

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GRÜNENTHAL GMBH,

Petitioner

v.

ANTECIP BIOVENTURES II LLC,

Patent Owner.

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PGR2019-00028  
U.S. Patent No. 10,052,338

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**DECLARATION OF DAVID E. CANNADY**

**Grün. Exh. 1043**  
**Grünenthal v. Antecip**

I, David E. Cannady, declare as follows:

1. My name is David E. Cannady. I am an adult, over the age of 21 years, and I am competent to testify in all ways. I have conducted library research and services, including the location and retrieval of identified references, since 1980.

2. I specialize in document retrieval and delivery of medical and biomedical articles obtained from the National Institutes of Health's U.S. National Library of Medicine ("NLM") in Bethesda, Maryland.

3. Because I have no professional relationship with the NLM and simply access materials as a member of the public, I have personal knowledge about the library's public access procedures. At the NLM, any member of the public can enter the Main Reading Room on most weekdays (with the exception of federal holidays and other special or emergency closures) and can request materials from the NLM's General Collection for pick-up at the Information desk. I have personally retrieved materials from the NLM in this manner thousands of times since 1980.

4. In December 2017, I was asked by counsel for Grünenthal GmbH ("Grünenthal") to acquire a copy of an article titled, M. Muratore et al., *Il neridronato nel trattamento dell'algodistrofia simpatica riflessa dell'anca: confronto in aperto con il clodronato*, *PROGRESSI IN REUMATOLOGIA*, ABSTRACT

BOOK VII CONGRESSO NAZIONALE COLLEGIO DEI REUMATOLOGI OSPEDALIERI  
5(Suppl. 1): 89 (Apr. 16-18, 2004) (“Muratore”).

5. Within a few days of receiving the request from Grünenthal, I personally went to the NLM to acquire a copy of Muratore. As was my general practice in retrieving articles from the NLM, and consistent with the library’s procedures for public access to materials in its General Collection, I entered the Main Reading Room, looked up the call number for Progressi in Reumatologia in the library’s online catalog, and requested the specific issue containing Muratore. A library contractor or staff member retrieved the hard copy of this issue, which I picked up from the Information desk.

6. I then used the NLM’s public scanners to scan Muratore, along with the cover pages of the journal containing the article. The copy of Muratore that I scanned is attached hereto as Exhibit A. At the bottom of each page of the scanned article is a marking which is added automatically by the NLM’s scanner, stating that “This material was copied at the NLM.”

7. As can also be seen in Exhibit A, the cover page of the journal containing Muratore states that it is the “Property of the National Library of Medicine,” and displays a sticker stating “General Collection,” the journal’s call number, and a date/time stamp of “2004-07-19 10:33:34.” From my nearly forty years of experience retrieving articles from the NLM, I understand that this

date/time stamp represents the date/time Muratore was received by the NLM, and that it would have been added to the NLM's General Collection—and therefore available and accessible to the public through the procedures I have described above—within 7-10 days of receipt of the publication, depending on staff availability to process.

8. I sent the scanned copy of Muratore and the journal's cover pages (Exhibit A) via email to counsel for Grünenthal in December 2017.

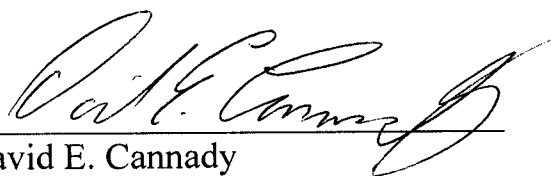
9. According to a page on the NLM website, a printout of which is attached hereto as Exhibit B, the library will not provide date stamp or legal declarations related to materials in its collection. NIH U.S. National Library of Medicine, *Can I get a legal declaration from NLM about the receipt of a book or journal issue?*, <https://support.nlm.nih.gov/knowledgebase/article/KA-04941/en-us> (last visited Jan. 2, 2020). This stated policy is consistent with my personal experience with the NLM.

10. I make this declaration based on my own personal knowledge and experiences, and if called upon as a witness, could competently testify to the matters stated herein.

11. I declare that all statements made herein on my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false

statements and the like so made are punishable by fine or imprisonment, or both,  
under Section 1001 of Title 18 of the United States Code.

01/07/2020  
Date

  
David E. Cannady

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