

Transcript of Jacob Sharony, Ph.D.
Conducted on July 10, 2024

1 (1 to 4)

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2	UNITED STATES PATENT AND TRADEMARK OFFICE	2	A P P E A R A N C E S
3	-----	3	ON BEHALF OF THE PETITIONER:
4	BEFORE THE PATENT TRIAL AND APPEAL BOARD	4	DLA PIPER
5	-----	5	BY: EDWARD H. SIKORSKI, ESQ.
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7	v.	7	San Diego, California 92121-2133
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10	Case IPR2023-00565	10	
11	Patent No. 10,076,269	11	ON BEHALF OF THE PATENT OWNER:
12	-----	12	KRAMER LEVIN NAFTALIS & FRANKEL LLP
13	EXAMINATION OF	13	BY: JEFFREY H. PRICE, ESQ.
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18		18	
19		19	A L S O P R E S E N T
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21		21	KENDALL MORAN
22		22	CHARLES KELLER (remote appearance)
23	CERTIFIED STENOGRAPHER: JESSIE WAACK, RDR, CRR, CCRR, NYRCR, NYACR, CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958) CCR-WA (No. 21007264), CSR-CA (No. 14420), REALTIME SYSTEMS ADMINISTRATOR JOB NO.: 543424	23	NATHAN CANDLER (remote appearance)
24		24	KIERA MaxWHINNIE (remote appearance)
25		25	--o0o--
2	2	4	4
1	EXAMINATION of	1	INDEX TO EXAMINATION
2	JACOB SHARONY, PhD, taken before	2	WITNESS: JACOB SHARONY, PhD
3	JESSICA R. WAACK, Registered Professional	3	
4	Reporter, Registered Merit Reporter,	4	EXAMINATION PAGE
5	Certified Realtime Reporter, Registered	5	BY MR. PRICE 7
6	Diplomate Reporter, California Certified	6	BY MR. SIKORSKI 75
7	Realtime Reporter, New Jersey Certified	7	
8	Court Reporter (License No. 30XI008238700);	8	INDEXED PAGES
9	Texas Certified Shorthand Reporter (License	9	PAGE
10	No. 11958); Washington State Certified	10	JACOB SHARONY, PhD, sworn 7
11	Court Reporter (License No. 21007264);	11	REPORTER CERTIFICATE 78
12	California Certified Shorthand Reporter	12	DECLARATION UNDER PENALTY OF PERJURY 80
13	(License No. 14420); New York Association	13	WITNESS ERRATA 81
14	Certified Reporter, New York Realtime Court	14	
15	Reporter and Notary Public of Washington,	15	INFORMATION REQUESTED
16	D.C. and the States of New York,	16	None
17	Pennsylvania, Delaware, Maryland and	17	
18	Virginia, at DLA Piper, LLP, 1251 Avenue of	18	WITNESS INSTRUCTED NOT TO ANSWER
19	the Americas, 27th Floor, New York, New	19	None
20	York, on Wednesday, July 10, 2024,	20	
21	commencing at 9:37 a.m. and concluding at	21	
22	12:43 p.m.	22	
23		23	
24		24	
25		25	

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5 1 INDEX TO EXHIBITS 2 WITNESS: JACOB SHARONY, PhD 3 Wednesday, July 10, 2024 4 MARKED DESCRIPTION PAGE 5 Exhibit 2015 U.S. Patent 5,704,345 50 6 7 ** The original exhibit was included in 8 the original transcript. ** 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	7 1 ***** 2 PROCEEDINGS 3 July 10, 2024, 9:37 a.m. 4 New York, New York 5 ***** 6 JACOB SHARONY, PhD, sworn 7 on oath and/or affirmed, called as a 8 witness herein, was examined and testified 9 as follows: 10 ***** 11 EXAMINATION 12 BY MR. PRICE: 13 Q. Good morning, Dr. Sharony. 14 A. Good morning. 15 Q. Is that how you pronounce your 16 name? 17 A. Yeah. You guys and you 18 pronounced it good. 19 Q. Good. 20 A. There's many versions, but these 21 are good. 22 Q. I'm glad. 23 Can you please state your full 24 name for the record. 25 A. Jacob Sharony.
6 1 INDEX TO PREVIOUSLY MARKED EXHIBITS 2 WITNESS: JACOB SHARONY, PhD 3 Wednesday, July 10, 2024 4 MARKED DESCRIPTION PAGE 5 Exhibit 1001 U.S. Patent 10,076,269 28 6 Exhibit 1004 Dr. Sharony's 11 7 declaration 8 Exhibit 1008 Not identified 51 9 Exhibit 1010 Stahmann reference 60 10 Exhibit 1012 Kocinski reference 73 11 12 --o0o-- 13 14 15 16 17 18 19 20 21 22 23 24 25	8 1 Q. And do you understand why you're 2 here today? 3 A. Yes. 4 Q. And why is that? 5 A. In reference to my declaration in 6 the March 21. 7 Q. Okay. You're referring to the 8 declaration you provided in Case 9 Number IPR2023-00565? 10 A. Yes. This is for the '269 11 patents, yes. 12 Q. U.S. Patent number 10,076,269? 13 A. Yes. 14 Q. And you're okay if we refer to 15 that as the 269 patent today? 16 A. Sure. 17 Q. Okay. Great. 18 THE STENOGRAPHER: Someone 19 joined. Should we get their 20 appearance? 21 MR. PRICE: Sure. C.J., is that 22 you? C.J., can you hear us? 23 MR. KELLER: Yes, I can. 24 MR. PRICE: Is anyone else on the 25 line?

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9 1 MS. MacWHINNIE: Yes. 2 MR. PRICE: Please just state 3 your names for the record, please. 4 (Indiscernible.) 5 THE STENOGRAPHER: I can't hear. 6 MR. PRICE: Sorry. One more 7 time. 8 (Indiscernible.) 9 THE STENOGRAPHER: Please repeat. 10 MR. CANDLER: Nathan Candler. 11 MR. PRICE: Nathan Candler. 12 MR. KELLER: Charles Keller. 13 MR. PRICE: And Kiera? 14 MS. MacWHINNIE: Kiera 15 MacWhinnie. 16 MR. PRICE: You guys can go on 17 mute. Thanks. 18 BY MR. PRICE: 19 Q. Dr. Sharony, have you ever been 20 deposed before? 21 A. Yes. 22 Q. Roughly how many times have you 23 been deposed? 24 A. 15, 20. 25 Q. Have you ever been deposed in an	11 1 Q. Is there any reason that you 2 can't give truthful testimony today? 3 A. No. 4 Q. I'm handing you a document that 5 has been marked Exhibit 1004 in this 6 proceeding. 7 MR. SIKORSKI: Thank you. 8 MR. PRICE: You're welcome. 9 (Whereupon, Previously Marked 10 Exhibit 1004 is identified for 11 the record.) 12 BY MR. PRICE: 13 Q. Dr. Sharony, do you recognize 14 this document? 15 A. Yes. 16 Q. What document did I just hand 17 you? 18 A. This is the declaration that I 19 submitted in March 23 regarding the '269 20 patent. 21 Q. Is that your signature on 22 page 98? 23 A. Yes. 24 Q. Was it your understanding that as 25 of March 21, 2023, you were supposed to
10 1 inter partes review proceeding? 2 A. Yes. 3 Q. Roughly how many of your 4 depositions have been in connection with an 5 inter partes review proceeding? 6 A. Around 10. 10 to 15. 7 Q. And the rest were district court 8 proceedings? 9 A. Yeah. 10 Q. Just basic ground rules. I'm 11 going to be asking you questions today. 12 I'm just going to need your truthful 13 testimony. 14 Is that going to be a problem? 15 A. Sure. 16 Q. It will be a problem -- 17 A. No. No, not a problem. 18 Q. Okay. And just for sake of 19 clarity of the record, please whenever I'm 20 asking a question, let me finish my 21 question, and I'll extend the same courtesy 22 to you; when you're answering, I'll try not 23 to cut you off or speak over you. 24 Does that sound good? 25 A. Sure. Of course.	12 1 include all of your opinions that you had 2 formed to date regarding the patentability 3 of the '269 patent? 4 MR. SIKORSKI: Objection to form. 5 THE WITNESS: Could you repeat, 6 please? 7 BY MR. PRICE: 8 Q. Was it your understanding that as 9 of March 21, 2023, you were supposed to 10 include all of your opinions that you had 11 formed to date regarding the patentability 12 of the '269 patent? 13 MR. SIKORSKI: Objection to form. 14 THE WITNESS: Yes. As of 15 March 21? 16 BY MR. PRICE: 17 Q. Yes, yes. 18 A. Yes. So my opinions are 19 basically -- were given in the document, 20 and I signed it by -- in March 21. 21 Are you asking if in the future 22 or anything, opinion may come up or... 23 Q. I'll get there. My question was: 24 Was it your understanding that as of the 25 date that you signed this document, that

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13 1 you were supposed to include all of the 2 opinions that you had formed to date 3 regarding the patentability of the '269 4 patent? 5 MR. SIKORSKI: Objection to form. 6 THE WITNESS: I included all the 7 opinions that I thought that are 8 necessary to submit this in conjunction 9 with the petition. 10 So the document, is it conclusive 11 of everything? I basically elected to 12 put what I thought would be at the time 13 the most -- you know, all the grounds 14 that I thought are basically necessary 15 to convey unpatentability of the '269. 16 BY MR. PRICE: 17 Q. Did you form any opinions about 18 the patentability that detracted from your 19 overall conclusions about the patentability 20 of the '269 patent that were not placed 21 into the -- 22 A. Could you repeat? It's a little 23 bit faster. If you can, repeat. 24 Q. I will endeavor to speak more 25 slowly.	15 1 independent claims, some of them are 2 dependent claims. So that's what I 3 included in the declaration. 4 Q. You don't have any anticipation 5 grounds in your declaration, do you? 6 A. It was obviousness, based on one 7 of the... 8 Q. And do you have an understanding 9 of whether an opinion on obviousness 10 requires that you consider both evidence 11 that supports and detracts from the 12 conclusion that a claim is obvious? 13 MR. SIKORSKI: Objection to form. 14 THE WITNESS: I'm sorry. Maybe I 15 don't understand your question. 16 So for the obviousness sake, 17 basically, as you said, it's not one -- 18 there was no anticipation. There was a 19 combination of two or more prior art 20 references that, in my opinion, read on 21 the claims that were basically 22 analyzed. 23 BY MR. PRICE: 24 Q. In forming your opinions, did you 25 find any evidence that detracted from your
14 1 A. Okay. 2 Q. Did you form any opinions about 3 the patentability of the '269 patent that 4 detracted from your overall conclusions 5 about the patentability of the '269 patent 6 that were not included in your declaration? 7 MR. SIKORSKI: Objection to form. 8 THE WITNESS: I included my 9 opinions that relates to the '269 based 10 on the prior art references that I 11 analyzed. 12 BY MR. PRICE: 13 Q. My question was: Were there any 14 opinions that you formed while writing your 15 declaration that detracted from your 16 overall conclusions? 17 MR. SIKORSKI: Objection. 18 THE WITNESS: What do you mean by 19 detracted from my overall conclusions? 20 BY MR. PRICE: 21 Q. Did you conclude that every claim 22 of the '269 patent is obvious over the 23 prior art you cited in your declaration? 24 A. So basically I formed opinion for 25 the asserted claims. So some of them are	16 1 opinions that you did not include in your 2 declaration? 3 MR. SIKORSKI: Object to form. 4 THE WITNESS: What do you mean by 5 "detracted"? 6 BY MR. PRICE: 7 Q. Were contrary to the opinions 8 that you formed. 9 MR. SIKORSKI: Same objection. 10 THE WITNESS: You are 11 suggesting -- I'm trying to understand. 12 That you suggested I came into opinions 13 that are contrary to what I basically 14 put in the document? 15 BY MR. PRICE: 16 Q. That's not my question, no. 17 My question is: As you were 18 preparing your declaration, did you come 19 across any evidence that would have 20 detracted or contradicted any of the 21 opinions that you wrote down in your 22 declaration? 23 A. I don't think so. 24 Q. Okay. Since preparing your 25 declaration, have you formed any new

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17 1 opinions about the patentability of the 2 '269 patent that are not included in your 3 declaration? 4 A. These the only document that I 5 submitted with regard to the patentability 6 to the '269. 7 Q. My question was whether or not 8 you have formed any new opinions that are 9 not included in your declaration since you 10 signed this document on March 21, 2023. 11 A. Listen, this was over a year ago, 12 and since then I really didn't work on the 13 case, so I think that... 14 Q. So is the answer no? 15 A. I think no. I haven't, you know, 16 considered new things. I was not asked to 17 further analyze the case or look for new 18 evidence or -- not new evidence was 19 provided to me; so... 20 Q. Are there any corrections to your 21 declaration that you would like to make at 22 this time? 23 A. No. 24 Q. Dr. Sharony, did you write this 25 declaration?	19 1 declaration that you did not write that 2 included legal principles; is that 3 accurate? 4 A. Yeah. In this case -- look, in 5 the past I wrote some declaration that I -- 6 I included also the legal. I'm not an 7 attorney, but I -- I do understand the 8 legal requirements as explained to me that 9 I knew before and also explained to me by 10 counsel. 11 Q. And those legal principles that 12 you say you understand, are those the ones 13 that are written out on pages 9 through 14 14 of your declaration? 15 A. Yes. Yep. 16 Q. And these are the principles that 17 you applied when forming your opinions 18 about the patentability of the '269 patent? 19 A. Yes. 20 Q. You see paragraph 27? 21 A. Yes. 22 Q. You see where you write that it 23 is important not to determine obviousness 24 using the benefit of hindsight derived from 25 the patent being considered?
18 1 A. Yes. It was a collaborative 2 effort. So usually before any work come on 3 a draft, we have several sessions and I 4 basically provide my opinions and thoughts 5 why, for example, there was a motivation to 6 combine A and B, reference A and B, or why 7 they read on certain claim elements. 8 After that, sometime certain 9 parts, like the legal parts and the like, 10 are written by counsel. I basically wrote, 11 you know, the background and some other 12 sections. And it was basically a 13 collaborative effort. 14 I adopted some of the -- after we 15 discussed everything, I adopted some of the 16 text that was written by counsel. And 17 sometime I basically, of course -- like in 18 every time it happens, you edit -- you 19 review and edit, correct, strike, explain 20 why this is not correct or why I think it 21 should be like this. 22 And at the end of the day when I 23 sign it, I stand behind what's written in 24 the declaration. 25 Q. You referred to a portion of your	20 1 A. Correct. 2 Q. How did you, in providing your 3 opinions, prevent yourself from using the 4 benefit of hindsight? 5 A. Right. So that's an important 6 rule that you shouldn't use hindsight. 7 So I went back to 2005, which is 8 the priority -- the effective priority date 9 of the '269. And in considering the prior 10 art references that are all in the very 11 same field of endeavor, you know, they are 12 all talking about the CPAP devices and 13 sensors and... 14 So there was -- my point is there 15 was nothing that required me to go and find 16 prior art just for the sake of reverse 17 engineering the claim because maybe 18 something was missing. 19 All the prior arts are really 20 disclosing many of the elements. And 21 wherever some elements were missing from a 22 given prior art, it was basically added 23 with a combination of another one. 24 So I made sure that there is a 25 motivation to combine, and the features --

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21 1 or the elements that are required appear 2 there. So it is not that I was kind -- I'm 3 trying to give you an example. 4 There was a feature -- let me 5 give you an example. Let's say there was 6 in the claim a feature of some -- a process 7 that is done, and the hindsight would go 8 and basically find such a feature in the 9 prior art history, but it could be like a 10 publication that has nothing to do with 11 the -- you know, that relates to apnea or 12 hypopnea or using CPAP device 13 It could be from completely 14 different field. Because different field 15 use -- are using different processes. But 16 the references are really from the very 17 same field. 18 So -- so there was a -- there is 19 a justification to modify or to combine 20 them to analyze. 21 So I didn't need to look for 22 something just to fill a gap in one of the 23 references 24 Q. Is it your understanding that so 25 long as two references are in the same	23 1 would cause for hindsight. 2 BY MR. PRICE: 3 Q. Are you telling me that you found 4 explicit support for every claim limitation 5 in the prior art references that you cited 6 in your declaration? 7 A. Well, I basically analyzed the 8 different claim elements one by one. 9 Q. And you found explicit support in 10 each of the -- in the prior art references 11 for each claim term in the '269 patent? 12 MR. SIKORSKI: Objection to form. 13 THE WITNESS: From my 14 recollection, yes. But if sometimes it 15 was not expressly defined or expressed, 16 sometime we use, you know, the common 17 sense of a POSITA that would 18 basically... 19 But I don't recall relying on the 20 knowledge of a POSITA or something for, 21 like, a missing element. Usually it 22 came from the combination of the 23 different references. 24 BY MR. PRICE: 25 Q. Did you provide your opinion from
22 1 field of endeavor, that the combination of 2 the references cannot be the product of 3 hindsight? 4 MR. SIKORSKI: Objection to form. 5 THE WITNESS: No. My 6 understanding is that you need to 7 basically -- several things have to 8 happen. 9 First, that there is a motivation 10 to combine them. A why: For example, 11 a POSITA at the time of the invention 12 would take one of the references and, 13 for example, that discuss sensors and 14 processing of that -- of these sensors. 15 And it was, let's say, in a CPAP 16 device, so it would make sense to 17 basically put them -- this sensors in 18 the other reference that maybe, for 19 example, missing one of the sensors. 20 Why? Because it's already done. 21 You know, the success or the 22 predictable results are known, because 23 it was kind of done already in the 24 previous reference. 25 So this is not something that	24 1 the point of view of a person of ordinary 2 skill in the art in 2005? 3 A. Yes. I have to. 4 Q. Were you a person of ordinary 5 skill in the art as of 2005? 6 A. Yeah. Exceedingly. 7 Q. Exceedingly? 8 A. Yeah. 9 Q. Are you a medical doctor? 10 A. I'm not a medical doctor. 11 Q. Have you ever diagnosed a patient 12 for any disease? 13 MR. SIKORSKI: Objection to form. 14 THE WITNESS: I'm not a medical 15 doctor, doctor. I'm not allowed to 16 deal with patients. 17 BY MR. PRICE: 18 Q. Have you ever treated a patient 19 for any disease? 20 A. No. I'm not a medical 21 practitioner. But this patent is about the 22 system. It's -- there is nothing about 23 medical here. 24 Q. Do you -- 25 A. Everything was known before.

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25 1 Q. Do you have any experience 2 diagnosing sleep disorders? 3 MR. SIKORSKI: Objection to 4 relevance. 5 THE WITNESS: I'm not a medical 6 professional. 7 BY MR. PRICE: 8 Q. Do you have any experience 9 treating sleep disorders? 10 MR. SIKORSKI: Same objection. 11 THE WITNESS: Same answer. I'm 12 not a medical professional. 13 BY MR. PRICE: 14 Q. Do you have any experience 15 operating a CPAP machine? 16 MR. SIKORSKI: Same objection. 17 THE WITNESS: I'm not a medical 18 practitioner; so... 19 BY MR. PRICE: 20 Q. Do you have any experience 21 designing a CPAP machine? 22 A. I haven't designed CPAP machine, 23 but this -- to answer your question, so 24 this patent is about a system and the 25 components. All the components, the	27 1 specification -- in my declaration, I 2 want to say. 3 So, like, for example, it says 4 calculating the index of severity. 5 There was no one algorithm that would 6 be devised by a medical practitioner 7 that says if there's a drop of such and 8 such and the number is such and such, 9 then you do such and such. 10 No. It's -- just basically talks 11 about the components, sensors. So I 12 personally didn't think that there is 13 something -- let's put it that way. 14 Hypothetically, if there was an 15 invention here, which I don't think 16 there is, it has to do with the system 17 of combining sensors and devices and 18 the like based on known medical thing. 19 Would the medical doctor be a 20 POSITA? No, I don't think so. That's 21 my opinion. Because there are lots of 22 components here that are communicate -- 23 it's data networks and data capture 24 devices and sensors. That's what I 25 think.
26 1 devices, the sensors, the algorithms are 2 repeatedly in the specification of the 3 '269, says are known to a skill -- skilled 4 person in the art or known. 5 So there is a designation by the 6 patentee that all these were known. Does 7 this mean that you cannot have invention? 8 No. Because sometime you take known 9 components, you combine them together and 10 you -- and you get, you know, an invention. 11 But so that's what I think is 12 the -- basically the -- what the invention 13 is about. It's a system from components 14 that are known, and they are -- it's -- in 15 a certain architecture, they are combined 16 in order to provide sensing and treatment, 17 which are also admittedly by the 18 specification, are [indiscernible]. 19 (Stenographer asks for 20 clarification.) 21 THE WITNESS: They are mentioned 22 by the specification that are -- these 23 diagnosis or treatment are known to 24 those skilled in the art. 25 And I included it also in my	28 1 BY MR. PRICE: 2 Q. Dr. Sharony, I'm going to hand 3 you a copy of the document that was marked 4 as Exhibit 1001 in this case. 5 (Whereupon, Previously Marked 6 Exhibit 1001 is identified for 7 the record.) 8 BY MR. PRICE: 9 Q. Do you recognize this document, 10 Dr. Sharony? 11 A. Yes. This is the patent at 12 issue. 13 Q. What is the title of the '269 14 patent? 15 A. "Devices and Method For Sleep 16 Disorder, Diagnosis and Treatment." 17 Q. And just to be clear, you told me 18 that you don't have any experience 19 diagnosing or treating sleep disorders, 20 correct? 21 A. First, since we did with the 22 title, there is not much of a diagnosis 23 here. It's basically sensing. Diagnosis, 24 it tells you basically see that there is a 25 drop in the oxygen saturation or the number

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29 1 of apnea or hypopnea exceeding a certain 2 number, and then you diagnose the person. 3 There is no, again, algorithm 4 here that describe this. It describes 5 sensing. 6 And now to your question. I'm 7 not a medical professional, and I didn't 8 diagnose any patient. I don't have any 9 patients. I made it -- 10 (Stenographer asks for 11 clarification.) 12 THE WITNESS: I made it clear 13 before. 14 BY MR. PRICE: 15 Q. Can you turn to paragraph 124 of 16 your declaration. 17 MR. SIKORSKI: You said 124? 18 MR. PRICE: Yes, 124. 19 THE WITNESS: Yes. 20 BY MR. PRICE: 21 Q. Do you believe you're qualified 22 to make expert statements about the effects 23 of pharmaceuticals on the treatment of 24 sleep disorders? 25 MR. SIKORSKI: Objection to form.	31 1 didn't talk about the drug or the 2 agent, but the other reference 3 disclosing using the chemical agent or 4 the drug in the same scenario with the 5 CPAP device. 6 So it was, again, obvious to 7 basically take the teaching of Edgar 8 and put it into Stahmann. 9 BY MR. PRICE: 10 Q. So let me understand a little bit 11 better what you did here. 12 You found two references that 13 disclose what you think was close to what 14 was in the claims, and you provided an 15 opinion it would have been obvious to 16 combine them, correct? 17 A. Let me be specific. One of the 18 references, the Stahmann, doesn't mention 19 the agent or the pharmaceutical delivery. 20 But -- and, again, it doesn't talk 21 specifically about what agent it is. 22 It's just that the other 23 reference Edgar is teaching using these 24 drug or agent. So my point is that you 25 have to understand what kind of a drug or
30 1 THE WITNESS: Again, this is from 2 the system point of view. So the 3 specification talks about a chemical, a 4 physical and chemical method in order 5 to effect -- to effect -- to fix the 6 issue of apnea or dyspnea, for example, 7 if the airways close. 8 So you basically push air there 9 or in certain thing you basically 10 provide a chemical agent, for example, 11 that would do something. I'm not 12 relating to the medical stuff here and 13 nothing is mentioned in the 14 specification. 15 They just say that you can do it 16 physically or, like, providing chemical 17 drug in order to effect the person 18 experiencing apnea. 19 So I found -- I combined a 20 reference that also talks about CPAP 21 devices that uses the chemical agent 22 or -- or the chemical agent and 23 basically combining it with the 24 other -- the other reference. 25 Because the other reference	32 1 how it -- no. I need basically to make 2 sure that what Edgar is teaching, that you 3 can basically also deliver the drug in the 4 CPAP machine. And it was added to the 5 other reference that didn't mention the 6 drug. 7 So what is the motivation to 8 combine? Again, they are dealing with the 9 same CPAP machine which was known for 10 treatment. And I don't need to deal with 11 how the drug affects, what kind of a drug, 12 what's the dosage. 13 It just says that you use -- 14 THE STENOGRAPHER: It just says 15 that you use... 16 THE WITNESS: -- the agent, 17 pharmaceutical agent in the CPAP 18 machine. 19 BY MR. PRICE: 20 Q. Is it fair to say that you were 21 not aware of interactions between CPAP 22 machines and pharmaceutical agents before 23 you read these two references? 24 A. Could you repeat, please? 25 Q. I said, is it fair to say that

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33 1 you were not aware of any interactions 2 between CPAP machines and pharmaceutical 3 agents before you read these two 4 references? 5 MR. SIKORSKI: Objection to form. 6 THE WITNESS: So basically you 7 are asking if it was new to me that in 8 the CPAP machine, it is -- if you can 9 also deliver a drug, a pharmaceutical 10 drug? 11 I don't -- I don't recall. But I 12 basically had to -- my analysis was to 13 basically find the references from the 14 same field, see that -- if there is a 15 motivation to combine them and make 16 sure that when I combine them, it 17 satisfy the element. 18 BY MR. PRICE: 19 Q. Okay. But that didn't require 20 any of your expert or background as a 21 POSITA, did it? 22 MR. SIKORSKI: Objection to form. 23 THE WITNESS: Why not? So we 24 have a system that is called a CPAP 25 that's, let's say, does certain	35 1 BY MR. PRICE: 2 Q. That -- what a CPAP machine does 3 and that you can deliver a drug at the same 4 time? 5 A. Not that I -- 6 MR. SIKORSKI: Objection to form. 7 THE WITNESS: Not that I -- from 8 every patent that I read, you can learn 9 something. But I didn't -- it was 10 known to me that you can -- about CPAP 11 machine and people with sleep apnea, 12 you know. 13 It's not that they -- I never 14 heard about existence of such a device 15 or that you can basically provide -- I 16 think it is something that is known. 17 You know, people suffer from it. 18 BY MR. PRICE: 19 Q. Your general knowledge of CPAP 20 machines, did that extend back to 2005? 21 A. I don't recall. So in 2005, I 22 don't recall that I dealt or read -- you 23 ask about the general knowledge about CPAP 24 devices. I don't recall. 25 But my analysis is I'm sitting
34 1 function. 2 For example, it basically put 3 constant pressure and airflow 4 through -- through the pipe that goes 5 to the person that is suffering from 6 apnea. 7 And then there is another 8 reference that also dealing with, you 9 know, breathing problem. And it 10 mentions that you can deliver a drug, a 11 chemical drug. 12 So, naturally, if you combine 13 them, you can take that function of 14 delivering the drug into the other 15 machine or Stahmann in order to 16 basically show that this claim elements 17 exist. 18 Again, this is basically based on 19 prior art before 2005. 20 BY MR. PRICE: 21 Q. Is it fair that you learned all 22 of these things from reading those two 23 references? 24 MR. SIKORSKI: Objection to form. 25 THE WITNESS: Learn what?	36 1 here in 2005, and basically I see two 2 references that are talking about a device 3 that is used to treat or mitigate a 4 breathing problem. 5 And I see that they are talking 6 about the same -- same device, which was 7 known and the specifications say that. And 8 one of them uses chemical drug delivered 9 via this device. 10 So my analysis says that, you 11 know, that it's -- it's obvious, because 12 it's predictable and more successful in the 13 other reference. So it should also be 14 successful in this reference, because it's 15 the same machine. 16 It is -- from a system point of 17 view, what we have here? We have a blower 18 that is the -- create pressure and pushes 19 air -- it's an elementary physics. You 20 don't need to know that it's called CPAP 21 or -- you know, from an engineering point 22 of view, I have a machine that create air 23 by basically through a motor, and the other 24 reference also suggest that you can deliver 25 a drug with it meaning not only atmospheric

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37 1 air. 2 So it was obvious to basically 3 take this component and put it in the 4 new -- new -- in the other reference. 5 Q. Dr. Sharony, are you familiar 6 with the phrase that you don't know what 7 you don't know? 8 A. Of course. Yeah, I think every 9 one of us knows that some people don't know 10 what they don't know. So the phrase is -- 11 is known. 12 Q. Dr. Sharony, are you familiar 13 with the concept of claim construction? 14 A. With? 15 Q. The concept of claim 16 construction. 17 A. Yes. 18 Q. What is your understanding of how 19 claim construction is used in the context 20 of a PTAB proceeding? 21 A. So certain claim elements has to 22 be construed in the -- this is basically -- 23 it's a matter of law. So you can provide 24 your opinions, but expert or... 25 But the Court decides what does	39 1 understood, there is no need to construct. 2 Obviously we don't construct each and every 3 phrase in a claim. 4 We basically provide construction 5 on certain claims. Sometime they are 6 disputed or -- and also sometime something 7 is clear to you and something is clear to 8 me, but we mean different things. So 9 that's why we need to go look through this 10 process. 11 So I said that I don't believe 12 that any claim term mean the form of 13 construction for -- for the purpose of 14 evaluating the claim in view of the prior 15 art. 16 So I haven't used specific claim 17 construction -- basically provided the 18 broadest understood of the -- of the phrase 19 in the claim. 20 Q. You applied the broadest 21 reasonable construction of the terms, in 22 your opinion? 23 MR. SIKORSKI: Objection. Form. 24 THE WITNESS: So my understanding 25 from counsel, that this was, like,
38 1 it mean and why it needs to decide what 2 does it mean. And this is based on certain 3 evidence like in the specification or the 4 prosecution history. 5 Because some construction that 6 takes into account concession that were 7 made in the prosecution history, it could 8 change the scope of the claim, make it 9 narrower, make it broader and the like; 10 so... 11 So basically the claim 12 construction is basically to sort of help 13 also define the scope of the claim based on 14 the received that exists. 15 Q. And did you provide any opinions 16 on the proper construction for any claims 17 in the '269 patent or any -- sorry, or any 18 terms in the '269 patent? 19 A. Not in this declaration. 20 Q. And why is that? 21 A. Huh? 22 Q. Why is that? 23 A. So I wrote here in the claim 24 construction that -- so usually they 25 basically -- if the term is known or	40 1 previously the broad reasonable 2 interpretation, but now the PTAB or the 3 board is basically adopting the 4 district court construction. 5 So if the district court 6 basically provide any claim 7 construction, it would be adopted by 8 the board. 9 BY MR. PRICE: 10 Q. That's your understanding? 11 A. Yes. 12 Q. And when you said that you 13 provided the broadest understanding of the 14 phrase of the claim, was that a 15 misstatement, or was that what you did in 16 your declaration? 17 MR. SIKORSKI: Objection. Form. 18 Asked and answered. 19 THE WITNESS: Well, I haven't 20 dealt with specific construction, claim 21 construction in the... 22 I basically -- for the purpose of 23 evaluating the prior art references, I 24 didn't need to construe any claim 25 elements. I just basically analyze it

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41 1 from the eyes of what a POSITA would 2 understand at that time. 3 BY MR. PRICE: 4 Q. My question was about one of your 5 previous answers. So you said, "So I 6 haven't used specific claim construction. 7 I basically provided the broadest 8 understanding of the phrase in the claim." 9 Is that what you did, or was that 10 not what you did in your declaration? 11 A. I didn't limit any claim term. I 12 basically, in light of the specification, 13 what I understood to be the meaning of that 14 claim term. 15 Q. The broadest understanding of 16 that claim term or some other understanding 17 of the claim term? 18 MR. SIKORSKI: Objection to form. 19 Asked and answered. 20 THE WITNESS: Let me just... 21 So reading the specification and 22 the prosecution history, I basically 23 applied the plain and ordinary meaning 24 of that claim phrase. 25 And that's what the Court also	43 1 A. Yes. 2 Q. You see where Claim 1 recites, 3 "An air flow" -- I'm sorry -- "a modular 4 transceiver adapted for receiving and 5 transmitting data to a remote location"? 6 A. This is at the very end? 7 Q. Yes. 8 A. Yeah, okay. So what's the 9 question? A modular transceiver adapted 10 for receiving and transmitting sleep 11 disorder signal for a severity to a remote 12 location, yes. 13 Q. When forming your opinions about 14 the patentability of the '269 patent, did 15 you come to an understanding of the meaning 16 of the term "remote location"? 17 A. Remote location is a location 18 that is not local to the system. So 19 basically we are talking about, like, if we 20 look at the preamble, it says a PAP sleep 21 disorder treatment system comprising. 22 So the system is comprised from 23 local devices, will the patients here -- 24 it's a PAP device. There are sensors that 25 are basically -- sense there is some signal
42 1 does. 2 BY MR. PRICE: 3 Q. Okay. And so when you said 4 earlier that you provided the broadest 5 understanding of each phrase in the claim, 6 that was a misstatement? 7 A. I explained, this was the old 8 method before the PTAB or the board adopted 9 the -- the Court -- you know, what's the 10 district court is doing. 11 So the district court has the 12 plain and ordinary meaning based on the 13 intrinsic evidence of the specification, 14 prosecution history, et cetera. 15 And the BRI was old. So I did 16 the plain and ordinary meaning. 17 Q. Is it fair to say that in forming 18 your opinions on the patentability of the 19 '269 patent, that you came to an 20 understanding of each term claimed in the 21 '269 patent? 22 A. Yeah. The plain and ordinary 23 meaning of these claim terms. 24 Q. Can you please turn to Claim 1 of 25 the '269 patent.	44 1 processing there, an other thing like a 2 mask and the like. 3 And then you have -- so this is 4 within the locale of the patients. And 5 then there is also a transceiver, 6 transmit/receive that basically end it to a 7 remote location. 8 So usually we transmit -- it's 9 bidirectional, transmit or receive and 10 sending it to another destination that 11 could be another city or a different flow 12 in the building. 13 So it refers -- it's not within 14 the area where the CPAP is. Like a 15 caregiver in a hospital. 16 Q. Do you see where Claim 1 recites 17 an airflow sensor internal to the PAP 18 device? 19 A. [Reading sotto voce]. Yes. 20 Q. In forming your opinions about 21 the patentability of the '269 patent, did 22 you come to an understanding of the meaning 23 of this term? 24 A. Which term? 25 Q. "An airflow sensor internal to

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45 1 the PAP device." 2 A. Yes. 3 Q. And what was your understanding 4 of that claim term? 5 A. So it's an airflow sensor. It 6 measure airflow. And it is internal or 7 inside the PAP device, the machine, yes. 8 Q. Inside an enclosure of the PAP 9 device? 10 MR. SIKORSKI: Objection to form. 11 THE WITNESS: It says internal. 12 So when you read this claim term, it's 13 internal to the device, internal, the 14 plain and ordinary meaning is basically 15 inside. 16 BY MR. PRICE: 17 Q. So Claim 1 says that the PAP 18 device has an enclosure, right? 19 A. It does. 20 Q. Is it your understanding that 21 "internal" means that the airflow sensor is 22 inside the enclosure? 23 A. Yes. It says internal. There is 24 an enclosure. It's internal to the device. 25 So this is the plain and ordinary.	47 1 be erased once we switch off the device, 2 because these are usually temporary 3 parameters that are used and are not kept. 4 So a good example, an example 5 sometimes your computer run on low memory. 6 It says low memory. And you have the 7 option to recycle. So it basically cleans 8 all the memory that you are not using or 9 you used before. 10 But, again, like the operating 11 system and other thing would be in a -- in 12 nonvolatile memory, that basically would 13 survive the power shutdown. And you can 14 use them again when you switch on the 15 device. 16 MR. PRICE: We've been going 17 about an hour. Is now a good time for 18 a break? 19 MR. SIKORSKI: Let's do it. 20 THE STENOGRAPHER: We're off the 21 record. 22 (Whereupon, a recess was taken at 23 10:36 a.m.) 24 BY MR. PRICE: 25 Q. Welcome back, Dr. Sharony.
46 1 Q. Would you turn to Claim 5 of the 2 '269 patent, please? 3 A. 5, yes. 4 Q. Do you see where Claim 5 recites 5 nonvolatile memory? 6 A. Yes. 7 Q. When forming your opinions about 8 the patentability of the '269 patent, did 9 you come to an understanding of the meaning 10 of the term "nonvolatile memory"? 11 A. Yeah, this is a term in the art 12 basically -- in general, two categories; 13 one that is volatile, meaning when you shut 14 off the machine, all what stores in memory, 15 you know, will disappear, would be erased. 16 But, of course, there are certain 17 things that you would like to keep, like, 18 for example, program, applications, 19 sometime parameters of device operation. 20 So you want the next time you 21 switch on the device, that you will use the 22 same apps, same programs. So you put it in 23 a nonvolatile memory. Like in a flash 24 memory compared to RAM that is used for -- 25 RAM would be, you know, all the data would	48 1 A. Hi. 2 Q. Did you have any conversations 3 with anybody about the substance of your 4 testimony during the break? 5 A. No. 6 Q. Do you remember earlier when you 7 told me that you hadn't done any work on 8 this case since you submitted your 9 declaration? 10 A. So I submitted it sometime in 11 March, March 21. The only thing since 12 then, I think there was -- not within the 13 IPR work. I think it was something with 14 district court. I think there was 15 something in May or June of '23, a year 16 ago. But, yeah, nothing else. 17 Q. Did you do anything to prepare 18 for your deposition today? 19 A. Yes. I read my declaration. I 20 read the patent, the prosecution history, 21 the exhibits, the -- review them. It has 22 been more than a year, so I had to refresh 23 my memory, yeah. 24 Q. Did you read patent owner's 25 preliminary response that was submitted in

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49 1 this proceeding? 2 A. Yeah. This was sometime in June. 3 I think I review it -- I reviewed also that 4 one. It was in June or something of '23, 5 about. I think it was in June '23 more or 6 less. 7 Q. So aside from the declaration, 8 the patent, the prosecution history, the 9 exhibits you submitted with your report and 10 patent owner's preliminary response, were 11 there any other documents that you reviewed 12 in preparation for your testimony today? 13 A. Not that I recall. I think this 14 were the documents. 15 Q. Did you review the board's 16 institution decision in this case? 17 A. Yes. 18 Q. Aside from the declaration, the 19 patent, the prosecution history, the 20 exhibits you submitted with your report, 21 patent owner's preliminary response and the 22 board's institution decision in this case, 23 did you review any other documents in 24 preparation for your testimony today? 25 A. I think that's -- I forgot to	51 1 your declaration? 2 A. Well, it was -- it was mentioned 3 in Farrell that cited it. So -- so by 4 providing Farrell as an exhibit that refer 5 to it saying that, that's basically -- I 6 don't know why it's not cited. 7 Where is -- do you have the 8 reference of Farrell? 9 Q. I do. I can hand that to you. 10 I'm handing you a document that 11 has previously been marked Exhibit 1008 in 12 this proceeding. 13 (Whereupon, Previously Marked 14 Exhibit 1008 is identified for 15 the record.) 16 THE WITNESS: Yeah, I do not know 17 why it was not cited. But basically it 18 teaches that the airflow sensor could 19 be -- you know, it's a matter of 20 implementation. That what we engineers 21 really do. 22 So different implementation. So 23 sometime it is in one part of a system 24 and one time in a different part. For 25 good reasons. Sometimes it's
50 1 mention the institution order. I think 2 that would be, yeah. 3 Q. Dr. Sharony, I'm going to hand 4 you a document that was cited in your 5 declaration but was not provided as an 6 exhibit, and I'm going to have a few 7 questions about it. 8 A. You said it was cited in my 9 declaration? 10 Q. Yes. It was cited in 11 paragraph 86 of your declaration. 12 (Whereupon, Exhibit 2015 is 13 marked for identification.) 14 THE WITNESS: Yes, I see that. 15 Yeah. 16 BY MR. PRICE: 17 Q. Do you recognize this document? 18 A. I haven't -- I don't recall 19 seeing it. 20 (Pause for reading/reviewing.) 21 A. I don't recall seeing it. What 22 is your question? 23 Q. That was my question. Do you 24 have any understanding of why this document 25 was not cited and provided as an exhibit in	52 1 convenience. Sometimes it's better 2 power management. So this basically 3 kind of teaches -- remember we talk 4 about the air flow sensor internal to 5 the PAP device. 6 So this basically provides 7 explanation that sometime it's 8 convenient not to put it near the mask, 9 but it could be within the PAP device. 10 BY MR. PRICE: 11 Q. Does Berthon-Jones, that 12 reference that I just gave you, disclose it 13 being within the PAP device? 14 A. Sorry? 15 Q. Does that reference that I just 16 gave you disclose an airflow sensor 17 internal to the PAP device? 18 MR. SIKORSKI: Objection to form. 19 THE WITNESS: So in -- on 20 Column 8, 3136, it says it may not be 21 convenient to mount the flow, 22 transducer, which is the flow sensor -- 23 the air flow sensor, at or near the 24 mask. And an alternative arrangement 25 would be mounted near the pressure

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53 1 generator. 2 So it's same -- same scenario 3 that we have in the CPAP that we have 4 the generator generating the air 5 pressure pushing the air through the 6 hose, it arrives to the mask. 7 And you can put the sensor in 8 different location, like near the mask 9 or near the generator as long as you 10 take into account what kind of flow is 11 or leakage through the mask. So it's a 12 matter of implementation. 13 BY MR. PRICE: 14 Q. Can you turn to Figure 3 of 15 Berthon-Jones. 16 A. Yes. 17 Q. Which side of the blower is the 18 airflow sensor located? 19 A. Which side? 20 Q. Yeah. On the internal or 21 external side of the blower? 22 A. Just one second. 23 Okay. So I need to see this 24 notations. [Speaking sotto voce]. 25 So the mask is 30 and the	55 1 Q. Yes. 2 A. Okay. "The pressure occurring at 3 pressure generator 34 outlet is measured by 4 a pressure transducer 70. The flow through 5 turbine 32 is measured with flow sensor 72 6 at the output of turbine 34." Yes. 7 Q. So now do you know where the flow 8 sensor and pressure transducer are from -- 9 A. Yeah. The 72 is the sensor, and 10 the turbine is 34, and the mask is 30. 11 Q. So does Figure 3 show these 12 sensors and transducers between the 13 pressure generator and the mask connected 14 to the tubing? 15 MR. SIKORSKI: Objection to form. 16 THE WITNESS: No. This is a blow 17 diagram. We don't know how the 18 enclosure goes. You can basically 19 enclose 34 and 72 together. 20 BY MR. PRICE: 21 Q. Does Berthon-Jones say that? 22 A. This is a blow diagram. It says 23 it in words and show in Figure 3 how 24 they're all related. Because it says in 25 3136 -- yeah, that's what I just read. The
54 1 generator is 34 and the transducer or the 2 airflow sensor is 44 at [indiscernible]. 3 THE STENOGRAPHER: Excuse me. At 4 or near the mask? 5 THE WITNESS: I believe it -- it 6 may -- I'm looking at Column 8, 7 line 31. It says it may not be 8 convenient to mount the flow transducer 9 44 at or near the mask 30 -- I don't 10 know if it's a typo here. There is 42 11 there. No, no. 42 is something else. 12 It doesn't show the 44, the air 13 flow transducer. But it says later 14 that you can put it near the generator. 15 So, again, what is your question? 16 BY MR. PRICE: 17 Q. Can you continue reading the next 18 paragraph in Column 8? That might answer 19 your question about where the pressure 20 transducer ends flow. 21 A. "In alternative arrangement where 22 the flow and pressure transducer are 23 mounted at or near the air pressure 24 generator, the embodiment being to bind -- 25 34 is shown in Figure 3." Continue?	56 1 flow transducer, it may not be convenient 2 to mount the airflow transducer 44 at or 3 near the mask 30. 4 So it is -- it is closer to the 5 turbine, but this is just a blow diagram. 6 The enclosure can just basically cover it. 7 I mean, I don't agree that 8 Figure 3 suggest that the sensor, the 9 airflow sensor is not inside the CPAP 10 device. 34 is just a generator, but we 11 don't know where the enclosure goes. 12 The CPAP device is a generator 13 and some other stuff there. And the words 14 basically teach that it's not near the 15 mask. So there are several places to put 16 it near the mask, along the pipe -- as long 17 as you take care of, you know, any losses 18 or leakage in the -- or just when it comes 19 outside the -- outside the generator. 20 So think about like a hose that 21 is basically affixed to the output of the 22 generator. So the enclosure includes -- 23 the enclosure or the CPAP device includes 24 the generator that's -- transducer -- the 25 airflow transducer is near that generator.

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57 1 This tells me that it's within the CPAP -- 2 internal to the CPAP device. 3 Q. You don't recall reviewing this 4 when preparing your declaration, correct? 5 A. It has been a long time. Over a 6 year. So I don't recall if I -- I don't 7 recall. 8 Q. Does Berthon-Jones affirmatively 9 say that the sensors are within the 10 enclosure? 11 MR. SIKORSKI: Objection to form. 12 Asked and answered. 13 THE WITNESS: Well, it says it 14 may not be convenient to mount the 15 airflow transducer 44, transducer or 16 sensor at, at or near the mask. Okay? 17 So where it could be? It could be 18 either on the pipe or near -- there are 19 not many places to put it. 20 You know, if it's only on the 21 mask, usually it would be within the -- 22 the enclosure of the CPAP device. 23 BY MR. PRICE: 24 Q. What is the basis for your 25 statement that it would usually be within	59 1 put it within the pipe because the pipe is 2 replaceable. Sometime... 3 So this, in my view, suggests 4 that this is within the CPAP device. It's 5 closer to the turbine, so the turbine is, 6 like, an outlet, an output where you sort 7 of screw in or attach the hose, the tubing. 8 And this suggests that it's in the CPAP 9 device. 10 It's a matter of engineering. 11 You don't put the sensor in a tubing that 12 is flexible and it can crack, can break. 13 It's replaceable. It is more secure to put 14 it inside the mask, inside the device or 15 inside the generator. 16 Q. Can you turn to paragraph 123 of 17 your declaration, please. 18 A. Yes. 19 Q. Do you agree that Stahmann does 20 not disclose adjusting the level of drug 21 delivery based on detected sleep events or 22 what Stahmann calls characteristics of such 23 events like AHI? 24 MR. SIKORSKI: Can you repeat the 25 question, please?
58 1 the enclosure of the device? 2 A. If it's not near the mask, where 3 it could be? 4 Q. In Figure 3, does it show the 5 flow sensor connected to the pipe? 6 A. Yeah. Because it's -- it's -- 7 says something about 72. What was 72? 8 Yeah, so that's an extra part 9 that you wanted me to read. It says the 10 pressure at the generator 34 outlet is 11 measured by the pressure transducer 70, the 12 flow through turbine 32 -- tubing, I'm 13 sorry, 32, is measured with the flow sensor 14 of 72, the adjacent back to 34, provided at 15 the output of the turbine 34. 16 So this says that it is within 17 the CPAP device, because -- I said, there 18 are three places to put it: in the mask, in 19 the tubing or in the CPAP device. Why 20 would you put it in the tubing if this is 21 something that, you know, may be -- you 22 want to secure it? 23 I wouldn't put a sensor -- it's 24 like a tubing or a pipe is prone to -- you 25 know, to break -- breakage or -- you don't	60 1 BY MR. PRICE: 2 Q. I said, do you agree that 3 Stahmann does not disclose expressly 4 adjusting the level of drug delivery based 5 on detected sleep events and/or what 6 Stahmann calls characteristics of such 7 events like AHI? 8 MR. SIKORSKI: Objection. Form. 9 THE WITNESS: Can you please give 10 me Stahmann? 11 BY MR. PRICE: 12 Q. I'm handing you a document that 13 has been labeled Exhibit 1010 in this 14 proceeding. 15 MR. SIKORSKI: Thank you. 16 (Whereupon, Previously Marked 17 Exhibit 1010 is identified for 18 the record.) 19 MR. SIKORSKI: This is the 20 reference that spans a couple 21 different... 22 MR. PRICE: Yeah, it was provided 23 as Exhibit 1010 part 1, 2 and 3. I 24 think all parts are there. 25 MR. SIKORSKI: I just note that

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61 1 my version seems to be incomplete. 2 THE WITNESS: Yeah, the 3 figures -- where are the figures? 4 MR. PRICE: I have more of it. 5 Hold on. Yep, here are the rest. 6 Part 2 and part 3. 7 (Pause for reading/reviewing.) 8 MR. SIKORSKI: The Stahmann 9 reference is 590 pages long. What 10 again is the question? 11 MR. PRICE: So I referred the 12 witness to paragraph 123. 13 MR. SIKORSKI: In his 14 declaration? 15 MR. PRICE: In his declaration. 16 He cited far fewer than the number of 17 pages. 18 MR. SIKORSKI: I understand. I'm 19 asking what's the question. You're 20 saying -- you're asking does a 590-page 21 document not disclose something? But 22 please repeat the question so I know 23 what's on the table. 24 BY MR. PRICE: 25 Q. Do you agree that Stahmann does	63 1 So looking at Figure 53, so we 2 have a feedback unit there that is 3 communicated to the CPAP device, the 5340. 4 And the -- it does mention that it is -- 5 the drug therapy also may be used. So why 6 you say it's not -- because... 7 Q. Do you need me to -- my question 8 was not about whether Stahmann discloses 9 drug delivery. 10 Do you need me to repeat the 11 question for a fifth time? 12 A. In response to the breathing 13 problem. 14 Q. My question: Do you agree that 15 Stahmann does not expressly disclose 16 adjusting the level of drug delivery based 17 on detected sleep events and/or what 18 Stahmann calls characteristics of such 19 events like AHI? And I can provide you 20 some more context for my question if it 21 will help. 22 Following your citation to 23 Stahmann -- 24 A. Yeah. 25 Q. -- you say, "This introduction
62 1 not expressly disclose adjusting the level 2 of drug delivery based on detected sleep 3 events and/or what Stahmann calls 4 characteristics of such events like AHI? 5 (Pause for reading/reviewing.) 6 A. You said that Stahmann doesn't 7 expressly suggest that drug delivery can be 8 used? 9 Q. No. I asked you a question. I 10 didn't state anything myself. I asked the 11 question several times. Do you need me to 12 repeat it again? 13 A. Please. 14 Q. Do you agree that Stahmann does 15 not disclose expressly adjusting the level 16 of drug delivery based on detected sleep 17 events and/or what Stahmann calls 18 characteristics of such events like AHI? 19 A. So we said, and I quoted in 20 paragraph 123, it says "Drug therapy may 21 also be used to treat disorder breathing. 22 Drugs may be delivered to the patient 23 through one or more of the automatically 24 controlled drug delivery devices, drug 25 pump, controllable nebulizer, et cetera."	64 1 would have motivated POSITA to adjust drug 2 therapy using the embodiments of Figures 53 3 and 54, for example, based on the detected 4 sleep events and/or what Stahmann calls 5 characteristics of such events like AHI." 6 My question is: Are you finding 7 an expressed disclosure of this limitation 8 in Stahmann, or are you relying on an 9 obviousness argument that a POSITA would 10 have modified Stahmann to adjust drug 11 therapy using the embodiments of Figures 53 12 and 54? 13 A. So when we continue, it says 14 Stahmann does not detail the drug therapy, 15 what it is. But Edgar, the other 16 reference, basically teaches providing 17 pharmaceutical and -- compound or another 18 agent to a patient via the CPAP device. 19 So Stahmann -- Stahmann just 20 said, you know, it's not expressed very 21 expressly. It just said drug therapy may 22 also be used to treat disorder breathing. 23 It doesn't use the word "adjust." It just 24 said drugs may be delivered to the patient. 25 But it does mention the drug

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65 1 therapy can be delivered. It doesn't 2 expressly adjust it based on the breathing 3 situation or problems. But it does -- it's 4 not expressly, but it does mention the drug 5 therapy, which basically linked it to 6 Edgar. 7 Because Edgar is more specific 8 about the agents that are basically 9 delivered. So to sum it up, there is no 10 expressed teaching of adjusting just said 11 delivery. Adjusting is changing it as the 12 condition of the patients are changing. 13 Q. And do you find that aspect of 14 the claims expressly disclosed in Edgar? 15 MR. SIKORSKI: Objection to form. 16 THE WITNESS: So Edgar basically 17 is more specific about the compounds 18 that are delivered through the CPAP 19 device. So it basically -- both 20 references refer to drug therapy to 21 treat the disorder of breathing. Edgar 22 also -- through the CPAP device. 23 Edgar also pointed in that 24 direction. So a POSITA would find a 25 motivation to basically use both	67 1 There's no point to give -- to give you 2 medicine if you are healthy. But I'm not a 3 doctor, medical doctor. 4 Q. Can we turn back to the 5 Berthon-Jones reference for a moment. 6 A. Yeah. Okay. 7 Q. You see in Figure 3, that there's 8 a pressure transducer and a flow sensor? 9 A. Yeah. 10 Q. What do you understand to be the 11 differences between those two elements of 12 the Berthon-Jones system? 13 MR. SIKORSKI: Objection to form. 14 THE WITNESS: So these are 15 different sensors. One is measuring 16 pressure, and one -- what does it mean 17 "measure pressure"? 18 There are certain sensors. One 19 of them could be based on piezoelectric 20 effect. So when you deform or cause a 21 mechanical pressure or bend of the 22 material, it would meet electric 23 current. 24 So this is used in order to 25 determine the -- a pressure. And the
66 1 references to adjust the drug therapy. 2 I think you are basically asking 3 about the adjusting. The adjusting 4 meaning it's a kind of dynamic process 5 based on the breathing disorder, you 6 give more, you give less, you don't 7 give. 8 But both references describe a 9 CPAP device that supports drug therapy. 10 Edgar is more specific about some of 11 the compounds. 12 So it would make sense to tailor 13 the administering of the drug delivery 14 based on the condition. I would give 15 more if the guy doesn't breathe at all 16 or maybe I would give less if it's 17 partially blocked or not give at all 18 after some time when -- you know, when 19 the airway is open. It makes sense to 20 adjust. 21 BY MR. PRICE: 22 Q. You're not a doctor, though, and 23 you've never prescribed drugs, correct? 24 A. I'm not a doctor. I'm just 25 saying it's a -- it's common sense.	68 1 air flow, it is sort of basically what 2 volume of air is sent per unit time. 3 And this is basically -- can be 4 determined in several ways. There are 5 several sensors. One of them is the 6 airflow can have a thermoelectric 7 effect, because as air moves, it can 8 heat an element that can basically 9 measure by electric current. 10 Or you measure the pressure 11 within that sensors to point you take 12 the difference between the pressures. 13 And the pressures and the airflow are 14 related to each other. 15 BY MR. PRICE: 16 Q. Do you have any understanding of 17 why Berthon-Jones's CPAP system includes a 18 pressure transducer and a flow sensor? 19 MR. SIKORSKI: Objection to form. 20 THE WITNESS: Yeah. The pressure 21 is basically to make sure that the 22 generator of the CPAP, the 34 working 23 and generating a required pressure. 24 You have to cause an air pressure 25 in order to push the air into the

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69 1 airways of the -- of the patient or the 2 person that has breathing problem. 3 And the airflow is basically 4 measured -- the flow of air into the 5 patient. So the airflow is also -- you 6 measure it, for example -- if the 7 person does not adhere to the 8 treatment, it doesn't want to sleep 9 with a mask, so in that case, there 10 would be no airflow. 11 So you need to basically adjust 12 the airflow in order to basically treat 13 the person. 14 BY MR. PRICE: 15 Q. If the person wasn't wearing the 16 mask but the CPAP machine was operating, 17 would the flow sensor sense airflow? 18 MR. SIKORSKI: Objection to form. 19 THE WITNESS: It depends on the 20 implementation. If, for example, there 21 is no -- so when there is a blockage in 22 the airways, when you put the mask on, 23 the generator has to open it. So you 24 have to apply a certain pressure to 25 open the airways.	71 1 by the -- by the generator. 2 And the airflow is basically the 3 amount of air that is pushed into the 4 person -- person airways. So but usually 5 they are -- both exist in the CPAP 6 machines. 7 MR. PRICE: I see that lunch has 8 been delivered. Is now a good time for 9 a break? 10 MR. SIKORSKI: Sounds good. 11 THE STENOGRAPHER: Off the 12 record. 13 (Whereupon, a break for lunch was 14 taken from 11:45 a.m. to 15 12:20 p.m.) 16 BY MR. PRICE: 17 Q. Welcome back, Dr. Sharony. 18 A. Hi. 19 Q. Did you have any discussions with 20 anybody about the substance of your 21 testimony during the break? 22 A. No. 23 Q. Okay. Can I please have you turn 24 to paragraph 147 of your declaration. 25 A. Yes.
70 1 If the mask is not connected, the 2 generator may even stop to work, 3 because it doesn't experience a 4 blockage. 5 When you have a blockage and you 6 push air, there is a pressure, a 7 counterpressure. It's like you push 8 something into my mouth, but it's 9 blocked. So there is a pressure 10 buildup in the tubing. 11 If I now recovered and I don't 12 have any blockage, so these machines 13 either stop pushing air or reduce the 14 amount of pressure that is generated. 15 So not wearing the mask is sort of 16 equivalent of to -- because it's open. 17 Equivalent to a person that doesn't 18 experience the apnea. 19 BY MR. PRICE: 20 Q. So is it fair to say that in 21 certain CPAP machines, the airflow sensor 22 and pressure transducer are used for 23 different purposes? 24 A. Well, the pressure is basically 25 for measuring the pressure that is caused	72 1 Q. I'm sorry. Let's turn to 2 paragraph 149. 3 A. 149, okay. 4 Q. Do you see were you write that 5 Kocinski displays patient-specific data as 6 shown in Figure 10 -- 7 A. Yeah. 8 Q. -- but that it does not 9 explicitly display the calculated symptom 10 data or index and/or index or usage data? 11 A. Yeah. 12 Q. Is that still your testimony. 13 (Pause for reading/reviewing.) 14 A. It doesn't show the index. But 15 the usage data is shown. Do you have 16 Kocinski? 17 Q. Dr. Sharony, I'm handing you a 18 document that was previously marked 19 Exhibit 1006 in this proceeding. 20 A. Thank you. 21 MR. SIKORSKI: Thank you. 22 MR. PRICE: That's not it. 23 MR. SIKORSKI: It was Schmidt. 24 MR. PRICE: Here you go. I'm 25 handing you a document that was

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73 1 previously marked Exhibit 1012 in this 2 proceeding. 3 MR. SIKORSKI: Thank you. 4 (Whereupon, Previously Marked 5 Exhibit 1012 is identified for 6 the record.) 7 BY MR. PRICE: 8 Q. Dr. Sharony, do you recognize 9 this document? 10 A. Yeah. Kocinski. 11 Yeah, what is the question? 12 Q. I just wanted to make sure that 13 you were standing by your testimony that 14 Figure 10 does not explicitly display the 15 calculated symptom data nor index or usage 16 data. 17 MR. SIKORSKI: The telephone 18 chime we just heard means somebody hung 19 up, right? 20 THE STENOGRAPHER: It could mean 21 someone joined or hung up. 22 MR. SIKORSKI: So off the record 23 for just a second. 24 (Whereupon, a recess was taken at 25 12:28 p.m.)	75 1 to... 2 Yeah, so Figure 10 shows 3 cumulative data and daily usage. The 4 top figure -- the top figure also shows 5 days used, if I'm reading it correctly. 6 MR. PRICE: All right. No 7 further questions today. 8 MR. SIKORSKI: Let's take a break 9 and see if I have any redirect. 10 (Whereupon, a recess was taken at 11 12:34 p.m.) 12 MR. SIKORSKI: Go back on the 13 record. 14 EXAMINATION 15 BY MR. SIKORSKI: 16 Q. Dr. Sharony, you have in front of 17 you Exhibit 110 -- 1010, which is the 18 Stahmann reference in several parts. 19 A. Yes. 20 Q. Can you grab the section that 21 begins with page 23 -- better yet, if you 22 could flip to page 240 -- strike that. 23 Dr. Sharony, can you please grab 24 Exhibit 1010, paginated page 240. 25 A. 240.
74 1 THE WITNESS: So it does show 2 usage data but not the index of the 3 symptom data. So it says that the base 4 station -- 5 (Stenographer asks for 6 clarification.) 7 THE WITNESS: "The base station, 8 cellular phone, or PDA adapted to 9 display the symptom data of severity of 10 the subject's sleep disorder system 11 and/or the index of the subject's 12 symptoms." This is not shown in 13 Figure 10. 14 "And to retransmit the symptom 15 data of severity of the subject's sleep 16 disorder symptom and/or the index of 17 subject's symptoms and the data of 18 usage received from the PAP device to a 19 remote Internet site." 20 So it doesn't display this 21 picture, although it has the data, 22 because it show the cumulative usage 23 and daily usage. So the usage data 24 exist in the PAP device, and it is 25 attached to the computer, attached	76 1 Q. Yeah. And by that I mean 2 page 240 at the top page of the Stahmann 3 reference. The exhibit's page number is 4 page 242. 5 A. Now I'm confused. 6 Q. Sure. Exhibit 1010, do you have 7 that? 8 A. Yes. This one. 9 Q. Yes. At the top of the page that 10 I'm looking for has the publication 11 identifier at page Number 240. Is that in 12 front of you? 13 A. Yes. Oh, yeah. 14 Q. And then in the bottom right -- 15 A. 242 in the bottom. 16 Q. In the bottom right, the 17 exhibit's internal page number is page 242. 18 A. Got it. 19 Q. Okay. Can you just read out loud 20 the sentence that spans page -- lines 23 21 and 24 that begins, "The feedback 22 information." 23 A. "The feedback information may be 24 used to adjust 5420 (Figure 54 B) the sleep 25 disorder breathing therapy."

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77 1 MR. SIKORSKI: That's the only 2 question I have. Thanks. 3 MR. PRICE: I have no follow-up. 4 THE STENOGRAPHER: Did anyone 5 need a rough draft? 6 MR. SIKORSKI: I don't. 7 MR. PRICE: I think we have a 8 standing order, so whatever it says is 9 good. We don't need it expedited or 10 anything. 11 (Time noted: 12:43 p.m.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25	79 1 REPORTER CERTIFICATE CONTINUED 2 3 I further certify that I am not 4 related to, nor associated with any of the 5 parties or their attorneys, nor do I have 6 any disqualifying interest, personal or 7 financial in the actions within. 8 Dated this 14th day of July, 2024, at 9 Kings County, New York. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25  JESSICA R. WAACK Registered Diplomat Reporter Certified Realtime Reporter California Certified Realtime Reporter New York Realtime Court Reporter New York Association Court Reporter Notary Public, State of New York CCR-NJ (No. 30XI008238700) CSR-TX (No. 11958) CCR-WA (No. 21007264), CSR-CA (No. 14420)
78 1 REPORTER CERTIFICATE 2 I, JESSICA R. WAACK, Certified 3 Realtime Reporter, Registered Diplomat 4 Reporter, California Certified Realtime 5 Reporter, Certified Court Reporter in New 6 Jersey, New York Association Certified 7 Reporter, New York Realtime Court Reporter 8 and Notary Public of the State of New York, 9 County of Kings, the officer before whom 10 the proceedings were taken, do hereby 11 certify that the foregoing transcript is a 12 true and accurate record of these 13 proceedings; that said proceedings were 14 taken in Stenotype note by me on 15 July 10, 2024, commencing at 9:37 a.m. and 16 ending at 12:43 p.m. 17 I further certify that present on 18 behalf of RESMED CORP., EDWARD H. SIKORSKI, 19 of DLA PIPER, and on behalf of CLEVELAND 20 MEDICAL DEVICES, INC., JEFFREY H. PRICE, of 21 KRAMER LEVIN NAFTALIS & FRANKEL LLP. 22 23 (Certification continued to next page.) 24 25	80 1 DECLARATION UNDER PENALTY OF PERJURY 2 3 Date of Deposition: July 10, 2024 4 5 6 I, JACOB SHARONY, PhD, hereby 7 certify under penalty of perjury under the 8 laws of the State of _____ that 9 the foregoing is true and correct. 10 11 Executed this ____ day of _____, 2024, at 12 _____. 13 14 15 16 JACOB SHARONY, PhD 17 18 SUBSCRIBED AND SWORN BEFORE ME 19 THIS __ DAY OF _____, 20____ 20 21 NOTARY PUBLIC 22 23 MY COMMISSION EXPIRES: _____ 24 25

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Transcript of Jacob Sharony, Ph.D.
Conducted on July 10, 2024

21 (81 to 84)

81

1 WITNESS: JACOB SHARONY, PhD
2 Date of Deposition: July 10, 2024

3
4 Reason Codes: 1. Clarify the record
5 2. Conform to the facts
6 3. Correct transcription errors
7 WITNESS ERRATA

8 Page Line Reason
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25 JACOB SHARONY, PhD

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Re: Deposition of **Jacob Sharony, Ph.D.**

Date: 7/10/2024

Case: ResMed Corporation -v- Cleveland Medical Devices, Inc. (PTAB)

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[illegible]

July 24, 2024

(Date)

J. Sharony

(Signature)

Re: Deposition of **Jacob Sharony, Ph.D.**

Date: 7/10/2024

Case: ResMed Corporation -v- Cleveland Medical Devices, Inc. (PTAB)

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ACKNOWLEDGMENT OF DEPONENT

I, Jacob Sharony, Ph.D., do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true, correct
and complete transcription of the testimony given by
me and any corrections appear on the attached Errata
sheet signed by me.

July 24, 2024

(Date)



(Signature)