

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

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

Job No. 54282

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PRESENT:

Appeared on behalf of Petitioner:

WINSTON & STRAWN LLP  
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BY: ANDREW R. SOMMER, ESQ  
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and

Appeared on behalf of Patent Owner:

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BY: VERONICA S. ASCARRUNZ, ESQ.  
vascarrunz@wsgr.com

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I N D E X

WITNESS:  
SCOTT BENNETT

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

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

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THE VIDEOGRAPHER: We are now on the record.

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

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

Will attorneys please identify themselves.

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

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

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

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

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

1 SCOTT BENNETT Ph.D.

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

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

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

9 EXAMINATION

10 BY MS. ASCARRUNZ:

11 Q. Good morning, Dr. Bennett.

12 A. Good morning.

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

15 A. My name is Scott Bennett.

16 Q. And what is your current address?

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

19 Q. And have you been deposed before?

20 A. Yes, I have.

21 Q. How many times?

22 A. Six or seven times.

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

25 A. Yes.

1 SCOTT BENNETT Ph.D.

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

4 A. Yes.

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

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

13 A. Yes, I do understand that.

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

17 Is that fair?

18 A. It certainly is.

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

23 Is that fair?

24 A. That is fair.

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

1 SCOTT BENNETT Ph.D.

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

4 Is that fair?

5 A. That is fair.

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

9 Fair.

10 A. That, too, is fair.

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

15 A. I will do so.

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

19 Is that fair?

20 A. That is fair.

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

24 A. No, I am not.

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

1 SCOTT BENNETT Ph.D.

2 you the first exhibit.

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

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

10 BY MS. ASCARRUNZ:

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

14 MR. SOMMER: Object to form.

15 BY THE WITNESS:

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

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

20 BY MS. ASCARRUNZ:

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

22 So let me rephrase the question  
23 then.

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



1 SCOTT BENNETT Ph.D.

2 connection with Patent 9,358,240?

3 A. It appears to be so.

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

6 MR. SOMMER: Object to form.

7 BY MS. ASCARRUNZ:

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

11 Is that your signature on this page?

12 A. Yes, it is.

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

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

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

19 A. No.

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

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

1 SCOTT BENNETT Ph.D.

2 Documentation Services, LLC.

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

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

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

11 Q. Okay.

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

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

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

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

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

25 Q. Okay.

1 SCOTT BENNETT Ph.D.

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

6 Q. Okay. Understood.

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

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

12 A. That business is closed.

13 Q. Okay.

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

16 Q. Okay. Thank you.

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

20 A. No.

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

1 SCOTT BENNETT Ph.D.

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

6 BY MS. ASCARRUNZ:

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

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

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

18 A. It appears to be.

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

22 A. Yes, it is.

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

25 MR. SOMMER: Object to form.

1 SCOTT BENNETT Ph.D.

2 BY MS. ASCARRUNZ:

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

5 MR. SOMMER: Object to form.

6 BY THE WITNESS:

7 A. They are substantively the same document.

8 BY MS. ASCARRUNZ:

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

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

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

16 A. Yes, that is a fair statement.

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

21 A. Yes, that is fair.

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

25 Can we agree that this deposition

1 SCOTT BENNETT Ph.D.

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

4 MR. SOMMER: Yes.

5 BY MS. ASCARRUNZ:

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

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

11 A. That is correct.

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

14 A. I retired in 2001.

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

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

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

24 A. That is correct.

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

1 SCOTT BENNETT Ph.D.

2 Art Documentation, LLC?

3 MR. SOMMER: Object to form.

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

5 BY MS. ASCARRUNZ:

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

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

10 Q. And why did you open that business?

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

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

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

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

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

1 SCOTT BENNETT Ph.D.

2 page -- in Paragraph 46 of the declaration.

3 The other partner is Robert Berger.

4 He also is a managing partner.

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

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

10 Q. Okay. And you mentioned Yale.

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

13 A. No.

14 Q. Why is that incorrect?

15 A. The number is four.

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

19 A. That is correct.

20 Q. What kind of researcher?

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



1 SCOTT BENNETT Ph.D.

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

4 A. No, I have not.

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

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

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

13 MR. SOMMER: Object to form.

14 BY THE WITNESS:

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

17 BY MS. ASCARRUNZ:

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

20 MR. SOMMER: Same objection.

21 BY THE WITNESS:

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

25

1 SCOTT BENNETT Ph.D.

2 BY MS. ASCARRUNZ:

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

5 A. It's imprecise.

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

8 MR. SOMMER: Object to form.

9 BY THE WITNESS:

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

12 BY MS. ASCARRUNZ:

13 Q. Okay.

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

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

19 A. Thank you.

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

22 A. No.

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

25 A. No.

1 SCOTT BENNETT Ph.D.

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

4 MR. SOMMER: Object to form.

5 BY THE WITNESS:

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

8 BY MS. ASCARRUNZ:

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

12 MR. SOMMER: Object to form.

13 BY THE WITNESS:

14 A. Yes.

15 BY MS. ASCARRUNZ:

16 Q. Okay. In what context?

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

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

23 MR. SOMMER: Object to form.

24 BY THE WITNESS:

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

1 SCOTT BENNETT Ph.D.

2 reflects expert knowledge.

3 BY MS. ASCARRUNZ:

4 Q. And what is your expert knowledge in?

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

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

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

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

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

1 SCOTT BENNETT Ph.D.

2 knowledge of how researchers work."

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

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

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

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

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

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

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

19 MR. SOMMER: Object to form.

20 BY THE WITNESS:

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

23 BY MS. ASCARRUNZ:

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

1 SCOTT BENNETT Ph.D.

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

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

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

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

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

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

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

1 SCOTT BENNETT Ph.D.

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

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

16 Q. I understand. Thank you.

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

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

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

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

1 SCOTT BENNETT Ph.D.

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

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

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

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

12 Q. Okay.

13 A. In Paragraph 7.

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

18 Do you see that?

19 A. I do see that.

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

22 A. No.

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



1 SCOTT BENNETT Ph.D.

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

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

6 A. No, I have not.

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

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

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

12 A. Correct.

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

16 A. I claim no such expertise.

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

19 A. No expertise there, either.

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

24 A. That is correct.

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

1 SCOTT BENNETT Ph.D.

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

3 A. Yes.

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

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

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

12 BY MS. ASCARRUNZ:

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

16 A. That is correct.

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

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

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

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

1 SCOTT BENNETT Ph.D.

2 have not yet asked --

3 BY MS. ASCARRUNZ:

4 Q. Okay.

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

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

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

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

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

23 MR. SOMMER: Object to form.

24 BY THE WITNESS:

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

1 SCOTT BENNETT Ph.D.

2 understand your question.

3 BY MS. ASCARRUNZ:

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

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

12 A. Yes, that is fair.

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

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

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

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

24 Let me rephrase that.

25 You yourself do not claim to be a

1 SCOTT BENNETT Ph.D.

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

4 A. That is right.

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

8 A. That, too, is right.

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

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

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

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

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

21 A. I'm sorry.

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

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

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

6 A. No, I make no such claim.

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

10 A. I make no such claim.

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

13 A. Possibly.

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

16 A. No, I have no positive recollection.

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

19 A. Almost surely not.

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

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

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

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2 separate documents.

3 BY MS. ASCARRUNZ:

4 Q. Okay.

5 A. That is correct.

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

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

13 A. Uh-huh.

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

17 A. That is correct.

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

22 A. Yes, we understand that.

23 Q. Okay. Thank you.

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

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2 be referring to?

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

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

10 A. Yes, I'll understand that.

11 Q. Okay. Thank you.

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

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

17 Do you see that?

18 A. I'm looking at Paragraph 38.

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

22 A. Yes, that is correct.

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



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2 MR. SOMMER: Object to form.

3 BY THE WITNESS:

4 A. That is correct.

5 BY MS. ASCARRUNZ:

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

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

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

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

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

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

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

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

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

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

9 MR. SOMMER: Object to form.

10 BY THE WITNESS:

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

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

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

21 BY MS. ASCARRUNZ:

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

25 MR. SOMMER: Object to form.

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2 BY THE WITNESS:

3 A. It is certainly relevant.

4 BY MS. ASCARRUNZ:

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

8 A. That is correct.

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

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

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

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

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

25 Q. And Scopus is the largest database of

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

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

6 Q. Why did you include the Scopus record?

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

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

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

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

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

19 A. No.

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

24 Do you see that?

25 A. I do.

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

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

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

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

18 A. That is correct.

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

22 A. That is correct.

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

25 MR. SOMMER: Object to form.

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2 BY THE WITNESS:

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

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

12 Q. Are you familiar with EMTREE terms?

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

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

18 Do you know what EMTREE terms are?

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

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

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

24 MS. REPORTER: I'm hearing entry.

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

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

MS. ASCARRUNZ: As used in Attachment 2e.

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

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

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

MS. ASCARRUNZ: Yes.

BY MS. ASCARRUNZ:

Q. Do you know what EMTREE terms are?

A. I know that they are index terms.

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

Q. Do you know what MeSH terms are?

A. Yes.

Q. What are MeSH terms?

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

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

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

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

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2 search term called pulmonary hypertension.

3 There may be others.

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

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

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

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

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

13 A. Scopus records are indexed by authors.

14 Q. And the institution at which they work?

15 MR. SOMMER: Object to form.

16 BY THE WITNESS:

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

18 BY MS. ASCARRUNZ:

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

22 A. That is correct.

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

25 A. I do not know.



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

5 A. No.

6 Q. Do you know when Scopus was launched?

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

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

11 BY MS. ASCARRUNZ:

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

14 A. No.

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

17 A. No.

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

22 THE WITNESS: It's your deposition.

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

25 THE WITNESS: I'm comfortable.

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

THE WITNESS: I'm comfortable. Thank you.

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

BY MS. ASCARRUNZ:

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

A. 2f?

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

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

A. Thank you.

Q. 2f.

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

Q. Oh, that's a problem.

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

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

THE WITNESS: Thank you.

MS. ASCARRUNZ: I just want to make sure.

So it was complete?

THE WITNESS: No, it is not.

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

THE WITNESS: But...

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

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

BY MS. ASCARRUNZ:

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

A. That is, correct.

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

A. Correct.

Q. Why did you include this attachment?

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

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

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

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

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

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

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

11 A. That is correct.

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

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

16 Q. When was this index created?

17 A. Would you define this index, please?

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

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

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

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

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

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

21 MR. SOMMER: Object to form.

22 BY THE WITNESS:

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

25 MS. ASCARRUNZ: Thank you for that

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2 correction.

3 BY THE WITNESS:

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

8 BY MS. ASCARRUNZ:

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

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

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

21 A. Yes.

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

25 It doesn't anywhere state that the

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2 issue was processed on that date; correct?

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

5 Q. Sure.

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

9 A. Uh-huh.

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

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

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

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

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

25 In this case the evidence suggests

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

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

18 MR. SOMMER: Object to form.

19 MS. ASCARRUNZ: Let me strike that.

20 BY MS. ASCARRUNZ:

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

24 A. That is correct.

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



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

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

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

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

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

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

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

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

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

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

8 Q. So --

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

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

13 A. Yes, I certainly would.

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

16 A. Yes, I would.

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

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

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

25 I'm sorry. You might want to say

1 SCOTT BENNETT Ph.D.

2 something?

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

5 MS. ASCARRUNZ: Okay.

6 BY MS. ASCARRUNZ:

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

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

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

11 A. Yes, early August 2005.

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

16 A. That is correct.

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

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

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

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

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

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

19 A. What do you mean by for certain?

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

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

4 MR. SOMMER: Object to form.

5 BY THE WITNESS:

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

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

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

19 MR. SOMMER: Object to form.

20 BY MS. ASCARRUNZ:

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

23 MR. SOMMER: Same objection.

24 BY THE WITNESS:

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

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

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

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

14 THE VIDEOGRAPHER: Going off the record.

15 The time is 11:00 a.m.

16 (WHEREUPON, a recess was  
17 had.)

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

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

21 BY MS. ASCARRUNZ:

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

24 A. Thank you.

25 Q. Which I often refer to as the Voswinckel

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

4 A. We do agree on that.

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

7 MR. SOMMER: Object to form.

8 BY THE WITNESS:

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

11 BY MS. ASCARRUNZ:

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

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

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

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

25 A. As stated in Paragraph 47, all

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

7 Q. Did you mean 16th?

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

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

17 MR. SOMMER: Object to form.

18 BY THE WITNESS:

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

21 BY MS. ASCARRUNZ:

22 Q. Sure.

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



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2 correct?

3 A. Correct.

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

7 A. Yes.

8 Q. And what are the circumstances of that?

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

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

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

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

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

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

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

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

8 BY MS. ASCARRUNZ:

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

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

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

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

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

24 MR. SOMMER: Object to form.  
25

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2 BY THE WITNESS:

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

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

7 BY MS. ASCARRUNZ:

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

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

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

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

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2 at least by December 2004.

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

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

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

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

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

19 A. Yes.

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

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

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

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

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

10 A. That is correct.

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

13 A. That is correct.

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

17 MR. SOMMER: Object to form.

18 BY THE WITNESS:

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

23 BY MS. ASCARRUNZ:

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

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

4 A. Yes, that would be correct.

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

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

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

9 MR. SOMMER: Object to form.

10 BY THE WITNESS:

11 A. No, I do not.

12 BY MS. ASCARRUNZ:

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

17 A. That is correct.

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

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

25 A. Yes.

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

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

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

9 A. That is correct.

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

13 A. Yes, that is correct.

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

17 A. That is correct.

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

20 A. I do not know how many pages.

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

23 A. No, I do not.

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

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2 abstracts that contain the Voswinckel abstract;  
3 correct?

4 A. That is correct.

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

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

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

17 A. Correct.

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

22 MR. SOMMER: Object to form.

23 BY THE WITNESS:

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



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

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

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

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

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

22 A. Correct.

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

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

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

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

10 A. I do.

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

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

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

25 So this record does a reasonable job

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

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

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

9 Q. Sure.

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

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

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

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

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

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

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

5 Q. Let me. Let me repeat the question.

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

11 MR. SOMMER: Object to form.

12 BY THE WITNESS:

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

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

17 BY MS. ASCARRUNZ:

18 Q. So, again, I'm referring to Documents 1b,  
19 1c, and 1d?

20 A. Got that.

21 Q. I understand that each index are  
22 referenced?

23 A. No, they don't.

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

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

5 Q. Perfect?

6 A. Okay.

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

9 A. Yes.

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

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

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

22 A. That's right.

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