

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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MR. SOMMER: Object to form.

BY THE WITNESS:

A. Would you care to define directly?

BY MS. ASCARRUNZ:

Q. Let me rephrase my question.

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

MR. SOMMER: Object to form.

BY THE WITNESS:

A. No. No.

BY MS. ASCARRUNZ:

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

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

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

Q. Are you aware of whether you found any 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 difficult 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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2 A. Helen Sullivan.

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

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

8 Q. Sure.

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

12 A. Yes.

13 Q. What did she mean?

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

17 Q. Of the Voswinckel abstract?

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

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

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

24 A. Unusual? Well, date stamping is a very
25 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

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2 published in Great Brittain in the 1820s with the
3 administration of Treprostiniil 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.

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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.

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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

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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

1 SCOTT BENNETT Ph.D.

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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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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STATE OF _____)
) :ss
COUNTY OF _____)

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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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 |
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| 61 | 12 | "circulation" change to "Circulation" | journal title; not a common noun |
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| 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 |



Witness's Signature

25 April 2018

Date

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