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קיבלנו, אני ראיתי את המייל של חברי בערך בשנים עשרה, ענינו לאחר 1
מכן, עמדתנו היא שכל חלק מתצהירו ומחוות דעתו של ד"ר צייל 2
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כן. 6

ד"ר צייל, לאחר שהוזהר כחוק, משיב בהמשך חקירה נגדית לעו"ד וטשטיין: 8

עו"ד וטשטיין: OK, good morning Dr. Chyall, welcome back. 9
העד: I appreciate you have some more questions for me. Your 10
honor, before we begin I just wanted to respond to some 11
requests that were made of me to look at some things on 12
the breaks. so I can confirm sir that the calculations with 13
respect to the percentage theoretical values of carbon, 14
those, those are correct. For the samples you asked if I 15
had added the phosphoric acid drop wise for all my 16
experiments and I did. There was one thing that I needed 17
to clear up though - the concentrations of phosphoric 18
acid were different depending on the experiment, and I 19
checked in my declarations so when I write out what I did 20
in my declaration I say what the concentrations of 21
phosphoric acid are. those are correct, I believe that's 22
everything that, 23

עו"ד וטשטיין: OK. 24
עו"ד בנד: you have done your homework 25
העד: thank you. 26

עו"ד וטשטיין: thank you Dr. Chyall. We will go back to your pH- 27
solubility experiments, and now we'll focus on table 5 of 28
C1 which is page 24 of your first declaration. In this table 29
actually what you attempt to do is to obtain additional 30

No. they weren't. because even on your summary, even : העד 1
on your representation to me, as to what I did, you say 2
4031-27-01 diluted 200. Oh wait a minute, I'm sorry, 3
0.5 ml of it. 0.5 ml of it. : עו"ד וטשטיין 4
you're right, you're right, sorry. : העד 5
0.5 ml of it. : עו"ד וטשטיין 6
sorry. : העד 7
so it's the same dilution parameters. : עו"ד וטשטיין 8
OK. : העד 9
it's the same scale, right? : עו"ד וטשטיין 10
yes. : העד 11
OK, so our rule of 3, the solubility value of 60 mg per ml : עו"ד וטשטיין 12
you want to say anything about it? do you agree with it? 13
simple arithmetic. 14
Let me just burrow a calculator. I can be sure, I am sure I : העד 15
can find the exact value, 16
rough value is also fine, you know, 1 mg up or down : עו"ד וטשטיין 17
doesn't matter. I am sure that if we had your standards, 18
we could have had the exact values. 19
I make it to be around 58, just by using another : העד 20
calibration standard, 21
OK, fine, that's fine, we won't argue about 2 mg per ml : עו"ד וטשטיין 22
Dr. Chyall. thank you. So, we have a solubility. We have 23
a sample at pH 5.9, which is below the pH max, namely it 24
should be a salt, right? 25
yes. : העד 26
fine. With a solubility which is 58 or 60. And this is the : עו"ד וטשטיין 27
XRPD of the sample that was, 28
כבי' סגנית הרשם : רק נסמן ברשותכם מב/117, כן. 29

of the sample, of the 117 מב/ And this is the XRPD : עו"ד וטשטיין 1

sample of the solids from the measurement in pH 5.9. 2

yes, I remember, this is the co-crystal, this is the sample. : העד 3

yes, that's fine. Now, ok, let's, : עו"ד וטשטיין 4

רק גברתי איך מסמנים את זה? 5

כב' סגנית הרשם : מב/118. 6

Let's, let's see what we have here. We'll start, : עו"ד וטשטיין 7

גברתי מהעמוד האחרון. 8

כב' סגנית הרשם : כן. 9

The last page is again the XRPD of the sample which : עו"ד וטשטיין 10

you obtain, of the solids which you obtain at pH 5.9, 11

right? It's the same XRPD which we saw before. 12

yes. : העד 13

thank you. The second page is Professor Atwood's : עו"ד וטשטיין 14

sample 1.2, the 2:1 salt. I know you don't agree so we 15

will call it the Atwood solids, which he prepared in 16

isopropanol and water. 17

yes. : העד 18

fine. And the cover page is an overlay of Dr. Atwood's 2:1 : עו"ד וטשטיין 19

solids prepared in isopropanol and water, and of the 20

solids which you prepared at pH 5.9. and I see here, Dr. 21

Chyall, a perfect match. So essentially when you ran 22

your pH adjusted solubility tests, you obtained Professor 23

Atwood's salts, or solids, whatever you want to call them, 24

and you concealed this important, this dramatic piece of 25

evidence, from the patent commissioner, for years and 26

years. You have Professor Atwood's solids in your lab, 27

after you ran your first experiments. and you did not tell 28

that not in your second declaration, not after you saw Dr. 29

AtwoodAtwood's declaration, not in your third declaration 30

How dare you conceal such piece of information? You 1
prepared Atwood's solids. 2

When, I, let me say that first of all I agree that the Atwood 3 : העד
solids and this, the crystal material from this pH adjusted 4
experiment, these are the same solid form. these are 5
both, the, the lines of diffraction pattern match up. I did 6
not recognize Professor Atwood's sample while doing 7
this work because I didn't have his declaration at the 8
time. When I first saw this difragotram from the material, I 9
assumed that it was a decomposition product, because 10
of all the difficulties that we had with respect to getting 11
the pH stable, and in the case where we had a stable pH 12
this clearly was not Sitagliptin base or the phosphoric 13
acid salt. so I didn't know what to make of this at the 14
time, and I assumed it was a decomposition product. 15
When Professor Atwood put in his report, I then 16
recognized his crystalline phase as the same phase as 17
this material here. but in my rebuttal reports I was 18
primarily addressing Professor Atwood's criticisms of my 19
work and I didn't, didn't include this in my second report 20
because that was my understanding that I was to rebut 21
his work. 22

Dr Chyall, עו"ד וטשטיין : 23
with respect to the identity of this sample we did have 24 : העד
ample time to characterize it in my third declaration, and I 25
understand this material to be the co-crystal. 26

Dr. Chyall, you submitted your second declaration after 27 : עו"ד וטשטיין
Dr. Atwood submitted his experiments. In Dr. Atwood's 28
declaration he submits this, these solids, with this 29
identical X-ray powder diffraction of the 2:1 solids. In your 30

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