In the Matter Of:

MOM ENTERPRISES V. VIETH

2023-00726

STEPHEN BENYUNES

December 05, 2023

Vieth Ex. 2023 - IPR2023-00726

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CASE IPR 2023-00726
Patent 9,066,958

MOM ENTERPRISES, LLC	§
	§
Petitioner	§
	§
vs.	§
	§
ELAINE AND REINHOLD W. VIETH	§
	§
Patent Owner	§

REMOTE ORAL DEPOSITION

STEPHEN BENYUNES

December 5, 2023

(Reported Remotely)

REMOTE ORAL DEPOSITION of STEPHEN BENYUNES, produced as a witness at the instance of the Patent Owners and duly sworn, was taken in the above-styled and numbered cause on December 5, 2023, from 9:35 a.m. to 12:31 p.m., before Annette E. Escobar, Texas Certified Shorthand Reporter Number 5475, in and for the State of Texas, reported by computerized stenotype machine, reported remotely via zoom, pursuant to the Patent Trial and Appeal Board and the provisions stated on the record or attached hereto.

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REPORTER NOTE: Please note that I was not physically present for said proceedings in making the stenographic record; therefore, due to the poor quality of the zoom videoconference, i.e., audio distortions, Internet connections freezing, extraneous room noises, et cetera, unintelligibles or inaudibles may have created inaccuracies in the reporter's stenographic record.

P-R-O-C-E-E-D-I-N-G-S

Whereupon,

9:35 a.m.

THE COURT REPORTER: Good morning. My name's Annette Escobar, Texas CSR Number 5475. I will be reporting the deposition remotely by stenographic means and swearing in the witness.

Counsel, would you please state your appearances starting with plaintiff.

MR. ANDERSON: Thank you.

Alan M. Anderson of Alan Anderson Law Firm appearing on behalf of patent owners, Reinhold and Elaine Vieth.

MS. PATEL: Hi. Sarika Patel from Fish & Richardson on behalf of petitioner, MOM Enterprises.

THE COURT REPORTER: All right.

MS. FLORENCE: Do you want all counsel as well here to identify --

Okay. L. Reagan Florence on behalf of plaintiff's co-counsel with Alan Anderson Law Firm.

MR. UNGERMAN: Mark Ungerman on behalf of patent owner with Ungerman IP PLLC.

THE COURT REPORTER: Okay. Dr. --

MR. ANDERSON: Or Ms. Duguay?

THE COURT REPORTER: Okay.

MS. DUGUAY: Elaine -- Elaine Duguay with RWS.

THE COURT REPORTER: All right. Dr. Benyunes? Benyunes?

THE WITNESS: Stephen Benyunes -- Dr. Stephen Benyunes, I should say, and I'm from RWS, and I'm a translator.

THE COURT REPORTER: Thank you.

(Witness sworn at 9:36 a.m.)

THE COURT REPORTER: You can proceed, counsel.

MR. ANDERSON: Thank you.

DR. STEPHEN BENYUNES,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. ANDERSON:

Q. Dr. Benyunes, could you please state your full name and present home address for the record, sir?

A. Yep. It's Stephen Alexander Benyunes, and my home address is 48 Trinity Rise, London SW2 2QR, United Kingdom.

Q. And, Dr. Benyunes, this deposition is being conducted remotely via Zoom. Can you tell me where you are currently located physically?

A. At my home address, at 48 Trinity Rise.
Q. Okay. Is there anyone else in the room with you?
A. There's nobody else in the house at the moment.
Q. Okay. And do you have any sort of cellphone or personal communication device with you that is on?
A. I have a cellphone on my desk that is on, yes.
Q. Okay. Could you please mute it or turn it off?
A. It's muted.
Q. All right. And I understand that you are being represented here today by Ms. Duguay as in-house counsel for RWS; is that correct?
A. That's correct, yes.
Q. And are you being compensated for your time here today?
A. I'll be making records of it and presenting it to my employers to be taken into account on my time sheet.
Q. Okay. Have you given testimony previously in United States litigation or proceedings?
A. No, I haven't.
Q. Have you testified previously in any court proceeding, for example, in the United Kingdom?
A. No, I haven't.
Q. Okay. Do you understand that you are under

oath here today the same as you would be if you were actually in court testifying?

A. Yes, I do.

Q. All right. Did you review any documents to prepare for your testimony here today, sir?

A. No.

Q. Did you speak with anyone to prepare for your testimony here today?

A. I've had a briefing more or less just to explain a little about what's involved with Elaine, my -- my representative from RWS, and also with Sarika, the representative of Fish & Richardson, and with my immediate supervisor at RWS, David Sherman. Oh, and with one of the vice presidents at RWS as well which was with Erica Gatland.

Q. Could you spell her first and last name, sir?

A. That's Erica, E-R-I-C-A, and Gatland, which is G-A-T-L-A-N-D.

I was in two separate meetings as well. It wasn't altogether.

Q. Okay. Let's take the first meeting where you -- in preparation for your testimony here today. Who was involved in that meeting?

A. That was with Sarika, Elaine, and David.

Q. Was this via Zoom, I assume, or over the

telephone?

A. It was on Teams.

Q. Okay. Do you recall when that meeting took place?

A. It was last Friday.

Q. So that'd be December 1st?

A. Yes, that's correct.

Q. Approximately how long did this Teams meeting last, sir?

A. I think about half an hour, possibly a bit longer.

Q. Okay. As best you can recall, what did -- what were you told or what -- what were you told during this meeting in preparation for your testimony here today by Ms. Patel?

A. Not a lot, really. I'm starting to think what I was actually told. I was asked -- I was asked some questions about a number of things. I was told -- the meeting was just in very broad terms outlining what -- what am I to expect, but nothing very specific, really.

Q. Okay. You said that you were asked some questions on a number of things. Do you recall any of those questions, sir?

A. I was asked about -- to confirm that my declaration was -- was correct, and I was asked to -- I

was asked some questions -- I was asked some questions about how I prepared my translation of the -- of the text.

Q. Any other questions that you recall?

A. It's mainly just those, really, I think.

Q. Okay. What was your response to the question when you were asked to confirm that your declaration was correct?

A. It was, yeah, just to confirm that it was correct.

I was also asked a little about the nature of my MITI qualification as well and what was involved in that, so I provided some extra detail.

Q. Okay. Did you -- did you confirm that your declaration is correct?

A. Yes, I did.

Q. Okay. You said you were also asked some questions about how you prepared the translation. What were you asked in that regard more specifically or what was your response?

A. I was asked sort of broadly how I went about preparing it, what would be my procedure, and I responded that I translated it in the usual way, which I would translate any such text, which would be to go through it sentence by sentence and to -- yeah, to

translate it in a linear fashion from start to finish.

While -- while referring -- I was aware -- while -- I was aware of the existence of an earlier translation that had been done by my company, and so I was also using that as reference material and where I felt the wording corresponded to the wording -- essentially to the wording that I would have chosen myself, I used that as well.

Q. Okay. The earlier transaction that -- or translation that you're referring to, is that one prepared by Ms. Tinworth?

A. That's right, yep.

Q. So you used that as the starting point or template for your translation, sir?

A. I certainly used it as -- I certainly used it as a -- as -- as reference material, I'd say, and -- in places -- or in -- in sections of it. It was very close to how I would have chosen to translate it myself, so I used substantial amounts of it in my own translation.

Q. Okay. When you say that you used substantial amounts of Ms. Tinworth's translation, can you give me an estimate?

A. Not really, no. It might -- probably more than half.

Q. Okay. In effect, you did not start from

scratch when you did the translation that you were asked -- or tasked with doing, correct?

A. Not entirely from scratch, not in the sense of having performed it blind, no.

Q. I'm sorry. You kind of faded off there at the end.

A. Oh, sorry. Not -- not starting from scratch in the sense of having performed it blind.

Q. Okay. When you perform -- or when you do -- or are asked to do a translation, do you normally start it blind, in effect, or from scratch?

A. I would always routinely search our company archive for keywords or -- or telltale sections of text that might find previous -- previous texts that would be translated that might have useful content. That's routine procedure for me.

Q. Okay. But in this case, it wasn't looking through your archive for comparable text. Here, you were given Ms. Tinworth's prior translation as the starting point, correct?

A. I was -- I was made aware of it. I wasn't actually given it per se, no. I -- I -- I was made aware that there was one, and I found it on the archive.

Q. Okay. So you did have -- when you were doing your translation, you had Ms. Tinworth's translation

with you and you, you know, was reading through -- you were reading through that --

A. Yes.

Q. -- and utilizing it -- and utilizing it, correct?

A. On a sentence-by-sentence basis, yes.

Q. Okay. Did you speak with Ms. Tinworth about her translation?

A. No, I didn't. I -- I believe she was on maternity leave at the time, and I believe, also, she's not a current RWS employee.

Q. With regard to the translation that you prepared, sir, was that you reviewed prior to you signing your declaration by a reviewer?

A. It went through our standard complete quality control procedures, so it would have been reviewed by one of our revisers.

Q. Do you know who that reviser was?

A. No, I don't.

Q. Do you know whether the revisor had any changes?

A. No, I don't recall.

Q. Okay. Would the standard quality control process, also, to your understanding have been applied to Ms. Tinworth's prior translation?

A. Yes, it would.
Q. Did you provide any other information in response to being asked how you went about preparing the translation during your preparation Teams meeting with Ms. Patel, Ms. Duguay, and yourself other than what you've already testified to?
A. Not as I recall. I think that's broadly everything.
Q. Okay. Now, you said that you -- also in this call was Mr. Sherman; is that correct?
A. That's correct, yes.
Q. Did Mr. Sherman say anything during this call that you remember?
A. Nothing in particular that I recall, no. He did speak, but I don't have any particular recollection.
Q. Okay. Now, are you aware that Mr. Sherman signed several declarations with regard to translations in this matter?
A. I know that he was asked to sign one on a previous occasion, yes.
Q. Did you see -- or have you seen that declaration of Mr. Sherman or declaration -- any of the declarations of Mr. Sherman?
A. No, I haven't.
Q. Did you use or consider them at all in the

preparation of your translation?
A. I haven't seen any declaration of Mr. Sherman so ...
Q. Okay. All right. In preparing your translation, did you use any, what I'll call, machine translation in any way?
A. No, I didn't.
Q. Did you use any dictionary?
A. Can't say for sure, but very likely I did.
Q. Do you recall what dictionary?
A. No, not offhand, no. I could have used a book or I could have used an online resource.
Q. Okay. You don't recall either the name or title of the book or the online resource?
A. If it were a book, it could have been -- could have been -- I have to remind myself what it's called, but it's standard German to English medical textbook -- medical dictionary which would be the one edited by Werner Bunjes, B-U-N-J-E-S.
Q. I'm sorry. B-U-N-J-E-S?
A. Yes.
Q. First name Werner? First name Werner?
A. If you bear with me a second, I can tell you.
Q. All right.
A. Werner, W-E-R-N-E-R. It's possible I used

that. I can't say for sure, actually. It's not something that I would remember in relation to a particular translation. That's just one of various books I might refer to.

Q. Okay. Using Ms. Tinworth's translation as the starting point, do you recall how long it took you to complete your translation?

A. No, I can't say offhand. Probably -- possibly as much as two days. I can't say for sure.

Q. Okay. So you don't recall how long it took you to complete the translation using Ms. Tinworth's translation as a starting point, correct?

A. No, not specifically. It's not something I would -- I do a lot -- I translate seven -- five days a week, so it's -- it's not something that I log for every particular -- every single job I do.

Q. Do you keep a time entry?

A. No, I don't. It's not required for -- for the terms of my employment.

Q. Okay. Now, I had asked you about the first meeting that you had on Teams with Ms. Patel, Ms. Duguay, and Mr. Sherman, and you've referenced discussing -- confirming that your declaration was correct, and then you -- what you described when you were asked about how you went about doing the

translation, correct?

A. Yes.

Q. Okay. Is there anything else that you recall stating during that Teams meeting last Friday with regard to how you went about preparing the translation other than what you have stated thus far?

A. No, not as I recall.

Q. Okay. And you also said that you were asked about the nature of your MITI qualification --

A. That's right, yes.

Q. -- correct?

A. Yes.

Q. All right. And what do you recall saying about the nature of your MITI qualification, sir?

A. That it was awarded on the basis of how my years of experience as a professional translator in -- in the stated field of the qualification, that -- that was one element of it. Plus testimonials from my -- from representatives of my employer and by peer review -- peer-review work that I had been asked to complete. And, also, just an incidental clarification that although the subject that the MITI qualification is in, it states just chemistry, this was because we had to select -- I had to select a subject for the purposes of the examination, and that was the subject that -- that I

chose out of the ones that were offered.

Q. So your MITI qualification is in the field of chemistry, is that correct, then?

A. The subject that I was examined in is in the field of chemistry. I said I would be happy to be examined in a number of other fields as well --

Q. Okay.

A. -- at the time.

Q. The section of a chapter of the book "Wochenbettbetreuung in der Klinik und zu Hause" that you were asked to translate, that's not in the field of chemistry, correct?

A. That's correct, yes, not -- not what I would describe as chemistry.

Q. And did you say anything else with regard to your MITI qualification?

A. No, not really, that's the -- that's pretty much the -- the main thing.

Q. Anything else that you recall being -- that you recall saying or being asked in this first preparation meeting last Friday other than what you have testified to so far?

A. Nothing immediate springs to mind.

Q. Okay. Were you given, as you said before, a very broad outline of what to expect?

A. In very general terms only, really, because I don't think anybody present was -- I believe they weren't very clear what -- what to expect anyway so ...

Q. Okay. Do you recall what you were told in terms of the very broad outlines of what to expect?

A. Only really that I was likely to be asked questions about -- about my translation and about my background. No, I don't -- beyond that, I don't -- don't really recall anything --

Q. Okay.

A. -- very concrete.

Q. All right. Then there was a second preparation meeting that you referenced, is that correct, sir?

A. That's right, yes.

Q. And when did that second preparation meeting occur?

A. That was yesterday.

Q. And was that in person or virtual or over the telephone?

A. It was on Teams.

Q. Who was involved in that meeting?

A. David and Elaine and Erica Gatland.

Q. Okay. No -- Ms. Patel was not part of that meeting?

A. No, not on that occasion.

Q. Okay. How long did it last?
A. Half an hour, 40 minutes. I can't say for sure.
Q. Without giving me the substance, what was the general topic or topics for the meeting?
A. It was more about really -- more, again, about how -- you know, preparing me for the -- for the deposition, what to expect, reassuring me a bit, because I'm a translator, this isn't something I'm normally asked to do so -- and, yeah. Talking a bit about presentation and -- and the -- yeah, the -- again, some -- some sort of -- little bit of information on -- not so much information as just a guide or an outline of what I might expect from the meeting. Again, we didn't really know -- didn't know what. And, yeah, general -- general advice and help on how to prepare for it.
Q. Okay. Are you a -- what I'll call, a regular employee of RWS, sir?
A. I'm a full-time staff translator.
Q. And just so we're clear, can you give us the name and office address for RWS?
A. Not off the top of my head, no.
Q. Okay. Do you work remotely, sir?
A. I'm a remote worker. I've worked remotely since 2010.

Q. Have you -- and you said you're a staff translator?
A. That's right, yes.
Q. How long have you been a staff translator?
A. Since 1996.
Q. Have you always been a full-time staff translator since 1996 for RWS?
A. Yes, I have.
Q. Okay. Didn't you spend a year from September of 2016 to September of 2017 working as an in-house translator for Corporate Translations, Inc.?
A. Corporate Translations, Incorporated, was a wholly-owned subsidiary of RWS. It was part of RWS.
Q. Okay. Was that a different position, though, as an in-house --
A. No.
Q. -- translator?
A. It was as a remote working in-house staff translator.
Q. Okay. What's your undergraduate degree in or your university degree in? What area or field of specialization or major?
A. It's in chemistry.
Q. When did you receive that, sir?
A. 1984.

Q. And then you received your PhD from the University of Sussex?
A. That's right, yes.
Q. And what year was that?
A. 19 -- I think it was 1998.
Q. And your field of study?
A. Chemistry.
Q. Is the -- I'm curious about these things having also gotten a degree from an English university. The abbreviation for the Doctor of Philosophy degree at the University of Sussex, is it PhD or DPhil?
A. It's DPhil. It's just a different form of writing.
Q. Yeah. I've only -- go ahead. Sorry.
A. Sorry. I was going to say it's -- it's the form used by Oxford and Cambridge and a number of other British universities follow suit, Sussex being one of them.
Q. Yeah. I've only known of Oxford being DPhil, so that's why I asked. That's why I asked.
What year did you receive your MITI qualification specializing in chemistry?
A. I don't know, but I can tell you if you bear with me. 2014.
Q. Is there a reason you don't work in the field

of your PhD of chemistry?

A. Is there a reason? There weren't enough jobs in -- in my vocation when I finished working as a postdoctoral researcher which was in 1996, which is what I have done for all but 18 months of the time since finishing my PhD, which I finished in 1987; although, I didn't -- I wasn't awarded the actual degree until a year later.

Q. What made you decide to go into being a translator?

A. What made me decide?

It was, yeah, the need to find a -- find a different career, really. I went into it gradually. During -- during the last three years of postdoctoral research, I was working as a freelance translator for a chemistry journal, and so it kind of led from there, really.

Q. Your MITI professional qualification, is that, I guess what I'll call, sort of like the gold standard for translation qualifications?

MS. PATEL: Objection, form.

Q. (By Mr. Anderson) Do you understand my question, sir?

A. Yes, I do.

Q. Okay.

A. Is it the gold standard?
Q. Yeah. Yes, sir.
A. It's -- it's the highest level of -- of award an offer from the principal UK professional body which is the Institute of Translators and Interpreters.
Q. Would you agree that there is a difference between translation and interpretation when it comes to going -- translating or interpreting a foreign language?
MS. PATEL: Objection.
A. Yes.
Q. (By Mr. Anderson) I'm sorry?
Sir, could you answer?
MS. PATEL: Same objection.
MS. DUGUAY: Objection. You asked me to confirm that. I'm sorry. Mute.
Q. (By Mr. Anderson) Yeah. We're just trying to make sure we get a clear answer because -- so there's not talking over.
And you gave an answer, but it was kind of blocked by Ms. Patel's objection, so I just ask you to restate your answer, sir, so it's clear on the record.
A. Yes, there is a difference.
Q. Okay. And what is the difference between translation and interpretation?
A. Translating and interpreting. Translating

is -- as -- in the sense -- in the strict professional census is written translating of one language into another and interpreting is verbal. The terms are used interchangeably by laypeople.

Q. Okay. Are there other languages besides German that you translate into English?

MS. PATEL: Objection, relevance.

Q. (By Mr. Anderson) You can go ahead, sir.

A. Yes. At the present time, I translate French.

Q. Anything other than French and German?

MS. PATEL: Objection, relevance.

Q. (By Mr. Anderson) You can go ahead.

A. Not at the present time. I have translated other languages in the past.

Q. You'd agree with me that German is one of the most complex languages?

MS. PATEL: Objection, form. Objection, foundation.

Q. (By Mr. Anderson) Dr. Benyunes, just so you understand, if there's an objection, you can go ahead and answer once the objection is stated. You don't need to --

A. Right.

Q. So --

A. Okay.

Q. So my question was, would you agree that German is one of the most complex languages to translate?

MS. PATEL: Same objections.

A. I wouldn't agree, no.

Q. (By Mr. Anderson) Why not?

MS. PATEL: Objection, form. Objection, foundation. Objection, relevance.

A. I think, you know, as global languages go most European languages, well, certainly the Germanic and Romance languages, are considered among the most straightforward ones.

Q. Well, for example, in German, there are 16 different ways to say the word "the," isn't there -- aren't there?

MS. PATEL: Objection, foundation, form, and relevance.

A. I think --

Q. (By Mr. Anderson) Dr. -- I'm sorry, Dr. Benyunes, you know as a German translator that there are 16 different words in German for the word "the" in English, you know that, correct?

A. No, there aren't. There are 16 -- there are 16 situations covered by the word "the" and six words that cover those 16 situations.

Q. Sure.

Der, die, dem, das, den. I missed one, I think. Der, die, dem, das, den. What's the one I'm missing?

A. Der, die, das, dem, den, and der.

Q. Der.

Okay. So those six different -- all right. Thank you.

You would agree that in translating it's important that the translator understand the context of what they are translating?

A. Oh, for sure --

MS. PATEL: Objection, form.

A. -- yes.

Q. (By Mr. Anderson) Okay. And, in fact, if you were going to -- if you were asked to translate one sentence, you would want to know the context for that sentence in the overall piece that you're translating, correct?

MS. PATEL: Objection, foundation and form.

A. I would generally want to know the context, yes.

Q. (By Mr. Anderson) What if you were asked to translate a paragraph, you'd want to know the context in which that paragraph appears, correct?

A. Insofar as it wasn't immediately obvious from the content in the paragraph, yes. Yes.

Q. Okay. And if you are translating a section of a chapter of a book, you'd want to know what the context is of -- for that section in the chapter of the book, would you not?

MS. PATEL: Objection, foundation. Objection, form. Objection, relevance.

A. Yeah, there's -- there's a number of things I might wish to know about the context and, yeah, not just you -- not just the subject but perhaps, also, the nature of the book, the age of the book, that sort of thing.

Q. (By Mr. Anderson) I mean, in German, you would agree that a single word can have different meanings in English?

MS. PATEL: Objection, form.

A. That's true of any language. That is true within English.

Q. Yes. And it's certainly true in German?

MS. PATEL: Objection.

A. Yeah.

Q. Okay. In connection with the translation that you prepared where you used Ms. Tinworth's translation as the starting point, did you ever speak with anyone

from Ms. Patel's firm or Ms. Patel while you were doing that work?

MS. PATEL: Objection, foundation; form.

A. No, I didn't.

Q. (By Mr. Anderson) Did you ever send any e-mails directly to Ms. Patel in connection with your work translating the excerpt from Chapter 15 of the book?

MS. PATEL: Objection.

A. The staff -- the staff translators at RWS don't contact customers directly.

Q. Do you know why?

MS. PATEL: Objection, foundation; form; relevance.

A. We have product managers who -- who are the customer facing people in our team and any -- any dealings or any -- any inquiries or queries we might have with a -- with a client would go through the product manager.

Q. (By Mr. Anderson) Who was the project -- did you said say "project" or "product manager"?

A. Product manager.

Q. Okay.

A. I think that's what -- I think that's the correct term. I'm not sure.

Q. Who was the project -- I'm sorry.

A. No, I don't know an answer to your question.
Q. All right. Do you know who the project manager was or who you interfaced with for the translation that you did?
A. Not offhand, but it would be on the record.
Q. By the way, have you ever had, what I'll call, a comparable situation where you were asked to prepare a translation and where you used the complete translation, the work of one of your colleagues such as Ms. Tinworth as the starting point as you've described?
MS. PATEL: Objection, foundation. Objection, form.
A. I think we've covered this before. I routinely would use any useful source material that I found on the company archive as -- as -- yeah, as potential material to be used in my translation.
Q. Okay.
A. That's -- that's routine procedure.
Q. Okay. But here you had a complete translation of the, you know, entire piece that you were asked to translate in the form of Ms. Tinworth's prior translation, right?
MS. PATEL: Objection, foundation. Objection, form.
A. I don't know whether I have been asked to

translate something that we've translated previously. Quite possibly, but I can't say for certain.

Q. Nothing comes to mind as you sit here today, correct?

MS. PATEL: Objection, foundation.

A. Nothing immediate.

MS. PATEL: Objection, form.

MS. DUGUAY: Objection.

A. Nothing immediate.

Q. (By Mr. Anderson) And, by the way, just so we're clear, when you were tasked with doing the translation of, you know, this section of one chapter, were you told of -- at that time of Ms. Tinworth's prior work or were you handed or given or transmitted a copy of her prior work?

MS. PATEL: Objection, foundation; form; hearsay.

A. I was made aware of it or -- yeah, I was -- I was aware of it, so I found it on the company archive.

Q. (By Mr. Anderson) Do you recall how you were made aware of it?

A. Not off the top of my head, no.

Q. Okay. Do you recall that at one point in the process of doing the translation you were first asked to translate only a single sentence?

MS. PATEL: Objection, foundation; form.

A. It was -- it was a paragraph. It might have been two paragraphs. It was more than a sentence.

Q. (By Mr. Anderson) All right. So your recollection -- and we'll see this when we get to some of the exhibits -- is that you first were asked to translate one or two paragraphs of the Section 15.9 in the book edited by Ulrika Harder, is that correct, sir?

A. On -- on an earlier occasion, yes.

Q. Okay. Did you complete that translation of the one or two paragraphs?

A. I did complete it, and then the job was canceled.

Q. Did you use that prior translation of the one or two paragraphs in any way in connection with your subsequent translation of more of Section 15.9 of Chapter 15 of Ms. Harder's edited book?

MS. PATEL: Objection, form.

A. Yes, I think I did, because I still had it on my computer.

Q. (By Mr. Anderson) Do you recall whether you made any changes to that earlier one or two paragraph translation in your final translation?

A. No, I don't.

Q. You don't recall one way or the other as you

sit here today; is that correct?
A. No, I don't recall. No.
Q. Okay. When you were tasked with doing the one or two paragraphs, did you review the entire section, Section 15.9 of Chapter 15, to understand the context of what you were translating?
MS. PATEL: Objection, form and relevance.
A. I had a good look-see, yes.
Q. (By Mr. Anderson) What do you mean by a good look-see?
A. Well -- okay. I -- I reviewed it, if you want a better word than -- yeah, ran through it, see -- see where it fitted with the rest of the text.
Q. Okay. When you say you read through it, what are you referring to, Chapter -- or Section 15.9?
A. I can't say for sure. This was some time ago. I certainly read through some of it to try to understand why my -- there was importance being attached to that particular paragraph.
Q. Were you told why you were being asked at least initially to translate a particular paragraph?
MS. PATEL: Objection, hearsay.
A. I don't recall exactly what I was told, no.
Q. (By Mr. Anderson) When you performed your -- or

the translation that resulted in your declaration, did you review the entirety of Chapter 15 of the Harder book to understand the context of Section 15.9?

MS. PATEL: Objection, form. Objection, relevance.

A. I think the context was quite clear.

Q. (By Mr. Anderson)

Q. What's the answer to my question, though, sir?

A. Did I review it?

Q. Did you review all of Chapter 15 in connection with your translation of Section 15.9?

MS. PATEL: Objection, form. Objection, relevance.

A. I wasn't provided with Chapter 15.

Q. (By Mr. Anderson) Okay. So the -- I'm sorry?

A. And -- and I -- I wouldn't have considered it necessary.

Q. Okay. So the answer to my question is, no, you did not read or review the entirety of Chapter 15 in connection with your work translating Section 15.9, correct?

A. No.

MS. PATEL: Form.

Q. Okay.

A. That's correct, yes.

Q. All right. And you did not review any of the other sections in Chapter 15; for example, Section 15.10, 15.11, 15.8, you didn't review any other sections in connection with your translation of Section 15.9, correct?

MS. PATEL: Objection, form. Objection, relevance.

A. That's correct.

Q. (By Mr. Anderson) Okay. And you did not review the entirety of the book where you were translating a single section from a chapter, correct?

MS. PATEL: Objection, form. Objection, relevance.

MS. DUGUAY: Objection, form; relevance.

A. That's correct.

Q. Okay. You don't know what the context was for the overall work that Ms. Harder edited, would that be a fair statement, sir?

MS. PATEL: Objection, foundation. Objection, form. And objection, relevance.

A. I'm sorry. Could you repeat the question? I'm not sure I understand it.

Q. Sure.

MR. ANDERSON: Could I have -- ask the court reporter simply to restate it.

(Court reporter read the last question.)
Q. For the book that Ms. Harder edited.
THE COURT REPORTER: Sorry. Okay.
A. Who is Ms. Harder? Sorry.
MS. PATEL: Same objections to the question.
Q. (By Mr. Anderson) Okay. You don't recall who Ms. Harder is or know?
A. Is she the author of the whole book?
Q. Well, that's -- my question is, do you know who Ms. Harder is, sir?
MS. PATEL: Objection, relevance. Objection, form.
A. I'm not sure I do, no.
Q. Okay. Do you know who the author was of the Section 15.9 that you translated?
MS. PATEL: Objections, foundation, form, and relevance.
A. No, I don't think I do.
Q. Okay. Do you know who the audience is or was for any part of the book that you translated Section 15.9 from?
MS. PATEL: Objection, foundation, form, and relevance.
A. The original audience of the book, yes.

Q. (By Mr. Anderson) What is your understanding of the original audience of the book?

MS. PATEL: Objection, foundation, form, and relevance.

A. It's clinicians dealing with -- dealing with, I think, babies, certainly physicians.

Q. Okay. You don't know the background -- or the background at all for the author of Section 15.9 that you translated, correct?

MS. PATEL: Objection, foundation.

MS. DUGUAY: Objection, foundation, form; relevance.

A. Not beyond the assumption that it's physicians specializing in the treatment of young -- young babies or children, no.

Q. Okay. Okay. Dr. Benyunes, I'm going to share my screen here and show you some documents that we're going to mark as exhibits. And I'd like to know how large of a screen you're working from --

A. Okay.

Q. -- or looking at. How large is the screen that you're using so I know how big I can make it on my screen so that it's legible for you?

A. It's a -- it's a kind of standard size laptop.

Q. Okay.

A. Although, I can see it -- I can see it on a bigger screen if I look behind the laptop. Do you want to go ahead --

Q. Yeah.

A. -- and see -- see how it looks?

Q. All right.

A. Yep.

Q. Can you see my screen now, sir?

A. Yep. Yes, I can.

Q. And it -- how far down can you see? I'm just going to -- I want to adjust size for legibility for you, sir.

A. I can see as far as -- where it says, of an excerpt search from Section 15.9.

Q. Okay. All right. Let me see if I -- is that -- can you still read that, sir?

A. No. No.

Q. No? All right. How about that?

A. I can see that if I move things around and look at my external monitor --

Q. Okay.

A. -- but then I --

Q. Which would -- which would you prefer to look at?

A. I can just about read that on the laptop,

actually, if I -- if I squint.

Q. All right. Let's make it easier.

A. Okay.

Q. Here you go. How's that?

A. Yeah, that's good.

Q. All right. Okay. I just want to know so that when we look at other exhibits here I know where to start. So I'm going to ask you, sir, to look at what we will mark as Exhibit 1.

(Exhibit marked for identification as Deposition Exhibit Number 1.)

Q. (By Mr. Anderson) It is a document that has been submitted in this proceeding as MOM Exhibit 1023. It has production numbers MOM_0006202 through 6235, and it is a document headed, Declaration of Accuracy of Translation.

A. Uh-huh.

Q. Do you see this document on your screen, sir?

A. Yes, I do.

Q. Okay. This appears to be a declaration by yourself. And I would like to ask you to just take a moment to read through this and let me know when you went me to scroll down so that you can read the first two pages which are -- is the declaration.

A. Okay. Yeah, you can go down. Yep, you can

continue. Yep.

Q. Let me stop you there.

These first two pages, do you recognize these as a declaration that you signed on or about October 27th, 2003?

A. Yes.

Q. And is that your signature on Page 2 of what will be Exhibit 1?

A. Yes, it is.

Q. And did you review your declaration carefully prior to signing it?

A. Yes, I did.

Q. And at the time you signed it, do you believe that everything stated in the declaration is true and correct?

A. Yes.

Q. And as you sit here today, do you believe that everything stated in the declaration is true and correct?

A. Yes, I do.

Q. Are there any -- so there are no changes that you would like to make to your declaration as you sit here today, correct, sir?

A. No, I don't think so. No.

Q. All right. Then attached to the first two

pages of what will be Exhibit 1, your declaration, Exhibit A appears to be an English language translation or -- of what is headed, 15.9 Prophylaxis of bleeding, rickets, and dental caries.

A. Uh-huh.

Q. Do you see that, sir?

A. That's right, yep.

Q. All right. I'm going to scroll through this and ask if you recognize Exhibit A as your translation that you prepared of Section 15.9. And you tell me when I can go on.

A. Yes. I believe so, yes.

Q. Do you want me to keep scrolling?

A. No, you've showed me enough -- or at least -- yeah.

Q. Okay. I'm going to keep going until I get to the next exhibit on it so I can ask you that.

A. Okay.

Q. And we get to Exhibit B. And I'm putting the first page of Exhibit B, sir. It is, I believe, the cover of the book or the excerpt that you translated this from, Wochenbettbetreuung in der Klinik und zu Hause.

A. Uh-huh.

Q. Do you recognize Exhibit B?

A. Yes, I do. I'm not -- I can't remember offhand whether I -- I was provided with the -- with the first page that I can see there -- see there. I'm not sure.

Q. Okay. Well, then in there --

A. Or the next page. They may have been in the -- they may have been in the file I was provided. I can't remember.

Q. Okay. Because it looks there was a bunch of the title pages, the forward.

A. Oh, no. I wasn't -- I'm pretty sure I wasn't given the whole -- that looks like the whole book.

Q. Well, it's actually -- it's not the whole book, but there is the forward, the table of contents, looks like Chapter 1.

A. No, I wasn't -- I haven't seen that before, I don't think.

Q. Okay. And then we get -- keep going through Chapter 1, and then we get to Page 256 of the book which is -- looks like the last part of Section 15.8, and then we have Section 15.9.

A. Yeah.

Q. Okay. Just to be clear, sir -- and if you want me to go slower, I certainly will -- the only part that you were given to translate was starting at Page 18 of this exhibit, I think it is, but it's the page that has

on the bottom, 15.9 Blutungs-, Rachitis- und Kariesprophylaxe.

A. Yes, that's -- that's where it started, yes.

Q. Yes.

Okay. And then that goes to the page where Section 15.10 begins, correct?

A. Yes.

Q. Okay. And just so -- so your recollection is that you were not provided anything other than the pages that are Section 15.9; is that correct?

A. I can't remember, but I don't think. I certainly didn't have all the preceding pages.

Q. Okay. So, for example, just to be clear, you don't recall reading or reviewing Chapter 1, correct?

A. No, I wouldn't expect to either.

Q. Okay. And the forward, you don't recall reading or reviewing the forward?

A. No.

Q. Or the table of contents?

A. No.

Q. Okay. From what you did review, Section 15.9, you would agree that this book is not in a -- in the pharmaceutical field or that section is not in the pharmaceutical field, correct?

MS. DUGUAY: Objection, foundation; form;

relevance.

A. It's a medical textbook.

Q. (By Mr. Anderson) Okay. So it's not a pharmaceutical field?

MS. PATEL: Objection, foundation; form; relevance.

A. It's not in the field of -- I think it's -- I think actually it's -- I think the actual section has got a lot to do with pharmaceuticals.

Q. (By Mr. Anderson) Okay. Well, in your declaration you say that you have specialized in preparing translations in the pharmaceutical field. Do you see that, sir?

A. Yes.

Q. Okay. And do you consider what you translated, Section 15.9, to have been in the -- to be in the pharmaceutical field?

A. Oh, most definite.

MS. PATEL: Objection, foundation --

A. Most definite.

MS. PATEL: -- form, and relevance.

A. Most definitely, yes.

Q. (By Mr. Anderson) Okay. What makes the Section 15.9 in your view the pharmaceutical field?

MS. PATEL: Objection, foundation; form;

relevance.

A. The field of pharmaceuticals, as I understand it, relates to all -- all -- all stages in the process by which pharmaceuticals are discovered and used from the very beginnings of the drug discovery process up to and including their use in clinical practice. And I would regard a vitamin product as a pharmaceutical.

Q. (By Mr. Anderson) Why would you say that you regard a vitamin product as a pharmaceutical?

MS. PATEL: Objection.

A. Why?

MS. DUGUAY: Objection, foundation; form; relevance.

MS. PATEL: Relevance.

A. Vitamin products are -- vitamin products that are given to human beings in -- in pharmaceutical formulations would be subject -- subject to all the regulatory procedures -- all the standard regulatory procedures required under national law and -- and would be, as such, regarded as pharmaceuticals.

Q. (By Mr. Anderson) Okay. Looking at Paragraph 1 of your declaration, sir, you say that you personally performed the attached translation. Do you see that in Paragraph 1?

A. Yes.

Q. Okay. And, as I believe you testified previously, and correct me if I'm wrong, over half of what you used with adopted Ms. Tinworth's translation, correct, or a substantial --

MS. PATEL: Objection, form.

Q. (By Mr. Anderson) -- a substantial part, correct?

MS. PATEL: Objection, foundation.

MS. DUGUAY: Objection, foundation; form.

A. That's correct.

Q. (By Mr. Anderson) Yes. Thank you.

Now, in Paragraph 1, you say you translated it, and I'm looking here, it says, "An excerpt from Section 15.9." Do you see that?

A. Yes.

Q. Okay. What was the excerpt from Section 15.9 that you translated?

A. I think it's, in fact, all of Section 15.9.

Q. So this description of an excerpt from Section 15.9 is not accurate?

A. It depends how you define excerpt.

Q. Well, these are your words, and this is your declaration. What did you mean when you said that you performed a translation of an excerpt from Section 15.9?

A. Perhaps that was an oversight in the sense that

that wasn't -- that that wasn't the entirety -- in fact, the entirety of Section 15.9, but I think that -- well, I think that, yeah, for all intents and purposes, it's -- it's -- an excerpt can be anything up to 100 percent if we're going to be very precise about it. But, yeah, perhaps it should have said, "All of Section 15.9."

Q. Okay. But that's not what you said when you carefully reviewed this and signed it on October 27th of 2023, correct?

MS. DUGUAY: Objection, form.

A. Yeah, perhaps I -- I overlooked that -- what I would describe as a very minor detail.

Q. (By Mr. Anderson) Okay. Well, in Paragraph 2, sir, of your declaration you say that the attached translation is a true, full, and accurate translation of the relevant excerpt from the attached German version of Section 15.9. Do you see that, sir?

A. Yes, I do.

Q. What's the relevant excerpt that you were referring to?

A. Well, it's -- it's all of it.

Q. Okay. And correct me if I'm wrong, but I believe you testified that your translation would have been reviewed by your quality control people at RWS

prior to you signing this declaration; is that correct?

A. That's correct, yes.

Q. To your knowledge, would that also have been true of Ms. Tinworth's earlier translation that you used?

MS. PATEL: Objection, foundation.

MS. DUGUAY: Objection, foundation.

A. Everything that we -- that we produce at RWS goes through our normal routine quality control procedures.

Q. (By Mr. Anderson) So to your knowledge -- to your knowledge, that would include Ms. Tinworth's earlier translation, correct?

A. Yes.

MS. PATEL: Objection, foundation.

MS. DUGUAY: Objection, foundation.

Q. (By Mr. Anderson) Okay. I'm now going to share my screen. Can you see that, sir?

A. Yep.

Q. Okay. And this is a document that will be marked as Exhibit 2.

(Exhibit marked for identification as Deposition Exhibit Number 2.)

Q. (By Mr. Anderson) And it has, for the record, been submitted by MOM in this proceeding as MOM_1021.

It has production numbers MOM_0006188 through -- excuse me, 6201. And it is headed on the first page, there's a case style, but then it says, Declaration of Translator Rebecca Amy Tinworth. Please -- I'm going to ask you -- I'm going to scroll through this again. I want you to take a minute to look at this document and tell me whether you have seen all or any part of it.

MS. PATEL: Alan, before we do that, can we take a quick break? We've been going --

MR. ANDERSON: Absolutely. That's a good point, and I'm glad you raised it. I was thinking of the same thing so --

And by the way, Dr. -- I keep on looking back at how to pronounce your name, I'm sorry -- Benyunes.

THE WITNESS: That's correct, yep.

MR. ANDERSON: Yeah.

If any time you need to take a break to -- you know, a personal break to go to the lavatory or anything like that, just let us know. But let's take a break now for about, what, ten minutes. Is that all right?

THE WITNESS: Okay. Yep.

MR. ANDERSON: Okay. So with that, we'll go off the record. It is 10:45 and come back at about

10:55.

THE WITNESS: Okay.

(Short break taken at 10:45 a.m.)

(Proceedings resumed at 10:56 a.m.)

Q. (By Mr. Anderson) Okay. Dr. Benyunes, you understand that you're still under oath the same as you would be if you were in court testifying?

A. Yes.

Q. And just so the record is clear, during the break, did you have conversations with your counsel Ms. Duguay?

A. Momentarily.

Q. Okay. All right. Just before we took the break, I had showed you what will be marked as Exhibit 2. Can you see that, sir?

A. I can, indeed.

Can I just clarify what I had said previously about Exhibit 1?

Q. Well, let me ask you this: What is the genesis of your desire to clarify something that you had testified to regarding Exhibit 1?

A. I just checked on -- on our company archive what was the source document that I was provided with when I prepared the translation of Section 15.1 of the book, and it was, indeed, as shown. I wasn't sure

whether I remembered this correctly or not, but it was as shown.

Q. Okay. Let me go back to Exhibit 1.

THE COURT REPORTER: Counsel, can we pause for just a moment?

MR. ANDERSON: Yes.

(Brief court reporter pause.)

Q. (By Mr. Anderson) Back on the record, sir.

Mr. Benyunes, you had said that you checked the RWS archive; is that correct?

A. Yes. I just checked the job folder for this job just to be sure what I had been provided with, so I was provided with -- with the document shown as Exhibit -- as Exhibit A.

Q. Exhibit A is the translation.

A. Or --

Q. Or is it Exhibit B?

A. -- Exhibit B, probably. Yep.

Q. All right. So you were provided, it looks like, the cover -- an image of the cover, the author title page, the printer or publisher information --

A. That's right, yep.

Q. Yep. All of -- all of this; the forward, the table of contents. Did you review or translate any of this prior to the -- what begins with Section 15.9?

A. I would have had a very quick look at the table of contents and the title and the -- yeah, that -- that would be sufficient --

Q. Okay.

A. -- for the purposes of establishing the context of the, the referred job at hand.

Q. Okay. And what was it -- what did the -- reviewing the title and table of contents tell you about the context of the job at hand?

A. Well, it's about childcare -- about neonatal childcare.

Q. For a -- okay. And for a medical provider, I think you said, or a --

A. Physician.

Q. -- physician specializing in childcare, correct?

A. That's right, yeah.

MS. DUGUAY: Foundation, form.

Q. (By Mr. Anderson) Okay. So just -- just so we're clear, you did not, as part of that, read chapter -- or review Chapter 1 or the forward, correct?

MS. PATEL: Objection, relevance.

A. No, that wouldn't be part of our standard practices and it wouldn't have been -- it wouldn't have added anything to my understanding of the context there.

Q. Okay. By the way, with regard to Exhibit 1, your declaration, prior to signing the declaration, did you discuss your translation of Section 15.9 with anyone at RWS?

A. No, I don't think so, no. I wouldn't have any cause to.

Q. Okay. Did you discuss your translation with Ms. Patel or anyone from her firm Fish & Richardson?

A. No. Again, that wouldn't be -- that would be highly irregular in regard to our business practices.

Q. Okay. By the way, who wrote -- who authored the -- who wrote the declaration?

MS. PATEL: Objection, foundation and form.

A. It was prepared for me and presented for me to -- to sign. I think I -- I was given the opportunity to amend anything that I was unhappy about, and I think I -- I think I did. I can't honestly remember.

Q. (By Mr. Anderson) Okay. But you do know that you didn't write this in the first instance, correct?

MS. PATEL: Objection, foundation; form.

A. I didn't create the document, no.

Q. Okay. In fact, are you aware that it was created by Ms. Patel or someone at Fish & Richardson in the first instance?

MS. PATEL: Objection, form.
A. I couldn't tell you anything.
Q. Okay. But it was presented to you by your -- the person you were working with who was -- who you don't recall --
MS. PATEL: Objection, foundation.
Q. (By Mr. Anderson) -- within -- within RWS, the, what I'll call, client contact person?
MS. PATEL: Same objections.
A. It would -- yeah, it would have been just given to -- I think it would -- I can't -- I can't really recall who -- who actually sent it to me, but, yeah, it was -- it was -- it was, yeah, given to me to review, correct, and -- to review and correct, and then I think I eventually ended up signing it, amended -- an amended version of it.
Q. (By Mr. Anderson) Okay. Do you normally sign declarations of accuracy of translations that are prepared by your client?
MS. PATEL: Objection, foundation.
A. As far as I was aware, it was prepared by my company. I had no idea who it was prepared by.
Q. Okay. If I tell you that it was -- I'm sorry. I didn't mean to interrupt. I apologize.
A. I was going to say, I just wouldn't have given

it any thought provided I was completely happy about the content.

Q. Okay. In your experience at RWS, are you usually -- are you often provided with a declaration to sign that you did not draft in the first instance?

MS. PATEL: Objection, foundation; form.

A. I wouldn't have thought it was standard practice having to draft one's own declarations, but it's not very commonplace for me to have to sign declarations. I've maybe signed a handful of others in all the time I've been at RWS. Yeah, maybe a -- yeah, a small number, but I wouldn't have drafted them myself.

(Exhibit marked for identification as Deposition Exhibit Number

Q. (By Mr. Anderson) Okay. All right. Let's go back now to what I said would be marked as Exhibit 2. And this is document that says, Declaration of Translator Rebecca Tinworth. My first question to you, sir, is the first is the declaration. Do you see that, sir?

A. Yep.

Q. Okay. And have you ever seen this page previously?

A. The page as presented with the signatures and names --

Q. Yes, sir.
A. -- shown on the page?
No, not to the best of my knowledge, no, or at least I don't recall. I don't see why I would have had any occasion to have seen it.
Q. Okay. Now, you said with the name and the signatures. Did you see it in some other form?
A. I just wanted clarification that you weren't asking me whether I had seen this in the form of a blank declaration; in which case, I'd have to answer I don't recall.
Q. Okay.
THE COURT REPORTER: Counsel?
Q. (By Mr. Anderson) Now, following the first page is --
THE COURT REPORTER: Counsel?
MR. ANDERSON: Yes.
THE COURT REPORTER: I'm sorry. My writer is lagging right now. Do you mind if I -- I need to restart my -- my job. Can you just pause for just a moment, please? I'm sorry. I haven't had this happen in a --
MR. ANDERSON: No problem. You're the most important person on the Zoom, because without you, we've got nothing so you take whatever you need to fix

the situation.

THE COURT REPORTER: Okay. I need to let it catch up. For some reason, it's -- I don't know why it's -- just give me -- I think I need five.

MR. ANDERSON: That's absolutely fine. We'll wait.

THE COURT REPORTER: All right. Thank you.

MR. ANDERSON: We're not going anywhere.

THE COURT REPORTER: Okay. We're going off the record. The time is 11:08.

(Deposition resumed at 11:10 a.m.)

MR. ANDERSON: All right. We're back on the record.

Q. (By Mr. Anderson) Mr. Benyones, just to make sure we got it on the record, I think you said that you had not seen previously the first page of Exhibit 2, the actual declaration, dated April 3, 2017, signed by R. A. Tinworth; is that correct?

A. I don't recall having seen it.

Q. All right. Following that is a translation, and it is the next 13 pages. And my question is, or I will tell you based on the declaration -- it's the declaration, it's the translation prepared by Ms. Tinworth.

I want you to take a minute to take a look at the exhibit and I'll scroll through as you wish. And my question to you is whether you recognize seeing this translation that is attached to the declaration of Ms. Tinworth?

A. Yes, I do.

Q. All right. And the -- have you seen it previously?

A. Well, yes.

Q. And this is the translation that you got prior to doing your work, correct?

MS. PATEL: Objection, form; foundation.

A. As -- as found in the company archive, yes.

Q. Sure. This is what you got prior to doing your translation, correct?

MS. PATEL: Objection, form.

A. Yes.

Q. And you reviewed this translation in connection with doing your own translation, correct?

MS. PATEL: Objection, form.

A. I wouldn't say I reviewed it. I've used it as a, as a -- as a translated aide, and I've used -- the parts of it, substantial parts of it that I've used I have reviewed as I've gone along, reviewed it in, in -- in the sense of looking at how it's phrased in relation

how I would choose to phrase it had I translated it from scratch.

Q. What you had in your -- on your screen in your computer in your possession this translation by Ms. Tinworth at the time that you did your translation?

A. I had to open.

MS. PATEL: I objected to the question. Foundation and form.

Q. (By Mr. Anderson) So it's clear, Mr. Benyones, you just need to pause because it's important we not speak at the same time, especially with any delays inherent in the virtual nature of this deposition, because it is very difficult for the court reporter to take down more than one of us speaking at once.

A. All right.

Q. And also unless you are told don't answer the question, you just go ahead and answer after the objection is stated, okay?

A. Okay.

Q. Thank you.

With regard to your process for doing your translation, sir, did you -- I'm just trying to understand the process, did you first look at Ms. Tinworth's translation, then go look at the original text and decide whether you would change anything or did

you look at the original text in German, come up with what you would say and then look at Ms. Tinworth's, and if you agreed with Ms. Tinworth's you just repeated it? What was the process there, sir?

MS. PATEL: Objection, form.

A. I would -- my standard process of it, I generally have a hard copy of the German, which is on a document holder in front of the screen, so I otherwise begin by looking at that. And then in a sentence by sentence basis reading it, deciding how I would phrase it myself.

Then I would, in this particular case, see how it was being phrased in the, in the -- existing translation. And if, if the words chosen were essentially as I would have chosen myself, I would then have copied it across.

Q. When you say if they were essentially what you would have chosen, you would agree that in doing any translation there are variations that still result in a, you know, certifiable translation?

MS. PATEL: Objection, foundation. Objection, form.

A. Yes, of course. There are many ways that you can correctly translate something often, yeah, often, very large number of ways. We all have our own

preferences and, and, yeah, style and terminology and all the rest of it really.

Q. And that's certainly true when you are translating the German language, correct?

MS. PATEL: Objection, foundation; form.

A. It's true of all languages.

Q. And certainly true of German?

A. Oh, for sure.

MS. PATEL: Objection, form.

Q. (By Mr. Anderson) Was there any part of Ms. Tinworth's translation that you see on the screen that you focused on more particularly when you were doing your translation?

MS. PATEL: Objection, form.

A. Only -- only the paragraph that was, I can't remember one or two paragraphs I had been asked to translate on an earlier occasion because that suggested to me that, that there was something particularly important about that particular section of text; otherwise, no.

Q. Okay. With regard to that particular section of text, do you recall if I put up the German language version, do you recall what section of text that was?

A. I would recognize it if I saw it.

Q. All right. Let's see if we can get it up

there.

THE COURT REPORTER: I'm sorry. Did you say I would or I wouldn't?

THE WITNESS: I would.

Q. (By Mr. Anderson) I have put up on the screen, sir, Exhibit B of your declaration. Do you see this, sir, as the first page?

A. Yes.

Q. All right. I'm going to go to the start of Section 15.9, and then I would ask you, if you can, you tell me to scroll until I get to the paragraph that you recall being told to focus on.

Okay. I'm at the start now, and I saw you were looking at something on your desk. Were you referring to some piece of paper?

A. I've got a print out of that, of that paragraph that I was just checking so that I didn't waste your time any.

Q. All right. Go ahead.

A. You are scrolling fast, so I'll know when I come to it.

Q. All right. I'll scroll slowly. You tell me when I come to it.

A. I think it's the next page. Okay. Coming to it now. Yes. Stop there. It's a bit further down.

That's it. Stop there.

Q. Okay.

A. Yeah. So it's the paragraph that's kind of in the middle of the left-hand side where it says Die Anwendung.

Q. Okay. Let me see if I can -- wait one minute here and I should be able to highlight it so we're all on the same page.

Well, I don't wait forever. My system is now being slow.

It's the paragraph that begins: Die Anwendung ist einfach?

A. That's right, yeah.

Q. Okay. And it was the paragraph that goes down and ends in Ols uberzeugen?

A. Do you recall being told why that paragraph was important?

MS. PATEL: Objection and form.

A. No. No. I'm not sure. No, I don't recall. I've known that -- well, I recognize it from having asked to translate it.

Q. (By Mr. Anderson) Did you change anything of your earlier translation of this paragraph when you did your translation of the entire section of the book 15.9?

A. No, I don't think so.

Q. Okay. Going back to Exhibit 2, sir, Ms. Tinworth's translation -- just to be clear, do you know Ms. Tinworth or did you ever deal with her during your years at RWS?

A. No, I've never met her.

Q. Okay. I'm now going to show you, sir, a document that I'm going to mark as Exhibit 3 or that will be marked as Exhibit 3. It is headed, Declaration of Accuracy of Translation. It has been marked as MOM 1007 in this proceeding. And the there are no Bates numbers on the document.

(Exhibit marked for identification as Deposition Exhibit Number 3.)

Q. (By Mr. Anderson) My question to you, sir, is first off, have you ever seen this first page which is a declaration of accuracy of translation, and it appears to have been signed by David Joshua Sherman on or about February 28th, 2003?

A. No, I don't think so. No, no, I definitely haven't definitely seen.

Q. All right. There is attached to this a translation, which I will represent to you for the record is different from the translation of Ms. Tinworth that we looked at just a little while ago.

Do you recall having seen a translation or

a modification or amendment of Ms. Tinworth's translation prepared by Mr. Sherman previously?

A. I am unaware that there's more than one version of the translation. The only version that I've seen is the version that I found on the company archive, which is presumably the amended version.

Q. The amended version or the original version by Ms. Tinworth?

A. Oh, no, sorry. The -- well, the version done by Ms. Tinworth, the finalized version that we supplied to the customer.

Q. Okay.

A. Yeah, it hadn't occurred to me that there might be more than one version of it.

Q. Okay. The version that you obtained from the archive indicates that the author, or to your understanding the author was Ms. Tinworth, correct?

A. That she had been the translator.

Q. Yes.

A. Yes, I think it would have shown that on the, in the record.

Q. Okay. So --

A. Withdrawn.

Q. Okay. So with respect to this translation in which Mr. Sherman says that he changed or added the

words "to be licked off" to make the translation a "more accurate relection of the German text" you have not seen that, correct, that translation?

A. I don't know actually. I don't know.

Q. Okay. Well, let's see if we can perhaps. I am now sharing my screen, and on the left-hand side to me is the translation from, attached to Mr. Sherman's declaration and on the right-hand side is the translation attached to Ms. Tinworth's declaration.

A. Okay.

Q. And taking a moment to look at these two paragraphs that begin with in bold "use of". Do you see that, sir?

A. Uh-huh.

Q. Does that refresh your recollection as to which translation you consulted as you were doing your translation?

A. No, they seem similar. And, yeah, as I explained previously, you know, I was translating -- you know, I would be translating my, the text myself sentence by sentence, and as such, I would have only been looking at the text, the writing of the previous translation one sentence at a time. I can't say that I would have noticed categorically which was which.

Q. Okay. Well, when you did your -- when you

accessed the art of U.S. archive, do you recall that there are was only one Tinworth translation?

MS. PATEL: Objection, foundation.

A. I can't say for certain actually. I think I probably noticed there was more than one on there. I can't remember.

Q. Well, if there had been more than one translation, wouldn't you have downloaded or accessed both in your work?

MS. PATEL: Objection, foundation; form.

A. I think I would have probably just -- I would have probably just looked at the, the one that, that had the original translator's name against it.

At the end of the day it's not something I would have paid that much attention to really. I just assumed it was all in order, because, ultimately, all the words supplied by me are words that I have essentially finalized in my own mind and approved.

So, you know, the -- it hadn't occurred to me actually to be honest.

Q. Okay.

A. I just assumed it was like, like any other job that I'd be doing routinely and I don't know.

Q. So going back to Exhibit 3, Mr. Sherman's declaration and attached translation dated February 28,

2023, as you sit here today you do not recall one way or the other -- you don't recall, specifically, seeing a translation by Mr. Sherman, would that be a fair statement?

MS. PATEL: Objection, foundation.

A. No, not specifically. No, I don't recall. No.

(Exhibit marked for identification as Deposition Exhibit Number 4.)

Q. (By Mr. Anderson) Okay. I'm now going to show you a document that I'm going to mark as Exhibit 4 or that will be marked as Exhibit 4. This is a document headed Supplemental Declaration of Accuracy of Translation, appears to be David Joshua Sherman. For the record, it's been marked as MOM Exhibit 1022, it has production numbers MOM 0006255 through 6285.

Looking first at the first page, actually, the first two pages, first three pages signed November 6th by Mr. Sherman or appears to have been signed November 6th by Mr. Sherman. Do you recall having seen this declaration previously, sir?

A. No, I don't, sir. I don't know if I had any occasion to.

Q. All right. Attached to the attachments to it we have Ms. Tinworth's declaration, I think you said you have not seen that for her, correct?

A. Uh-huh.

Q. And then -- that's still hers, as Exhibit B, we have Mr. Sherman's previously declaration and attachment of February 28th, which you said you hadn't seen previously, correct?

A. Yes, I haven't it. As far as I'm aware I haven't seen it. I had no occasion to.

Q. And then as Exhibit C we have what appears to be an excerpt from an online English Cambridge Dictionary. You've not seen that previously; is that correct?

A. No, I don't think so. No.

(Exhibit marked for identification as Deposition Exhibit Number 5.)

Q. All right. I'm going to show you, sir, it's an e-mail thread which will be marked as Exhibit 5 ,if I'm doing my numbers correctly.

For the record it has production numbers -- excuse me, M0005791 through 5809, and it is a series of e-mails, and I will tell that you none of them indicate that you were an arthur, recipient or copyee. So I just have a few questions for you.

First, do you recall seeing any of these e-mails between Elizabeth Daw and Andrea Turner at RWS and Ms. Patel at Fish & Richardson. And I'll just

scroll through these slowly so you can take a look at it. The last e-mail is dated August 4th of 2023, and the first e-mail, for the record, is dated February 14th of 2023.

So I'm now going to scroll through these slowly. And Mr. Benyones, at the end of it, let me know whether you recall having seen any of these previously.

A. I think I can categorically say if I wasn't copied into them, I wouldn't have had the occasion to have seen them.

Q. Well, do you recall any of them being forwarded to you by the folks at RWS?

A. Do you mean the entire thread or individual e-mails?

Q. Individual e-mails if you recall having seen any of them, please let me know and stop me.

A. It doesn't look familiar. Yeah, I can't categorically say, but I can't think of any particular reason why I would have needed to have seen them.

Q. Okay. I'll just keep on scrolling while we're at the end, and I'll ask you a few specific questions of some of them whether they do refer to you.

A. No, they don't look familiar.

Q. Okay. There's a number of e-mails from an Andrea Turner, key account manager. Do you see that,

for example, on page 5802 that I have up on the screen right now?

A. Yeah.

Q. Do you know who she is?

A. The name is familiar. I've not had any -- I've met her. I think she's a product manager. I'm sure I've had e-mail correspondence with her about individual jobs. But we've got lots of product managers, so I can't be more precise than this I'm afraid.

Q. By the way, have you ever done a translation for the law firm of Fish & Richardson prior to this translation?

MS. PATEL: Objection, relevance.

A. I've done another translation for them. I couldn't say for certain whether it was before or after this one.

Q. Okay. I'm going to go to the last page of this exhibit, which has Bates numbered 5809, and it appears to be a single full sentence.

Do you recognize having seen this expert that begins Die Anwendung ist einfach?

A. No, I don't think so, but I can't say for certain.

Q. Okay. I'm going to go to Bates numbered page MOM 0005796, and in it at the bottom of that page is

e-mail from Ms. Patel to Andrea Romero-Perez, Elizabeth Daw and Andrea Turner at RWS. It is dated July 28, 2023. Do you see that, sir, on the screen?

A. Yes.

Q. First off, do you recognize the name Andrea Romero-Perez?

A. Again, the name looks familiar. I would have guess it was another product manager --

Q. All right.

A. -- of which there are many.

Q. Okay. In the e-mail from Ms. Patel, she asks or tells Ms. Perez that she would like a quote, a new translator to translate just that sentence and how long it would take to get a signed declaration. Do you see that, sir?

A. Yes.

Q. Do you, seeing that, confirm what I believe you testified to previously that initially you were asked simply to translate a single sentence?

MS. PATEL: Objection, foundation; form.

A. No, I think I was asked to translate a single paragraph.

Q. Okay.

A. I think.

Q. All right. You don't recall for sure?

MS. PATEL: Objection, foundation; form.

A. No, I don't actually. No.

Q. All right.

A. I think it was a paragraph.

Q. All right. I'm going to go up to the next e-mail on the thread on this page. It's to Ms. Patel from Ms. Perez, dated, looks like, July 28th, 2023. Do you see that, sir, on the screen?

A. Yeah.

Q. Okay. And in this, Ms. Perez says that, quote, We could have this returned to you by close of business UK time, 1st August, as the translator would need to spend time looking at the context of the text and not just translating a sentence. Do you see that, sir?

A. Yes.

Q. Does that at all refresh your recollection that you initially were asked to simply translate a single sentence?

MS. PATEL: Objection, foundation; form.

A. No, not really. No. Just sentence. The difference between one sentence and one paragraph is not enormous.

Q. Okay. Would you agree with Ms. Perez's statement that quote, The translator would need to spend time looking at the context of the text and not just

translating a single sentence, close quote?

MS. PATEL: Objection, foundation.

A. Yes.

Q. Thank you. I'm now going to go up to, it's actually the top of Bates numbered page 5795 and the bottom of Bates numbered page 5794.

And first looking at 5795, there's an e-mail from Ms. Perez to Ms. Patel, copied to Ms. Daw and Ms. Turner, dated July 31st, 2023. And in it it identifies you as the translator. Do you see that?

A. Yeah.

Q. Do you recall having any conversations with Ms. Perez when you were apparently selected to do this translation?

MS. PATEL: Objection, form.

A. I can't remember.

Q. All right. Scrolling up, there is another e-mail from, in response to Ms. Romero's, or excuse me, Ms. Perez's e-mail identifying you.

The next e-mail is from Ms. Patel to Ms. Perez, copies to Ms. Daw and Ms. Turner, dated August 2nd, 2023, in which Ms. Patel says, quote, We would like to work forward with Mr. Benyones performing this additional translation with one minor revision. Could he translate the entire paragraph in which the

relevant sentence is located and not just the relevant sentence. Please let us know if there will be any changes in the cost to do so. Do you see that, sir?

A. Yes.

Q. Okay. Does that refresh your recollection that your initial assignment that you were -- at least the initial assignment that you recall was simply translate a paragraph?

MS. PATEL: Objection, foundation. Objection, form.

A. It doesn't refresh my memory at all because it doesn't add anything further to my recollection that I was asked to translate a paragraph.

Q. All right. Moving up to 5794, it's an e-mail from Ms. Patel to Ms. Perez, copy to Ms. Daw and Ms. Turner, dated August 2nd, 2023, in which Ms. Patel says, Please find a draft declaration for Mr. Benyunes, and the highlighted paragraph we'd like him to translate for review. Do you see that?

A. Yes.

Q. Do you recall having received a draft declaration prepared by Ms. Patel or someone at her firm which included the highlighted paragraph that they wanted you to review?

MS. PATEL: Objection, foundation; form.

A. I can hardly remember. It's been provided with the paragraph, and then at a later stage being provided with a declaration. I don't have any recollection of the origins of the declaration. I remember being asked to approve the content, and I think I asked to have some changes made to it, as I recall -- as I recall. It's stuff that I don't remember in minute detail at this point.

Q. All right. Okay. Well, this is sent with the -- do you have any reason to believe that Ms. Patel did not send Ms. Perez a draft declaration for you with the highlighted paragraph they wanted you to translate?

MS. PATEL: Objection, foundation. Objection, form. Objection, relevance.

A. It's not something that would have crossed my mind where the declaration had come from.

Q. Yeah.

A. I think probably I just assumed it come in-house from my own company.

Q. Okay. Well, my question is, I thought you testified that you don't recall seeing the draft declaration in the highlighted paragraph?

MS. PATEL: Same objection.

Q. Or do you recall it?

MS. PATEL: Same objections.

A. Separately, yes.
Q. Okay.
A. Draft declaration and the highlighted paragraph.
Q. Okay. You do recall seeing that?
A. Separately, yes.
Q. Okay. Do you recall -- this is dated August 2nd at 1836, and I believe that's the local time for Ms. Patel, which would be 6:36 central standard time, which I believe would be 0036 summertime. Do you see that, sir?
A. Yes.
Q. All right. The next e-mail is an e-mail from Ms. Perez to Ms. Patel and copies to Ms. Daw and Ms. Turner, dated August 3 at 4:37 a.m., so the next day. I believe that would be 10:37 a.m., I believe, summertime.
A. Yes.
Q. In it Ms. Perez provides, says there are some comments from you. Do you see that, sir?
A. Yes.
Q. Okay. Do you -- does this refresh your recollection that you -- or does this confirm that you received the declaration drafted by Ms. Patel with the highlighted paragraph attached and that you reviewed and

provided comments on the draft declaration?

MS. PATEL: Objection, foundation. Objection, form.

A. Oh, I certainly remember receiving the declaration. I just don't remember where it came from, that's all, or even giving it any thought.

Q. All right. But do you recall making these comments to the draft declaration?

MS. PATEL: Objection, foundation. Objection, form.

A. Yes, they look familiar now.

Q. Okay. And to the best of your recollection, those are comments and responses to specific client inquiries that you made and passed on to Ms. Perez, correct?

MS. PATEL: Objection, foundation.

A. I think I just making -- because I can't remember what originally it said. I think I'm just clarifying or making it a little clearer. I can't remember exactly what the nature was of the things that I was rephrasing actually.

Q. All right.

A. It's minor things I expect.

Q. All right. Let's go up to Bates numbered page 5792. There is an e-mail from Ms. Patel to

Ms. Perez and Ms. Daw and Ms. Turner, dated August 4th of 2024, says, quote, Thank you for this information. Attached please find a revised draft of Dr. Benyunes's declaration to include his title and the signature block. Do you see that?

A. Yes.

Q. Now, that was sent on August 4th at 1642, so 4:54 p.m. central time and after 10:00 p.m. -- almost 11:00 p.m. London time. And that is -- it appears to be less than two days or about two days after Ms. Patel sent a draft declaration to Ms. Perez. Do you see that?

MS. PATEL: Objection, foundation.

Q. Here we have on the August 2nd e-mail at 1836, Ms. Patel saying here, Attached is a draft declaration with the highlighted paragraph, and then less than two days later, Here is the revised draft with the title. Do you see that?

MS. PATEL: Objection, foundation. Objection.

MR. ANDERSON: Excuse me, counsel. What's the lack of foundation to the question do you see that?

MS. PATEL: He already testified that he's not a party to this chain, he doesn't know anything about these e-mails. I mean, he doesn't have personal

knowledge of any of these correspondences or what they reflect or anything like that.

MR. ANDERSON: Well, counsel, my question was does -- do you see it? It's a question whether he is physically capable of seeing it with his eyes.

There's is nothing missing in foundation about that unless Mr. Benyunes has certainly gone blind in the last minute. Please listen to my question before us say a bunch of instructions that are not relevant.

MS. PATEL: That's --

Q. (By Mr. Anderson) Mr. Patel -- excuse me. Mr. Benyunes, do you see this e-mail?

A. I can see the e-mail on the screen.

Q. Excellent. Now, the first e-mail that included -- that attached -- that drafted the declaration for Ms. Patel is dated August 2nd. Do you see that?

A. Yes, sir. I'm starting to get very lost with all these dates, but I can see that that's dated August the 2nd.

Q. All right. My question to you, sir, is does this refresh your recollection that you completed the translation of the single paragraph that was provided to you in less than two days?

MS. PATEL: Objection, foundation.

Objection, form.

A. I would have completed a translation of a single paragraph in less than two days, yes.

Q. All right. When you did this translation of the single paragraph, did you refer to Ms. Tinworth's original translation?

A. Yes, I suppose so. Yes.

Q. All right. So to the extent that you agreed with her translation of that single paragraph, you adopted her language as you testified to previously, correct?

MS. PATEL: Objection, foundation.

A. I would have adopted her language where I felt it corresponded to how, how I would have expressed it in my own words, yes.

Q. Okay. And then if we go to the first page in the exhibit, 5791, there's an e-mail from Ms. Patel, dated August 4th, 2023, sent about 20 minutes after the document, or after the here is the revised draft e-mail on August 4th at 1654. So about 20 minutes later at 1714 she sent an e-mail saying, Could you please hold off on these. Do you see that?

A. I can see that, yes.

Q. Do you recall being told that the translation project was off?

A. Yes, I do.
Q. Okay. Do you recall being told why?
MS. PATEL: Objection, foundation.
A. No. No. That's not the sort of information I'm normally given as a translator.
Q. All right. I'm going to show you a document will be marked Deposition Exhibit 6.
(Exhibit marked for identification as Deposition Exhibit Number 6.)
Q. Do you see that, sir, first page?
A. Yeah.
Q. All right. For the record, this has Bates numbers MOM --
MR. ANDERSON: Excuse me. I'm sorry, but Ms. Duguay, I'm afraid I have to ask you to excuse yourself from this meeting because this document is marked confident attorney's eyes only, so I'm not allowed to show it -- you're not allowed to have access to it unless counsel for MOM is willing to waive the designation.
MS. PATEL: Does that excuse me come now or do I --
MR. ANDERSON: If she wants to -- let me ask this, Counsel Ms. Patel, are you willing to waive the designation on this exhibit?

MS. PATEL: Can we scroll through it?
MR. ANDERSON: Sure.
MS. PATEL: Can you start at this top, please, Alan.
MR. ANDERSON: Although scrolling through it with Ms. Duguay seeing it.
MS. PATEL:
MS. DUGUAY: I'm happy to jump off and jump back in.
MR. ANDERSON: Can you -- what's the best way to do this? Stop your -- turn off your monitor and you won't be able to see it, or stop your video, pause your video.
MS. DUGUAY: I can stop video, certainly. I can turn my laptop or jump off for a moment.
MR. ANDERSON: It's Ms. Patel's call.
MS. DUGUAY: I'm happy to jump off, Ms. Patel.
MR. ANDERSON: Because it's designation.
MS. PATEL: We can de-designate this document. She can stay on.
MR. ANDERSON: All right. Thank you. And I apologize, I did not notice that Exhibit 5, which we just saw, also has the same highly confidential attorneys eyes only designation. Are you agreeable to

de-designate Exhibit 5, otherwise, we have a problem with Ms. Duguay having seen it?

MS. PATEL: We can de-designate that one well. Alan, correct me if I'm wrong, I believe we sent an undated e-mail de-designating all of this e-mail correspondence after it was designated?

MR. ANDERSON: I don't recall that. These are the versions that we have. If you de-designated them, I think you need to send a version without the designations.

MS. PATEL: We --

MR. ANDERSON: If you did, then great, we are home free. If you didn't, I would ask you to do that.

MS. PATEL: We sent that e-mail.

MR. UNGERMAN: I recall seeing the e-mail de-designating them, but I did not substitute versions of that.

MR. ANDERSON: That explains the question. That was, for the record, Mr. Ungerman.

I would ask, just so we don't have the difficulty, when you get a chance, please send versions that don't have the designation at the bottom.

MS. PATEL: Will do.

MR. ANDERSON: Thank you. All right.

Back to you, Mr. Benyunes.

Q. (By Mr. Anderson) For the record, this is an e-mail thread and attachment that has Bates numbers MOM 0005857 through 5872.

I'm going to refer you only to the last two pages of this exhibit, which are an attachment to one of the e-mails. And this appears to be a draft of a declaration for you, Mr. Benyones. And I'm going to scroll through this and ask whether you recall having seen this draft previously? And this draft is dated August 2nd, 2023.

A. I can't say for sure.

Q. All right. Do you have any reason to believe this is not the draft declaration that was sent to Ms. Perez by Ms. Patel on or about August 2nd, 2023?

MS. PATEL: Objection, foundation.

A. I can't answer that question. I have no idea.

Q. All right. If you look at paragraph 2, it references an attached translation of the relevant excerpt from the attached German version of Section 15.9 of "Wochenbettbetreuung in der Klinik und zu Hause." Do you see that?

A. Yes.

Q. And the relevant excerpt is highlighted on page 259. Do you see that?

A. Yes.

Q. Do you recall having received a copy of Section 15.9 with an excerpt on page 259 in the document highlighted?

A. Some of the questions you're asking me, you're asking me to distinguish between things I remember about when I translated the first paragraph and the second job, and it's difficult to say for sure. I think so, yes. Yeah, I think so. Yes.

(Exhibit marked for identification as Deposition Exhibit Number 7.)

Q. (By Mr. Anderson) Okay. All right. I'm going to show you now a different document which the will be marked Exhibit 7. This is e-mail thread and attachment. The first Bates numbered page is MOM 0005840 and the last Bates numbered page is MOM 0005853.

Looking at the first e-mail on the first page of the exhibit, sir, it's from Ms. Patel to Ms. Perez dated August 4th, 2023 at 3:54 p.m. Do you see that, sir?

A. Yes.

Q. And it references, Attached please find a revised draft of Dr. Benyunes's declaration to include his title in the signature block. Do you see that?

A. Yes.

Q. And if we then go to the attachment, there is a draft declaration of accuracy. And if we go to the second page, it appears that your title is included in the signature block. Do you see that?

A. Yes.

Q. Do you recall having received this draft declaration during your work relating to translating a single paragraph?

MS. PATEL: Objection, form.

A. Not specifically. I may have done -- I honestly can't remember.

Q. Going up to page 0005843, there's an e-mail from Ms. Perez to Ms. Patel, copied to Daw and Ms. Turner dated January 28, 2023, which references a sentence to be translated. Do you see that, sir?

A. Yes.

Q. Do you recall having seen this e-mail previously, I know you're not an addressee, but do you recall it ever being forwarded to you?

A. Doesn't look familiar. I can't say for sure.

Q. Okay. This does not refresh your recollection of being initially tasked with translating only a single sentence?

MS. PATEL: Objection, foundation; form.

A. I can't remember. I absolutely can't remember

whether I was asked to translate a sentence or a paragraph. That's not very much to me really necessarily. It's a small section of text.

Q. I'm sorry. When you say it's a small section of text what is antecedent for it's?

A. Well, whether it's a sentence or a paragraph, it's a small section of text. I honestly can't remember some of these things in minute detail.

Q. Okay. Now, we saw an e-mail from Ms. Patel in, I think it was dated August 4th saying to stop work on the project. And you recall it being -- I believe, you testified you recall being told to stop work on the project at that time, correct?

A. I can't say right now. I don't recall when it was told, but I do recall being told that.

Q. Okay. Do you recall at some point in time being told that the project or some aspect of the project was back on, if you will?

A. Well, when I was sent or asked to translate the whole Section 15.9, whenever that was.

Q. All right. I'm going to show you what will be marked as Exhibit 8.

(Exhibit marked for identification as Deposition Exhibit Number 8.)

Q. (By Mr. Anderson) This is an e-mail thread, the

first page and an attachment, first page has Bates MOM 0006286 and the last page is MOM 0006308. I'm first going to direct your attention, sir, to page 6288.

At the bottom of that page there's an e-mail from Ms. Daw to Ms. Patel on August 4th at 11:29 a.m. saying, Thank you for confirming. We will put both parts on hold. Do you see that?

A. Yes.

Q. It says that, Mr. Benyunes has already completed the translation of the paragraph in question. Do you see that, sir?

A. Yes.

Q. Okay. Do you have a copy of your translation of the single paragraph?

MS. PATEL: Objection, foundation. Objection, relevance.

A. I've got it somewhere, yes.

Q. Okay. As you sit here, however, you can't tell us whether there are any differences between the translation that you did of just the paragraph or the translation that you later did of Section 15.9 for that paragraph; is that correct?

MS. PATEL: Objection, foundation.

A. Sorry. I can't say categorically, but -- no, I can't say categorically. No.

Q. Okay. I'm going to move up on that page and there is an e-mail from Ms. Patel to Ms. Daw, copy to Ms. Turner dated October 13th of 2023, and it says in part, quote, We would like to move forward with Dr. Benyunes preparing a complete translation for Section 15.9, pages 18 to 23 of the attached reference at this time. When you get the chance, could you please provide me with a quote and expected turnaround for this project. Do you see that, sir?

A. Yes.

Q. Do you recall in about the middle of October being told that now you were, they -- that now Ms. Patel wanted a complete translation for Section 15.9?

A. Not in that form. I'm not given the names of individual people, customers. I was just being asked to do this in very general terms.

Q. Okay. When you say very general terms, can you give me an example what you mean by very general terms?

A. The way I work those, operate, I would have had what we call a job card in my schedule with the internal job reference number, the name of the customer, and I would have registered that it was there, and little more, really. I would have probably recognized the name Fish & Richardson because I've done the previous paragraph, but that's all. And then right when it

came -- when it came to do the job it would have, yeah, I would have realized what it was.

MS. PATEL: Alan, two questions. Seems like we've been going for an hour and 35. Do you guys plan on taking any additional breaks or taking a lunch breaks at all?

MR. ANDERSON: I was hoping to finish this up relatively quickly and then take a break before the next one, so if it's all right with Mr. Benyones and Ms. Escobar are the critical people here. Do either of you need a break?

THE WITNESS: I would --

MR. ANDERSON: Go ahead, Mr. Benyones.

THE WITNESS: If we're going to be done in the next ten minutes, I'm happy to carry on, but otherwise I'd like a toilet break.

MR. ANDERSON: Okay. Well, I'm hopeful that we will be done in the next ten minutes. Let's press on, is that all right?

MS. PATEL: Ms. Escobar, is that okay with you?

MR. ANDERSON: I see the thumbs up. Thank you.

Q. (By Mr. Anderson) So Mr. Benyones, do you recall how it was communicated to you on or after

October 13th that you now were to do a complete translation for Section 15.9, other than just a job card showing up in your --

A. I can't remember. I may have had a -- there may have been a -- I may have had an explanatory e-mail. I can't remember.

Q. All right. If I scroll up to Bates numbered page 6287, there's an e-mail from Ms. Daw to Ms. Patel telling her the cost for translating the five pages into English and saying that if the confirmation is received on that day it would be done by 24 October, so about a week.

And then there's an e-mail from Ms. Patel two days later saying that they will provide a declaration for your review and comment. Do you see that?

A. Yeah.

Q. Do you recall receiving another draft declaration for your review and comment?

MS. PATEL: Objection, form.

A. I mean, I remember being given a declaration. Yeah, I can't recall specifics of it.

Q. Okay. If we scroll up to the first page 6286, there is an e-mail at the top from Ms. Patel to Ms. Daw that says, Attached please find a draft declaration for

Mr. Benyones review and comment. Please let us know if he has any revisions. Do you see that, sir?

A. Yes.

Q. Okay. And then if we scroll all the way to the end, beginning at page 6307, there's a draft declaration.

A. Yeah.

Q. Do you recall that as the draft declaration that you received to review?

MS. PATEL: Objection, foundation; form.

A. Not specific. I mean, these declaration they all look alike to me really. All I recall is being given a declaration to review, having had the opportunity to review it, and then signing the finalized repeat version. I don't remember anymore detail than that.

Q. All right. I will tell you, and if you want if you don't believe me, we can go and look at the one you actually signed. But this draft which is undated and unsigned appears to be identical in the language for the declaration that you actually signed?

A. Okay.

Q. Okay. Do you -- does that refresh your recollection that whatever draft you received to signed you had no further changes?

MS. PATEL: Objection, foundation; form.
A. It's too much detail for me to remember. I'm sorry.
Q. (By Mr. Anderson) Do you recall who you received communications from at RWS with regard to this project?
A. No, not off the top of my head. No.
Q. Do you recall who you sent your translation or signed documents to in connection with this project?
MS. PATEL: Objection.
A. We don't -- sorry.
MS. PATEL: You can go ahead.
A. We don't send translations. We upload them to a job folder on our document management system.
Q. Okay.
A. And I'm not sure who I -- I can't remember who I sent the declaration to.
Q. All right.
MR. ANDERSON: Thank you, Mr. Benyones. I have no further questions for you at this time. I appreciate your time here today.
THE WITNESS: I thank you.
MS. PATEL: Alan, are you passing the witness?
MR. ANDERSON: Yes. Yes.

MS. PATEL: Does Ms. Duguay get to ask questions or does it go straight to me?

MR. ANDERSON: Straight to you. This is the same as we were in trial direct, in effect.

MS. PATEL: Sounds good.

EXAMINATION

BY MS. PATEL:

Q. Dr. Benyunes, we spoke briefly on Friday; is that correct?

A. That's correct, yes.

Q. And that information included Ms. Duguay, correct?

MR. ANDERSON: Objection, leading.

A. That's right, yes.

Q. (By Ms. Patel) Was Mr. Sherman part of that conversation?

A. Come to think of it, I don't think he was actually.

Q. Okay.

A. I can't remember now.

Q. Okay. If I represented to you that he wasn't, would that be something that you would disagree with?

MR. ANDERSON: Objection, leading.

A. No, I wouldn't disagree with it because I can't remember to be honest.

Q. You reviewed your declaration before this deposition; is that right?
A. Yes, I did.
Q. And you reviewed it again today as counsel asked questions?
A. Yes.
MS. PATEL: Alan, can you remind me the exhibit number of his signed declaration or can the court reporter did that, please?
MR. ANDERSON: It's Exhibit 1. Would you like me to put it up on the screen?
MS. PATEL: Yes, please.
Q. (By Ms. Patel) Counsel asked you questions about Exhibit 1; is that right?
A. Yes.
Q. Specifically, I believe he asked questions about language in paragraphs 1 and 2; is that correct?
A. As I recall, yes.
Q. Okay.
MS. PATEL: Alan, can you please scroll down to paragraph one.
Q. Paragraph 1 says that you personally performed the attached translation from German to English of an excerpt of Section 15.9 of a reference that translates to child bed care in clinics and at home.

If I refer to that reference as Harder would you understand that that is what I am referring to that reference?

A. In the sense of the author of the book?

Q. Yes.

A. Yes, I would.

Q. Okay. In the same similar language, I guess, is also in paragraph 2 of the relevant excerpt from the attached German version of Section 15.9 of Harder, correct?

MR. ANDERSON: Objection, leading.

A. Yes, correct.

Q. (By Ms. Patel) What is your understanding of what you reviewed when you wrote those two paragraphs?

MR. ANDERSON: Object to the form of the question.

A. Well, it's actually correct that I personally performed the translation, and the attached translation is, to the best of my knowledge, a truthful and accurate translation. I appreciate that, perhaps, it should say Section 15.9, rather than an excerpt from Section 15.9, which is an oversight.

Q. And just for clarification, let me rephrase that question.

What is your understanding of what you

reviewed.

MR. ANDERSON: Object to the form of the question?

A. The wording of the two paragraphs. I don't understand what you're asking me beyond that.

Q. Did you review all of Section 15.9?

A. Did I review it? I translated all of Section 15.9.

Q. So you translated the entire Section 15.9, correct?

MR. ANDERSON: Object to the form of the question; leading.

A. Yes. I translated it, yes, with, you know, basing sections of my translation on an earlier one. But I take full responsibility for my translation.

Q. Did you translate the entire section or just an excerpt of Section 15.9?

A. All of it in the sense that I've translated it, in the sense that I execute my role as a translator on all jobs routinely.

Q. And with that clarification, do you sitting here today, believe that the statements in your declaration are true?

MR. ANDERSON: Object to the form of the question.

A. Yes, I do.
Q. (By Ms. Patel) And you reviewed your translation before this deposition, correct?
MR. ANDERSON: Objection, leading and asked and answered.
A. I did when I completed it. I'm not sure I reviewed it since.
Q. You completed it after you reviewed it, right?
MR. ANDERSON: Objection, leading; also mischaracterizes his testimony.
A. Yes, I did.
Q. Did you review your translation today during this deposition with counsel?
MR. ANDERSON: Object to the form of the question.
A. I haven't reviewed it today, no.
Q. When is the last time you reviewed it?
A. Probably when after I completed it.
Q. Sitting here today --
A. Sorry.
Q. Go ahead.
A. I was just going to say I have no cause to review it again because I already signed this declaration that it is a true, full and accurate translation, so I didn't really see that there's any

need to review it again.

Q. So sitting here today, do you still believe that your translation is true accurate and complete?

A. To the best of my knowledge, yes.

MS. PATEL: No further questions.

MR. ANDERSON: I have just a couple follow up questions for you, Dr. Benyunes.

REEXAMINATION

BY MR. ANDERSON:

Q. Mr. Benyunes, earlier when I asked you about who attended the first Teams meeting that you had you testified it was Ms. Patel, Ms. Duguay and Mr. Sherman. Do you recall that testimony?

A. Yes, actually I think I did.

Q. All right. And now in response to further questions from Ms. Patel, you've indicated that your recollection was wrong, correct?

A. I made a mistake. I think I had made a mistake, yes.

Q. So your recollection of what occurred just four days ago was wrong from what you testified earlier, correct?

MS. PATEL: Objection, foundation -- sorry, form.

A. I've got a less than fantastic memory I confess

to of that, yes.

Q. (By Mr. Anderson) Okay. And just so we're clear you have not reviewed your translation that you prepared since some time on or before October 27th, 2023, when you signed Exhibit 1, correct?

A. Correct.

Q. All right. And also during her questions Ms. Patel referred to this as a book authored by Ms. Harder. Do you recall that?

A. Yes.

Q. In fact, Ms. Harder is an editor of the book and that there are chapters written by at least five other individuals. Do you see that, sir?

A. I do see that. I noticed that.

Q. So it would be more appropriate to refer to this book as a book in which Ms. Harder was the editor as opposed to the author of the entirety of the book, correct?

A. Yes.

MS. PATEL: Objection, relevance.

MR. ANDERSON: Thank you. Thank you. I have no further questions at this time.

MS. PATEL: No further questions from me as well.

MR. ANDERSON: Thank you, Mr. Benyones.

I appreciate you testifying here today in connection with this very important matter.

I don't believe we have anything further.

MS. PATEL: Thank you.

THE WITNESS: All right. Thank you.

THE COURT REPORTER: Okay. We are off the record.

(Deposition concluded at 12:31 p.m.)

THE STATE OF TEXAS §
COUNTY OF HIDALGO §

COURT REPORTER CERTIFICATE

I, ANNETTE E. ESCOBAR, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that there came before me the aforementioned named person, who was by me duly sworn to testify the truth concerning the matters in controversy in this cause; and that the examination was reduced to writing by computer transcription under my supervision; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, related to or employed by, any of the parties to the action in which this deposition is taken, and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially or otherwise interested in the action.

_____Reading and Signing was requested.

_____Reading and Signing was waived.

_XX_ Reading and signing was not requested.

Given under my hand and seal of office on this 11th day of December, 2023.



ANNETTE E. ESCOBAR, CSR

TX CSR#5475, Exp: 1/31/24

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that Patent Owners Exhibits 2023-2066 are being served on February 8, 2024, by filing Patent Owners Exhibits 2023-2066 through the Patent Trial and Appeal Case Tracking System (P-TACTS) and by electronic mail as directed by Petitioner upon the following counsel of record for Petitioners:

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