachings to combine them;  
24 is that right?

25 MR. MATHAS: Object to the form.

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2 BY THE WITNESS:

3 A. Well, the POSA would realize  
4 that the OptiNeb nebulizer family already had  
5 the physical capabilities to have an  
6 opto-acoustic trigger, and the device described  
7 in Patton describes that as a component of the  
8 device. And the POSA essentially is learning  
9 from Patton that -- and knew this likely even  
10 before Patton described it in the specific --  
11 in the specific patent based on the fact that  
12 there were other devices available that used --  
13 used lights, used sounds, used other things to  
14 indicate to patients how to use the device  
15 appropriately.

16 So the motivation is that  
17 Patton describes using light and sound to  
18 indicate something about the dose being ready  
19 for the patient, and that's easily transferable  
20 to a different device that is easily capable of  
21 using those same sensory readouts to improve  
22 the ability of a patient to use that device  
23 correctly.

24 BY MS. ASCARRUNZ:

25 Q. I understand your testimony.



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2 I do. But that wasn't the question that I  
3 asked. So let me go about it this way.

4 Can you point to a statement  
5 in the Voswinckel reference that invites a POSA  
6 to modify the device used in that reference in  
7 any way?

8 MR. MATHAS: Object to the form.

9 BY THE WITNESS:

10 A. Again, the Voswinckel  
11 Circulation abstract is merely an abstract.  
12 It's a very abbreviated form of information  
13 that's being presented, but even in its very  
14 abbreviated form when I compare it to a similar  
15 abstract by a similar group of investigators, I  
16 already see that they have changed the  
17 nebulizer from a continuous nebulizer to a  
18 pulse nebulizer.

19 It tells me that they are open  
20 to the opportunity of improvements or changes  
21 in a nebulizer to advantage some  
22 characteristics of those nebulizers for  
23 improved patient therapy, and knowing that  
24 there are other improvements from a human  
25 factors standpoint that could yet again improve

1 MAUREEN DONOVAN, Ph.D.  
2 the usefulness, the ability of patients to use  
3 the nebulizers correctly in an outpatient  
4 setting, not in the acute care setting that was  
5 described in the Voswinckel Circulation  
6 abstract, certainly there's a motivation to  
7 provide the -- the invention or the -- provide  
8 the best possible characteristics in any  
9 nebulizer to provide to a set of patients who  
10 are in need of a reproducible, accurate,  
11 at-home nebulizer system for an important  
12 therapy.

13 BY MS. ASCARRUNZ:

14 Q. Is that motivation made  
15 explicit in the text of Voswinckel?

16 MR. MATHAS: Object to the form.

17 BY THE WITNESS:

18 A. Again, a POSA doesn't need a  
19 specific text to direct them to --

20 BY MS. ASCARRUNZ:

21 Q. And that wasn't my question.  
22 My question was --

23 MR. MATHAS: Veronica, you have to  
24 let her answer. Then you can ask your question  
25 again if you don't like her answer.

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2 BY THE WITNESS:

3 A. So, again, a POSA doesn't need  
4 specific direction to take known information in  
5 the art and utilize it and combine it, and  
6 whether there's something actually specifically  
7 in an abstract an abbreviated description of a  
8 body of work that suggests that or not, that --  
9 a POSA doesn't need that.

10 BY MS. ASCARRUNZ:

11 Q. I understand that. I'm asking  
12 the question whether -- so I understand that  
13 it's your testimony that a POSA did have a  
14 motivation to combine those two references as  
15 you have indicated, and you've testified at  
16 length as to where you believe that motivation  
17 would reside in the considerations of a POSA.

18 Is that a fair  
19 characterization of your testimony?

20 A. Yes.

21 Q. Okay. All I am trying to  
22 establish is that that motivation was in the  
23 mind-set and considerations of a POSA and not  
24 in a sentence in one of these references. So I  
25 am asking you to identify is there a sentence

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2 in Voswinckel that provides a motivation to  
3 modify the device used in Voswinckel?

4 MR. MATHAS: Asked and answered.

5 BY THE WITNESS:

6 A. There's not a specific  
7 sentence that -- in the Voswinckel Circulation  
8 abstract that describes anything about needing  
9 or desiring to change the device in their  
10 future studies. It doesn't necessarily mean  
11 that they -- they hadn't or another POSA  
12 wouldn't contemplate doing that.

13 BY MS. ASCARRUNZ:

14 Q. Okay. Is there a specific  
15 statement or sentence in the Patton reference  
16 that invites a POSA to use the features  
17 described for the treatment of pulmonary  
18 hypertension?

19 A. Well, again, Patton is open to  
20 the use of the device described in the '951  
21 patent application or however we want to refer  
22 to that. That his device provides a method to  
23 deliver a medicament by inhalation to reach the  
24 lungs of the patient which means that to a POSA  
25 that any treatment that a POSA would need to

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2 reach the lungs to achieve the treatment goal  
3 that the Patton device is capable of being  
4 utilized to do that.

5 (Reporter Clarification.)

6 BY MS. ASCARRUNZ:

7 Q. Earlier in your discussion of  
8 a POSA being motivated to modify the device  
9 used in Voswinckel, you referred to the  
10 Voswinckel Exhibit 1047 reference.

11 Do you recall that discussion?

12 A. I think I need to be reminded  
13 what the Voswinckel 1047 reference is.

14 Q. Sometimes we refer to it as  
15 Voswinckel II, but it's the European Heart  
16 Journal.

17 A. Okay. Can I take a look at  
18 that reference?

19 MR. MATHAS: 1046?

20 BY MS. ASCARRUNZ:

21 Q. Did I -- sorry, 1046.

22 A. So it's European Heart Journal  
23 abstract.

24 Q. Yes.

25 A. Okay. Yes. All right.

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2 Q. So when I asked you about the  
3 motivation in Voswinckel to modify the device,  
4 you told -- you referred me to this other  
5 Voswinckel reference and said that it tells you  
6 that they are open to the opportunity of  
7 improvements or changes in a nebulizer to  
8 advantage some characteristics of those  
9 nebulizers for improved patient therapy.

10 Do you recall that testimony?

11 A. Yes.

12 Q. What does this reference which  
13 I will start referring to as Voswinckel II just  
14 for clarity of the record, tell you about the  
15 willingness of the investigators to improve --  
16 to make improvements or changes to the  
17 nebulizer?

18 A. Well, the Voswinckel II  
19 abstract describes the use of an OptiNeb  
20 ultrasound nebulizer and a six-minute  
21 inhalation exposure, and the Voswinckel  
22 American Heart Association abstract describes  
23 using three single breaths from a pulsed  
24 OptiNeb ultrasonic nebulizer, and it was  
25 certainly very well known in the field for

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2 nebulizer therapy that reducing the amount of  
3 time to achieve the dose needed for a patient  
4 was an important aspect of nebulizer therapy  
5 and patient adherence to nebulizer therapy.

6 So moving from a six-minute  
7 nebulization to a three inhalation therapy  
8 whether that was accomplished exactly by a  
9 change in nebulizer or accomplished by other  
10 activities in addition was certainly something  
11 that Voswinckel demonstrates that groups were  
12 aware of and were in relatively similar  
13 timeframes evaluating the opportunity to use a  
14 device that provided a better user experience.

15 Q. Okay. Now, you are aware that  
16 the single ground that the Board instituted for  
17 decision in this trial was the question --  
18 speaking just to the '240 patent, was limited  
19 to the question of obviousness over Voswinckel  
20 in view of Patton and Ghofrani, correct?

21 A. In the '240 patent, yes.

22 Q. But it's your opinion that in  
23 part a motivation to combine those references  
24 is evidenced by Voswinckel II, correct?

25 A. No, I don't need Voswinckel

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2 II, but you were asking directly about specific  
3 statements in Voswinckel I, and because it's an  
4 abstract, it's a very short description of work  
5 conducted and has often times very little  
6 description about what other information the  
7 authors are thinking, and so I look to other  
8 evidence even from the same group to  
9 demonstrate that, yes, those other -- those  
10 investigators were thinking about other things  
11 to improve this therapy beyond just the mere  
12 words that are included in the written  
13 description in the abstract.

14 And so I don't need to rely on  
15 Voswinckel II to come to the -- to come to the  
16 opinions that I did in the matter of the '507  
17 or '240 patents. Merely use that as an obvious  
18 example of even whether it's -- whether  
19 something is actually stated clearly in an  
20 abstract. It was clear that even that same  
21 research group understood that that was a  
22 consideration and a motivation.

23 Q. Okay. So because Voswinckel I  
24 is an abstract and it's a very short  
25 description of work conducted and has often



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2 times very little description about what other  
3 information the authors are thinking, you  
4 looked to Voswinckel II to supplement that  
5 understanding, correct?

6 MR. MATHAS: Object to the form.

7 BY THE WITNESS:

8 A. No, that's not correct. I  
9 didn't need to look to Voswinckel II. We  
10 started discussing Voswinckel II because I was  
11 answering questions you were asking about  
12 specific statements included in the Voswinckel  
13 I abstract that would have described the  
14 author's thoughts, desires, I don't remember  
15 the wording about the nebulizer, and I provided  
16 you with actual evidence of what would be clear  
17 to a POSA that there -- that those  
18 investigators must have been thinking about  
19 issues regarding modifying the nebulizers being  
20 used because they demonstrated that they even  
21 did that in order to modify the dosing regimen  
22 that they used that was different between those  
23 two, but I don't need to rely on Voswinckel II  
24 for that. I was using that as an example to  
25 answer your questions.

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2 BY MS. ASCARRUNZ:

3 Q. Do you need to refer to  
4 Voswinckel II to understand the motivation of  
5 the Voswinckel I authors to modify the device  
6 disclosed therein?

7 MR. MATHAS: Object to the form.

8 BY THE WITNESS:

9 A. No. Again, a POSA understood  
10 that certainly at the time of the priority date  
11 of the '240 and the '507 patents it was well  
12 known that in evaluating human factors and  
13 improving the human interface with devices was  
14 an important thing to do in order to improve  
15 user -- improve the use of the device, improve  
16 the adherence to the design dosing strategies  
17 and so forth.

18 It was -- POSA's were well  
19 aware of those issues and were motivated to try  
20 to find ways to improve devices to address  
21 human factors issues and improve patient  
22 interactions with devices.

23 BY MS. ASCARRUNZ:

24 Q. Okay. Where in Voswinckel I  
25 is it said that three breaths are delivered in

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2 less than six minutes?

3 A. It doesn't -- let's see.  
4 Voswinckel I doesn't specifically indicate the  
5 timeframe over which the three breaths were  
6 taken, but a POSA reading this and, again, if  
7 it was -- if the occurrence or the  
8 description -- start over.

9 If the methodology used by the  
10 investigators was going to differ significantly  
11 from what a reader of this abstract would be  
12 expected to understand, the authors typically  
13 make additional -- put in additional  
14 information into the abstract. So those  
15 methods are clear.

16 So not having additional  
17 information indicates that a POSA is free to  
18 believe that this medication was dosed in the  
19 same way you would dose other medications with  
20 the OptiNeb ultrasound nebulizer which means  
21 three single breaths receiving the dose over a  
22 relatively short interval of time, certainly  
23 far less than six minutes.

24 Q. Okay. We were talking about  
25 paragraph 125, and the last sentence there you

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2 indicate: "A POSA would have a reasonable  
3 expectation of success with such a  
4 combination," which refers to the combination  
5 of Voswinckel and Patton, "because it simply  
6 seeks to improve upon the successful treatment  
7 already achieved."

8 Do you see that?

9 A. I see that.

10 Q. Why would a POSA seek to  
11 improve a treatment that is already  
12 successful?

13 A. Because while the treatment  
14 was therapeutically successful, the future of  
15 the treatment was having patients be able to  
16 use that treatment in -- and, you know, not  
17 have it be a lifestyle interference. So in  
18 addition to being able to demonstrate that it  
19 was a successful treatment in the acute study  
20 or even with the two patients who were using it  
21 for compassionate use, there's a -- there's a  
22 motivation to make improvements so that when  
23 that is sent out into patients using it in  
24 their homes and other situations, that again  
25 it's as easy as possible for them to adhere to

1 MAUREEN DONOVAN, Ph.D.

2 the therapeutic regimen. And for the  
3 alterations to -- and the need to take Patton's  
4 teaching about an optical and sound based  
5 indicator and combine that, a POSA wouldn't --  
6 would have every expectation that that could be  
7 achieved.

8 Q. You reviewed the file  
9 histories of both patents at issue, correct?

10 A. I did quite a while ago, yes.

11 Q. Do you recall reviewing the  
12 declarations of -- of a Dr. Rubin?

13 A. I -- only vaguely. I know I  
14 speak to it in my report, but I would need to  
15 see that declaration again to remind myself  
16 what it said.

17 Q. Do you recall reviewing the  
18 declaration of a Dr. Zamanian?

19 A. Again, I think I recall. I  
20 mean, I know there was something about material  
21 provided by Dr. Zamanian, but I don't recall in  
22 what aspects.

23 Q. Okay. Do you recall reviewing  
24 a declaration of a Dr. Elder?

25 A. I'm not sure. It's been a

1 MAUREEN DONOVAN, Ph.D.

2 very long time since I have looked at those  
3 file histories.

4 Q. And you recalled that you may  
5 have discussed Dr. Rubin's declaration  
6 somewhere in your declaration, correct?

7 A. I thought that I did. Yes, in  
8 paragraph 210 in the '240 declaration, I  
9 mention what I understood Dr. Rubin's  
10 declaration to communicate.

11 Q. And what did you understand  
12 that to be?

13 A. Well, Dr. Rubin was -- I think  
14 it's -- I can only summarize essentially what's  
15 in this paragraph. I think -- I am sure  
16 there's more in the declaration I should speak  
17 to. So I would like to review it briefly.

18 Q. In the course of forming your  
19 opinions in this case, did you at any point  
20 form an opinion that Dr. Rubin's declaration  
21 and the file histories was not credible?

22 MR. MATHAS: Object to the form.

23 BY THE WITNESS:

24 A. Again, it's been a long time  
25 since I have reviewed the file history or the

1 MAUREEN DONOVAN, Ph.D.

2 declarations. So I would need to refresh my  
3 memory about what that specific declaration  
4 said and whether there were other things I  
5 evaluated as I read that.

6 BY MS. ASCARRUNZ:

7 Q. Well, certainly nowhere in  
8 your declaration did you articulate an opinion  
9 that Dr. Rubin is not credible, correct?

10 A. No, I did not communicate that  
11 in my declaration.

12 Q. Did you communicate anywhere  
13 in your declaration that Dr. Zamanian is not  
14 credible?

15 A. I don't know that I recall  
16 that there's a description of Dr. Zamanian's  
17 declarations in this report.

18 Q. Okay. Are you aware that both  
19 Drs. Rubin and Dr. Zamanian are medical doctors  
20 with an expertise in treating patients with  
21 pulmonary hypertension?

22 A. I think people have told me  
23 that that's their background.

24 Q. You don't claim to know more  
25 than Dr. Rubin or Dr. Zamanian regarding the

1 MAUREEN DONOVAN, Ph.D.

2 medical treatment of pulmonary hypertension,  
3 correct?

4 A. That's correct.

5 Q. And you don't claim to know  
6 more than Dr. Rubin or Dr. Zamanian regarding  
7 patient responses to the treatment of pulmonary  
8 hypertension with inhaled treprostinil,  
9 correct?

10 A. Clinically observable patient  
11 responses?

12 Q. Yes.

13 A. No, I don't know more than  
14 those two physicians, no.

15 Q. You are aware that there's a  
16 consideration in this case as one of the  
17 objective indicia as to whether or not TYVASO  
18 is commercially successful, correct?

19 A. I understand that that's  
20 certainly part of the case, yes.

21 Q. And you are aware that TYVASO  
22 has been sold on the market since its approval  
23 by the FDA, correct?

24 A. That's -- I mean, that's my  
25 assumption. I haven't tracked any time that it



1 MAUREEN DONOVAN, Ph.D.  
2 had been in shortage or not available.

3 Q. Okay. And you agree that the  
4 attributes of TYVASO that drive its sales  
5 include the frequency of its administration,  
6 its shorter duration of treatment time as  
7 compared to Ventavis, and its efficacy,  
8 correct?

9 MR. MATHAS: Object to the form.

10 BY THE WITNESS:

11 A. Can you restate that question?

12 BY MS. ASCARRUNZ:

13 Q. Yes.

14 A. Or at least reread it.

15 Q. Do you agree that the  
16 attributes of TYVASO that drive its sales  
17 include the frequency of its administration,  
18 its shorter duration treatment time as compared  
19 to Ventavis, and its efficacy?

20 MR. MATHAS: Same objection.

21 BY THE WITNESS:

22 A. Well, I understand that there  
23 are differences between TYVASO and other  
24 pulmonary inhalation products for pulmonary  
25 hypertension that allow TYVASO to have

1 MAUREEN DONOVAN, Ph.D.

2 administration characteristics that might be  
3 preferred by patient users. It is well known  
4 that treprostinil was particularly pulmonary  
5 selective. The half life of TYVASO provides  
6 or -- provides the opportunity to have a longer  
7 duration between administrations. The ability  
8 of -- to formulate TYVASO or treprostinil at a  
9 concentration that allows a reduced number of  
10 inhalations allow the product known as TYVASO  
11 to have the characteristics it has.

12 Q. Let me ask you about paragraph  
13 213 of your '240 declaration. The first  
14 sentence of paragraph 213 you state: "I  
15 understand that the examiner rejected each and  
16 every one of these secondary consideration  
17 arguments, and I agree especially in light of  
18 the teachings of Voswinckel and Ghofrani."

19 Do you see that?

20 A. I see that.

21 Q. And you don't cite any  
22 particular portion of the file history for that  
23 statement, correct?

24 A. I didn't cite it in this  
25 particular paragraph, no.

1 MAUREEN DONOVAN, Ph.D.

2 Q. Did you have in mind when you  
3 wrote this sentence where the examiner rejected  
4 each and every one of the patent owner's  
5 secondary consideration arguments?

6 A. Again, I don't recall a  
7 specific section because, again, it's been a  
8 really long time since I looked at the file  
9 histories. I don't remember the sequence of  
10 rejections and responses and final  
11 determinations.

12 Q. Okay. But do you stand by the  
13 statement that the examiner rejected each and  
14 every one of the patent owner's secondary  
15 consideration arguments?

16 A. In the absence of being able  
17 to review the file history, yes. I believe  
18 that my understanding of the record as I read  
19 it and wrote my report is that the examiner  
20 rejected each and every one of the secondary  
21 considerations arguments.

22 Q. And do you know with respect  
23 to what claims the examiner rejected such  
24 arguments?

25 A. I have no recollection on the

1 MAUREEN DONOVAN, Ph.D.

2 details of the -- again, the rejections and the  
3 responses and the rejections and the responses  
4 that are part of the file histories.

5 Q. You are obviously aware that  
6 some claims issued in both of the patents that  
7 are at issue in this case in the IPR  
8 proceedings, correct?

9 A. Well, that there are claims  
10 issued for the '507 patent and the '240 patent.  
11 So, yes, some claims issued.

12 Q. And that necessarily means the  
13 examiner found those claims to be non-obvious,  
14 correct?

15 MR. MATHAS: Object to the form.

16 BY THE WITNESS:

17 A. Again, those claims issued,  
18 but exactly what the patent examiner evaluated,  
19 how they made their determination to issue  
20 those is beyond my ability to comment on.

21 BY MS. ASCARRUNZ:

22 Q. And that includes the  
23 examiner's opinions with respect to objective  
24 indicia, correct?

25 MR. MATHAS: Same objection.

1 MAUREEN DONOVAN, Ph.D.

2 BY THE WITNESS:

3 A. The claims issued. That's  
4 what I understand.

5 BY MS. ASCARRUNZ:

6 Q. I want to go back to our  
7 discussion about the word pulsed, and before we  
8 do that, let's maybe set the context and have  
9 both of the two patents at issue in front of  
10 you.

11 And looking to the '240  
12 patent -- the '240 patent, do you agree with me  
13 that a requirement of the claims includes the  
14 use of a quote "pulsed ultrasonic nebulizer"?

15 A. Yes, in both claim 1 -- claim  
16 1 in both the '240 and the '507 include the  
17 phrase pulsed ultrasonic nebulizer, and a POSA  
18 would understand that term to mean an  
19 ultrasonic nebulizer that's capable of  
20 delivering the aerosols in a pulsed manner.

21 Q. So your understanding of the  
22 word pulsed in the context of the claims of  
23 both patents is that it is -- that the phrase  
24 pulsed ultrasonic nebulizer means an ultrasonic  
25 nebulizer that is capable of delivering the

1 MAUREEN DONOVAN, Ph.D.

2 aerosols in a pulsed manner, correct?

3 A. Well, as I -- you know, as we  
4 read the remaining description about the pulsed  
5 ultrasonic nebulizer in claim 1, and I am  
6 looking at the '240 patent, it's requiring it  
7 to be able to deliver a fixed amount of  
8 treprostiniol or pharmaceutically acceptable  
9 salt. So that fixed amount indicates that it's  
10 being delivered as a pulse where there's a  
11 pause in time where there's not delivery  
12 happening.

13 Q. In your reading of the claim,  
14 does it indicate how long that period of time  
15 is when there is a pause in time when there is  
16 not delivery happening?

17 A. No, I don't read anything into  
18 the claim regarding the amount of -- the length  
19 of the time interval.

20 Q. And there's nothing else in  
21 the claim that describes to you the length of  
22 the time interval?

23 A. Well, later in the claim it  
24 describes the number of breaths that might be  
25 used to administer a particular mass of the

1 MAUREEN DONOVAN, Ph.D.  
2 drug treprostnil, and depending on what  
3 sequence of breaths somebody wanted to take,  
4 that indicates a possible amount of time that  
5 the total administration might take, but  
6 there's nothing within the claim that describes  
7 the specific length of time of the pulse.

8 Q. Okay. Focusing again on the  
9 use of the word pulse in the claims and not  
10 just speaking in the abstract general English  
11 terminology, but focusing on the use of the  
12 word pulsed in the claims, is it your opinion  
13 that an ultrasonic nebulizer with a constant  
14 output that has a switch you can use to turn  
15 the device on and off can be a pulsed  
16 ultrasonic nebulizer within the meaning of the  
17 claims?

18 MR. MATHAS: Object to the form.

19 BY THE WITNESS:

20 A. I believe that an ultrasonic  
21 nebulizer that's capable of administering a  
22 fixed amount of the drug and then not -- not  
23 continue to aerosolized could be viewed as a  
24 pulsed ultrasonic nebulizer.

25

1 MAUREEN DONOVAN, Ph.D.

2 BY MS. ASCARRUNZ:

3 Q. Is it your opinion that an  
4 ultrasonic nebulizer with a constant output  
5 that has a switch you can use to turn the  
6 device on and off can be a pulsed ultrasonic  
7 nebulizer within the meaning of the claims?

8 MR. MATHAS: Same objection.

9 BY THE WITNESS:

10 A. That same -- if the turning  
11 the switch off can discontinue the aerosol  
12 production and then switching the -- switching  
13 the nebulizer back on in whatever timeframe it  
14 is that is desired or required that delivers  
15 two pulses or if you switch it off again, it  
16 will deliver -- and switch it back on again, it  
17 will deliver three pulses of the medication.

18 BY MS. ASCARRUNZ:

19 Q. And in that instance then that  
20 would fall within the meaning of pulsed  
21 ultrasonic nebulizer in the claims?

22 A. Well, because it's  
23 aerosolizing a fixed amount of treprostinil,  
24 yes.

25 Q. Is it your opinion that an



1 MAUREEN DONOVAN, Ph.D.  
2 ultrasonic nebulizer with a timed uninterrupted  
3 stream of aerosol that lasts for ten seconds is  
4 a pulsed ultrasonic nebulizer?

5 MR. MATHAS: Object to the form.

6 BY THE WITNESS:

7 A. As long as the amount of  
8 aerosol is reproducible during the time that  
9 the aerosol is being produced and that there's  
10 a period of time where the aerosol is not being  
11 produced, that could be considered a pulsed  
12 delivery.

13 BY MS. ASCARRUNZ:

14 Q. Can a pulse within the meaning  
15 of the claims last more than one breath?

16 A. I don't see anything in the  
17 claims that indicates that there's a time  
18 duration requirement for the time between  
19 pulses. So there could be -- there could be  
20 other breaths between the breaths being used to  
21 inhale the aerosol.

22 Q. Okay. If a device has  
23 intermittent periods of aerosol generation and  
24 no aerosol generation, would this be pulsed  
25 according to your understanding of the use of

1 MAUREEN DONOVAN, Ph.D.

2 the terminology in the claims?

3 A. Can you repeat that, please?

4 Q. Sure. If a device has  
5 intermittent periods of aerosol generation and  
6 no aerosol generation, would this be pulsed  
7 within the meaning of the claims?

8 MR. MATHAS: Object to the form.

9 BY THE WITNESS:

10 A. I am still confused. One more  
11 time.

12 BY MS. ASCARRUNZ:

13 Q. Would it be considered pulsed  
14 within the meaning of the claims if a device  
15 were to have intermittent periods of aerosol  
16 generation and no aerosol generation?

17 So it switches back and forth  
18 from aerosol generation, no aerosol generation,  
19 aerosol generation, no aerosol generation.

20 MR. MATHAS: Object to the form.

21 BY THE WITNESS:

22 A. Yes, I believe that is within  
23 the definition of pulsed delivery from an  
24 ultrasonic nebulizer.

25

1 MAUREEN DONOVAN, Ph.D.

2 BY MS. ASCARRUNZ:

3 Q. Okay. If a device is turned  
4 on to generate aerosol, turned off to cease the  
5 aerosol generation, put down, and then turned  
6 on again after a period of time to generate  
7 aerosol, would this be pulsed according to the  
8 meaning of the claims?

9 MR. MATHAS: Object to the form.

10 BY THE WITNESS:

11 A. It -- I would certainly  
12 consider it could be. There -- there are a  
13 number of different ways that someone might  
14 configure an ultrasonic nebulizer and a  
15 solution of drug and the need of a particular  
16 patient or group of patients or whatever that  
17 conceivably might include a longer non-aerosol  
18 generation period.

19 BY MS. ASCARRUNZ:

20 Q. Are you familiar with the term  
21 breath actuated in the art of inhalation  
22 therapy?

23 A. Yes, I am.

24 Q. If a device generates  
25 aerosol -- okay. In a breath-actuated device

1 MAUREEN DONOVAN, Ph.D.

2 where the device delivers aerosol to the  
3 patient due to the patient's breathing -- I'm  
4 sorry. Let me start all over.

5 Can a breath-actuated device  
6 be a pulsed device within the meaning of the  
7 claims?

8 MR. MATHAS: Object to the form.

9 BY THE WITNESS:

10 A. It depends. If that breath  
11 actuated device is capable of or is designed to  
12 deliver that fixed amount regardless of the  
13 other factors in the patient inhalation, yes,  
14 it could be considered if it uses ultrasonic --  
15 a pulsed ultrasonic device.

16 BY MS. ASCARRUNZ:

17 Q. And when you say regardless of  
18 the other factors in the patient inhalation,  
19 did you have specific factors in mind?

20 A. That most obvious is for how  
21 long does the patient inhale and how is the  
22 aerosol being formed during that time.

23 Q. Is the inspiratory flow of the  
24 patient also a factor?

25 A. That's very dependent on

1 MAUREEN DONOVAN, Ph.D.

2 the -- what's being emitted from the nebulizer  
3 whether the inspiratory flow add additional  
4 effects.

5 Q. In your mind or in your  
6 opinion, does the requirement in the claims of  
7 a pulsed device require that the pulse equates  
8 to one breath?

9 MR. MATHAS: Object to the form.

10 BY THE WITNESS:

11 A. I think you could certainly  
12 be -- there are -- would be circumstances  
13 where, yes, it could equate to one breath and  
14 each breath is a breath that is utilized to  
15 inhale the aerosol, and I think there could  
16 conceivably be breaths where they were part of  
17 the pause.

18 BY MS. ASCARRUNZ:

19 Q. Okay. And could there also  
20 conceivably be more than one breath per pulse?

21 MR. MATHAS: Object to the form.

22 BY THE WITNESS:

23 A. Well, if the pulsed ultrasonic  
24 nebulizer was configured as a breath-actuated  
25 nebulizer, there could be the possibility, but,

1 MAUREEN DONOVAN, Ph.D.

2 again, there's some additional requirements  
3 that aren't really clearly specified in the  
4 claim so.

5 BY MS. ASCARRUNZ:

6 Q. Okay. If I were to take a  
7 sort of standard asthma inhaler and take a puff  
8 and then wait a few seconds and then take  
9 another puff, is that pulse delivery?

10 A. Under sort of the POSA's  
11 understanding of pulse delivery versus multiple  
12 dose delivery, yes.

13 Q. Let me turn your attention to  
14 paragraphs 126 -- 126 of your '240  
15 declaration -- '507 declaration. Thank you.

16 Do you see where you discuss  
17 that the primary purpose of using a pulsed  
18 nebulizer is to avoid wasting the drug that  
19 gets aerosolized while the patient is exhaling?

20 A. I see where it says that, yes.

21 Q. Is this the only possible  
22 purpose for using a pulsed nebulizer?

23 A. There are probably others, but  
24 this again is one of the key purposes for  
25 designing pulsed nebulizers or nebulizers that

1 MAUREEN DONOVAN, Ph.D.

2 pause when the patient is not breathing and the  
3 aerosol that's being formed.

4 Q. And how did you determine that  
5 this is the primary purpose?

6 A. It's based on my experiences  
7 and teaching and understanding of the field of  
8 nebulized drug delivery.

9 Q. Let me ask you to look at  
10 paragraphs 37 and 38.

11 Do you consider the HaloLite's  
12 device to being a pulsed nebulizer?

13 A. It's a breath-actuated or  
14 signaled-type nebulizer. I would have to look  
15 at the details I think again about the HaloLite  
16 to find out whether there's anything else  
17 beyond my description in this paragraph to make  
18 sure that it doesn't do something else that I  
19 wouldn't consider it being a pulsed nebulizer,  
20 but it has pause periods and periods that it  
21 produces aerosol or at least directs aerosol  
22 out the mouthpiece.

23 Q. Unfortunately, we don't have  
24 this one printed so let me ask you to get out  
25 the two patents again.

1 MAUREEN DONOVAN, Ph.D.

2 Both patents contain a  
3 dependent claim limitation, and I will direct  
4 you to claim 4 of both patents where the single  
5 event dose produces a peak plasma concentration  
6 of treprostinil about 10 to 15 minutes after  
7 the single event dose, right?

8 A. Yes, that's what they say.

9 Q. What factors impact when the  
10 peak -- the time to peak plasma concentration  
11 will be?

12 A. The time to peak plasma  
13 concentration is highly dependent on the  
14 absorption rate of the drug at the site of  
15 administration, and the time indicated here is  
16 certainly in keeping with the times and the  
17 absorption rates known to occur in pulmonary  
18 delivery.

19 Q. Are time to peak plasma  
20 concentrations similar across all known  
21 inhalation therapies, or do they differ? Just  
22 leave it at that.

23 A. Well, they would differ  
24 between a material being administered as a  
25 suspension as compared to a material being



1 MAUREEN DONOVAN, Ph.D.

2 administered as a solution. As long as the  
3 material that was undissolved in the suspension  
4 actually continues to dissolve and be absorbed  
5 in the lungs, one would anticipate a different  
6 Tmax than --

7 THE COURT REPORTER: Wait. One  
8 would anticipate?

9 BY THE WITNESS:

10 A. A different Tmax, sorry, time  
11 to peak plasma concentration than -- I'm sorry,  
12 now let me -- so with a suspension formulation,  
13 one would anticipate as long as there was  
14 continued dissolution and then absorption of  
15 the drug that was delivered as the suspension,  
16 that that would have a longer Tmax than the  
17 same drug administered entirely in solution.

18 BY MS. ASCARRUNZ:

19 Q. So does the solubility of the  
20 drug impact the Tmax?

21 A. To be absorbed, the drug has  
22 to have been in solution, and the Tmax is  
23 affected by the absorption rate. So if there's  
24 continued dissolution and continued absorption,  
25 that will affect the Tmax because there's a

1 MAUREEN DONOVAN, Ph.D.

2 time lag for all of the drug to go into  
3 solution.

4 If the drug is presented in  
5 solution, it's there immediately and available  
6 for absorption. So the Tmax between those two  
7 situations would be anticipated to be different  
8 as long, again, as the drug that was  
9 administered in the insoluble form actually did  
10 continue to dissolve and be absorbed.

11 Q. So that's a, yes, the Tmax is  
12 affected by solubility?

13 A. No, it's not. It's affected  
14 by how you -- how you present the material that  
15 you are intending to be absorbed.

16 Q. Is it affected by drug  
17 concentration or volume?

18 A. That depends on the site of  
19 administration.

20 Q. So we are talking about  
21 inhalation administration.

22 A. Okay. And the Tmax might be  
23 affected by the -- more the volume of the  
24 aerosol than the volume of the aerosol  
25 droplets. It depends on the surface area

1 MAUREEN DONOVAN, Ph.D.

2 that's exposed that's available or that's able  
3 to absorb the drug, and the surface area that's  
4 exposed is another -- has other factors that  
5 influence it. The concentration of the drug.  
6 The concentration will affect the Cmax, the  
7 peak plasma concentration more than it's going  
8 to affect the Tmax.

9 Q. Is the time to peak plasma  
10 concentration affected by number of breaths?

11 A. Again, it -- that starts to  
12 become very dependent on the characteristics of  
13 the material that are being absorbed. So I  
14 would have to contemplate a specific material  
15 and characteristics and absorption rate to be  
16 able to draw some sort of estimate --

17 Q. Okay.

18 A. -- on that.

19 Q. In the context of inhaled  
20 treprostnil, does the time to peak plasma  
21 concentration depend on the number of breaths?

22 A. Well, I think I am going to  
23 have to think about that more. I really -- I  
24 don't know that I was -- I know I didn't  
25 provide an opinion on alterations in Tmax in my

1 MAUREEN DONOVAN, Ph.D.  
2 declaration, and there are just a number of  
3 things that need to be held constant in essence  
4 for me to be able to answer that question. I'd  
5 have to think about what those all are and  
6 articulate them. I'd have to take some time to  
7 be able to identify that list.

8 Q. Okay. So based on that, I  
9 think I know the answer to my question, but I  
10 still need to ask it.

11 Sitting here right now without  
12 the benefit of that additional analysis that  
13 you said would prefer to do, are you able to  
14 articulate any factors that would affect the  
15 time to peak plasma concentration in the  
16 context of inhaled treprostinil?

17 MR. MATHAS: Object to the form.

18 BY THE WITNESS:

19 A. I think I need a more specific  
20 question than that especially regarding what  
21 inhaled treprostinil are we talking about.

22 BY MS. ASCARRUNZ:

23 Q. What do you mean?

24 A. What concentration of solution  
25 are we -- is being inhaled? What particle size

1 MAUREEN DONOVAN, Ph.D.

2 is being inhaled? A number of other things.

3 Q. So would the concentration,  
4 particle size, dosage, a number of breaths,  
5 timing between breaths, would all of those  
6 factors affect the time to peak plasma  
7 concentration of inhaled treprostiniil?

8 A. Well, there's certainly the  
9 chance that they could under the conditions  
10 that are being described in the '240 and the  
11 '507 patent. If we contain ourselves to that  
12 specific -- those specific ranges for  
13 treprostiniil and the use of the ultrasonic  
14 nebulizers and the assumption that those are  
15 providing the appropriate particle size for  
16 inhalation delivery which is built into all of  
17 these claims, that the 10 to 15 minute --  
18 that's the timeframe -- 10 to 15 minute  
19 timeframe for the Tmax is in keeping with the  
20 expectation of a POSA for the system that's  
21 described by the claims in the '507 and '240  
22 patents.

23 Q. Okay. Do you agree with me  
24 that certain of the dependent claims in the  
25 patents relate to the micrograms of

1 MAUREEN DONOVAN, Ph.D.

2 treprostiniil per breath?

3 A. Yes. For example, claim 6 in  
4 the '240 as a dependent claim describes at  
5 least 5 micrograms of treprostiniil or its  
6 pharmaceutically acceptable salt.

7 Q. Does -- in the context of the  
8 administration of treprostiniil under the  
9 claims, does the droplet size affect what the  
10 micrograms per breath would be, or can the  
11 droplet size affect what the micrograms per  
12 breath would be?

13 A. Only indirectly. The number  
14 of micrograms per breath is determined by the  
15 volume of aerosol emitted, and the actual  
16 deposition into the respiratory tract is  
17 certainly dependent on particle size. So  
18 indirectly, yes, but the direct delivery from  
19 the device is a function of the concentration  
20 of the fluid that's being aerosolized and the  
21 volume of -- the total volume of aerosol formed  
22 able to be inhaled.

23 Q. Does the microgram per breath  
24 inhaled by the human also depend on that  
25 person's breathing capacity?

1 MAUREEN DONOVAN, Ph.D.

2 A. Depending on how the aerosol  
3 is -- how it forms, what its characteristics  
4 are, there certainly are characteristics of the  
5 aerosol that will be dependent on patient  
6 inhalation conditions. There are also  
7 characteristics of aerosols where the patient  
8 conditions are certainly significantly blunted.  
9 That they are not significantly dependent or  
10 that they don't offer -- or they don't result  
11 in a significant difference in the delivery.  
12 So it's again a more of a slightly more  
13 complicated interface between the aerosol being  
14 produced and the user.

15 Q. We talked about the two  
16 patients in Voswinckel that were treated for a  
17 longer term.

18 Are those two patients part of  
19 the 17, or is it 17 plus two patients that were  
20 treated in total in that study?

21 A. Based on the notation that the  
22 two patients who received the compassionate use  
23 treatment received it after the acute test,  
24 they would have been part of the 17 patients  
25 that underwent the acute test.

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2 Q. Okay. Let me ask you to turn  
3 to paragraph 126 of the '240 declaration.

4 MR. MATHAS: Veronica, when you get  
5 a chance, maybe we can take another or an  
6 afternoon break.

7 MS. ASCARRUNZ: Yeah, this is a  
8 great time actually. Are you ready to take a  
9 break?

10 THE WITNESS: Yes. That would be  
11 appreciate, thank you.

12 THE VIDEOGRAPHER: Going off the  
13 record. The time is 2:46 p.m.

14 (WHEREUPON, a recess was had at  
15 2:46 p.m. until 3:05 p.m.)

16 THE VIDEOGRAPHER: Going on the  
17 record. This marks the beginning of media  
18 number 4. The time is now 3:05 p.m.

19 BY MS. ASCARRUNZ:

20 Q. Dr. Donovan, can you give me  
21 an example of an inhalation device that does  
22 not use pulsed delivery, and I should clarify  
23 within the meaning of the claims?

24 A. So ultrasonic nebulizers that  
25 couldn't be configured for pulsed delivery.



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2 I'm -- I'm sure there is a nebulizer in a  
3 system. I would suspect that in particular if  
4 the formulation viscosity was somewhat higher  
5 than -- than water, the traditional  
6 formulations that are currently used, that the  
7 response time for the nebulizer might be such  
8 that it really wouldn't be effective in pulsed  
9 delivery. So that it would have to have a  
10 different sort of delivery time relationship,  
11 but, you know, it's not something I have spent  
12 any time thinking about.

13 Q. Okay. Fair enough.

14 In the course of our  
15 discussion today and in the course of your  
16 preparation for today, did you identify any  
17 portions of your declaration that are  
18 incorrect?

19 A. I continue to find typos that  
20 make me wonder why I hadn't seen them before  
21 or, you know, a word choice or something, but  
22 there's nothing of substance in my declarations  
23 that I have found that I no longer agree with  
24 or think need to be communicated in a different  
25 way.

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2 MS. ASCARRUNZ: Okay. I have no  
3 further questions at this time.

4 EXAMINATION

5 BY MR. MATHAS:

6 Q. Just a couple questions.

7 Dr. Donovan, early in your  
8 deposition, counsel for the patent owner asked  
9 you some questions about how you would go about  
10 researching a particular -- a scientific area  
11 of interest.

12 Do you recall those?

13 A. Yes.

14 Q. And you mentioned using some  
15 online databases and running searches.

16 Do you recall that?

17 A. Yes.

18 Q. How, if at all, would you have  
19 used information if you knew a particular  
20 researcher or group of researchers was  
21 interested in the topic of interest?

22 MS. ASCARRUNZ: Objection to form.

23 BY THE WITNESS:

24 A. Okay. You know, it's sort of  
25 the same process. Most of the databases that I

1 MAUREEN DONOVAN, Ph.D.  
2 mentioned so Web of Science, PubMed,  
3 International Pharmaceutical Abstracts, and  
4 chem abstracts for lack of a better phrase for  
5 what they are called, offers you the  
6 opportunity to search the authors. So I can --

7 THE COURT REPORTER: I'm sorry.

8 BY THE WITNESS:

9 A. I'm sorry. Offers the  
10 opportunity to search authors. So if there's a  
11 particular research group that I am interested  
12 in, I will just search based on the author, and  
13 that's the advantage of using Web of Science  
14 even is it gives -- it both gives the  
15 publications the author is named in, and it  
16 also gives easy access to all the people who  
17 have cited those same publications.

18 So you can expand your family  
19 of people of interest pretty rapidly. So just  
20 searching based on a particular group that I  
21 was interested in, knew that they were doing  
22 work is just as easy as doing a topic search.

23 BY MR. MATHAS:

24 Q. In your experience,  
25 Dr. Donovan, why do researchers present their

1 MAUREEN DONOVAN, Ph.D.

2 research at a conference?

3 A. They both want to demonstrate  
4 the things that they are doing that are -- and  
5 usually they're novel and hope people are  
6 interested in them and most of the time no  
7 people are interested in them because they are  
8 choosing topics that they know are pertinent to  
9 the particular group that they are presenting  
10 in front of, and they want to be able to  
11 describe the work they are doing before perhaps  
12 they even have enough data to completely write  
13 a manuscript and have that go through review  
14 and be published and so forth.

15 Now it's not quite as bad.  
16 Back in the day, manuscript writing to actual  
17 hard copy publication time might be a year and  
18 a half or longer when you got into the queue  
19 for particular journals. Now with electronic  
20 access that becomes less of an issue, but it  
21 became a -- that's why you present so that  
22 people understood what you were doing in  
23 realtime almost versus, you know, two years  
24 previous. It also allows you to find  
25 collaborators, people who are interested in the

1 MAUREEN DONOVAN, Ph.D.

2 same things, lots of other reasons why.

3 Q. And in your experience why,  
4 Dr. Donovan, are abstracts of presentations  
5 published?

6 A. Because they describe bodies  
7 of knowledge and bodies of work that people  
8 have been accomplishing. They are just not in  
9 the format for complete publication. When  
10 things are presented at meetings, there's a  
11 whole group of interested scientists who don't  
12 attend that meeting.

13 So you have the ability then  
14 as -- you know, with a published abstract to  
15 also inform others who weren't physically  
16 present at a meeting what took part, what was  
17 the latest information being presented, who is  
18 doing things in a similar area that people look  
19 at but just can't afford the time or the money  
20 to attend every meeting that something might be  
21 presented at.

22 MR. MATHAS: Thank you, Doctor. I  
23 have no further questions?

24 THE WITNESS: Okay. Thanks.

25 MS. ASCARRUNZ: No questions from

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MAUREEN DONOVAN, Ph.D.

me. Thank you for your time.

THE VIDEOGRAPHER: Going off the record. The time is 3:12 p.m.

(WHEREUPON, the deposition was concluded at 3:12 p.m.)



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1  
2 such attorney or counsel for any of the parties  
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4 hereto, nor am I interested directly or  
5 indirectly in the outcome of this action.  
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and  
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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